

Lost in translation: the reality of implementing children's right to be heard

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Abstract: Paragraph 1 of Article 12 of the United Nations Convention on the Rights of the Child (UNCRC) gives children the right to express their views freely in all matters affecting them and for their views to be given due weight in accordance with their age and maturity. It has previously been acknowledged, however, that the process of translating this article results in a gap between the stated article and its realisation within policy and practice contexts. This paper takes an in-depth look at the meanings attributed to Article 12 to provide a basis for understanding the principles inherent within the article. It draws on core values associated with respecting and operationalising the rights enshrined within Article 12 to critically explore factors to consider when implementing Article 12 if the dilution and reshaping of principles pertaining to the article are to be minimised during its translation into practice.

Keywords: UNCRC, Article 12, children's rights, children's voice, listening to children.

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Introduction

This paper is concerned with principles relating to children's right to express their views and be heard, and with the complexities associated with implementing this right in practice. Paragraph 1 of Article 12 of the United Nations Convention on the Rights of the Child (UNCRC) (UN 1989) sets out the details of children's right to be heard. However, as the article is translated from the UNCRC into practice it undergoes a series of translations. The translation process may include incorporating the article into legislative systems, into policy at national, regional and local levels, and finally into organisational policy and practice. At each of these stages, individual interpretations and biases can dictate which aspects of the article are translated, and this is particularly significant when it comes to enacting the article in practice (Robinson *et al.* 2020). During the translation process, there is the potential for the article to be narrowed and reshaped – the outcome being that the enactment of the article may not reflect the full intentions of the original article and children's rights within Article 12 will not be fully realised in practice.

In a recent provocation paper, Archard (2020b) presented a philosophical analysis of what Article 12 is and the kinds of rights that might be granted to children through Article 12. This contribution complements Archard's paper by unpacking meanings attributed to Article 12 from a practical perspective. It draws on a number of core values that have been identified as underpinning practices associated with listening to children's voices (Robinson & Taylor 2007; Lundy 2007) to critically explore factors to consider in an endeavour to minimise the dilution and reshaping of the various elements of Article 12 when enacting the article in practice.

The UNCRC presents 54 provisions aimed at protecting children's civil, political, social, economic and cultural rights. It applies to all children up to and including the age of 18 years and has been ratified by all countries across the world apart from the United States of America. This paper is specifically concerned with Paragraph 1 of Article 12 (hereafter referred to as Article 12), which states:

the child who is capable of forming his or her own views [has] the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child. (UN 1989: 4)

As well as each stage of the translation process presenting opportunities for the partial translation of the article, there are also '*ongoing obstacles*' resulting from a limited awareness of the requirements of Article 12 (Lundy 2007: 930), thus heightening challenges relating to its implementation in practice.

The UN Committee on the Rights of the Child (hereafter referred to as the Committee) acknowledged that there was '*a need for a better understanding of what*

article 12 entails and how to fully implement it for every child' (UN Committee 2009: 6, para 4). To support the 'effective implementation' of the article, this Committee set out their interpretation of individual phrases of the article with the aim of 'strengthening understanding of the meaning of article 12' (UN Committee 2009: 6, para 8). An overview of this interpretation is set out below.

Meanings attributed to Article 12: the perspectives of the United Nations Committee on the Rights of the Child

Within the Committee's General Comment (UN Committee 2009), the meanings attributed to the four key phrases which make up Article 12 were presented as follows.

Phrase 1: 'the child who is capable of forming his or her own views'

The Committee stressed that we: '*cannot begin with the assumption that a child is incapable of expressing his or her own views ... [rather we] ... should presume a child has the capacity to form her or his own views ...; it is not up to the child to first prove her or his capacity*' (UN Committee: 9, para 20). The Committee also underlined that children are '*able to form views from the youngest age, even when [they] may be unable to express them verbally. Consequently, the full implementation of article 12 requires recognition of, and respect for, non-verbal forms of communication*' (para 21). Furthermore, the Committee stated '*it is not necessary that the child has comprehensive knowledge of all aspects of the matter affecting her or him, but ... has sufficient understanding to be capable of appropriately forming her or his own views on the matter*' (para 21).

Within the description of this phrase, the Committee also stressed the need '*to ensure the implementation of this right for children experiencing difficulties in making their views heard*' (ibid.). This statement was qualified with an acknowledgment of the need for children with disabilities to '*be equipped with, and enabled to use, any mode of communication necessary to facilitate the expression of their views*' (ibid.) and the need for efforts to be made to '*recognize the right to expression of views for minority groups and those who "do not speak the majority language"*' (ibid.).

