

Child Rights in the Network of Generations

An appeal for a topical reading of the Convention on the Rights of the Child

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Many subjects, which are intensely discussed by the public recently, refer to children: Examples of far-reaching consequences are care and education in the early years complementing parental efforts and the all-day school. In these debates it would seem obvious to refer to the Convention on the Rights of the Child. Yet such attention is paid reluctantly only, as this treaty is hardly known, or it is simply maintained that the treaty lopsidedly emphasizes the rights of children - according to the Convention young human beings up to the age of 18. However, a thorough reading of the Convention demonstrates that it constructs no antagonism between rights of the children and parents. On the contrary, it is based on the comprehensive and persevered conception that in reality „the preparation of the child for responsible life in a free society“ (Art. 29) can be implemented in mutual dependence of the generations only. We intend to substantiate this thesis by an analysis of some of the pivotal provisions of the Convention.

1. Rights of Children - Rights of Parents

Just mentioning „rights of children“ is often interpreted as an attack on the „rights of the adults“. The fear of losing authority is additionally nurtured by the view that children should be invested with rights, which they were not entitled to until now. It is suspected that the entire legal framework would be changed by the recognition of rights of children: Existing legal status would be lost whereas new right holders encroach upon established legal relationships.

Thus, rights of children and rights of parents, rights of the young and rights of old become an opposition, a field of rivalry and conflict, even a „war of generations“. The horrifying scenario depicts children who, for instance, impudently answer back to their parents, who refuse to go to bed in time, who attend school only when their favourite subjects are scheduled and who insist on more pocket money. Is this the content of the agreement of the State parties to the Convention? - No, obviously not at all. The conception of rights, which equally adhere to all human beings, young or old, and are not assigned by a law, does not refer to rights, which are awarded because of children's merits. The Convention incorporates rights, to which children are forever entitled by being human beings. Human rights treaties do not aim at the provision of added rights rather than at the awareness of children's human rights and their consideration in all laws, measures and actions, which affect children.

The Convention hence addresses what is the right of *all human beings*, including children, although respecting their level of development and their need for protection. For this reason the member states

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of the United Nations deemed necessary to elaborate on the human rights, which apply to children. The following issues are central: children's survival, nutrition and health, guidance and education, recognition of their particular interests, protection against discrimination, abuse, neglect and exploitation and children's participation. All states of the world (except Somalia and the United States of America, which have not yet ratified the Convention) have accepted the obligation to implement these rights, as they are anchored in the dignity of each and every human being.

The human rights of children generate community and not discords, as they do not deprive parents of rights. From this perspective the suspicion is devious that child rights fuel conflicts in the relationships between young and old. One may ask whether such kind of fears mirror the view that human rights and their reinterpretation as child rights have no bearing on parent-child relationships or the relationship of the generations. Should this be the case, then these tensions may generate conflicts which have to be endured and coped with in order to bring together parents and children on the base of human rights and to give generational relationships a common ground.

2. Child and family (Articles 5, 9, 10, 16 and 18)

It is evident that the Convention on the Rights of the Child presents a clear family-policy perspective with regard to the relationship of parents and children and its integration in society. Children have a right to reliable personal relations and to direct personal contact to both parents, even when separated parents live in different states. Also all family members have the right to know the whereabouts of absent family members, when measures of states have split the family. Arbitrary and unlawful intervention into the privacy of the child and her/his family are prohibited. This is stated with explicit recognition of the rights and the obligations of the parents who, on the other hand, have to take into account the rights of the child. These provisions of the Convention underscore the dependence of the child on her/his parents and the obligation of the parents to promote the personal development of their child. The reference of the Convention to intergenerational relationships becomes apparent.

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The anthropological potential of intergenerational relationships in the family and, thus, the institution of the family are not only acknowledged, but clearly highlighted. This is also apparent in the presentation of the aims of education (Art. 29). Among others they include that the child's education shall be directed to the development of respect to the child's parent. This aim is related to the respect, which the child shall show for her/his cultural identity, language as well as cultural and national values.

