



UNIVERSAL PERIODIC REVIEW – FOURTH CYCLE

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ICELAND

The Center for Family and Human Rights (C-Fam) is a nongovernmental organization that was founded in 1997 and has held Special Consultative Status with the UN Economic and Social Council since 2014. We are headquartered in New York and Washington, D.C., and are a nonprofit, nonpartisan research and advocacy organization that is dedicated to reestablishing a proper understanding of international law, protecting national sovereignty, and the dignity of the human person.

INTRODUCTION

1. This report focuses on the purpose and function of the Universal Periodic Review (UPR), and Iceland's use of this mechanism to promote concepts that do not enjoy international consensus as human rights standards. While Iceland is not alone in doing this, in the previous and current cycle of the UPR, it has become an overwhelming outlier in its promotion of abortion as a human right, as well as exerting pressure on other member States to legally recognize and promote issues related to sexual orientation and gender identity. While this may reflect Iceland's position as a country, it is not aligned with internationally agreed human rights standards, and this is further supported by the responses of other States in the UPR process.

NO INTERNATIONAL HUMAN RIGHT TO ABORTION

2. There exists no right to abortion under international law, either by way of treaty obligation or under customary international law. No United Nations treaty can accurately be cited as establishing or recognizing a right to abortion.¹ The right to life is articulated in Article 3 of the Universal Declaration of Human Rights (UDHR), which states that every person has a right to "life, liberty and security of person."² The International Covenant on Civil and Political Rights (ICCPR) refers to the "inherent right to life" of every human being.³ Far from excluding human beings before birth, the preamble to the Convention on the Rights of the Child states that children need special safeguards, including appropriate legal protection, "before as well as after birth."⁴ Finally, international agreement holds that the status of abortion is solely for member States to determine: the outcome of the International Conference on Population and Development (ICPD) makes clear that "any measures or changes related to abortion within the health system can only be determined at the national or local level according to the national legislative process."⁵
3. In the third and ongoing fourth cycles of the UPR, Iceland has emerged as the leading source of explicit pressure on fellow member States to liberalize their abortion laws. Recommendations by Iceland include calls for decriminalization of abortion, expansion of legal grounds where it is allowed, and increased access to abortion. In the third cycle, Iceland issued almost fifty recommendations promoting abortion as a right, and this has nearly doubled in the fourth cycle, which is not yet concluded.
4. The fact that there is no internationally agreed human right to abortion, as referenced above, is further supported by the fact that the overwhelming majority of UN member States do not use the UPR to advance such a "right," and the fact that recommendations to liberalize abortion laws are far more likely to be marked as "noted" by recipients than recommendations on other matters. Fewer than one percent of recommendations in the UPR mention abortion, yet of those that do, Iceland alone accounts for nearly a third of them in the ongoing fourth cycle. Furthermore, less than 30% of Iceland's abortion recommendations were marked as "supported" in comparison with the fact that around 73% of recommendations in total are supported. Taken together, these figures demonstrate that on this issue, Iceland is clearly out of step with global consensus.

NO INTERNATIONAL CONSENSUS ON "SEXUAL RIGHTS"

5. International law reserves singular protections for the natural family to which relations between individuals of the same sex are not entitled. As stated in the UDHR, international law and policy define the family as “the natural and fundamental group unit of society.” As such, it is “entitled to protection by society and the State” and it is a proper subject of human rights.⁶
6. Relations between individuals of the same sex and other social and legal arrangements that are neither equivalent nor analogous to the family are not entitled to the protections singularly reserved for the family in international law and policy. Textually, the language on the *right of men and women* to marry and found a family in the ICCPR (Article 23) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR) (Article 10) predicates that “*they are entitled to equal rights* as to marriage, during marriage, and at its dissolution” (emphasis added). This is also reflected in the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) (Article 16), which refers to equality within marriage as between “men and women” and “husband and wife” in the context of the family. The European Convention on Human Rights (ECHR) (Article 12) and the Inter-American Convention on Human Rights (IACHR) (Article 17) also mirror the language of the Universal Declaration of Human Rights (UDHR) on the right to marry and found a family verbatim.⁷
7. All human beings possess the same fundamental rights by virtue of their inherent dignity and worth. UN Member States have no obligation to enact laws that give individuals any special benefits or protections on the basis of their sexual preferences and behavior or to sanction an individual’s feeling about their gender identity.⁸
8. There is no consensus among UN member states on the use of the term “sexual orientation and gender identity.” UN declarations and resolutions that mention these categories are all non-binding in nature and have never been adopted on a consensual basis. Moreover, while treaty bodies, including this committee, have stated their support for including “sexual orientation and gender identity” as categories of non-discrimination alongside race and religion, they do not have the power to alter the obligations of State Parties under the ICCPR.
9. There is no textual support or any historical record to indicate that State Parties ever intended UN human rights treaties to require gender identity change laws. The promotion of this concept is particularly egregious in the context of children because of the interest in the increase in reported gender dysphoria among children and the growing practice of supplying them with powerful and expensive treatment and drugs. These drugs and surgeries can have lasting negative effects on their health. It is especially egregious when one notes the subjectivity and fluidity of the notions of “gender identity” and the lack of any scientific or legal precision.⁹
10. The UDHR and binding international human rights treaties recognize that many children are deprived of one or both of their natural parents and must be provided with adequate protection, by providing that “[m]otherhood and childhood are entitled to special care and assistance” and that “all children, whether born in or out of wedlock, shall enjoy the same social protection” (UDHR, Article 25). This provision requires that children be protected regardless of whether they are living with their intact family. It does not entitle adults in a homosexual relationship to adopt children.

