



THE UNIVERSITY *of* EDINBURGH
Moray House School of
Education and Sport

Moray House Annual Lecture
Wednesday 27th May 2020

Welcome to the Moray House Annual Lecture

**‘Making Children’s Rights Real’:
The opportunities of incorporating the
Convention on the Rights of the Child**

Professor Kirsten Sandberg
University of Oslo

Wednesday 27th May 2020



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- Attendees will not be able to share video or audio during this event.
- Please keep all comments in the text chat respectful and considerate.
- Please do not use the Raise Hand function.
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- The lecture is being recorded and will be made available to the public. The Text Chat is not captured in the recording.



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Observatory of Children's Human Rights



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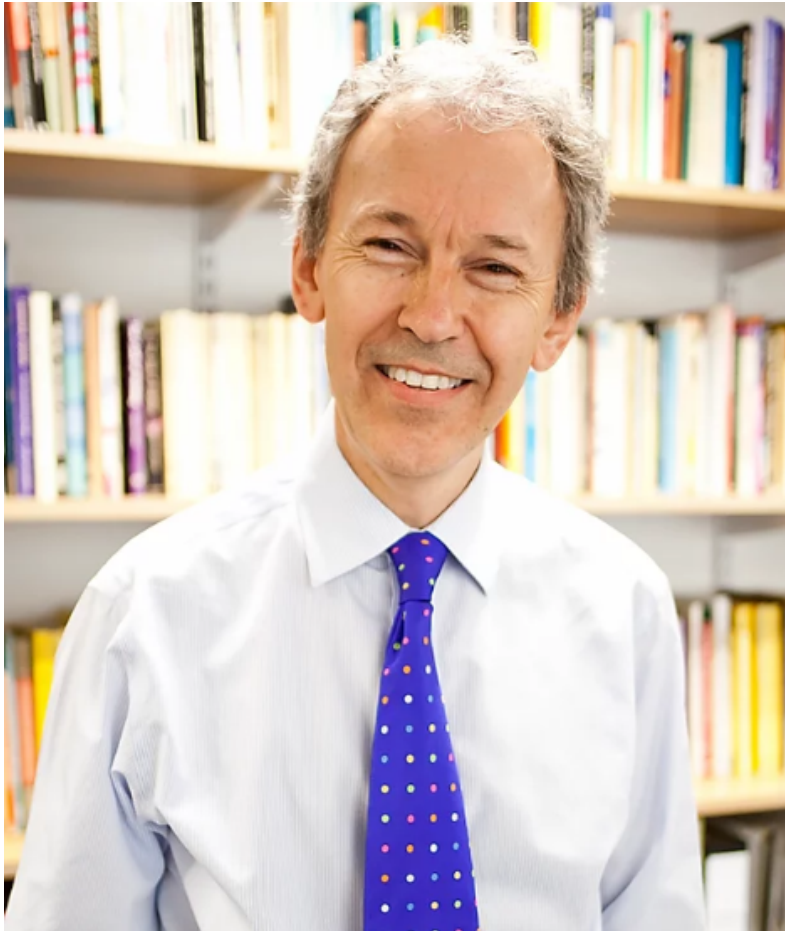
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Professor Richard Andrews

Head of School

Moray House School of Education and Sport

University of Edinburgh

Observatory of
**CHILDREN'S
HUMAN RIGHTS**
Scotland



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UiO : **Department of Public and International Law**
University of Oslo

Kirsten Sandberg, Professor, former Member and Chair of the
UN Committee on the Rights of the Child

**‘Making Children’s Rights Real’:
The opportunities of incorporating the
Convention on the Rights of the Child**

Moray House Annual Lecture,
Edinburgh, 27 May 2020



Overview

- What do the CRC and the UN Committee say about incorporation?
- Incorporation in Norway – the process
- Legal opportunities, challenges and interpretation
- Awareness
- Prevention, remedy and redress
- A culture change?
- Need for additional legal measures?
- Conclusion

What do the CRC and the UN Committee say about incorporation?

CRC Art. 4: States Parties shall undertake all appropriate **legislative**, administrative, and other measures for the implementation of the rights recognized in the present Convention.

General Comment No. 5 on general measures:

1. Ensuring that the Convention's principles and provisions can be **directly applied and appropriately enforced** is fundamental.

