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HUMAN RIGHTS IN CHINA

485 Fifth Avenue, 3rd fl., New York, NY 10017, Tel 212-661-2909/ Fax 212-972-0905 /e-mail:

hrichina@igc.org

General Comments

Human Rights in China (HRIC) welcomes the various laws that the Chinese government has passed in recent years pertinent to the rights of children and infants. However, it notes with concern that in general these laws lack enforcement mechanisms and refer to penalties under

the existing Criminal Code rather than creating new sanctions for violators. (See Attachment #2., in attachments list below, for an explanation of this.) Furthermore, even the implementation of specific, enforceable laws is highly contingent, since it depends on whether individual officials or sectors of the judicial system believe it is in their interests to do so.

In the absence of independent groups or real independence of various branches of the judiciary, there is virtually no monitoring of the operation of the law enforcement system. Existing supervisory systems which are supposed to oversee its operations, particularly relating to juveniles, including the procuracy, are interconnected with the political authorities and thus do not exercise these functions in a proper manner.

For all the above reasons, the gap between laws and regulations and the reality remains unacceptably wide. In the area of children's rights, as the information below makes clear, this is also the case. Therefore, the concentration in Chinese government's initial report on the implementation of the CRC on the provisions contained in laws and regulations does not provide sufficient information to assess the real situation of the rights of the child in China. HRIC has consistently called for full implementation of existing laws and regulations as a first step towards proper protection of human rights, and believes that such an approach is also need in the area of children's rights.

China's initial report is also lacking in specifics on a number of issues, including numbers of children affected by certain types of problems. We would also caution that Chinese government statistics should be viewed with a certain degree of skepticism; even official news reports have repeatedly complained about the falsification of statistics, including numbers relating to negative social trends such as illiteracy and school drop-out rates.

The information provided below provides brief summaries of some information and issues not addressed in China's initial report, referring to fuller expositions and data in attached materials produced or published by HRIC. These are listed below, and the numbers given to each are cited as references in the text. References to China's initial report are to the English text provided in CRC/C/11/Add.7.

Attachments

1. "Caught Between Tradition and the State: Violations of the Human Rights of Chinese Women," Human Rights in China, August 1995
2. "The Legal Protection of Women's Rights in China," by Jonathan Hecht, China Rights Forum, Fall 1995.
3. "Fighting for Their Rights: Chinese Women's Experiences Under Political Persecution," Human Rights in China, August 1995.
4. "City officials turn a blind eye to child abuse," Human Rights in China, Human Rights Tribune, Winter 1992. (This is an English summary of the full text of the Chinese-language report, which is attached.)
5. "Subsistence Rights and the Free Market: Economic Growth Leaves China's Disadvantaged Behind," by Xiaorong Li, China Rights Forum, Winter 1994.
6. "The Price of Obscurity in China: Revelations About Prisoners Arrested After June 4, 1989," by Human Rights in China and Human Rights Watch/Asia, May 19, 1994.
7. "Religion in China: Regulating the Opium of the People," by Mickey Spiegel, China Rights Forum, Spring 1995.

Non-discrimination (Article 2)

Discrimination against girl children is an enormous problem in China today. Such discrimination has been exacerbated by the government's population control policies, which limit the number of children each couple may have. These policies combined with social attitudes have resulted in seriously skewed male-female sex ratios at birth. HRIC estimates that about half a million girl children are "missing" every year as a result of sex-selective abortion, infanticide, death

through neglect, abandonment and non-registration (discussed more fully below). (See Attachment #1, pp.48-54 for discussion of these points.) Infanticide and abandonment are mentioned in China's initial report, in paragraph 102, but their extent is not disclosed. Observers have stated that around 90 percent of children in orphanages are female, with the rest suffering from some kind of disability.

