

Having rights and having rights fulfilled – the child rights-based approach in day nurseries

by Jörg Maywald

ABSTRACT

Children are legal subjects and holders of their own rights from the outset. The UN Convention on the Rights of the Child is fully applicable to all children living in Germany. Pedagogy based on children's rights is intended to promote the rights of every child to protection, provision and participation set out in international, European and national law.

In addition to the children's parents, early year pedagogy professionals in day nurseries are to ensure that the children familiarise themselves with their rights according to their age and that they can actually enjoy them. The focus on children's rights and implementation of the child rights-based approach are key elements of good quality in day nurseries.

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INFORMATION ON THE AUTHOR

Prof. Dr. Jörg Maywald was employed for many years in the youth welfare sector and the youth health sector. He has been managing director of the German League for the Child since 1995, a spokesperson for National Coalition Germany – Network for the Implementation of the UN Convention on the Rights of the Child since 2002 and honorary professor at the University of Applied Sciences Potsdam since 2011.

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Children’s rights are an expression of the inherent dignity of every child

1. Introduction

Children are holders of rights from birth. Children’s rights do not have to be acquired or earned, they are not dependent on certain characteristics, but are a direct expression of the inherent dignity of every child. Respecting children as legal subjects is the responsibility of all those involved in working with and for children.

The focus on children’s rights is linked at the same time to a rejection of paternalistic attitudes. Children are not merely objects of protection and care. Children’s rights protection therefore goes far beyond child protection. Pedagogy based on children’s rights respects the child as an independent holder of rights to protection, provision and participation.

The implementation of the rights of every child is a key aspect of good quality. Pedagogy must measure its success or failure in terms of the extent to which it contributes to the realisation of children’s rights.

Why should children have their own rights?

Children are people from the outset and therefore without limitation holders of all human rights. If the status of being a human being and the associated rights are to be seen as a yardstick of comparison, children are the same as adults. Nevertheless, at the same time, children are undoubtedly very different from adults. Children are not small adults. As “beings”, on the one hand, they are people just like everyone else. As “becomings”, on the other hand, they are people at a particular stage of development.

The relationship between children and adults

<i>Equality</i>	Children, like adults, are people
<i>Difference</i>	Children are not small adults. They have specific needs related to their development.

The relationship between adults and children is asymmetrical: Adults are responsible for children, although this does not apply in the same way the other way round. The fact they are developing means that children need special protection, special provision and special, child-centred forms of participation. For healthy development, children are reliant on adults taking responsibility for them getting what they’re entitled to.

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When determining the relationship between children and adults, it is about both equality and recognition of difference. The particular challenge in how adults interact with children is in balancing equality on the one hand and difference on the other. Expressing this ambivalent relationship in a normatively appropriate way is the task of international and national law.

Linked to the recognition of the particular needs of children that may differ from those of adults is the realisation that children need their own human rights protection that is tailored to their specific situation. The United Nations therefore adopted the UN Convention on the Rights of the Child in 1989, about 40 years after the Universal Declaration of Human Rights was adopted. This Convention standardises the human rights to which children are entitled in a specific way. The Convention on the Rights of the Child is part of a range of international conventions in which human rights were formulated for vulnerable groups of the population. These include, for example, the Convention on the Elimination of All Forms of Discrimination Against Women and the Convention on the Rights of Persons with Disabilities.

**Children's rights
are human rights
for children**

The rights set out in the UN Convention on the Rights of the Child are not different rights beyond the universal human rights. After all, “the spirit of children's rights comes from the heart of human rights thinking” (Kerber-Ganse 2009, p 71). Rather, the Convention on the Rights of the Child is more specific and expands on universal human rights with reference to the particular needs of children. Children's rights are, in this respect, human rights for children. The Convention therefore contains both rights that are applicable to everyone (“equal rights”) and a number of specific rights that are tailored to the particular situation of children (“special rights”) (Hanson 2008, p. 8).

2. History of children's rights

The idea of children as independent personalities and legal subjects is a recent development. This is due to how children have been traditionally viewed. For millennia, children were seen as people who did not yet have full value, were inferior to adults in every respect and did not have equal rights. Childhood was seen as a transitional stage, as a phase of human imperfection that was to be got through as quickly as possible. In the relationship between the generations, the youngest and weakest members of society were at the same time those with the least rights.

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The idea of children as independent personalities and legal subjects is a recent development.

In patriarchal Roman law, it was up to the father to accept a newborn child, or not as the case may have been (right over life and death). In many cases, girls and almost always disabled children were not accepted and were thus doomed to die. The Advent of Christianity brought with it radical changes. For the first time, children were given a right to life. Child abandonment and infanticide were prohibited.

How children were viewed changed again in the wake of the Enlightenment. Childhood as a modern invention – as a stage of life with its own needs – was born. As well as the recognition that children had their independent right to life, there was also the notion that children need particular support. Pre-schools and schools appeared as places of education in addition to what the family was providing. Prohibitions of “gross” mistreatment and “inappropriate” punishment by parents, teachers, apprentice’s employers and home supervisors and prison warders were to prevent the worst excesses of violence against children.

Attempts to view children as individual personalities with their own rights and no longer merely as objects of adults began little more than 100 years ago. And it was only after the Second World War that children were gradually recognised on a global level as holders of rights.