20. The Committee welcomes the **incorporation** of the Convention into domestic law

To UK 2016

Legislation

The Committee recommends that the State party:

(a) **Expedite bringing in line with the Convention its domestic legislation, at the national and devolved levels and in the overseas territories and the Crown dependencies, in order to ensure that the principles and provisions of the Convention are directly applicable and justiciable under domestic law**

Incorporation in Norway – the process

- Human Rights Act 1999 incorporated the three ‘central’ conventions, not the ‘special’ ones
- Parliament asked Government to come back with a proposal to incorporate the CRC
- Working Group of various ministries in 2001 proposed partial transformation
- After the written hearing, the Ministry of Justice in the bill 2003 instead proposed full incorporation
- The CRC was incorporated in its entirety 2003, with priority over other legislation in case of conflict
- The four general principles + dignity and integrity were included in the Constitution in 2014

Incorporation of the CRC – legal opportunities

- Stronger position in the domestic legal system
 - The rights of the child are presented holistically, not in a fragmented way
 - The Convention text can be used directly
 - The most loyal way to make the CRC law, children's rights are not modified by the legislator
 - Easier to hold the Government to account
 - In Norway, local authorities became bound by the Convention

Legal opportunities, cont.

- International legal harmonisation
 - States use the same text
 - Interpretive documents at the international level are relevant
 - Dynamic interpretation – the UN Committee may lead the way

Incorporation of the CRC – challenges

- Fear of increased litigation
- The CRC is ‘too vague and aspirational’
- Budgetary implications of justiciability, interference with the sovereignty of Parliament

Norway: Increased litigation?

- The CRC is increasingly used in litigation but mainly where the case would have been brought anyway
- Incorporation has apparently not led to more cases
- If the 'vague and aspirational' provisions are used in litigation, it is as an additional argument
- No budgetary implications of justiciability so far
- Children and young people (under 18 years) cannot bring cases themselves, they have to be represented
- Courts are not child-friendly. A proper complaints mechanism would be useful for children

Interpretation of the CRC by the courts

- Varying. Some are bold, some more cautious
- The Supreme Court: both ways.
 - Immigration cases: cautious, but with strong dissenting opinions
 - Child protection cases: more child rights friendly
- The general principles are applied most frequently
- For children in conflict with the law art. 37 and 40 are used
- General comments are given «great weight» (finally)

Awareness of children's rights

- Lawyers: incorporation was the starting point
- Municipalities: Ministry made a guidance only then
- Children + public: much more since incorporation
- Professionals working for and with children:
 - Child protection system: gradually increasing
 - Immigration: strong awareness, but in practice?
 - Teachers, healthcare workers, police: slowly coming, more training needed
- County Governors' programme «The Giant Leap» has been important at the local and county level

Prevention of violations?

- Prevention of violence:
 - In the upbringing and at school: yes
 - In relation to deaths of children by violence in the home: obligation to report is discussed with a child rights approach
- Including children's views, e.g. in child protection
- Issues in the corona period:
 - The right to education has been discussed during home schooling and after
 - The right to assistance for children with a difficult care situation has been raised
- The Children's Ombudsperson's use of the CRC

Remedy and redress for violations?

- Cases on e.g. compensation for insufficient schooling or inadequate action from child protection authorities are argued with a child rights approach
- But uncertain whether incorporation has led to remedy and redress in more cases
- A single child-friendly complaints mechanism would probably help

A culture change in how children are viewed?

- Children are seen as subjects of rights, not just an object of concern or someone we should be kind to
- Best interests of the child on ‘everbody’s’ lips, but still a way to go in practice
- Children’s right to participation:
 - Individual decisions: A growing awareness of children as actors in their own lives
 - Children as agents of change in general policy-making: it’s coming, but we are not there yet

A need for additional legal measures?

- Include the contents of relevant rights into sectoral legislation
- Best interests of the child into all relevant legislation, with some criteria specified
- Children's participation: require feedback to the child/children
- Better solutions for including children's views in policy-making processes

Conclusion

Full and direct incorporation has been a success in Norway:

- Few critical voices
- The CRC has a strong position in the law
- Awareness before and after is hardly comparable
- Training of professionals since then and ongoing
- Central authorities became more committed, including in legislative processes
- Change in culture: yes, the child is viewed as a rights holder

Thank you!

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Mairi Macpherson

Deputy Director for Creating Positive Futures
Children and Families Directorate
Scottish Government



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Q&A

- Please write your question or raise a discussion point in the Text Chat
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Mr Bruce Adamson
Children and Young People's Commissioner
Scotland



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Thank you for joining us

The recording of the lecture will be made available on the Moray House School of Education and Sport website in due course.



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Programme

14.00-14.05	Introduction to the Annual Lecture	Professor Kay Tisdall, Children & Young People MHSES University of Edinburgh
14.05-14.10	Welcome to the Annual Lecture	Professor Richard Andrews, Head of School MHSES, University of Edinburgh
14.10-14.40	Annual Lecture	Professor Kirsten Sandberg, Professor of Law, University of Oslo
14.40-14.50	Comment	Mairi Macpherson, Deputy Director for Creating Positive Futures
14.50-15.15	Questions and Discussion	Chaired by Kay Tisdall
15.15-15.25	Comment	Mr Bruce Adamson, Children and Young People's Commissioner Scotland
15.25-15.30	Conclusion	Kay Tisdall