



Implementation of Child Rights - Reflections on the Role of Researchers

DISCUSSION PAPER ONLY

Anne Graham¹

In simple terms, research focuses on what we don't know, policy on what we should do, and practice on what we (can) do. These cultures differ in terms of their understanding of the 'the rules of evidence', the influence of ideology and values, and the demands of the particular tasks within them. Building a bridge across these divides requires an understanding of these differences and some willingness to accommodate them in each.²

The Centre for Children and Young People has been developed on an understanding that:

- Children and young people are entitled to the provision, protection and participation rights afforded them in the United Nations Convention on the Rights of the Child;
- Practice and policy should be evidence based;
- Participation and collaboration are intrinsic to improved outcomes for children and young people.

This brief presentation today is aimed at stimulating discussion around the possibilities for, and limitations on, collaboration between researchers, policy makers and practitioners in progressing children's rights³. The presentation takes as a point of departure the understanding that Childwatch members are committed to research related activities that are not only aimed at improved outcomes for children and young people but also at building the capacities of organisations to pursue policies and programs based

¹ Anne Graham is an Associate Professor in Education and Director of the Centre for Children & Young People at Southern Cross University, Lismore, Australia.

² Judy Cashmore, *Linking Research, Policy and Practice: Including Children's Input*. Paper presented at the Children's Issues Centre Conference, University of Otago, Dunedin, June 2003.

³ Particular thanks to Associate Professor Judy Cashmore, Ms Jenni Whelan & Ms Robyn Fitzgerald for their assistance with the development of this presentation.

on sound evidence. The presentation is structured around a series of questions that I hope will promote discussion, debate and the sharing of ideas for future action.

1. Child Rights: The Australian Context

It is 15 years since Australia ratified the UN Convention on the Rights of the Child. Australia has been making some progress, as evidenced in numerous examples of governments and communities working together to provide programs of support for children and their families. However, the current Executive government and High Court take a restrictive, rather than expansive, view of Australia's implementation obligations. As the recent Non-Government Report on the Implementation of UNCROC in Australia⁴ has articulated, there is still some way to go in progressing better outcomes for children and young people:

*The lack of an effective national commitment to the Convention, a national Commissioner for Children, and a national plan of action for children inhibits the development of a national collaborative process to evaluate, share information, learn lessons and promote best practice.*⁵

There is no mainstream rights platform in Australia from which to launch children's rights implementation initiatives. Other than the few government agencies⁶ and NGOs which are involved in research and advocacy relating to children's rights, the legal and sociological research and advocacy about children's rights remains largely removed from the everyday experience and knowledge of Australian citizens. The concept of rights has not featured significantly in Australian history (unlike America, Europe, South Africa and the Middle East). The language of minority rights is seldom used (or accepted) in Australian political life and in the national media (eg. Tampa, children in detention, stolen children, changes to industrial relations systems).

Several Australian government and non-government institutions monitor or promote the 'safety, welfare and well-being of children' but few monitor compliance with the rights of children in legal and policy arenas (for example, HREOC, NSW Commission for

⁴ National Children's & Youth Law Centre and Defence for Children International (Australia) (2005). *The Non-government Report on the Implementation of the United Nations Convention on the Rights of the Child in Australia*. Sydney.

⁵ *Ibid* at p.xii.

⁶ The Human Rights and Equal Opportunity Commission has reported on the rights of children in immigration detention and the children of the 'stolen generation' but has no specific reference in relation to children's rights or even a specialist Children's Commissioner, and its functions have been restricted by cuts in its powers and funding.

Children⁷, Queensland Children's Commission, Ombudsman, CREATE, Chilout and DCI, Children's Legal Centres). Notwithstanding such developments, breaches of children's rights, and human rights generally, do not factor significantly on the current political radar in Australia. That is, arguments based on established breaches of children's rights, in and of themselves, seldom lead to policy or legislative change in Australia. The most recent example is that the recently announced changes to legislation in relation to the detention of children were not triggered by the findings of the HREOC that Australia's mandatory detention policy breaches the CROC but rather by threats of a handful of members of the governing political party to cross the floor if the changes were not made.

In Australia, we need to advocate for a fuller domestic implementation of the Convention. Ratification of CROC by the Australian government obliges it:

- To make CROC, by appropriate and active means, widely known in Australia by both children and adults (Article 42) ;
- To ensure the rights in the Convention are available to each Australian child (Article 2.1)
- To take all appropriate legislative, administrative and other measures in order to implement the rights set out in the Convention (Article 4); and
- To report to the UN Committee on the Rights of the Child regularly on progress made in ensuring children enjoy in practice the rights given to them under the Convention.

Question for reflection:

How do we work collaboratively to progress better outcomes for children in light of the fact that many countries still have a long way to go in establishing the constitutional, statutory or other domestic regimes for progressing the children's rights agenda?

