

*Welcome to the*  
Bergen Exchanges on Law & Social Transformation

Venue: Bergen Resource Centre for International Development, Jektviksbakken 31, Bergen

*20 – 24 august 2018*



Twitter: #BeEx2018

Bergen Exchanges 2018 Focus Areas:

## HEALTH & the LAW

**20. August Keynote Address** by **Norman Daniels** Harvard University, USA  
*“Human Rights and Fair Priorities in Health”*

&

## RIGHTS of the CHILD

**23. August Keynote Address:** by **Helen Stallford** University of Liverpool, UK  
*“Participation for Unaccompanied Children”*

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*Annual lecture on Law & Social Transformation*

**Sally Engle Merry**

**From human rights to local justice  
& the quiet power of indicators**

**University Aula, Wednesday 22 August 15:30 -17:30**

# The Bergen Exchanges on Law & Social Transformation

is a meeting place for scholars and practitioners from across the globe who seek to understand how law serves as an instrument of change - and how it shapes and is shaped by power relations. During a week of public discussions, we examine strategic uses of rights and law and how legal institutions function as arenas for political contestation (*lawfare*). The multi-disciplinary and international nature of the *Bergen Exchanges* makes it a unique space for improving research strategies and methods to grasp the effects of law & lawfare. This includes the use of legal instruments by governments to shape societies – whether through constitutional change, international treaties, statutes or regulations – as well as by social actors who go to court or otherwise engage rights and law to advance their goals. Effects take different forms. How legal strategies alter political dynamics, ideas and discourses can be as important for long term transformation as more immediate changes in laws, policies, or the distribution of resources. We also seek to better understand the functioning of legal and administrative institutions as they adjudicate, interpret and implement legal norms. Topics to be discussed include:

- **How law shapes people's chances to live healthy lives.** This is addressed from many angles: what are the effects of rights, law and court rulings on inequalities in health? Can law stem **corruption** in health systems? Prevent child obesity? How does criminal law produce health and ill health? What happens when children go to court to secure future generations' right to a healthy environment?
- **Child rights.** Is Norway fulfilling its international commitments? How do child welfare services in different countries exercise discretion 'in the best interest of the child'? How should cultural differences be taken into account in the implementation and enforcement of children's rights? How should children's right to participation be institutionalised - in the criminal justice system, and by immigration authorities?
- **Just health care. How can the right to health be protected when resources are scarce?** And should priority be given to children's health rights?
- **How politics and law determines sexual and reproductive health.** What makes abortion, homosexuality and sex education so important for politics? How does legalizing abortion affect access to abortion care? Does it matter whether the abortion law is liberalized by the legislature or through court rulings? What are the health consequences of criminalising homosexuality? And does removing transgender as a diagnosis affect access to treatment for transgender people?
- **Intersectionality** - how to best study the ways in which disadvantage on different dimensions interact?
- **Understanding backlash against democracy.** Why do authoritarian regimes care about constitutions? and what is the role of courts when democracies are backsliding
- Experiences of **women judges** - how do they get to the bench and what difference do they make?
- **Law and Technology** - how new technology creates new legal challenges - and how "computer judging" changes legal institutions and professions
- **The human right to water.** Can rights secure better access to water for poor people?

In connection with the Bergen Exchanges, we have an annual, interdisciplinary **PhD course** on **Effects of Lawfare**, which this year, in addition to the general track, offers specialization in **Health & Law** and **Rights of the Child**. The PhD course is free of charge and open to applicant from Norwegian and international institutions on a first-come first serve basis (but out-of-town applicants have to cover their own travel and accommodation costs). Information is available at the [www.lawtransform](http://www.lawtransform.no) webpage. **To join our team of volunteers**, contact us at [info@lawtransform.no](mailto:info@lawtransform.no).

**All events are public and participation is free of charge. Sessions are normally recorded.** If this is a problem for you, please let us know. If you have a **disability and require adjustments** to participate on an equal basis with others, please let us know in advance at [info@lawtransform.no](mailto:info@lawtransform.no).

The Bergen Exchanges are made possible through contributions from the research projects that form part of LawTransform, whose research is presented throughout the Exchanges and by generous support from the **Chr. Michelsen Institute (CMI)**; the **University of Bergen (UiB)** - and in particular the **Centre for Research on Discretion and Paternalism** ([www.discretion.uib.no](http://www.discretion.uib.no)) and the **Bergen University Fund**; the **Raffo Foundation**; and the **Mayor of Bergen**.



# Pre-Exchanges

## LawTransform PhD course “Effects of lawfare”

(Sampol 902-18H) 15-24 August

### Public events:

#### Thursday 16 August 15:30 – 17:00 **Coral Whisperers: Breathing Law into Life**

**Irus Braverman** (Professor of Law, Adjunct Professor of Geography, University at Buffalo, NY, USA)

In recent years, a catastrophic global bleaching event devastated many of the world's precious coral reefs. Working on the front lines of ruin, today's coral scientists are struggling to save these important coral reef ecosystems from the imminent threats of rapidly warming, acidifying, and polluted oceans. Science and law are entangled in many ways. Braverman is especially concerned with the more mundane and contemporary entanglements between coral life and law—law's breathing life into corals by protecting their continued existence, and coral's breathing life into law by providing it with the materiality required for governance. Indeed, corals are saturated with law, which protects, ignores, or damages them—or any combination thereof; they are also saturated with science, which names, classifies, and lists them, thereby making them legible, or illegible, to the law. Braverman's talk will draw on multiple interviews with administrators and managers to highlight, in particular, how the traditional focus on species by conservation laws such as the U.S. Endangered Species Act disadvantages corals and, relatedly, how ill-equipped such laws are when dealing with the imminent threats to coral life on a global scale. While this fundamental incapacity of law to see, manage, and protect coral is, for the most part, a systemic failure, leading to much frustration and despair toward the law on the part of coral scientists, law can also be used as a tool for resistance and change, thus providing hope for corals in the Anthropocene. Braverman's book **Coral Whisperers: Scientists on the Brink** is forthcoming at University of California Press, November 2018.