Accordingly parents are entitled to appropriate assistance in their responsibility for upbringing the child. This refers to services and institutions. In connection with "the enjoyment of the highest attainable standard of health" reference is made to parental education and counselling (Art. 24). Furthermore children are entitled to social security (Art. 26) and an adequate standard of living (Art. 27), whereby, as explicitly stated, parents have the primary responsibility notwithstanding the state's obligation to support families and children in hardship. The wide socio-political scope of the Convention is moreover apparent in Art. 23 stating the special rights and needs of children with mental and physical disabilities.

It is obvious: In no way the Convention disregards the role of family and parents. On the contrary it enhances their status, since it establishes a connection to the right of all human beings to personal development. Such a connection also applies to the school (Art. 28, 2). Respect for the institutions, which assist the child on its way into the social, intellectual and cultural life, is clearly evident. However, respect is not an end in itself, since the institutions serve the implementation of the inalienable human and child rights which make possible life in freedom, justice and peace.

Entitlements to human rights and principles provided for individuals and correspondingly for institutions as well, protect against arbitrariness and authoritarian enforcement of interests. As the Convention on the Rights of the Child embeds the best interests of the child into the formation of intergenerational relationships and the shared priority of the development of a personality enabled to

responsibility and social participation, it opens up far-reaching and current perspectives: Apart from possible tensions between old and young the Convention is shaped by the interdependence of the generations and legally safeguards this interdependence.

3. Best interests of the child (Art. 3)

It is crucial to read the text accurately in order to avoid the impression that the treaty stipulates to give priority to the best interests of the child in all conflicts of interests including such conflicts among the generations. This would remove the best interests of the child from all negotiations about access and distribution; generational conflicts would be pre-decided in favour of children.

In fact the Convention designates some areas, where the best interests of the child have to be paramount. They include the separation of the child from maltreating or neglecting parents (art. 20), adoption (Art. 21) or the potential exclusion of parents in juvenile justice procedures (Art. 40, 2 b, iii). In Art. 3, in which the Convention generally explains the right to consideration of the child's best interest, the Convention stipulates that the best interests of the child have to be a primary consideration. The Convention takes into account that other interests exist which also need primary consideration.

Only by acknowledging other interests of high importance it was possible to extent primary consideration of the child's best interests from areas, which are of existential relevance to the child such as separation from parents or adoption, to "*all actions concerning children*" (see para. 1 of Art. 3). For this reason the best interests of the child are not *the*, but only *one of the issues of primary* consideration. This becomes evident, if community development, retirement funds, energy supply or CO₂ emissions are under debate. Mostly such problems are discussed from the perspective of other pressure groups or generations.

Often the term "best interest of the child" in the official UN text is used interchangeable with the term "wellbeing". Although the dictionary declares the meaning of both terms as identical, there is an important difference. The term "best interests" elucidates that children are *subjects* with interests, perspectives and objectives of their own. The Convention juxtaposes these interests alongside with the interests of other groups in society and consequently integrates children into the controversies in society and the succession of generations.

According to the Convention, the best interests of children have to be explicitly defined and respected in all actions concerning children. Thus, it is not enough to assure after decisions have been made that children were always in the mind of the decision makers. Rules of decision-making in legislative bodies, administration and children's institutions have to guarantee that children's best interests are actually debated. This way, the best interests of children receive recognition besides other interests, which have to be considered with priority as well.

In such processes it has to be transparent to which extent the best interests of children are incorporated into the outcome or are put back. The right of children stipulating that their interests have to be considered does not separate them from adults. On the contrary, the interdependence of the generations is strengthened. The Convention binds the generations together; finding best possible solutions with regard to children's wellbeing and best interests is seen as a shared learning process involving all generations.

4. Evolving capacities (Art. 5)

The relationship between the generations as conceived of by the Convention can be further elucidated by a formulation in Article 5 addressing age and maturity of the child. Both terms are often used to justify the exclusion of children from participation. Yet, such actions would have serious consequences, as children would be dependent on benevolence and at the same time at the mercy of adults' discretion.

It is not denied that children do not overview all conditions and circumstances and are lacking capacities and understanding necessary to examine the best interests in view of children's development and life prospects. Indeed, children alone often cannot define and represent their best interests. The Convention is clear in this regard as it several times refers to age and maturity as an aspect, which has to be assessed, e.g. when due weight has to be given to a child's view (Art. 12).

