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## Reporting the Rhetoric, Implementation of the United Nations Convention on the Rights of the Child as Represented in Ireland's Second Report to the UN Committee on the Rights of the Child: a Critical Discourse Analysis

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*Reporting the rhetoric, implementation of the United Nations Convention on the Rights of the Child as represented in Ireland's 2nd Report to the UN Committee on the Rights of the child: a critical discourse analysis*

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# **Reporting the rhetoric, implementation of the United Nations Convention on the Rights of the Child as represented in Ireland's 2<sup>nd</sup> Report to the UN Committee on the Rights of the child: a critical discourse analysis**

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## **Abstract**

*Ireland's second periodic report to the United Nations Committee on the Rights of the Child (CRC) presents the government's case that it is succeeding in protecting and promoting the rights of all children in Ireland. This article presents a critical discourse analysis of the government's Report to the CRC. Using a refined critical discourse analysis (CDA) model, based on the framework proposed by Chouliaraki & Fairclough (1999); the linguistic structure of the Report is examined alongside consideration of the wider socio-political context in which it exists.*

*The Report is itself a promotional genre<sup>1</sup>. It lists legislative change, strategy plans and other policy activity intended to have an impact on children's rights. This promotional genre is realised in the Report through drawing on the language necessary to sell the government as successful in implementation of the Convention, to the CRC. Through adherence to the structured language of reporting, in tandem with the careful positioning of paragraphs, the report serves to circumvent the absences of legislation and provisions which directly influence and impact on children's rights. Thus, the analysis reported in this article confirms the view that much of the discourse is rhetorical.*

*Nevertheless, the Report generally represents the government as progressing in the field of implementation of the UNCRC. This has led to an assumption that the reporting mechanisms of the CRC may allow for such rhetorical construction of reports, thus a brief linguistic textual analysis of the United Nations Committee on the Rights of the Child guidelines for periodic reports is included to reveal if there is a case for this assumption.*

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<sup>1</sup> Genre as a category of a discourse analysis is described by Fairclough as "a way of acting and interacting linguistically" (2003) in other words genre refers to the form in which the text exists for example, a report, an interview, a newspaper article, an advertisement. Promotional genre refers to the document promoting (in this case) the government's achievements; as opposed to a dialogical genre which would be a document intended to generate a discussion.

## **Introduction**

Ireland ratified the UN Convention on the Rights of the Child (UNCRC) in 1992. It presented its first National Report to the UN Committee on the Rights of the Child (CRC) in 1998. The concluding observations of the CRC to the National Report led to significant changes in child policy including the establishment of the National Children 's Office, now renamed as the Office of the Minister for Children and Youth Affairs (OMCYA); the drafting and publication of a ten year National Children's Strategy (2000) and the appointment of an Ombudsman for Children. The Irish government submitted the second National Report in 2005.

This article reports on the application of the tools of a critical discourse analysis (CDA), based on a framework proposed by Chouliaraki & Fairclough (1999), to textual analysis of *Ireland's 2<sup>nd</sup> report to the Committee of the United Nations Convention on the Rights of the Child (2005)*, (hereafter referred to as the Report). The analysis used pays particular attention to the use of language, syntactic positioning, and conflict within the text.

The Report is framed following specific guidelines published by the CRC, and also responds to the specific issues highlighted in the Committee's 'concluding observations' on Ireland's 1<sup>st</sup> report. The Report presents the government's case that it is succeeding in protecting and promoting the rights of all children in Ireland. The purpose of this article is to illustrate that although the language of the report indicates that the government is doing its best for children's rights; a critical discourse analysis of the text, illuminates the gaps in certain policy areas affecting children. The implication of this is that children's rights are not being fully realised. Thus, this article includes a brief analysis of the Committee's guidelines for periodic reports '*General Comment No.5, General measures of implementation of the*

*Convention on the Rights of the Child (arts.4, 42 and 44, para. 6)* (2003) and *'General Guidelines regarding the form and content of periodic reports to be submitted by states parties under article 44, paragraph 1 (b), of the convention'* (2005), in order to determine the extent to which the guidelines themselves contribute to the linguistic style of the Report.

## **Research Context**

Ireland is significant in its socio-cultural composition for the way that social policy has been greatly shaped by the dominant influence of the Catholic Church through its direct influence on the Irish Constitution, *Bunreacht na hÉireann* (1937). The influence continues through to today very much enshrined in and reproduced through the principles of the constitution which positions the family as the most important social structure in Irish society as stated in Article 41.1.1:

The State recognises the Family as the natural primary and fundamental unit group of society, and as a moral institution possessing inalienable and imprescriptible rights, antecedent and superior to all positive law (Ireland, 1937).

