

Indigenous Greenlandic women's access to justice

A study of the legal pluralism in the Greenlandic criminal justice system compared to the holistic human rights framework by the CEDAW Committee in relation to gender-based violence.

Candidate number: 8010

Submission deadline: 15th August 2019

Number of words: 19.999



Table of contents

<i>Acknowledgement</i>	<i>iv</i>
<i>Overview of diagrams, maps and tables</i>	<i>v</i>
1 INTRODUCTION	1
1.1 Indigenous norms and non-discrimination.....	2
1.2 CEDAW's holistic approach.....	3
2 GREENLAND'S CRIMINAL JUSTICE SYSTEM	4
2.1 Historical context.....	4
2.2 The legal relationship between Greenland and the Danish Realm	7
2.3 The function of the Criminal Court	7
2.4 The Criminal Code - the legislative framework	8
2.4.1 Definition of crimes of violence against women.....	9
2.4.2 Punishment	9
3 UNDERSTANDING AN ARCTIC, PLURALISTIC CRIMINAL JUSTICE SYSTEM	10
3.1 The 'blind spot' of violence against indigenous women in the Arctic	10
3.2 When justice systems are active in ensuring women's human rights.....	12
3.3 Legal pluralism and justice systems	13
3.4 The ambiguities of customary norms in justice systems - ensuring indigenous women's rights	14
3.5 Violence against women in the criminal justice system in Greenland	15
4 METHODOLOGY	16
4.1 Legal analyses.....	16
4.1.1 Greenlandic legislation.....	18
4.2 Empirical study	18
4.2.1 Case résumés from Court of Appeal.....	18
4.2.2 Court observations.....	19
4.2.3 Interviews	20
5 CEDAW AND GREENLAND	22
5.1 CEDAW's obligation upon States in relation to violence against women	22
5.1.1 Legislation	23
5.1.2 Access to law	24

5.1.3	A gender-sensitive process	25
5.1.4	Access to remedies	27
5.2	Official Status of Women's Human Rights in Greenland	28
5.2.1	CEDAW's application to Greenland	28
5.2.2	Official statement towards gender-equality	29
5.2.3	Legislation	29
5.2.4	Access to law	31
5.2.5	A gender-sensitive process	33
5.2.6	Access to remedies	35
5.2.7	Sum up	35
6	THE CRIMINAL JUSTICE SYSTEM IN PRACTICE	36
6.1	National Legislation	36
6.1.1	Provision on gender-discrimination in Greenland	36
6.1.2	The Criminal Code	37
6.2	Access to Law	37
6.2.1	Social Support Strategy	38
6.2.2	Access to Courts	38
6.3	Within the Court	41
6.3.1	A gender-sensitive process	44
6.3.2	Training in CEDAW	44
6.3.3	Gender-stereotypes: Women's credibility and mitigating circumstances	45
6.4	Remedies	48
1.1	Summarizing	50
7	CONCLUSION	51
8	TABLE OF REFERENCE	53
	Domestic Legislation (by date)	53
	Preparatory work for domestic legislation	53
	International Declarations/treaties:	53
	General Comments	54
	Inquiries by the CEDAW Committee:	54
	Judicial decisions	54
	The CEDAW Committee:	54
	Greenlandic Criminal Cases (mentioned by case-name in thesis):	54
	Sources in relation with reviews by the CEDAW Committee (Denmark)	55
	9th review	55
	8th review	55

7th review	55
6th review	56
Other related sources:	56
Reports by the Special Rapporteur on violence against women.....	56
Publications.....	57
Books and book sections	57
Journal articles.....	58
Reports	59
Other	59
Webpages:.....	59
9 APPENDIX.....	61
Appendix I – interview respondents	61
Appendix II – Interview guides	61
Appendix II.1 Interview for Prosecutor.....	61
Appendix II.2. Interview guide for District Court Judge	62
Appendix II.3 Interview guide with Court of Greenland Judge	63
Appendix II.4 Interview guide with Court of Appeal Judge	64
Appendix III: Court observation notes 2019	65
Appendix IV – the 25 cases of gender-based violence under §77 or §88.....	66

Acknowledgement

I would like to acknowledge those who helped me along the way. First of all, I would like to say thank you to my respondents for their participation, and their daily work to keep Greenlandic women safe to the best of their capacity. I would also like to thank those who provided food for thought - especially Professor Hanne Petersen and MarieKathrine Poppel.

Additionally, I would also like to express my gratitude to friends and family who have supported me throughout my master degree, and provided a supporting ear when I found myself frustrated. I especially want to thank my friends and fiancé, who have been beyond supportive, and have read and commented on my drafts and discussed them in what seemed to be endless sessions.

Last but not least, a special thanks goes to Anne Hellum. They say that through University you will encounter 'The Professor.' I believe this was my moment with Anne Hellum in 'Women's law,' as I'm sure many other students can recognize. Thank you for guiding me through the interesting process of writing a master thesis in the undiscovered field of women's human rights in Greenland.

I hope you enjoy my work.

Kind Regards,
Siff

Overview of diagrams, maps and tables

- Table 1 – *Criminal cases* –page 19.
- Map 1 – *Shelter locations* - page 38.
- Diagram 1: *Division between cases related to violence against women by a man under §77 or §88 of the Greenlandic Criminal Code.* Page 39.
- Diagram 2: *Number of cases, which are evident within the Court of Appeal of violence against women, divided into the crime being perpetrated within the Criminal Code. ‘Rape or other sexual intercourse’ does also include attempts of such.* Page 40.
- Diagram 3: *Division between men and women judges in the District Court cases of violence against women. One case does not contain information of upon the judge, as the case from the District Court is not available.* Page 40.
- Diagram 4: *Division of sentences given by District Courts in the 25 cases of violence against women prosecuted under §77 (rape or other sexual intercourse, or attempts of such) and §88 (violence). Time in prison extends from 3 days to 1 year and 6 months.* Page 42.
- Diagram 5: *Sentences given by Court of Appeal compared to District Courts in cases of violence against women prosecuted under §77 (rape or other sexual intercourse, or attempts of such) and §88 (violence). Lesser sentence includes suspended sentence, warning, found not-guilty, community service and lesser time in prison.* Page 42.
- Diagram 6: *Number of cases of §77 cases (rape or other sexual intercourse, or attempts of such) against women divided in relation to the relationship between the victim and the accused.* Page 43.
- Diagram 7: *Number of cases of §88 cases (violence) against women divided in relation to the relationship between the victim and the accused.* Page 43.
- Diagram 8: *Division of the 25 cases of violence against women, divided into their inclusion of remedies in District Courts and Court of Appeal.* Page 49.

1 Introduction

Violence against women represents a great challenge for the Greenlandic criminal justice system. The District Court Judge express: “*Violence overall is highly present in Greenland, especially within the home’s four walls.*”¹ The Governmental webpage ‘Break the Silence’ states that 62.4% of women over 17 have experienced violence. In 65.2% of these cases, the offender is a current or former partner.² Unofficial numbers from crisis shelters in 2014 show similar numbers, where 60% of women have been subject to violence.³ Another study by Balvig from 2015 showed that 11% of the population have been exposed to violence and/or been a victim of serious threat of violence within the last year, and one in 20 have within the last five years identified as being victim of rape.⁴

Even though violence is highly visible in Greenland, there is little research on women’s access to protection against violence. The Committee on the Elimination of Discrimination against Women (CEDAW Committee), who sees violence against women as an equal rights issue, has continuously called for more research on women’s protection against violence in Greenland.⁵ Similarly, the Danish Institute for Human Rights points out that only few studies are done on discrimination against women in Greenland.⁶

This thesis addresses violence against women in Greenland, focusing on their ability for access to the criminal justice system. A criminal justice system is part of the broader topic ‘access to justice’, and there exist two broad approaches towards justice in a criminal justice system: restorative and retributive. Retributive justice means *inter alia* that those who commit wrongful acts deserve to be proportionately punished.⁷ Oppositely, restorative justice focuses on repairing the harm done to people and communities.⁸ Either way, the criminal justice system is vital for ensuring that women’s rights to equality are respected, protected, promoted and fulfilled. As Sally E. Merry explains, women who are victims of violence face the choice between being ‘the good partner’, who does not drag her husband to the authorities and dis-

¹ Appendix I.2

² Data from the official webpage “bryd travsheden”: <https://brydtavsheden.gl/da/viden-om-vold/vold-i-familien/hvem-bliver-udsat-vold/vold-mod-kvinder> (accessed July 2019)

³ Pressrealese fra Kattuneq <https://danner.dk/nyt/fagfolk-i-gr-nland-skal-kende-voldens-dynamikker> (accessed July 2019)

⁴ Balvig, Flemming. "Kriminalitet Og Retsbevidsthed - I Grønland." *Nordisk Tidsskrift for Kriminalvidenskab*, no. 1 (2015). 14-19

⁵ For example periodic review in 2006 (25th October 2004 CEDAW/C/DNK/CO/6 para.21), in 2009 (7th August 2009 CEDAW/C/DEN/CO/7 para.30.), and in 2015 (11th March 2015 CEDAW/C/DNK/CO/8 para.18(a)).

⁶ Danish Institute for Human Rights. "Parallel Report to the Un Committee on the Elimination of Discrimination against Women (Cedaw) Denmark 2015." 15

⁷ Walen, Alec, "Retributive Justice", *The Stanford Encyclopedia of Philosophy* (Winter 2016 Edition), Edward N. Zalta (ed.)

⁸ Zehr, Howard, Restorative Justice: the Concept Accessed: <http://dhss.alaska.gov/djj/Documents/ReportsAndPublications/restorative-concept.pdf>

play his violence, or being ‘the right bearing-woman’, who is entitled to a life without violence. As Merry describes: “*The practice of the legal system are thus of critical significance to the woman’s decision as she ambivalently moves in and out of this subjectivity.*”⁹ Women who are victims of violence are therefore inevitably linked with the criminal justice system, and studies show that justice systems can be instrumental in eradicating gender-based violence.¹⁰

The reason behind focusing on the Greenlandic criminal justice system is that it has been seen as exceptional in its approach by ensuring access to the people by its people. It originated as part of the equalising progress of Greenland within the Danish Realm in the 1950’s. A challenge for this new legal system was to ensure access to courts. The solution was to implement local personnel, who spoke the indigenous language and had local knowledge, and were thus able to navigate local and basic legal norms.¹¹ After a small alteration in the 2000’s, this system still exists. Local knowledge among judges is still vital, and the legal language is Greenlandic, alongside Danish. This is stated by law in article 12(4) and article 95 in the Greenlandic Administration of Justice Act.¹²

According to the legal researcher Hanne Peterson, here “*Inuit legal culture meets with modern Home Rule legal culture, Danish legal culture, and increasingly global legal culture*”.¹³ This system, which emerged legal orders (as state law and customary norms) constitutes a legal pluralistic system,¹⁴ and this is what I intend to study.

1.1 Indigenous norms and non-discrimination

My study focuses on access to justice as an equality issues. It will address Greenlandic women’s access to criminal justice in light of their mixed identities; both as members of an indigenous group and as equal individual citizens. Indigenous women’s ability to gain access to justice when victims of gender-violence, is complex and this should be given special attention because, as the CEDAW Committee has recognized, they may experience more difficulties in gaining access justice.¹⁵

⁹ Merry, Sally Engle. *Human Rights and Gender Violence : Translating International Law into Local Justice*. Chicago Series in Law and Society. Chicago: University of Chicago Press, 2006. 186-190

¹⁰ See section 3.2

¹¹ Bentzon, Agnete Weis et.al. *Læg Og Lærd I Grønlands Retsvæsen 1950-2000*. København: Dansk Polarcenter og Grønlands Landsret, 2001.

¹² Bekendtgørelse nr. 1581, 13th December 2016

¹³ Petersen, Hanne. "Legal Cultures in the Danish Realm.: Greenland in Focus." In *Legal Cultures and Human Rights: The Challenge of Diversity*. Great Britain: Kluwer Law International 2001. 77

¹⁴ A legal pluralistic system is defined by the coexisting of “(...) *State Laws, regulations, procedures and decisions on one hand, and of religious, customary, indigenous or community laws and practices on the other.*” (adopted 3. August 2015, sixty-first session) CEDAW/C/GC/33 GR33 para.5. See section 3.3

¹⁵ CEDAW/C/GC/33 para.8

On one side, as the majority of the Greenlandic population is comprised of Inuit people, this group is thus entitled to cultural indigenous particularities and own customs within the national legal system (including the criminal justice system). This is stated in the United Nations Declaration on the Rights of Indigenous Peoples article 34 and the ILO Convention (No. 169) concerning Indigenous and Tribal Peoples in Independent Countries article 8. However, this is only as long as these norms are in accordance with human rights.¹⁶

On the other side, indigenous women are entitled to a life without violence. The CEDAW Committee states gender-based violence as discrimination against women is prohibited by the general clause against discrimination in article 1 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).¹⁷ In its interpretation of article 1, The Committee states:

*“(...) discrimination against women –as defined in article 1 of the [CEDAW] Convention– includes gender-based violence, that is, ‘violence which is directed against a woman because she is a woman or that affects women disproportionately’, and, as such, is a violation of their human rights.”*¹⁸

According to the Committee, gender-based violence must be eradicated, as this violence is fundamental in keeping women in a subordinate position, and its eradication is therefore critical in achieving gender equality and securing women’s basic human rights.¹⁹ Thereby gender-based violence is discrimination against women, and norms (customary or others) that limit female victims access to justice are thus no longer in accordance with human rights.

1.2 CEDAW’s holistic approach

The CEDAW sets out to protect women from discrimination in all areas. It binds ratifying states to respect, protect, promote and fulfil women’s rights, and ensures de jure and de facto equality for women on the same level as men.²⁰ Denmark ratified this convention in 1983. Even though Greenland and Denmark are two separate states, Greenland is bound by the Danish ratifications of international treaties.²¹

The CEDAW lists obligations aimed at ensuring women’s access to justice in situations of gender-based violence. Rikki Holtmaat describes its approach as ‘holistic’, meaning is correlation obligations aimed at including the whole process women encounter when want-

¹⁶ United Nations Declaration on the Rights of Indigenous Peoples supported by Denmark at the General Assembly (adopted by the General Assembly Resolution 61/295, Enacted 13.9.2007), and ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries (adopted 76th ILC session 27th June 1989) adopted by Denmark in 1997 (Bekendtgørelse nr. 97 af 9. oktober 1997 af ILO-konvention nr. 169 af 28. juni 1989 vedrørende oprindelige folk og stammefolk i selvstændige stater).

¹⁷ (adopted 18th December 1979, entry into force 3rd September 1981) 1249 UNTS 13 CEDAW art.1

¹⁸ (adopted 26th July 2017, sixty-seventh session) CEDAW/C/GC/35 GC35 para.1

¹⁹ Ibid. para.10

²⁰ (adopted 2004, thirtieth session) CEDAW, General Recommendation No. 25 on article 4 paragraph 1, para.4

²¹ See section 5

ing access to justice, without limiting itself to a courtroom. Additionally, it is also the consideration of the intersectional factors indigenous women encounter as individual citizens and members of an indigenous group.²²

Based on the CEDAW Committees holistic approach, I identified four sets of obligations within CEDAW: i. Legislation ii. Access to law iii. A gender-sensitive process within the court, and iv. Access to remedies. These are the components I will rely on in my study.

As a student partly in legal anthropology and partly in equality law, I was particularly interested in how tension between Inuit women's dual identities as individual citizens and as member of an indigenous group is reconciled in Greenland. I lived in Nuuk for nine months, interviewed judges and prosecutors, observed court cases and read available criminal court résumés, guided by my research question: *How can we understand the Greenlandic criminal justice system compared to CEDAW's holistic set of obligations in relation to gender-based violence?*

My thesis consists of seven sections, including this introduction. Section two explains the Greenlandic criminal justice system. Section three looks into existing literature on women's rights in the arctic, (pluralistic) criminal justice system and gender-based violence. Section four describes my methodology. Section five describes CEDAW's binding obligation, how Greenland have presented themselves to the CEDAW Committee, and what the Committee concluded. Section six analyses these obligation in relation to the Greenlandic criminal justice system. Section seven is the conclusion.

2 Greenland's criminal justice system

To analyse how Greenlandic criminal justice system functions in 2019, we need to situate it in a broader historical context.

2.1 Historical context

In 1948, an expedition was sent by the Danish Prime Minister to Greenland to investigate the legal status and draft a proposal for a future legal justice system.²³ Their aim was to research whether it was possible to establish a single legal system across Greenland.²⁴ Up until then, there existed two systems: one of mainly unwritten customary laws for the Greenlandic population, and one with Danish laws for the Danish inhabitants. Each had its own sets of execu-

²² Holtmaat, Rikki. "The Cedaw: A Holistic Approach to Women's Equality and Freedom." Chap. 3 In *Women's Human Rights: Cedaw in International, Regional, and National Law*, edited by Anne Hellum et.al 95-123: Cambridge University Press, 2013.

²³ Petersen, Hanne. "50 År Efter Den Juridiske Ekspedition - Spredte Refleksioner over Kolonier, Køn Og Ret." In *Ret Og Skønsomhed I En Overgangstid*, edited by Peter Blume et.al.: Akademisk Forlag, 1998.

(Referencing to Den Juridiske Ekspedition, 1950, Bet I, s. 1) 24

²⁴ Ibid.26

tive and judicial powers.²⁵ The expedition was led by the social scientist Werner Goldschmidt. His wife, lawyer Agnete Weis, also participated. She later became a prominent scholar in relation to the Greenlandic justice system.

The expedition proposed establishing District Courts manned by laymen. They recommended a system based on the principle of subsidiarity, ensuring the Greenlandic people's access to law and court. In 1976 Weis published her legal sociological studies of the functioning of this laymen system from 1951-1976. She presented the advantages of this system, particularly the significance of judges who understood the Greenlandic culture and language. This would allow judges to better understand the involved parties, and thus making their judgements in accordance with local norms and practices.²⁶ This system valued knowledge of the local people's culture and mentality more highly than a legal background – although the latter was welcomed as a supplement.²⁷

The proposed Criminal Code also mirrored local norms. It was divided into two sections: what constitutes a crime, and applicable sentences. This division was based on special trades of Greenlandic law, where the sentences should be based less upon the crime – as traditional in Danish law – and more on the offender and his/hers personal and social background. The aim would not be to sanction this person, but to rehabilitate him/her into society.²⁸ This would cohere with the Inuit culture, wherein the offender was shortly, if at all, stigmatized, but continued to participate in the everyday life as all others.²⁹ Thereby, restorative justice was in the heart of this new legal justice system.

