

CHILDREN AND THE RIGHT TO EDUCATION

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Introduction

“Children” and “Education” – these two terms are suggestive of an elementary condition of human existence. Human life is determined by a continuous change of generations.¹ Human beings come into the world as very small children, grow up and into the world they encounter, become adults, and old, and finally leave this world. For the universal “anthropological fact” of growing up, a classic formulation referring to the need of education is to be found with Immanuel Kant:² “The human being can only become human by education.” If children are deprived of or only insufficiently provided with education, they can barely develop and frequently not even survive.³ But at the very least, essential opportunities of life are withheld from them. Human beings need a “Right to Education” because we grow up and because growing up goes along with being educated by others, educating ourselves along the way. Thus, children ought not to be seen merely as holders of rights, but also as “social subjects,” i.e. as

human beings with specific, subjective properties that, in part, differ from those of adults, but which also – depending on age and development possibilities – may be action-competent players.⁴ There is one basic requirement for any cognitive, emotional, and social education of all children – physical well-being. The provision of food, clothing, a home, protection against violence and abuse as well as help when they have experienced violence or are ill, contribute to their well-being. The less this provisioning and help are possible in keeping with the child’s age, the less education will be possible. This is why the right to education fundamentally also depends on the children’s physical condition.

The universal childhood phase of life is designed in highly diverse ways in different cultures, different social groups and classes, and over and above in each individual biography, and has historically developed along highly different lines. Terms such as “education,”⁵ even the very term of “childhood,” are indeed based on the universality of generation change, but

they have arisen in specific historical and cultural situations and often mean different things, also in those situations. The history of childhood and education is described and evaluated differently in historical childhood research.⁶ For insight on the social construct of childhood and thus also for the educational processes, the work *Geschichte der Kindheit* (The Centuries of Childhood) by Philippe Ariès was pioneering. Ariès has been much criticized since then. But it remains to be stated that childhood is the result of a historic process. In his foreword to the German edition of *Geschichte der Kindheit*, Hartmut v. Hentig states: “We think of children as if they were grass – the same at all times. (...) That this is not true I have now learned – today’s children are quite evidently children of their time and their environment ...”⁷

Consequently, the losses modern times entail for children are, in part, emphasized: Isolation due to the loss of large families; desensualization by technical media and urbanization; burdened by over-schooling, impoverishment due to colonization and globalization. In part, the historic development of childhood is interpreted more as a history of progress in which children find more recognition and are less exposed to violence.⁸

In our world with its immense diversity of cultures, there are as many varied forms of growing up.⁹ The way in which children grow up and are educated also depends on the economic life situation in which they live; which gender they belong to; who their parents are; in what family situation they are; what peer group they belong to; the region they live in; whether they are migrants or not; whether they are affected by impairments or illnesses. Many other dimensions determining and influencing children’s lives could be listed. All these childhood

conditions overlap in individual life contexts and contribute to the individual life history of each child and assure that each child is a unique personality.

From the perspective of children’s rights, three aspects of education can be differentiated: The right to education, rights within education, and rights through education.¹⁰ The right to education has to do with the question how far and in what quality education is made possible for children. Rights within education refer to the question regarding the context in which education is transmitted, and how the children’s rights become effective within the education process. The rights through education refer to the matter as to how education enables children to exercise their rights and to act as competent citizens.¹¹

After these introductory remarks, the following contribution focuses on four issues: In the first part, we look into internationally relevant documents manifesting the right to education. In the second and third parts, the importance of the right to education and some typical forms of encroachment in two successive phases of growing up are outlined. In the fourth part, internationally active organizations working on behalf of children’s right to education will be presented.