Changes in how society viewed	children
<i>Antiquity (Roman kingdom)</i>	Child as the father’s property
<i>Middle Ages (Christian cultural milieu)</i>	Child as a gift from God (ambivalence between innocence and sin)
<i>Modernity (Enlightenment)</i>	Child as an object of education and upbringing (“invention of childhood”)
<i>Postmodernism (globalisation)</i>	Child as a legal subject (individualisation)

2.1 Development of children’s rights worldwide

Shocked by the huge scale of child poverty in the First World War, the English primary school teacher Eglantyne Jebb founded the British organisation “Save the Children International Union” in 1920 as the first international lobby organisation for the interests of children. A five-point programme (Children’s Charter) designed by her contained basic protection obligations of the adult towards the children and ended with the call to educate children in the spirit of international peace. The League of Nations, founded in 1919, took over the charter and in 1924 proclaimed it as the “Geneva Declaration” on the rights of the child.

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At about the same time, in the 1920s, the Polish paediatrician and pedagogue Janusz Korczak proclaimed that every child had a right to unconditional respect for his personality as the basis of all children's rights. As the director of a Jewish orphanage in Warsaw, he demanded full participation rights for children and thus quashed the idea of a point of view characterised by protection and provision alone in favour of a view of children characterised by equality and respect. The way he saw things was far ahead of its time and was in essence that “the child does not become a person, he is one already”.

After the setbacks as a result of Nazism and the Second World War, the United Nations, as the successor to the League of Nations, continued the deliberations on children's rights. A revised text of the “Geneva Declaration” that was extended to 10 articles was adopted by the United Nations General Assembly as the “Declaration of the Rights of the Child”. In this declaration that was not legally binding, the child is referred to as a holder of his or her own rights for the first time on an international level. The term “best interests of the child” was also introduced.

Against the background of great famine, but also because of the experience of decolonisation and worldwide aspirations for freedom, the 1970s saw people the world over becoming increasingly aware of the immense inequality of opportunities in life for children. Consequently, the United Nations took up the cause of children once again. On the occasion of the 20th anniversary of the adoption of the “Declaration of the Rights of the Child”, the UN General Assembly decided to proclaim 1979 as the “International Year of the Child”. In addition, on Poland's initiative, it commissioned a working group to work on a children's rights convention that was binding under international law.

The UN Convention on the Rights of the Child was adopted on 20th November 1989.

Ten years later, on 20th November 1989, at the 44th United Nations General Assembly, the Convention on the Rights of the Child (UN Convention on the Rights of the Child) was then adopted unanimously. The Convention is unique in that it combines, in a single treaty, the largest range of fundamental human rights – economic, social, cultural, civil and political – to date. The minimum standards legally binding under international law presented in the 54 articles aim to ensure the dignity, survival and development of children, thus more than half of the world's population, worldwide.

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History of children's rights worldwide	
1924	League of Nations adopts "Geneva Declaration". Responsibility of adults to protect children
1948	"Universal Declaration of Human Rights"
1959	United Nations adopt "Declaration of the Rights of the Child". Children are referred to as holders of rights for the first time. The term "best interests of the child" is introduced
1979	International Year of the Child
1989	United Nations General Assembly decides unanimously on the Convention on the Rights of the Child (UN Convention on the Rights of the Child)
2002	Special Session of the United Nations General Assembly on children in New York (World Summit for Children). Adoption of the international plan of action "A World Fit For Children"
2002	Optional Protocols to the UN Convention on the Rights of the Child on "Children in armed conflict" and "The sale of children, child prostitution and child pornography" come into force
2012	United Nations General Assembly decides on third Optional Protocol to the UN Convention on the Rights of the Child on an individual complaints procedure for children

Three Optional Protocols gave more detail about and expanded on the rights set out in the UN Convention on the Rights of the Child. The Optional Protocol, which came into force in 2002, is intended to protect children in armed conflict. The second Optional Protocol, which came into force in the same year, on the sale of children, child prostitution and child pornography, prohibits these forms of exploitation and calls on states to prosecute and criminalise them. Finally, the League of Nations adopted a third Optional Protocol in 2012, which provides children whose rights have been violated under the Convention, and who have exhausted all domestic remedies, with an individual complaints procedure.

The European Union, with its member states currently numbering 27, is also committed to inalienable human rights. The Charter of Fundamental Rights of the European Union that came into force in 2009 has a separate article on "Children's rights". Article 24 (rights of the child) sets out the most important rights of the UN Convention on the Rights of the Child.

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2.2 Development of children's rights in Germany

Against the background of international developments, there has also been a radical change in perspective in Germany that is still ongoing. Children in this country too are to a large extent no longer treated as objects of adults from a legal point of view, but as subjects and holders of their own rights.

A first step in formulating personal children's rights was taken in 1922 when the National Youth Welfare Law came into force, a law that dated back to an initiative of 33 female lawmakers from all Reichstag factions. In section 1(1) it is written: "Every German child has a right to be educated so as to develop physical, mental and social ability." This right to be educated that was limited to children of German citizenship alone was no more than a declared goal without the resulting legal entitlements, but it was a start. However, this did not initially develop any further – on the contrary, the Hitler dictatorship and the Second World War interrupted the tentative reform process and returned children to being completely dependent on parents and the state once again.

The post-war years were also initially characterised by a standstill. (Note: the development in the GDR that was different in parts is not considered in this paper). It was not until the 1970s that – in West Germany – things began to happen, not least as a result of the revelations about unacceptable conditions in numerous children's homes in the course of the so-called 'Home Campaign' and as a result of the activities of the women's rights movement and a newly formed child protection movement. In the context of the comprehensive custody reform of 1980, the transition from "parental authority" to "parental custody" was complete. Section 1626(2) was also incorporated into the Civil Code that for the first time provided a legally binding ruling for children to have a say in all decisions their parents make that concern them.