Sexual violence was prohibited within criminal law in 1954.³⁰ Part of Weis' study focused on how this crime was handled by the District Courts. She found a cultural clash between the Greenlandic and Danish norms in relation to violence against women, more specifically rape. Rape was, according to the Greenlandic notion, seen as something as equal to other types of violence against one's body. This notion was reflected in the sentences by the courts, where it was ruled that if the victim had suffered 'harm' from the violence related to the rape, not the rape itself, a fine could be sentenced.³¹

In the 1980's, remedies and what later became crisis shelters, were incorporated into legislation. In 1984, the Greenlandic Board of Remedies was established, to provide remedies

²⁵ Bentzon, Agnete Weis. *Ret Og Reformer 1*. København: Nyt fra Samfundsvidenskaberne, 1979. 30-31

²⁶ Ibid. 34

²⁷ Bentzon, Agnete Weis. *Ret Og Reformer 2*. København: Nyt fra Samfundsvidenskaberne, 1979. 96-97

²⁸ Bentzon(1979) *Ret Og Reformer 1*. 56

²⁹ Bentzon(1979). *Ret Og Reformer 2*. 112

³⁰ Bentzon, Agnete Weis. "Tugt, Vold Og Voldtægt I Grønland." *Nordisk Tidsskrift for Kriminalvidenskab* 64, no. 1 (1977). 8

³¹ Ibid. 5-6, & Weis (1979). *Ret Og Reformer 2*. 131,

by the State to victims of criminal acts. This board still exists today. In 1988, legislation, preceding the eventual legislation for crises shelters was adopted.³²

In 1994, it was decided that a Greenlandic Judicial Commission should review the Greenlandic justice system. The basis was that even though there might be satisfaction with the lay judges in the District Court, other areas might need adjustment, as the social-geographic landscape of Greenland was changing.³³ Part of the task was to review whether it was desirable to preserve the current system of judges without a legal degree.³⁴ The Commission wanted to preserve two things: i. The principle of subsidiarity, which ensured availability of the court to a widespread public, and ii. The 'Greenlandic element' of the administration of justice,³⁵ entailing knowledge of the language, society and mentality differences.³⁶ They found that these traits would most likely not be united with the want for judges with a legal degree.³⁷ Therefore, laymen judges were preserved, and 18 District Courts jurisdictions were proposed.³⁸

The Commission's review included an investigation of the system's support among the population. Two studies were initiated. Helene Brochmann's study concluded that the Greenlandic people were satisfied with the laymen judges, who played a vital role, as they were the reason why courts were not viewed as an outsider's initiative upon Greenland.³⁹ Flemming Balvig investigated whether the restorative justice culture was still present within the Greenlandic population.⁴⁰ He found that 95% of his participants pointed at re-socialization as either most or second most important aim of punishments. 88% of women who have been victims of sexual crimes believed that the primary aim of the criminal justice system should be re-socialization.⁴¹ This indicates that indigenous women supported restorative justice. Therefore, it was important to maintain the focus on restorative justice within the criminal system.⁴²

According to the Commission, 38 % of the convictions in criminal cases were for violence, and 9% of the Greenlandic population has been convicted of violence.⁴³ In the pro-

³² Landstingsforordning nr. 6, 28th April 1988.

³³ Walsøe, Per. "Grønlands kredsretter" In *Ret Og Skønsomhed I En Overgangstid*, edited by Peter Blume et.al.: Akademisk Forlag, 1998. 51

³⁴ Betænkning 1442/2004 om det grønlandske retsvæsen, (2004). 205-206

³⁵ Ibid.179

³⁶ Ibid.228

³⁷ Ibid.205-206

³⁸ Ibid.1336

³⁹ Ibid.198, referencing to Brochmanns 'I kredsretten', (1996).

⁴⁰ Balvig (2015)

⁴¹ Ibid.36

⁴² Betænkning 1442/2004. 72-74, 144

⁴³ Ibid.136-137

posed legislation, rape and physical violence would be prohibited⁴⁴, although marital rape was not included. The latter was not illegal until February 2019.⁴⁵ According to the Commission, the judicial authorities should increase their focus on the support for women to ensure their access to the legal system and remedies. They found that even though remedies were provided to victims, they recommended that remedies were dealt with as part of the criminal case.⁴⁶ In relation to shelters, the Commission found that there was a lack of crisis shelters for women - some were established upon volunteer initiatives, but in practice, access to shelters was limited.⁴⁷ Therefore, in 2004, legislation for crisis shelters was adopted.⁴⁸

2.2 The legal relationship between Greenland and the Danish Realm

Today, the Greenlandic justice system and its laws are, to an extent, still under Danish jurisdiction. The Greenlandic Constitution is built partly on Danish Realms Constitution from 1953 and partly on the Act on Greenland Self-Government from 2009.⁴⁹

§1 of this Self-Government Act states that Greenland has legislative and executive jurisdiction over areas in which they have gained autonomy. Gender equality is currently part of the health area⁵⁰, over which Greenland gained autonomy in 1991.⁵¹ However, the Justice Department has not been retracted to Greenland, so it is thereby still part of the Danish Justice Department. Additionally, as Greenland is not an independent state, there are certain aspects of the Danish Realm that cannot be autonomous. For the legal justice system, the Danish Constitution still binds the entire Danish Realm, and requires that there exist one common Supreme Court. Thereby, the Danish Supreme Court is the highest instance of the Greenlandic justice system.⁵²

2.3 The function of the Criminal Court

The Greenlandic criminal justice system is described by the Greenlandic Order of the Procedural Code (Procedural Code), and consists of District Courts, The Court in Greenland, and The High Court of Greenland.⁵³

District Courts are first instance for criminal cases.⁵⁴ They can refer these cases to the Court of Greenland if they are especially difficult or have a principle character.⁵⁵ The Court of

⁴⁴ Ibid.1906-1908

⁴⁵ Lov nr. 168, 27th February 2019

⁴⁶ Betænkning 1442/2004. 32

⁴⁷ Ibid.120-121

⁴⁸ Bekendtgørelse nr. 18, 8th december 2004

⁴⁹ Act no. 473, 12th June 2009

⁵⁰ Gender equality are currently places under the Department of Health within Naalakkersuisut

⁵¹ Lov nr. 369, 6th June 1991

⁵² Betænkning 1442/2004. 1315

⁵³ Nr.1581, 13th December 2016, para.1

Greenland is first instance for civil cases.⁵⁶ The High Court of Greenland is the Court of Appeal for criminal and civil cases.⁵⁷ The judgments from this court can only be appealed to the Supreme Court in Denmark under special circumstances.⁵⁸

There currently exist four District Courts jurisdictions determined by the Minister of Justice⁵⁹ (from Denmark). The number of jurisdictions has decreased through time, and is currently Kujalleq, Sermersooq, Qeqqa and Qaasuitsaq.⁶⁰

Appointments to become judge of a District Court require that candidates have completed a special District Court judge training.⁶¹ The judge of the Court of Greenland and the Court of Appeal must have a legal master's degree.⁶² New District Court judges must in addition to personal and professional qualification, have knowledge of local conditions.⁶³

In addition to a judge, two lay assessors are normally present at the lower level of criminal cases.⁶⁴ Additionally, the offender, a defender and a prosecutor must be present. The defenders and prosecutors do not necessarily have a legal master's degree - often the prosecutor is a policeman.⁶⁵ The legal language is both Greenlandic and Danish. In those cases, where all does not understand the language spoken, a translator is present.⁶⁶ Through my fieldwork, I discovered that most cases are handled in the language of the victim and the offender.⁶⁷ All court hearings are, as a starting point, public.⁶⁸

2.4 The Criminal Code - the legislative framework

The Greenlandic Criminal Code contains the only provision prohibiting violence against women. It covers all acts committed in Greenland committed by people above the age of 15.⁶⁹ This Criminal Code states what constitutes as crime and afterwards lists the possible punishments.

⁵⁴ Ibid. para.55

⁵⁵ Ibid. para.55(1)-(2)

⁵⁶ Ibid. para.57

⁵⁷ Ibid. para.59

⁵⁸ Ibid. para.60 & para.564

⁵⁹ Ibid. para.2

⁶⁰ Bekendtgørelse nr.1428, 23rd December 2012

⁶¹ Bekendtgørelse nr.390, 25th April 2017

⁶² Nr. 1581, 13th December 2016, para.13

⁶³ Ibid. para.12(4).

⁶⁴ Ibid. para.44

⁶⁵ From own observations and interviews

⁶⁶ Nr.1581, 13th December 2016, para.95

⁶⁷ Own observations.

⁶⁸ Nr.1581, 13th December 2016, para.112

⁶⁹ Ibid. para.4¶.16

2.4.1 Definition of crimes of violence against women

Chapter 18 and 19 of the Criminal Code addresses violence and rape. Physical violence against women is prohibited under §88 of the Criminal Code. Of crimes against life and body, we *inter alia* find violence to be intentional harm or violating someone's body. Inadvertent actions of such are also included.⁷⁰

Rape is prohibited as a sexual criminal act under §77. One is convicted of rape if one by violence or threat of such, forces himself/herself to sexual intercourse, or acquire sexual intercourse with a person whom, due to his/hers condition, is unable to resist.⁷¹ In accordance with the legislative change of 2019, rape now includes all sexual interaction - not only sexual intercourse.⁷² Further, the 'outside of marriage' was removed from *inter alia* the definition of rape, meaning that it now also prohibits marital rape.⁷³

2.4.2 Punishment

If one is found guilty, there exist eight possible sentences for people who are not under 18 or mentally ill, found in §119. The list goes from mild to severe sentences. These are a warning, then fine, suspended sentence, supervision, community service, time in prison and supervision, time in prison (maximum 10 years⁷⁴), and finally detention without limitation.⁷⁵ I will not go into depth of each one – only those that are relevant for this study, being a warning, suspended sentence and time in prison.

'A warning' is when the crime was of an extremely mild degree of roughness, and the person is not previously sentenced.⁷⁶ 'Suspended sentence' is where the accused is found guilty, but will not be sentenced to prison, as such action is not needed to prevent any further crimes.⁷⁷ 'Time in prison' is obviously serving time within a prison, in order to ensure no other crimes will be committed.⁷⁸

For rape, it is standard for the prosecutor to argue for time in prison, as rape is regarded as "gross violence" according to their guiding document "Dagsbefaling No. 11" by the Danish Attorney General. Violence against women by a husband or previous partner (described as 'family violence') is considered "regular violence". The standards claim should

⁷⁰ Ibid. para.88

⁷¹ Ibid. para.77(1)-(2)

⁷² Nr. 168, 27th February 2019, para. 1

⁷³ Ibid. para.4

⁷⁴ Bekendtgørelse nr. 1045, 7th September 2017, para.147

⁷⁵ Ibid. para.199(1)-(7), own translation.

⁷⁶ Ibid. para.125

⁷⁷ Ibid. para.129(1)-(2)

⁷⁸ Ibid. para.146(1)-(2)

therefore be suspended sentencing or supervision. For single acts of violence, this is considered “simple violence”, and the punishment should be argued a fine.⁷⁹

When determining the final judgment, the Criminal Code states, that following components must be taken into consideration by the judge: Firstly, the harshness of the crime, including society’s interest in preventing further similar actions. Secondly, the convicted personal relationship, including what is necessary to prevent this person from committing a similar act in the future.⁸⁰ It is mitigating circumstances if the action is committed in upset state of mind, or if the action is committed under influence of strong emotions or under spiritual instability.⁸¹

3 Understanding an arctic, pluralistic criminal justice system

Scholars have studied women’s rights and legal pluralistic systems all over the world. However, the literature focused upon Greenland is limited. This literature review draws on relevant scholarly work, and starts with explaining research on gender-based violence in the situation of Arctic indigenous women. The second section describes the vital role justice systems play in ensuring women’s human rights. The third section focuses on legal pluralistic systems in colonial states, and the final section goes into gender-based violence within Greenlandic courts.

3.1 The ‘blind spot’ of violence against indigenous women in the Arctic

There is an overall problem within the Arctic States to ensure indigenous women’s rights. In ‘Gender equality in the Governance of the Arctic’⁸², Eva-Maria Svensson explored whether the Arctic States lived up to their international obligation to establish gender equality through their governance. None of the States she investigated - Canada, Russia and Sweden - lived up to their obligation to ensure gender equality. Indigenous women’s interest was secondary to other interests, and more talked about than actually ensured. She found that the CEDAW Committees had a) concerns of Sami-women experiencing intersectional discrimination because of lack of effective protection in Sweden, b) concerns of a lack of efficient mechanisms to ensure legal implementation of the Convention in Canada, where indigenous women experience more discrimination than other groups, and c) concerns that indigenous women face stereotypes and lack of legislation defining and prohibiting discrimination on the basis of sex in Russia.⁸³

⁷⁹ Dagsbefaling nr. 11 - Om anklagevirksomhed, 27. juli 2016, Journal Number 55PM-60190-00015-05.

⁸⁰ nr. 1045, 7th September 2017, para.121(1)-(2)

⁸¹ Ibid. para.123(3)

⁸² Svensson, Eva-Maria. "Gender Equality in the Governance of the Arctic Region." *Nordic Journal on Law and Society* 1, no. 01-02 (2017):16-64.

⁸³ Ibid.53-56

Monica Burman's research looking into indigenous women in Sweden also reflects this gap of protection in her article: 'Men's intimate partner violence against Sami-women – a Swedish blind spot'.⁸⁴ To Summarize, Sami women in Sweden are neglected within Swedish mainstream discourse, even though Sweden portray itself as willing to improve the efforts regarding men's violence against women.⁸⁵ The issue of violence against Sami women becomes subordinate to other issues - either in relation indigenous people versus the surrounding society,⁸⁶ or equality as a general issue not in relation to violence against women. If there is talk of violence, it is linked to 'health', formulated in general terms.⁸⁷ She found that the imbalance of power between men and abused women needed to be acknowledged in laws and policies, and one must be aware of a 'culturalization' of violence, in which violence become normalized as part of a culture.⁸⁸

The same lack of protection is found among the Sami women in Norway.⁸⁹ The Norwegian Institute for Human Rights (NIM) in their thematic report from 2017, states that 49 % of Sami women have been victims of violence.⁹⁰ Sami women who are victims of violence need culturally and linguistically adjusted initiatives,⁹¹ which would help bridging the gap of lack of trust between the Sami people and the authorities.⁹² NIM did not believe that the Norwegian Government fulfilled its obligation for linguistic, cultural and traditional sensitivity in its process to eradicate violence against Sami people.⁹³

Karna Jakumsen found similar results in her study of the actual focus on CEDAW and its fulfillment in Greenland.⁹⁴ She was part of the Equality Council and part of the commission, which was set up to write the act prohibiting discrimination.⁹⁵ She explains, how, in line with CEDAW, they saw violence against women as a result of imbalanced power relations between men and women that should be addressed by both criminal law and equality and anti-discrimination law.⁹⁶ They argued that gender-based violence should be included in the 'equality act'. The proposal, however, was turned down by politicians, who saw violence

⁸⁴ Burman, Monica. "Men's Intimate Partner Violence against Sami Women - a Swedish Blind Spot." *Nordic Journal on Law and Society* 1, no. 01-02 (2017):194-215.

⁸⁵ Ibid.195- 198

⁸⁶ Ibid.208

⁸⁷ Ibid.202-204

⁸⁸ Ibid.208-209

⁸⁹ Norges nasjonale institusjon for menneskerettigheter. "Temarapport 2018. Vold Og Overgrep I Samiske Samfunn."

⁹⁰ Ibid.28.

⁹¹ Ibid.29, referencing to 'Om du tør å spørre, tør folk å svare. Hjelpeapparatets og politiets erfaringer med vold i nære relasjoner i samiske samfunn, NKVTS, rapport nr. 2. 2017'.

⁹² Ibid.29-30

⁹³ Ibid.38

⁹⁴ Jokumsen, Karna. "Lovgivning På Området Køn Og Vold - Lægmænd, Politikere Og Embedsmænd." In *Køn Og Vold I Grønland*, edited by Mariekathrine Poppel, 267-86: Atuagkat 2005.

⁹⁵ Inatsisartutlov No. 3 of 29th of November 2013

⁹⁶ Jokumsen(2005) Ibid.267-273

against women as a criminal law issues, as violence was part of the criminal code.⁹⁷ In the end, the task of drafting the equality act was given to a person, who had neither had experience in Greenlandic law nor in equality law.⁹⁸ Other scholars such as Hanne Petersen have warned that authorities might use right language strategically. She explains, that Greenlandic state might present itself to “(...) *at least outwardly to subscribe to a culture of rights or to mimic it*”.⁹⁹

These studies show that even though Arctic States differentiate, there is a tendency that they do not fulfil their indigenous women’s human rights obligations. In Greenland, despite of high instances of violence, the general assumption is that there is gender equality.¹⁰⁰ I focus my research on discovering whether this assumption is true, or if there exists a ‘blind spot’ here too.

3.2 When justice systems are active in ensuring women’s human rights

Some justice systems have been characterized by ‘judicial activism’, where courts stretch the letter of law in order to make rulings, which fulfill the state’s obligations embedded in human rights conventions. In India in 1995, the Supreme Court, in a case of sexual assault, framed guidelines for *inter alia* support services, legal aid and compensation for rape survivors. Although it was not directly linked to CEDAW, it was the first time reparative justice was considered and included in India.¹⁰¹ Kabita Pandey found in her study ‘Judicial education in Nepal’ (2013)¹⁰² a direct link between legal literacy, legal aid, judicial education and judicial review. She studied Nepalese Supreme Court cases before and after an education for the judiciary. She argues that ratification of CEDAW does not in itself have any impact. After proper education, the justice system may be in a position to fulfill the State’s obligation to respect, protect, promote and fulfill women’s human rights.

Pandey’s study shows that it is possible for justice systems to embrace the holistic approach and to be instrumental in eradicating gender-based violence.