#### Friday 17 August: 18:00 - 21:00 **Film & Reflection: Samouni Road**

In the rural outskirts of Gaza City a small community of farmers, the Samouni extended family, is about to celebrate a wedding. It's going to be the first celebration since the last war. Amal, Fuad, their brothers and their cousins have lost their parents, their houses and their olive trees. The neighborhood where they live is being rebuilt. As they replant trees and plow fields, they face their most difficult task: piecing together their own memory. Through these young survivors' recollections, "Samouni Road" conveys a deep, multifaceted portrait of a family before, during and after the tragic event that changed its life forever.

(Link to the film: <https://www.quinzaine-realisteurs.com/en/film/samouni-road/>.)

## Closed/by invitation session and events:

- **“Queer Lawfare in Africa” Book workshop** 17 August, 15:00 - 20:00
- **“Political determinants of sexual and reproductive health” & “SSR lawfare” Project Workshop** 17-18 August
- **“Researching intersectionality”** 21 August 14:30 - 17
- **Nature Walk with social event** 18 August 15:00
  - Meet at CMI or hotel reception at 3pm or at Fløybanen at 3:30. If going directly for dinner, meet in hotel reception at 17:30.
- **INTPART-project workshop** Saturday 25 August 9:00 - 13:00
- **“Water Rights”-project workshop** 25 August 13:00 - 26 August 14:00

# Bergen Exchanges on Law & Social Transformation

## Monday 20 August: HEALTH & the LAW

### 9:00 - 9.30 Opening of the 2018 Bergen Exchanges

CMI Director **Ottar Mæstad**

University of Bergen Prorektor **Margareth Hagen**

**Bente Moen** (tbc\*) Head of UiB Global Challenges

Chair: **Siri Gloppen** (UiB/CMI LawTransform)

### 9:30 - 11:00 Keynote Address & Roundtable



#### Human Rights and Fair Priorities in Health

**Norman Daniels** Harvard University, USA (Photo HSPH)

The right to health aims to secure for all the highest attainable standard of physical and mental health, but what when resource scarcity makes it impossible to provide optimal health care for the entire population? How should we prioritise available resources fairly between different health needs? Can the right to health be useful in the pursuit of fair priorities in health, or does maximalist conception of health rights undermine efforts to advance justice in health?

#### Human Rights and Fair Priorities to Children in Health

The keynote lecture by Norman Daniels, will be followed by a roundtable on how to set fair priorities to children when allocating resources in health. Should we, when prioritising health resources, use other standards for effectiveness and costs of treatment with regard to the medical needs of children? What does the obligation to ensure the highest attainable standard of physical and mental health mean for disabled children? And when should children have autonomy over decisions regarding their own health – for example regarding gender-affirming treatment, male circumcision or blood-transfusion?

Chair: **Alicia Yamin**

With **Norman Daniels**, **Roberto Gargarella** (Di Tella University, Argentina), **Ole Frithjof Norheim** (UiB), **Kristine Onarheim** (Ålesund Hospital) and **Jesse Tomalty** (UiB)

11:15 - 12:15

**Litigating health rights – what happened with the mega-judgments?**

The first decade of the millennium has witnessed a surge in structural cases decided by courts of the Global South regarding health rights and their social determinants. In widely discussed mega decisions adopted in India, Colombia and Argentina courts have experimented with a variety of procedural and remedial tools in environmental health, food or health systems design. A first generation of pioneer socio-legal studies have scrutinized the context of the cases, the weak and strong remedial approaches deployed by courts, and the cases' early direct and indirect effects. As the cases enter their second decade of life, time is ripe to reopen the conversation to comparatively assess courts strategies and performance. What are the challenges faced by courts and other actors dealing with protracted implementation processes? How have courts internal organizational capacities and resources evolved? Has the execution of the decision involved other courts or administrative bodies? How have participation, information and transparency mechanisms been shaped? What about communication strategies? How have the impacts of the mega cases evolved? The panel will discuss from a comparative perspective the transformations observed in the courts, governments and civil society after a decade of experimentation.