The children's rights reform of 1998 brought further improvements in the BGB [*German Civil Code*], among them the substantial equality between legitimate and illegitimate children. The right of the child to contact with both parents was also introduced. Since then, children have the option of having a "guardian ad litem" as a "child advocate" by their side in proceedings that concern parental custody. A particularly important link in the chain of significant children's rights is the policy on zero tolerance for violence in education adopted in November 2000. Since then, section 1631 (2) of the BGB states that children have the right to violence-free education. Corporal punishment, emotional wounds and other degrading measures are also not permitted from their own parents.

Section 1631 (2) of the BGB (social code VIII) states that children have a right to a violence-free education

The Child and Youth Welfare Act (Social Code VIII), which came into force in 1990 and has since been reformed several times, explicitly designates children and young people as holders of their own rights. Section 1(1) of SGB VIII sets out

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the right of every young person to “be assisted with his development and to be educated to become a responsible and socially competent person”. Section 8(1) of SGB VIII states that children and young people are “to participate in all decisions of public youth welfare concerning them according to the stage of development they are at. They are to be made aware of their rights in the administrative procedure and in the proceedings before the Family Court, the Guardianship Court and the Administrative Court in a suitable way.” Section 8(3) of SGB VIII states that children and young people who are in an emergency and conflict situation now have “access to legal advice without the knowledge of the primary carer”, but only as long as the purpose of the consultation would be thwarted by communicating with the primary carer. In section 9 of SGB VIII, the providers of youth welfare are asked to take into consideration “the growing ability and the growing need of the child or young person to act independently and with a sense of responsibility” when designing their services. If the parents separate or divorce, children have “access to legal advice and support in the exercise of visitation rights” according to section 18(3) of SGB VIII. The Child and Youth Welfare Act also includes the child’s entitlement to assistance with integration in the case of mental disability (section 35a of SGB VIII) and to be taken into care in crisis situations “if the child or young person requests care” (section 42(1) of SGB VIII).

Section 27(1) of SGB VIII sets out the right to claim educational support as a right of parents and not as a right of the child. Nevertheless, section 36(1) of SGB VIII states that children have the right “to be advised” “before the decision is made on whether to have help and before any necessary change in the nature and extent of the help”. In 1996, the entitlement of the child to start attending a day care centre once he or she turned three years of age was added to section 24 of SGB VIII. This was formulated explicitly as the right of the child, not that of the parents. On 01/08/2013, this entitlement was extended to all children once they turned one year of age. Finally, the Federal Child Protection Act that came into force on 01/01/2012 strengthened the rights of children in day care centres. Section 79a of SGB VIII now obligates the providers of day care centres and services to further develop, use and regularly check “principles and standards for evaluating the quality and appropriate measures for guaranteeing them (...)”. These also include “quality characteristics for protecting the rights of children and young people in day care centres and ensuring their protection from violence”.

Although the Child and Youth Welfare Act (Social Code VIII) formulates legal entitlements of children at various points, the child rights-based approach is not yet fully realised in this act that is particularly important for children and young people. “The primacy of the best interests of the child as a point of view to be given primary consideration in all measures in children and youth welfare is not explicitly mentioned in SGB VIII” (Skutta 2010, p. 4). As well as this, the entitlement to educational assistance is, according to sections 27 ff of SGB VIII, not the right of the child, but the right of the parents.

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The Basic Law has to date not recognised children’s rights

However, contrary to progress on the ordinary law level, children still do not appear as holders of their own rights in the German constitution – the Basic Law. In Article 6 of the Basic Law (marriage and family), they are treated merely as an appendage to their parents – i.e. as objects – and a judgement was required especially from the Federal Constitutional Court to clarify that the child is a holder of basic rights without limitation.

The UN Convention on the Rights of the Child was ratified by Germany in 1992, but initially only with restrictions. The restriction was withdrawn in 2010. Since then, the Convention has been considered fully applicable to all children living in Germany. Both existing Additional Protocols to the UN Convention on the Rights of the Child and also the UN Convention on the Rights of Persons with Disabilities, which also has important children’s rights, were ratified by Germany without restrictions. In 2012, Germany was one of the first signatories of the third Additional Protocol to the UN Convention on the Rights of the Child, which was not yet in force, concerning the introduction of an individual complaints procedure.

Development of children’s rights in Germany

1922	In the National Youth Welfare Law, every child is given a right to be educated. Foreign children remain initially excluded from that.
1959	As part of the equality law, section 1631(2) of the Civil Code is deleted without any replacement. Up until it was deleted, this section had allowed a father to “exercise appropriate disciplinary measures against his children”.
1980	The great custody reform replaces the term “parental authority” with “parental custody”. Section 1626 (2) is also incorporated into the Civil Code that for the first time and stipulates in a legally binding way that children have a say in all decisions their parents make that concern them.
1990	The new Child and Youth Welfare Act (SGB VIII) explicitly designates children as holders of their own rights.
1992	Germany ratifies the UN Convention on the Rights of the Child, but not fully. In a statement, the Federal Government formulates restrictions, especially with regard to children without a German passport.

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1998	As well as the radical equality between legitimate and illegitimate children, the Children’s Law Reform brings, among other things, the right of the child to contact with both parents (section 1684(1) of the BGB) and the option of having a “guardian ad litem” as a “child advocate” by their side in proceedings that concern parental custody.
2000	As a result of the policy of zero tolerance for violence in education, and according to section 1631(2) of the Civil Code, children have a “right to violence-free education”.
2004	Germany ratifies the Additional Protocol to the UN Convention on the Rights of the Child on children in armed conflict.
2006	Germany ratifies the UN Convention on the Rights of Persons with Disabilities, which contains numerous children’s rights.
2009	Germany ratifies the Additional Protocol to the UN Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.
2010	The Federal Government withdraws the restriction as regards the UN Convention on the Rights of the Child. All rights under the Convention now apply fully to all children living in Germany.
2012	Germany is one of the first signatories of the Additional Protocol to the UN Convention on the Rights of the Child on the introduction of an individual complaints procedure.