Criminal justice systems obligations towards female victims of gender-based violence starts at ensuring women’s access to law, goes all the way into the process within the legal system itself, and culminates in the obligation to ensure women have access to remedies. Such a sys-

⁹⁷ Ibid.272-723

⁹⁸ Ibid.273-274

⁹⁹ Petersen(2001). 78 (referring to Petersen 1999a)

¹⁰⁰ Jokumsen(2005). 270

¹⁰¹ Mehra, Madhu. "India’s Cedaw Story." Chap. 13 In *Women’s Human Rights: Cedaw in International, Regional, and National Law*, edited by Anne Hellum et.al.; Cambridge University Press, 2013. 402-403

¹⁰² Pandey, Kabita. "Judicial Education on the Convention on Elimination of Discrimination against Women in Nepal." Chap. 14 In *Women’s Human Rights: Cedaw in International, Regional, and National Law*, edited by Anne Hellum et.al, 410-29: Cambridge University Press, 2013.

tem functions at different domestic levels, where different local actors participate. Sally F. Moore' uses the term 'semi-autonomous field' to characterize social spaces, where different actors generate norms through their interaction. These socially generated norms, ranging from state-law to customs to common sense, supporting their interest, are a mixed product.

Even though Moore's theory was originally implemented in a workplace situation, this theory can be transferred to the criminal justice system. A semi-autonomous field is not defined by its physical boundaries, but by its processes.¹⁰³ It allows us to, beyond the setting of the courtroom, analyse the normative framework women go through when wanting access to justice from start to finish.

In a field, a person's power comes from their ability to refer back their position in written laws, e.g. a union man. This power creates a capacity to mobilize actions within this field.¹⁰⁴ In the justice system, judges act as centre figures - they make mandatory decisions, because we have legislation enabling them with such power. A field is not closed to outside factors. Actors of the field are in the capacity to draw on outside sources to rearrange the field.¹⁰⁵ In this context this could mean international conventions.

This theory allows me to understand how people, who are part of the criminal justice system are also part of its self-regulative process and reinforcement of norms.¹⁰⁶ It provides a framework to understand how norms become a mixed set of different sources of law, introduced and regenerated by different actors. The following will explain how we can understand this coexistence of international conventions, domestic legislation etc. as sources of law within the justice system.

3.3 Legal pluralism and justice systems

There are two approaches to justice systems and multiple legal sources - weak and strong legal pluralistic systems. 'Weak' legal pluralism refers to situations, where State law is the only source of legal norms that courts can apply, and customary laws are another form of state law developed by state-courts.¹⁰⁷ However, this approach does not take into account of the 'living' element of law, and overlooks the dynamic relationship between state law and other social orders, e.g. human rights conventions.¹⁰⁸

Instead, we must understand the Greenlandic criminal justice system within the framework of 'strong' legal pluralism. Strong legal pluralism focuses on how state law and

¹⁰³ Moore, Sally Falk. "Law and Social Change: The Semi-Autonomous Social Fields as an Appropriate Subject of Study." *Law & Society Review* 7, no. 4 (1973): 720- 723

¹⁰⁴ Ibid.728-729

¹⁰⁵ Ibid.720

¹⁰⁶ Ibid.728

¹⁰⁷ Griffiths, Anne. "Legal Pluralism." Chap. 15 In *An Introduction to Law and Social Theory*, edited by Reza Banakar et.al, Hart Publishing, 2002. 290-296

¹⁰⁸ Ibid.290-302

other normative orders influence each other in different contexts.¹⁰⁹ Examples hereof are international human rights treaties and local values. Many scholars have found it fruitful to study women's human rights from a legal pluralistic framework, e.g. Agnete Bentzon¹¹⁰ and Hellum et.al.¹¹¹ conducted fieldwork studies on how women's positions are negotiated by the different actors invoking different international, national and local norms in different social fields, including in local courts.

As Hanne Petersen, a scholar in legal pluralism in Greenland, has described, the Greenlandic legal culture is characterized by the coexisting of legal norms – those of the modern western (Danish) legal culture, those based upon Inuit values and culture, and international legislation.¹¹² The aim of this criminal legal system, particular in its origin, was to create a system where state law and local norms merge into a unified system. The emphasis on establishing lay judges competent in ruling on and responding to the situations on hand gave room for legal development through strong legal pluralism. By approaching the Greenlandic system, from the framework of the plurality of norms outside written customary and state laws, I will attempt to include all possible relevant norms which might affect women's access to justice.

3.4 The ambiguities of customary norms in justice systems - ensuring indigenous women's rights

Customary norms as part of a justice system do not necessarily limit women's access to justice. The International Council on Human Rights Policy published in 2009 the report 'When Legal Worlds Overlap: Human Rights, State and Non-State law'. The report concluded that incorporation of customary law into official justice systems does not in itself have either negative or positive effects on human rights. However, the discussion of customary norms within justice systems often leaves out the voices of ingenious women. As the Council points out: "*Debates and conflicts regarding recognition of customary or religious law and the relative standing of different forums within a plural legal context can determine the contours of the justice system, to the detriment of human rights, **often disadvantaging women.***"¹¹³

The Special Rapporteur on Violence Against Women, Yakin Ertürk, explains that indigenous female victims of violence find themselves with an impossible choice: choosing between the culture of the imperialistic state or comply with oppressive practices, disguised as

¹⁰⁹ Ibid.303

¹¹⁰ For example Agersnap & Bentzon (2001).

¹¹¹ For example Hellum, Anne. "How to Study Human Rights in Plural Legal Contexts: An Exploration of Plural Water Laws in Zimbabwe." Chap. 18 In *Research Methods in Human Rights - a Handbook*, edited by Bård A. Andreassen, et.al. 435-60. Cheltenham: Edward Elgar Publishing Limited, 2017.

¹¹² Petersen(2001), 68-70

¹¹³ International Council on Human Rights Policy. "When Legal Worlds Overlap: Human Rights, State and Non-State Law'." Versiox, Switzerland, 2009. 83-84 - own highlight.

‘culture’.¹¹⁴ These women were hesitant to seek help from the mainstream authorities, as this was perceived as alien to their culture.¹¹⁵

To come to grips with the situation of women as individual citizens and members of indigenous groups, we need a nuanced approach towards legal pluralistic systems.¹¹⁶ Sally E. Merry uses the example of Fiji and the cases of rape in the legal pluralistic system composed of an official system and a local system named *bulubulu*. The CEDAW Committee overall rejected the *bulubulu* practice, as it provided legitimacy for rape. However, as pointed out by Merry, this was too simplistic.¹¹⁷ The customs in themselves, she argues, are neither inherently good nor bad; rather, it depends on the customs related to gender sensitivity. *Bulubulu* was originally not a forum for cases of rape, but as the official legal system did not function effectively, *bulubulu* enabled women some form of retribution. However, some offenders also used it to escape accountability.¹¹⁸ Therefore, there was a misuse of this custom, hiding harmful practice under the name of ‘culture’.¹¹⁹ A similar approach is described by Rachel Sieder and John-Andrew McNeish in their approach to ‘gender justice’. This approach means a conversation between human rights and cultural particularities. One must place abstract international rights into local and culturally appropriate practicalities, where the complexities of women’s lives are acknowledged. One must be open minded, but cautious of cultural practices, acknowledging that they might be a useful tool for women at times, although this is not always the case.¹²⁰

An overall rejection of culture is too simplistic. The above studies indicate that customs themselves might not be harmful for women, but if misused without ‘gender sensitivity’, they can be. Therefore, the judges within the Greenlandic criminal justice system should be especially aware of how norms should be applied to protect women.

3.5 Violence against women in the criminal justice system in Greenland

Throughout history, Greenlandic women’s position in society has been closely linked to their access to justice.¹²¹ Although most cases of gender-based violence in Greenland in the 1970’s did not reach court, some did and were studied by Agnete Weis.¹²² By looking into cases from 1968 to 1972, she found that women were the victims in two thirds of cases, and in most cases

¹¹⁴ (17th January 2017, Fourth Session HRC) A/HRC/4/34 para.44

¹¹⁵ (17th January 2017, Fourth Session HRC) A/HRC/4/34/Add.3. 39-40

¹¹⁶ For example Hellum, Anne. *Women's Human Rights and Legal Pluralism in Africa : Mixed Norms and Identities in Infertility Management in Zimbabwe*. Tano Aschehoug, 1999.

¹¹⁷ Merry(2006).116

¹¹⁸ Ibid.123

¹¹⁹ Ibid.126

¹²⁰ Sieder, Rachel et.al. "Introduction." In *Gender Justice and Legal Pluralities. Latin American and African Perspectives*, edited by Rachel Sieder et.al. New York: Routledge, 2013. 16-22

¹²¹ Bentzon(1977).

¹²² Ibid.11

female rape victims knew their offender.¹²³ Additionally, she found that violence within families – being between spouses or unmarried couples – was to some extent viewed as tradition.¹²⁴ She shows that there existed strong norms for preventive measure, taking the individual offender situation into consideration.¹²⁵ Although this clear understanding of ‘Greenlandic norms’ has been contested and discussed by other authors such as Elaine T. Schecter¹²⁶ and Finn Breinholt Larsen¹²⁷, they have not been analyzed from CEDAW’s perspective. As Weis points out, there might be a danger of creating weak protection for women by having strong preventive reactions towards men.¹²⁸ In this study, I address this topic through the lenses of women’s rights and legal pluralism.

4 Methodology

The aim of studying the plurality of norms guiding the Greenlandic criminal justice system is to understand how the system works in practice. This is key to understanding whether, and to what extent, the existing legal pluralism promotes or prevents women’s human rights.¹²⁹

To study a legal pluralistic system, I will rely on the three aspects identified by Anne Hellum. Firstly, the aspect of viewing human rights as socially constructed, where human rights norms are part of the normset invoked by different actors - sometimes these norms overlap; sometimes they conflict. Secondly, to go beyond the descriptive component of anthropology, into a human rights normative perspective, studying the interaction between international, national and local norms - and if the outcome promotes or prevents the realization of human rights. This requires a vertical comparison between similarities and differences between the human rights, national law and living local law. Thirdly, we must also be critical upon what sources of norms best meet the local needs.¹³⁰

My data consist of two parts, beside a few supplementary sources: Firstly, a legislative analysis, and secondly, the empirical data collecting components of the actual practice.

4.1 Legal analyses

The legal analysis has two aims: stating the obligation under CEDAW, and analysing the relevant local legislation in Greenland. My analysis of CEDAW is based on the method argued

¹²³ Ibid.23-26

¹²⁴ Ibid.8

¹²⁵ Ibid.17

¹²⁶ Schecter, Elaine T. "The Greenland Criminal Code and the Limits to Legal Pluralism." *Études/Inuit/Studies* 7, no. 2 (1983): 81

¹²⁷ Larsen, Finn Breinholt. "Greenland Criminal Justice: The Adaptation of Western Law." *International Journal of Comparative and Applied Criminal Justice* 20, no. 2 (1996): 277-90.

¹²⁸ Bentzon(1977). 27

¹²⁹ Hellum(2017)

¹³⁰ Hellum(2017). 437-438.

by Martin Scheinin as the proper way to interpret human rights treaties.¹³¹ International human rights laws set legally binding obligations, because they have voluntarily been taken on by states - this makes the human right obligations into binding laws.¹³² The aim of interpreting human rights law is to identify and understand the legal norm, which is expressed in the written text.¹³³

The application of the legal source is very much related to the interpretation of the legal norms, as the application will inevitably affect the interpretation. As for interpretation of human rights law, the first step is to look into the Vienna Convention on the Law of Treaties (VCLT), as it reflects norms of customary international law upon interpretation of international treaties, along with including article 38 of the Statute of the International Court of Justice (Statute of the ICJ). The VCLT does not recognize the work by the CEDAW Committee (or all other monitoring mechanisms and their opinions and judgments) as sources of law within international law. They are included within The Statute of ICJ. Scheinin argues two constructions, which bridge these two.

Firstly, he argues that the monitoring bodies are *lex specialis*, in where the VCLT is *lex generalis*, thereby overrules VCLT according to international law principles. Additionally, human rights bodies' inherent powers of monitoring through a treaty body, which provides them with an interpretive function when they apply the laws. Furthermore, he argues that VCLT art. 31(3)(b) allows for 'subsequent practices', wherein he defines the monitoring bodies to belong.

Finally, he argues that the rules and principles, which determine the interpretation of treaties can also be extended to soft law documents that aid the interpretation of international legal texts, e.g. general recommendations. This is because bodies adopt these recommendations, which receive their power under a treaty. Their outcome is legally binding and public available upon the member states.¹³⁴

Thereby, we can conclude that the work by the CEDAW Committee can be used to interpret the Convention. I will rely on the treaty itself and the explanatory general recommendations 19 and 35 on gender-based violence, 33 on access to justice, 25 on temporary special measures and 28 on core obligations. This will then be supported by concluding observations to states (especially the Nordic States due to their similarities), land-marking individual complaints and inquiries.

¹³¹ Scheinin, Martin. "The Art and Science of Interpretation in Human Rights Law." Chap. 2 In *Research Methods in Human Rights - a Handbook*, edited by Bård A. Andreassen et.al. 17-37. Cheltenham: Edward Elgar Publishing Limited, 2017.

¹³² McInerney-Lankford, Siobhán. "Legal Methodologies and Human Rights Research: Challenges and Opportunities." Chap. 3 In *Research Methods in Human Rights - a Handbook*, edited by Bård A. Andreassen et.al, 38-67. Cheltenham: Edward Elgar Publishing Limited, 2017. 57

¹³³ Scheinin(2017). 19

¹³⁴ Ibid.20-31

4.1.1 Greenlandic legislation

The legal analysis also includes an analysis of the Greenlandic legislation. Dimitrina Petrova argues that when studying discrimination, one must be cautious to assume generalities from small studies. She explains small studies might be affected by “noise”. Legislation is a tool to reveal broader structures with less noise.¹³⁵ Additionally, Greenland is also under the obligation to implement CEDAW into national laws. Therefore, my legal analysis includes an analysis of the Greenlandic legislation.

4.2 Empirical study

The empirical study aims to understand human rights practices within the micro-social situation of the Greenlandic criminal courts. As Sally E. Merry states, by looking into interaction, anthropology allows the researcher to see behavioural patterns and structures. In order to understand such, the researcher must also understand the individual’s actions, and if such action is typical or abnormal behavior within the overall group. The common way of researching such is through observations and interviews with the group members.¹³⁶ I did both interviews and observations, along with reading case résumés.

Before handling my data, I considered my research ethics, and chose to rely on those of the Norwegian National Research Ethics Committee.¹³⁷ These include confidentiality and informed consent. For my court résumés, these are already available online and are made confidential. Court cases, which I observed, are open for the public; however, I handled them anonymously. For interviews, I would initially explain my research, require a signed consent form, keep the data secured, had the respondent approve my transcript to ensure no misunderstandings or incorrectly reproducing their statements, and present them anonymously. I will also send them this thesis so that they are informed of the research they appear in.

4.2.1 Case résumés from Court of Appeal

The District Courts are the objective of my studies. The Prosecutor explained, that of the approximately 1000 cases reached the District Courts, around 150 cases were appealed to the Court of Appeal.¹³⁸ The Court of Appeal judge similarly explained, that around 10% of all

¹³⁵ Petrova, Dimitrina. "Researching Discrimination." Chap. 16 In *Research Methods in Human Rights - a Handbook*, edited by Bård A. Andreassen et.al. 379-407. Cheltenham: Edward Elgar Publishing Limited, 2017.

¹³⁶ Merry, Sally Engle. "The Potential of Ethnographic Methods for Human Rights Research." Chap. 7 In *Research Methods in Human Rights - a Handbook*, edited by Bård A. Andreassen et.al. 141-58. Cheltenham: Edward Elgar Publishing Limited, 2017. 141-142

¹³⁷ See webpage ‘General guidelines for research ethics’: <https://www.etikkom.no/en/ethical-guidelines-for-research/general-guidelines-for-research-ethics/> (Assessed latest August 2019)

¹³⁸ Appendix I.1

cases are appealed.¹³⁹ Therefore, most cases only reach District Courts. When looking into Court of Appeal cases, I acknowledge that this will only show a limited part of a larger picture, as most cases do not reach the Court of Appeal.

The reason behind looking into Court of Appeal case résumés anyway is because District Court cases are difficult to research, as there are currently no public records of their cases. But the District Court résumés are attached or included within the Court of Appeal cases. And these are publically available online. Additionally, this broadens the number of cases available to my, both in regards to previous cases, and District Courts, which would otherwise been unavailable.

In order for a case to qualify, and to limit the amount of data due to my time limitations, I made three criteria. Firstly, both parties must above the legal age 15.¹⁴⁰ Additionally, a man must be accused of violence, rape or attempt of such, being §77 or §88 within the Greenlandic Criminal Code, and lastly, the case must have been in court between June 2018 and June 2019.

4.2.2 Court observations

The aim with observations is to provide data upon which norms are evident within the criminal justice system shown in the argumentation by different actors. I observed cases at the Sermersooq District Court, as these are physically available, and this is the court dealing with the majority of cases (see table 1). Therefore, odds of the possibility to observe a relevant case were higher here, then in the other District Courts.

	Received-Criminal cases without cases of fines	Received-Criminal cases of fines	Ended - Criminal cases without cases of fines	Ended - Criminal cases of fines	Waiting (Dec. 2018) - Criminal cases without cases of fines	Waiting (Dec. 2018) - Criminal cases of fines
In all four district courts	951	106	904	78	832	98
Sermersooq	385	61	305	36	353	63
Kujalleq	143	6	148	2	159	13
Qeqqata	136	26	157	30	100	12
Qaasuitsoq	287	13	294	10	220	10

¹³⁹ Appendix I.4

¹⁴⁰ Nr.1045, 7th September 2017, para.16

Table 1 – Criminal case within District Courts in 2018 ¹⁴¹

I went to the court's office in the morning, to see on the information board if any criminal cases were scheduled for the day - this was not possible to know in advance. Here, I could also see if the offender was a man. If those two requirements were fulfilled, I observed the case in court. Every case was a gamble, as charges and used language¹⁴² were not revealed until the case was heard in court. Therefore, I ended up observing many cases in the spring of 2019, only one of which was highly relevant.¹⁴³ But all cases expanded my understanding of the criminal court, although the result meant a greater emphasis on my interviews and court case résumés.

