

A Human Rights-Based Approach to Disaster Risk Management in Greenland: Displacement, Relocation, and the Legacies of Colonialism

Miriam Cullen, Benedicte Sofie Holm,** and Céline Brassart-Olsen****

1 Introduction¹

On 17 June 2017, residents of the Karrat Fjord in Greenland experienced ‘the first known example of an Arctic tsunami which directly impacted an inhabited Arctic settlement and forced its evacuation’.² In total, 176 residents were evacuated and ultimately relocated. In this article, the tsunami and associated response are adopted as a reference point for examining disaster risk management in Kalallit Nunaat / Greenland. This article explores the link between Greenland’s colonial past and present-day approaches to disaster risk management to reveal how human rights-based approaches could advance resilience at a time when hazards in Greenland are on the rise.

The effects of climate change will continue to increase the frequency and intensity of extreme weather events, landslide-triggered tsunamis, avalanche flows, glacial retreats, permafrost melt and seasonal loss of sea ice in Greenland.³ These factors add

* PhD, LLM, LLB, BA, GDLP, Associate Professor, Copenhagen University, Faculty of Law (Aotearoa New Zealand settler, naturalised Australian, migrant to Denmark).

** LLM, BA, Student Assistant, Copenhagen University, Faculty of Law (Danish Greenlandic).

*** PhD, LLM, LLB, BA, Assistant Professor, Copenhagen University, Faculty of Law (French national, resident in Denmark).

1 This research was made possible with funding from the Independent Research Fund Denmark (grant number 1127-00125B).

2 Mateusz C. Strzelecki and Marek W. Jaskólski, ‘Arctic Tsunamis Threaten Coastal Landscapes and Communities – Survey of Karrat Isfjord 2017 Tsunami Effects in Nuugaatsiaq, Western Greenland’ (2020) 20/9 Natural Hazards and Earth System Sciences, 2521, 2531.

3 Intergovernmental Panel on Climate Change (IPCC), Synthesis Report of the IPCC Sixth Assessment Report (AR6) (2023), Summary for Policymakers (IPCC 2023) 19; IPCC, Climate Change 2022: Impacts, Adaptation and

to disaster risk management challenges in a territory that is both extremely vast and sparsely populated. Greenland encompasses approximately 2 million square kilometres of land, over 80 per cent of which is covered in ice, and is home to just 56,900 people who live in small towns and settlements with no roads between them.⁴ About 85 per cent of those residents are Greenlandic Inuit, which raises important questions about the application of the rights of Indigenous Peoples in the context of disaster risk management and the complex legal arrangements between self-governing territory and the distant coloniser state.⁵

Indeed, ensuring equity and non-discrimination between rights-holders within a single state requires a particularly well-considered approach in the context of the unique legal arrangements between a state and a self-governing territory.⁶ The next section of this article outlines the legal arrangements between the Kingdom of Denmark and the self-governing territory of Greenland. It describes aspects of the colonial legacy, and how they matter to disaster risk management, particularly in the context of relocation, whether temporary or protracted. In section three, the article describes the 2017 tsunami that struck the Karrat Fjord and led to the wholesale evacuation of two coastal settlements, the residents of which remain displaced to this day. In section four, the example of the 2017 tsunami is used to illustrate why potential relocation options ought to be planned for, in advance, in consultation with the people affected, and be guided by the thoughtful and tailored implementation of human rights standards. Of particular, though not exclusive, relevance are rights to land, culture and mental health (section 4.1),

Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change (CUP 2022) 2332.

4 Statistics Greenland, *Greenland in Figures 2022* (19th edition) 13.

5 Miriam Cullen, 'Climate Change, Colonialism, and Human Rights in Greenland' in Petra Butler and Jean-Pierre Gauci (eds), *Human Rights in Small States*, (Springer, forthcoming), 8–9, at <https://static-curis.ku.dk/portal/files/357050337/Cullen_Climate_Change_Colonialism_and_Human_Rights_in_Greenland_rev_.pdf>, last accessed (as any subsequent URL) on 18 July 2023; Terto Ngiviu, 'The Inughuit of Northwest Greenland: An Unacknowledged Indigenous People' (2014) VI *The Yearbook of Polar Law Online*, 142; Rachael Lorna Johnstone, 'The Impact of International Law on Natural Resource Governance in Greenland' (2020) 56/21 *Polar Record*, 5.

6 Cullen *ibid.*

adequate housing (section 4.2), through processes underpinned by the right to self-determination, in particular associated rights to information and participation (section 4.3).

2 The Colonial Legacy

As a matter of international law, Greenland sits within something of a legal lacuna characteristic of former colonies which have not (yet) reached a full degree of statehood, but are self-governing. Each legal arrangement between the former colony and coloniser state is *sui generis*, varying from 'near independence to practical absorption' into the state.⁷ Pursuant to the provisions of the 2009 Self-Government Act (of the Danish Parliament), Greenland is a self-governing territory within the Danish Realm. It is not a state within the meaning put forth in Article 1 of the Montevideo Convention on the Rights and Duties of States, but rather a territorial entity within the Kingdom of Denmark.

Greenland exercises a high measure of independence through its self-governance arrangements with Denmark and possesses some degree of international legal personality in its own right. Accordingly, the Government of Greenland is responsible for ensuring rights protection as part of the day-to-day activities of governing, including in relation to disaster risk management. Still, in the strict legal sense, when it comes to human rights, the buck stops with Denmark. It is the Kingdom of Denmark that responds to questions about the human rights of Greenlandic Inuit under UN special procedures, it is Denmark that leads the universal periodic review (albeit in consultation with the Government of Greenland and the Greenland Human Rights Council), and it is Denmark that answers for its actions in the European Court of Human Rights. Denmark also ratified and accepted the International Labour Organization's Indigenous and Tribal Peoples Convention (hereafter ILO 169) in 1996, and in so doing, declared that the original inhabitants of Greenland were the only Indigenous People in the Danish Realm.⁸

7 James Crawford, *The Creation of States in International Law* (OUP 2007) 284.

8 Declaration in Relation to Convention No. 169, Order no. 97 of 19 October 1997 of the ILO Convention no. 169 of 28 June 1989 (BKI nr 97 af 09/10/1997 *Erklæring i forbindelse med ratifikation af ILO-Konventionen Nr. 169 af Oprindelige Folk og Stammefolk i Selvstændige Stater*) para. 1; reproduced in

When Denmark joined the United Nations in 1945, Greenland was listed as a non-self-governing territory under Part 11 of the Charter. Denmark was obligated under the terms of the UN Charter to promote the well-being of the inhabitants of Greenland and advance the development of self-governance.⁹ Pursuant to the formalities of international law, Greenland ceased to be a colony of Denmark when it was subsumed into the Danish State by an amendment to the Danish Constitution in 1953, confirmed by the UN General Assembly with the adoption of resolution 849(IX) on 22 November 1954. While integration was a legitimate conclusion to non-self-governing territory status under Chapter XI of the UN Charter, it was always ‘viewed with some suspicion by the General Assembly’.¹⁰ The trust system was ‘geared towards eventual independence, not least to avoid potential threats to international peace and security that arose from territorial disputes’.¹¹ Integration was, *prima facie*, the opposite of that.¹²

Whatever the outcome of decolonisation as a matter of international law, Greenland’s incorporation into Denmark intensified local experiences of coloniality. Coloniality refers to a set of practices ‘characterized by a unique combination of remoteness, infrastructural sparseness, Indigenous erasure, and settler homogeneity that shapes everyday lived experience, politics and intellectual production’.¹³ Although to many legal practitioners trained in the Western European tradition, ‘[I]aw is justified and dynamised by the continuous assertion of universal

English in: International Labour Organization (ILO), ‘Report of the Committee set up to examine the representation alleging non-observance by Denmark of the Indigenous and Tribal Peoples Convention, 1989 (No. 169), made under article 24 of the ILO Constitution by the National Confederation of Trade Unions of Greenland’ (*Sulinermik Inuussutissarsiateqartut Kattuffiat-SIK*) (SIK), Decision (2001) para. 25.