Children of families who have "out of plan" births are subject to discriminatory treatment because of the actions of their parents. For example, such "out of plan" children may not be given a "residence registration" (hukou), without which they are not eligible for free education, health benefits and other subsidies. Furthermore, without this registration such children do not have a local identity, also raising issues under Art. 7 of the Convention. Other children in such families may also suffer a loss of benefits, affecting their education, health and livelihood. (See Attachment #1, pp.46-48, pp.52-53.)

Children of dissidents have sometimes been discriminated against because of their parents' beliefs or activities. Some dissidents have had difficulty registering their marriages, which means that children born to them are also prevented from obtaining residence registration. (See Attachment #3, p.6 and pp.44-46 for examples.)

Girls make up the majority of children not receiving primary education or dropping out of school. The proportion of females enrolled decreases at each educational level. Girls and young women are also discriminated against in entrance to vocational and technical schools and institutions of higher education. (See Attachment #1, p. 74 and pp.96-98.)

Right to life, survival and development (Article 6)

HRIC is very concerned about continuing reports of very late-term abortions performed in execution of China's population policies. In some cases, such abortions constitute an officially-sanctioned form of infanticide. The majority of provincial laws and regulations on the implementation of the population policy reviewed by HRIC do not place any limits on gestational age for abortions, and no national law or regulation containing such limits has been enacted. HRIC has documented instances in which children born alive as a result of such abortions have been killed by medical personnel after birth. Although we have no information as to the prevalence of such acts, the persistence of such reports combined with the lack of prosecutions of people responsible, means that such abuses remain unchecked. (See Attachment #1, p.39, pp.40-41, p.44 and p.51 for specific cases; pp.36-41, pp.43-45 and pp.50-51 for general discussion.)

There have been persistent reports of high death rates and abusive conditions in a number of the child welfare institutions in which orphaned, abandoned and handicapped children live. For example, according to an official internal report and independent investigation of conditions in the Shanghai Children's Welfare Institution which contains children ranging from newborns to 16 years old, between 1984 and 1991, the death rate remained over 50 percent, in 1991 reaching 77.6 percent of the total intake. (See Attachment #4, p.27, for more details.) Similar problems have also been reported in other such institutions (see TV report, "The Dying Rooms.")

Illicit transfer and trafficking (Articles 11 and 35)

Trafficking in women and children has grown substantially since the late 1970s. Although law enforcement agencies claim to have diminished the trade somewhat in recent years, tens of thousands of girls and women and thousands of children are affected every year. Girls and women are trafficked to be sold either as wives or into prostitution, while children (primarily infants) are trafficked to be sold as "adopted children." The latter form of the trade reflects the fact that legal adoption of children without disabilities is stringently restricted under the current laws (see below for more information). China mentioned the problem of trafficking without describing its extent in paragraph 102 of its initial report.

A large proportion of those sold into marriage or prostitution are girls under the age of 18. A survey of over 30,000 trafficking victims in one Chinese province, Anhui, in the 1980s found that

one third were aged 15 to 18. (See Attachment #1, pp.10-12, 14-15.) From reports of such cases, it is clear that local officials frequently are actively involved in trafficking or turn a blind eye to it. (See Attachment #1, pp.17-19.) Furthermore, even though purchase and sale of women not involving abductions were finally criminalized in the 1991 "Decision Relating to the Severe Punishment of Criminal Elements Who Abduct and Kidnap Women and Children" (referred to in China's initial report, paragraphs 100 and 262), to our knowledge, men who buy women as wives and parents who sell their own children are rarely prosecuted. (See Attachment #1, pp.15-16 for details.) This is alluded to in China's initial report, which states in paragraph 100 that "where the circumstances are grave enough to warrant treating the matter as a crime" prosecutions may be brought for the abandonment or sale of children, which appears to imply that such actions may not be considered criminal.

Child marriage, which HRIC considers to be a form of illicit transfer and is actually against Chinese law, continues to be practiced. HRIC believes that the authorities have failed to take significant action against such practices, for example by enforcing the 1980 Marriage Law. (See Attachment #1, pp.16-17 for details.)