4.2.3 Interviews

I originally intended to interview judges from all levels of the domestic courts, the public prosecutor and the women involved in the criminal cases in order to understand what legal norms influence the criminal District Courts. However, I found that I needed the approval by the Norwegian National Research Ethics Committee too late, and therefore had to rely on less data-sensitive information, as these would be approved more easily. I therefore had to dismiss interviewing the involved women. I then planned to present my results to the women's rights organisation, as substitute for the women themselves, in order to test my results. I had already discussed with some of their members in the research initial stage. Sadly, I had to dismiss this due to time limitations. Therefore, my final interviews were conducted with the District Court Judge, the Court of Greenland Judge, Court of Appeal Judge and Public Prosecutor.¹⁴⁴

The overall purpose of the interviews was to provide insight into the respondents' consideration, how the system worked in practice and what norms was present (local customary norms and CEDAW). I had a specific reason for each respondent, explained below. My impression was that there was a high interest in this research from my respondents.

4.2.3.1 District Court Judge

The aim of the interview with the District Court judge was to gain insight into the underlying considerations, which help determine cases of violence against women. This would provide special insights into such consideration, which could not be read from either case records or observed through court observations. A District Court judge of the District Court Sermersooq was chosen because the majority of cases are dealt with by this District Court (see table 1).

¹⁴¹ District Courts statistics 2018 - <http://www.gl.dk.domstol.dk/groenland/kredsretter/statistik/Sagsstatistikker/2018%20Alle%20kredsretter%20og%20byerDK.pdf> (accessed July 2019)

¹⁴² I was limited to cases handled in Danish, as I do not understand Greenlandic.

¹⁴³ See Appendix III

¹⁴⁴ See Appendix I

4.2.3.2 *Court of Greenland Judge*

I interviewed the judge from the Court of Greenland, as this judge trains the new District Court judges, and also provides guidance for them if they should need it in cases. Thereby, this person informed me of norms, given on by training to District Court judges, along with insight into the remedy processes and this person's general knowledge regarding the District Court judges.

4.2.3.3 *Court of Appeal Judge*

My interview with the High Court of Greenland judge, being the appeal instance for District Court cases, was to gain insight into the difference or similarities in the consideration on how to determine cases, and whether there was a general agreement with the District Courts judgments.

4.2.3.4 *The Public Prosecutor*

Public prosecutors are present at all cases, and thereby able to support data upon norms within the courts. Additionally, they might also be able to provide a different perspective than the judges. Finally, they are also actors, which can introduce new norms into the semi-autonomous fields, and thereby change the norms - therefore it was interesting to get insight to their knowledge and use of CEDAW and local norms.

My interviews were semi-structured, and an interview-guide was customized for each respondent.¹⁴⁵ My approach was based on the theory of expert respondents. When interviewing an expert, the researcher must be aware of the field and that the respondent is use to responding to questions in their capacity. Therefore, I started with the broad clarifying questions, and had thematic through my interviews. I explained this in advance, so they understood what the aim and structure was. Luckily, I did not have the problem of getting access to these judges, which otherwise is a common problem in expert interviews.¹⁴⁶

Summarizing, I embraced the holistic approach by the CEDAW Committee. What this entails is explained the next section. From there, I looked into available public relevant source as websites or legislation, along with my own collected data, to determine how the Greenlandic criminal legal system compare to the requirements by CEDAW.

¹⁴⁵ See Appendix II for interview guides

¹⁴⁶ Kvale et.al *Interview*. 2nd ed.: Hans Reitzels Forlag, 2008. 167

5 CEDAW and Greenland

This section explains what obligations CEDAW entails in relation to gender-based violence. The first section will explain shortly what legal obligations CEDAW has upon the criminal justice system. As stated in the methodology chapter, I will rely on CEDAW and the explanatory general recommendations 19 and 35 on gender-based violence, 33 on access to justice, 25 on temporary special measures and 28 on core obligations, supported by concluding observations to especially Nordic states, land-marking individual complaints and inquiries.

The second section will look into how the Greenlandic State has officially presented them in relation to fulfilling these obligations. This will be done by investigating the various official documents from the Greenlandic and Danish state in relation to their reporting to the CEDAW Committee, and this Committee's responses.

5.1 CEDAW's obligation upon States in relation to violence against women

Gender-based violence is not explicitly mentioned within CEDAW. However, the CEDAW Committee have within supplementary document General Recommendation 19 upon gender-based violence stated, that gender-based violence is included within articles 1 general prohibition of discrimination. This is because gender-based violence is defined as “(...) *violence that is direct against a woman because she is a woman or that affects women disproportionately* (...)”,¹⁴⁷ and is inevitable linked with women's ability to enjoy their other rights as the right to life, safety, health and so forth.¹⁴⁸

This violence takes multiple forms¹⁴⁹, but the CEDAW Committee have stated it to be “(...) *acts that inflict physical, mental or sexual harm or suffering* (...)”, including “(...) *violence that occurs within the family or domestic unit or within any other interpersonal relationship* (...)”.¹⁵⁰ This violence, and possible acceptance of such, is rooted in the underlying assumptions of men and women's roles, the male identity, gender privileges and so forth.¹⁵¹ States are therefore obligated to treat gender-based crimes as discrimination, and required to eradicate these in order to ensure substantive equality for women.¹⁵²

In relation to gender-based violence, States can be held accountable for both acts by officials and privates. Under article 2(d), States are under the obligation to ensure that the State officials do not discriminate against women.¹⁵³ The CEDAW Committee have also on several occasions concluded that States are equally required to act with due diligence in cases

¹⁴⁷ (1992, eleventh session) GC19 on violence against women para.6

¹⁴⁸ GC19 para.4, para.7 & CEDAW/C/GC/35 para.15

¹⁴⁹ CEDAW/C/GC/35 para.14

¹⁵⁰ Inquiry Canada (2015) CEDAW/C/OP.8/CAN/1 para.197

¹⁵¹ CEDAW/C/GC/35 para.9&19

¹⁵² CEDAW/C/GC/35 para.10

¹⁵³ (adopted 16th December 2010, forty-seventh session) CEDAW/C/GC/28 GR 28 para.35 & CEDAW art.2(d) & CEDAW/C/GC/35 para.22

of violence against women by individuals, meaning to 1. Prevent, 2. Investigate, 3. Punish and 4. Provide compensation for female victims of gender-based violence.¹⁵⁴ These obligations extend to *all* justice systems, including those where multiple legal systems are incorporated.¹⁵⁵

Female victims of gender-based violence are of all ages and types within society.¹⁵⁶ The State is obligated to have special consideration for indigenous women, because they are at special risk, as they can also be exposed to intersectional discrimination. In *Kell v. Canada* the CEDAW Committee found, that intersectional discrimination increases risks of violence. Henceforth States must be aware of the special situation indigenous women are in, and that they are also entitled to indigenous rights.¹⁵⁷

Rikki Holtmaat explains the holistic approach the CEDAW Committee has taken in order to ensuring gender equality in relation to gender-based violence. There are three layers:

1. Formal equality: Meaning creating the necessary platform within the legislation prohibiting violence against women.
2. De facto/substantive equality: Meaning acknowledging that women are not in an equal position, and that temporal special measures and the consideration of the different position of women are necessary. In relation to gender-based violence, this means equal access to law through social support in the form of shelters, as one example.
3. Transformative equality: This is the need to transform gender-relations and gender-stereotypes in order to overcome the underlying structures and cultural and traditional notions keeping women in a subordinate position, and may create acceptance of violence against women.¹⁵⁸

I will include all layers, and what standards the CEDAW Committee have imposed on each layer. This inspired into four sections: Legislation, access to law, a gender-sensitive process and access to remedies.

5.1.1 Legislation

The obligation upon states to adopt legislation is rooted in article 2(a) and 2(b) in CEDAW. Article 2(a) states that States are under the obligation to ensure the principle of equality within a State's legislation. Supporting this, article 2(b) states that legislative measures must be

¹⁵⁴ GC19 para.9, CEDAW/C/GC/35 para.24(b), Communication No. 24/2009 *X&Y v. Georgia* para.9.3 & Communication No. 46/2012 *M.W. v. Denmark* para.5.8

¹⁵⁵ CEDAW/C/GC/35 para.30 & CEDAW/C/GC/33 para.5

¹⁵⁶ GC19 para.23

¹⁵⁷ Communication No. 19/2008 *Kell v. Canada* para.10.2-10.3

¹⁵⁸ Holtmaat(2013). 96-110

adopted which prohibit all forms of discrimination against women. As of General Recommendation 33 on access to justice, this entails an obligation to ensure that the rights set forth in the Convention are incorporated into the domestic legislation.¹⁵⁹

In the Concluding Observation to Denmark, the CEDAW Committee recommends that CEDAW should be incorporated directly into the national constitution or into the national framework. However, if this is not done - as in the case of Denmark - they recommend that at least a comprehensive legislation prohibiting sex-discrimination in all areas covered by the Convention should be adopted.¹⁶⁰

Secondly, all legislation should be gender-sensitive instead of gender-neutral/gender-blind.¹⁶¹ Gender-neutral legislation could “(...) *lead to inadequate protection of women against direct and indirect discrimination and hinder the achievement of substantive equality (...)*”.¹⁶² This approach is beneficial because “*Gender-neutral laws (...) unintentionally may perpetuate the consequences of past discrimination. They may be inadvertently modeled on male lifestyles and thus fail to take into account aspects of women’s life experiences which may differ from those of men.*”¹⁶³ This gender-neutral language within the Criminal Code can lead to a gender-neutral application of the Criminal Code, which could limit opportunity of data collection in relation to cases of violence against women. This would mean that the actual picture of the situation would be invisible, thereby limit women’s opportunities for receiving help.¹⁶⁴

Thirdly, for criminal legislation, the CEDAW Committee has stated several criteria; i. Legislation must be in place, which prohibits *inter alia* family violence and rape,¹⁶⁵ ii. The Criminal Code legislation upon rape should be based upon the lack of consent, not the use of resistance,¹⁶⁶ and iii. A specific legislation on violence against women, which includes domestic violence, should be adopted.¹⁶⁷

5.1.2 Access to law

Cf. article 3, 4 and 24 of CEDAW the State must take all appropriate measures to ensure that women enjoy substantive equality. Substantive equality is the recognition that women might

¹⁵⁹ CEDAW/C/GC/33 para.15(a)

¹⁶⁰ CEDAW/C/DNK/CO/8 para.11-12

¹⁶¹ 22th November 2017 CEDAW/C/NOR/CO/9 para.13(a) & 8th April 2008 CEDAW/C/SWE/CO/7 para.14

¹⁶² CEDAW/C/NOR/CO/9 para.12

¹⁶³ GC25, footnote 1.

¹⁶⁴ CEDAW/C/DNK/CO/8 para.39

¹⁶⁵ GC19 para.24(b)

¹⁶⁶ 9th March 2010 CEDAW/C/SWE/CO/8-9 para.14(c), Communication No. 18/2008 *Vertido v. Philippines* para.8.9(i) & CEDAW/C/GC/35 para.33,

¹⁶⁷ CEDAW/C/DEN/CO/7 para.31 & Communication No. 2/2003 *A.T v. Hungary* para. II(d)

be in a different position influenced by many factors, and that temporary special measures¹⁶⁸ and special considerations must be in place in order for women to have de facto equality.¹⁶⁹ I found that in relation to gender-based violence and access to laws, there are two areas to highlight: Access to the court and supporting services.

5.1.2.1 Access to Courts

Article 2(c) entails an establishment of legal protection of the rights of women, and competent national tribunals must be in place to protect women against discrimination. The General Recommendation 33 on access to justice explains that States are required to ensure accessibility and availability of their courts. Courts must therefore be physically available to women in all areas, included in remote areas.¹⁷⁰ They must also be financially accessible.¹⁷¹ Additionally, in the CEDAW Committee's Concluding Observations to Norway, it is stated that linguistic and cultural barriers should also be removed for indigenous women.¹⁷² Finally, it also requires an equal representation of women in the judiciary.¹⁷³ These obligations apply to all justice systems, including criminal justice systems.

5.1.2.2 Social Support Strategy

Part of ensuring that female victims of gender-based violence have access to law includes ensuring services exist, which support their access to court. Rikki Holtmaat defines these as a 'Social Support Strategies'. States must have measures in place helping vulnerable groups to ensure that they have a real possibility to enjoy their rights.¹⁷⁴ In the Concluding Observations to Denmark, the CEDAW Committee found that these measures include access to a sufficient number of State-funded safe shelters, protection orders and legal aid.¹⁷⁵

5.1.3 A gender-sensitive process

The CEDAW Committee has on several occasions stated that women are entitled to gender-sensitive court processes. In practice, this means training the judiciary, eradicating gender stereotypes and taking the female victim's situation into account.

¹⁶⁸ CEDAW art.4

¹⁶⁹ Holtmann(2013). 106

¹⁷⁰ CEDAW/C/GC/33 para.16(a)

¹⁷¹ CEDAW/C/GC/33 para.17(a) & CEDAW/C/NOR/CO/9 para.18

¹⁷² CEDAW/C/GC/33 para.17(b) & CEDAW/C/NOR/CO/9 para.24(e)

¹⁷³ CEDAW/C/GC/33 para.15(f)

¹⁷⁴ Holtmann(2013). 110

¹⁷⁵ CEDAW/C/DEN/CO/7 para.31, CEDAW/C/DNK/CO/6 para.2 & 25th July 2015 CEDAW/C/DNK/Q/8 para.8

5.1.3.1 Training the judiciary

The judiciary must be trained both in gender-based violence and in CEDAW. The CEDAW Committee have stated in several concluding observations that States are required to ensure capacity-building programs for judges, prosecutors and lawyers upon the Convention and its related components.¹⁷⁶ This is to “(...) enable them to invoke those instruments before domestic courts and interpret domestic legislation accordingly”.¹⁷⁷

5.1.3.2 Eradication of gender-stereotypes

A gender-sensitive court process also means that the judiciary must not apply any gender-stereotypes. States are required to adjust any justice systems to meet the standards set forth in CEDAW, meaning eradicating any stereotypes and practices which allow for gender-based violence.¹⁷⁸ Gender-stereotypes are defined as “(...) distort perceptions and results in decisions based on preconceived beliefs and myths rather than relevant facts.”¹⁷⁹ As of article 2(f) and 5(a) of CEDAW, States are obligated to adopt and implement measures “(...) to eradicate prejudices, stereotypes and practices that are the root cause of gender-based violence against women,”¹⁸⁰ Women victims of gender-based violence can be particularly impacted by such stereotypes.¹⁸¹ This is because traditional attitudes of ‘subordinate’ women or stereotypical gender roles might support violent practices, such as family violence, and act as justification of gender-based violence as a control mechanism, keeping women in a subordinate position.¹⁸²

The CEDAW Committee has expressed concern how gender-stereotypes can be present in criminal cases, in *inter alia* how women should react to violence.¹⁸³ In *Vertido v. the Philippines*, The Committee argued that gender-stereotypes were evident, as the case and the woman’s credibility was influenced by expectation upon how a woman would act before, during and after the rape due to circumstances surrounding the incident and the woman’s personality and character.¹⁸⁴ Additionally, gender-stereotypes can also be present in mitigating circumstances, when mitigation are practices based on male privilege, including traditional

¹⁷⁶ CEDAW/C/SWE/CO/8-9 para.12-13(c), CEDAW/C/DNK/CO/8 para.10(a), *M.W. v. Denmark* para. 6(a)(vi) & CEDAW/C/SWE/CO/7 para.18-19

¹⁷⁷ CEDAW/C/SWE/CO/8-9 para.13(c)

¹⁷⁸ CEDAW/C/GC/33 para.26 (a)

¹⁷⁹ CEDAW/C/GC/33 para.26

¹⁸⁰ Ibid.

¹⁸¹ Ibid.

¹⁸² GC19 para.11

¹⁸³ CEDAW/C/GC/35 para.26(c), referring to CEDAW/C/GC/33

¹⁸⁴ *Vertido v. Philippines* para.8.4-8.5

apologies, pardons from the woman's family, and judicial practices that disregard history of gender-based violence and end up impairing women's claims.¹⁸⁵

5.1.3.3 *Taking into account the women's position in a violent relationship*

In order for women to have effective access to remedies (next section), the CEDAW Committee has shown, that special attention must be paid to the women's situation in criminal court cases involving domestic violence. This is seen in the case of *Sahide Goekce v. Austria*.¹⁸⁶ In this case, the wife has several times pressed charges against her violent husband, but also sent other signals to the court: she did not want to testify, and she asked the court not to punish her husband. Additionally, she would tell the authorities that she would do anything to keep the family together, that they had a good relationship, and that he helped her with the household as she had epilepsy. Overall, she repeatedly played down the incidents of violence by her husband, which would contribute to the fact that he would not be convicted.¹⁸⁷

The claimants argued that women victims of violence might be afraid to leave their husbands. They may try to decrease any potential increase of the danger they face, and even act in the interest of the perpetrator. Therefore, women should not be blamed for being unable to separate from the husband due to psychological, economic or social factors.¹⁸⁸

The Committee agreed with this and stated, "(...) *the State should have considered the social and psychological circumstances of the case*".¹⁸⁹ They concluded that as she was in "(...) *a situation of protracted domestic violence and threats of violence*", she did not have effective availability to remedies.¹⁹⁰

5.1.4 Access to remedies

The CEDAW Committee has found that within the obligations of due diligence and under access to justice, women are entitled to remedies when being victim of violence. This remedy could be monetary.¹⁹¹

Summarizing, there is indeed a holistic approach towards women victims of violence. Firstly, we have the formal approach: obligations upon the legislation. Secondly, there are obligations in place to ensure that women have effective access to courts. Thirdly, judges must know the concept of gender-based violence and the rights ensured within CEDAW. Additionally, we have special considerations upon the judiciary regarding how they should (and should not) act

¹⁸⁵ CEDAW/C/GC/35 para.31(b)

¹⁸⁶ Communication No. 5/2005 *Goekce v. Austria*

¹⁸⁷ Ibid. para.4.1-4.11

¹⁸⁸ Ibid. para.5.4

¹⁸⁹ Ibid. para.9.8

¹⁹⁰ Ibid. para.11.3

¹⁹¹ CEDAW/C/GC/33 para.19(b)

in cases of violence against women. Otherwise, this might lead to a non-gender-sensitive approach, which can inflict women's rights to remedies. Finally, we have requirements that women are entitled to remedies. The next section will describe how Greenland has presented itself in the various official documents related to the periodic review by the CEDAW Committee, and how the Committee has responded and concluded.

