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Att: Justice Report 2019
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DOC. NO. 19/01064-1

**SUBMISSION ON INDIGENOUS JUSTICE SYSTEMS
AND HARMONISATION WITH THE ORDINARY JUSTICE
SYSTEM' – SR IP REPORT TO THE HUMAN RIGHTS
COUNCIL 2019**

10 MAY 2019

The Danish Institute for Human Rights (DIHR) welcomes the public announcement of a thematic report on indigenous justice systems and harmonisation with the ordinary justice system by the UN Special Rapporteur on the rights of indigenous peoples, Ms. Victoria Tauli Corpuz. Pursuant to the call, DIHR would like submit information on indigenous peoples in the ordinary justice system and, in particular, on challenges related to the right to interpretation and fair trial in Greenland (question 11 and 12).

The Danish Institute for Human Rights

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Introduction

In the report "Human rights in Greenland – Status 2016" the Human Rights Council of Greenlandic and DIHR focused on the language of the Greenlandic courts.¹ In a report from April 2019, together with Illisimatusarfik (University of Greenland) DIHR have further examined interpretation provided in the justice system in Greenland.² The report identifies challenges which arise in relation to interpretation between Greenlandic and Danish and Greenlandic dialects in court proceedings during criminal cases.

Moreover, the report examines certain due process challenges within: (1) the framework for interpretation in the courts, (2) the consideration of dialect differences when interpreting for persons who speak North or East Greenlandic, and (3) the interpreters' linguistic skills, interpreting techniques, and professionalism.

1.2. The legal framework

The right to interpretation follows, inter alia, from the provisions of the International Covenant on Civil and Political Rights article 14 (3)(f) as well as Article 6 of the European Convention on Human Rights (ECHR) and the jurisprudence of the European Court for Human Rights.³ The ECHR is incorporated into domestic law.⁴

Although Greenlandic is the official language in Greenland according to the Self-Government Act⁵, both Greenlandic and Danish are languages of the courts in Greenland pursuant to the Administration of Justice Act.⁶ Thus, it is the court that decides whether hearings must take place in Greenlandic or Danish.

2. Interpretation in the Greenlandic justice system

The report highlights that many due process challenges are solved on a practical level by so-called co-interpretation. Thereby bilingual members of the court (judge, lay judges, and defence attorneys) intervene and, together with the interpreter, seek to find the proper understanding and subsequent translation of a term. However, despite the practical problem-solving with co-interpretation, the report concludes that a need for concrete improvements remains:

2.1. Need for improvement in the framework for interpretation

In 2000, the Commission on Greenland's Judicial System made a terminology list of the most widely used concepts. This, however, has not been updated since. A large part of the interviewees express that the lack of uniform terminology is the biggest challenge in relation to interpretation in the courts.

Several interviewees also point out that, especially in the district courts, the request for an interpreter is not always submitted in due time. This may make it difficult for the interpreter to prepare for the subject matter of the case and specific terminology in documents, such as police reports, medical certificates, witness testimonies, etc. Ilisimatusarfik and DIHR recommend, that:

- Oqaasiliortut – The Commission on the Greenlandic Language Council update the existing terminology list and regularly approve new legal terms; and

- The courts ensure that case files are always sent to the interpreter in due cause so that the interpreter can prepare for the case. In certain circumstances, such as pre-trial detention hearings, it may be difficult to ensure time for preparation. In these cases, the case files should be sent as soon as possible.

2.2. Differences in dialects create due process challenges

The official language of Greenland is Western Greenlandic (kitaa). In addition, there are several dialects, amongst which East Greenlandic (tunu) and North Greenlandic (avanersuaq) are the most widely spoken.⁷ East Greenlandic is almost to be regarded as an altogether different language which most West Greenlanders do not understand.