⁷ The NSW Commission for Children and Young People Act 1998 outlines the principal functions of the Commission in s. 11:

- (a) to promote the participation of children in the making of decisions that affect their lives and to encourage government and non-government agencies to seek the participation of children appropriate to their age and maturity,
- (b) to promote and monitor the overall safety, welfare and well-being of children in the community and to monitor the trends in complaints made by or on behalf of children,
- (c) to conduct special inquiries under Part 4 into issues affecting children,
- (d) to make recommendations to government and non-government agencies on legislation, policies, practices and services affecting children,
- (e) to promote the provision of information and advice to assist children,
- (f) to conduct, promote and monitor training on issues affecting children,
- (g) to conduct, promote and monitor public awareness activities on issues affecting children,
- (h) to conduct, promote and monitor research into issues affecting children,
- (i) to participate in and monitor screening for child-related employment in accordance with Part 7,
- (j) to develop and administer a voluntary accreditation scheme for persons working with persons who have committed sexual offences against children,
- (k) to support and assist the Child Death Review Team in the exercise of its functions under Part 7A..

To what extent does a 'rights agenda' matter as opposed to the promotion and monitoring of the overall safety, welfare and well-being of children ?

2. Australia's Non-Government Report : Challenges for Collaboration

This report is the most recent and exhaustive example in Australia of the contribution that researchers can make to progressing the promotion of children's rights⁸. The report was presented to the UN Committee in Geneva on Thurs 9 June 2005 by a small delegation led by Associate Professor Judy Cashmore, a leading Australian researcher in the care and protection of children and children's rights. Judy is President of Defence for Children International-Australia and a member of the Board of the National Children's and Youth Law Centre. She is also Chair of the Advisory Board for the Centre for Children & Young People.

The delegation comprised a small group of impressive young people, including Thao Nguyen who was a refugee from Vietnam and lived at Villawood before it was a place of detention and surrounded by razor wire. The others were two Indigenous researchers - Megan Davis and Jason De Santolo - from Jumbunna Research Unit, University of Technology Sydney; and Louise Pounder a young volunteer lawyer. The composition of the delegation is significant in that it speaks with authority in relation to a number of the key rights issues identified.

The summary makes clear what these major rights issues are in the Australian context:

- the over-representation of Indigenous children in many problem areas e.g. child protection, youth suicide, substance abuse, juvenile justice, etc and their under-representation in many positive areas e.g. completing high school, positive health and well-being etc.;
- the continuing detention of children in immigration centres in breach of the Convention;
- the inequity and uncoordinated provision of services and resources in many important areas, e.g. mental health services for children and young people, child care and education especially for disadvantaged and vulnerable children and their families etc; and
- the lack of 'real' participation for children and young people in many areas that affect their lives.

⁸ For information on the concluding observations for monitoring the implementation of CROC in nine other countries see www.crin.org

Questions for Reflection:

How can momentum be sustained and within what kind of advocacy framework?

What are the opportunities for dialogue when the Government presents its report and responds to the issues raised?

How do we work with the resistances of government to issues of children's rights?

Is there a role we can play in liaising with government that doesn't heighten adversarialism and polarised perspectives?

Can researchers position themselves as "the honest brokers" between government and non-government organizations to monitor the progress of compliance with the implementation of CROC?

3. Progressing Children's Rights: Issues and Concerns in Linking Research, Policy and Practice

Clearly, there is a need for a more collaborative process between researchers, policy makers and practitioners to identify research agendas, interpret and translate findings and follow up on implementation. Cashmore⁹ suggests we should give further consideration to the following key issues to build a more effective approach:

- Resisting one way relationships where researchers as 'experts' deliver the 'evidence' on what the issues/problems/concerns are and where the other children's rights stakeholders (policymakers, NGOs, practitioners and children & young people) are left to make sense of them and/or make progress in relation to them.
- Involving the other stakeholders in identifying the questions around rights that remain unanswered and in generating ideas about what might make a difference from their vantage point, including the development from research of practical resources that would benefit practitioners.

Cashmore¹⁰ points out that taking such an approach may well promote greater engagement with the research process, produce better data (by measuring what matters) and generate more insightful interpretation and greater acceptance of the findings and implications. She draws on the work of Denner *et al* in arguing for greater commitment and perseverance from all stakeholders, more effective means and forums for

⁹ Cashmore, J. (2003) at 2, p.6

¹⁰ Ibid

communication and collective problem solving, an emphasis on community-university partnerships, interdisciplinary research networks, international collaborations, modifications to research approaches that build on collaboration and 'real world' relevance¹¹.

Children's rights advocates and researchers have only been partially successful at establishing the relevance and legitimacy of the rights discourse. Children's rights still tend to be enumerated within welfare discourses, with children being treated as objects of concern rather than as active agents.¹² On a practical level, the rhetoric of children's rights will not be translated into practice until children's rights advocates and researchers can convince parents, practitioners and government that implementing the rights that children have under CROC does not undermine their authority and can, potentially, lead to better service outcomes.