9 Charter of the United Nations (26 June 1945) art. 73.

10 Crawford (n 7) 283.

11 Cullen (n 5) 7.

12 Integration into the Danish Realm was undertaken without the free, prior, and informed consent of the Greenlandic people and has been written about extensively elsewhere: Gudmundur Alfredsson, ‘Greenland and the Law of Political Decolonization’ (1982) 25 *German Yearbook of International Law*, 302; Gudmundur S. Alfredsson, ‘Greenland and the Right to Self-Determination’ (1982) 51/1 *Nordic Journal of International Law*, 39–43; Anne Kristine Hermann, *Imperiets Børn: Da Danmark Vildledte FN Og Grønland for at Beholde Sin Sidste Koloni* (Lindhardt og Ringhof 2021) 74–78; Cullen (n 5) 6–7.

13 Max Liboiron, *Pollution is Colonialism* (Duke University Press 2021) 29.

values from a professed position of external objectivity',¹⁴ that professed objectivity cloaks a set of values and assumptions that have rarely, if ever, constituted a neat fit for the Indigenous Peoples on whom they were transplanted and imposed. Indeed, the blunt implementation of that law elsewhere exposed the imperialist assumptions and biases inherent within it.

During and after decolonisation, the Danish authorities instituted policies which led to numerous instances of forced eviction and relocation for Inuit. Thus, although displacement in the context of disaster has been relatively rare in Greenland, its people are not unfamiliar with sudden eviction and forced relocation. Rapid industrialisation in the 1950s and 1960s by the Danish authorities required an intensification of population density in towns rather than sparsely separated family units.¹⁵ There were numerous incidences in which people were coerced or forced to move to advance Danish-operated cod fishing, mining and other industries, and strategic interests also played a role. The forced relocation of an entire settlement with only five days' notice in order to construct the United States Thule airbase is an infamous example.¹⁶ The subsequent nuclear contamination and general pollution of the environment associated with the base continue to 'linger in people's sense of living in a disturbed landscape today'.¹⁷

-
- 14 Usha Natarajan and Julia Dehm, 'Introduction: Where Is the Environment? Locating Nature in International Law', in Usha Natarajan and Julia Dehm (eds), *Locating Nature: Making and Unmaking International Law* (CUP 2022) 1.
 - 15 Matthew H. Birkhold, 'A Brief History of the Indignities Heaped Upon Greenland', *New York Times* (2 August 2019), at <<https://www.nytimes.com/2019/08/22/opinion/trump-greenland-denmark.html>>.
 - 16 Rachael Lorna Johnstone, 'What Is Required for Free, Prior and Informed Consent and Where Does It Apply?' in Rachael Lorna Johnstone and Anne Merrill Hansen (eds), *Regulation of Extractive Industries* (Routledge 2020) 47, 53. Thule Air Base was recently renamed Pituffik Space Base: US Ambassador to the Kingdom of Denmark Alan Leventhal, Remarks at the Renaming of Thule Airbase to Pituffik Space Base' (Pituffik, 6 April 2023), at <<https://dk.usembassy.gov/remarks-at-the-renaming-ceremony-of-thule-air-base-to-pituffik-space-base/>>.
 - 17 Kirsten Hastrup, 'The Historicity of Health: Environmental Hazards and Epidemics in Northwest Greenland' (2019) 53/3 *Cross-Cultural Research*, 291, 303.

Even in these new urban settlements, longevity of residence was not guaranteed. The closure of Qullissat is one of the more renowned examples. Established in the 1920s for the purpose of coal mining, Qullissat quickly grew to become one of Greenland's largest towns. Made up of mine workers rather than the fishers and hunters of traditional settlements, it was also a relatively wealthy town, with sports clubs, cinemas and a unionised workforce. After more than 40 years, however, in 1968 the colonial administration announced the closure of the town citing an apparent lack of profitability.¹⁸ Despite fierce resistance from residents, over the course of the next four years, public services and utilities were steadily removed. Then in 1972, telegraph lines and power supply were abruptly cut, and those who had not left already were forcibly relocated to other towns on Greenland's west coast.¹⁹ Residents' forced relocation from a town that was established exclusively to advance Danish mining interests became 'a symbol of colonial arrogance' within Greenland.²⁰

Other policies evidence even darker aspects of ongoing coloniality. In 1951, the Danish authorities facilitated 'the coerced removal of 22 Inuit children from their families for the purported purpose of improving their Danish language skills,' and future employment prospects. The effect was not only long-term trauma for the families involved, but also the loss of Kalaallisut as a language for many Greenlandic Inuit today, as parents stopped speaking their mother tongue with their children for fear that their child might be next.²¹ Later, in the 1960s and 1970s, thousands of women of fertile age, some as young as 12 years old, had intrauterine contraceptive devices fitted, often without their knowledge or consent, by Danish healthcare providers, apparently acting in accordance with Danish policy.²² The practice not only prevented an unknown number of pregnancies, but also

18 Søren Peder Sørensen, *Qullissat: byen der ikke vil dø* (Frydenlund 2013) 67.

19 Anne Mette Jørgensen, 'Communitification and Emotional Capital: Producing, Shaping and Re-shaping Communities before and after Mining in Norbotten and Disko Bay' (2019) 56/7 *Polar Records – A Journal of Arctic and Antarctic Research*, 7.

20 Ibid.

21 Cullen (n 5) 6; Johnstone (n 5) 4.

22 United Nations Special Rapporteur on the Rights of Indigenous Peoples, Francisco Cali-Tzay, 'Visit to Denmark and Greenland 1–10 February 2023 – End of Mission Statement' (February 2023) 3; Anne Pilegaard Petersen and Celine Klint, *Spiralkampagnen* (May 2022), at <<https://www.dr.dk/lyd/p1/spiralkampagnen>>.

jeopardised the mental and physical health of the women themselves, weakened cultural and social ties, and further entrenched distrust of public authorities and health professionals.²³

That distrust of centralised authority alongside significant geographical distance from the (better-resourced) Danish State has continuing implications for disaster risk management,²⁴ not least in the context of relocation, whether temporary or protracted. Those repeated experiences of forced evictions, relocation, and displacement under colonial rule, alongside other colonial abuses, ought to inform future approaches to evacuation and planned relocation. As this article will elaborate, planned relocation is not yet incorporated into disaster risk management planning in Greenland. Yet, as this article will evidence, its inclusion, guided by a tailored implementation of human rights standards alert to colonial harm, could improve outcomes for the people facing current and emerging hazards.

3 The 2017 Karrat Fjord Tsunami

On 17 June 2017, a significant landslide in the Karrat Fjord of western Greenland triggered a tsunami, which caused significant damage to the village of Nuugaatsiaq and put the neighbouring town of Illorsuit at risk. Four people died in Nuugaatsiaq, and 11 buildings were washed away. All of the residents of both towns (176 people) were evacuated to the island town of Uummanaq,²⁵ approximately 80–100 kilometres away from the two villages, which themselves are roughly 30 kilometres apart. Overall, the initial response and subsequent relocation of residents was characterised by a lack of advanced planning. Disaster response teams felt that they were inadequately prepared,²⁶ and residents

23 Pilegaard Petersen and Klint, *ibid.*

24 Mo Hamza, Kerstin Eriksson and Reidar Staupe-Delgado, 'Locating Potential Sources of Capacity and Vulnerability in Geographically Remote Areas: Reflections Based on Three Case Studies' (2021) 63 *International Journal of Disaster Risk Reduction*, 3.

25 Ivik Kristensen, '*Genhusning vækker både glæde og sorg hos evakuerede*', Kalaallit Nunaata Radioa (Nuuk, 11 August 2017).

