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**ICELAND**

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## Introduction

1. ADF International is a faith-based legal advocacy organization that protects fundamental freedoms and promotes the inherent dignity of all people before national and international institutions.
2. This report draws attention to the government of Iceland's shortcomings in guaranteeing freedom of expression, protecting the right to life and affirming the dignity of persons with disabilities, in addition to safeguarding parent's rights to educate their children according to their beliefs.

### a) Freedom of Expression

3. Article 73 of the Constitution of the Republic of Iceland (as revised in 1991) (the Constitution) provides for the right to freedom of opinion and belief accordingly:

“Everyone shall be free to express his thoughts, but shall also be liable to answer for them in court. The law may never provide for censorship or other similar limitations to freedom of expression. Freedom of expression may only be restricted by law in the interests of public order or the security of the State, for the protection of health or morals, or for the protection of the rights or reputation of others, if such restrictions are deemed necessary and in agreement with democratic traditions.”<sup>1</sup>

4. However, the Icelandic General Penal Code places undue restrictions on freedom of expression Under its Article 233a., “Anyone who publicly mocks, defames, denigrates or threatens a person or group of persons by comments or expressions... for their nationality, colour, race, religion, sexual orientation or gender identity... shall be fined or imprisoned for up to 2 years.”<sup>2</sup>
5. A working group within the Icelandic Parliament is proposing changes to the penal code to relax the existing hate speech law. Among the proposals is the addition of a requirement that a perpetrator threaten violence or harm to a specific group or individuals before a criminal charge can be issued.<sup>3</sup>
6. The proposed change faces some opposition from the standpoint that a relaxation of the hate speech law could exacerbate Iceland's current problem of making hate speech acceptable within society. This perspective calls for greater restrictions on speech, including through the implementation of a “zero tolerance” policy for hate speech.<sup>4</sup> However, this policy of heightened restrictions would further violate Iceland's obligations under international law because even the most well-intentioned hate speech laws tend to impermissibly violate freedom of expression.

#### *Freedom of Expression in International Law*

7. The right to freedom of expression is enshrined in the International Covenant on Civil and Political Rights, to which Iceland is a State Party. Article 19 states, “Everyone shall have

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<sup>1</sup> Iceland's Constitution of 1944, Article 73

<sup>2</sup> Icelandic General Penal Code, Article 233a.

<sup>3</sup> Josie Gaitens 'Harsh Words: Proposed Changes To Hate Speech Laws Slammed' (8 August 2019) Reykjavik Grapevine <<https://grapevine.is/news/2019/08/08/proposed-changes-to-hate-speech-laws-slammed/>>.

<sup>4</sup> Id.

the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”<sup>5</sup>

8. While speech that incites violence can be easily defined and identified, the determination as to what constitutes mocking, defamation or denigration is often subjective and ambiguous. It is patently disproportionate to take away someone’s liberty in reprisal for words that violate feelings of any sort, however insensitive they might be. Moreover, central to the right to freedom of expression is the liberty to openly and candidly debate ideas and belief systems of all varieties. The threat of prison sentences or fines for saying things that might be interpreted as offensive directly flouts the possibility of honest debate and undermines the pursuit of a vibrant and diverse public square, and ultimately risks contravening Iceland’s obligation to guarantee freedom of expression.
9. There is certainly a need to regulate forms of communication that can credibly and reasonably be said to constitute incitement to violence, whether against an individual or a group. The concern, however, is that laws that criminalize expression such as the provisions of Article 233a. of the General Penal Code, are largely subjective, do not necessarily require falsehood, rarely require a victim, often only protect certain people, and are arbitrarily enforced.<sup>6</sup>
10. Although there are clear limitations placed on free expression within the ICCPR (Articles 19(3) and 20)<sup>7</sup> and Article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)<sup>8</sup>, there is still a very high threshold as to the legality of relevant restrictions.<sup>9</sup>
11. General Comment No. 34 of the Human Rights Committee (CCPR) makes clear that restrictions on the right to freedom of expression “should not go beyond what is permitted in paragraph 3 [of Article 19] or required under article 20,” and that relevant laws “must provide sufficient guidance to those charged with their execution to enable them to ascertain what sorts of expression are properly restricted and what sorts are not.”<sup>10</sup> Similarly, with regard to freedom of movement, CCPR General Comment 27 asserts that “restrictive measures must conform to the principle of proportionality; they must be appropriate to achieve their protective function; they must be the least intrusive instrument amongst those which might achieve their protective function; they must be proportionate to the interest to be protected.”<sup>11</sup>

## **b) Right to Life**

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<sup>5</sup> International Covenant on Civil and Political Rights (ICCPR), opened for signature Dec. 19, 1966, 993 U.N.T.S. 3., art. 19.