Article 42.1 further provides parents with rights, which give them the duty, “to provide, according to their means, for the religious and moral, intellectual, physical and social education of their children” (Ireland, 1937). As a consequence, the State is positioned to intervene within the domain of the family only in “exceptional cases, where the parents for physical or moral reasons fail in their duty towards their children” (Article 42.5, Ireland, 1937). The impact of the Constitution has “formalised and institutionalised many of the core values associated with a society which was catholic, traditional, nationalist and rural” (Girvin, 1996, p. 599). The general esteem in which the catholic hierarchy were held in Irish society led to the Constitution of Ireland and all other aspects of governance becoming largely influenced by Catholic social teaching (Whyte, 1980). Its legacy remains with the lasting view reflected in Article 42.5 of the Constitution which perpetuates the notion that “the State should only intervene as a last resort in accordance with the principle of

subsidiarity” (Fanning, 1999, p. 53). The principle of subsidiarity was bolstered by the Catholic social teaching of the church which aimed to maintain a traditional Irish society through resistance to any state intervention seen as encroaching on the facets of society which the church controlled (the catholic church generally dominated the provision of services in the education, health and other voluntary sectors throughout the 20<sup>th</sup> century and still to a lesser extent today)<sup>2</sup>.

Since ratification of the United Nations Convention on the Rights of the Child (UNCRC), the Irish government has instigated various important developments in recognising policy related to children. These include the publication of the *National Children’s Strategy* (2000), the appointment of an Ombudsman for Children and the establishment of a National Children’s Office (OMCYA). The CRC *General Comment 5* (2003) document advises states parties that if they are to “promote and respect the rights of the child” (CRC, 2003, p. 8), at all levels, “a unifying, comprehensive and rights-based national strategy, rooted in the Convention” (ibid.) is necessary. One significant development in Irish policy, the *National Children’s Strategy* (2000), uses the Convention as an informing framework and is evidence of the move within government policy, pertaining to families and children, to adopt the language of rights in official texts (Hayes, 2002; Kilkelly, 2008b). However, Ireland’s *National Children’s Strategy* (2000) does not “incorporate the principles and provisions of the convention directly” (Hayes, 2002, p. 49), hence it is not a rights based strategy (CRA, 2006).

Criticism of the lack of explicit rights for children in the constitution was brought to the fore when an influential report<sup>3</sup>, in terms of both child protection and children’s rights, by Justice

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<sup>2</sup> For a broader discussion on the principle of subsidiarity as an element of Irish social policy see Fanning (2004)

<sup>3</sup> The Report of the Kilkenny Incest investigation was the first major inquiry into child abuse in Ireland and also the first Report to note children’s rights appearing as subordinate to parents rights in the Irish Constitution thus it became the first Report to officially recommend Constitutional change in respect of children as rights holders

Catherine McGuinness (1993), noted that the “high emphasis on the rights of the family in the Constitution may consciously or unconsciously be interpreted as giving higher value to the rights of parents than to the rights of children” (p. 56). Even today the general situation for children in Ireland, despite ratification of the UNCRC and subsequent positive policy developments, is that their rights have remained relatively subordinate to the rights of parents, both constitutionally and legally (Kilkelly, 2008a; McGuinness, 1993). Nonetheless, a number of advances have been made in respect of children’s rights:

1. The formation of the Children’s Rights Alliance (CRA): The CRA formed in 1995.

They are a coalition of over 80 non-governmental organizations, whose mission statement is:

To realise the rights of children in Ireland through securing the full implementation of the UN Convention on the Rights of the Child (CRA, 2008)

The CRA lobby the government to try and secure legislative and policy changes which will aid the full implementation of the UNCRC, and have repeatedly called on the government to hold a referendum in respect of changing the constitution with regard to children’s rights (CRA, 2005, 2006, 2009).

2. The All Party Oireachtas Committee on the Constitution: In 1996 an All-Party Oireachtas Committee on the Constitution was convened in order to establish where the 1937 Constitution required amendments to be made. Their first report recommended the express inclusion of the unenumerated rights of the child (1996).
3. Concluding observations of the CRC: The UN Committee on the Rights of the Child called for the inclusion of children’s rights in the Irish constitution in the concluding observations to Ireland’s Reports (1998, 2006).
4. Political debate on Children’s Rights in the Constitution: The year of 2006 in particular saw a protracted government debate, concerning a children’s rights amendment to the Constitution, play out both in the Dáil and the media whilst the UN

Committee were in the process of reviewing Ireland's 2<sup>nd</sup> report. The debate culminated in an announcement from the then Taoiseach that a referendum was necessary and imminent, to "explicitly set out rights of the child in our Constitution" and, "to put the rights of children in a central place in our Constitution" (Ahern, 2006).

5. The Joint Committee on the Constitutional Amendment on Children: In November 2007 the Joint Committee on the Constitutional Amendment on Children was established. As of September 2009, "the Committee is currently deliberating on the proposed amendment to our Constitution to provide an express acknowledgement of the constitutional rights of children" (O'Rourke, 2009).<sup>4</sup>

Subsequent discussion on the issue of a constitutional referendum in respect of children's rights has suggested that new laws for child protection are the governments "immediate concern" (An Taoiseach, Brian Cowen quoted in, Edwards, 2009), in conjunction with recommendations on strengthening children's rights, in advance of any decision on a constitutional referendum on the issue (O'Brien, 2009, p. 4).