26 Lasse Winther and Frederik Svaneborg, '*Når en tsunami rammer Grønland*', DR Viden (Copenhagen, 5 December 2021), at <<https://www.dr.dk/viden/webfeature/groenland-fjeldskred>>.

described being ‘carried away ... without anyone telling us where we were going’.²⁷

Evacuees were initially offered rehousing in Uummannaq or alternatively the villages of Upernavik, Aasiaat, Qeqertarsuaq and Qasigiannuit.²⁸ In August 2017, two months after the tsunami, the Government of Greenland announced it had set aside DKK 70 million (approximately USD 10.2 million) to rehouse the inhabitants of the two tsunami-damaged towns.²⁹ The Government focused its investment on new housing infrastructure in Uummannaq, and construction commenced in 2018.³⁰ What began as an emergency evacuation in response to a sudden-onset hazard had transitioned into a situation of protracted displacement and subsequent relocation.

Since then, the Government of Greenland has installed a tsunami surveillance system in the Karrat Fjord, and an associated early warning system is planned.³¹ Yet residents have by and large been unable to return to Illorsuit or Nuugaatsiaq despite their desire to do so.³² Former residents have argued, among other things, that the Government ought to rebuild local infrastructure in safer locations within Illorsuit and Nuugaatsiaq to enable them

-
- 27 Andreas Wille and Malik Brøns, ‘Kristian blev evakueret fra Illorsuit – og han savner stadig sin bygd’, Kalaallit Nunaata Radioa (Nuuk, 24 May 2021), at <<https://knr.gl/da/nyheder/kristian-blev-evakueret-fra-illorsuit-og-han-savner-stadig-sin-bygd>>.
- 28 Kenneth Elkjær, ‘Naalakkersuisut afsætter 70 millioner kroner til genhusning’, Kalaallit Nunaata Radioa (Nuuk, 9 August 2017) at <<https://knr.gl/da/nyheder/naalakkersuisut-afs%C3%A6tter-70-millioner-kroner-til-genhusning>>.
- 29 Kristensen (n 25).
- 30 Anton Gundersen Lihn, ‘Boliger til evakuerede: Uummannaq får ny bydel’, Kalaallit Nunaata Radioa (Nuuk, 20 June 2018), at <<https://knr.gl/da/nyheder/ejklar-uummannaq-f%C3%A5r-ny-bydel>>.
- 31 Helle Nørrelund Sørensen, ‘Overvågning skal undersøge ustabile fjeld ved Karrat fjorden’, Kalaallit Nunaata Radioa (Nuuk, 4 July 2022), at <<https://knr.gl/da/nyheder/overv%C3%A5gning-skal-unders%C3%B8ge-ustabile-fjeld-ved-karrat-fjorden?fbclid=IwAR1MemxaCu9tsc8Q5zCGda3GTDPCr1zR6EB-pbv1-NvbCige90Hj2ECV0RM>>.
- 32 Karl Peter Møller, former resident of Nuugaatsiaq, quoted in Kristensen (n 25); Kristian Nielsen, former resident of Illorsuit, quoted in Wille and Brøns (n 27), at <<https://knr.gl/da/nyheder/kristian-blev-evakueret-fra-illorsuit-og-han-savner-stadig-sin-bygd>>.

to return to relative safety.³³ In May 2021, some four years after the tsunami, Greenland's Minister for the Environment clarified that the people who had been evacuated were not forbidden from taking up residence in their hometowns again.³⁴ However, the following year the Minister for Natural Resources and Justice confirmed that there were no plans to reinstate public services in the affected villages,³⁵ and Tusass, the national (and sole) telecommunications provider, ceased to provide services.³⁶ While it might be true, strictly speaking, that the Government did not forbid residents from returning, the withdrawal of infrastructure and essential services was prohibitive in its effect.

The Karrat Fjord tsunami in 2017 was the most recent disaster to impact inhabited areas in Greenland, but it will not be the last. Increased rainfall and permafrost degradation associated with warmer average temperatures have led to the destabilisation of mountain slopes in polar regions, increasing both the frequency of landslides and the volume of debris.³⁷ Other landslide-triggered tsunamis will likely occur, and with greater frequency and intensity as warming average temperatures compromise permafrost and accelerate slope instability.³⁸ This has particularly serious consequences for inhabited fjords because the channel itself drives any consequent tsunami higher and further. Accordingly, in these areas, larger and more frequent tsunamis

33 Editorial, '*Dyster udsigt til genåbning af Illorsuit*', Sermitsiaq AG (Nuuk, 14 November 2021) <<https://sermitsiaq.ag/node/233405>>.

34 Jens Thorin, '*Naalakkersuisoq: Det er ikke forbudt at opholde sig i Illorsuit*', Kalaallit Nunaata Radioa, (Nuuk, 26 May 2021), at <<https://knr.gl/da/nyheder/naalakkersuisoq-det-er-ikke-forbudt-og-v%C3%A6re-i-illorsuit>>.

35 Merete Lindstrøm, '*Naalakkersuisoq on Illorsuit: Fortsat ingen mulighed for at flytte tilbage*', Sermitsiaq AG (Nuuk, 11 October 2022), at <<https://sermitsiaq.ag/node/240104>>.

36 Ibid.

37 Stephanie Matti and others, 'Planned Relocation Due to Landslide-Triggered Tsunami Risk in Recently Deglaciated Areas' (2023) 86 *International Journal of Disaster Risk Reduction* 103536; Yereth Rosen, 'Thaw-Triggered Landslides are a Growing Hazard in the Warming North', *Arctic Today* (30 March 2021), at <<https://www.arctictoday.com/thaw-triggered-landslides-are-a-growing-hazard-in-the-warming-north/>>.

38 Geological Survey of Denmark and Greenland, 'Project: Landslides in a Changing Climate', at <<https://eng.geus.dk/nature-and-climate/sea/project-landslides-in-a-changing-climate>>.

are to be expected.³⁹ In fact, in early 2021 the Geological Survey of Denmark and Greenland reported that a future landslide-triggered tsunami could be significantly larger, and entirely destroy local infrastructure in Nuugaatsiaq, while putting other hamlets at risk.⁴⁰

In addition, climate change impacts in the Arctic will lead to increased tourist and commercial activity in the years to come, giving rise to new hazards and disaster risks. The melting ice cap exposes the potential for new rare earth mineral projects, as well as the possibility of hydrological power generation from the water flow of the melt itself. Mining and energy projects enhance disaster risk in terms of potential accidents (physical or pollutant), land instability, environmental damage, and the risks associated with the major infrastructure necessary to support them. The melting of the ice cap also allows for greater ease of passage for cruise and commercial ships. As the Intergovernmental Panel on Climate Change (IPCC) has acknowledged, increased tourist and commercial activity 'directly impacts human safety and well-being' in Arctic coastal communities.⁴¹

4 Applying a Human Rights-Based Approach to Disaster Risk Management in Greenland

It can be alluring to syphon off human rights into neatly categorised legal principles, each separate and distinct from the other. In many ways that is a necessary exercise to fulfil the positivist understanding of the law in which the system exists, and also to stay within the succinct parameters of academic articles such as this. Yet each human right forms part of an 'indivisible, interdependent, and interrelated' system.⁴² Thus, although this

39 Kevin McGwin, 'A Future Landslide-Triggered Tsunami Could be a Lot Bigger than Experts First Thought', Arctic Today (13 May 2021), at <<https://www.arctictoday.com/a-future-landslide-triggered-tsunami-in-greenland-could-be-a-lot-bigger-than-experts-first-thought/>>.