Chair **Henriette Sinding Aasen** (University of Bergen)

With: **Paola Bergallo** (Di Tella University, Argentina); **Sudhir Krishnaswamy** (Azim Premji University, India); **Alicia Yamin**

**12:30 - 13:30 Abortion Lawfare**

The past year has seen surprising changes towards legalization of abortion in countries known for their strict abortion laws. **Chile** liberalized their 'under-no-circumstances' stance in August 2017; **Ireland** went to the polls on Friday 25 May to vote in a referendum that returned a large majority in favour of end the country's ban on abortion; and, most recently **Argentina** has seen an amazing public deliberation – in and out of Congress – on a bill to allow abortion in the first 14 weeks, resulting in the lower house passing the bill in June 2018. Although the Bill was rejected by the senate on 9 August, the process has shifted public opinion and created new opportunities for advancing women's reproductive rights. Why do we see these moves, and why now? In this roundtable we meet some of the key 'movers' behind these reforms. We will also hear why the **United States** is moving in the other direction, a development that is expected to escalate with the appointment of a new Supreme Court justice.

Chair: **Alicia Yamin**

Introductions: **Paola Bergallo** (Di Tella University), **Máiréad Enright** (Birmingham Law School)

Participants: **Joseph Cozza** (University of Texas at Austin), **Ruth Rubio Marin** (University of Sevilla); **Mindy Roseman** (Yale University)

**14:30 - 16:00 Children's Climate Litigation:****Future Generations' rights to a healthy environment**

We see a growing number of court cases where children challenge the state for not acting responsibly to secure their (and future generations') rights to a healthy environment. Most of the cases have been lodged before courts in the USA but we also see in other parts of the world, including in Colombia, where a landmark judgment was handed down by the Supreme Court in April 2018. Are children lodging these cases really active participants or mere symbols? And what is the likelihood of winning these cases- and of having real world effects?

Chairs: **Catalina Vallejo** (CMI/LawTransform) & **Esmeralda Colombo** (UiB),

With: **Nicholas Orago** (Nairobi University); **Conrado Hubner Mendes** (University of Sao Paulo), **Jørn Øyrehagen Sunde** (UiB), **Cesar Rodriguez-Garavito** (Los Andes University,, on Skype)



**18:00 - 19:30 Evening exchanges****The Role of Law in Global (and National) Health Governance**

**17:30 - 17:45 Pick-up in hotel reception (Scandic Byparken) & Bergen Resource Centre reception area to UiB Faculty of Law, Auditorium 4**

**Venue: UiB Faculty of Law, Auditorium 4**

This roundtable will explore the potential and challenges of harnessing law, including international human rights law, to promote equity and accountability in health systems and global health governance. Agenda 2030, and the Sustainable Development Goals, which followed the Millennium Development Goals, sets out an ambitious agenda on an array of issues of global health. The SDGs, as opposed to the MDGs, set out a universal framework that is applicable to high-income and low-income countries alike, and concentrates in inequalities. Achieving goals, such as in health, are explicitly acknowledged to be connected to other goals, such as sustainable production, gender equality, and effective and transparent institutions. The ongoing Lancet-Georgetown/O'Neill Commission on Global Health and the Law examines how law can be used to translate vision into action on sustainable development and a number of UN groups are examining how legal reform and enforcement can be used to strengthen accountability in global health. The UN Secretary General's Independent Accountability Panel for the Global Strategy on Women's Children's and Adolescent Health (IAP) will be exploring the multiple layers of laws and institutions required to private sector accountability for their role in global health. This role goes beyond provision of services or medicines and commodities to influencing health, through direct consumption patterns, as well as creating social norms, and influencing political processes, as well as financing development. This brings into focus the tremendous array of legal forms and spaces, from regulatory frameworks to judicial enforcement to securities, tax and trade legislation in other countries. But there are many challenges to harnessing laws to effectively regulate the asymmetries of power and lack of accountability that pervades national health systems as well as global health architectures, due among other things to public incapacity and sometimes capture. Moreover, of course, often laws are punitive and discriminatory and have negative effects on both health of certain populations, as well as on inclusive democracy. This panel will explore the potential and challenges of harnessing law, including international human rights law, to promote equity and accountability in health systems and global health governance. Discussion will include concrete experiences from different regions that offer lessons (positive and negative), as well as analysis of the global stage.

Introduction by **Alicia Yamin**

With **Johan Dahlstrand** (SIGHT, Sweden), **Ephrem T. Lemango** (Ministry of Health, Ethiopia), **Mulumba Moses** (CEHURD, Uganda), **Ole Frithjof Norheim** (UiB), **Danielle Rached** (University of São Paulo),

Followed by **welcome reception** in **Knut Fægri's house**

**19:30 - 19:45 Pick-up in hotel reception (Scandic Byparken) to Knut Fægri's house**

# Tuesday 21 August HEALTH & the LAW

**7:00 - 8:00 Running with Bheki** 5-7 km route. Meet in the lobby at Scandic Byparken

## 9:00 - 10:15 Corruption and health

Corruption is a major health risk. It takes different forms – from bribes and charging of unofficial fees, via sale of fake or substandard drugs, to corruption in public procurement of drugs and infrastructure, and diversion of public health funds. Corruption is one of the biggest threats to universal health coverage and estimates indicate that in some countries, as much as 80 percent of non-salary health funds disappear before reaching local health facilities. This round-table discusses how the scale and form of corruption vary between health systems, and some of the efforts taken to address it.

Moderator: **Sara Ekblom** (Jurist, LawTransform)

With: **Taryn Vian** (Clinical Professor and Associate Chair of Global Health, Boston University), **Monica Kirya** (Senior Program Advisor at U4, CMI), and **Tina Søreide** (Prof. of Law & Economics, NHH; Leader of LawTransform Corruption & Law Unit).