Kilkelly (2008a) states that "Ireland's progress in realising children's rights is hampered by the terms of the constitution through its 'strong provision for the family'" (p. 2). Nolan (2007), discussing the battles over children's rights in the Constitution considers the view of those opposed to children as rights holders, who believe that the according of "rights to children would be harmful due to the negative impact this will have on the parental authority over, and responsibility for, children" (p. 496). There has also traditionally been a view of some in opposition to children's rights that the relative immaturity of children, particularly younger children, renders them unable to be legitimate holders of rights (Purdy, 1994) This

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<sup>4</sup> On February 16<sup>th</sup> 2010 the Joint Committee on the Constitutional Amendment on Children published their final report which recommends specifically worded changes to the constitution in respect of children's rights; the government have yet to make a decision on calling for a constitutional referendum. See Kilkelly (2010).



ambivalence about children's role in society, their rights to participation and their right to be rights-holders is compounded by a belief that "to take children seriously poses a fundamental challenge to power issues within the family and within the wider community" (Pryor & Rodgers, 2001, p. 12). Nevertheless, the problematic surrounding the Report is the continued lack of explicit children's rights in Ireland. There is a lack of visibility of children within the public sphere, particularly in relation to the acknowledgment of children as rights holders, thus a constitutional amendment to include express children's rights could go some way towards rectifying this (CRA, 2006; Kilkelly, 2008a; Nolan, 2007).

In order to promote and realise full implementation of children's rights, the Committee on the Rights of the Child itself welcomes the inclusion of children's rights principles and sections in national constitutions, however they do point out that "additional legislative and other measures may be necessary" (CRC, 2003, p. 7) alongside such constitutional protection of children's rights. Nevertheless, a concurrent "public embrace of the principles and spirit of the convention" (Reading et al., 2009, p. 335) might be equally as important as the adoption of constitutional and legislative measures. Thus in Ireland's case the social construction of Irish society in relation to the family, particularly, the constitutional primacy of the family (Kilkelly, 2008a), the adherence to the principle of subsidiarity and how these concepts are addressed and interpreted within the legal system (Nolan, 2007; O'Brien, 2009) are continued barriers to policy change in favour of children's rights.

### **Critical Discourse Analysis**

Discourse analysis is a research activity which looks closely at language and is mainly "concerned with the production of meaning through talk and texts" (Seale, 2004, p. 373). "Discourse analysis involves the systematic study of texts to find evidence of their meaning

and how this meaning translates into a social reality” (Hardy et al., 2004, p. 20); critical discourse analysis is specifically concerned with studying language, focusing on how social relations, identity and power are constructed through written and spoken texts (Fairclough, 1995). Within critical discourse analysis, social life is seen and researched as “both constrained by social structures, and an active process of production which transforms social structures” (Chouliaraki & Fairclough, 1999, p. 3). Habermas (1971) considers the “critical” in critical research as having an “emancipatory knowledge interest” which is committed to progressive social change. Thus critical research has become an important tool in many studies of social policy, particularly those involving explorations of policy from a rights context.

CDA as a concept evolved from Foucault’s (1969) notions of discourse<sup>5</sup> and was expanded further with Halliday’s concept of Systemic Functional Linguistics (SFL) (1978, 1994). SFL is a theory of language which is centred on the notion of language function; it is interested in what language does and how it does it. SFL is “concerned with the relationship between language and other elements and aspects of social life” (Fairclough, 2003, p. 5). Consequently, the objective of using a critical discourse analysis as a tool in studies of official texts is to investigate how language figures “as an element in social processes” (Fairclough, 2001, p. 229).

CDA research operates from the view that language both shapes, and is shaped by societal practices (Fairclough, 1995) and has been positioned by many experts as an effective way of doing social policy research; an explicit focus on language combined with an engagement with social theoretical issues (Fairclough, 2003). CDA explores texts aiming to uncover

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<sup>5</sup> Foucault saw discourses as systematised ways of seeing, speaking, thinking, feeling and acting relating to a topic through specific language and concepts; thus he saw language, power and knowledge as fundamentally interconnected at the level of discourses

anything of relevance embedded in the language, while also considering what the nuances of the society (pertaining to both the social and the political culture) under investigation are and how these influence the status quo.