This stipulation again indicates the importance of close interdependent relationships between children and parents as well as other adults. The right and the obligation of parents to guide and direct their children are confirmed. Article 5, however, insists that guidance and directions have to be given in a manner, which takes account of the evolving capacities of the child. Parents and everybody else, who wants to convey values and orientations to the child, have to thoroughly scrutinize to which extent the capacities of the child have developed, which challenges for further development the child needs and which problems would overburden him or her.

The request to give guidance and simultaneously to consider the child's evolving capacities, demands parents' attention, intimate involvement with the child and orientation of guidance and directions to the best interests of the child, as also required by Article 5. In summary: The child needs a close interrelationship with her/his parents. This applies in a corresponding way to the child's relationships to other adults, who are near to the child on her/his way to adulthood. Relationships are indispensable in which human beings, children as well as adults, pay attention to each other and can mutually rely on each other.

Two greatly discussed issues are not addressed by the Convention: Parent-child attachment, which is so essential for the child's healthy development, and the call for limits, with which children have to be confronted. Attachment is a quality of relationships, which a treaty cannot oblige State parties to implement. Yet the Convention entitles children to the right that the family is assured support, counselling and adequate living conditions. Such provisions will favour close parent-child relationships.

28 Limits, which, according to some pedagogical views, children must experience, are no topic of the Convention. However it acknowledges evolving capacities, age and maturity. With respect to the Convention State parties define minimum ages for children's activities and responsibilities such as criminal responsibility, employment or age of marriage. The observation that these age limits are defined differently, shows that cultural traditions influence such age definitions, but today have to be reconsidered in many societies in the light of the Convention and its provisions. The responsibilities and freedoms in family and everyday lives of children have to be permanently adapted to the evolving capacities of children and, therefore, have to be constantly negotiated. If accorded responsibilities disregard the evolved capacities, the child is bereaved of challenges, which could push forward her/his development and should push forward development. Without challenges no development!

Rules, if not explained and mutually agreed upon, disconnect parents and children and deprive them of a task to be shared. With regard to intergenerational relationships, the rhetoric of limits is dangerous, even more so, when it is stressed that limits must be set by adults alone. To set a limit avoids searching for shared understanding and inhibits explanation. For this reason such behaviours harm relationships and transform mutual intergenerational relationships into a one-sided command structure of the older ones to the young instead of generating joint efforts to construct rules of living together.

5. Participation, the child's rights to be heard (Art.12)

Above all the public is aware of children's right to participation. This is correct and wrong at the same time. It is *correct*, as the right of the child to be heard is one of the principles of the Convention, which is relevant wherever rights of the child are implemented in practice. Protection, healthy life, development and promotion of children shall be realized together with children to the extent possible. It is *wrong and causes misinterpretations*, if children's participation would be understood just as political involvement by means of election rights and voting.

Nothing about election rights and voting is mentioned in the Convention. Instead State parties to the Convention ensure to give due weight to the views which children have the right to freely express in all matters affecting them. Age and maturity of the child have to be taken into account. Although the concept of participation is not found in the Convention, it is a good term, however, depicting a practice, which has evolved on the base of the guarantee to give the child a voice. Who is entitled to the right to be heard, has to receive a response. Otherwise the child would not know that he or she was heard. The response may be followed by additional utterances. This stimulates conversation, exchange and produces participation and sharing.

If participation is regarded in this way, participation in fact is a central message of the Convention. From early years on children have to be involved in shaping their relationship and social lives. Their views, more precisely: their perspectives (and one could add: their experiences) have to be considered. By whom? By those, with whom children share their lives: first, therefore, by their parents, caregivers, teachers, but also by all the others who influence children's lives. Much more than the right to vote, which may be exercised without any consideration, the right to be heard including the due response opens the door for intense relationships between generations.

The enjoyment of the right to be heard needs conditions, which have to be created and guaranteed. It is the responsibility of adults to provide these conditions. The right has to be ensured not only with regard to individual cases, but generally. It has to be institutionalized in ways, which respect the particular life circumstances, in family, school, day care and other facilities for younger children and adolescents, local communities and private initiatives.