<sup>6</sup> Paul Coleman, *Censored: How European “Hate Speech” Laws are Threatening Freedom of Speech*, Kairos Publications, 2016, 8-10

<sup>7</sup> ICCPR, Art 19-20.

<sup>8</sup> Convention on the Elimination of All Forms of Racial Discrimination (adopted 21 December 1965, entered into force 4 January 1969) 660 UNTS 195 (CERD) Art 4.

<sup>9</sup> Report of the Special Rapporteur on freedom of religion or belief, Asma Jahangir, and the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Doudou Diène, further to Human Rights Council decision 1/107 on incitement to racial and religious hatred and the promotion of tolerance, A/HRC/2/3, 20 September 2006, Art 47.

<sup>10</sup> UN Human Rights Committee, General Comment No. 34 (2011), CCPR/C/GC/34, 25.

<sup>11</sup> UN Human Rights Committee, General Comment No. 27 (1999) CCPR/C/21/Rev.1/Add.9, 14.

12. In 2019, the Icelandic parliament amended its abortion laws to legalize the unlimited termination of a pregnancy within the first 22 weeks regardless of the reason, with later abortions requiring the approval of two doctors.<sup>12</sup> Previously, abortions could be procured within the same time frame, but a committee of doctors had to approve the decision after the 16<sup>th</sup> week.<sup>13</sup>
13. Prior to the passage of the 2019 amendment, it was reported in 2018 that from 2007 to 2015, nearly 85% of pregnant women opted for pre-natal screening. Of those who obtained the screening and subsequently received an amniocentesis resulting in a positive test result for Down Syndrome, 100% chose to terminate their pregnancy.<sup>14</sup>
14. Although pre-natal screening is not compulsory in Iceland, the 100% termination rate among these pregnant woman calls into question whether “heavy-handed genetic counseling is desirable.”<sup>15</sup> With a population of about 330,000 people, Iceland can claim to have nearly “eradicated” people with Down Syndrome within its society as only one or two people are expected to be born with Down Syndrome each year. This mostly occurs because of inaccurate pre-natal test results.<sup>16</sup>
15. The expansion of the abortion law allows for even later pre-natal screening, which can potentially have the effect of detecting previously undetectable disabilities.

*The Right to Life in International Law*

16. Under Article 6 of the ICCPR, to which Iceland is a State Party, “Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.”<sup>17</sup> The protection of unborn life is also found through an ordinary reading of the language in the preamble of the Convention on the Rights of the Child (CRC), to which Iceland is a State Party. It is therefore essential to note that the CRC explicitly recognizes the child before birth as a rights-bearing person entitled to special needs and protection. The preamble states, “[T]he child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth.”<sup>18</sup>
17. Article 1 of the CRC defines a child as “every human being below the age of eighteen years.” This provides an upper limit as to who is a child, but does not provide a lower limit on when the status of “child” attaches. Moreover, Article 6 of the CRC holds, “States Parties recognize that every child has the inherent right to life. States Parties shall ensure to the maximum extent possible the survival and development of the child.” Viewed in the

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<sup>12</sup> 2019 Bill on Abortion <<https://www.althingi.is/altext/149/s/0521.html>>, art. 4.

<sup>13</sup> J. Ćirić ‘Abortion Bill Passed in Icelandic Parliament’ (14 May 2019) Iceland Review <<https://www.icelandreview.com/news/abortion-bill-passed-in-icelandic-parliament/>>.

<sup>14</sup> Global Down Syndrome Foundation ‘Global Down Syndrome Foundation Responds To Shocking Report – Shares Translated Prenatal Testing Information With Iceland’ (11 January 2018) <<https://www.globaldownsyndrome.org/global-syndrome-foundation-responds-shocking-report-shares-translated-prenatal-testing-information-iceland/>>.

<sup>15</sup> J. Quinones ‘What kind of society do you want to live in?: Inside the country where Down syndrome is disappearing’ (17 August 2017) CBS News <<https://www.cbsnews.com/news/down-syndrome-iceland/>>.

<sup>16</sup> *Id.*

<sup>17</sup> ICCPR, art. 6.

<sup>18</sup> Convention on the Rights of the Child (CRC), opened for signature Nov. 20, 1989, 1577 U.N.T.S. 3, art. 1 & 6.

context of the preamble, both Articles 1 and 6 of the CRC indicate recognition and protection of unborn life.