The UN Convention on the Rights of the Child and the right to education

The Convention on the Rights of the Child adopted by the UN General Assembly in 1989 is a milestone of current children’s policy and refers to all children and juveniles up to the age of 18. It serves the concrete implementation of the General Declaration on Human Rights of the United Nations with regard to children and commits politicians and legislation to ac-

knowledge children as subjects of the law. All nations of the world, with the exception of Somalia and the USA, have ratified the Convention on the Rights of the Child. This means that the Convention on the Rights of the Child has the greatest acceptance among all conventions adopted by the UNO. At the same time, violations of children's rights are to be found in all nation states of the world. The same as declarations and articles of the constitution concerning human rights, the Convention on the Rights of the Child also offers standards for analyzing violations of rights, making such violations public and reducing them.

All articles of the Convention on the Rights of the Child may be related to the right to education; Articles 28, 29, and 31 formulate it directly as follows:

Article 28 [the right to education, schooling, and vocational training]

1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:
 - a. Make primary education compulsory and available free to all;
 - b. Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;
 - c. Make higher education accessible to all on the basis of capacity by every appropriate means;
 - d. Make educational and vocational information and guidance available and accessible to all children;

- e. Take measures to encourage regular attendance at schools and the reduction of drop-out rates;
2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.
3. States Parties shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

Article 29 [educational objectives; educational institutions]

1. States Parties agree that the education of the child shall be directed to:
 - a. The development of the child's personality, talents, and mental and physical abilities to their fullest potential;
 - b. The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;
 - c. The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;
 - d. The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national, and religious groups and persons of indigenous origin;

- e. The development of respect for the natural environment.
2. No part of the present article or Article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principle set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

Article 31 [participation in leisure, cultural and artistic life, promotion by the State]

1. States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.
2. States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

In this extract from the UN Convention on the Rights of the Child, essential aspects of the right to education are clearly formulated. Among others – herewith summarized to simplify – they include the right to schooling free of charge of adequate quality, the right to a suitable education all the way to vocational training or higher education, the right to learn about human rights, the right to have his or her personality developed and the right to leisure time with recreation, play, and creativity.

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- 1** Wulf/Liebau 1996.
- 2** 1803; cf. also Tenorth 2005.
- 3** Mannoni 2001; Spitz/Cobliner 2005.
- 4** Cf. Liebel 2007, p. 15off.
- 5** “Bildung” is a term that is deeply anchored in the German cultural context; it relates specifically to “education.” In English, both terms are summed up by “education,” in Spanish by “educación.” In the French or Spanish context, the terms of “formation” or “formación” have to be added.
- 6** Cf. e.g. Ariès 2003; de Mause 1982.
- 7** Hentig 1975, p. 32.
- 8** Cf. also Hungerland 2007.
- 9** Trommsdorf 1995.

- 10 Cf. Verhellen 1993.
- 11 Liebel 2007, p. 80.
- 12 Klaus/Klaus 1998.
- 13 Als 1996.
- 14 Bowlby 2001, Stern 1998.
- 15 KFW Entwicklungsbank 2004, p. 4.
- 16 Küper (2003).
- 17 UNICEF 2000/47.
- 18 Cf. Overwien 2005, p. 399 ff.
- 19 Niedrig 2002.
- 20 Oxaal 1997, p. 12.
- 21 Cf. Lang-Wojtasik 2001.
- 22 Tillman 2005.
- 23 Tillmann 2005, p. 11.
- 24 Overwien/Pregel 2007.
- 25 Cf. the summary of Krappmann 2006.
- 26 Cf. Edelstein 2002.
- 27 Cf. e.g. Benbenishty/Zeira/Astor 2002; Pregel/Heinzel 2003.
- 28 Pregel 2005.
- 29 Krumm 1999; Hyman/Perone 1998.
- 30 Cf. Pregel 2002.
- 31 Cf. e.g. Pregel/Meiß 2003; Sliwka 2001; Selby/Rathenow 2003.
- 32 Krappmann 2006, p. 153.
- 33 National Coalitions for the rights of the child 2006.
- 34 <http://www.savethechildren.net/alliance/index.html>
- 35 Kindernothilfe e. V. 2006.

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