The aforementioned dialects are not used in official texts. Thus, challenges of interpretation arise when there is a need for interpretation to and from these dialects, as no trained interpreters in the judiciary have sufficient knowledge of the two dialects. Ilisimatusarfik and DIHR recommend, that:

- The Court of Greenland ensure that permanent interpreters or freelance interpreters who speak and understand East Greenlandic and North Greenlandic are available to the court.

2.3. Improving the interpreters' competences in interpretation in the judiciary

The level of interpretation among permanent interpreters in the courts is generally regarded as satisfactory and of high quality. Interpreters live up to the expectations of neutrality, professionalism, linguistic skills, knowledge of legal concepts, etc.

Freelance interpreters are approved by the court, however the criteria for such approval are not clearly established. Thus, major difficulties can arise when using interpreters who are not trained, who do not know the legal terminology, the cases, etc. Ilisimatusarfik and DIHR recommend, that:

- The Council of Greenland's Judicial System consider whether an approval procedure with fixed criteria for approval of interpreters in the judiciary should be introduced, particularly regarding freelance interpreters; and
- The Court of Greenland ensure training of interpreters without prior knowledge of interpretation in the judiciary.

Yours sincerely,

Emilie Thage

LEGAL ADVISER

¹ DIHR status report 2016 on Greenland is available at (in Danish):
[https://menneskeret.dk/sites/menneskeret.dk/files/media/dokumenter/udgivelser/status/2015-](https://menneskeret.dk/sites/menneskeret.dk/files/media/dokumenter/udgivelser/status/2015-16/groenland/menneskerettigheder_i_groenland_-_status_2016.pdf)

[16/groenland/menneskerettigheder_i_groenland_-_status_2016.pdf](https://menneskeret.dk/sites/menneskeret.dk/files/media/dokumenter/udgivelser/status/2015-16/groenland/menneskerettigheder_i_groenland_-_status_2016.pdf)

² Ilisimatusarfik and DIHR report on interpretation provided in the justice system in Greenland is available at (in Danish):

https://menneskeret.dk/sites/menneskeret.dk/files/03_marts_19/tolkning_i_det_groenlandske_retsvaesen_dk.pdf

³ Kamasinski vs. Austria, 19. December 1989, available at:

<https://hudoc.echr.coe.int/eng#%7B%22fulltext%22:%5B%22Kamasinski%22,%22documentcollectionid%22:%5B%22GRANDCHAMBER%22,%22CHAMBER%22%5D,%22itemid%22:%5B%22001-57614%22%5D%7D> and Cuscani vs. UK, 24.

September 2002, available at:

<https://hudoc.echr.coe.int/eng#%7B%22fulltext%22:%5B%22Cuscani%22,%22documentcollectionid%22:%5B%22GRANDCHAMBER%22,%22CHAMBER%22%5D,%22itemid%22:%5B%22001-60643%22%5D%7D>, Amer vs. Turkey, 13. January

2009, available:

<https://hudoc.echr.coe.int/eng#%7B%22fulltext%22:%5B%22Amer%22,%22documentcollectionid%22:%5B%22GRANDCHAMBER%22,%22CHAMBER%22%5D,%22itemid%22:%5B%22001-90588%22%5D%7D>

⁴ Decree no. 814 of 18 September 2001 on the act on the European Convention for Human Rights entering into force in Greenland.

⁵ Article 20, Greenlandic self-government Act, no. 473 of 12. June 2009 is available at (in Danish):

<https://www.retsinformation.dk/forms/r0710.aspx?id=125052>.

⁶ Article 95, Greenlandic Act on Administration of Justice, Consolidated act no. 1581 of 13 December 2016, available as a pdf via a link at (in Danish):

<https://www.retsinformation.dk/Forms/R0710.aspx?id=182027>

⁷ The Greenlandic Judicial Commission, report no. 1442/2004 on the Greenlandic judiciary, section V, para. 1.2.1., available at (in Danish):

<http://jm.schultzboghandel.dk/upload/microsites/jm/ebooks/bet1442/bind3.pdf>