## 10:30 - 11:20 Researching intersectionality

Human rights violations are closely related to structural inequalities in society – when we look at barriers to the implementation of the right to health we need to take as a starting point how overlapping structures of discrimination – age, sex, race, class, religion, caste, sexual orientation, gender identity – Intersect to form barriers to rights realization, including of the right to health. This poses challenges for research as well as for policy.

Chair: **Ruth Rubio Marin** (University of Sevilla)

Introduction: **Jayna Kothari** (CLPR, India)

Participants: **Ciara O'Connell** (University of Pretoria); **Jackie Dugard** (Wits University Johannesburg) **Richard Sambaiga** (UiB); **Ingvild Skage** (UiB/LawTransform), **Maya Unnithan** (University of Sussex),

## 11:30 - 12:30 Criminalization of queer sexuality: drivers and health effects

What is driving the political attention to homosexuality or “gayism” (meaning any form of non-heteronormative sexual orientation and gender identity) in contemporary African politics? Why is the focus so strongly on criminal law as the means to guard against this “western affliction”? And how can we establish the effects of this politicisation and criminalization? This roundtable present findings from the *LawTransform* research projects on “Political Determinants of sexual and reproductive health in Africa” and “Sexual and Reproductive rights Lawfare: Global Battles”.

Chair: **Malcolm Langford** (UiO)

Participants; **Leo Arriola** (UC Berkeley); **Adrian Jjuuko** (University of Pretoria/Hrapf)); **Rudo Chigudu** (University of Pretoria); **Hamada Monwer**; **Ayo Sogunro** (University of Pretoria), **Getnet Tadele** (University of Addis Abeba)



**12:30 - 13:15 Beyond Virtue & Vice: Rethinking sex, health and criminal law**

All societies have laws regulating sexuality and reproduction, and the adequacy of these laws are often the centre of heated debates - as during the #metoo campaign. In this seminar we will discuss the criminal regulation of sex, gender and reproduction across countries, and how human rights actors can think differently about recourse to criminal law as a remedy for violations. Among the issues to be discussed is gestational surrogacy. The special rapporteur report on the sale and exploitation of children, in her report on surrogacy earlier this year concludes that commercial surrogacy is baby selling ([http://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/HRC/37/60](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/HRC/37/60)) This is a view shared by many (Nordic) feminists who view surrogacy as no different than prostitution and want it criminalized and abolished - others see it as a reproductive right. The discussion will be introduced by **Mindy Roseman** based on her forthcoming co-edit volume *Beyond Virtue and Vice: Rethinking Human Rights and Criminal Law* (U of Penn press, Jan 2019)

Chair: **Adrian Jjuuko** (University of Pretoria/Hrap

Introduction: **Mindy Roseman** (Yale University)

Participants: **Daniela Alaattinoglu** (European University Institute), **Jørn Jacobsen** (Faculty Law, UiB)\* and **Christine Jacobsen** (SKOK center for gender research, UiB)

**14:30 - 17:00 Researching intersectionality: PhD & workshop session (closed)****18:00- 19:30 Evening exchanges****Law, politics and adolescent sexual and reproductive health: evidence of impact**

**17:15 - 17:45 Pick-up in hotel reception (Scandic Byparken) & Bergen Resource Centre reception area to Department of Global Public Health & Primary Care**

**Venue: Department of Global Public Health & Primary Care, Kalfarveien 31**

Followed by social event.

Politics and law are major determinants of sexual and reproductive health, affecting the availability and quality of for sexual and reproductive health policies and services, including **abortion care**, as well as access to information and sex education. Health concerns also motivate laws against **genital cutting** and **child marriage**. And political processes and legal norms shape, norms among healthcare providers, and prejudice and stigma in society, with consequences for mental and physical health. Issues of **adolescent sexuality** are particularly politicised in many parts of the world, with consequences for the sexual and reproductive rights and health of young people. In Latin America (and elsewhere) comprehensive sexual education in schools and access to emergency contraception are highly politicised with significant consequences for teen pregnancy rates. Laws relating to the **change of legal and physical gender**, and access to gender affirming treatment vary radically between countries. Many countries have total bans on any change of gender, whether physical or legal, and even where permitted (under more or less strict conditions), age limits often prevent children from changing their gender.



While connections between politics, law and health are widely accepted they are harder to pin down scientifically. How can we establish evidence of impact? This roundtable present findings from the *LawTransform* research projects on “Political Determinants of sexual and reproductive health in Africa” and “Sexual and Reproductive rights Lawfare: Global Battles” and “Competing discourses impacting girls’ and women’s rights: Fertility control and safe abortion in Ethiopia, Zambia and Tanzania.”

Chairs: **Astrid Blystad** and **Karen Marie Moland** (UiB)

Introduction by **Camila Gianella** (CMI)

With: **Marthe E.S. Haaland**; **Irene Maffi** (University of Lausanne/CMI), **Satang Nabaneh** (University of Pretoria/LawTransform); **Carmeliza Rosario** (UiB/LawTransform); **Liv Tønnessen** (CMI); **Nerima Were** (KELIN, Kenya) **Denise Zambezi** (University of Pretoria)

## Wednesday 22 August

**8:00 - 9:00 Running with Bheki** 5-7 km route. Meet in the lobby at Scandic Byparken

**8:30 - 9:45 Breakfast** for the PhD Course students with **Sally Engle Merry**

### 10:00 – 11:00 Law & Technology

Technology is changing the law and the legal profession innumerable ways. This roundtable discusses some of the most pertinent issues – from threats that new technologies - by design or default - are posing to our privacy, and the challenges of developing legal regulations that can adequately handle these challenges; to computer judging that look set to change the way in which judicial institutions operate and the work of the legal profession.