Thus, the Committee highlighted their expectation that all children should be assumed to be able to form their own views and that efforts need to be made to equip children with sufficient information to enable them to do so. The Committee also acknowledged that provision should be made for children to communicate their views in ways other than verbally.

Phrase 2: ‘has the right to express those views freely’

The Committee stated that in the context of Article 12 “‘*Freely*” means that the child can express her or his views without pressure and can choose whether or not she or he wants to exercise her or his right to be heard ... [and] that the child must not be manipulated or subjected to undue influence or pressure’ (UN Committee 2009: 10, para 22). The Committee also emphasised that when expressing views, the environment should be one in which ‘*the child feels respected and secure when freely expressing her or his opinions*’ (para 23) and that ‘*The realization of the right of the child to express her or his views requires that the child be informed about the matters, options and possible decisions to be taken and their consequences*’ (para 25).

Requirements relating to phrase 2 reiterate the need for children to be equipped with the necessary information to enable them to form their own views, while also requiring that children are informed about the outcomes of decisions affecting them. The Committee also stressed the need to ensure children understand that they have the right to choose whether or not to express their views and, where children choose to exercise this right, they do so at their free will and in a respectful and supportive environment.

Phrase 3: ‘in all matters affecting the child’

The Committee asserted that ‘*the child must be heard if the matter under discussion affects the child*’ (UN Committee 2009: 10, para 26). The Committee also stated that it supported ‘*a broad definition of “matters”*’ and that children’s views should be carefully listened to ‘*whenever their perspective can enhance the quality of solutions*’ (para 27).

Phrase 3 builds on the meanings attributed to phrases 1 and 2, and the related requirements implicated within these, adding the requirement to listen to children’s perspectives about matters which affect them. Of significance here is that such matters are not limited to those identified by adults, but include matters which children themselves consider to be of importance to their lives and experiences.

Phrase 4: ‘the views of the child being given due weight in accordance with the age and maturity of the child’

The Committee highlighted that ‘*simply listening to the child is insufficient; the views of the child have to be seriously considered when the child is capable of forming her or his own views*’ (UN Committee 2009: 11, para 28). It also affirmed that ‘*age alone cannot determine the significance of a child’s views. Children’s levels of understanding*

are not uniformly linked to their biological age ... the views of the child have to be assessed on a case-by-case examination' (para 29). The Committee, however, recognised that *'Maturity is difficult to define; in the context of article 12, it is the capacity of a child to express her or his views on issues in a reasonable and independent manner'* (para 30).

The Committee's explanation of Phrase 4 highlights that it is not acceptable to listen to children in a tokenistic way, rather their views need to be seriously considered. Implicated within the need to assess the views of the child on a case-by-case basis is the requirement to consider how each child is informed about matters, and how the environment in which children express their views is as enabling as possible for each individual child.

Collectively, the Committee's interpretations of, and meanings attributed to, the four phrases within Article 12 strongly assert their expectations for children's views to be heard and taken seriously in all matters that affect them. In the following section, core values which underpin on-the-ground practices associated with listening to children's voices will be outlined. The importance of taking these core values into account to support minimising the dilution and reshaping of the intentions of Article 12 during its translation into practice will then be explored.

Core values associated with respecting and operationalising the rights enshrined within Article 12

As detailed above, when implementing Article 12 it is clear that all children have a right to voice their opinions openly and for their voices to be listened to and taken seriously. It is important to note that although the word 'voice' implies the spoken word, in the context of this paper it is understood far more broadly. 'Voice' is used to refer to a child's perspectives, opinions, thoughts and feelings. In addition to verbal language, 'voice' also includes, but is not limited to, written language, body language, silences, behaviour, actions, pauses in action, glances, movement and artistic expression (Wall *et al.* 2019: 268). The following core values (Robinson & Taylor 2007) associated with supporting children's voice in the context of implementing Article 12 are based on the premise that 'voice' is understood in these broad terms.

Core Value 1: Communication through dialogue

Within this value, dialogue refers to an attempt for all participants to be involved in the communication in a reciprocal way, leading to the development of shared understandings (Robinson & Taylor 2007). The notion of dialogue involves 'active listening'

(Fielding 2004: 202) by a 'listening audience' (Lundy 2007), and giving 'due weight' (UN 1989) to the views of *all* participants, including children. Thus, within this value the traditionally hierarchical relationships, which may curtail the voices of children, are recast to encourage 'the flow of a more horizontal discourse' (Robinson & Taylor 2007: 8).