Freedoms of expression, thought, conscience, religion, association and assembly, access to information (Articles 12, 13, 14, 15 and 17)

Children, like all Chinese citizens, are affected by stringent controls on freedoms of expression, association and access to information. (For a general discussion of how these controls operate, see Attachment #1, pp.84-91.) Religious freedom is also highly circumscribed. (See Attachment #7.) Children of dissidents have been pressured to renounce their parents or their parents' views. (See Attachment #3, p.16, p.35 and pp.44-46.)

HRIC is particularly concerned that restrictions placed on freedom of expression and association in China limit exposure of abuses of the rights of children and prevent the formation of independent advocacy groups which might oversee the implementation of laws and policies or provide necessary services to children in need.

Parental responsibilities (Article 18)

Although many laws and regulations, such as the Protection of Minors Act and the Compulsory Education Act, detail parents' responsibilities to their children, HRIC believes that such laws are rarely enforced.

Prosecutions for infanticide or abandonment are extremely rare. (See Attachment #1, pp.49-50 on infanticide, pp.53-54 on abandonment.) As mentioned above, paragraph 100 of China's initial report implies that under certain circumstances, Chinese law may not consider the sale of children, or their abandonment, a crime.

The Compulsory Education Act does not provide for penalties for parents who do not send their children to school. (See Attachment #1, p.97.) HRIC believes that owing to underreporting of births, the number of children not receiving primary education, particularly girls, is likely much higher than the figures presented in China's initial report.

While urban children's tuition in school is generally provided free of charge, many rural parents have to pay to send their children to school. There are not sufficient state-run schools, which are supposed to provide free education, in the countryside. Furthermore, the growth of schools charging "miscellaneous fees" in both rural and urban areas is increasingly making education unaffordable for poor families. (See Attachment #5, p.20.) China's normally compliant National People's Congress has repeatedly complained about the lack of government funding for education.

Adoption and children deprived of a family (Articles 20 and 21)

Strict limits in adoption laws on who may adopt children without disabilities have led to a situation where many children, especially girls, spend their lives in welfare institutions. As mentioned here, conditions in some such institutions are abusive and not conducive to the survival and healthy growth of children. According to the Adoption Law, children must be

certified as orphans--meaning that both parents are dead--before an adoption can proceed. This is often difficult since the parents of many children in welfare institutions are not known. Furthermore, people who wish to adopt must have no children of their own and be over age 35. HRIC believes that such limits on adoptions are not in the best interests of children needing adoptive families, and have been enacted out of concern that easier adoption might lead to higher birth rates or the adoption of "out-of-plan" children by relatives of their parents.

Prevention of abuse and neglect (Articles 19 and 39)

According to HRIC's research, little investigation has been carried out on child abuse in China, and few specific measures have been enacted to prevent such abuse, uncover instances of abuse, punish abusers or provide services for victims. (See Attachment #1, p.24.)

Chinese law prescribes lighter penalties for assaults or killings of relatives as compared to strangers, as mentioned in the Chinese Criminal Code, Article 182 (cited in China's initial report, paragraph 40 and paragraph 105). This creates a situation where law enforcement personnel may not consider assaults on family members as a serious matter. "Minor" assaults not resulting in permanent physical damage are generally not prosecuted. (See Attachment #1, pp.25-27.)

To HRIC's knowledge, prosecutions for infanticide, abandonment or neglect of infants are extremely rare. Despite the prevalence of such acts against female infants, as evidenced by the skewed sex ratio at birth (see above), apart from "education" condemning such practices, little attempt has been made to investigate or prosecute such crimes. (See Attachment #1, pp.48-51, pp.53-54.)