Chair **Jørn Øyrehagen Sunde** (UiB) (

With **Jayna Kothari** (Centre for Law and Policy Research, Bangalore), **Malcolm Langford** (University of Oslo/LawTransform), **Kristin Bergtora Sandvik** (University of Oslo)

### 11:15 - 12:15 BFF-Democracy: Authoritarian Constitutionalism

Regimes moving towards more authoritarian forms of rule, often go to great length to formally amend their constitutions - which seems a paradox since they often seem not to care about adhering to them. Why do authoritarian rulers care about their constitution? What are the marks of authoritarian constitutions and constitutionalism? This panel is linked the LawTransform project on *Breaking BAD: Backlash against Democracy in Africa*.

Chair: **Bekhi Dlamini** (LawTransform))

Introduction: **Svein-Erik Helle** (CMI) and **Lise Rakner** (UiB)

Participants: **Daniel Brinks** (University of Texas, Austin), **Roberto Gargarella** (Di Tella University), (UiB/LawTransform); **Luciana Gross Cunha** (FGV, Sao Paulo), **Edge Kanyongolo** (University of Malawi), **Thandiwe Matthews** (University of the Witwatersrand)

### 12:30 - 13:30 Judging democratic backlash

Many countries are currently experiencing a narrowing of democratic space. This frequently affects the court, both directly and indirectly. It often affects who are appointed (and not appointed) to the bench as well as the terms of their operation. Courts in some cases continue to serve a pro-democratic role, upholding rights and sanctioning violations – but they are also used by governments as part of their strategies to silence the opposition and ensure electoral victories. What makes the difference? This roundtable forms part of a *LawTransform* project on *Breaking BAD: Backlash against democracy in Africa* and discusses the experiences of African courts in comparative perspective

Chair: **Oda Ringstad** (LawTransform)

Introduction: **Fiona Shen-bayh** (University of Michigan) and **Siri Gloppen** (UiB/LawTransform)

With **Daniel Brinks** (University of Texas, Austin), **Roberto Gargarella** (Di Tella University);

**Luciana Gross Cunha** (FGV, Sao Paulo), **Edge Kanyongolo** (University of Malawi), Justice

**Lydia Mugambe** (High Court Uganda),

### 14:00 - 15:00 Women on the Bench

How is it to be a woman judge? What are the incentives and obstacles that women face on the road to judgeship in different societies? And does it make a difference - to the operation of the court, its legitimacy or its judgments - whether there are women judges on a court – and how many they are? In this session **Ruth Rubio Marin** (University of Sevilla and European University Institute) will interview two women who have made it to the bench in different countries about their experiences: **Hanne Sofie Greve** (Justice of the High Court in Bergen and previously a judge of the European Court of Human Rights) and **Lydia Mugambe** (Justice of the High Court of Uganda, who previously worked as legal officer and council with the UN International Tribunal for Rwanda) This is part of a new *LawTransform* project on “Women on the Bench”.

# Annual lecture on Law & Social Transformation



(Photo NYU Law)

## Sally Engle Merry

Silver Professor of Anthropology, New York University College of Arts and Sciences

### From human rights to local justice & the quiet power of indicators

How are international human rights «vernacularized» and applied in local contexts?

And what happens when we develop global indicators to measure their effects?

In the 2019 Annual Lecture on Law & Social Transformation, leading legal anthropologist Sally Engle Merry will discuss what happens when culturally translated information is gathered and analysed in the production of «objective» global indicators, arguing that the design of measurement systems constitutes a power that is rarely acknowledged.

*“those who create indicators aspire to measure the world  
but, in practice, create the world they are measuring”*

## Panel discussion

in Collaboration with the Rafto Foundation

Chaired by Antonio de Lauri (CMI)

with: **Malcolm Langford; Lydia Mugambe; Lise Rakner; Maya Unnithan**

Bergen University Aula **Wednesday 22 August 15:30 - 17:30**

**Followed by reception hosted by the Mayor of Bergen** (by invitation)

**17:30 - 17:50 Pick-up in hotel reception (Scandic Byparken) & outside Bergen University Aula to reception hosted by the Mayor of Bergen**