40 Ibid.

41 IPCC (2022) (n 3).

42 Craig M. Scott, *The Interdependence and Permeability of Human Rights Norms: Towards a Partial Fusion of the International Covenants on Human Rights* (Legal and Literary Society of Osgoode Hall Law School 1989) 779. For a criticism of the notion of indivisibility of human rights, see Daniel J.

article will interrogate the application and utility of individual rights, it acknowledges that the interdependence between those rights is essential to their meaningful realisation and it necessarily traverses between different rights as it progresses. It also acknowledges that the rights examined in this article are but a few of those that are relevant to this case study, and they are neither exhaustive nor a complete picture on their own.

Among the legal obligations detailed in the subsections which follow are human rights interpreted in light of specific legal protections owed to Indigenous Peoples under the UN Declaration on the Rights of Indigenous Peoples (the Declaration)⁴³ and ILO 169,⁴⁴ under which the Danish Government expressly recognised that ‘there is only one indigenous people in Denmark, the Inuit of Greenland’.⁴⁵ In interpreting the obligations under both the Declaration and ILO 169, the governments of Greenland and Denmark have agreed that for the purposes of ensuring adherence to the principle of obtaining Indigenous Peoples free, prior and informed consent, the consent of the Greenlandic Government alone is sufficient. The argument goes that if decision-makers are Inuit, then that is ‘guarantee enough that Inuit values are taken into account’.⁴⁶ This article disputes the validity of that interpretation as a matter of international human rights law in section 4.3.

4.1 Rights to Land, Culture, and Mental Health

Territory is a European legal construct that dictates a certain relationship between community, authority, time and place.⁴⁷ In

Whelan (ed), ‘Indivisible, Interdependent, and Interrelated Human Rights’ in Daniel J. Whelan, *Indivisible Human Rights: A History* (University of Pennsylvania Press 2011) 1–10.

43 UNGA Res 61/295 (2 October 2007) UN Doc A/RES/61/295 (hereafter UNDRIP). Although not binding itself strictly speaking, the terms of the Declaration interpret binding human rights norms in the context of the rights of Indigenous Peoples. At the time of writing, it had been endorsed by 148 of the 193 UN member states.

44 Indigenous and Tribal Peoples Convention, 27 June 1989.

45 ILO, ‘Report of the Committee set up to examine the representation alleging non-observance by Denmark of the Indigenous and Tribal Peoples Convention’, 1989 (No. 169), made under article 24 of the ILO Constitution by the National Confederation of Trade Unions of Greenland (*Sulinermik Inuussutissarsiateqartut Kattuffiat-SIK*) (SIK), Decision (2001) [25].

46 Cullen (n 5) 8; Johnstone (n 5) 6.

47 Natarajan and Dehm (n 14) 14.

1933, the Permanent Court of International Justice declared the territory of Greenland *terra nullius* prior to 1814 and formally recognised it as part of the Danish State,⁴⁸ notwithstanding centuries of human occupation before European arrivals. *Terra nullius* is part of the discovery doctrine which underpins much of the contemporary sovereignty exercised by Western Europe in colonised places.⁴⁹ To the colonising state, recognition of a legal interest in land was entrenched in concepts of ownership, and rights to exploit, often evidenced by the establishment of infrastructure such as permanent dwellings, roads, fences and so forth. As Mickelson has written this was often disadvantageous for indigenous custodians of land because ‘the lighter the ecological footprint of the Indigenous peoples in question, the less likely the colonisers were to see the land as “inhabited” or “owned”’.⁵⁰ For Greenlandic Inuit, as well as many other Indigenous Peoples, these legal concepts legitimised monolithic colonial control over land, infrastructure and resources. In this way, for many Indigenous Peoples, ‘[t]he past is always in front of [them]’,⁵¹ insofar as the historical system of territorial division, governance and dominion continues to determine access to place.

48 PCIJ, Legal status of Eastern Greenland (*Denmark v Norway*) (Judgment) [1933] PCIJ Series A/B, para. 37–40.

49 Robert J Miller and others, ‘The Doctrine of Discovery’ in Robert J Miller and others (eds), *Discovering Indigenous Lands: The Doctrine of Discovery in the English Colonies* (OUP 2010) 21. The idea was established in an 1823 decision of the US Supreme Court *Johnson v McIntosh* and later described in a 19th century arbitral award thusly: ‘... countries inhabited by savage tribes may, under well-established rules of public law, be so occupied and possessed by the representatives of a Christian power as to dispossess the native sovereignty and transfer it to the Christian power’. Arbitral award of the President of the United States, Regarding the Dispute between Portugal and the United Kingdom, about the sovereignty over the Island of Bulama, and over a part of the mainland opposite to it, 21 April 1870, *riaa* Vol xxviii, 131, 137.

50 Karin Mickelson, ‘The Maps of International Law: Perceptions of Nature in the Classification of Territory Beyond the State’ in Usha Natarajan and Julia Dehm (eds), *Locating Nature: Making and Unmaking International Law* (CUP 2022) 159, 165.

51 Meg Parsons, Karen Fisher and Roa Petra Crease, ‘“The Past Is Always in Front of Us”: Locating Historical Māori Waterscapes at the Centre of Discussions of Current and Future Freshwater Management’ in Meg Parsons, Karen Fisher and Roa Petra Crease (eds), *Decolonising Blue Spaces in the Anthropocene: Freshwater Management in Aotearoa New Zealand* (Springer 2021) 75.

This is also true in Greenland, where it is possible to own a house, but impossible to privately own the land on which it stands. Private land ownership was excluded by the Danish State out of apparent respect for indigenous rights, but to somewhat paradoxical effect. Upon ratification of ILO 169, Denmark included a declaration which specified, among other things, that ‘it has not at any time been possible, for either natural or legal persons, to acquire rights of ownership to lands in Greenland’.⁵² The declaration conspicuously describes that to have ownership vested not in individuals, but in the public authorities of the State of Denmark, is ultimately more ‘faithful to the traditional ways of the Greenlanders’. Although that declaration does not have binding force,⁵³ its philosophy underpins land management in Greenland today, the day-to-day administration of which is undertaken by the Government of Greenland, with Denmark retaining ultimate authority through sovereignty. The consequence of which is that decision-making over the exploitation and use of land remains exclusively in the hands of the government, notwithstanding indigenous rights to their lands, territories and resources under international law. That legal arrangement is important in situations such as the present because it makes it difficult to contest one’s effective exclusion from land under domestic legal property arrangements. Indeed, in results antithetical to the apparent underlying ideology, this approach to land management has led to instances in which Greenlandic Inuit have been excluded from the land they traditionally occupied precisely because there is ‘no private right to ownership of land in Greenland’.⁵⁴

The right to culture as protected under Article 27 of the International Covenant on Civil and Political Rights (ICCPR) explicitly entails a right to access and use lands, territories and resources, to ensure ‘the survival and continued development’ of cultural identity,⁵⁵ and includes, but is not limited to, activities

52 Declaration in Relation to Convention No. 169, Order no. 97 of 19 October 1997 of the ILO Convention no. 169 of 28 June 1989 (BKI nr 97 af 09/10/1997 *Erklæring i forbindelse med ratifikation af ILO-Konventionen Nr. 169 af Oprindelige Folk og Stammefolk i Selvstændige Stater*) para. 4.; reproduced in English in: ILO (n 45) para. 25.

53 ILO, *ibid*, para. 27.

54 *Ibid*, para. 14.