Questions for reflection:

Do we focus seriously enough on the ways in which researchers, policy makers and practitioners collaborate for better outcomes for children?

Are we committed to building firmer bridges across the cultural divides that so often separate the three?

Are we working closely enough with NGOs to identify the specific catalysts for policy change and assisting them to leverage for action through well documented research evidence that is timely and useful?

Are we doing enough to include the voices of children and young people in the methodologies we use?

4. What Progress Have We Made ?

Ten years ago Susan Limber¹³ suggested that social scientists had both an opportunity and a responsibility to contribute to children's well-being through CROC by :

- Demonstrating how the rights of the child relate to their professional work e.g., through the child's right to information or right to participate in the decision-making process of treatment ;
- Helping clarify key concepts within the Convention, such as 'the best interests of the child' and the 'evolving capacities of the child' ;

¹¹ *ibid*

¹² Dewar, J. (1998) The Normal Chaos of Family Life. 61 *Modern Law Review* 472

¹³ Limber, S. (1995). The UN Convention on the Rights of the Child: Its Relevance for Social Scientists. *Social Policy Report*, Vol IX (2), pp.1-16.

- Helping monitor implementation of the principles of the Convention at local, state, and federal levels ;
- Assisting children to understand and express the rights enumerated in the Convention ; and
- Advocating for ratification of the Convention.

Question for Reflection :

How far have we come in relation to these issues ?

In Australia, we could make the following broad observations:

- Australia has established organizations like CREATE, Chilout, the NSW and Qld Children's Commissions which have, as part of their charters, the function of pursuing the participation agenda with and for children and young people.
- There is an increasing body of Australian academic research around concepts within the Convention, such as 'the best interests of the child' and the 'evolving capacities of the child' and the extent to which those concepts are being realized into practice.¹⁴
- The organizations listed in the acknowledgment section of the Non Government report help to monitor the implementation of the principles of the Convention at local, state, and federal levels. The issue for Australia is the lack of accountability of the government to its citizens about its failure to implement the principles and the lack of domestic interest in international criticism of the government's failures.
- More research needs to be done to follow up on indications that Australia has generally been unsuccessful at assisting children to understand and express the rights enumerated in the Convention.¹⁵

5. Approaches to Researching Children's Rights

The *United Nations Convention on the Rights of the Child* calls for respect for children's rights in the research process and guides research practice. While the Convention consists of 54 articles relating to the provision, protection and participation of children, it is the

¹⁴ See for example, A. Smith (2002) Interpreting and supporting participation rights: contributions from sociocultural theory. 10 *International Journal of Children's Rights* 73

¹⁵ See CCYP Report to the Childwatch International Citizenship Research Network, *Children's Perspectives on Rights, Responsibilities and Citizenship in Australia*, A. Graham, B. Shipway, R. Fitzgerald, J. Whelan (2005).

participation rights, the right to a name and identity, to be consulted and be taken into account, to physical integrity, to information, to freedom of speech and opinion and to challenge decisions made on their behalf that continue to beg our further attention.¹⁶

Alderson and Morrow suggest the following issues are included by researchers to ensure respect for the rights of the child¹⁷:

- to what is so far known to be the best available treatment, care or resources;
- to protection from harm, neglect and discrimination;
- to self determination, such as to give informed consent or refusal;
- to non-interference and to research that is not too intrusive or restrictive.

Children have different competencies to adults and are understood to have authoritative knowledge that develops according to life experiences.¹⁸ While children may be dependent on adults for substantial periods of time, this does not preclude the development of their sense of individual identity and their social and moral capabilities, particularly in matters pertaining to their well-being.¹⁹ Involving children and young people in research holds many possibilities for enhancing research, practice and policy. However, such involvement will not always promote the best interests of children and young people and researchers must consistently address how ethical and legal issues inform their work. Listening carefully to children does not necessarily result in hearing their stories and views. The potential to merely generate a research 'product' that is interpreted in terms of adult discourse about children's development must be an ever present consideration by researchers in whom power relationships are weighted towards.²⁰

Questions for Reflection :

Do we value the dignity and integrity of children such that our approaches to research reflect a respectful integration of what they have to tell us ?

Do we use what we find out about what children do and don't know about their rights and follow through with efforts to ensure this is heard where it could be best used e.g., in education ?

6. Where To Now ?

¹⁶G Lansdown. Children's rights in B.Mayall (ed), *Children's Childhood: Observed and Experienced*, Falmer Press, London, 1994 at 33.

¹⁷ P Alderson and V Morrow, *Ethics, social research and consulting with children and young people*, Barnados, Essex, 2004 at 29.

¹⁸ C Smart, B Neale and A Wade *The Changing Experience of Childhood*, Polity Press, Cambridge, 2001 at 14

¹⁹ Ibid at 13

²⁰ Ibid

Questions for Reflection :

Are we as researchers engaging sufficiently with the implementation of the Convention?

Do we contribute a broad range of disciplinary interests and knowledges to progress the rights of children ? If not, why not ?