

HARD FACTS

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Introduction

The overarching principle of the Convention on the Rights of the Child, which goes beyond the protection of the other Convention guarantees, is the observance of the child's best interest according to Art. 3 CRC. With all measures concerning children, the child's well-being takes precedent. It has to be taken into account in each procedure in which the interests of a child are affected: "The well-being of the child shall be the guiding criterion of decisions by the state."¹ Now, how this all-encompassing well-being of the child is to be defined is a matter of interpretation and – in particular concerning the social, cultural, and economic rights of the child – depends on the cultural, religious, and social framework of each State Party. Hence, the fostering and development of a child does not rank equally in each State Party, the same as the matter of applying physical punishment for the purposes of the paternal right to punishment is assessed differently.

Based on the material to which the authors of this publication had access and with consul-

tation of further studies which shall be mentioned as individual sources, this article clusters figures and facts on a number of topics which concern the elementary rights and claims to the protection of children according to the CRC, for instance the child's right to life, survival, and development (Art. 6), protection from violence within the family (Art. 19), the ban on discrimination (Art. 2) and the right to be protected against economic exploitation and sexual abuse (Art. 34 and 35).

The right to life, survival, and development (Art. 6 CRC)

It is an uncontested finding that the keystone for a healthy development is being laid in the first two years in the life of a child; it is equally well known that regular inoculations and the free access to fresh water may considerably improve the living conditions of children. As the various reports in this book show, about 5.6 million children under 5 years old still die of famine or malnutrition every day. Further millions of children² are impaired in their physical

and intellectual development due to malnutrition. This is worrisome when we hear – according to the comments of the UN Special Rapporteur, Jean Ziegler – that sufficient food would be available worldwide to feed all of humanity, but that distribution fails due to political deficiencies and problems of logistics:

___ About 100 million children suffer from a lack of Vitamin C and iron, both of which are indispensable for strengthening the immune system.

___ About 125 million children younger than 5 years old do not have free access to clean water and about 280 million children do not have access to the simplest sanitary facilities.

___ More than 1.5 million children worldwide still die of contaminated water and due to a lack of sanitary installations.

___ About 2.2 million children die every year because they do not receive the necessary protective vaccinations.³

___ In spite of considerable improvements in the social and health areas in Morocco and in particular a substantial decrease of child mortality (mortality of children below 5 years of age) during the period 1979–2003, on average still five of one hundred children in Morocco currently die. The main causes of child mortality are infectious diseases and insufficient nutrition, in particular the lack of iron, vitamin A and iodine, responsible for 50% of the cases (cf. “Situation of the Rights of the Child in Morocco” by Nadia Sebti).

Protection against violence, mistreatment and neglect (Art. 19 CRC)

The discrepancies of opinions on protective rights guarantees are nowhere more evident than in the context of acceptable and/or un-

acceptable parental practices concerning child abuse within the family. Art. 19 of the CRC, which is intended to guarantee the protection of the child against violence and abuse within the family, does not contain an express prohibition of the parents applying any physical punishment. Whereas during the deliberations on the Convention text of Art. 19 of the CRC the Scandinavian countries, in particular, were of the opinion that any type of physical punishment was to be generally punishable, a majority of the State Parties – among them also some European countries and the USA – did not want to completely exclude light corporal punishment.⁴ Thus even here in Switzerland, parental force against children is not expressly prohibited.⁵ Even though the CRC was unable to enact an express interdiction of the application of any kind of corporal punishment by the parents, the essence and purpose of the CRC as well as the remainder of its wording leave no doubt that any type of corporal punishment within the family is taboo and that the State Parties are expected to work towards prohibiting any kind of parental violence.

Now what does practice look like?

Due to a high estimated figure of unreported cases, precise data on the topic of violence against children are lacking. The following findings, however, are considered assured:

___ The majority of violent acts against children are committed by a person of confidence of the child or juvenile. This is the conclusion arrived at in the Report of the UN-Secretary-General’s Study on violence against children presented by Paulo Sérgio Pinheiro.

