



Position Paper by the German-Speaking Association for Infant Mental Health (GAIMH) on:
Proposal for a Declaration of Infant Rights, WAIMH, Edinburgh, 14-18 June, 2014

The GAIMH welcomes the World Association for Infant Mental Health's (WAIMH) initiative to strengthen the rights of children in the first years of life (age 0 to 3 years) and to more than before raise awareness of those rights among parents, professionals, and policy makers. Like all members of the human community, young children have inherent, inviolable dignity. From the very start, they are subjects and holders of their inalienable human rights. Bearing in mind the particular needs of children, these human rights are set out in the United Nations (UN) Convention on the Rights of the Child (CRC), the most widely ratified human rights treaty of international law in history. Among the rights outlined in the 54 articles of the CRC are the principle of the best interests of the child and extensive rights to protection, provision, and participation.

Strengthening young children's rights and promoting increased awareness of those rights can be approached in different ways. There are three main alternatives:

- (1) **Recommend that the community of states further develop the CRC:** Since its entry into force in 1990, the CRC has been supplemented and clarified with three Optional Protocols. A step of that kind is conceivable also for the particular needs of young children. It would also be possible to revise articles of the CRC or add articles to it. Article 50 of the CRC outlines the procedure for proposing and adopting amendments. Changes and additions to the CRC would have extensive legal consequences worldwide. It is important to consider that the procedure is lengthy and success unsure.
- (2) **Interpret the CRC in light of the particular needs of young children:** An interpretation of existing rights in the CRC in light of the particular needs of young children would be a suitable way to supplement and update General Comment No. 7 "Implementing child rights in early childhood" (published in 2005) of the UN Committee on the Rights of the Child taking into account up-to-date scientific knowledge. The interpretation could have impacts especially in science/research, professional practice, and civil society, including possible voluntary commitments. There would be no legally binding obligation.

(3) **Publish a declaration of the rights of young children:** The aim of a declaration of the rights of young children would be to formulate the full range of human rights in light of young children’s particular needs. The declaration could have impacts especially in science/research, professional practice, and civil society, including possible voluntary commitments. There would be no legally binding obligation.

The WAIMH has proposed to take the third approach and presented an initial Proposal for a Declaration of Infant Rights (Birth to Three Years of Age) at the 14th World Congress of the WAIMH in Edinburgh in June 2014.

In the following, we comment on the WAIMH Proposal from a professional and a child-rights perspective. We examine in particular the extent to which the formulations in the Proposal are compatible with, expand, or – on the contrary – fall behind the rights of young children set out in the CRC.

I. Basic Principles of Infant Rights (Birth to three years of age)

Ad 1.: The term “absolute dependence” contradicts the finding that from the start children have competencies that make them active contributors in the shaping of their social and material environments. “Absolute dependence” runs contrary to the principle of “the evolving capacities of the child” in Article 5 of the CRC. Evolving capacities means that children, through the process of maturation and development, gradually expand the capacities that they have had from the moment of their birth, and that children have a growing need to co-decide and a growing ability to take responsibility.

Ad 2.: In principle 2 of the Proposal, young children’s needs and rights are mixed together in a problematic way, with the result that the rights position of the child is weakened. Certainly, “caregiving relationships” are one of the central needs of young children. Recognizing and understanding this is indispensable for healthy child development. However, it is problematic to formulate a right of the child for caregiving relationships on this basis, because needs for love, affection, and care are not legally enforceable or actionable. It is only possible to anchor in law requirements for the conducive framework conditions upon which caregiving relationships depend.

The CRC resolves this dilemma by recognizing, in the Preamble, the knowledge that “the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding.” The child’s rights to particular protection and particular care are set out, among others, in Article 3 (“best interests of the child”), Article 6 (“inherent right to life”; “development of the child...to the maximum extent possible”), and Article 24 (health care) of the CRC. The rights of especially vulnerable children who live separated from their parents are set out much more comprehensively and more precisely in the CRC than in the Proposal: among others, in Article 9 (a child separated from his or her parents; right to maintain personal relations), Article 20 (a child temporarily or permanently deprived of his or her family environment; foster placement; adoption), and Article 21 (adoption).