Analysts of discourse, such as Fairclough and Hastings (1998) believe that “detailed aspects of language such as grammar, vocabulary, metaphor and idioms can be ideologically significant”(p. 196). When CDA is applied to an official document, it can expose the political agenda, the hegemony behind the text, the inclusion of particular voices versus the exclusion of others, and the way(s) in which certain values are expressed and realised. Hence, a rigorous analysis of narrative, grammar and language contained in official documents can uncover how discourses are replicated and perpetuated through the text. A thorough textual analysis of a document is employed to identify if there are linguistic properties that possess an ideological basis, thus CDA is concerned with the following linguistic properties within a text:

- The way a dialogue is structured (narrative)
- The way sentences are linked together (clause combination)
- The grammar and semantics of clauses including: transitivity, action verbs, voice and modality.
- Words, including: choice of vocabulary, meaning, collocation of, and metaphorical uses of words. (Luke, 1997)

### **The UNCRC Monitoring Process**

The monitoring process for the Convention is a relatively robust procedure which is overseen by the UN Committee on the Rights of the Child, a panel of ten leading experts in the field of children’s rights from around the world. Under the terms of the Convention, signatory states

are required to update the Committee on progress in its implementation on a determined periodic basis (CRC, 1996, 2003, 2005). The committee's guidelines explicitly maintain that states parties must submit an initial report two years after ratification and periodic reports every five years thereafter (CRC, 1996, 2003, 2005). The Committee examines states parties reports alongside considering submissions from non-governmental organisations (NGO's) and other interested parties who are concerned with children's rights and welfare. When the Committee has received the reports, a pre-sessional meeting is held where NGO's and other national and international organisations present further information on the situation regarding children's rights in the state under scrutiny. The pre-sessional meeting generates a list of further issues which is forwarded to the government, highlighting areas which require further information and indicating the priorities of the Committee with regard to their formal examination of the governments report. The Committee requests the state party to respond to the list of issues in writing in advance of the plenary hearing. Then follows the plenary hearing where the Committee formally examines the states party report through questions and discussion in order to analyse "progress achieved", "factors and difficulties encountered", "implementation priorities" and "future goals" (CRC, 1994, p. 3). Following the plenary hearing the Committee convenes privately to make its Concluding Observations which discuss the state party's progress achieved, alongside suggestions and recommendations for action in further implementing the provisions of the Convention. The intention of the Concluding Observations are that the state party will publicise them widely and that they will form the basis of discussion for improvement of implementation of the Convention (CRA, 1998).

### **UNCRC reporting mechanisms/guidelines**

The guideline documents from the Committee on the Rights of the Child, *General Comment No.5, General measures of implementation of the Convention on the Rights of the Child (arts.4, 42 and 44, para. 6)* (2003), and *General Guidelines regarding the form and content of periodic reports to be submitted by states parties under article 44, paragraph 1 (b), of the convention*, (2005) are very much guideline documents. They outline the necessary information required from states parties to demonstrate their implementation of all the principles of the convention. The *General Comment 5* (2003) document is more descriptive in parts; it discusses the main issues in relation to implementation while also listing the necessary requirements for reports. The *Guidelines* (2005) list the revised information requirements while also referring to following the more explanatory provisions from the *General Comment 5* (2003) in many instances. The *Guidelines* (2005) discuss the necessary provisions under the Convention cluster headings and also relates these areas to the specific articles in the Convention to which they belong; for example, under the education, leisure and cultural activities cluster, the guidelines advise states parties to provide relevant information in respect of:

*Education, including vocational training and guidance (art. 28);*

*Aims of education (art. 29) with reference also to quality of education;*

*Rest, leisure, recreation and cultural and artistic activities (art. 31).*

(CRC, 2005, p. 7)

Both documents are permeated by an excess of the word “*should*”, as opposed to use of the stronger auxiliary verb “*must*”, which leads to the information guidelines appearing in some parts as gentle suggestions rather than as required information. For example, in relation to what the Committee expects in terms of information on states parties monitoring and implementation of the Convention, they request that:

*The subsequent paragraphs should contain sufficient information to provide the Committee with a comprehensive understanding of the implementation of the Convention in the country concerned as well as the mechanisms established within the Government to monitor progress (CRC, 2005, p. 2).*

On the contrary, in parts of *General Comment 5* the use of the word “*should*” serves to reinforce general common sense in terms of what the Convention is for and reminds states parties that even when fully implemented, its success will be part of an ongoing process of monitoring and review:

*And while it is important that this review process should be built into the machinery of all relevant government departments, it is also advantageous to have independent review by, for example, parliamentary committees and hearings, national human rights institutions, NGOs, academics, affected children and young people and others (CRC, 2003, p. 6)*

The guidelines in both documents are reasonably specific and comprehensive, particularly when states parties previous experience in reporting to the Committee is taken into consideration. The documents do provide a clear indication of the type of information required and the necessary areas which need to be covered in terms of information provision and data collection. Analysis of both documents does not reveal much in terms of any dominant underlying ideology; however, the list of provisions under the cluster headings is not infinite, which could suggest that specific areas have been thoughtfully selected by the Committee as the priorities for implementation of the Convention. What the analysis does reveal, is the reliance of the Committee on states parties to be both committed to implementing the Convention, and to be truthful as to how they have gone about their implementation efforts thus far. The Committee is therefore dependent to a certain extent on states parties to self-monitor their own implementation and to report back to them truthfully on the progress made:

*rigorous monitoring of implementation is required, which should be built into the process of government at all levels but also independent monitoring by national human rights institutions, NGO’s and others (CRC, 2003, p. 8).*

There are additional productive elements involved in the monitoring process, particularly the involvement of NGO's and human rights institutions who are fully committed to implementing the Convention and keeping it on the agenda as much as possible. Nevertheless, the role of the Committee, after investigation of reports and hearings with NGO's, is still limited to guiding, advising and encouraging states parties to fully implement the Convention. There are no legal sanctions for states parties non-compliance and there is a limited amount of time involved for the Committee to delve deeper into the issues. Therefore the tendency for the Committee, is essentially, to "monitor the monitoring" (Hammarberg, 2001, p. 134).