School is a central field of joined cultivation of participation and increasing responsibility, as the school is full of everyday tasks and challenges, which ask for agreed solutions. Adults and children share learning, leisure and social life for many years in a stable framework, within which they should be given opportunities to plan, decide, experiment and reconsider results on the base of procedures which adults and children themselves have negotiated. School is a community with various forums: talk in the classroom, class council and representative bodies, which provide realistic experience with accepted and reflected responsibility. Since the Convention defines listening and response as the foundation of participation, but not "self-determination" of children, the Convention supports the aims of civic education in school, which has to develop the fundamentals of shared responsibility by debate and negotiation, controversy and agreement.

The second paragraph of the article is of particular relevance, in which the State parties to the Convention declare that they will ensure the right of the child or of her/his representative to be heard in all judicial and administrative proceedings, which affect the child.

The formation of just, protective and promoting life conditions for children requires a meaningful orientation, which is shared by the generations, old and young. This orientation cannot be established by one generation for the other, by the older generation for the younger. It can be produced by the participation of the younger generation only, as soon as they can voice their own perspective and views.

6. Mass media (Art. 13 and 17)

Realistically the Convention recognizes the high relevance of the media in children's processes of growing up. It is stated that children's right to freely express their views implies the right to free access to information. Consequently the Convention stipulates that children can use the opportunities for information and learning. The production and dissemination of books for children is explicitly demanded. At the same time, the necessity of guidelines is emphasized, which protect children "from information and material injurious to his or her well-being" (Art. 17).

Media, however, are effective not only through the content, but also through the attractiveness and the dynamics of rapidly changing technical applications and the omnipresent appeal of prestigious consumption by open and veiled advertisement. In this context one has to remember that adults make available most of the media provisions, including the technical equipment. Again intergenerational relationships are challenged and, in this case, particularly the responsibility of the older members of society for the younger ones.

Considering the human rights principles of the Convention, not only the exploitation of children and adolescents by the media is of concern. Many effects of media are problematic for adults as well and have to be criticized. No doubt: freedom of opinion and media use is a high accomplishment, but has to be recognized in view of human rights standards as, for instance, demonstrated by legislation and jurisdiction in the field of racism. Violence and pornography are a danger not only to personality development of children and adolescents, but are a general violation of human dignity. They are a challenge also with regard to adults and, therefore, are a subject shared by old and young. Given the competent use of the young with the media, the problem cannot be solved by technical access barriers and prohibitions rather than by jointly developed insight.

7. In vision: A politics oriented to the relation among generations

The competition of political interests makes it especially difficult for children and those, who advocate their rights, to allocate what children need for healthy growing-up, development and protection on the same level with other priority issues. The promotion of the best interests of children is often declared rhetorically, but in fact decisions are mainly determined by economic and financial considerations. Children need not only economic security, as fundamental as this goal is in itself. Beyond economic security children need recognition and participation. In this regard the deficits are even larger. Only if the rights of children and the rights of adults will be regarded as equivalent and not be played off against each other, families and other institutions established for children's development will become the places which provide good life prospects for children and parents at the same time.

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When we look back into history of relations between children and adults, we discover many areas of tension. Children enter the social world with an own perspective, but are expected to adopt what adults regard as relevant. They shall participate at the live of their community, yet de facto are often excluded. Adults and children partly share interests, partly have own interests. The Convention on the Rights of the Child incorporates general principles and detailed provisions how to constructively deal with these discrepancies and ambivalences.

The Convention addresses these issues as it insists that children are included when the inalienable rights of all human beings are declared and confirmed in binding treaties. They are subjects, who establish relationships to others and whose own perspective has to be respected. Adults are depended on children and children are dependent on adults in view of their life-long development and evolving capacities. Without any doubt, the relationships among the generations in family and society aspired for in the Convention are two-sided, and they are embedded in the sequence of generations and the collaborative adaptation to the cultural heritage.

Our analysis of some essential articles shows that the Convention on the Rights of the Child combines this issue with the general right to development of a responsible personality capable to live with others in a cooperative manner - expressed in the language of the German federal law on support for children and adolescents (abbreviated: KJHG). The respect of this basic requirement asked from parents and children, from old and young and in all juridical or administrative proceedings, creates meaningful orientation for parents and involved persons of any age and also for the way, in which public and civil institutions understand their responsibilities. In this regard the implementation of child rights is a project, which does not only target children. It requires a generational policy, which addresses the relationships among all age cohorts of society, and takes account of the present as well as of the future.