5.2 Official Status of Women's Human Rights in Greenland

For Denmark's periodic review, it has become custom that Greenlandic authorities make a separate status report. I will mainly refer to the recent state report by the Greenlandic authorities from the 29th March 2019 for the ninth review by the CEDAW Committee. Additionally, I will also primarily rely on the recent Concluding Observation by this Committee from 2015 in relation to how they have responded to Greenland's works, although tracing some remarks back into previous concluding observations. I will focus on remarks for Greenland and for the whole Danish Realm. I will also include the independent status report upon equality in Greenland from 2019 by the Danish Institute of Human Rights and the Greenlandic Council for Human Rights. There are no individual complaints against Denmark related to either Greenland or Greenlandic citizens, nor any shadow reports from NGOs related to Greenland, to include.

The next section explains CEDAW's application to Greenland. The following sections describe how the Greenlandic State has presented themselves upon the four identified holistic obligations, and the CEDAW Committee's concluding observations.

5.2.1 CEDAW's application to Greenland

According to paragraph 16, article 1 of the Greenlandic Home Rule Act, Greenlandic authorities are bound by the obligation from international legal agreements and other international rules that are binding upon the Danish Realm. This means that those international human rights conventions ratified by Denmark are also binding upon Greenland.

However, there exists a mutual agreement between Denmark and Greenland that core human rights conventions are usually ratified with a territorial reservation for Greenland.¹⁹² But when Denmark ratified CEDAW in 1983, and CEDAW's optional protocol in 2000, there were no territorial reservations. Thereby, CEDAW is fully binding upon Greenland.

As the Greenlandic Government has both legislative and executive jurisdiction in the area of equality between men and women, they are responsible for of fulfilment of the obliga-

¹⁹² Stakeholder Submission by The Human Rights Council of Greenland (HRC Greenland) for the Danish 24 Universal periodic Review 2016, Nuuk, 22nd June 2015. para. 7

tions set forth in CEDAW.¹⁹³ As they have stated themselves: *“Although some relevant areas of responsibility are still under the competence of the Kingdom of Denmark, the promotion of gender equality should mainly be considered a Greenlandic affair.”*¹⁹⁴

5.2.2 Official statement towards gender-equality

Greenland has in its reports made clear statements of its support for gender equality, and how the principle of gender equality is fundamental for the Greenlandic Government.¹⁹⁵ In the 2019 report, it states: *“Women and men have the same formal rights, obligations and opportunities in society. Greenlandic legislation does not contain any formal barriers to gender equality”*.¹⁹⁶ The aim is to create a society of gender-equality, and *“It is thus a fundamental principle for Naalakkersuisut [red. The Greenlandic Government] to promote equal opportunities in all life conditions”*.¹⁹⁷ The Greenlandic Government has several times stated the unacceptability of violence against women¹⁹⁸, and has in the latest report recognized that *“Violence against women is an unacceptable offense that reflects the lack of equality between women and men”*.¹⁹⁹ However, the Committee expressed concerns that the convention has not been fully incorporated in Greenland.²⁰⁰

5.2.3 Legislation

As found, CEDAW extends to three areas in relation to legislation: i. Incorporating non-discrimination into the legislative framework, either by incorporating CEDAW in the national legal framework or by adopting comprehensive non-discrimination legislation based upon the principles of equality coherent with CEDAW’s approach; ii. Use of a gender-sensitive language within the legislation, including the criminal code; iii. Specific requirements for the criminal code being: 1. Prohibition of violence, including rape and domestic violence, 2. Consent as centre for rape legislation and 3. A specific provision on violence against women.

¹⁹³ 11th May 2009 CEDAW/C/DEN/Q/7/Add.1 p.5

¹⁹⁴ 22nd July 2009 CEDAW/C/DEN/CO/7/Add.1 para.20

¹⁹⁵ Annex to State party report for the 8th periodic review p.1, & Denmark’s Report to CEDAW for 9th periodic review (28th March 2019). Paragraph 1:Foundation.

¹⁹⁶ Report(2019) Paragraph 1:Foundation.

¹⁹⁷ Ibid.

¹⁹⁸ Annex to State party report for the 8th periodic review p. 10 - Most recently in 2019, it is again stated as an unacceptable offence.

¹⁹⁹ Report(2019) Paragraph 5: subsection:Effort against violence.

²⁰⁰ CEDAW/C/DEN/CO/7 para. 14, CEDAW/C/DNK/6 para. 10

5.2.3.1 Prohibition of non-discrimination

The Danish authorities have decided not to incorporate CEDAW into the general legal framework or constitution.²⁰¹ But the Greenlandic authorities have previously stated that the convention is applicable to the legal justice system as a source of law: *“It has to be emphasized that the Convention is a relevant source of law in Greenland, which can be called on and used in the legal system.”*²⁰² However, the Danish Supreme Court has ruled that non-incorporated treaties do not enjoy the same status of incorporated treaties.²⁰³

Therefore, a comprehensive legal framework prohibiting gender discrimination must be in place, when the Convention is not incorporated. In the State report 2019, the Greenlandic Government states, that it has adopted the Parliamentary Act No. 3 of 29th of November 2013 on equality between men and women, (Gender Equality Act), as one of its efforts to ensure gender-equality.²⁰⁴ This act should allegedly cover *“(…) gender equality in all areas (…)”*.²⁰⁵

5.2.3.2 Gender-sensitive language in legislation

In relation to the gender-sensitive wording within legislation, the Greenlandic Government has stated, *“Existing legislation is based on equal rights for men and women, i.e. non-discrimination”*.²⁰⁶ Thereby, this obligation should be fulfilled. However, previous NIHR reports show that this is understood as gender-neutral, as Greenlandic legislation is based on a notion of gender equality that does not distinguish between men and women, thereby giving them the same rights without addressing the need for gender-based protection for women.²⁰⁷

5.2.3.3 Specific requirements for the Criminal Code

For the Criminal Code, the Greenlandic Government states, *“(…) violence against women is a violation of the Greenland Criminal Code.”*²⁰⁸ Additionally, they explain that they updated the sexual crime provision by adopting ‘Act on the amendment of the Criminal Law and the Administration of Justice Act’ on 14th of November 2018. This law is aimed at extending the protection to all people against sexual exploitation, *inter alia* extending the definition of rape

²⁰¹ CEDAW/C/DNK/CO/8 para. 11

²⁰² CEDAW/C/DEN/CO/7/Add.1 para.22

²⁰³ CEDAW/C/DNK/CO/8 para. 11

²⁰⁴ Report(2019) Significant process since the last report.

²⁰⁵ Report(2019) Paragraph 2:Constitution and legislation.

²⁰⁶ Ibid.

²⁰⁷ CEDAW/C/DEN/CO/7 p.83-84, Annex to State party report for the 8th periodic review p.1 & 8th June 2006
CEDAW/C/DEN/Q/6/Add.1 para.2¶.9

²⁰⁸ Report(2019) Paragraph 5: subsection:Effort against violence.

to include marital rape.²⁰⁹ Thereby, the first requirement of prohibiting violence against women is stated. However, there is not any information of the wording within the rape legislation, nor to any specific provision specifically addressing violence against women.

5.2.3.4 *The CEDAW Committee's Concluding Observations upon legislation*

In recent concluding observations, the Committee was not satisfied with the current legislative framework. Firstly, the Committee recommends a comprehensive law prohibiting discrimination based on sex in all areas of the law, as the Committee is “(...) *concerned at the absence of legislation for the general prohibition of all forms of discrimination against women under the Convention (...)*.”²¹⁰ Additionally, they are concerned with the gender-neutrality language in laws, including that in the Criminal Code.²¹¹ In the previous Concluding Observations, they also ask the State to adopt a specific legislation upon violence against women.²¹² However, such plans was never prepared because, as the Greenlandic state previously described, any specific provisions must be settled with Denmark, as the Criminal Code is under Danish legislative jurisdiction.²¹³

5.2.4 Access to law

According to the identified obligations, there are two components, which must be fulfilled in relation to access to law: Access to court and Social Support Strategy.

5.2.4.1 *Access to court*

Courts must be physically, financially, linguistically and culturally available to female victims of violence, and women must be equally represented within the judiciary. Not much specific information has been provided, but in the report from 2019, the Greenlandic Government stated that women and men are equal before the law, and that “*They have the same right of access to the legal system (...)*”.²¹⁴ This right to access the legal system and to receive the same treatment in court can also be found in previous documents,²¹⁵ emphasizing that women in rural areas have the same rights as others.²¹⁶ Therefore, if all women are to have equal access to courts, the above-mentioned prerequisites should be fulfilled, although this is not directly stated.

²⁰⁹ Report(2019) Paragraph 5: subsection:Act on the Amendment of the Criminal Law and the Administration of Justice Act.

²¹⁰ CEDAW/C/DNK/CO/8 para. 11

²¹¹ CEDAW/C/DNK/CO/8 para. 40

²¹² CEDAW/C/DEN/CO/7 para. 31

²¹³ CEDAW/C/DEN/CO/7/Add.1 para.63-64

²¹⁴ Report(2019) Paragraph 15:Legal capacity.

²¹⁵ Ibid. & Annex to State party report for the 8th periodic review p.11 & CEDAW/C/DEN/Q/6/Add.1 para.50

²¹⁶ Report(2019) Paragraph 14:Women in rural areas.

5.2.4.2 Social Support Strategy:

States must have shelters, legal aid and protection orders in place. According to the Greenlandic authorities, they have currently two national strategies addressing gender-based violence: i. "Naalakkersuisut National Strategy and Action Plan against violence 2014-2017"²¹⁷ and ii. "Naalakkersuisut's National Strategy against Sexual Assault 2018-2022 "Kiiliisa".²¹⁸

The focus is mainly on crisis shelters, which, aside from these Action Plans, have been mentioned several times within the Greenlandic reports.²¹⁹ In the action plan expanding from 2014-2017, Measure 14 of the 31 within the action plan focuses specifically on violence and violence against women.²²⁰ It includes a development and expansion plan for shelters for battered women in Greenland, aimed at supporting and treating women victims of violence, and providing them with a safe space away from their perpetrators.²²¹ It also includes the pilot project of a national crisis shelter "Illernut".²²² Several million dollars have gone into this Action plan.²²³

A different strategy called "Kattunneq" is a Danish-Greenlandic collaboration aimed at strengthening the Greenlandic shelters by "(...) *upgrading of the staff at the shelters and increasing the cooperation between the shelters and other professionals working with victims of violence.*"²²⁴

Additionally, the action plan for 2018-2022 named "Kiiliisa" is also aimed at supporting all citizens, including women affected by abuse. It includes six themes: i. Information/knowledge sharing, ii. Prevention, iii. Interdisciplinary cooperation, iv. Victims and relatives, v. the local community and vi. People with sexual abusive behaviour.²²⁵ It does not state more directly how the three components will be fulfilled.

²¹⁷ Report(2019) Paragraph 4: Subsection:Promoting gender equality. This strategy is also mentioned in previous state reports; Annex to State party report for the 8th periodic review p.13, 2009 Annex to the reply to list of issues 8th periodic review para.31, 7th March 2017 CEDAW/C/DNK/CO/8/Add.1, para.A.11 & CEDAW/C/DNK/Q/8 p.2

²¹⁸ Report(2019) Paragraph 4: subsection: Promoting gender equality.

²¹⁹ Annex to State party report for the 8th periodic review p.3

²²⁰ 25th November 2014 CEDAW/C/DNK/Q/8/Add.1 p.14-15 & Report(2019) Paragraph 5, subsection: Efforts against violence & Establishment of Illernit - nationwide crisis and treatment center.

²²¹ CEDAW/C/DNK/Q/8/Add.1 para.10

²²² Ibid. & Report(2019) Paragraph 5, subsection: Efforts against violence & Establishment of Illernit - nationwide crisis and treatment center.

²²³ CEDAW/C/DNK/Q/8/Add.1 para.10

²²⁴ Report(2019) Paragraph 5, subsection:Establishment of Kattunneq

²²⁵ Report(2019) Paragraph 5, subsection:Efforts against sexual assault

5.2.4.3 The CEDAW Committee's Concluding Observation upon access to law

In the latest Concluding Observations, The CEDAW Committee welcomed the adoption of the Strategy and Action Plan against Violence in Greenland for 2014-2017.²²⁶ However, they do also point out some weaknesses with such strategies. The Committee marks that these Strategy and Action Plans combating violence are questionable. It states that the initiative is gender-neutral, and “(...) *therefore misses the specificity of violence of men against women and neglects the root causes of violence suffered by women.*”²²⁷

For the three specific aspects, starting with shelters, the Committee has stated that it urged the State to take substantial steps to ensure access to women to safe shelters, and continue to do so.²²⁸ In relation to the protection order, this obligation was viewed as fulfilled because of a later mentioned protection order, stated in the follow up letter from the CEDAW Committee. Still, the CEDAW Committee has asked for more information upon the measures, which strengthen the quality and accessibility of protection measures.²²⁹ Legal aid has not been mentioned by the State or the Committee.

5.2.5 A gender-sensitive process

The Greenlandic Government explains that women and men are equal before the law in Greenland, and “(...) *have the same right (...) to receive the same treatment in court*”.²³⁰ I was not able to find any document, which addresses the process within the courts, only that “*The Convention has not been used in cases presented before the National Court, the Court of Greenland or the local courts (...)*”²³¹ explained by the Government of Greenland. Additionally, the Danish Institute of Human Rights has pointed out the “(...) *extremely limited*” use of CEDAW within the Greenlandic courts, and “*The convention is not perceived as directly applicable, and its role is limited if the judge or contesting parties do not refer to it in the specific case*”.²³² However, according to the Greenlandic Government, CEDAW is indirectly included in the justice system, as the courts works from a basis of equality.²³³ The following will look into the requirements of training for judges and eradication of gender-stereotypes.

²²⁶ CEDAW/C/DNK/CO/8 para.b(6)(d)

²²⁷ CEDAW/C/DNK/Q/8 para.10

²²⁸ CEDAW/C/DNK/6 para.21 & CEDAW/C/DEN/CO/7 para.31

²²⁹ Follow-up letter sent to the State party 21th September 2017

²³⁰ Report(2019) Paragraph 15:Legal Capacity, Annex to State party report for the 8th periodic review p.111 & CEDAW/C/DEN/Q/6/Add.1 para.50

²³¹ CEDAW/C/DNK/Q/8/Add.1 p.5

²³² Danish Institute for Human Rights. "Selected List of Issues on the Un Convention on the Elimination of All Forms of Discrimination against Women. Denmark 2014." .8

²³³ CEDAW/C/DNK/Q/8/Add.1 p.5

5.2.5.1 Training judges

Within the 2019 report by the Greenlandic Government, there is no talk of training to judges. The Greenlandic Government has expressed that the judiciary belongs to the Danish authorities.²³⁴ Therefore, the Danish Director of Public Prosecution has made instructive guidelines to the investigation and prosecution in cases regarding domestic violence – these guidelines have been implemented in Greenland too. Along this, has there also been a training seminar for prosecutors and judges on domestic abuse addressing e.g. the victim-offender relationship.²³⁵ However, the Greenland authorities have previously expressed, that “(...) *the convention is not directly applied in regard to employees competency development*”.²³⁶

5.2.5.2 Gender stereotypes

In the 9th review report, limited information focuses on how the government is fighting gender stereotypes in Greenland. It only states that they are important to fight in order to achieve equality. To do so, they say that they are working for a permanent public forum of constant discussion and promotion of gender equation, and the Gender Equality Council plays a vital role for raising public awareness.²³⁷ The same is stated in the previous report from the 8th periodic review, adding only how the council have arranged meetings, contributed to legislative hearings, strategies, etc. and has declared the common responsibility to raise a child.²³⁸ The previous reports are silent upon this subject.²³⁹

5.2.5.3 The CEDAW Committee’s Concluding Observation upon a gender-sensitive process

The CEDAW Committee has through several reviews raised concerns regarding the visibility of CEDAW within Greenland, also within the judiciary. They have on several occasions asked for more information upon if CEDAW have been invoked by Courts.²⁴⁰ In one of the Concluding Observation, the Committee states for both Denmark and Greenland, that it “(...) *is concerned that there is inadequate awareness of the Convention in general (...)*”²⁴¹ and recommend capacity building for *inter alia* judges to facilitate access to information on the Committee’s views and recommendations.²⁴² In the previous Concluding Observations this was even more explicitly mentioned, wherein the Committee expressed concern that the Con-

²³⁴ Ibid. p.3

²³⁵ Ibid. p.4

²³⁶ CEDAW/C/DEN/Q/7/Add.1 p.5

²³⁷ Report(2019) Paragraph 5: Priorities. Sex Role Stereotyping and prejudice

²³⁸ Annex to State party report for the 8th periodic review p.3

²³⁹ 21st July 2008 CEDAW/C/DEN/7

²⁴⁰ CEDAW/C/DNK/Q/8 para.2 & 1st December 2008 CEDAW/C/DEN/Q/7 para.2

²⁴¹ CEDAW/C/DNK/CO/8 para.9

²⁴² Ibid. para.10(a)

vention had only been used once in court (for the whole Danish Realm) “(...) which may indicate a lack of awareness of the Convention among the judiciary and the legal profession”.²⁴³ They therefore recommend, that CEDAW and its components be “(...) made an integral part of educational curricula, including legal education and the training of the judiciary.”²⁴⁴

Additionally, the Committee has stated that the State failed to include information regarding gender stereotypes,²⁴⁵ and in the Concluding Observations from 2015, recommended the State to take special temporary measures to combat gender-stereotypes, as these are presently rather limited.²⁴⁶ The National Human Rights Institution reflects this. In 2015, they wrote “*The Greenlandic education patterns and labour market reflect fixed gender patterns that are difficult to breach. There does not appear to be a concerted effort to fight against prejudice and stereotypes*”.²⁴⁷

5.2.6 Access to remedies

Do women in Greenland have access to remedies? The last three State reports from the Greenlandic authorities do not cover this area. However, the CEDAW Committee has addressed this issue occasionally in the Concluding Observations. They state that the State must raise awareness among women of their rights under CEDAW and of legal remedies at local and national level.²⁴⁸ It has also addressed this issue in previous Concluding Observations, here in relation to monitories, declaring that the State must ensure minority women have access to remedies by increasing their awareness about it.²⁴⁹

5.2.7 Sum up

In summary, Greenlandic authorities have presented themselves as a State fulfilling its obligation under CEDAW. However, reviewing the response by the CEDAW Committee gives a different impression. I only found one occasion, where the Committee agreed without any additions, being the protection order under Social Support Strategies. For all of the rest, they expressed concerns and the need for improvements, often asking for more information. The next section will analyse the current criminal justice system from the perspective of these four components, and discuss whether the present norms actually ensure that CEDAW’s obligations are fulfilled.