___ According to the above research, in 2002 the WHO registered the deaths of 53,000 children up to 14 years of age worldwide due to physi-

cal violence applied by parents or persons with parental power; the corresponding number in the European Union is approximately 1,300 children per year on average.

___ According to several further studies, between 80–90% of children have experienced physical violence at home.

___ There are substantial differences between the countries: Child mortality due to domestic violence is twice as high in low-income countries than in countries of high income.

___ Infants and children suffer physical and mental violence – usually as a disciplinary measure – most frequently in the domestic environment. Children spend 90% of their time at home. This is where they ought to find refuge and feel safe, but for altogether too many of them it is the most dangerous place ever for them.⁶

___ In the industrialized countries, drugs and alcohol abuse are among the most widespread and most severe family problems, which contribute to violence against children in their own four walls.

___ According to estimates, between 40% to 70% of men who are violent with their female partners also commit acts of violence against their children, and of all women suffering physical abuse, approximately half also commit violence against their children.⁷

___ Disabled children are the ones who are most frequently the subject of domestic violence. As shown by Luis Alfonso de Alba's report: "The Rights of the Child in the Convention on the Rights of Persons with Disabilities," with reference to numerous studies, disabled children are almost twice as often exposed to domestic violence as healthy children.

___ Furthermore, the WHO estimates that in the year 2002, 150 million girls and 73 million

boys under 18 years experienced sexual violence by relatives, friends of the family, or persons with parental powers.

Ban on discrimination (Art. 2 CRC)

The ban on discrimination of Art. 2 CRC prohibits the discriminatory treatment of children. All rights established in the Convention must benefit each child equally. The injunction of discrimination according to Art. 2 is not a ban of discrimination of children compared to adults, but a ban on discrimination of children, for instance because of their race, their origin, or gender.

The reports in this book clearly show that the prohibition of discrimination anchored in Art. 2 section 2 of the CRC – in spite of substantial successes in the promotion of equal rights and women's rights in the past years – so far has not been able to change the fact that girls are being discriminated against from early childhood onwards compared to children of the other sex, i.e. boys:

___ As is evident from Devaki Jain's report, "The Rights of the Girl Child in India," available data show that in certain areas of the world (besides India also Korea and China) the preference for male versus female fetuses and newborn children not only leads to the targeted abortion of girls, but also to an early death of girls in the course of their childhood.

___ One quarter of the approximately 12 million girls born every year in India do not reach their 15th year; one third of them die before they reach 5 years of age. According to estimates by the Indian government, the high mortality rate of girls is due to the general preferential treatment given to male children in nourishment and disease prophylaxis. In spite of the program

of “positive discrimination” introduced by the Indian government and in spite of the worldwide sensitization to these problems, improvement of the situation is made difficult because of the continued, predominant opinion of the low social status of girls.

___ Millions of girls in developing countries are married off early, with detrimental consequences for their education, their health, and their economic possibilities. According to estimates by the Swiss Aid Organization PLAN,⁸ 60% of girls between 15 and 19 years of age in the areas south of the Sahara are married. Traditional and religious customs prevent the implementation of pertinent legislation for the protection of girls.

___ The basic principles guaranteed by the Convention such as the guarantee of the child’s well-being (Art. 3 CRC), the right of the child to protection of his/her physical integrity (Art. 24 CRC), the ban on abuse and inhuman or degrading treatment (Art. 37 CRC) as well as the right to be heard (Art. 12 CRC) notwithstanding, and in spite of the worldwide, international agreements to make genital mutilation a crime, this practice continues to be widespread, in particular in Africa and the Near East – as pointed out by the report of Marta Santos Pais on “Promoting the Abandonment of Female Genital Cutting.”

___ According to the UNICEF Innocenti research center, between 100 and 140 million women and girls had to endure genital cutting. Still today, about 2 million girls per year are victims of such practices, half of them in Egypt and Ethiopia. In other words, about 6,000 girls are being mutilated every day.

