

Locating Scotland in the 20th Kilbrandon Lecture: Children of the beloved country – lives and legacies from Kilbrandon to Mandela

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Abstract

This paper is a response to the 20th Kilbrandon Lecture - 'Children of the beloved country – lives and legacies from Kilbrandon to Mandela' – delivered by Professor Ann Skelton. This response serves to locate Professor Skelton's experiences in South Africa and at the United Nations in Scotland's own unique national context, as a country embarking on an ambitious programme of change in its human rights journey. This response considers the incorporation of the United Nations Convention on the Rights of the Child as a landmark moment in Scotland, overcoming and utilising a complex policy landscape, and as a commitment and responsibility despite compounding national and global crises threatening the rights and wellbeing of children in Scotland.

Keywords

Children, child rights, UNCRC incorporation, Kilbrandon lecture

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Introduction

In March 2021, the United Nations Convention on the Rights of the Child (UNCRC) Incorporation Bill was unanimously passed into Scottish domestic law (Scottish Parliament, 2021). Around the world, children’s rights experts noted the ambitiousness of the incorporation approach taken by Scotland – one of, if not the, most holistic approaches to incorporation of the UNCRC ever seen.

Its incorporation is a landmark moment in Scotland’s human rights journey. The UNCRC is to be the first legally incorporated UN human rights treaty in Scotland, the first Convention specifically relating to children’s human rights, and the first economic, social, cultural, and environmental human rights law obligations to be given force within the national legal system (Shields et al., 2023, p. 3). It comes as a separate but parallel human rights process to those which have been underway for over two decades, which will see Scotland incorporate four further UN human rights treaties. Those at the forefront of improving human rights protection in Scotland promote a mission and aspiration to be a global leader in human rights. The foundation of this movement is building a culture of human rights and human dignity, so that every person has what they need to claim these rights as their own (First Minister’s Advisory Group, 2018, p. 10). There is no clearer opportunity to get this right for every child, starting at the very beginning of life.

This paper is a response to the 20th Kilbrandon Lecture - '*Children of the beloved country – lives and legacies from Kilbrandon to Mandela*' – delivered by Professor Ann Skelton. This response serves to locate Professor Skelton’s experiences in both South Africa and at the United Nations in Scotland’s own unique national context, as a country embarking on an ambitious programme of change with respect to human rights protections.

UNCRC incorporation in Scotland: A landmark moment?

Two years on from the unanimous passing of the UNCRC Incorporation Bill in Scotland, it has still not been incorporated into the national legal system. The Bill took a ‘maximalist approach’ to the incorporation of the UNCRC, meaning it

is to be brought into the national legal system to the fullest extent possible (Scottish Parliament, 2023). However, this ambitious approach is somewhat challenged by Scotland's unique constitutional settlement, as a devolved government within the United Kingdom. Within the UK's devolution settlement, the UK Parliament maintains control over matters considered **reserved** – issues like foreign policy, defence, and constitutional affairs (Scotland Act 1998, sch. 5). Conversely, the Scottish Parliament can legislate on areas considered **devolved** – issues like healthcare, education, and agriculture.

In response to the Bill's passing the UK Government pursued a successful legal challenge to Scotland's UNCRC Bill, where four sections were found to go beyond the scope of the powers afforded to the Scottish Parliament (UK Supreme Court, 2021). In response, amendments are required to ensure the Bill considers only areas within Scotland's legislative competence before the UNCRC can be successfully incorporated into the national legal system.

The complexity which currently sits at the heart of the UK's political landscape can be characterised by this differing approach to human rights protection at the Scottish and the UK level. Where Scottish political leaders and civil society have continued to echo their commitments to broader and wider human rights protection, the UK Government have expressed an interest in further legal challenges to other Bills which consider human rights and equalities – such as the [Gender Recognition Reform Bill](#) - and have committed to repealing the UK's Human Rights Act 1998 after over two decades, replacing it with a weakened British Bill of Rights (House of Commons Library, 2022; UK Government, 2023).

An explicit timeline on when the UNCRC will attain national implementation remains unclear, with no major update since the [May 2022 announcement](#) that the Bill required further consideration and consultation with children (Scottish Government, 2022). Children's rights experts and practitioners remain hard at work delivering guidance, information, and training to prepare government agencies, departments, and local authorities for what might change come the incorporation of the UNCRC. Despite delays and setbacks, a founding characteristic of Scotland's children's rights movement is the persistence of hope, responsibility, and courage from children themselves and from adults who have key roles in their lives.