3. Content and scope of the UN Convention on the Rights of the Child

A child is defined as a person below the age of 18

The starting point of the UN Convention on the Rights of the Child is the position of the child as a holder of his or her own rights. Article 1 defines a child as a person below the age of 18, i.e. children and young people. Running parallel to the rights of children are the obligations of adults. Both the parents and the state take responsibility for the realisation of children’s rights.

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3.1 General principles

The rights that are the most important in the “edifice of children’s rights” and the ones defined by the UN Committee on the Rights of the Child as interrelated General Principles can be found in Articles 2, 3, 6 and 12.

General	Principles of the UN Convention on the Rights of the Child
Article 2	Right to non-discrimination
Article 3	Right of the child to have his or her best interests given primary consideration
Article 6	Right of the child to life and full development
Article 12	Right of the child to have his or her opinion taken into account in all matters involving them

Article 2 contains a comprehensive prohibition of discrimination. The primacy of the best interests of the child is enshrined in Article 3(1). This stipulates that the best interests of the child are to be given primary consideration in all legislation, administrative measures and other measures at public or private facilities. Article 6 protects every child’s fundamental right to life, survival and development. Article 12 states that every child has the right to be heard in all matters concerning him or her, whether directly or through a representative. The child’s opinion must be considered appropriately and according to his or her age and maturity.

3.2 Rights to protection, rights to provision, rights to participation

Children have rights to protection, rights to provision and rights to participation

A large number of other material rights of children are formulated in the UN Convention on the Rights of the Child. These relate to different life situations and spheres of life and can be distinguished as follows: rights to provision, rights to protection and rights to participation

Rights to protection: The rights to protection include the right to non-discrimination (Article 2), the right to preservation of his or her identity (Article 8), the right to protection from unauthorised separation from parents (Article 9), the right to protection of his or her privacy and honour (Article 16), the right to protection from media influences injurious to his or her well-being (Article 17), the right to protection from all forms of physical and mental violence, mistreatment or neglect including sexual abuse (Article 19), the right of children living apart from their family to protection (Article 20), the right of refugee children to protection and assistance (Article 22), the right of minorities to protection of their culture, language and religion (Article 30), the right to protection from economic exploitation (Article 32), the right to protection from addictive substances (Article

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33), the right to protection from sexual exploitation and sexual abuse (Article 34), the right to protection from abduction and child trafficking (Article 35), the right to protection from all forms of exploitation (Article 36), the right to protection from capital punishment and life imprisonment and to protection in custodial measures (Article 37), the right to protection in armed conflicts (Article 38) and the right to protection in criminal proceedings (Article 40).

Rights to provision: The most important rights to provision are the right of the child to have his or her best interests given primary consideration (Article 3), the right to life and full development (Article 6), the right to family reunification (Article 10), the right to freedom of thought, freedom of conscience and freedom of religion (Article 14), the right to freedom of association and to freedom of peaceful assembly (Article 15), the right to have access to the media (Article 17), the right to both parents and to child-care services (Article 18), the right of children with disabilities to special care (Article 23), the right to health care (Article 24), the right to social security benefits (Article 26), the right to an adequate standard of living (Article 27), the right to education (Article 28), the right to rest, leisure, play and relaxation and to participation in cultural and artistic life (Article 31) and the right of injured children to recovery and reintegration (Article 39).

Rights to participation: The rights to participation include in particular the right of the child to have his or her opinion taken into account (Article 12), the right to free expression of his or her opinion and to seek, receive and impart information (Article 13) and the right to use the media (Article 17).

In addition to the material rights, the UN Convention on the Rights of the Child contains a range of regulations for implementing the convention in Articles 42 to 45. These include the obligation to make known the UN Convention on the Rights of the Child (Article 42), the use of a Committee on the Rights of the Child (Article 43), the obligation of the States Parties to submit reports (Article 44) and the involvement of other United Nations organs (Article 45)

Every child has the right to know his or her rights

The obligation of the States Parties to “make known the principles and provisions of the Convention, by appropriate and active means, to adults and children alike” contained in Article 42 is of great importance. With this obligation, the States Parties of the Convention are committed to comprehensive child and human rights education on all levels, both towards parents, professionals who work with and for children and adults in general, and children of all age groups.

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3.3 Relationship between international and national law

The UN Convention on the Rights of the Child ranks as a federal law, but is not above the Basic Law

In Germany, the UN Convention on the Rights of the Child came into force under international law on 5th April 1992. The Federal Government withdrawing the restriction on 15th July 2010 meant that there was no longer any restriction on applying it at national level. Since then, the Convention has been fully applicable to all children living in Germany. It establishes subjective legal positions and establishes nationally directly applicable norms. Courts and also executive power are fully bound by them. According to Article 25 of the Basic Law, the Convention ranks as a simple federal law. However, this does not mean that it is above the constitution. In the event of competition between the Basic Law and Convention on the Rights of the Child, the Basic Law takes precedence.

4. The child rights-based approach in work with children

Children's rights are central to this approach

Seeing children as holders of their own rights has consequences not only for the way the state treats them, but also for all persons and organisations that work with and for children. One consequence is in seeing the focus on the rights of the individual child and children as a whole as central to the way organisations working with children go about that work and what guiding principles they have. It is also about aligning all concepts to the rights of the affected children and in the case of professionals promoting child-focused attitudes. The term 'child rights-based approach' has been established for this process of realignment.

