

Human rights incorporation in Iceland



Like Scotland, Iceland must adopt new legislation before an international human rights treaty becomes part of national law and is directly enforceable in courts. This is accomplished through direct incorporation.

To date, Iceland has incorporated the European Convention on Human Rights (ECHR) and the UN Convention on the Rights of the Child (UNCRC) into domestic law.

Human rights protections in Icelandic law

Constitution

The Constitution, which is the supreme law in Iceland, contains a chapter on fundamental human rights.

It includes civil and political, economic, social and cultural rights. It provides for equality and non-discrimination along with special protection for children.

This chapter was included in 1995, when Iceland undertook constitutional reform, partially to facilitate for the incorporation of the ECHR by ensuring that domestic law was in line with the international standard.



Direct incorporation: ECHR and UNCRC

- The ECHR was fully and directly incorporated into Icelandic law in 1994 by an Act of the Icelandic Parliament.
- The UNCRC was fully and directly incorporated into national law by an Act of the Icelandic Parliament in 2013 following years of piecemeal children's rights law development. The first and second Optional Protocols were also incorporated.
- In terms of legal hierarchy, both the ECHR and UNCRC rank at the level of regular statute. Incorporation removed uncertainties about whether citizens could invoke ECHR or UNCRC provisions before national courts, an issue which had previously arisen in Icelandic courts.

Legal incorporation has been followed by multiple measures on part of duty-bearers, including:

Ombudsman for Children established to oversee implementation of UNCRC and ensure that duty-bearers give full consideration to rights of children.



Minister of Social Affairs and Children: develops policy and drives vision in matters relating to children, linking economic policy and child policy.



UNICEF Child Friendly Cities initiative: since 2016 in pilot phase in two municipalities; aims to raise awareness of the UNCRC and make cities child- and family-friendly to live in.



No national action plan on general human rights exists, but the National Action Plan on Child Protection 2019-2022 is based on the UNCRC.



Legal aid is readily available and state-funded free legal services are provided in child protection cases.



Increased government funding to realising children's rights, e.g. the Children's Cultural Fund.



Children regularly take part in Child Assemblies and consultations to give their input and feedback on how well their UNCRC rights are being realised by duty-bearers.



Youth councils cover areas where 95% of the population live. They are forums of communication between duty-bearers and rights holders.



Enforcement by duty bearers

Enforcement in courts

ECHR provisions are generally invoked on their own or used together with the Constitution to interpret other statutes.

In 2017, the Supreme Court enforced UNCRC article 12 (right to be heard) when a child's views were not taken into account in a custody case. This resulted in the custody case being sent back to the District Court for reconsideration.

UNCRC provisions have been raised in courts when children's rights were ignored in other legal proceedings.



Icelandic courts have enforced economic, social, and cultural rights deriving from the Constitution, making them justiciable.

UNCRC incorporation has increased rights-holders' awareness of and engagement with their rights:

A 2018 consultation revealed that younger children attending UNICEF Rights Respecting Schools have a good understanding of their UNCRC rights and the Convention whereas older children who did not attend these schools had an overall poorer understanding of the UNCRC.



The Barnabing 2019 started a bi-annual consultation process, which is mandated by law and overseen by the Ombudsman. The results are taken into account in Parliament, which gives the process legitimacy and value in the eyes of rights holders.

Children can take ownership of their rights by partaking in public children's forums and consultations, where they democratically make their ideas and concerns heard by the Ombudsman and the government.



Awareness and ownership of rights



Children facing multiple discrimination due to their young age, or characteristics like ethnicity, disability, or sexuality, feel that their rights are not respected by duty-bearers as much as the rights of children without these characteristics. As a result, they cannot claim and enjoy their rights to the same extent as other children.



Varying levels of education in schools about the UNCRC and human rights directly correlate with the rights holders' levels of awareness of their rights, and a mainstreamed state wide policy should be adopted.



Children feel that adults should be aware of the UNCRC to fully respect children's rights.



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