11. Just as with the abortion issue, Iceland's behavior in the UPR on issues of sexual orientation and gender identity (SOGI) are well outside the range of global agreement. In the ongoing fourth UPR cycle alone, Iceland has pressured other countries on SOGI nearly three hundred times, by far the most of any other member State, with recommendations ranging from the decriminalization of same-sex sexual behavior to the legal recognition of same-sex marriage and gender identity on the basis of self-identification alone. Yet only 21% of these recommendations were supported by their recipients, which is far lower than the average of around 73%.

NATIONAL SOVEREIGNTY

12. Regarding the legal status of abortion and the protection of the unborn, it is a matter of longstanding consensus that "each nation has the sovereign right to implement programs and activities consistent with their laws and policies." However, opposition to this sovereign right of countries has become increasingly commonplace in those parts of the United Nations system governed more by expert opinion or bureaucratic oversight than by the standard of negotiated consensus, including treaty bodies. There is no global mandate to pressure countries to liberalize their abortion laws or expand the categories for non-discrimination as a matter of international human rights law concerning, for example, sexual orientation or gender identity, and to the extent that mandate-holders engage in such behavior, they do so *ultra vires*.
13. Nevertheless, the frequency of such pressure has only increased toward countries whose laws restrict abortion to protect the unborn, or which maintain a traditional view of marriage and the family, in line with the human rights obligations expressed in the binding treaties they have ratified. Such non-binding opinions have been elevated in many parts of the UN, although they have never been accepted nor adopted by consensus in the General Assembly.
14. Unlike other UN human rights mechanisms, the UPR provides a space for sovereign nations to speak to each other and provide encouragement to fulfill their human rights obligations. This venue should not be used to exert further pressure on countries to liberalize their abortion laws or redefine the family, as there is no internationally agreed consensus on these matters.

CONCLUDING RECOMMENDATIONS

15. Iceland should refrain from promoting concepts that are a matter of national preference and outside the scope of internationally agreed human rights standards in the context of the Universal Periodic Review.

¹ San José Articles. 2011. Available at <https://sanjosearticles.com/>

² United Nations General Assembly. 1948. Universal Declaration of Human Rights. Paris.

³ UN General Assembly, International Covenant on Civil and Political Rights, United Nations, Treaty Series, vol. 999, p. 171, 16 December 1966.

⁴ UN General Assembly, Convention on the Rights of the Child. 20 November 1989. United Nations, Treaty Series, vol. 1577, p. 3.

⁵ United Nations. 1995. Report of the International Conference on Population and Development, Cairo, 5-13 September 1994. New York: United Nations.

⁶ Universal Declaration of Human Rights, *ibid.*

⁷ The European Court of Human Rights has interpreted its provisions on marriage and family—which are identical to those contained in the Universal Declaration of Human Rights and the Covenant—as referring only to the union of a man and a woman. Even though the Court has repeated more than once that relations between individuals of the same sex are entitled to some form of legal recognition it has also specified that States are not required to sanction relations between individuals of the same-sex as if they can constitute a family. *See* ECHR, Chapin and Charpentier v. France, no. 40183/07 (Judgment (Merits and Just Satisfaction), 9 June 2016. Available at <https://hudoc.echr.coe.int/eng?i=001-163967>; *See also* *Hämäläinen v. Finland*, no. 37359/09, § 71, ECHR 2014; *Schalk and Kopf v. Austria*, no. 30141/04, § 101, ECHR 2010; *Rees v. UK*, no. 9532/81, § 49, ECHR 1986).

⁸ UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (III), Preamble and Article 1.

⁹ Lawrence S. Mayer, M.B., M.S., Ph.D. and Paul R. McHugh, M.D., “Sexuality and Gender: Findings from the Biological, Psychological, and Social Sciences,” *The New Atlantis*, Fall 2016. Available at http://www.thenewatlantis.com/docLib/20160819_TNA50SexualityandGender.pdf