4.1 Principles of the child rights-based approach

Like any human rights-based approach, the child rights-based approach is based on certain principles taken from the character of human rights. We can distinguish four basic principles in particular: Universality, indivisibility, children as holders of their own rights and adults as bearers of responsibility.

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The principle of the universality of children’s rights: Children’s rights apply equally to all children around the world, regardless of the culture or tradition in which they live, and also regardless of the life circumstances in which the children are raised. All children are equal when it comes to their rights. Boys and girls have equal rights. Non-discrimination is one of the core tenets of human and children’s rights.

The principle of the indivisibility of children’s rights: All rights to which children are entitled are equally important and closely related. The “edifice of children’s rights” is to be understood as a holistic unit. No group of rights is more important than the other. Rights to protection, provision and participation can claim equal validity across all sectors. So, for example, children are better protected from dangers if they know their rights and participate in decisions that concern them.

The principle of children as holders of their own rights: Children are holders of their own rights. These rights do not have to be acquired or earned by them and they cannot be renounced or sold either. They are entitled to them simply because they are children.

The principle of adults as bearers of responsibility: The principle of children as holders of their own rights corresponds to the obligation of adults to take responsibility for implementing children’s rights. Adults are duty bearers from whom children can expect implementation of their rights. Parents are primarily responsible for the welfare of each individual child. However, the state, economy, culture, sport and media, associations and religious communities and the various institutions working with children and beyond that all adults living in a society bear responsibility for children’s rights.

Principles of the child rights-based approach

<i>Universality</i>	All children are equal when it comes to their rights.
<i>Indivisibility</i>	All rights are equally important and closely related.
<i>Children as holders of rights</i>	Children are holders of their own rights.
<i>Adults as bearers of responsibility</i>	Adults are duty bearers and have a responsibility to implement children’s rights

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4.2 From needs to rights

The child rights-based approach is a human rights-based approach geared to the needs of children

What is characteristic of the child rights-based approach is that this does not only concern the needs of children, but also their rights. While needs are subjective and dependent on the situation, the rights of children are objective and not dependent on any individual situation. The child rights-based approach forms the framework for aligning the actions of people and organisations with the principles of the UN Convention on the Rights of the Child. In this way it is a human rights-based approach that is geared to the particular needs and specific rights of children and young people. The children's rights organisation "International Save the Children Alliance" has compared the implications of the needs-based approach with those of the rights-based approach (International Save the Children Alliance 2002, p. 22):

Needs-Based Approach	Rights-Based Approach
<i>Private charity</i>	Political, moral and legal obligation
<i>Voluntariness</i>	Obligation
<i>Welfare, alms, charity</i>	Legal right guaranteed
<i>Justice, equality, freedom</i>	
<i>Addressing symptoms</i>	Addressing causes
<i>With regard to subgoals</i>	Ensuring rights are fully implemented
<i>Hierarchy of needs: some needs are more important (e. g. food before education)</i>	Indivisibility of rights: all rights are equally important
<i>Needs are different depending on the situation</i>	Rights are universal
<i>Provision of services</i>	Holders of rights are empowered to demand their rights (empowering)
<i>Determining needs is subjective</i>	Rights based on international standards
<i>Short-term perspective</i>	Long-term perspective
<i>Provision of offers</i>	Awareness raising
<i>Specific projects with specific target groups</i>	Holistic approach
<i>Children deserve assistance</i>	Children are entitled to assistance
<i>Governments should do something, but no one has clear obligations</i>	Governments have binding legal and moral obligations
<i>Children can take part in improving what is offered.</i>	Children have a right to active participation

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<i>Some children will be left behind because of lack of resources</i>	All children have an equal right to realise their potential
<i>Each work area has its own objective without their being an overarching goal</i>	There is an overarching goal to which all areas are related
<i>Certain groups have the technical skills for dealing with children</i>	All adults (and all children) can contribute to implementing the rights of children

The child rights-based approach aims to fully implement the rights of children under the UN Convention on the Rights of the Child and takes into account both the individual situation and the surrounding social units such as family, community life, nation and world population. The actions of persons and organisations geared to the child rights-based approach is evident in all the action units: in the analysis of the initial situation, planning, carrying out and following up measures and in its evaluation.

The implementation of the child rights-based approach is a central component of good quality of all professionals and organisations working with children

Overall, the focus on children's rights and the implementation of the child rights-based approach is a central component of good quality of all professionals and organisations working with and for children. Services and facilities that claim to provide high-quality work with children must measure to what extent they are contributing to the rights of children being realised. The reference to children's rights should therefore be standard of all models and concepts.

5. Children's rights in day nurseries

Almost all children in Germany go to day nurseries. The number of children between three and six years old who attend them is now more than 90 percent. Against the background of changes affecting the whole of society – increased employment of both parents, increased stresses on education, changes in the living environment – the entry age in day nurseries is increasingly being extended.

It is therefore to be expected that in a few years more than two thirds of all two-year-olds and about one third of one-year-old children will attend a day nursery or a day care centre. The average life time that children spend in day nurseries will exceed the time that they spend in the (four year) primary school.

The day nursery is a place where children regularly get together with other children in a group outside of their family, usually for the first time. Communication with other children and with the teachers is becoming increasingly complex. Expanding their horizons is associated with new opportunities, but also with fears and risks. Children have to try playing together, practice enforcing their own rights and showing consideration for other people's rights, and learn to participate.