# Thursday 23 August - Rights of the Child

**7:00 - 8:00 Running with Bheki** 5-7 km route. Meet in the lobby at Scandic Byparken

## 09:00-10:30 Children's Right to Child Friendly Justice

Courts, traditionally oriented towards parental rights and presumptive autonomous individuals, are often criticized for not focusing on children's interests, rights and competencies. Children, who are at the centre of cases relating to them (child custody, child protection, juvenile offenders), are often not engaged as agents in the decision-making process. Reports from children and young people regarding their experiences of the justice system (criminal, family and child protection courts), found a high degree of mistrust (Kilkelly, 2010). Shortcomings such as "intimidating settings, lack of age-appropriate information and explanations, a weak approach to the family as well as proceedings that are either too long or, on the contrary, too expeditious" were just some of the deficits highlighted by the Council of Europe (2010: 7). The Convention on the Rights of the Child, article 12, states that "Children shall be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body." Further, the Guidelines on Child Friendly Justice (Council of Europe, 2010) underscore the necessity of skills and competencies of judiciary staff. **But what does it mean to be heard? Are courts in their practice child-friendly, and how do the child-responsive settings vary across systems? Can children's rights capacity be improved through empowerment and advocacy?** In this session, we will hear results from two action projects on child-friendly courts: 1) "Improving Decisions through Empowerment and Advocacy (IDEA)" includes five countries: Estonia, Finland, Hungary, Ireland, and Sweden. The researchers have provided interdisciplinary training on legal developments, child participation, child welfare and development and staff welfare to lawyers and social workers representing children or children's interests. 2) The Change Factory (Norway) has a training program for district courts and county boards to improve the dialogue and inclusion of children. What have we learnt from these interventions? Are courts becoming more child-friendly?

Moderator(s): **Jenny Krutzinna** (UiB) / **Marit Skivenes**

Participants/introductions: **Laura Kalliomaa-Puha** (Helsinki University); **Kenneth Burns** (University College Cork); **Katle Luhamaa** (UiB); **Staffan Höjer** (University of Gothenburg); **Conor O'Mahony** (University College Cork); **Lajkó Dóra** (Szeged University); **Julia Sloth-Nielsen** (Leiden University); **The Pro's** (Change Factory).

## 10:40-12:10 Changing the system from within: influencing front level practice and politicians' mindset

Societies and states are at a crossroads in how children are to be treated, how their rights should be respected and protected. Children's new position and the emphasis on their rights create tensions and challenge the traditional relationships between the family and the state, and the state's and courts' role towards its citizens. Individuals receiving services are raising their voices and demanding a place at the table where decisions concerning them are being made. In Norway, the experts by experience are attempting to change the system and the decision-making processes, and the Child Protection Professionals – Proffene – have made quite a splash in the Norwegian political and administrative system, bringing the perspectives of children in the child protection service into the public debates and on the political agenda. They are targeting the government from all angles. Groundbreaking in the Norwegian context, Proffene

drafted an alternative child protection law in 2016, parallel to the government's expert committee suggestion.

How did they do it, and did it have any effect? What can the role of “experts by experience” be in such processes? How can children take action and lobby for change? Proffene have implemented several programs at the frontline of our public administration, and one of these is “My life – child protection” in which over 200 child protection agencies across Norway have signed up for making changes according to a child-centric work practice. The program is impressive in its design and its comprehensiveness, but does it work? How can child protection workers, under constant time pressure and with scarce resources, change their way of working with children at risk? The Pro Bono group at UiB has studied the effects of My Life Child Protection, and together with the Pro’s and child welfare workers, this session will discuss how to make changes, and how to make them last.

Moderator(s): **Marit Skivenes**,

Participants/introductions by: **The Change Factory** and **the Pro’s; Tarja Pösö** (Tampere University); **Svanhild Alver** (Bergen Municipality); **Pro Bono Group**, University of Bergen (presentation by **Lisette Holm** with others from the group)

### 12:20-13:30 Making professional decisions and judgements

The UN Convention on the Rights of the Child (UNCRC) is a global and a European standard. It is a legal document with global reach and thus a cosmopolitan imprint, as well as the most far-reaching document explicitly stating the rights of children. Child protection viewed through a prism of children’s rights should consider how the rights of children can and should influence and shape decisions that are made in different parts of the child protection system. This involves making assessments and decisions about preventive services including children with disabilities, out-of-home placement, emergency placements, adoption and aftercare. Today, we see the influence of the UNCRC most prominently in shaping demands towards the involvement of children in decision-making. UN Guidelines (UN Committee on the Rights of the Child, General Comment 12 (2009), #134) suggest nine conditions that are necessary to fulfil participation rights for children: (1) transparent and informative; (2) voluntary; (3) respectful; (4) relevant; (5) inclusive; (6) supported by training; (7) safe and sensitive to risk; (8) accountable; and (9) child-friendly. Are these standards relevant for jurisdictions across the world or are there other more pressing problems that are overshadowing children’s rights? How, if at all, should the UNCRC lead to different ways of working professionally? **How can the UNCRC assist states and be an instrument that shapes decision-making systems and courts in becoming professional in line with the Convention?**

Moderator: **Amy McEwan-Strand** (UiB)

Participants/introductions by: **Asgeir Falch-Eriksen** (OsloMet) **Marit Skivenes** (University of Bergen) **Karl Harald Søvig** (University of Bergen); **Helen Stalford** (University of Liverpool); **Anne Mette Magnussen** (Western Norway University of Applied Science)

### 13:45-14:30 Chr. Michelsen Prize Lunch with Maja Janmyr



**Maja Janmyr** (Professor of Law at the University of Oslo and Head of the LawTransform Migration Unit) was awarded the Chr. Michelsen Prize for 2018 for her article “No Country of Asylum: ‘Legitimizing’ Lebanon’s Rejection of the 1951 Refugee Convention” (*International Journal of Refugee Law* 2017). In this lunch talk she will give an introduction to her work, followed by a Q&A session.