55 CCPR, Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 3624/2019 (*Daniel Billy et al. v Australia*), UN Doc CCPR/C/135/D/3624/2019 (21 July 2022), para. 8.13.

such as hunting, fishing, herding and gathering plants, medicines and foods.⁵⁶ That recognition of culture as continuously evolving is important.⁵⁷ It dispels the common misperception, rooted in cultural bias, stereotyping, and colonial legacies, that culture is fixed and traditions immutable.⁵⁸ It is that recognition of the evolution of culture as a practice that has seen commercial and non-commercial activities, including fishing (which is important to the present case study) recognised as part of indigenous culture for the purpose of human rights protection elsewhere.⁵⁹ In Greenland today, commercial fishing employs almost a third of the population in some municipalities,⁶⁰ and was a primary source of income in both Illorsuit and Nuugaatsiaq before the tsunami. Although former residents of both towns have received compensation to replace the fishing equipment damaged by the tsunami, many remain under-equipped to continue their trade because their knowledge does not relate to fishing conditions in and around their new residences in Uummanaq, which is roughly 80–100 kilometers away from their home waters.⁶¹

Many people displaced from Illorsuit and Nuugaatsiaq continue to describe a deep feeling of disconnection and longing to return to their villages, even several years later. That connectedness exists both in relation to Greenland generally, and also very specifically to the bays, waters and mountains of their settlement.⁶² The IPCC has recognised that ‘for many polar

56 CESCR, ‘General comment No. 26 (2022) on Land and Economic, Social and Cultural Rights’ (24 January 2023) UN Doc. E/C.12/GC/26, para. 16; CCPR, *ibid.*

57 CCPR, ‘General comment No. 23: Article 27 (Rights of Minorities)’ (8 April 1994) CCPR/C/21/Rev.1/Add.5, para. 9.3; CCPR, ‘Views, Communication No. 547/1993 *Apirana Mahuika et al. v New Zealand*, UN Doc CCPR/C/70/D/547/1993 (27 October 2000) para 9.4.

58 Jessie Hohmann, ‘Igloo as Icon: A Human Rights Approach to Climate Change for the Inuit’ 18/2 *Transnational Law and Contemporary Problems* (2009) 315; CESCR, ‘General Comment No. 21 – Right of everyone to take part in cultural life (Art 15(1)(a) ICESCR)’ (21 December 2009) UN Doc E/C.12/GC/21, para. 11.

59 CCPR, *Apirana Mahuika et al. v New Zealand* (n 57) para. 9.4.

60 Avannaata Kommunia, ‘Planstrategi 2020’, 23 at <<https://plania.avannaata.gl/media/3391/planstrategi-2020-dk-web.pdf>>.

61 Noah Mølgaard, ‘Chefredaktøren anbefaler: Minderne vælter frem på årsdag’ *Sermitsiaq AG* (Nuuk, 5 June 2018) at <<https://sermitsiaq.ag/node/206453>>.

62 Wille and Brøns (n 27).

residents, especially Indigenous Peoples, the physical environment underpins social determinants of well-being, including physical and mental health'.⁶³ The International Covenant on Economic, Social and Cultural Rights (ICESCR) provides that everyone has the right 'to the enjoyment of the highest attainable standard of physical and *mental* health'.⁶⁴ Mental health is defined as a 'state of balance between physical, mental, cultural, spiritual and other personal factors, and between the self, others and the environment'.⁶⁵ The adverse mental health effects of displacement related to extreme weather events are well-established, ranging from post-traumatic stress disorder (PTSD) and depression, to anxiety-related conditions.⁶⁶

In interpreting the human right to health, the UN Committee on Economic, Social and Cultural Rights (CESCR) has expressly acknowledged that displacing Indigenous Peoples 'against their will from their traditional territories and environment ... and breaking their symbiotic relationship with their lands, has a deleterious effect on their health'.⁶⁷ Indigenous Peoples are also more likely to experience solastalgia, which is 'the feelings of pain experienced when one's place of residence is transformed or destroyed as a result of environmental change'.⁶⁸ Protracted

63 Michael Meredith and others, 'Polar Regions' in IPCC Special Report on the Oceans and Cryosphere in a Changing Climate (Intergovernmental Panel on Climate Change 2019) 261.

64 *International Covenant on Economic, Social and Cultural Rights* (ICESCR) (16 December 1966) art. 12 (emphasis added).

65 Helen Herman and Eva Jané-Llopis, 'Mental Health Promotion in Public Health' (2005) 12/2 Promotion & Education 42, 42, referring to Norman Sartorius, 'Preface' in David Goldberg and Digby Tantam (eds), *The Public Health Impact of Mental Disorders* (Hogrefe and Huber 1990).

66 Margaretha Wewerinke-Singh and Melina Antoniadis, 'Climate Displacement and the Right to Mental Health' in Avidan Kent and Simon Behrman (eds), *Climate Refugees: Global, Local and Critical Approaches* (CUP 2022) 146, 155; See also, Laurence Lebel and others, 'Climate Change and Indigenous Mental Health in the Circumpolar North: A Systematic Review to Inform Clinical Practice' (2022) 59 *Transcultural Psychiatry* 136346152110666, 325.

67 CESCR, 'General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12)', (11 August 2000) UN Doc. E/C.12/2000/4, para. 27.

68 Wewerinke-Singh and Antoniadis (n 66) 158. Glenn Albrecht and others, 'Solastalgia: The Distress Caused by Environmental Change' (2007) 15/S95

displacement 'can unravel the fabric of a community, weaken community institutions and social networks, disrupt subsistence and economic systems, and impact the cultural identity and traditional kinship ties within a community'.⁶⁹ The diminished sense of belonging and cultural identity and loss of security and familiarity can result in 'long term disorders such as depression and trauma'.⁷⁰

For these reasons, among others, international law recognises that 'indigenous peoples should not be forcibly removed from their lands or territories' and that 'planned relocation must be based on consent, conducted as a last resort and enhance the living standards of relocated communities'.⁷¹ Indeed, in general, where people have been displaced, they should be given the means 'to return voluntarily, in safety, and with dignity, to their homes or place of habitual residence'.⁷² Where return is not possible, or not wanted, in line with rights to culture and to health, methods to minimise deleterious health consequences must be sought and should include, where relevant, socio-cultural healing informed by indigenous ways of knowing.⁷³ These concerns are especially pertinent in Greenland, which has one of the highest

Australasian Psychiatry: Bulletin of Royal Australian and New Zealand College of Psychiatrists, S95.

69 Robin Bronen, 'Climate-Induced Community Relocations: Creating an Adaptive Governance Framework Based in Human Rights Doctrine' (2011) 35 N.Y.U Review of Law & Social Change, 357, 394.

70 Helen Berry, Kathryn Bowen and Tord Kjellstrom, 'Climate Change and Mental Health: A Causal Pathways Framework' (2010) 55 International Journal of Public Health, 123.

71 UNDRIP, art. 10; ILO 169, art. 16; Robin Bronen, 'Climate-Induced Community Relocations: Institutional Challenges and Human Rights Protections' in Robert McLeman and François Gemenne (eds), Routledge Handbook of Environmental Displacement and Migration (Routledge 2018) 396, 399; Wewerinke-Singh and Antoniadis (n 66) 178.

72 See also UNDRIP, art. 10.

73 See, for example: Erica Tom, Melinda M Adams and Ron W Goode, 'Solastalgia to Soliphilia: Cultural Fire, Climate Change, and Indigenous Healing' (2023) Ecopsychology, 1; Miriam Cullen and Céline Brassart Olsen, 'Climate Change and Human Rights in the Overseas Colonized Territories of the State' in Dina Lupin (ed) A Research Agenda for Human Rights and the Environment (Edward Elgar 2022) 143, 150.

rates of suicide in the world,⁷⁴ and a scarcity of mental health support.⁷⁵

Yet what differentiates much of the historical forced relocation of Greenlandic Inuit from the protracted displacement of the present case study, is the intervention of a hazard in the latter. The emergency evacuation was *prima facie* a measure necessary to protect human life. Indeed, human rights law requires states to take positive steps to protect people from foreseeable harm. What is similar about these examples, though, is that in all instances it is a unilateral decision of governmental authority that rendered return practically impossible. Where a serious threat to human life exists, that could justify the exclusion of people and associated infrastructure from places that are in harm's way, in line with principles of proportionality and necessity. Article 16 of ILO 169 prohibits Indigenous Peoples from being removed from land which they occupy, except where 'necessary as an exceptional measure' (which emergency evacuation might be), and relocation can occur only with the 'free and informed consent' of the Peoples concerned. Yet the instant moment of an emergency is obviously not one in which free and informed consent can necessarily be obtained. Thus, in the context of disaster risk management, this means that the necessity of both evacuation and relocation needs to be assessed on a case-by-case basis and, strictly, in consultation with the people impacted, in advance of foreseeable risk and based on various possible contingencies. That is, informed consent can be achieved in advance through planned disaster risk management processes and protocols, developed by and with the Peoples affected, and as part of an ongoing and continuous dialogue. Rights of access to information and participation in decision-making are relevant to that end and will be further elaborated in section 4.3.