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5.1 *Children’s rights education as the instilling of values*

The social experiences of children in day nurseries have a major influence on the formation of their personality. To what extent children can live as active members of a community that advocates the rights of the individual and enables participation, but also defines boundaries and rules and explains them has a huge impact on the child’s moral development and political socialisation. The day nursery can therefore justifiably be termed a “nursery of democracy” (Hansen/Knauer/Friedrich 2004).

The day nursery is a
“nursery of democracy”

The instilling of values in the name of children’s and human rights education is an indispensable part of early (childhood) education. “Imparting values and rules by which to be guided” (section 22(2) of SGB VIII) is part of the day nurseries’ mandate for the child’s development. In an increasingly multicultural and multi-religious society, this aspect is increasingly important.

5.2 *References to the UN Convention on the Rights of the Child*

The relationships between day nurseries and the UN Convention on the Rights of the Child are diverse and affect numerous children’s rights. Alongside Articles 2 (non-discrimination), 3 (primacy of the best interests of the child), 8 (right to life and full development) and 12 (consideration of the child’s opinion) designed as transversal rights, Articles 18, 19, 28, 29 and 31 are especially affected.

According to Article 18(2) of the Convention, the States Parties support the parents in the fulfilment of their duties “and ensure the development of institutions, facilities and services for the care of children.” Article 18(3) states that the States Parties have to take all appropriate measures “to ensure that children of working parents have the right to benefit from the child-care services and facilities for which they are eligible”.

Article 19 contains the right of the child to protection from all forms of physical or mental violence, mistreatment or neglect, including sexual abuse, both by parents and any other person who has the care of the child e.g. pedagogy professionals. Article 28 sets out a child’s right to education from the start – i.e. from birth. Article 29 contains the educational goals that are binding for educational establishments. The formation of personality that is so important, especially in early (childhood) education, is named as a separate goal. Other educational goals concern the full development of the child’s mental and physical abilities, the respect of human rights, parents and the natural environment and the respect of cultural identity and cultural diversity.

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Finally, Article 31 sets out the right of every child to rest, leisure, play and relaxation. In the interpretation of the right to play, the UN Convention on the Rights of the Child attaches importance to the fact that this is above all free, non-instrumental play that has no purpose other than play itself.

UN Convention on the Rights of the Child: Children's rights in day nurseries

<i>Article 18</i>	Entitlement of children of working parents to benefit from child-care services and facilities
<i>Article 19</i>	Protection from all forms of violence
<i>Article 28</i>	Right to education from birth
<i>Article 29</i>	Educational goals (formation of personality etc.)
<i>Article 31</i>	Right to rest, play and relaxation

5.3 An example: *the child's right to rest and relaxation*

According to Article 31 of the UN Convention on the Rights of the Child, every child has a right to rest and relaxation. It is not uncommon for there to be conflicts in day care centres to do with children's need for sleep, whether it's because the daily routine in the facility is upset by sleeping children or whether it's because parents urge the educators to wake their child early from their midday nap.

Case study

Leonie's mother gave the day nursery the following hand-written note:

*Dear teachers,
Since we have to get to work very early, my husband and I want to have time to ourselves in the evening at least from 7.30 pm onwards. Please don't let Leonie sleep past 2.30 pm as otherwise she will go to sleep very late in the evening and sometimes we're up until all hours.*

*Many thanks!
Leonie's mother*

What can the day nursery do? The right of the child to adequate and restorative sleep conflicts with the needs of the parents. Consideration should be given to the fact that both the child benefits if his parents are rested and good-tempered and the parents benefit from getting a reasonably rested and good-tempered child at the end of his or her time at day nursery.

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First, it is important that the professionals have knowledge of developmental psychology in relation to the sleep behaviour of small children. This includes the fact that sleep duration and circadian rhythm differ depending on the child and are biologically determined. On the other hand, it is definitely possible to influence the sleep-wake cycle of a child (within limits) and it can be carefully adjusted. Any change takes time (usually up to two weeks) and requires adult supervision.

Armed with their knowledge of developmental psychology, the staff at the day nursery should discuss the following with the parents: the child's sleep behaviour, the parent's wishes and what the day nursery can do in terms of flexible sleeping times. Preparing a sleep log can be helpful here. In the course of the conversations, the two parties can agree on a realistic goal: that of aligning the various needs with each other and carefully changing the child's sleep-wake cycle. It should be made clear here that one can't "simply" wake a deeply sleeping child. The change takes time and requires close coordination and cooperation between parents and day nursery. In this way, the pedagogy professionals can succeed in facilitating the child's right to rest and relaxation, with support, with the parent's wishes being considered at the same time.

5.4 Lack of implementation of children's rights in day nurseries

Children's rights only play a minor role in the everyday awareness of most teachers.

Most day nurseries in Germany go to great lengths to offer (a) pedagogy that is geared to the needs of the children. In many facilities, children take (some) part in decisions concerning them and regular morning circle times or even children's conferences take place for this purpose where children can express their opinion and influence decisions. However, children's rights have so far only played a minor role in the everyday awareness of most teachers. The realisation that child-friendly education contributes to children's rights being realised is not yet very widespread in early (childhood) education. One reason for this is that child and human rights education is not established in the education and training of early childhood professionals, but also still too little interest among the providers in a child rights-based approach.

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The rights of children are not usually mentioned in the concepts and models.

A second deficiency arises from poor framework conditions in many places, which do not allow pedagogy that is in the best interests of the children. Although the demands for early education are ever increasing, with good reason, and the children spend time in day nurseries at an increasingly early age and for longer and longer, the available structures are far from growing with them in the same way. Not enough places are available, the groups are often too large and the rooms too small, the professional-child ratio in most facilities exceeds what is child-friendly and a lot of quality requirements are usually not fulfilled. Added to this is the fact that in Germany there are no nationwide binding quality standards that the day nurseries have to meet.