Core Value 2: Participation and inclusion

The focus of this value is on the need for the equal participation of all parties. Underpinning this value is the requirement to recognise that there are multiple viewpoints and, therefore, multiple voices. All voices should be listened to, heard and valued equally, regardless of any potentially discriminatory factors including gender, ethnicity, disability, behaviour and social class (Robinson & Taylor 2007: 11). There should also be opportunities for the views of a diverse range of children to be represented and for inclusive spaces (Lundy 2007: 934) and safe spaces to be created in which children can express their genuine views '*without fear of rebuke or reprisal*'. Thus, there is an expectation that knowledge and understandings generated through dialogic communication will involve the active participation of all parties (Robinson & Taylor 2007), with children and adults engaging conjointly (Thomas 2007: 215).

Core Value 3: A recognition that power relations are unequal

The power dynamics that exist in relationships can be subtle and can serve to steer, or even silence, the perspectives of some children. We need to acknowledge that '*power inhabits all processes of social communication*' and that forms of communicative power are not equally available to all (Robinson & Taylor 2007: 12). Thus, through recognising that some groups have privileged access to certain forms of communication, consideration needs to be given to how to challenge structures and processes that curtail opportunities for some to have their voices heard (*ibid.*).

Core Value 4: Possibilities for transformations

This value recognises the need for listening to children's voice to extend beyond a tokenistic attempt to provide opportunities for children to voice their opinions (Robinson & Taylor 2007). Rather, there needs to be a commitment to take their voices seriously, with those listening being prepared for children to have 'influence' (Lundy 2007: 938-9) and for changes or transformations to be made as an outcome of the views expressed by children. Thus, children should be involved as potential active

agents of change (Fielding: 2001), with the agency to initiate change which will lead to improving their lives and experiences.

The core values outlined above should not be seen as discreet values, they are interrelated and interdependent, with all the values needing to be considered together in relation to implementing Article 12 in practice. These values will be drawn on in the following section when outlining some of the tensions and challenges that emerge which can lead to the dilution and reshaping of Article 12 when operationalising the article in practice.

Discussion: tensions and challenges associated with implementing Article 12 in practice

One of the key determinants of whether, and if so how seriously, children's views are listened to relates to adults' construction of childhood and, whether or not adults perceive children as capable holders of rights. For example, where children are viewed by adults as competent, mature and active agents involved in the co-construction of their own lives and cultures, they are more likely to be considered capable of holding their own rights (James *et al.* 1988; Corsaro 2005; Mayall 2000). In such cases, children are likely to be perceived as '*capable of forming his or her own views*' and their views taken seriously (Le Borgne & Tisdall 2017; Tisdall 2018). Conversely, where children are viewed as being dependent upon adults, they are more likely to be perceived as incapable of forming their own opinions (Raby 2014; Tisdall 2018) and insufficiently competent or mature to be holders of their own rights. In such circumstances children are viewed as not having 'the independence of mind and ability to act on their own choices' (Archard 2020a) and their views are unlikely to be accorded '*due weight*', with the outcome that their voices become marginalised or silenced. This dispute around whether children are capable holders of their own rights can be seen along a continuum. At one end of the continuum, children are viewed as progressing along the road to 'becoming' adults, and at the opposite end they are viewed in a state of 'being' in their own right, where childhood is considered to be a distinct and 'finished' status (Lee 2005; see also Archard 2020a). The position in which adults place children on the becoming-being continuum will impact on whether, and how, children's views are listened to by adults and on the '*due weight*' given to children's perspectives.

Take, for example, giving due weight to a child's perspective within healthcare settings. A child with a broken arm may be asked what colour plaster cast they would like to support their arm. The health care practitioners concerned may consider the child as a rights' holder and capable of expressing a preference in relation to this and act in accordance with the child's preference. However, where there are two medical

procedures to choose from, both with associated advantages and disadvantages, the child may not be viewed as such a competent rights' holder and less weight may be placed on the child's viewpoint if this view does not align with what the adults involved consider to be acting in the best interest of the child (as stipulated in Article 3 of the UNCRC). Regardless of the reasons or strategies for positioning children towards the 'becoming' end of the becoming-being continuum, not prioritising their views, leads to a reshaping and dilution of Article 12 in practice.