In addition, if relocation is considered necessary, any disaster risk management strategy should incorporate planning for

74 Alongside a recognised need for more research on factors that advance protection from suicide and strength-based (rather than damage-based) interventions which incorporate the wider community: Ivalu Katajavaara Seidler et al., 'A Systematic Review on Risk and Protective Factors for Suicide and Suicidal Behaviour Among Greenlandic Inuit' (2023) 82/1 International Journal of Circumpolar Health, 1.

75 United Nations Special Rapporteur on the Rights of Indigenous Peoples, Cali-Tzay, (n 22) 6.

potential future uses of the abandoned land, even if it can no longer support a permanent population. Some six years after the tsunami, former residents of Illorsuit and Nuugaatsiaq still sail to the affected villages in the summer.⁷⁶ This gives rise to questions about whether there are alternative ways to facilitate safe future use of that land that would better align with the residents' rights to land, culture and health. There is an obligation on states to 'safeguard the right of the peoples concerned to use lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities'.⁷⁷

4.2 The Right to Adequate Housing in Situations of Displacement

The right to adequate housing is a component part of the right to an adequate standard of living,⁷⁸ and a 'congruent entitlement' to the right to land.⁷⁹ It must be implemented without discrimination, and its 'adequacy' is understood as more than simply a right to shelter but as a right to live in 'security, peace and dignity'.⁸⁰ The right to adequate housing continues to apply in situations of evacuation and rehousing after a natural hazard. As explained by CESCR, state obligations to respect economic, social and cultural rights mean that '[w]here people have been relocated and given alternative accommodation, alternative housing shall be safe and provide security of tenure, enabling access to public services, including education, health care, community engagement and livelihood opportunities'.⁸¹

Tenure comes in a variety of different forms and is more complex than a lay understanding of "ownership" might elicit. Forms of tenure include rights to possess and use housing, and includes rental, freehold and collective

76 Wille and Brøns (n 27).

77 ILO 169, art. 14; see also UNDRIP, art. 26.

78 As recognised in the Universal Declaration of Human Rights, 10 December 1948, art. 25 and International Covenant on Economic, Social, and Cultural Rights, 16 December 1966, art.11 as well as various regional conventions.

79 Miloon Kothari, 'The Human Right to Adequate Housing and the New Human Right to Land: Congruent Entitlements' in Andreas von Arnould, Kerstin von der Decken and Mart Susi (eds), *The Cambridge Handbook of New Human Rights* (CUP 2020) 81, 84.

80 CESCR, 'General comment No 4: The Right to Adequate Housing' (13 December 1991) UN Doc E/1992/23, paras. 6–7.

81 CESCR (n 56) para. 24.

arrangements.⁸² Lack of housing (to buy or rent) is endemic in Greenland rendering urbanisation an unreliable mechanism for disaster risk reduction and recovery.⁸³ This explains in part why the construction of new “rehousing” residences for those relocated after the disaster was a necessary government investment. *Prima facie* the government’s decision to build new housing infrastructure in Uummannaq for those displaced in the context of the tsunami, does advance the potential for tenured solutions. However, further assessment is needed to determine whether the current housing arrangements meet minimum human rights standards.

In Greenland, “rehousing” is temporary accommodation offered in situations where people have been evicted from their home,⁸⁴ and includes accommodation provided after disaster. Greenland currently has no minimum standards for this form of housing, nor do any of the five municipalities that directly supervise construction. The housing standards that do exist are below that required under the right to an adequate standard of living. Act No. 13 of the Greenland Parliament provides that to be put into use, a building must provide access to a system for wastewater removal, fire-fighting equipment, and be located within an accessible distance to a water tank.⁸⁵ It does not expressly require electricity, heating, sewage or access to safe drinking water within the building itself. As a result, there is room for fairly loose interpretations of what the law demands, and housing cooperatives themselves decide the minimum standards they will meet with regard to other aspects of the accommodation that they provide.⁸⁶ This means that, for example, whether

82 Special Rapporteur on the right to adequate housing, Raquel Rolnik, ‘Guiding Principles on Security of Tenure for the Urban Poor’ (30 December 2013) UN Doc. A/HRC/25/54, 9.

83 Cullen (n 5) 5; United Nations Special Rapporteur on the Rights of Indigenous Peoples, Cali-Tzay (n 22) 6.

84 Danish Institute for Human Rights (DIHR) and Human Rights Council of Greenland, *Retten til Bolig – Status i Grønland 2020* (DIHR, 2020) 16.

85 Inatsisartutlov nr. 13 af 26. maj 2010 om byggeri, para 4; The Government of Greenland, Ministry of Housing, Nature and Environment, ‘Besvarelse af § 37-spørgsmål nr. 112/2013 om hjemløse børn i genhusning af 8. juli 2013’, 8 July 2013 <https://ina.gl/documents/para3637/2013/svar/112_hjemloese_pach_svar.pdf>.

86 DIHR and Human Rights Council of Greenland (n 84) 16.

electricity comes as standard varies from one housing cooperative to another.⁸⁷

A 2020 report on the Right to Adequate Housing, jointly authored by the Danish Institute for Human Rights and the Human Rights Council of Greenland, expressed concern about a lack of minimum rehousing standards in Greenland.⁸⁸ The report recommends that the Parliament of Greenland ensure that rehousing includes heating, electricity, water, and sanitation in order to comply with minimum human rights standards.⁸⁹ However, the Government of Greenland has previously expressed the view that there are many different living conditions in Greenland and therefore ‘no minimum standards can be set about, for example, sewers and baths since such a standard cannot be met everywhere, and it would be unreasonable to set higher requirements for a rehousing home than that of standard a family ...’.⁹⁰ However, to the extent that “a standard family” in Greenland would be living in conditions that do not meet minimum human rights requirements, then the answer is not to refuse to meet those standards for residents of rehousing, but rather to prioritise and ensure that the living conditions for “standard families” are raised.

4.3 Planned Relocation and Rights to be Informed about and Participate in Decisions

There is no question that planning and preparedness for foreseeable hazards are part of a state’s positive obligations to protect human rights, as well as being central to disaster risk reduction and disaster risk management generally.⁹¹ Adequate

87 Ibid; Knud Erik Hansen & Hans Thor Andersen, *The University of Aalborg, Hjemløshed i Grønland* (SBI Forlag 2013) 175–176.

88 DIHR and Human Rights Council of Greenland, *ibid* 17.

89 Ibid; DIHR, *Menneskerettigheder i Fokus – Beretning til Inatsiasut 2021–22* (2022) 13.

90 DIHR and Human Rights Council of Greenland, *ibid* 16, referring to: Government of Greenland, Ministry of Housing (n 85). Unofficial English translation from the original Danish which read: ‘*Naalakkersuisut henviste endvidere til, at der er meget forskellige leveforhold i Grønland, at der ikke kan fastsættes minimumsstandarder om eksempelvis kloak og bad, da en sådan standard ikke kan opfyldes alle steder, og at det ville være urimeligt at stille højere krav til en genhusningsbolig end den standard en familie tidligere har levet under*’.

