

Book and media reviews

Are we nearly there yet? The fractious journey to incorporating children's rights into national law

Kilkelly, U., Lundy, L. & Byrne, B. (Eds.) (2021). *Incorporating the UN Convention on the Rights of the Child into National Law*. Cambridge, UK: Intersentia. xvi + 366pp., £75 (Paperback) ISBN: 9781780689920; £75 (eBook) ISBN: 9781839701764.

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Almost all states have ratified the UN Convention on the Rights of the Child (UNCRC) and have an obligation to undertake *all appropriate legislative, administrative, and other measures* to implement the rights in the Convention (UNCRC, Art. 4). This book provides a comprehensive and thorough examination of the measures being taken at a national level to give effect to children's rights through direct and indirect legal incorporation of the UNCRC. It provides a timely update of the research carried out by the same authors in 2012 (Lundy, Kilkelly, Byrne & Kang, 2012; Lundy, Kilkelly & Byrne, 2013). The book includes contributions from children's and human rights' experts based in 12 states with different experiences of the legal incorporation journey and its impact on children's lived experiences of their rights. The states, all of whom have ratified the UNCRC except the USA, were chosen to reflect the spectrum of incorporation, from non-legal measures or low-key legal measures to give effect to some rights in the UNCRC (minimalist) up to full and direct incorporation of the UNCRC in domestic law (maximalist).

Although ratifying the Convention is a starting point, this does not necessarily translate to states recognising children's rights in their domestic legal systems. The next step to effective protection of children's rights requires incorporation of the UNCRC or the implementation of legal measures to give the UNCRC standing in national law and enable children to realise their rights.

Each state examined in the book is on a different journey and at a different stage of legal incorporation, demonstrating that incorporation must take account of the different legal, political and social traditions of each state, which can best be understood by experts with knowledge of the national context. The overarching premise of the book is that full incorporation of the UNCRC into a state's domestic law, means a state can more effectively protect, respect and fulfil children's rights and children have access to justice, meaning that they can claim their rights as rights holders.

Strengths of the book

Twelve jurisdictions were chosen to reflect the different stages of the journey to incorporation and to illustrate the diversity of methods of legal incorporation in the context of different legal and constitutional frameworks. Although most of the jurisdictions covered in the book are in the Global North, the inclusion of Mexico, China and South Africa provides support for the universality of children's rights. However, there is a healthy dose of realism injected into the analysis which acknowledges the limitations of legal incorporation in terms of the lived experience of children.

The book strikes a note of hope by demonstrating that there is increasing interest in legal incorporation of the UNCRC at a national level. As more states incorporate children's rights into domestic legislation and give effective redress for violations of their rights, the visibility of children on the global stage is further amplified and recognised. This book provides a useful toolbox for advocates seeking to persuade governments to incorporate and implement the UNCRC into domestic law.

Important features

The book identifies four methods of incorporation adopted by States:

1. Full direct incorporation,
2. Constitutional incorporation,
3. Indirect incorporation, and
4. Specific measures implementing certain rights.

Each state is at a different stage in the journey and moving towards achieving the three hallmarks of a 'successful' incorporation: children as rights holders, justiciability of children's

rights and children's visibility both in law and in policy making. Although none of the countries examined in this volume had achieved all three, there is evidence that the countries closer to full incorporation were able to point to examples of these hallmarks in practice. For example, Sweden (p. 205) is a good example of a rights-based approach to incorporation and recognising children as rights holders. South Africa (p. 147) is a beacon of the justiciability of children's rights and the judiciary embracing the UNCRC. Mexico (p. 261) adopted a more child-rights based approach to law and policy following a series of constitutional reforms between 2000 and 2014 incorporating the UNCRC.

The different state experts identified factors which influence, promote or impede the different approaches to incorporation. Alongside implementing measures giving effect to children's rights or measures leading to full incorporation, the contributors highlight the importance of other factors such as key influencers in the process - children, the presence of civil society and children's national human rights institutions and organised coalitions of children's rights advocates. Public awareness and perceptions of children's rights, political will to give effect to children's rights and the country's relationship with international law were also influential factors.

Many states have established laws on children which are primarily focused on their protection and welfare, but these measures are not necessarily reflective of children's rights in the UNCRC (p. 338). Full incorporation should not be predicated on the outcomes for children, even though there is tangible evidence that there is a correlation between higher levels of well-being and respect for children's rights (p. 348 and 350). For states which have embraced full incorporation, this is not the end of the journey, as Friðriksdóttir observes '[i]t remains a challenge to ensure legislation is given full effect in a constant, appropriate and effective manner' (p. 301).

What is missing?

Unfortunately, the book omits to consider the value of human rights education (HRE) and to what extent this is relevant to the incorporation journeys of each state. HRE is not identified as a non-legal measure of implementation or an approach to improve children's lived experiences of their rights. The lack of discussion on HRE is perhaps unsurprising given the legal focus of the book, however, this is and should continue to be recognised as an important element in full incorporation of children's rights in national law and to ensure states fulfil their obligation under Article 42 UNCRC, 'to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike'.

Conclusion

This careful examination of 12 jurisdictions reveals that the journey to incorporation is not linear nor is there one true path. Each of the states featured in the book have approached incorporation differently depending on their political, social and economic frameworks and traditions. Unfortunately, some states have stalled on their incorporation journey only taking minimal steps to comply with obligations under the UNCRC (e.g. Australia), whereas other states, e.g. Mexico, Iceland, Norway and Sweden have fully incorporated the UNCRC, giving effect to children's rights in domestic law. Although Scotland has adopted a maximalist approach and have introduced legislation to give effect to the UNCRC, this was (at the time of writing) stalled by the UK Parliament and Supreme Court.

The findings in the book support previous studies that greater levels of incorporation lead to greater levels of compliance with children's rights (p. 336). In states, such as Ireland there is greater monitoring of domestic law against the standards in the UNCRC. However, for some states, e.g. New Zealand, the focus is on improving children's well-being rather than on improving children's lived experience of their rights. However, in many states, incorporation of children's rights is a distant goal beyond the horizon, with children facing significant hurdles to claiming their rights.

References

- L. Lundy, U. Kilkelly, B. Byrne and J. Kang (2012). *The UN Convention on the Rights of the Child: A Study of Legal Implementation in 12 Countries*. Belfast: UNICEF-UK and Queen's University Belfast. Retrieved from <https://www.unicef.org.uk/publications/child-rights-convention-2012-report/>
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