Where there are multiple children and multiple voices to be heard, for example, in school settings, this adds a layer of complexity to the requirement to give 'due weight' to children's views. There may be situations where different children are positioned at different places on the continuum, depending on a teacher's perceptions about a child's capability to holding their own rights in specific contexts.

Thus, respecting and operationalising the rights enshrined within Article 12 is not straightforward. However, acknowledging the four core values outlined earlier can help to raise critical questions surrounding the tensions and challenges associated with implementing the article in practice. Promoting communication through dialogue in the sense outlined in Core Value 1, is consonant with assuming that '*a child has the capacity to form her or his own views*' (UN Committee 2009: 9, para 20) and presumes a respectful environment in which children are at ease to '*freely express[ing] her or his opinions*' (UN Committee 2009: 10, para 23). However, in reality, only limited aspects of children's lives are fully open to negotiation. For example, in education and health-care settings pressures placed on adults to comply with professional expectations, as well as time constraints, limit the areas in which children are invited to express their views. Acknowledging Core Value 1, however, helps to raise critical questions such as: What aspects of lives are open/closed to negotiation? In which aspects of their lives are children considered capable/incapable of voicing their opinions?

Core Value 2 acknowledges that there are numerous and diverse viewpoints, all of which should be equally included. This value resonates with the requirements to recognise the right to expression of views for minority groups and those who '*do not speak the majority language*' (UN Committee 2009: 10, para 27) and to support children with disabilities to use '*any mode of communication necessary to facilitate the expression of their views*' (UN Committee 2009: 9, para 21). However, where different children express different viewpoints, decisions need to be made about which viewpoints are prioritised over others (as would be the case with adults too). Acknowledging Core Value 2 helps to highlight biases in terms of whether preference is given to some voices over others through raising questions around: Which children are/are not given the opportunity to express their views? Are children's views considered democratically with all perceptions being equally weighted? Are some viewpoints more heavily weighted than others and, if so, why?

Within Core Value 3, which recognises that power relations are unequal, there is an assumption that children will '*not be manipulated or subjected to undue influence or pressure*' (UN Committee 2009: 10, para 22) and that children's views will '*be seriously considered*' (UN Committee: 2009: 11, para 28). Through acknowledging this value, critical questions are raised around the following areas: In which areas do adults make decisions on behalf of children and/or filter children's voices through applying their own biases and assumptions? Are children encouraged to voice their opinion about issues of importance to them, or only about matters of importance to the adults?

As outlined in Core Value 4, when listening and giving weight to children's perspectives adults need to be prepared for transformations to take place. Recognising the requirements within this value raises questions, including: Is the involvement of children in discussions and decisions an empowering experience for children in which they are encouraged to act as agents of change? Or, do the adults concerned encourage a more tokenistic involvement of children?

What is apparent from this discussion is that there is the potential for different adults to position children at different places on the 'becoming-being' continuum, according to how capable they view children as being able to form and voice a viewpoint, and this will vary according to the context. To add to the intricacies surrounding the implementation of Article 12, even within the one setting, for example a classroom, different adults may position the same child at different places on the continuum. Thus, we cannot escape from the fact that a critical factor which impacts on the extent to which the four core values are acknowledged and how seriously children's views are taken, is the position at which adults perceive children to be on the becoming-being continuum.

While there might be some disagreement between adults about whether, or to what extent, children are 'capable' or sufficiently 'mature' to form and express their views in different contexts, what is evident is that not taking children's views into account is clearly contravening the requirements of Article 12. This paper has highlighted some of the challenges around implementing Article 12. It is particularly timely given that over the past year children's lives and experiences have been significantly impacted by the COVID-19 pandemic and ways need to be sought to support children to deal with some of these changes. Specifically, children have been at the receiving end of several changes to their lives including missed opportunities for in-school learning, fewer opportunities for social contact with their peers and, in some cases, increased or new experiences of exposure to domestic abuses. In the United Kingdom many children are experiencing increased levels of anxiety and more children witness, or are victims of, domestic abuse, with some children experiencing new or more persistent abuse at home (UNICEF UK 2020: 1).

Given these profound changes to their lives, it is vitally important that children's views are listened to as policies and practices are developed to support children. Acknowledging the requirements of the four core values outlined above will help to raise critical questions and bring to the fore some of the tensions and challenges associated with implementing Article 12, thus helping to minimise the gap between the intention of Article 12 and the enacted practice.

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