Finally, fault must be found with the fact that the concepts and models in day nurseries do not usually satisfy child rights entitlements. In most cases, the rights of children are not even mentioned. Standards such as the primacy of the best interests of the child, the age-appropriate participation of the children and an inclusive and prejudice-conscious pedagogy are in many cases only insufficiently enshrined or not at all. Overall, the following deficiencies can be determined in particular:

- There is hardly any teaching about children's and human rights in the education and training of early childhood professionals. The child rights-based approach is little known. Children's rights are seldom mentioned in the models and concepts of day nurseries.
- Not enough is being offered to guarantee that all children whose parents decide on an education, upbringing and care in addition to the family are given a place.
- There are no binding, nationwide quality standards that are geared to the needs and rights of children.
- Neither the quality of the structures nor that of the processes of most facilities is geared to the best interests of the children. In particular, the groups are often too large and the professional-child ratio is not child-friendly.
- It has long been the case that not all day nurseries have been equipped to take children with disabilities or other obstacles to taking part. The principle of inclusion is not realised across the board.
- Early education is unilaterally limited to cognitive advancement. A holistic understanding of education therefore falls too short. Not enough is offered to help develop personality.

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- Age-appropriate participation of children is only partially guaranteed and not structurally established.
- Prejudice-conscious pedagogy is still in its infancy. Inter-cultural and inter-religious skills are rare.
- Early childhood language development refers unilaterally to the promotion of the German language. This means that children often miss out on developing their mother tongue.

5.5 Examples of good practice

In various places – in individual day nurseries and in the case of providers – there are examples of good practice concerning children’s rights in day nurseries that are reassuring and encourage imitation. The Forum Menschenrechte – the network of German human rights organisations – has, together with the German Commission for UNESCO, published the handout “Menschenrechte und frühkindliche Bildung in Deutschland” [Human rights and early education in Germany] (Forum Menschenrechte 2011). This contains statements about elements of a “culture of human rights in early education” and recommendations for the legislator, administration and also for providers of education and further training.

The project “Democratie leben in Kindergarten und Schule” [Live democracy in pre-schools and schools] (Höhme-Serke 2005), supported by several foundations, advises teams of educators in Berlin and Eberswalde (Brandenburg) with the aim of developing new methods that guarantee children’s participation. The project assumes that children grow up to be part of a democratic everyday culture where they exercise their right to participate in shaping their everyday coexistence and influence the decisions that are important to them. Democracy is understood as everyday culture based on understanding, agreements and reasoning.

In Schleswig-Holstein, the project “Kinderstube der Demokratie” [“Nursery of Democracy”] has been set up (Hansen 2006, Hansen/Knauer/Sturzenhecker 2011). The project carried out by the Institute of Participation and Education and promoted by the Regional Government in Kiel qualifies multipliers for participation in day nurseries and supports pre-schools in the development of a culture of participation.

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The intention to convene so-called constituent meetings is particularly ambitious. “In a constituent meeting, the pedagogical staff come to an understanding with each other about the children’s rights to participation applicable in the facility in the future. They determine the content and the limits and also the forms of participation. A constituent meeting begins with following questions: What decisions should the children definitely take part in? And “What decisions should the children definitely not take part in?” The participating adults must answer these questions in all participation procedures” (Hansen 2006, p. 30 f.). All decisions to be made in a day nursery can be up for discussion – from the diet and agreement on eating rules to financial and staffing matters.

Example of a regulation in a day nursery constitution: Meals

- 1. With the assistance of the kitchen staff, the children should have a say in the choice and design of meals.*
 - 2. The children should decide themselves whether, what and how much they eat.*
 - 3. However, the pedagogy staff reserve the right to determine the table manners.*
- Hansen 2006, p. 33 f.)*

Once the greatest possible consensus has first been reached among the educators on the participation rights of the children, the team then determines how the children can exercise their rights. “Committees are developed, their composition determined, electoral procedures and transfer options devised, until finally a detailed diagram of the participation structure is created” (Hansen 2006, p. 31). Finally, the draft constitution is decided and then agreed with the parents. Only then will the constitution be presented to the children, who will now be supported in exercising their rights.

In Berlin, the Kinderwelten project (children’s worlds) has set up a nationally active “Department of Prejudice-Conscious Education and Upbringing” (Wagner 2008). The work of the Department is based on the anti-bias approach that has come from the USA. The Department works with pre-schools and primary schools to implement inclusive concepts for developing prejudice-conscious practice with them. Advanced training is offered and practice materials are developed on the subject of “Diversity as an Opportunity – Principles of a Prejudice-Conscious Education and Upbringing”.

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Finally, in 2011, the Humanist Association of Germany – provider of day nurseries in several federal states – began designing the work in day nurseries so that it was geared to children's rights. There are the following key questions: What rights do small children have and what does this mean for the design of and pedagogy in a good day nursery? How are small children to participate in decisions affecting them in an age-appropriate way? How can parents be made aware of the rights of their children and how can an education and training partnership succeed for the benefit of the child? What indicators of good quality based on children's rights are there and how can good quality be assured and constantly improved?

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6. Questions and further information

6.1 Questions and tasks for working on the text



TASK 1:

Look at a concept for a day nursery (available to download from the internet in many facilities). Check whether children's rights are explicitly mentioned in the concept or in the model of the day nursery. Then describe what rights of children are implicitly mentioned.