91 For example, in outlining the contours of the human right to be free from arbitrary deprivation of life, the CCPR explained that states ought to develop, when necessary, ‘contingency plans and disaster management

preparedness is about more than planning for the emergency response and immediate post-event needs (evacuation and emergency water, sanitation, and hygiene, housing and food provision) but by necessity must also incorporate any potential for relocation, as a matter of good disaster risk management practice and human rights compliance. Consideration of potential relocation should take into account the breadth of options available, including the implementation of risk reduction measures (such as, in this example, the potential for rebuilding further inland / uphill), and should be based on both scientific evidence, and meaningful and effective consultation with the affected population, in which they are both fully informed in a timely fashion,⁹² and able to influence the outcome. That process should lead to plans which detail whether and when relocation would occur, the manner and form it would take, the circumstances in which it would be carried out, and elaborate on the support people would receive before, during and after.⁹³

In the context of the rights of Indigenous Peoples in particular, *how* that planning and preparedness is undertaken is quite important. The right of Indigenous People to be informed of and participate in decisions which affect them is well-settled in international law, rooted in rights to self-determination and to be free from racial discrimination.⁹⁴ Indeed participation, consultation and transparency are central principles for a broad suite of human rights protections.⁹⁵ In the context of foreseeable

plans ... to increase preparedness and address ... disasters that may adversely affect enjoyment of the right to life, such as hurricanes, tsunamis, earthquakes, radioactive accidents and massive cyberattacks resulting in disruption of essential services.', see CCPR, 'General comment No. 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life' (30 October 2018) CCPR/C/GC/36, para. 26.

92 CCPR (n 57) paras 8.11–8.14.

93 As has been elaborated elsewhere, failure to ensure meaningful participation can have the perverse effect of aggravating disaster risk: Miriam Cullen and Jane Munro, 'Preventing Disasters and Displacement: How Economic, Social and Cultural Rights can Advance Local Resilience' (2022) 40 *Nordic Journal of Human Rights*, 118, 128.

94 In accordance with the International Convention on the Elimination of All Forms of Racial Discrimination (21 December 1965); ICCPR art. 1; ICESCR art. 1; ILO 169, arts. 2(1), 5(c), 6, 16 and 20(3)(a); UNDRIP, arts. 10, 19, 28, 29, 32; HR Council, 'Free, Prior and Informed Consent: A Human Rights Based Approach: Study of the Expert Mechanism on the Rights of Indigenous Peoples' (10 August 2018) UN Doc A/HRC/39/62, para. 3.

95 See CESCR (n 58) para. 20.

hazards, such as the tsunami risk in Greenland's fjord system, compliance with international human rights law demands that disaster risk management plans are not only developed but are prepared in advance, in consultation with the people affected, and with their free, prior and informed consent in relation to any ongoing or permanent relocation.

Indigenous Peoples' right to be informed about, consulted on, and participate in, decisions which affect them, receives particular protection in the context of relocation. Article 16 of ILO 169 provides that where relocation is 'necessary as an exceptional measure' it should only take place with the 'free and informed consent' of the people affected. If possible, people should be returned to their traditional lands as soon as the grounds for relocation have ended, and if not possible, compensated for loss and injury.⁹⁶ The Declaration provides in Article 10 that '[n]o relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return'. In the context of long-term or permanent relocation, including in the context of disaster that threatens the habitability of entire settlements, those 'communities have ... the right to make fundamental decisions about when, how and if relocation occurs'.⁹⁷ To be clear, the issue is not to do with the emergency action which moved people out of harm's way in the immediate aftermath of the tsunami. A reasonable assessment could find that evacuation was a necessary measure. Rather, the issue here is to do with the preparedness and planning for that evacuation and other foreseeable risks, as well as for risks of protracted and now permanent relocation.

The legal infrastructure itself has also impeded the implementation of this right in two ways. Firstly as a result of the flawed interpretation of 'free, prior and informed consent' agreed by the Greenlandic and Danish governments. And secondly, as a result of a domestic legal infrastructure unprepared for the various consequences of the disaster. As outlined in the introduction to this section, the governments of Greenland and Denmark have agreed that for the purposes of ensuring

96 ILO Convention No. 169 on the Rights of Indigenous and Tribal Peoples (27 June 1989) art. 16.

97 Bronen (n 71) 397.

adherence to the principle of obtaining Indigenous Peoples free, prior and informed consent, the consent of the Greenlandic Government alone is sufficient. This interpretation is not in keeping with obligations under the Declaration or ILO 169, nor the broader suite of human rights obligations under both ICCPR and ICESCR.

The consultation and participation of Indigenous Peoples in decisions which affect them are not satisfied as a matter of automaticity merely because the Government is made up of people who identify as Inuit.⁹⁸ This interpretation undermines the purpose of the principle which is to prevent harm to those affected by the relevant decision. It also disregards the various pressures on political leadership to take into account the interests of a range of other stakeholders in making executive and political decisions, including their non-indigenous constituents, business interests, and, potentially, their own political future. That a political executive could claim to speak for all indigenous communities within a territory could result in 'more subtle forms of silencing'.⁹⁹ That is, the purported implementation of the relevant conventions results in 'a form of erasure',¹⁰⁰ which itself contradicts, rather than achieves, free, prior and informed consent. To be clear, the necessary 'consent' or 'consultation' is that of the Indigenous Peoples affected, not any Executive or administrative branch of government.

Certain aspects of domestic law also proved ill-prepared for the impacts of disaster and associated relocation. After the initial evacuation, regulatory inconsistencies led to contradictory information being provided to the people affected.¹⁰¹ The regulations governing property ownership in Greenland provided that people living in homes that had been built with financial assistance from the Government would lose ownership of that

98 Cullen (n 5) 8.

99 Dina Lupin Townsend, 'Silencing, Consultation and Indigenous Descriptions of the World' (2019) 10/2 *Journal of Human Rights and the Environment*, 193, 781.

100 Eve Tuck and K Wayne Yang, 'Decolonization Is Not a Metaphor' (2012) 1/1 *Decolonization: Indigeneity, Education & Society*, 1, 3.

101 Mathies Hvid Toft and Andreas Wille, '*Naalakkersuisoq til bygdeborgere: Undskyld*', Kalaallit Nunaata Radioa (Nuuk, 26 June 2021), at <<https://knr.gl/da/nyheder/naalakkersuisoq-til-bygdeborgere-undskyld>>.

property if the owner(s) took up residence elsewhere.¹⁰² The consequence of this was that those who had been evacuated after the tsunami faced the loss of their original homes, and indeed some were advised by the local council that their houses would be demolished.¹⁰³ In May 2021, Greenland's Parliamentary Committee on Finance and Taxation adopted a regulation the effect of which was to ensure that evacuees would not lose ownership of their properties.¹⁰⁴ A month later, the Government apologised, and acknowledged that the residents' homes should not have been threatened with demolition.¹⁰⁵ Nevertheless, the four years that passed before that executive action had been a period of insecurity for many, compounding other stressors.

More generally, the National Emergency Plan for Greenland, does not specify disaster risk management measures but rather establishes a set of principles with which responses ought to comply. It was last revised in October 2022, though that text is not publicly available. Those wanting to read the Plan must request access to it from the Government of Greenland and give a reason. The actions associated with more specific disaster preparedness, response and recovery are to be dealt with in Local Emergency Plans, which the five municipalities are legally obligated to prepare.¹⁰⁶ Although they have had 13 years to do so, not all municipalities have prepared local emergency plans for disaster risk management and none are

102 *Landstingsforordning nr. 11 af 19. november 2007 om støtte til boligbyggeri, fælleshuse, byggesæt m.v.*, at <<https://lovgivning.gl/lov?rid=%7B494A3B68-F49C-418E-A047-4D9C87357BA4%7D>>.

103 Toft and Wille (n 101).

104 Paneeraq Olsen, Minister for Finance and Internal Affairs, Government of Greenland, '*Orientering til Naalakkersuisut om Finans- og Skatteudvalgets beslutning fredag den 02. juli 2021 – Tillægsbevillingsansøgning om bemyndigelse til Selvstyret og kommunalbestyrelsen om særlige foranstaltninger i forhold til husejere med offentlige lån i Karrat-fjorden*', case number 01.31.06/21-0094 (2 July 2021), at <https://ina.gl/documents/finafg/2021/942_Finansafg_da.pdf>.