Ad 3.: The rights of the child described in principle 3 of the Proposal – to be registered as a citizen from the moment of birth, the right to identity, and right to protection from all forms of discrimination – belong to the central rights of every child. In the CRC these rights are set out in Article 2 (respect and ensure the rights to each child; without discrimination of any kind), Article 7 (right to be registered after birth; right to a name; right to acquire a nationality), and Article 8 (identity) much more comprehensively and more precisely than in the Proposal.

Ad 4.: As in principle 2 of the Proposal, here again the needs and rights of young children are mixed together in a problematic way, with the result that the rights position of the child is weakened. Whereas the child’s needs for physical and emotional safety, nutrition, and sleep are stated as legal rights – compare Article 6 (“inherent right to life”; “development of the child...to the maximum extent possible”) and Article 31 (“right of the child to rest and leisure, to engage in play and recreational activities...and to participate freely in cultural life”) in the CRC – the need of the child to be loved is not legally enforceable.

Ad 5.: Protection from every form of violence and protection from child trafficking belong to the central rights of every child. These rights are set out in Article 19 (protection from violence, abuse, neglect), Article 34 (protection from sexual abuse), and Article 35 (measures to prevent abduction of or trafficking in children) of the CRC as well as in the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography much more comprehensively and more precisely than in the Proposal.

Ad 6.: Principle 6 states the right of traumatized children to have access to professional help. This right is set out in Article 39 (recovery and social reintegration of child victims) of the CRC much more comprehensively and more precisely than in the Proposal.

Ad 7.: Principle 7 states the need (not the right) of children with life-limiting conditions for access to palliative services. Systematically, such a provision does not belong in a declaration of the rights (not needs) of young children. The CRC recognizes no specific right to palliative medical care. However, such a right can be deduced from Article 24 of the CRC, which sets out the right of the child “to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health.” From a child rights perspective, the need for palliative services based on the same standards that stand for older children, as also stated in principle 7 of the Proposal, corresponds to the fundamental human rights principle of non-discrimination set out in Article 2 of the CRC.

II. Social and Health Policy Areas to be informed by these Principles

Part II of the Proposal contains numerous social and health policy demands. One passage of the text (the sixth paragraph) states only a need of the child (need for “access to palliative services”) without connecting it with a requirement. Another text passage (seventh paragraph) postulates a “right for parental leave” without mentioning the legal source. The CRC recognizes no right to parental leave. According to Article 18 of the CRC, the States Parties to the Convention are obligated to “render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities.”

Appendix A.

The 10 principles listed in Appendix A of the WAIMH Proposal are taken from the Declaration of the Rights of the Child adopted by the UN General Assembly in 1959. The Declaration was not legally binding. It in no way reflects the current state of international children’s rights today. In 1989 the Declaration was replaced by the CRC, which was adopted unanimously by the UN General Assembly after 10 years of negotiations. In contrast to the Declaration of 1959, the CRC is open to all national governments for ratification and is thus a legally binding international instrument.

Further General Comments on the WAIMH Proposal

The Proposal for a Declaration of Infant Rights contains only some rights to protection and rights to provision. Further important rights to protection and provision that are spelled out in the CRC (among others, the best interests of the child as the primary consideration; the child's right to education, adequate living conditions, and social security; and the rights of vulnerable children) are missing. Also absent in the Proposal are the full range of civil and political rights as well as the fundamental right of the child to be heard, identified by the UN Committee on the Rights of the Child as a general principle in early childhood: the right of the child to have the child's views be given due weight in accordance with the age and maturity of the child in all matters affecting the child (Article 12 of the CRC).

Summary and Recommendation

The Proposal for a Declaration of Infant Rights presented by the WAIMH at the 14th World Conference of the WAIMH in Edinburgh in June 2014 is incomplete, and in numerous important points it falls behind the legal protection status in the CRC. The GAIMH therefore recommends that the text be thoroughly revised and also reviewed from a legal standpoint (international law).

(written by Prof. Dr. Jörg Maywald, German League for the Child)

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