Seizing the opportunity: Improving the lives of children in Scotland in times of compounding crises

Professor Skelton spoke of South Africa's missed opportunities spanning 40 years prior to the adoption of the post-apartheid South African Constitution in 1996, and the importance of knowing when to 'spot the moment, and go for it' (Skelton, 2022). As a result of this commitment to improve lives, the South African Constitution's protection of economic, social, cultural, and environmental rights is one of the most successful examples of constitutional human rights protections in the world (Skelton 2022). Scotland's human rights journey is about seizing opportunities against the backdrop of, and indeed in spite of, compounding crises which offer challenges, and threaten regression from the steady progress made over the past 20 years in human rights protection, sustainable development and public health (Shields et al., 2023). The incorporation of the UNCRC ignites a conversation about making real improvements in the lives of children in Scotland, and building a country which champions human dignity and a human rights culture (First Minister's Advisory Group, 2018, p. 10). Taking inspiration from Kilbrandon's legacy and ethos, it is paramount to remember that any approach to incorporation is only as effective as the success of its implementation. This requires direct and real improvements at each and every level – nationally, regionally, and individually (Evans, 2022; Vandenhole, 2012).

There are essential aspects to successful incorporation of the UNCRC - such as upholding children's right to be heard in participation-focused, child-friendly, and age-appropriate decision-making processes - so that children and young people's voices are heard in the decisions which affect their lives and have the tools they need to hold adult decision-makers accountable (Bradwell, 2019; Secker, 2009). However, these are not sufficient to realise the full benefits of the implementation of this transformative document, particularly with respect to the delivery of socio-economic outcomes (Shields et al., 2023).

The UNCRC considers a universal approach to children's human rights, which includes economic, social, cultural, and environmental rights on an equal footing (UNCRC, para 2). Children, and particularly those already facing adversity, are

most at risk of being left behind, and not having their economic, social, cultural, and environmental rights fulfilled (Shields et al., 2023). These rights include issues which are important levers of change in Scotland –rights to housing, food, benefits from social security, etc. – and are key factors within any ambition to eradicate the current one in four children in Scotland living in poverty (Alston, 2018; Nolan and Pells, 2020, p. 117).

These rights are also particularly important in the current context of compounding crises. Crises impacting the rights and livelihoods of children living in Scotland include overcoming the legacy of COVID, the emergence of a cost-of-living crisis, and the ever-looming threat of environmental degradation. The legacy of COVID on our rights and wellbeing is demonstrated in the current UK-wide effort to grapple with extremely stretched essential services, including healthcare and education (Care Quality Commission, 2021). Scotland is also currently subject to a cost-of-living crisis which requires a concerted effort at every level to protect against further regression in human rights, child poverty and socioeconomic indicators, noting the extreme and disproportionate effects of rising costs on those already facing hardship, including women and children (Robertson et al., 2022). Finally, we remain acutely aware of the immediate, short-, medium- and long-term impacts of environmental and climate crises on children, as some of the most vulnerable to environmental harm and climate change, despite contributing the least to its degradation (Morgera et al., 2022, p. 2). Overcoming these challenges, and improving collective responses to future crises, is critical to protecting human rights, livelihoods and wellbeing, and to attaining an equitable future.

We face troubling times, where failing to progress is by its very nature regression. Scotland's international human rights obligations, specifically considering children's economic, social, cultural, and environmental rights, are founded on principles of non-regression and progressive realisation - best explained as ensuring steady improvements in socio-economic outcomes, and preventing any declines (UNCRC, 1989, art. 4). Failure to progress due to budget constraints or financial difficulty disproportionately harms those children in Scotland who are already in the most vulnerable situations (Shields et al., 2023). While Scotland faces a complex backdrop in every level and sector which

challenges our ambitions to be a world leader in human rights protection, these are obstacles that must be faced head on, as to do nothing will only make things worse.

Conclusion

The incorporation of the UNCRC in Scotland is only the first step in a long process toward implementation, and the ultimate creation of a culture in Scotland which upholds respect, dignity, and human rights for all.

This response has served to contextualise Scotland's current ambitions with respect to Professor Ann Skelton's experiences and reflections from South Africa. Noting the success of the South African Constitution's ability to hold decision-makers accountable to socio-economic progress, Scotland's incorporation of the UNCRC must meaningfully implement children's economic, social, cultural, and environmental rights. Protecting and fulfilling economic, social, cultural, and environmental rights will offer the most immediate improvements in the lives of those children in Scotland facing the greatest adversity. And so, these rights require commitment even in times of persisting, emerging and compounding crises.

At the heart of Professor Ann Skelton's 20th Kilbrandon Lecture was a sense of progress driven by human dignity and connectedness – a shared feature of humanity across, between, and within countries, regions, and cultures. In any journey to improve the lives of children in Scotland, honouring dignity, equity, human rights, and togetherness is essential.

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