²⁴³ CEDAW/C/DEN/CO/7 para.16

²⁴⁴ Ibid. para.17

²⁴⁵ CEDAW/C/DNK/Q/8 para.6

²⁴⁶ CEDAW/C/DNK/CO/8 para.15-16

²⁴⁷ Ibid. para.19

²⁴⁸ Ibid. para.10(b)

²⁴⁹ CEDAW/C/DEN/CO/7 para.39 & CEDAW/C/DNK/6 para.27

6 The criminal justice system in practice

In previous human rights assessment conducted with the judicial review in 2000's, the Danish Centre for Human Rights found the Greenlandic criminal system to be consistent with human rights. However, they only investigate it from the perspective of the European Convention on Human Rights and the ILO Convention related to indigenous rights.²⁵⁰ I will try looking into this system from a different perspective, namely CEDAW.

In this section, I will analyse my collected data and present the findings. My main data consist of: i. National legislation, ii. My relevant court observation, iii. My four interviews with the three judges and one with the prosecutor, and iv. Court case résumés. I will also scarcely include information from the official websites and articles.

I will focus on the four sets of holistic obligations described in the previous chapter. These are: i. Legislation, ii. Access to law, iii. A gender-sensitive process and iv. Remedies.

6.1 National Legislation

As we know, CEDAW has not been included into the constitution nor as being part of the legislative framework, thereby setting the need to domestic legislation to incorporate its obligations. The place to start is analysing whether the 'Equality Act' fulfils the requirement of prohibiting discrimination in *all* areas.

Then I will engage with the Criminal Code and the requirements of rape. I will not go into gender-neutrality nor a specific provision upon violence against women, as the Danish State have stated "*It is a basic principle in Denmark that the criminal law provisions are drafted in a gender neutral manner whenever possible,*" continuing; "*Denmark does not intend to change this position by adopting specific provisions regarding violence against women.*"²⁵¹

6.1.1 Provision on gender-discrimination in Greenland

The Danish Constitution §70 and the Greenlandic Criminal Code §100 both prohibit discrimination - although none of them on the bases of gender.²⁵² Therefore, the only legislation prohibiting gender-discrimination is the act 'Inatsisartutlov number 3 of 29th November 2013 regarding equality of men and women'²⁵³. Nonetheless, the non-discrimination act is limited to primarily include situations related to the workplace. This is seen in the initial proposal discussion²⁵⁴, and in the wording of the legislation as its aim and scope of limited to promot-

²⁵⁰ No longer exist - part became the Danish Institute for Human Rights.

²⁵¹ CEDAW/C/DNK/Q/8/Add.1 p.13

²⁵² Grønlands Råd for Menneskerettigheder og Institut for Menneskerettigheder – Danmarks Nationale Menneskerettighedsinstitution 'Ligebehandling ' Status på Grønland', 2019. p.10

²⁵³ Inatsisartutlov nr. 3 af 29. november 2013 om ligestilling af mænd og kvinder

²⁵⁴ Efterårssamling 2012, pkt. 112, Forelæggelsesnotat 1.beh. p.1-2

ing equality “(...) *to the extent that similar or better rights do not result from a collective agreement.*”²⁵⁵ Therefore, the prohibition of gender-discrimination does not extend to all areas covered by CEDAW.

6.1.2 The Criminal Code

In relation to the Criminal Code, I will focus on the prohibition of gender-based violence, mainly the requirement for the provision on rape, and how it should be based on the lack of consent rather than resistance.

Rape is within the Greenlandic Criminal Code defined by how the sexual encounter is reached, being “(...) *by violence or threat of violence, this person forced itself to intercourse or other sexual relationship.*”²⁵⁶ By a legislative update 2019²⁵⁷, marital rape also became prohibited.²⁵⁸ In relation to the basis on consent versus resistance, this update included that ‘the use of force’ also included cases where the victim, due to various circumstances, was unable to resist the crime; e.g. the victim was too drunk or sleeping.²⁵⁹ Therefore, it seems this legislation is in a position between consent and resistance. The aggressor can be convicted, even if the women did not resist. But it does not go as far as explicitly naming consent as the defining line between consensual intercourse and rape.

However, I found that the Criminal legal system uses this current legislation in a consent-focused approach towards rape situations. The District Courts has acknowledged that victims of rape do not necessarily fight, as they might be too scared to act²⁶⁰, and the Court of Appeal has expressed that rape is a matter of consent.²⁶¹ This means that the courts use the current legislation, and goes beyond it. Here local customary norms actually fulfil the obligations in relation to consent-focused rape handling, even though the legislation does not explicitly require it.

6.2 Access to Law

This section will look into the two elements, which are set to ensure women’s access to law: being the Social Support Strategy, and the elements constituting ‘Access to Court’

²⁵⁵ Para.1. Translation of the Danish words “kollektiv overenskomst”, which are mostly used in relation to employers and employee unions negotiating employment terms.

²⁵⁶ nr. 1045, 7. September 2017 para.77(1), updated by Legislation 168, 27. February 2019 - own translation.

²⁵⁷ nr. 168, 27. February 2019.

²⁵⁸ Ibid. para.4

²⁵⁹ Efterårssamling 2018, pkt. 19, Betænkning 2.beh. p.4

²⁶⁰ K032/18

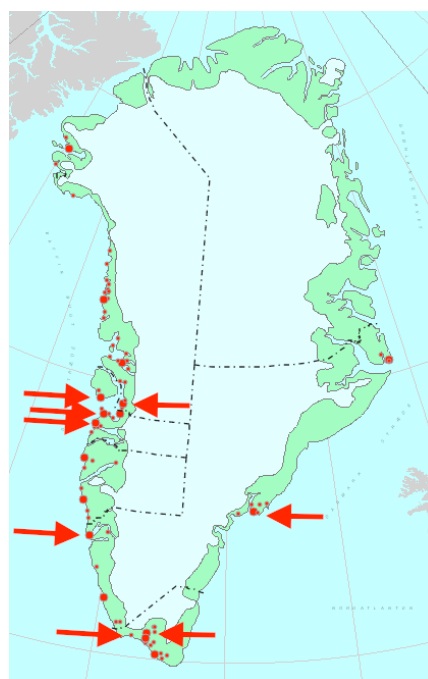
²⁶¹ K135/18

6.2.1 Social Support Strategy

In order for women to have access to law, a Social Support Strategy must ensure legal aid, protection orders and shelters. The national organization ‘IKIU’ provides free legal aid. Although women are entitled to free legal aid, this is only applicable if they fulfil the requirements of entitlement for free process, which is currently article §254(3), i.e. being a person, who would suffer significant deprivation if required to pay the legal costs.²⁶²

In regard to protection orders, the Act on Restraining Orders, Ban on Residence and Eviction was adopted in 2017. This Act provided authority to the District Courts to determine cases of restraining orders.²⁶³

There are nine crisis shelters located around Greenland. “Hjemmestyrets bekendtgørelse nr. 18 af 8. december 2004 om krisecentre”²⁶⁴, §1 states that shelters are for women and men (and their children), who are victims of violence, under threats of such or within other family crises. By combining the official data of shelter locations with the actual habitant locations (see map 1),²⁶⁵ we see inconsistencies between the location of people and location of shelters. Women cannot drive or take the train; traveling has to be done by boat or flight. Therefore, it is questionable whether rural and/or low-income women have access to shelters.



Map 1–Shelter locations

6.2.2 Access to Courts

Access to courts means ensuring physical and financial availability, removing linguistic and cultural barriers, and establishing an equal gender representation within the judiciary. I encountered that this corresponded with the approach taken by the Greenlandic criminal justice system and their local elements of the District Courts. Local knowledge is a requirement for new judges under §12, stk. 4 of the Danish Administration of Justice Act, and it is still important in practice that District Court judges ‘know the local culture’.²⁶⁶

²⁶² ‘Bryd tavsheden’ - subwebpage ‘oversigt over tilbud.’

<https://brydtavsheden.gl/da/v%C3%A6rkt%C3%B8jer-og-tilbud/oversigt-over-tilbud> (accessed June 2019)

²⁶³ Lov nr. 149, 7th February 2007, para.1

²⁶⁴ Hjemmestyrets bekendtgørelse nr. 18 af 8. december 2004 om krisecentre

²⁶⁵ Source for picture: visit Govmin.gl

<https://asiaq.maps.arcgis.com/apps/webappviewer/index.html?id=819ff201b76f44f99b31da7ef630c18e&locale=en> (Accessed July 2019). Source for the location of the shelters are from the official webpage against violence “bryd tavsheden”. Arrows are placed by myself.

²⁶⁶ Appendix I.4

Today, this ‘knowing’ is divided into two parts: Firstly being the principle of subsidiarity, where the courts are located both in four main locations, and also travel to their smaller bi-places around the country.²⁶⁷ Secondly, it is the responsibility of judges to understand Greenlandic, both so the local people are able to explain in their common tongue²⁶⁸, and so that they are able to understand what is being expressed; e.g. why would some things said be very provocative, or how a certain sentence can be an invitation for sex in this context.²⁶⁹ This corresponds very well with the need for physical availability and the removal of linguistic and cultural barriers, meaning that the inclusion of indigenous and local norms as part of the criminal justice system in this sense, acts as an enabler of women’s rights.

Court cases are free for victims if a policeman has ordered it. §717(1) of the Administration of Justice Act states this. Thereby, criminal cases should be financially available. I believe that the setup of the Greenlandic criminal courts actually provides women with access to courts. This also seems to be reflected in my data, where cases of violence against women cases were seen within the Court of Appeal.

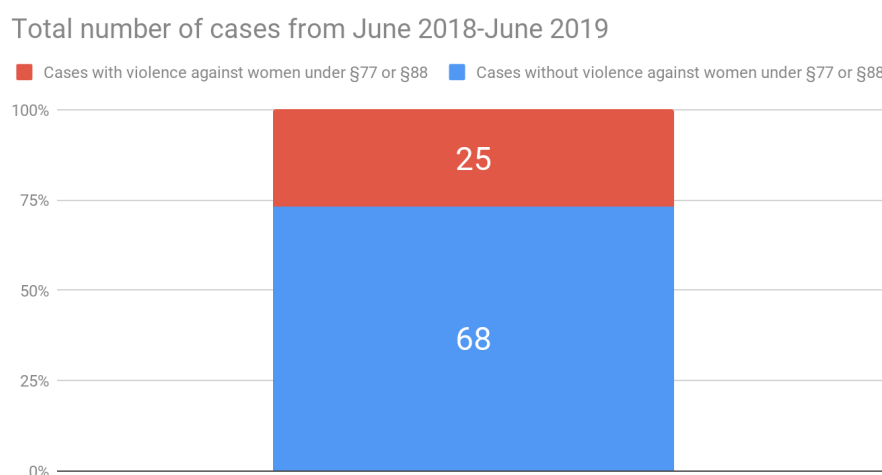


Diagram 1: Division between cases related to violence against women by a man under §77 or §88 of the Greenlandic Criminal Code.

I found that out of the 91 cases available in court résumés, 25 of them (26,9%) were related to violence against women. Within these 25 cases of violence against women, around two thirds of cases are physical violence, while approximately one third concerns rape or other sexual intercourses or attempts of such.

²⁶⁷ Appendix I.3

²⁶⁸ Ibid. Appendix I.2

²⁶⁹ Ibid. Appendix I.4

Number of cases in relation to type of violence in the Criminal Code

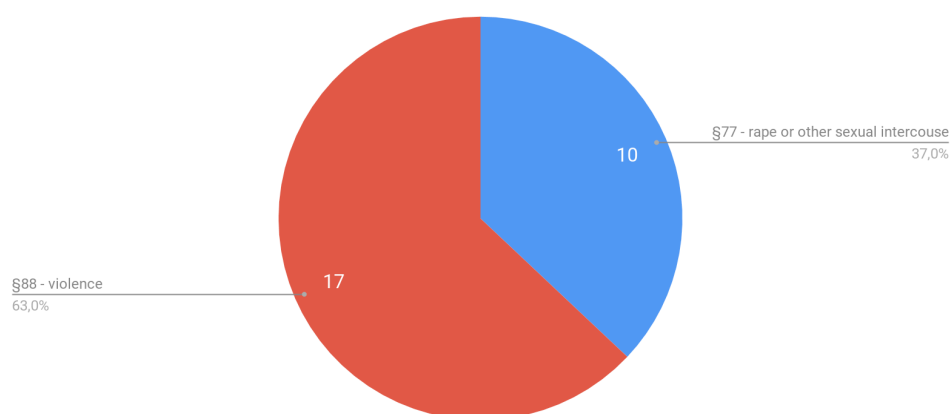


Diagram 2: Number of cases, which are evident within the Court of Appeal of violence against women, divided into the crime being perpetrated within the Criminal Code. 'Rape or other sexual intercourse' does also include attempts of such.²⁷⁰

The next diagram shows the gender of judges in these 25 cases. In the District Court, in 79,2% of the cases the judge was a woman. 100% of the 21 cases regarding violence against women within the Court of Appeal had a female judge. This indicates an equal representation within the judiciary is fulfilled.

Gender of the District Court judge

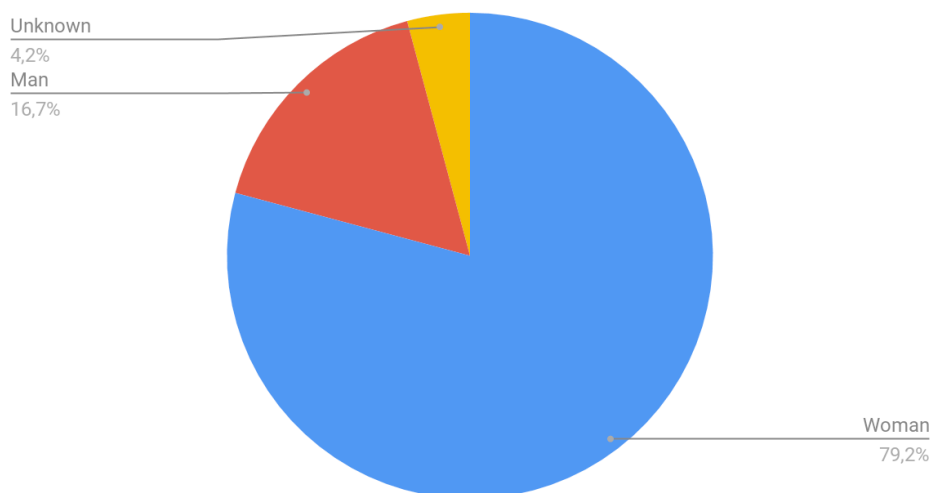


Diagram 3: Division between men and women judges in the District Court cases of violence against women. One case does not contain information of upon the judge, as the case from the District Court is not available.

²⁷⁰ Note: two cases overlap with having both violence and rape.

To summarize, the court seems financial available, as a criminal court case is free. Additionally, the ‘local element’ of the Greenlandic criminal justice system, meaning the requirement of local culture and linguistic familiarity, could mean the removal and linguistic and cultural barriers, thereby enabling women greater access to the justice system. Additionally, my data also seems to indicate a high representation of women within the judiciary. It seems that the special setup in Greenland, where knowledge of local culture and language is required, enables women to more easily access the justice system. The court handles women’s cases, as violence against women is highly visible within the Greenlandic criminal justice system. In my interviews, both the Prosecutor and District Court confirmed this. The District Court judge explained that the typical cases are: i. violence ii. Drugs iii. Sexual violations and iv. Youth cases.²⁷¹ Similarly, the Prosecutor explained that one of the two main groups of situations of violence in Greenland is ‘cohabiting person-related violence’, mostly meaning spousal abuse by the man upon the women.²⁷² This presence of violence against women within the criminal justice system is also evident within the court résumés, as around 30% are such cases, divided into $\frac{2}{3}$ being physical violence, while $\frac{1}{3}$ is related to rape.

6.3 Within the Court

There is an overall satisfaction among the judiciary with the District Court judges’ work. Other judges (with a legal degree) state that they are satisfied with the District Courts judges’ work, and do not believe them to make many mistakes.²⁷³ Only the prosecutor questions if laymen judges are able to stay informed of the evolved of the legislative framework - including international laws.²⁷⁴

Before going into the specific requirements, the following will provide an overview of the relevant cases - what the rulings was in the District Court, who the accused was, and if the Court of Appeal confirmed the first ruling. Out of the 25 case résumés of violence against women, none were found innocent in the District Court. The sentences are divided as follow:

²⁷¹ Appendix I.2

²⁷² Appendix I.1

²⁷³ Appendix I.3 & Appendix I.4

²⁷⁴ Appendix I.1

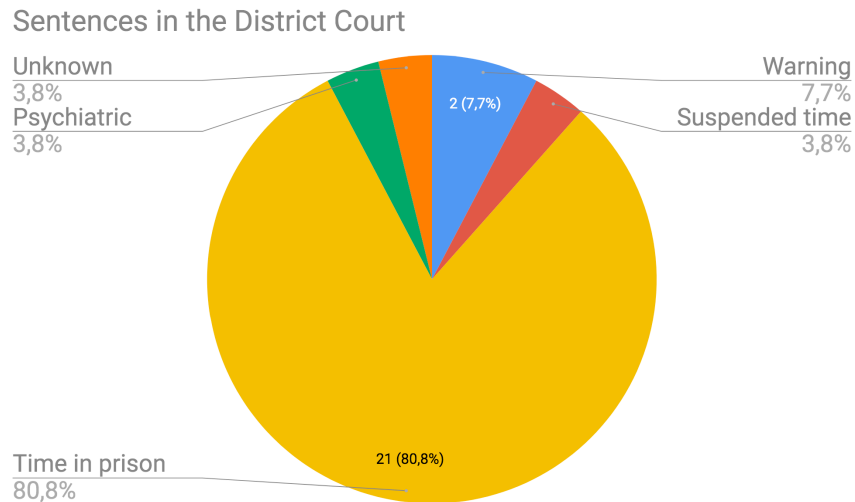


Diagram 4: Division of sentences given by District Courts in the 25 cases of violence against women prosecuted under §77 (rape or other sexual intercourse, or attempts of such) and §88 (violence). Time in prison extends from 3 days to 1 year and 6 months.