___ In Ethiopia, Eritrea, and Gambia, 90% of girls are currently still being cut.

___ To avoid national punishment, the average age of girls for cutting is being lowered continuously. Whereas in the past most genital mutilations used to be practiced between the 5th and 14th years of age, more and more girls are now victims of this inhuman procedure in the first two weeks of their lives.⁹

___ The discrimination of girls is also manifest in access to education. Of the approximately 113 million children worldwide who do not attend any elementary school 57% are girls, in particular also because girls, based on gender-specific work allocation, are more frequently called to do household work (see Annedore Prengel and Bernd Overwien, “Children and the Right to Education”).

___ In industrialized countries, the discrimination of girls in training often shows against the family and financial backdrop; if a family only has the required means for financing a higher education of one child, as a rule it is the boy and not the girl enjoying that privilege.

___ Migrant females are doubly discriminated. As can be gleaned from the report “Racism Towards Children and Young People in Europe” by Katrin Wladasch, girls with a migratory background are particularly affected by racist behavior. This is particularly apparent in facilities for children and juveniles, such as schools and other educational institutions. Girls with an ethnic background are not only exposed to sexist comments but frequently suffer discrimination based on their refusal to take off their headscarves which are a symbol of their religion.

___ Disabled girls suffer a similar fate. They, too, due to their disability, are especially exposed to domestic violence combined with sexual abuse (cf. Luis Alfonso de Alba “The Rights of the Child in the Convention on the Rights of Persons with Disabilities”).

— Girls are at greater risk to get infected with the HI-virus than boys. According to the UN-AIDS (Joint United Nations Program on HIV/AIDS) studies, at the end of 2003 at least two million children younger than 15 years of age were living with the HIV/AIDS virus in Africa, south of the Sahara. 75% of them are females (cf. report by Anna Alexandrova and Johann O. Koss, “Using Sport as a Tool to Foster Children’s Rights”). Compared to the number of children in this region, these figures mean that about 9 of 10 children younger than 15 years are living with HIV.

— In her report on sex tourism in Southeast Asia (“Challenges and Successes in Addressing Child Sex Tourism in Southeast Asia”), Amihan V. Abueva estimates that several hundred thousand boys and girls are being sexually exploited worldwide and are being forced to child prostitution under inhuman circumstances. The victims of such exploitation are primarily girls between 14 and 18 years of age (see detailed discussion below).

— Maids in private households are among the least visible and most widely spread form of child labor. In most cases, these are family arrangements, which are socially tolerated in large areas of Africa, Asia, Latin America, in the Near East and parts of Southern Europe.¹⁰ Most of these children hail from very poor rural backgrounds and are therefore often sent to foreign households at the tender age of 5 years. According to information of the PLAN children’s fund, 90% of children working in foreign households are girls between 12 and 17 years old. They are particularly vulnerable to exploitation by labor, physical and mental violence as well as sexual abuse.¹¹

Protection against sexual and economic exploitation (Art. 34 and 35)

In Art. 34 and Art. 35 of the CRC, the Convention on the Rights of the Child manifests the child’s right to protection against all forms of exploitation and sexual abuse. It obliges the State parties to take all suitable national, bi-national, and multinational measures, which prevent the abduction, the sale and traffic of children for any purpose in any form whatsoever. Furthermore, the governments have to take all suitable measures to promote the recovery and social reintegration of the victims of exploitation (Art. 39 CRC).

As is evident from the report by Jacqueline Bhabha “Migrant Children: The Rights and Wrongs,” child trafficking violates the child’s right to grow up in a protected environment and to be free of any form of abuse and exploitation (Art. 19, 34, 35, 36 CRC), as well as children’s rights to a living standard in keeping with their physical, spiritual, mental, social, and moral development (Art. 27 CRC), and last but not least, their right to education (Art. 28 CRC). In the area of child trafficking and child prostitution, there is a whole set of regulations of additional conventions and optional protocols, which all target the increased prevention and combating of worldwide trafficking in human beings. But all these efforts cannot deceive us about the fact that child trafficking as well as child prostitution are attaining ever larger dimensions.