105 Toft and Wille (n 101).

106 *Inatsisartutlov nr. 14 af 26. maj 2010 om redningsberedskabet i Grønland og brand- og eksplosionsforebyggende foranstaltninger*, Art. 1; *Almindelige bemærkninger, Inatsisartutlov nr. 14 af 26. maj 2010* (23 February 2010), 3.

publicly available. To obtain a copy, an individual must request one from the Chief of the municipal emergency services. Since the 2017 tsunami, Avannaata Municipal Council, responsible for the Karrat Fjord, has posted general advice on its website about what to do to prepare for a tsunami and guidance on where to evacuate to should one occur,¹⁰⁷ but there remains no detailed emergency plan tailored to each settlement within its jurisdiction. It is true enough that some aspects of emergency management might need to be discretely managed, for reasons associated with potential security threats for example. However, early access to information about the chain of command in a national crisis, about how responses will be managed, and who to turn to for answers, is crucial to ensure local awareness and in turn to reduce disaster risk. More broadly, where there is a risk that entire towns may be relocated in the event of a hazard, that too should be part of emergency planning, available publicly, and prepared by and in consultation with those affected, including the potential host communities. Uummanaq, the town to which the 176 people were evacuated, is itself a settlement of only a little over a thousand residents. Indeed, it is notable that in Greenland, the sudden and unplanned addition of even relatively few new residents can place strain on the local resources of host communities.

For people to have been properly informed, affected communities must have equal access to sufficient and transparent information in a language and format that they understand, well in advance of the relevant decision.¹⁰⁸ In this case, information ought to be shared not only about the risk of the relevant hazard, but also about the process of relevant decision-making in the context of one, the diversity of available options to respond and recover, relevant law, the availability of financial and other material support, all of which should form part of an ongoing dialogue. The people affected by the hazard must meaningfully participate in those decisions and be included well 'prior to any

107 Avannaata Kommunia, at <https://www.avannaata.gl/tsunami/foer-under-efter/for?sc_lang=da>.

108 HR Council, 'Free, Prior and Informed Consent: A Human Rights Based Approach: Study of the Expert Mechanism on the Rights of Indigenous Peoples' (10 August 2018) UN Doc A/HRC/39/62, para. 22(b); CESCR (n 56) para. 20; CCPR (n 55) paras 8.11–8.14.

decision that might affect their rights’,¹⁰⁹ in this case, well before the tsunami actually occurred (given the hazard was well-known). As Wheeler et al have written, ‘addressing issues of equity in the power and agency of [indigenous knowledge] holders and institutions in the whole process that leads to informed decision-making’ is crucial in the context of any environmental decision-making in the Arctic.¹¹⁰

In Spring/Summer 2021, four years after the tsunami, a series of town hall meetings were held at which Government representatives, geologists and public safety officials, described the ongoing hazard and remaining options for those who had been displaced. The meetings were attended by, among others, the Prime Minister of Greenland, Múte B. Egede, who said at the time ‘[t]ransparency is important for Naalakkersuisut [the Government of Greenland], even if that causes people to worry. We are sharing this information and making sure that we meet with the affected residents face-to-face and tell them about the options that are open to them’.¹¹¹

The challenges associated with human rights compliance in the context of disaster management in Greenland might not be derived from a lack of political will but connect more deeply with a lack of adequate resources and colonial histories. As Whyte has written, ‘... the political and cultural domination of settler states affects internal affairs in Indigenous governments’ which often means that they are deeply under-resourced in relation to the breadth of the governance tasks they undertake. Public service employees are spread thin across numerous projects.¹¹² In addition, government agencies are often siloed, and do not always communicate effectively between each other on the governance of issues that are interrelated.

109 CESCR *ibid*; CCPR, ‘General Comment No. 23: Article 27 (Rights of Minorities)’ (8 April 1994) CCPR/C/21/Rev.1/Add.5, para. 3.2 and 7.

110 Helen C Wheeler and others, ‘The Need for Transformative Changes in the Use of Indigenous Knowledge along with Science for Environmental Decision-Making in the Arctic’ (2020) 2/3 *People and Nature* 544, 548.

111 McGwin (n 39).

112 Kyle Whyte, ‘What Do Indigenous Knowledges Do for Indigenous Peoples?’ in Daniel Shilling and Melissa K Nelson (eds), *Traditional Ecological Knowledge: Learning from Indigenous Practices for Environmental Sustainability* (CUP 2018) 57, 60.

5 Conclusion: On Equity, Human Rights and the Responsibilities of Denmark

In Greenland, the agricultural, social, and political legacy of colonialism has led to the systemic loss of traditional knowledge, and damaged the social fabric of its Indigenous Peoples. The introduction of a European and anthropocentric worldview, and legal system, disrupted otherwise strong societal resilience, increased disaster risk, and led to instances of forced relocation and evictions.¹¹³ The consequent entrenched distrust of centralised authority alongside significant geographical distance from the (better-resourced) state authority has continuing implications for disaster risk reduction, recovery and response.¹¹⁴ At the same time, private sector engagement is intensifying in precisely these locations as resource and energy scarcity drive companies to exploit potential opportunities in “new” territory,¹¹⁵ raising questions about disaster risk creation. As the consequences of colonialism on Indigenous Peoples both persist, and continue to be revealed,¹¹⁶ this article has sought to assess whether and how rights-based approaches could be more effectively employed to underpin disaster policy.

As the IPCC has recognised, social vulnerability and equity must be prioritised to ensure fair and just climate resilience and sustainable development,¹¹⁷ and existing laws and policies in the Arctic are in general not sufficiently equipped to address cascading risks and uncertainty in an integrated and

113 Cullen (n 5); Lauren Manning, ‘Mining for Compromise in Pastoral Greenland: Promise, Progress, and Problems in International Laws’ Response to Indigenous People Academy on Human Rights and Humanitarian Law Articles and Essays on Extractive Industries and Human Rights’ (2016) 32/4 *American University International Law Review* 931; Matti and others (n 37).

114 Hamza, Eriksson and Staupe-Delgado (n 24).

115 Mark Nuttall, ‘Living in a World of Movement: Human Resilience to Environmental Instability in Greenland’ in Susan Alexandra Crate and Mark Nuttall (eds), *Anthropology and Climate Change: From Encounters to Actions*, (Routledge 2009) 308–309; Kelton Minor and others, *Greenlandic Perspectives on Climate Change: Results from a National Survey* (2019).

116 Pilegaard Petersen and Klint (n 22); Hermann (n 12).

117 Michael Oppenheimer and others, ‘Low-Lying Islands, Coasts and Communities’ in IPCC Special Report on the Oceans and Cryosphere in a Changing Climate (IPCC 2019) 325, 329, 365.

precautionary way.¹¹⁸ The realisation of human rights protections, including indigenous rights, remains hindered by systemic challenges characteristic of the unique nature of the legal arrangement within which Greenland is governed. Yet it must be recalled that notwithstanding the self-government arrangements, Greenland remains part of the Danish Realm, its people Danish citizens, and the human rights obligations, strictly speaking, belong to Denmark. Where human rights are inequitably realised within the same state, it is for that state to address that inequity. To do so does not justify authoritarian intervention from Denmark. Rather, the provision of financial and other material support that ensures a standard of living, and other human rights protections, comparable with that of other Danish citizens within the Realm.¹¹⁹

118 Meredith and others (n 63) 260.

119 For a comparable approach see: Alison Quentin-Baxter, 'The New Zealand Model of Free Association: What Does It Mean for New Zealand' (2008) 39/4 Victoria University of Wellington Law Review, 607.