In most cases the District Court sentence time in prison. In my interview with the District Court judge, it was explained, that a typical sentence for violence against woman or rape of a woman is time in prison.²⁷⁵ The next diagram shows how the Court of Appeal ruled in the 25 cases:

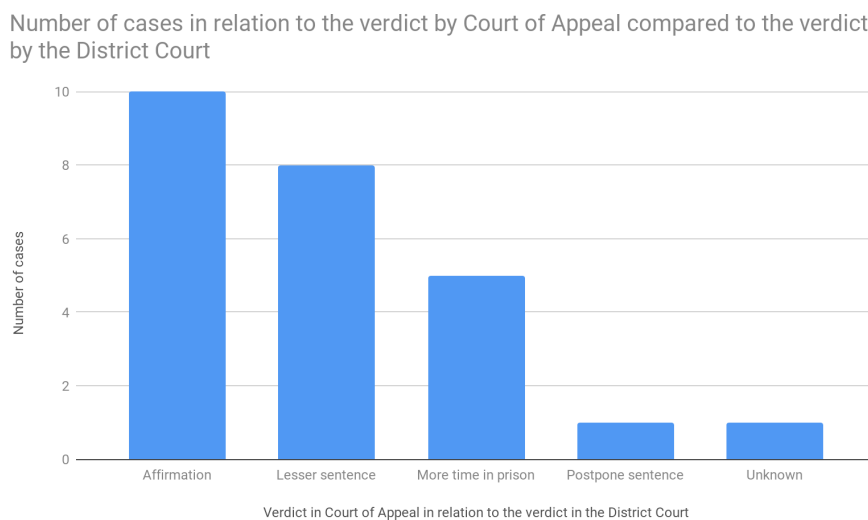


Diagram 5: Sentences given by Court of Appeal compared to District Courts in cases of violence against women prosecuted under §77 (rape or other sexual intercourse, or attempts of such) and §88 (violence). Lesser sentence includes suspended sentence, warning, found not-guilty, community service and lesser time in prison.

²⁷⁵ Appendix I.2

Therefore in half of all cases, the Court of Appeal affirmed the ruling. Interestingly, they also found the District Court to be too harsh in a high number of cases. The next diagram shows women's relationship with the offender, divided between the two types of criminal articles (rape and violence).

Number of cases divided according to relationship between victim and accused in §77 cases

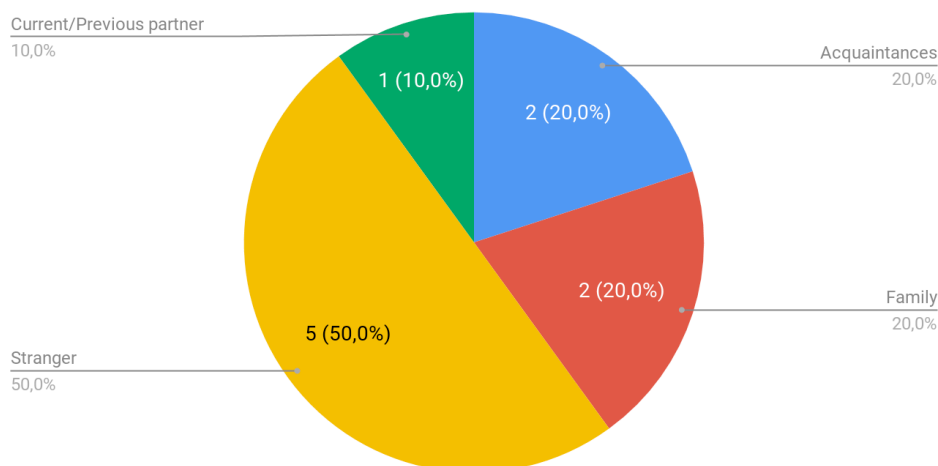


Diagram 6: Number of cases of §77 cases (rape or other sexual intercourse, or attempts of such) against women divided in relation to the relationship between the victim and the accused.

Number of cases divided according to relationship between victim and accused in §88 cases

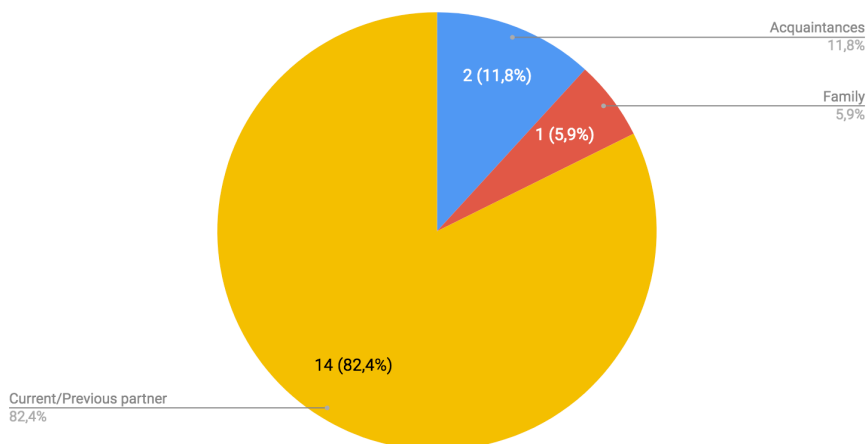


Diagram 7: Number of cases of §88 cases (violence) against women divided in relation to the relationship between the victim and the accused.

The type of crime and type of alleged perpetrator seem to be related. For possible rape victims, there is a division between their relationships with the perpetrator. Half of the time it is a stranger, and half of the time they know the aggressor. For possible victims of violence, the

women always knew the offender, and there are a high number of cases where the perpetrator is a previous or current partner.

Summarizing, the District Courts do punish gender-based violence - showing evidence of retributive justice in Greenland. The Court of Appeal confirms their right approach, although sometimes altered. Women are mostly victims of gender-based violence by a known offender – half of the time for rape, and every time in cases of violence.

6.3.1 A gender-sensitive process

Equality is regarded as a core principle in the Greenlandic criminal justice system. However, it is interpreted as gender-neutral. The Court of Greenland, which educates the new judges, explains this very clearly: The person - as a victim or offender - will be treated equally, no matter the gender of the person. The overall perspective is that this person is a citizen, and equally entitled to a series of rights.²⁷⁶ The Prosecutor reflects this assumption. This person states, “(...) *it is just as illegal for a man to hit a women, as it is for a women to hit a man. That is the gender-equality perspective in a violence case.*”²⁷⁷

Additionally, the re-integrative perspective of the offender still exists within the Criminal justice system.²⁷⁸ The District Court Judge describes, that this local element is still relevant, as Greenland has a small population, and the likelihood of the offender and victim to meet each other is bigger than in other places. Therefore, offenders must be re-integrated, as they have no other place to go.²⁷⁹

The CEDAW Committee has stated several times that in relation to domestic violence, the perpetrator's rights cannot exceed the woman's right to life and physical and mental integrity.²⁸⁰ The question, therefore, is whether the Greenlandic criminal justice system also ensures that women's rights are fulfilled in the process itself, and does not breach the obligation imposed by CEDAW in relation to her right to a gender-sensitive process in court. There are two obligations, in order to secure a gender-sensitive process: the obligation to train judges in CEDAW and the obligation to eradicate gender-stereotypes.

6.3.2 Training in CEDAW

The requested training in CEDAW, its obligations, mechanism and other related components, are not being provided in Greenland. I found that there is a lack of knowledge of CEDAW among the judiciary. The Court of Appeal Judge answered to whether or not District Court

²⁷⁶ Appendix I.3

²⁷⁷ Appendix I.1

²⁷⁸ Appendix I.2, Appendix I.3, Appendix I.4

²⁷⁹ Appendix I.2

²⁸⁰ E.g. *Goekce v. Austria* para.12(3)(b) & *A.T v. Hungary* para.9.3

judges or Greenlandic women know the Convention: *“I do not think the women know, no. And I actually do not believe the District Court judges do either.”*²⁸¹ The Court of Greenland judge supports this, expressing that there is a deficit of knowledge of rights generally in the Greenlandic society.²⁸² The District Court judge herself explained, that she did not know CEDAW; *“As already stated, I’m not really inside the [red. CEDAW] Convention. (...) I can say, I do not know what is written in the [red. CEDAW] Convention (...).”*²⁸³ It is not surprising that the District Court Judge did not know CEDAW, as it is not taught in their training program at all.²⁸⁴

There is a general lack of knowledge of CEDAW within the judiciary. Therefore, the question is whether the obligation to eradicate violence against women is still being fulfilled unintentionally.

6.3.3 Gender-stereotypes: Women’s credibility and mitigating circumstances

According to the CEDAW Committee, gender-stereotypes must not influence judges. These stereotypes can be assumptions upon how women should act when being victims of e.g. rape, but also stereotypes of women’s roles in partnership, and the inclusion of an individual woman’s situation affecting her behaviour in a violent relationship.

There are two aspects I will look into; i. The inclusion of women’s credibility in court cases - how she should or should not behave in cases of alleged rape, and ii. The mitigating circumstances - how the court has mitigated sentences based on the woman’s behaviour in violent relationships.

6.3.3.1 Credibility assessment

I found that the courts take into account the credibility of victims’ explanations in cases of rape or other sexual intercourse (or attempt of such). These cases are especially difficult in Greenland, as 7/10 cases included alcohol. More specifically, cases where the woman has been drinking and fell sleep. She would then either wake up during the possible crime, or the morning after. In either case, it would be hard to describe the specific circumstances, as these would have been affected by alcohol. This puts extra pressure on the courts. In at least five²⁸⁵ of the ten cases related to rape, the credibility of the victim was included. Two especially stand out being case K031/18 and K032/18.

In K031/18, a step-granddad is accused of having sexually violated the step-granddaughter. This case was reported to the police by her grandmother. His DNA was found

²⁸¹ Appendix I.4

²⁸² Appendix I.3

²⁸³ Appendix I.2

²⁸⁴ Appendix I.3

²⁸⁵ K155/18, K032/18, K031/18, K073/18, K135/18

on her pants, and he himself explained to have had his finger in her - although he claims that she took the initiative. However, the step-granddaughter herself did not remember the episode (she was so drunk, the police couldn't wake her up when they entered the apartment the next morning), and they found; “(...) *she was unaffected, when she was examined at the hospital, and during her statement for the High Court. She was first embarrassed, when the District Court asked, if she had flirted with the accused [her step-granddad]*. Based on this and the fact that she did not feel violated, the court found that there was not enough evidence to convict him.

In K032/18, another case of alleged rape, a woman was raped during her deep sleep. She explained that when she woke up, she still acted calm due to the fear of what the perpetrator might do. The Court found that even though she did not fight, in court she “(...) *appeared very affected by the situation and hateful towards the accused*”,²⁸⁶ and did not consent to the intercourse. Therefore, along with the DNA evidence, the man was convicted of rape.

The CEDAW Committee has made it clear that gender-stereotypes are present when the court assesses victim's credibility on a basis of how women should act before, during and after a rape. In the two cases above, there are indicators that these factors did indeed influence judges' assessment of women's credibility in situations of possible rape. It shows that the judges do take into consideration how the victim is perceived as 'influenced' by the situation or not, indicating that there is an understanding of how women should appear after a rape in order to make it believable that the offence occurred. This is a dangerous standard, and the judiciary must be cautious not to apply such gender-stereotypes and expectations. These gender-stereotypical norms would constitute a breach of Greenland's human rights obligations and limit some women's access to justice.

6.3.3.2 *Mitigating circumstances*

Then there is the situation of partner violence, which constitutes the majority of cases of violence against women, and how women react in such situations. The prosecutors guiding document acknowledges that violent relationships are difficult, and that women in these relationships are in a difficult position - she might be subjugated, afraid or dependent on the other parts, which might influence her actions.²⁸⁷ Additionally, the District Court has acknowledged in case K079/18 that one reported episode of violence within the home might have been amongst several unreported instances, meaning her statement for this specific episode might be confused between several instances of violence which could account for her somewhat

²⁸⁶ K032/18

²⁸⁷ Dagsbefaling nr. 11 p.81

contradicting statement.²⁸⁸ In other cases, the District Court found it an aggravating circumstance, that it was not the first time the accused had exercised violence against the victim.²⁸⁹ And The Court of Appeal has taken a strong position towards violence within the home, stating “*The High Court finds, that violence within the home is unacceptable.*”²⁹⁰

However, there are also cases where the Court has sentenced a lesser punishment, such as if the woman was dependent upon her partner, or if she forgave him by either stating so or actively taking him back. These norms are not mentioned as mitigating circumstances in the Criminal Code. In the interview with the District Court judge, she explained, “*(...) if the violence was not so gross, then they [the offender] can receive a lesser sentence depending if they [the offender and victim] live together again, if the [offending] man is the sole provider, do they have any kids together, who needs to eat, and yes. Everything will be considered.*”²⁹¹ Supporting this, the Prosecutor indicates that there might be a slight change in some verdicts, that the offender will receive a lesser sentence, when this person regrets his actions and has apologized.²⁹²

Similar things are seen in the court cases: K077/18 especially stands out. A man took a stranglehold of his partner, hit her several times, and tried to rape her. He was found guilty. The usual sentence is nine months in prison. However, due to several mitigating circumstances, he was given a suspended sentence. First, the District Court found it mitigating that they were still a couple, they have grandchildren together, she had forgiven him, and that when she was sick, he made sure she took her medicine. Similar mitigating circumstances were applied in The Court of Appeal.

In case K075/18, a man admitted to hitting his female partner hit her. However, instead of the usual punishment of prison time, the District Court judge sentenced a warning, *inter alia* based on the fact that the violence happened within a relationship; “*(...) T is sentenced a warning as punishment based on the foundation that (...) the action of violence happened within a relationship.*”²⁹³ This is an example of using the relationship as a mitigating circumstance for a lesser sentence than usual. In the Court of Appeal, the Court took a strong opposition towards this approach.

The Greenlandic Criminal Code states that sentences must be determined upon the aggressor’s personal situations along with the harshness of the crime. Mitigating circumstances can arise based upon the offender's state of mind. Nowhere does the Criminal Code state that the

²⁸⁸ K079/18

²⁸⁹ K070/18, K 227/18

²⁹⁰ K075/18

²⁹¹ Appendix I.2

²⁹² Appendix I.1

²⁹³ K075/18

following are mitigating circumstances, although they are used in practice: that the violence happens within a relationship, if the victim is economically or otherwise dependent upon her aggressor or if the aggressor has been forgiven.

According to the CEDAW Committee men's rights must not limit women's rights to a life without violence, and her process must not be influenced by gender-stereotypes. In *Sahide Goekce v. Austria*, the Committee found that there must be special considerations of the woman's circumstances in a violent relationship, and it is agreed that judges should be aware that women's actions could be influenced by the attempt to avoid further harm from the perpetrator. Nonetheless, these cases indicate that the offender might actually go home to the victim faster when she forgives him or is dependent on him, which does not ensure that she is protected from harm. This indicates that the Greenlandic restorative justice focus might have overshadowed the women's individual rights, and local norms here might be an obstacle for women in gaining access to justice. Additionally, in case K077/18 the woman was not granted remedies, as she is still in relation with the perpetrator, which leads us to the next section.

6.4 Remedies

Remedies are part of the holistic approach towards mitigating gender-based violence. The CEDAW Committee has stated that part of eradicating gender-based violence is providing remedies for victims of violence. These remedies can be monetary, which is the situation in Greenland.

The legislation states that of §334, the District Courts can award remedy to a victim of a crime. As of §336, (1)-(2) in the Danish Administration of Justice Act, the police are obligated to guide the victim, both upon their claims of remedy under a criminal case and in relation to their application for remedy at the Board of Compensation. Women are entitled to remedies even if the guilty person cannot be charged, e.g. if the perpetrator is under the age of 15 or cannot be found.²⁹⁴ In order to bring a claim to this Board, the claim must have been made in court, when the criminal case is being handled.²⁹⁵

According to the prosecutors guiding document part of the investigation is to determine entitlements to remedies, and should be included in the police report. This is important because if there is not any documentation upon the remedies, the court can dismiss this to a civil case. Additionally, it is important that this is raised in the criminal court, as this is the usual requirement in order to be awarded remedies.²⁹⁶ Afterwards, if the claim has been met in court, the victim must fill out an application and give it to a police station.²⁹⁷

²⁹⁴ Nr. 277 af 26. maj 1976 para.6(1)-(3)

²⁹⁵ Lov nr. 277 af 26. maj 1976 , sat i kraft ved anordning nr. 472 af 25. september 1984. para.11

²⁹⁶ Dagsbefaling nr. 11 p.56-58

²⁹⁷ Board of Remedies, The Greenlandic justice system.

<http://www.gl.dk.domstol.dk/groenland/offererstatningsnaevnet/Pages/default.aspx> (accessed July 2019).

In the interview with the Court of Appeal judge (which is in the Board of Compensation), it was explained that this was working quite well, as prosecutors were good at making these claim statements, and the District Courts were good at setting the compensation, even though the Board can award a higher compensation (not lower).²⁹⁸

Looking into the case résumés, remedies were granted in 6 of the 25 cases of violence against women. However, other indicators were also present, which the diagram below illustrates. In 11 cases remedies were not mention - what remains unclear, is if this means that it was not granted or simply not included in the résumés.

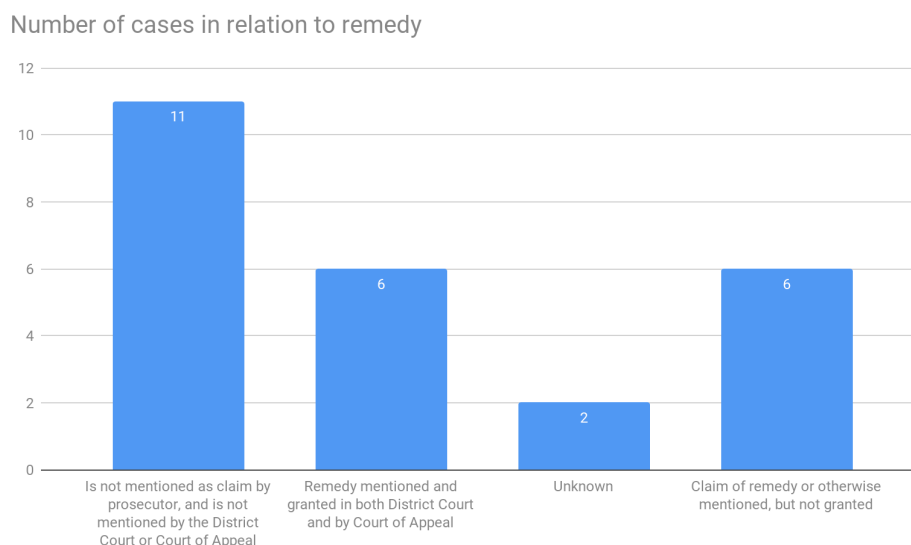


Diagram 8: Division of the 25 cases of violence against women, divided into their inclusion of remedies in District Courts and Court of Appeal.