Introduction by **Ottar Mæstad** (CMI Director)

**14:30-15:30 Children's Right to Health: Childhood obesity**

Is **childhood obesity** a case of medical neglect? Does it warrant state intervention? What is the state's responsibility in creating a regulatory framework that supports parents in making healthy choices for their children's nutrition: prohibition of obesogenic marketing for children, hidden sugars, etc. Do children have a right to not just food, but to healthy and safe food? How is the issue of malnutrition/obesity addressed in the child welfare system? Have there been cases heard in national or international courts? The ECJ ruled in 2014 that obesity can be a disability, at least in the work context. Are parents and/or the state guilty of disabling children by not doing more to prevent childhood obesity?

Moderator: Dr **Jenny Krutzinna** (UiB Centre for Research on Discretion and Paternalism)

Participants/introductions by: **Katharina Eva Ó Cathaoir** (University of Copenhagen), **Sveinung Nygård** (University of Bergen), **Camila Gianella** (CMI)

**18:00-19:30 Evening exchanges****Children on the run: Keynote and Roundtable**

**17:30 - 17:45 Pick-up in hotel reception (Scandic Byparken) & Bergen Resource Centre reception area to UiB Faculty of Law, Auditorium 4**

**Venue: UiB Faculty of Law, Auditorium 4**



**1 Keynote** by **Helen Stalford** University of Liverpool (Photo UoL)

**'David and Goliath: Children's Participation in Immigration Proceedings'**

**Roundtable:** What does it mean to adopt a children's rights-based approach to immigration and asylum law. This roundtable focuses in particular on children's right to be heard, as expressed in Article 12 of the UN Convention on the Rights of the Child (UNCRC). Notwithstanding the vast literature on children's participation on the one hand, and on child migration on the other, there has been virtually no attempt to bring these fields of inquiry together to interrogate the currency of participation for immigrant children. This is perhaps not surprising: one might query the relevance of participation, conceptually or practically, in proceedings that are arguably inimical to individual autonomy (there is no specific human right to choose the country in which you want to live) and that permit only narrow, welfare-related concessions to an otherwise rigid regime primarily designed to protect state borders and public resources. And yet it is argued that participation and, specifically, the weight to be attached to children's views, is a crucial dimension of migration proceedings, particularly in relation to unaccompanied children, not least because, in the absence of any other documentation or supporting evidence, the outcome of the case rests heavily on the child's own testimony.





Applying children's rights-based conceptualisations of participation to this area are contested and complex. The coherence and credibility of children's direct accounts, the influence of anecdotes on what should be told or not told to authorities, children's motivation for migrating, are factors playing into the proceedings of applying for asylum or residence permits. The obligations of the States are clear: Migrant children have the same rights as domestic children, and unaccompanied migrating children are an exceptionally vulnerable group. States still have to uphold a threshold for immigration, and thus migrating children will meet a system that also are operating under a rather more hostile agenda of exclusion and expulsion. **What does compliance with Article 12 UNCRC actually mean in asylum proceedings?**

Moderator: **Katre Luhamaa** (University of Bergen)

Participants: **Hilde Liden** (SFI); **Sagrario Segado** (National Distance Education Univ., Spain);

**Katrin Kriz** (Emanuel College); **June Thoburn** (University of East Anglia); **Maja Janmyr** (UiO/head of LawTransform Migration Unit); **Nicolas Orago** (University of Nairobi)

Followed by reception & social event in the UiB Law School Cafeteria

## Friday 24 August - Rights of the Child

### 09:00-10:00 **Child's best interest principle**

Article 3 of the UNCRC requires that *"In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration."* In this session, we will discuss the principle of the best interest from different disciplinary angles and empirical fields. The child's best interests principle is a main pillar of the UNCRC and is well-established in the legal systems across the world. The intuitive appeal of regulating and defending legal interventions by reference to "best interests" is met with significant criticism of the principle's failure to provide substantive guidance to what is and is not in a child's best interests. The English baby Charlie Gard, fatally ill, made headlines internationally in 2017 when the Supreme Court of England and later the European Court of Human Rights decided that it was in the baby's best interest to be taken off life support. Recently another baby, Alfie Evans, died at Alder Hey hospital after life support was withdrawn. How can removal of life support be in the best interests of the child? What is the reasoning behind such a decision, and how does it correspond with Human Rights and the Rights of the Child? Judges apply significant discretion when making decisions regarding children. Some have accused the courts of using this vagueness as a means of implementing their own values and beliefs, rather than objectively assessing the child's welfare, and applying legal principles consistently. Differences in outcomes on similar facts appear to support this view. What does this tell us about best interest considerations in the legal sphere? The session marks the publication of Langford, Skivenes & Søvig (eds) ***Child rights in Norway: Measuring Compliance***.