### **Ireland's Report to the UN Committee on the Rights of the Child**

Ireland's first report to the UN Committee on the Rights of the Child was submitted in 1996 and was prepared by the Department of Foreign Affairs; the concluding observations were received from the Committee in 1998. Ireland's second report (the subject of this analysis) was prepared by the Office of the Minister for Children and Youth Affairs in the Department of Health and Children and submitted in 2005; the concluding observations were returned in 2006.

The Report arrived seven years after the concluding observations of the first report were returned to the Irish government. Thus, as a result of this passage of time, there was plenty of time for changes to be made and steps forward taken, in relation to recasting policy for children in respect of the Convention. The objective of the Report is twofold for the Irish government: first, to fulfil their reporting commitments to the Committee on the Rights of the Child; second, to illustrate their commitment to the implementation of the Convention in

Ireland through “evidence” of the increased and enhanced development of policies and services for children, through significant resources, investment and new legislation.

The Report is one hundred and seventy five pages long and is an official summary of what the government has addressed to contribute to fulfilling implementation of the Convention since the CRC’s concluding observations on Ireland’s first report. The introduction summarises the main contents of the whole document, particularly summarising actions that were taken in direct response to the CRC’s concluding observations on Ireland (1998). Each chapter is broken down into numbered paragraphs; there are sections covering specific actions broken down into headings where necessary and sub headings also. In terms of genre, the Report is promotional (Fairclough, 2001). The promotional nature of the document means that the government is publishing the actions already taken in relation to implementation of the Convention, rather than offering a platform for discussion. For instance, the document operates promotionally through presenting information illustrated by descriptions of existing legislation and other policy initiatives which have specifically been enacted or established since the 1998 concluding observations, in tandem with the actions expressly taken in response to the CRC’s concluding observations.

The document is written in a style consistent with the CRC’s information requirements on the progress of Convention implementation thus refrains from any noteworthy design elements.

The Report concentrates strictly on the job of informing, through text which is broken down into eight chapters under the headings of the main clusters of the Convention:

- general measures of implementation;
- definition of the child;
- general principles;
- civil rights and freedoms;
- family environment and alternative care;
- basic health and welfare;



- education, leisure and cultural activities;
- special protection measures.

The eight chapters are further broken up into subheadings and numbered paragraphs.

The principal voice represented in the Report is that of the government. Non-governmental organisations (NGO's) are well represented within the rest of the monitoring process and their own reports play an integral role within the CRC's considerations. The government Report includes a small section (five and a half pages) which discusses consultation with the NGO sector, and highlights a selection of the main concerns and short-term recommendations of the NGO's involved.

Periodic reports of this nature are generic texts; their function is to report on what progress has been made. The CRC are relatively detailed in their guidelines as to the information they require in periodic reports from state parties, so the content of the Report has been somewhat prescribed. Focusing on the language used, the choice of words, and the positioning and collocation of the chosen words, can potentially highlight a government's modus operandi in relation to how they wish to present themselves in their report. Consequently, for this kind of analysis subject, it is the linguistic textual analysis, particularly in terms of narrative, structure and vocabulary that reveals the most significant findings; within that, close scrutiny in terms of the choice and positioning of words becomes the most significant facet of this analysis.

## **Findings**

The Report has a tendency to skim over the areas where the government have been laissez faire and focuses more on celebrating any progress that has been made in relation to implementing the Convention, through the governments "*increased and enhanced*

*development of policies and services for children in the 1990s and recent years” (OMCYA, 2005, p. 2).*

The Report illustrates the government’s accentuation of their successes in implementation of many of the recommendations from the UN committee to the first report. Nevertheless, a number of unaddressed issues also remain, alongside incomplete and desultory actions. The language throughout the Report, when analysed closely with CDA, revealed four notable discourse trends, which the findings are respectively discussed under, they are:

1. Well presented positives
2. Incomplete policy actions
3. Recurring ambiguity
4. Weak policy commitments

### **1. Well presented positives**

The positives conveyed in the Report predominantly centre on the governments major achievements since the concluding observations of the 1<sup>st</sup> report particularly the publication of the *National Children’s Strategy* (2000), and the appointment of the Ombudsman for Children in 2004. A confidence emanates from the language used to represent successful actions, often through lengthy and detailed descriptions. The majority of significant positive actions discussed in the Report relate to the publication of the National Children’s Strategy and the establishment of the National Children’s Office. The Report leads with celebration of the successful publication of the *National Children’s Strategy* in 2000:

*the publication of the National Children’s Strategy is the most significant initiative in Ireland to implement the UNCRC and to promote knowledge and understanding of the UN convention (OMCYA, 2005, p. 2).*

The discourse in reference to the improvement of policy for children is bolstered by a stated commitment to making children's lives better, which is particularly evident in terms of the quoted goals of the *National Children's Strategy*:

Goal 1: Children will have a voice in matters which affect them

Goal 2: Children's lives will be better understood

Goal 3: Children will receive quality supports and services (Ireland., 2000)

The Report subsequently cites the *National Children's Strategy* as offering a vision of:

*An Ireland where children are respected as young citizens with a valued contribution to make and a voice of their own; where all children are cherished and supported by family and the wider society; where they enjoy a fulfilling childhood and realise their potential* (Ireland., 2000, p. 4)

The Report also alludes to the broadening and enhancement of the role of the Minister for Children who is charged with the responsibility for overseeing the implementation of the strategy and the establishment of the National Children's Office (NCO)<sup>6</sup>. The NCO is the office responsible for implementation of the strategy, and the Report states the NCO's objectives for the period 2003-2005, to:

*progress the three national goals of the National Children's Strategy and to develop an overview of public policy in relation to children in order to identify gaps and recommend appropriate action to address them* (OMCYA, 2005, p. 27).

Further positives stated in the Report include the assertion that the NCO has "*become a centre of excellence in children and young people's participation and children's research*" (OMCYA, 2005, p. 2); and that Ireland has become "*the first country in the world with a detailed national play policy*" (ibid.) which refers to the 2004 publication of *Ready, Steady, Play! A National Play Policy*.

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<sup>6</sup> The National Children's Office (NCO) was established in 2001 and is now part of the Office of the Minister for Children and Youth Affairs (OMCYA) which was established in 2005.

## 2. Incomplete policy actions

There is a recurring theme throughout the Report where there is reference to legislative acts and other policy programmes that have not yet commenced or not yet been fully enacted. An example of this is:

*Under the Mental Treatment Act, 1945, a child was defined as a person under the age of 16 years. However, under the Mental Health Act, 2001 (enacted but not yet fully commenced), a child is defined as a person under the age of 18 years, other than a person who is or has been married. (OMCYA, 2005, p. 53).*

This indicates that as a result of the delay in commencement of the Act 16-17 year olds will be left in a precarious position where they may be treated as adults rather than children within the mental health system.

Further demonstration of this recurring theme of incomplete policy actions is also evident here, in the case of juvenile justice: *“Part 5 of the Children Act, 2001 provides for the raising of the age of criminal responsibility from 7 to 12 years. This Part of the Act has not yet commenced”* (ibid. , p. 55).

The recurring theme of legislation which *“has not yet commenced”*, *“not yet been commenced”* or in other cases, will be commenced *“when resources become available”* in the Report is unfortunately often associated with policy areas such as mental health and juvenile justice, where children are most vulnerable. For instance, there are approximately twelve separate areas within juvenile justice that have not been commenced or fully commenced under the Children Act, 2001 referred to in the Report, and there are also a further four specific areas under the Mental Health Act, 2001 which have also not been properly or fully implemented. These exclusions are stated in a rather matter of fact manner within the language of the Report; there is a lack of explanation or discussion around why certain parts

of certain acts have not yet been implemented, and no stated commitment (through stated targets or timelines for implementation) to rectify the problem(s) either.

Further to this, there is a noticeable air of elusiveness when the Report discusses other gaps which reinforce the invisibility of children and the exclusion of their voices in matters which greatly affect them. An example of this is in reference to child abuse:

*In 1996, the Department of Health issued a discussion document on the question of mandatory reporting of child abuse in line with a Government commitment to introduce mandatory reporting. Following an extensive consultation process, the majority view was against the introduction of mandatory reporting. (ibid., p. 10).*

The report does not divulge if children were involved in or represented adequately in the consultation process, leading the reader to discern in this case that they were not.

Another example of this elusiveness, is in reference to parent's physical punishment of children, where the Report alludes to the Common Law rule which "*recognises the right of a parent to inflict moderate and reasonable physical chastisement on a child*" (OMCYA, 2005, p. 86). The Report further legitimates this aspect of the law through explaining that,

*Where a parent physically chastises a child, the motive for, and the duration and force of, the punishment must be objectively reasonable, not just reasonable in the parent's opinion. (ibid.),*

rather than recognising that this Common Law Rule is contrary to the provisions of Article 19.1 of the Convention<sup>7</sup>.