Abuse of children in state welfare institutions, which house orphaned, abandoned and handicapped children, has been reported in a number of instances. An example is persistent reports of beatings and improper use of restraints and confinement of children in the Shanghai Child Welfare Institution in the late 1980s and early 1990s. Despite several internal reports and concern expressed by local People's Congress members in the city, no disciplinary or criminal action is known to have been taken against officials responsible for these abuses. (See Attachment #4, p.27.) Furthermore, similar abuses have been reported in other such institutions. To our knowledge, no systematic effort has been made to investigate abuses in child welfare institutions or to create proper safeguards to prevent their.

Despite legal provisions outlawing discrimination against victims of trafficking, in practice there are few services provided to such persons. Women and girls who have been trafficked are often unable to return to their natal families because of prejudice, and therefore may have no option but to remain with the "husband" who purchased them. (See Attachment #1, pp.19-20.)

Health and health services (Article 24)

Although China has undoubtedly provided health services for many children and decreased infant mortality rates, HRIC believes that the provision of health care to children is actually much more variable and problematic than China's initial report maintains. Some concerns are raised by internal contradictions within the report. For example, although paragraph 145 quotes provisions of the Mother and Infant Health Care Law requiring the state to "provid[e] the necessary conditions and material assistance to enable mothers and infants to obtain medical care" while paragraph 150 describes regulations on health care for children, paragraphs 158-161 describe an insurance scheme in which a small proportion of Chinese children are enrolled which would prevent children "being unable for economic reasons to seek prompt medical attention."

This apparent disparity is a reflection of the current state of health care provision in China. Children who are covered by insurance or through the work units of their parents may receive good care, yet many children only have access to fee-for-service medicine for which their parents must pay. This is particularly the case in rural areas. Furthermore, increasingly doctors require the payment of bribes or gifts if they are to provide adequate services to patients. Such

practices raise serious concern about the provision of health care services to poor children. (See Attachment #1, pp.99-100, Attachment #5, pp.20-21.) As mentioned in paragraph 149 of China's initial report, malnutrition is a growing problem among the nation's under-fives.

The administration of juvenile justice (Article 37)

Although China has enacted safeguards for the treatment of juvenile suspects and offenders, HRIC is concerned that as in so many areas of Chinese law and regulations regarding the treatment of detainees and prisoners, such rules may not be observed in practice.

HRIC has information about three Beijing juveniles imprisoned for their role in the 1989 demonstrations. All three were incarcerated with adults at Qinghe Farm No.3 Branch near Beijing. They are, with age at time of arrest, Huo Yanfeng, 16, sentenced to 10 years for arson; Tong Bo, 16, sentenced to six years for stealing weapons and ammunition; and Zhang Yu, 17, sentenced to one year for "engaging in hooligan activities." (See Attachment #6, p.22, p.23, p.27.) HRIC believes that the individuals prosecuted on criminal charges following the 1989 crackdown generally did not receive fair trials. (See Attachment #6, pp.10-11 for discussion.) Furthermore, initiates at Qinghe Farm are forced to perform extremely heavy labor. (See Attachment #6, p.9.) HRIC believes that many other juveniles across the country may also have been sent to prisons and labor camps for their role in the 1989 events.

China's initial report states in paragraph 79, "Torture of children does not occur in China." Unfortunately, HRIC does not believe such a categorical statement to be warranted. Abuses of children in the Shanghai Children's Welfare Institution (see Attachment #4, p-27) appear to constitute torture. Such abuses, particularly the use of restraints, have also been reported in other welfare institutions.

Although the Protection of Minors Act states that juveniles are to be held separately from adult detainees and prisoners, HRIC believes that these rules are not always observed. Former prisoners recall juveniles being held in the same cells with adults in detention centers. Conditions in such detention centers are often abusive, and beatings by guards or other inmates are common. Procuracies at all levels are charged with the supervision of incarceration all individuals as well as the administration of the juvenile justice system. As they have proved to be woefully inadequate in their oversight of the former, we see no reason to believe that their supervision of the latter their record would be any better.

[Home](#)

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