Moderators: **Siri H. Pedersen** and **Hege S. Helland**

Participants: **Katre Luhamaa** (University of Bergen); **Kirsten Sandberg** (University of Oslo, member of the Committee on the Rights of the Child, chair of the Committee 2013-15\*); **Asgeir Falch-Eriksen** (OsloMet – storbyuniversitetet); **Thomas Meysen** (the International Centre for Socio-Legal Studies (SOCLES))

### 10:10-11:10 The European Court of Human Rights and Child's Rights

The European Court of Human Rights (ECtHR) has decided nine child protection cases brought against the Norwegian state. Parents disagreeing with the state's child welfare interventions have brought their complaints to the Court, alleging a breach of Article 8 of the ECHR. The Court must carry out an assessment of the potential breach of the parents' Convention rights, but also give thorough consideration to the child's rights. How does the ECtHR handle cases that concern child care proceedings, adoption without consent, or care orders of newborn babies? How does the ECtHR understand the margin of appreciation, the subsidiarity principle and what is "necessary in a democratic society" in these cases? Is the case law uniform on this? Is there European consensus to speak of on these issues? Four of the cases communicated to Norway concern adoption as child protection measure. How are biological ties and legal ties assessed in these cases and how is the child's best interests interpreted? How should the court weigh biological ties and legal ties and best interest assessments - in light of Article 8?

Moderator: **Trond Helland** (University of Bergen).

Participants: **Karl Harald Søvig** (University of Bergen); **Katrine Luhamaa** (University of Bergen); **Geir Kjell Andersland** (Hordaland Social County Board); **Conor O'Mahony** (Cork University Collage); **Marit Skivenes** (University of Bergen)

### 11:20-12:20 International Rights and cultural practices?

The United Nations' Convention on the Rights of the Child (UNCRC) places extensive obligations on governments to protect the rights of children. Still, there are huge differences in how the UNCRC is interpreted and what thresholds are set for allowing certain practices. In most western countries, child marriage is forbidden, or only allowed in very limited circumstances. This understanding of female children's rights is challenged by the influx of migrants into Europe, and herewith, children married to older men. These married girls are 12 or 13 years old, may have children and are in a sexual relationship with an older man. What should the state do here to protect children? The reasons for child marriage can be found in cultural tradition, poverty and gender inequality, but after migrating to a new country these reasons are questioned. In this debate, we wish to shed light on the situation for child-married girls, and to scrutinize the reasons for making an intervention.

Moderator: **Audun Løvlie**

Participants: **June Thoburn** (University of East Anglia); **Sagrario Segado** (National University of Distance Education); **Kenneth Burns** (University College Cork); **Thomas Meysen**; **Jayna Kothari** (CLPR/Lawtransform); **Satang Nabaneh** (University of Pretoria/Lawtransform);

### 12:30-13:30 The Critique of Child Protection and Children's Rights

The Norwegian child protection system is once again under the scrutiny of international mass media. This time it is the BBC that August 3, 2018 published an article titled *Norway's hidden scandal*, portraying parents that feel mistreated by the system. These types of articles, exposing the mistakes and brutal consequences of a system that always stands on the balancing verge of doing too much or too little - damned if you do and damned if you don't - are common in many

countries and raises a wide range of questions in relation to the rights of children and the legitimacy of the child protection system.



This session discusses the many consequences of mass media exposure of child protection workers, judiciary decision makers, children, foster parents and birth parents. How do parental rights challenge children's rights, and does mass media exposure create a mistrust in the system that poses a risk to children? Transparency and accountability are necessary in a democratic society; even more so, for a system that can remove children from their families. How does the government handle and respond to critique without disclosing private and confidential information about the individuals concerned? We will discuss the implications of critical exposure of child protection systems, examining the experiences from various systems and countries.

Moderator: **Hege Helland** (University of Bergen).

Participants: **June Thoburn** (East Anglia University); **Tarja Pösö** (Tampere University); University of Bergen); **Svanhild Alver** (Bergen Municipality)(tbc); **Geir Kjell Andersland** (Hordaland Social County Board)(tbc); **Kenneth Burns** (Cork University College); **Thomas Meysen** (the International Centre for Socio-Legal Studies (SOCLES)); **Marit Skivenes** (University of Bergen).

### **14:30-15:30 The right to water, urban governance & health**

Water is an increasingly scarce resource with pressures from growing populations and industrial developments depleting and polluting water resources, and with changes in the climate exacerbating the situation. Some of the world's largest cities – including Sao Paulo, Cape Town, Bangalore, Mexico City, London and Miami - are facing severe scarcity of drinking water, posing severe risks to human life and health - and to the rights for children and future generations in particular. This roundtable discusses the challenges and to what extent the adoption of the right to water as a human right, can contribute towards better and more just water governance. This panel is linked to the LawTransform project on "Water Rights"

With: **Mathilde Thorsen, Bruce Wilson, Jackie Dugard, Dan Brinks, Evelyn Villarreal Fernandez**

### **15:40-16.30 Innovative Teaching on Law & Social Change**

LawTransform and partner institutions in Brazil, the USA, South Africa and India won an INTPART grant (2018-21) to collaborate on strengthening their teaching in the field of Law & Social Change. The ambition is to improve and develop new models for research-integrated teaching, starting with the Bergen Exchanges PhD course on "Effects of Lawfare". In this session, which launches the project, presents the core ideas of the program and challenges students of this year's Bergen Exchanges PhD course to point to new directions.

Chair: **Lara Cortes** (CMI LawTransform)

With: **Christopher Faulkner; Clio Radomysler; Francisco Gandolfi de Tulio; Joseph Cozza; Soumya Jha and Thandiwe Matthews**

### **16:30-17.00 Closing of the 2018 Bergen Exchanges**

**Siri Gloppen** (UiB/CMI LawTransform)