There is however one area where the Report does display some frankness on the part of the government by including an acknowledgment of the particular problem of the childcare policy area:

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<sup>7</sup> Article 19. 1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

*Notwithstanding a range of positive developments, childcare provision in Ireland is a continuous source of concern. The primary difficulties are articulated in the OECD Report on Early Childhood Education and Care, which refers to the fragmented nature of policy development in Ireland and the lack of coordination of service delivery. (OMCYA, 2005, p. 126).*

This is the clearest incidence of a direct admission and acceptance of a specific problem area in this Report.

### **3. Recurring ambiguity**

The Report includes a recurrence of ambiguous statements which are predominantly illustrated by overuse of the word “*should*” as opposed to use of the stronger auxiliary verb “*must*”, which would facilitate clearer understanding of the meaning of the statements. The use of the word *must* can and does appear to be more of a statement of intent and/or obligation when it is used in the Report, as opposed to the use of the word *should*, which comes across as weaker and less commitment based.

An example of the ambiguity implied through use of the word *should* is where the Report discusses the Children Act, 2001; the attitude to custodial care for children in juvenile justice cases maintains that “*detention should be a last resort, but where it is unavoidable it should be in institutions where the ethos is educational rather than penal*”.(OMCYA, 2005, p. 155). Use of the word *should* in this instance, can be seen to imply that there may be instances where detention for children is not used as a last resort and that children may end up in penal institutions even though they should be in educational ones.

Another clear example within the Report of this overuse of the word *should* leading to weakened and ambiguous provisions, is in relation to discussing local government planning regulations:

*local authorities should have due regard to the need for and the availability of key services and amenities, including the provision of community meeting places, recreation and leisure facilities (OMCYA, 2005, p. 146).*

Here the use of the word *should* seems to imply that while the intention is that local government should plan proper community services and amenities accordingly, there remains no legislative onus on them to do so.

There are also a number of incidences of extremely long-winded explanations within the Report which manage to confuse and potentially distort the real meaning; for example, the language used to discuss the intentions of the Disability Act 2005:

*to enable government ministers to make provisions (consistent with the resources available to them and their obligations in relation to their allocation) for services to meet those needs (OMCYA, 2005, p. 106).*

The construction of the language here appears to suggest that ministers and their resources are prioritised over children with specific needs.

More evidence of complicated and confusing use of language appears where the Report explains that children are eligible to receive free healthcare services while also referring to the Health Act of 1970 to explain why this is not actually available.

*At present, children are eligible to receive healthcare services free of charge, but system capacity means that there are delays in both assessment for and delivery of some of these services. The system of eligibility for services within the health system is complex. The Health Act, 1970 explicitly provides for eligibility for a service; it does not provide that a person is entitled to receive a service. (ibid, p. 122).*

#### **4. Weak policy commitments**

There is a strong pattern of weak policy commitments throughout the Report, where policy appears to have been enacted without evidence of strategic planning, proper funding or resourcing. This is illustrated in the Report by repeated reference to pilot projects which were either never expanded on, or implemented in a reduced manner, compared to what was

initially envisioned for the service. This is evidently so in the case of the National Educational Welfare Board (NEWB), whose role is to ensure that each child “*attends a recognised school or otherwise receives a certain minimum education*”, in reference to the NEWB service the Report states that

*The NEWB is currently developing its services and has appointed a number of educational welfare officers who are responsible for encouraging school attendance. It is hoped to expand this service to cover all parts of the country in the future.* (OMCYA, 2005, p. 145).

The use of the word *hope* does not imply a detailed commitment to expansion of the service.

A further example of weak policy commitments arises with this statement about the National Youth Work Development Plan. Where the government’s intention is that the plan will be implemented in phases, but it is also dependent on the availability of resources which suggests that it may well not be implemented.

*The National Youth Work Development Plan 2003–2007 was published on 5 August 2003, following an extensive consultation process. It is intended that the plan will be implemented on a phased and prioritised basis as resources become available.* (ibid, p. 137).

Using critical discourse analysis as a way into this Report exemplifies how the Irish government use overtly positive language to promote and sell their successes in relation to implementation of the Convention to the CRC. Conversely, the analysis simultaneously reveals their laissez-faire attitude towards certain policy areas relating to children which is illustrated by a use of language which glosses over the problem of omissions and often appears vague and ambiguous. The governance style in relation to implementation of the Convention appears to consist of prioritising certain preferred policy areas over other less politically desirable areas. This is contrary to the government discourse around putting “the rights of children in a central place in our Constitution” (Ahern, 2006) and the National Children’s Strategy goal to ensure that children will receive quality supports and services (Ireland., 2000, p. 11). Thus their style of governance, what they say they will do versus what



they actually do, accentuates the difference between “rhetoric & reality” (Fairclough, 2001, p. 263) in government discourse.