According to our present state of knowledge, commercial sexual exploitation of children for purposes of prostitution and to produce pornographic products as well as forced labor are the main reasons why children are being trafficked.

Precise and meaningful data concerning the trafficking of children in general and child pros-

titution in particular are difficult to obtain. Trafficking of human beings is a process that evolves in various steps and in which several people are involved. It is the nature of this crime that it takes place in concealment, thus making its apprehension very obscure and persecution therefore correspondingly difficult. Furthermore, the victims of slave trafficking are not treated as such by the authorities, but rather as illegal immigrants and/or criminals. In addition, trafficking of human beings is interpreted differently. The following estimates only let us surmise its true dimension:

___ In its latest report, the US Department of State estimates that the annual turnover obtained from trafficking in persons is approx. USD 9.5 billion.¹² The EU Council of Ministers is also of the opinion that the illegal trade with human beings is the third-largest source of income of organized crime, besides drug dealing and the arms trade.¹³

___ Both the US Department of State as well as the International Labor Organization (ILO) indicate that women and girls make up more than 80% of trafficking in persons and that about half of all the victims of the traffic in human beings (40 to 50%) are children (boys and girls). In addition, the ILO estimates that in particular in the area of forced labor, 56% of victims are women and girls, and 98% of them are victims of sexual exploitation.

___ UNICEF supposes that child prostitution and child pornography has a worldwide yearly turnover of about EUR 6 billion.¹⁴

___ Child labor is not prohibited internationally. The International Labor Organization ILO has set the minimum age for child labor at 15 years and in exceptional cases, i.e. primarily for developing countries, at 14 or 13 years, respec-

tively. In spite of that, in the year 2000 the ILO estimated the number of child laborers younger than 15 years old worldwide at about 186 million, of them, about 110 million younger than 12 years old. The children are deployed as cheap workers in the industrial as well as the informal sectors (car washing, work in agriculture or construction, etc.).¹⁵ According to the report by Jerroo Billimoria and the Aflatoun team "Economics and Social Rights of the Child," approximately 73 million children under ten years are affected.

___ According to the same estimates, an additional 8.4 million children worldwide are exposed to the worst forms of child labor.¹⁶ This covers all types of slavery or slave-like practices, such as the sale of children and child trafficking, debt serfdom (repayment of parents' debts by children), forced labor and compulsory work, including forced recruitment or impressment as soldiers, as well as sexual commercial exploitation for purposes of prostitution and the production of pornographic features.¹⁷

___ Of the above 8.4 million children, according to estimates by the ILO, 5.7 million children are bonded in forced labor; approximately 1.2 million are victims of child trafficking,¹⁸ approx. 1.8 million children are working in prostitution, about 0.3 million have been forcibly recruited, and about 0.6 million children are used for illegal activities, especially for obtaining and dealing in drugs as well as for the purpose of illegal organ and tissue trading.¹⁹

___ Estimates from individual countries allow an educated guess that the actual number of child prostitutes is far higher: in Brazil, estimates of minors in prostitution vary from 250,000 to 2 millions. In the USA, between 100,000 and 300,000 minors prostitute themselves.²⁰

— ECPAT, an alliance of organizations (End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes) represented in more than 70 countries sets the number of child prostitutes in Thailand at 800,000, in India at 400,000, on the Philippines at 100,000.

— According to the ILO, the sex business in Thailand accounts for 14 to 16% of the Gross Domestic Product, a large part thereof by minors.