Looking into these remedies, two interesting cases stand out related to women's access to remedies: K 031/18 and K 015/19. In case K031/18, the judge asked if the female victim knew if she was entitled to remedies, and the victim didn't know. The District Court then ruled that, even though there was no claim by the prosecutor, it is jurisprudence to provide remedies for rape, and the victim was granted remedies of 40.000 kr. Thereby, the court itself ensured remedies.

In K015/19, there is a claim of remedies by the prosecutor. However, the District Court stated that even though the woman did file for remedies, as she did not provide sufficient documentation, they take reservations towards this claim. In the Court of Appeal, the Court referred this claim of remedies to a civil suit, thereby not granting remedies to this

²⁹⁸ Appendix I.4

woman. Additionally, the Ombudsman has criticized the long waiting time before a woman received remedies.²⁹⁹

Legislation states that remedy must be accessible for women. The judge, who sits on the Board of Compensation, explains their system functions well, and in my own case observation, the woman was awarded compensation within the criminal court.

However, the court case résumés do not confirm or deny this, as only six of 25 cases clearly stated remedies for women, and the two above résumés contradict another. Maybe the recommendation from the Judicial Commission of handling remedies within the criminal case has not made into the norms within all District Courts - one of the court résumés would support such. Additionally, we have the critique by the Ombudsman. Concluding, due to the difference in my data, I am not able to conclude if this obligation is being fulfilled, and whether the current norms acts is enabling or limiting women's access to remedies.

1.1 Summarizing

Does the Greenlandic Criminal justice system fulfil the obligations under CEDAW in relation to access to justice in gender-based violence cases? The District Courts local norms, in its approach to ensure access by trained laymen who require linguistic and local cultural knowledge, might ensure that Greenlandic women have access to justice. Despite this, there are weaknesses, and present norms acts both as an enabler and limiter of women's access to justice.

Legislation only fulfils the requirement of prohibiting gender-based violence in the Criminal Code. It does not have an extensive prohibition against gender-discrimination; rather it is gender neutral, and there is no special provision regarding violence against women. Its definition of rape relies on a middle ground between consent and resistance, focusing instead on threat of violence. Therefore the legislation itself seems limited. However, customary Greenlandic norms within the courts take this provision further, and ensure women's right to a consent based approach anyway.

In relation to access to law, obligations are mostly fulfilled. There are protection orders, and possible legal aid. Access to a court knowledgeable of local knowledge and language is an area where the inclusion of customary norms might act as an enabler of women's right to justice, seeing how gender-based violence cases reach courts. However, the availability and access to shelters are limited.

The procedural aspects within the court seem to reflect how local norms might also limit women's rights. There are indicators of stereotypes, seen within the credibility assess-

²⁹⁹ Critic by the Ombudsman:

http://www.ombudsmanden.dk/find/nyheder/alle/alvorlig_kritik_af_groenlandsk_erstatningsnaevn/ (accessed June 2019)

ment of rape victims, and in the mitigating circumstances in partner-violence cases. In especially the latter areas, the restorative focus on the offender might have overshadowed the women's rights in some situations. Maybe training the judiciary would help, as there are currently no training informing the judiciary of CEDAW and its obligations.

Finally, women officially have right to remedies, and these should be provided. However, I was unable to conclude if local norms provide such, due to the differences and lack of information in my data.

7 Conclusion

The Greenlandic people are entitled to their own customs, including within the justice system as long as human rights are not violated. The CEDAW Committee has interpreted gender-based violence is discrimination, and thereby a violation of women's human rights. Greenland is bound to fulfill CEDAW's obligations through the Danish ratification. My aim with studying the plurality of norms guiding the Greenlandic criminal justice system was to understand how the system works in practice, to understand whether and to what extent the existing legal pluralism promotes or prevents the human rights of Greenlandic indigenous women.

The Greenlandic situation is exceptional. Due to its special challenges, District Court judges are specially trained laymen. It has never been studied before how the local customs in the Greenlandic criminal justice system compare to CEDAW. I did so from a holistic approach, answering the following question: *How can we understand the Greenlandic criminal justice system compared to CEDAW's holistic set of obligations in relation to gender-based violence?*

From the theory of a semi-autonomous field, I included the process surrounding and within Greenlandic courts, which women go through to gain access to justice after being victims of gender-based violence. The theory of strong legal pluralism helps to understand that justice systems are not only guided by written laws, but might also be guided by local customs and international human rights laws.

Some justice systems have taken an active role through 'judicial activism' and helped promote women's human rights, as Pandey's study from Nepal shows. However, in the Arctic, studies indicate that indigenous women's rights are generally not being fulfilled. My question was whether this also applies to Greenland, so I researched the norms present in Greenland's criminal justice system. As indigenous women's perspectives are often left out, I aimed to address the criminal justice system from this angle. My approach was holistic, inspired by Rikki Holtmaat, meaning the CEDAW embraces the whole process to ensure access to justice, this being formal, substantive and transformative equality. When analysing the obligation in relation to gender-based violence, I identified four sets of correlating obligations: i. Legislation, ii. Access to law, iii. Gender-sensitive process, and iv. Access to remedies.

Within the official status for the CEDAW Committee reviews, Greenlandic State presented itself as fulfilling its obligations under CEDAW. However, the CEDAW Committee has been critical of this.

By going to Greenland, interviewing judges, reading online criminal court cases, and observing criminal cases, I found that the plurality of norms guiding the criminal justice system, to some extent limit and promote women's ability to gain access to justice.

Especially norms within the legislation could limit women. Legislation does not have one single provision prohibiting gender-discrimination upon all areas. Additionally, the Criminal Code is not gender-sensitive; there is no specific provision on gender-based violence, and does only to some extent embrace consent as key within the rape prohibiting provision. Only the Greenlandic judiciary activist approach of including content as key in rape-case fulfill the last requirements, representing how customary norms promotes women's access to justice.

Access to law is partly being provided, and partly not. The current Social Support Strategy is limited, and access to shelters is questionable. However, access to court is being provided due to the presence of female judges and especially the specific adherence to cultural norms in Greenland. Here, the cultural sensitivities ensured to indigenous people seem to play a key role in ensuring women's access to law. And we see that actually a high number of gender-based violence cases indeed make it to court.

However, the gender-sensitive process within the courts is questionable. CEDAW is not present and the judiciary does not know what it provisions entails. There are mitigating circumstances and credibility assessment, which rely on norms indicating gender-stereotypes that are only found within the actions of the court.

A final question remains as to the access to remedies. According to the legislation and Board of Remedies, remedies should be provided. However, my dataset does not confirm or deny such. As this subject has not been mentioned in any state reports, it might constitute a blind spot for the state in its approach towards gender-equality.

Overall, my limited research indicates that the Greenlandic cultural norms and its focus on restorative justice does not necessarily mean an obstacle for women's human rights - in the instance of access to courts and a consent-focused approach to rape, these cultural norms works as an enabler. However, it should not mean that one should forget the focus on the women's situation, and in some cases, e.g. the mitigating circumstances, the present norms might limit women's access to justice. Preferably more research should be done upon this subject, especially studies in which the women are included. This might help provide an even more detailed picture. Additionally, more 'local' research (meaning going to more remote settings) would also have been highly valuable to provide more nuances.

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9 Appendix

Appendix I – interview respondents

No	Position	Date and place
I.1	Prosecutor	12.3.19, Nuuk
I.2	Judge of District Court	17.4.19, Nuuk
I.3	Judge of Court of Greenland	20.3.19, Nuuk
I.4	Judge of High Court of Greenland (Court of Appeal)	28.3.19, Nuuk

Interviews are transcribed anonymously, and will be available on request.

Appendix II – Interview guides

As my interviews were semi-structured, my questions, the order of them and the specific wording were adjusted during the interview, and other questions were added, as the conversation evolved. Nonetheless these were my initial interview guides. I have not included my presentation, my explanation of their right to withdraw from this study and what their data will be used for, and if I was allowed to record the interview – the section below only show my guiding questions. OBS. the questions are in Danish.

Appendix II.1 Interview for Prosecutor

Interview guide (Danish):

Q1: Hvor mange sager har I, som omhandler vold mod kvinder?

Q2: Kan du beskrive en typisk sag hos jer?

Q3: Hvordan ender sagerne hos anklageren?

- Hvad kræver det at anmelde en sag om vold?
- Hvem anmelder?

Q4: Hvor mange gange oplever I at nogen trækker sager tilbage, og hvorfor sker dette?

Q5: Hvilke sager ville man typisk anke og hvorfor?

Hvilke sager ville I typisk ikke gå videre med? Hvorfor?

Q6: Hvad er dit overordnet indtryk, om kredsretternes behandling af sager om vold mod kvinder?

Q7: Hvordan mener du, at den grønlandske kultur kommer til udtryk i disse domssager?

Q8: I alle de sager som omhandler vold mod en kvinde, hvilke sager vælger I at anke og hvorfor?

Q9: Inddrager I den internationale kvindekonvention i nogen af jeres sager?

Hvis ja – hvornår og hvorfor?

Hvis nej – hvorfor ikke?

Q10: Mener du, at kredsretsdommerne kender nok til kvindernes rettigheder fra den internationale kvinde konvention?

Q11: Mener du, at kvinderne kender nok til deres rettigheder fra den internationale kvinde konvention?

Q12: Hvem har ansvaret til at oplyse de kvinderne eller dommerne om disse rettigheder?

Appendix II.2. Interview guide for District Court Judge

Interview guide (Danish):

Q1: Er der mange sager har du haft, som omhandler vold mod kvinder? Hvilken slags vold drejer det sig om?

Q2: Kan du give eksempler på sådan en typisk sag og en typisk dom?

Q3: I sager, hvor der er vold mod kvinder, hvilke overvejelser gør du inden du kommer frem til en afgørelse?

Q4: Mener du, at den grønlandske kultur kommer til udtryk i domssager?

Hvis ja – hvordan?

Q5: Tager du den internationale kvindekonvention med i dine overvejelser?

Hvis ja, hvor ofte og hvordan?

Hvis nej, hvorfor ikke?

Om kredsdommer uddannelsen

Q6: Vil du fortælle overordnet om indholdet på kredsdommer uddannelsen og de emner, den indeholder?

Q7: Indeholder uddannelsen emnet 'vold mod kvinder'?

Hvis ja, synes du at uddannelsen belyser emnet tilstrækkeligt?

Q8: Underviser uddannelsen om kvinders rettigheder fra den internationale kvindekonvention?

Hvis ja, synes du at uddannelsen belyser emnet tilstrækkeligt?

Q9: Synes du at uddannelsen bør forbedres i forhold til emnet 'vold mod kvinder' og kvinders rettigheder, eller oplever du at kredsdommerne generelt er nok oplyst omkring dette emne?

Q10: Hvem har ansvaret for at dommerne og kvinderne kender til kvinders rettigheder fra den internationale kvindekonvention?

Appendix II.3 Interview guide with Court of Greenland Judge

Generelt.

Q1: Vil du fortælle lidt om dig selv og din baggrund?

Q2: Vil du fortælle om en typisk sag hos jer?

Q3: Som dansk uddannet, hvordan er det at skulle fungere som dommer i det grønlandske domstolssystem? Hvilke forskelle eller ligheder har du mødt?

Q4: Nu skal dommeren ved Retten i Grønland være uddannet jurist, til forskel fra kredsretten - mener du, at den grønlandske kultur stadig kommer til udtryk i Retten i Grønland ?

Hvis ja – hvordan?

Nej - hvordan det?

Q5: Tager du den internationale kvindekonvention med i dine overvejelser?

Hvis ja, hvor ofte og hvordan?

Hvis nej, hvorfor ikke?

Q6: Der er en 'ligestillingslov'³⁰⁰ - er det en du har haft sager med?

Om kredsdommer uddannelsen

Q7: Vil du fortælle om din rolle i forhold til kredsdommer uddannelsen?

Q8: Vil du fortælle overordnet om indholdet på kredsdommer uddannelsen og de emner, den indeholder?

³⁰⁰ Inatsisartutlov nr. 3 af 29. november 2013 om ligestilling af mænd og kvinder

Q9: Indeholder uddannelsen emnet 'vold mod kvinder'? Hvordan?

Hvis ja, synes du at uddannelsen belyser emnet tilstrækkeligt?

Q10: Underviser uddannelsen om kvinders rettigheder fra den internationale kvindekonvention?

Hvis ja, synes du at uddannelsen belyser emnet tilstrækkeligt?

Q11: Synes du at uddannelsen bør forbedres i forhold til emnet 'vold mod kvinder' og kvinders rettigheder, eller oplever du at kredsdommerne generelt er nok oplyst omkring dette emne?

Q12: Hvem har ansvaret for at dommerne og kvinderne kender til kvinders rettigheder fra den internationale kvindekonvention?

Kvindernes viden om kvindekonventionen generelt:

Q13: Hvor meget kender grønlandske kvinder til deres rettigheder fra den internationale kvindekonvention?

Q14: Hvad er holdningen blandt grønlandske kvinder til den internationale kvindekonvention?

Q15: Hvem har ansvaret for at oplyse om denne konvention til kvinder? Til kredsdommerne?

Appendix II.4 Interview guide with Court of Appeal Judge

Q1: Vil du fortælle lidt om din rolle Grønlands Landsret spiller i forhold til kriminalsager og kredsretten?

Q2: Hvordan ser en typisk sag ud i Grønlands Landsret?

Q3: Hvor mange sager oplever I, som omhandler vold mod kvinder?

Q4: I ankesager om vold mod kvinder, hvad er de typiske forskelle fra dommen fra kredsretten, og den dom, Grønlands Landsret kommer frem til?

Q5: Hvad er dit overordnet indtryk, om kredsretternes behandling af sager om vold mod kvinder?

Ankesager

Q6: I de sager, som når ankedomstolen, hvordan søger du at beskytte kvinders rettigheder i dine afgørelser?

Q7: I de sager, som når ankedomstolen, er den internationale kvindekongressionen en del af dine overvejelser?

Hvis ja, hvordan?

Hvis nej – hvorfor ikke?

Q8: Mener du, at den grønlandske kultur kommer til udtryk i dine domssager?

Hvis ja – hvordan?

Oplysning

Q9: Mener du, at kredsretsdommerne kender nok til kvindernes rettigheder fra den internationale kvindekongression?

Q10: Mener du, at kvinderne kender nok til deres rettigheder fra den internationale kvinde kongression?

Appendix III: Court observation notes 2019

The charges were violence and rape of two different women. The room is medium size; the tables touch each other in a circle. There is a traditional Inuit drum on the wall.

The atmosphere is relaxed, but formal. There are greetings, and small talk. During the trial, the defender corrects the prosecutor if something this person's state is wrong, or needs to be corrected. The judge does not necessarily interfere, but sometimes mediate.

Of present active participators were the accused, the defender, a judge, two lay assessors, the prosecutor (a polish man), a polish man, and the translator.

During the two women come to testify - although one almost does not come, and a witness never occur.

First the accused get to explain their story. The judge (after each explanation) re-reads the told explanation.

All speak Danish, except the accused and offenders - these speak some Danish, but their story was told in Greenlandic. The defender speaks both languages.

After the accused story, the 1st offender enters. She explains what she believed happened on the day of the alleged crime.

The second victim does not automatically arrive. The police have to actively try to get her. After a while, she appears. When the second victim testify, the victim and accused great and speak shortly. The accused speaks several times. The defender has to tell him to be quite. The judge has to tell him twice. She cries when she leaves the room.

During the trial, a court case is not within the files, which the prosecutor wants. The judge search for such within the system. This case is from 2008, but the punishment was in 2018.

Personal relationship:

In the part of personal relationship, it is mention that the accused have a social life. Furthermore, it is also said that the accused want to stop drinking. And that he have a mental illness. And only drink in the periods, where he is very ill.

Translation problem:

In the description from the 2nd victim, there is a word, the victim states. The translate states that she does not know this word, but for her it means, "lighten". The defender interferes and states that this word means "lightning" in relation to "lighting a weed pipe".

Defender

Stereotypes:

In the final remarks by the defender, she questions the 1st victims explanation regarding rape. The victim explains that after the rape, when she was allowed to leave, she called the police outside the apartment, and waited there for the police. The defender stated, that what rape victim does such - if it had been her, she would have screamed for help as soon as she left the apartment, and wanted to get as far away from the apartment as possible.

Fine for violence

Additionally, for violence, the defender argues, that the punishment could be a fine. Regular violence - as violence within the family or between girlfriends/boyfriends this is regulated with a fine, and therefore this should also be the case here, as it is regular violence.

For the rape, the accused is found innocent. For violence, he is found guilty, and sentenced in treatment. There is no explanation of why he is found guilty or innocent. For all charges and possible stay in custody, all parts ask for 14 days of consideration.

Appendix IV – the 25 cases of gender-based violence under §77 or §88

Case number	Date
K 231/18	10-04-2019
K 227/18	08-02-2019
K 213/18	22-02-2019
K 206/18	05-12-2018
K 197/18	17-04-2019
K 180/18	02-11-2018
K 177/18	06-11-2018
K 174/18	08-11-2018
K 170/17	08-08-2018
K 155/18	19-09-2018

K 135/18	24-09-2018
K 097/18	31-10-2018
K 079/18	01-08-2018
K 078/18	07-08-2018
K 077/18	02-08-2018
K 076/18	30-07-2018
K 075/18	16-07-2018
K 074/18	27-06-2018
K 073/18	25-09-2018
K 070/18	17-07-2018
K 032/18	06-08-2018
K 031/18	06-08-2018
K 018/19	16-04-2019
K 015/19	14-02-2019
K 011/19	04-02-2019