## **Discussion**

Despite the robustness of the Convention monitoring process there has been some criticism levelled at its effectiveness. Much of the criticism directed towards the monitoring process refers to states parties propensity to use the reporting procedure as a tool for “international accountability” as opposed to employing it as “a national monitoring and policy making tool” (Santos Pais, 2007, p. 109). The apparent lack of political will to engage in autonomous reporting and monitoring, outside of the generation of periodic reports for the Committee, serves to highlight the “absence of a systematic, comprehensive approach to children’s rights as a political priority” (Hammarberg, 2007, p. 114), which is often illustrated by decision-makers resistance to distinguish between “charity and a rights-based approach” (ibid.). The term “ratification” merely implies that the government has committed itself to treating the Convention seriously (Lyon, 2007).

The point of the Convention is that “it holds society legally accountable for meeting the obligations which give meaning” (Hammarberg, 1990, p. 99) to children’s rights. However, implementing the rights in the Convention is a moral obligation for state parties, they are not “legally enforceable rights” (Lyon, 2007, p. 149). The Committee’s monitoring of the Convention relies more so “on the willingness of national governments to take its criticisms and recommendations seriously” (Kilkelly, 2001, p. 309). The approach of the Committee in protecting and promoting children’s rights is one of encouragement and constructive advice, “its success relies on diplomacy rather than legal sanction” (Kilkelly, 2001, p. 309). The revisions of the Committee’s monitoring process through *General Comment 5* (2003) and

revised *General Guidelines* (2005) are an important tool in aiding states implementation of the Convention and the provision of more accurate reporting. However, the Committee is still reliant on information that state parties provide them with “which is often formal and legalistic and provides very little insight into the reality of children’s lives” (Kilkelly, 2006, p. 36). Thus there has been some speculation that “many countries sign up to child-related agreements because they know that thereafter non-compliance brings no repercussions” (Jones, 2005, p. 337). This is where the inclusion of the NGO’s and other interested parties helps to fill the gaps, however, while NGO’s can pressure governments to put children’s rights issues on the public agenda, and also highlight important issues to the Committee, they have limited capacity to make changes to legislation and constitutions, they are not the decision-makers.

Nonetheless, it is reasonable to assume that through ratification of the Convention, countries are committing to implementing the rights enshrined therein<sup>8</sup>. State parties however, may only be willing to implement the Convention on their own terms within the constraints of their economic, social, political and legal culture. For instance, in terms of Ireland’s strategy to aid implementation of the Convention, the government has prioritised particular policy areas over others:

Goals 1 and 2 of the *National Children’s Strategy* that children’s voice will be heard in matters affecting them and that their lives will be better understood have been embraced over and above Goal 3, the provision of quality services for children (Hayes & Bradley, 2009, p. 14)

This further highlights the difficulties facing implementation and monitoring of the Convention. While *General Comment 5* (2003) and the revised Guidelines on the form and content of the periodic reports are both welcome and useful, they have not engendered a

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<sup>8</sup> See ‘*Improving Accountability for Child Rights: The Need for a New International Mechanism*’ on the Child Rights Information Network (CRIN) website for a brief argument by Save the Children on how Governments are failing to keep their promises under the Convention, (CRIN, 2009)

system to eradicate the scope for state parties reports to be of a rhetorical nature. Aside from the work of NGO's, such as the Children's Rights Alliance, in Ireland's case, there is a tendency for discourse around children's rights and the Convention to drop off the agenda in the intervening years between periodic reports. Woll (2000) highlights the need to court the media as a strong ally for Convention implementation, she also recommends the need for a more participatory reporting process that raises public awareness and engages all members of society. Most importantly, it is vital that the concluding observations are published widely and that governments "identify clear lines of authority for follow-up" on them and realistic "timelines for achieving them" (Woll, 2000, p. 80).

## **Conclusion**

The Report emphasises the Irish government's hands-off approach to children in policy terms, when it comes to intervening within the private realm of the family. The incorporation of the Convention into law and the debate over having a referendum on the insertion of children's rights into the constitution, are both hindered by a number of socio-cultural barriers including the lasting influence of catholic social teaching on twentieth century social policy through the principle of subsidiarity (Fanning, 1999). While the government appears in a positive light in terms of the successes, (National Children's Strategy, Ombudsman for Children, National Play Policy); concurrently, they appear in a darker light through their inability to fully implement crucial acts (Mental Health Act 2001, Children Act 2001), and failure to adequately resource vital children's services (NEWB, Disability Act 2005). In spite of this the negatives are clearly glossed over and outweighed by overblown celebrations of the positives.

There is clearly too much scope for states parties to lean towards rhetoric in terms of the information they provide in their reports. Child rights indicators, state of the nation's children reports, the improved collection of disaggregated data in relation to children, and the work of NGO's at keeping children's rights on the public agenda, all go a long way towards improving the information gathered, as recommended by the Committee. However, there is also an urgent need for "a culture of transparency and openness throughout the government administration" (Hammarberg, 2001, p. 140), to allow room within the monitoring process for "doubt, self-criticism – and constant efforts to find better methods" (ibid.). Such an attitude should lay the foundations to promote full implementation of the Convention, and children's rights, "in the spirit of human rights" (ibid.).

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