— According to UNICEF studies, 200,000 children are the victims of child traffickers every year in Western and Central Africa alone. They are forced to work on plantations or are sold as maids to private households.²¹

— Within the EU, the number of women and children affected by the slave trade are estimated at 500,000.²²

Although the above data are substantially based on estimates, they unmistakably show that children are most affected by the trafficking in persons. Based on estimates it has to be assumed that the trend is increasing, in particular in the areas of child prostitution, child pornography, and child trafficking.²³

— The causes for child trafficking and child prostitution on the one hand are the increased demand for children on the illegal market (low risk and high profits for child traffickers, simplification of the “distribution channels” by new media such as the Internet, cell phones, etc.), and on the other hand the children’s poor living and working conditions in their home countries (e.g. underdevelopment, poverty, marked economic-social spread, unemployment, lacking government support, armed conflict, corruption).²⁴

— Children from countries with so-called weak governments are especially at risk. The “fragile states” are typically incapable of taking care of

the population because of political instability, paired with rampant corruption, weak legislation, and weak institutions.²⁵

— Demand for increased numbers of young and ever younger children in the sex trade is increasing, possibly due to the fear of contracting AIDS and other sexually transmitted diseases.²⁶ It is often surmised that children do not get infected as quickly as adults.

— Orphans and children that are not registered by any state are particularly at risk of being exploited as cheap labor or in prostitution. According to Art. 7 and 8 CRC, the registration of children is the most fundamental duty of any state, to guarantee to the child its right to protection. The registration of a child at birth represents its official acknowledgment as a member of a community. Without government acknowledgment, there is no proof of the existence of this person and all personal data of her/him. These children have no name, no nationality, and no legal age. But this obligation to register is fulfilled only inadequately by some states: UNICEF estimates that approx. 55% of all births in developing countries (excluding China) – about 50 million children –, but also in industrialized countries, are not being registered.

— Not all child prostitutes are working against their own will. But it is to be assumed that the background for it are poverty and the lacking perspectives of alternatives.

Conclusion

Every child has a right to a childhood. What this childhood ought to look like is assessed differently and depends on the cultural, social, and religious understanding of the parents and the individual State Parties. The provisions of the Convention on the Rights of the Child, how-

ever, determine the frame of reference, in the sense of a worldwide consensus, which is to be peremptorily observed by the parents as well as the state in their treatment of children, and which is to guarantee to all children the right to survival, development, protection against exploitation, and the right to be heard.

Although commendable progress has been achieved in many areas in the implementation of the protective and participatory rights guaranteed by the rights of the Convention, the above figures tell their own story.

In the year 2000, the member states of the United Nations have committed to realizing eight development objectives Millennium Development Goals by the year 2015. Their implementation would decisively improve the situation of children worldwide; their failure would affect children first of all. All governments of the world, business, and the public are therefore called to take their moral and political responsibility for all children of the world seriously. All efforts of applying the CRC as a binding instrument for the protection of children therefore need every intense and sustainable support we can give.