TASK 2:

Observe an everyday conflict in your own facility. Describe what children's rights are affected and what a solution that is geared to the rights of children would look like.



QUESTION 1:

Thinking back to your own childhood – what experiences did you have with children's rights? To what extent (in families, day nurseries, schools) were rights to protection, rights to provision and rights to participation observed and implemented? Compare your experiences with the situation of children today.



QUESTION 2:

Imagine you are trying to persuade a day nursery team to do their work using the child rights-based approach. What arguments would you put forward?

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6.2 Literature and recommendations for further reading

INFORMATION ON THE AUTHOR

- Forum Menschenrechte (Ed.) (2011): *Menschenrechte und frühkindliche Bildung in Deutschland. Empfehlungen und Perspektiven*. Berlin.
- Hansen, R. (2006): *Das Recht, Rechte zu haben – Kinderrechte in Kindertageseinrichtungen*. In National Coalition für die Umsetzung der UN-Kinderrechtskonvention in Deutschland: *Kinderrechte in Kindertageseinrichtungen und Schulen*. Vol. IX "Die Konvention umsetzen...". Berlin, p. 26-37.
- Hansen, R.; Knauer, R. & Friedrich, B. (2004): *Die Kinderstube der Demokratie. Partizipation in Kindertagesstätten*. Ministry for Justice, Women, Youth and Family Affairs of the Federal Land Schleswig-Holstein. Kiel.
- Hansen, R.; Knauer, R. & Sturzenhecker, B. (2011): *Partizipation in Kindertageseinrichtungen. So gelingt Demokratiebildung mit Kindern! Weimar: Publishing House "Das Netz"*.
- Hanson, K. (2008): *Schools of thoughts in children's rights*. I: Ben-Arieh, A.; Cashmore, J.; Goodman, G.; Kampmann, J. & Melton, G.B. (ed.): *Handbook of Child Research*. London: Sage.
- Höhme-Serke, E. (2005): *Partizipation in der Kindertagesstätte. Erfahrungen mit Veränderungsprozessen in dem Projekt "Demokratie leben in Kindergarten und Schule" in Eberswalde*. In "Frühe Kindheit", volume 8, issue 5, p. 36-38.
- International Save the Children Alliance (2002): *Child Rights Programming. How to Apply Rights-Based Approaches in Programming*. London.
- Kerber-Ganse, W. (2009): *Die Menschenrechte des Kindes. Die UN-Kinderrechtskonvention und die Pädagogik von Janusz Korczak. Versuch einer Perspektivenverschränkung*. Opladen: Publishing House Barbara Budrich.
- Maywald, J. (2012): *Kinder haben Rechte! Kinderrechte kennen – umsetzen – wahren*. Weinheim: BELTZ.
- Skutta, S. (2010): *Der Beitrag der Kinder- und Jugendhilfe zur Umsetzung der Kinderrechte. Bewertung und Erwartungen anlässlich 20 Jahre Kinder- und Jugendhilfegesetz (KJHG)*. In NDV issue 10/2010, p. 1-6.
- Vereinte Nationen (1989): *Übereinkommen über die Rechte des Kindes (UN-Kinderrechtskonvention)*. Accessed on 11.10.2013. Available at <http://www.national-coalition.de/pdf/UN-Kinderrechtskonvention.pdf>
- Wagner, P. (Ed.) (2008): *Handbuch Kinderwelten. Vielfalt als Chance – Grundlagen einer vorurteilsbewussten Bildung und Erziehung*. Freiburg: Herder Publishing House.

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**RECOMMENDATIONS
FOR FURTHER READING**

Hansen, R.; Knauer, R. & Sturzenhecker, B. (2011): Partizipation in Kindertageseinrichtungen. So gelingt Demokratiebildung mit Kindern! Weinheim: Publishing House "Das Netz".

Kerber-Ganse, W. (2009): Die Menschenrechte des Kindes. Die UN-Kinderrechtskonvention und die Pädagogik von Janusz Korczak. Versuch einer Perspektivenverschränkung. Opladen: Publishing House Barbara Budrich.

Maywald, J. (2012): Kinder haben Rechte! Kinderrechte kennen – umsetzen – wahren. Weinheim: BELTZ.

Vereinte Nationen (1989): Übereinkommen über die Rechte des Kindes (UN-Kinderrechtskonvention). Accessed on 11.10.2013. Available at <http://www.national-coalition.de/pdf/UN-Kinderrechtskonvention.pdf>

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6.3 Glossary

Children's rights Children's rights are human rights for children. Because of their particular needs, children need their own human rights protection that is tailored to their situation. The UN Convention on the Rights of the Child and numerous laws on a European and international level are more specific about and expand on the Universal Human Rights in relation to the concerns of children. Children's rights include protection rights, provision rights and participation rights.

Child rights-based approach The child rights-based approach forms the framework for aligning the actions of people and organisation with the principles of the UN Convention on the Rights of the Child. What is characteristic of the child rights-based approach is that this does not only concern the needs of children, but also their rights. While needs are subjective and dependent on the situation, the rights of children are objective and not dependent on any individual situation. The four principles of the child rights-based approach are: (1) Universality of rights, (2) Indivisibility of rights, (3) Recognition of children as holders of their own rights, (4) Obligation of adults as bearers of responsibility.

KiTa Fachtexte is a collaboration between the Alice Salomon University of Applied Sciences, the FRÖBEL group, and the professional development initiative for early childhood professionals WiFF. KiTa Fachtexte wants to support lecturers and students at universities and professionals in day care centres and day nurseries by providing the latest specialist texts for study and practice. All specialist texts are available at: www.kita-fachtexte.de

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