18. Further, Article 10 of the Convention on Persons with Disabilities (CRPD), to which Iceland is also a State Party, safeguards persons against discrimination on the basis of disability by stating, “States Parties reaffirm that every human being has the inherent right to life and shall take all necessary measures to ensure its effective enjoyment by persons with disabilities on an equal basis with others.”<sup>19</sup>
19. Article 25 of the CRPD specifies that “persons with disabilities have the right to the enjoyment of the highest attainable standard of health without discrimination on the basis of disability.” Article 17 provides the right to respect for physical and mental integrity. Article 26 requires that those with disabilities be provided “comprehensive habilitation and rehabilitation services and programmes, particularly in the [area] of health....” They are to be afforded “full inclusion and participation in all aspects of life.”<sup>20</sup>
20. The fact that Iceland’s abortion laws have resulted in the near eradication of persons with Down Syndrome in Iceland represents a gross violation of persons with disabilities’ dignity and human rights.

### **c) Parental Rights**

21. Article 76 of the Constitution protects the right to education: “The law shall guarantee for everyone suitable general education and tuition. For children, the law shall guarantee the protection and care which is necessary for their well-being.”<sup>21</sup> In 2008, the right to education was further elaborated on in the Compulsory School Act (the 2008 Act). Article 2 of the Act affirms, “Parents shall look out for the interests of their children at compulsory school age.”<sup>22</sup>
22. In December 2020, the government appointed a task force to review the country’s sexual education curriculum. The purported aim of the review is to improve sexual education and violence prevention education in primary and secondary schools.
23. As it currently stands, Iceland does not allow parents to opt their children out of the national curriculum, which runs counter to their rights under international law. In anticipation of the pending review of the sexual education curriculum, Iceland must amend its national curriculum to ensure for respect for parental rights in accordance with international law obligations.

#### *Parental Rights in International Law*

24. Article 13 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), to which Iceland is a State Party, guarantees the right to education as well as the right to alternative forms of education. Article 13(3) reads: “The States Parties [...] undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved

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<sup>19</sup> Convention on the Rights of Persons with Disabilities (CRPD), opened for signature on Dec. 13, 2006, 2515 U.N.T.S. 3, art. 10.

<sup>20</sup> *Id.*, art 25, 17, 26.

<sup>21</sup> Iceland’s Constitution of 1944, art. 76.

<sup>22</sup> Icelandic Legislation, Compulsory School Act 2008 No 91 12 June.

by the State and to ensure the religious and moral education of their children in conformity with their own convictions.”<sup>23</sup>

25. Article 18(4) of the ICCPR provides that States must “undertake to have respect for the liberty of parents [...] to ensure the religious and moral education of their children in conformity with their own convictions.”<sup>24</sup>
26. Article 18(1) of the (CRC) states, “Parents or, as the case may be, legal guardians have the primary responsibility for the upbringing and development of the child.” According to the Convention, parents have the primary responsibility for the upbringing and development of the child, whereas “State Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities” and not simply usurp those responsibilities.<sup>25</sup>
27. Writing on the issue of home education, former UN Special Rapporteur on the Right to Education, Vernor Muñoz Villalobos, has affirmed that: “Distance learning methods and home schooling represent valid options which could be developed in certain circumstances, bearing in mind that parents have the right to choose the appropriate type of education for their children ... The promotion and development of a system of public, government-funded education should not entail the suppression of forms of education that do not require attendance at a school.”<sup>26</sup>

#### **d) Recommendations**

28. In light of the aforementioned, ADF International suggests the following recommendations be made to Iceland:
  - a. Review Article 233a. of the General Penal Code to safeguard the legitimate exercise of freedom of expression in accordance with international human rights law;
  - b. Affirm the dignity of all persons, including those with disabilities, by raising awareness on the need to reverse the trend of near eradication of persons born with Down Syndrome;
  - c. Promote and protect parents’ right to decide on their children’s education and repeal the restrictions placed on parents who wish to homeschool their children;
  - d. Review the education on responsible sexual behaviour program to ensure that it is age-appropriate and respects and protects parents’ right to decide on their children’s education;
  - e. Ensure that sexual education programmes are aimed at delaying sexual debut and promoting responsible sexual behavior and healthy relationships.

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<sup>23</sup> International Covenant on Economic, Social, and Cultural Rights (ICESCR), art. 13(3), opened for signature Dec 19, 1966, U.N.T.S. 3., art. 13.

<sup>24</sup> ICCPR, art. 18.

<sup>25</sup> CRC, art. 18(1).

<sup>26</sup> UN Human Rights Council, ‘Addendum to the Report of the Special Rapporteur on the Right to Education, Mission to Germany’ (9 March 2007) UN Doc A/HRC/4/29/Add.3.



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