Hard Facts

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- 1 Wittenbach Judith, Grund- und Menschenrechtskonflikte zwischen Eltern, Kind und Staat, Basel Geneva Munich, 2006, p. 131.
- 2 UNICEF estimates this number to be as high as 90 million children under 5 years, cf. UNICEF annual report: On the situation of children in the world, 2005, Summary: "Endangered childhood" (www.unicef.de/fileadmin/content_media/mediathek/I_0093_SOWCR_2005.pdf).
- 3 UNICEF annual report: On the situation of children in the world, 2005, a.a.O.
- 4 Wittenbach Judith, Grund- und Menschenrechtskonflikte zwischen Eltern, Kind und Staat, a.a.O., p. 143.
- 5 Something complained of by the Swiss NGOs in their "Shadow Report" to the UN Committee on the Rights of the Child and/or challenged by the latter in its Concluding Remarks, cf. Concluding Remarks of the UN Committee for the Rights of the Child in Switzerland (in German) 07/06/2002, (www.eda.admin.ch).
- 6 World Report on Violence against Children, United Nations Secretary-General's Study of 29 August 2006, (www.unviolencestudy.org).
- 7 World Report on violence and health, edited by World Health Organisation, summary 2002.
- 8 Plan Schweiz, Zur Situation der Mädchen in der Welt, 2007, www.becauseiamagirl.org
- 9 From Swiss practice we may mention that the Swiss Asylum Appeals Commission decided in 2004 that an already ordered deportation of a girl requesting asylum is not to be carried out if there is a serious risk that she will suffer genital mutilation in her country of origin, Decision by the Schweizerische Asylrekurskommission of 28.01.2004 (Decisions and notifications of the Asylum Appeals Commission 2004, No. 14).
- 10 ILO (International Labour Organization), Das Ende der Kinderarbeit – zum Greifen nahe, Geneva 2006, p. 43.
- 11 Cf. also Human Rights Watch 2006, Swept Under the Rug: Abuses against domestic workers around the world, vol. 18, No. 7 C (www.hrw.org/reports/2006/wrdo706/wrdo706webcover.pdf).
- 12 US Department of State (2006). Trafficking In Persons Report 2006, Washington 2006, p. 13 (www.state.gov/documents/organization/66086.pdf).
- 13 STELLUNGNAHME des Ausschusses für auswärtige Angelegenheiten dated 25.7.2006 (2006/2078(INI)), "Zur Bekämpfung des Menschenhandels – ein integriertes Vorgehen und Vorschläge für einen Aktionsplan", p. 18.
- 14 UNICEF (2002), Information leaflet: Kinderprostitution, Kinderpornographie, Kinderhandel: Zerstörte Kindheit, 2002, www.unicef.de/fileadmin/mediathek/download/I_0082.pdf.
- 15 ILO: Every child counts (2002), p. 25; A future without child labor, N 106 p. 32.
- 16 ILO: Every child counts (2002), a.a.O.; N 106 p. 32.
- 17 ILO Agreement No. 182 on the ban of and immediate measures to eliminate the worst types of child labor, 1999.
- 18 Children are placed with couples wanting to adopt a child against payment, sold as slaves, or enticed into prostitution.
- 19 ILO: Every child counts (2002), Summary of highlights, p. 3. To avoid overlaps the total of 8.4 million children does not include the number of victims of child trafficking (1.2 million).
- 20 These numbers were found in 2001 in Yokohama; see also: UNICEF 2002, Information leaflet: Kinderprostitution, Kinderpornografie, Kinderhandel: Zerstörte Kindheit (2002), p. 2 et seq..
- 21 UNICEF (2002), Information leaflet: a.a.O., Zerstörte Kindheit (2002), p.4.
- 22 Report of the year 2001 by the member of the EU Commission responsible for justice and internal matters, Antonio Vitorino, in: Terre des Hommes (2001), Die Zeitung: "Verkaufte Kinder", p. 1.
- 23 According to the ILO report, 1 million children are

- newly brought to market every year. ILO (2006), *Das Ende der Kinderarbeit*, p. 43; UNICEF (2002), *Information leaflet: Zerstörte Kindheit*, p.1.
- 24** US Department of State (2006), *Trafficking In Persons Report 2006*, p. 16.
- 25** UNICEF (2005), *The State of the World's Children 2006*, p. 15.
- 26** IOM (2005), *Data and Research on Human Trafficking: A Global Survey*, p. 84; *Forced Migration Review (2006)*, p. 13; *Terre des hommes (2004)*, *Lost kids, Lost Futures*, p. 11; *Bericht des Bundesrates (2003) über das Fakultativprotokoll vom 25. Mai 2000 betreffend den Verkauf von Kindern, die Kinderprostitution und die Kinderpornografie, und über die entsprechende Änderung der Strafnorm über den Menschenhandel*, p. 3.

AUTHORS

Joy Altenburger, born 1980 in Zurich as the oldest



of three sisters in a family of attorneys, the only one to dedicate herself to jurisprudence. Influenced by an education of critical, liberal thinking, the study of law shaped her awareness of

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