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Building up the Future: The Implementation of the UNCRC in China

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Building up the future

The implementation of the UNCRC in China

To Professor Margaret Lewis

Respectfully Submitted

by Colin Gibson

21 May 2013

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Introduction

It is an undeniable fact that children are the future of humanity. We were all children once, and one day we in turn shall have children, who will go on to have children of their own. In this manner, humanity propagates forth, generation after generation. A similar view, one more recent, is that children deserve the utmost protection from harm, due to their importance and due to their inability to defend themselves. His Holiness the Pope Emeritus Benedict XVI said, “Jesus is always beside us, is always close to suffering people, and reminds everyone that His face is in every child.”¹ The modern children’s rights movement culminated in 1992, with the entry into force of the United Nations Convention on the Rights of the Child (or the UNCRC). According to the United Nations, it is the fastest-growing treaty in history; to date, 193 countries have ratified the treaty, including every member of the United Nations with the exception of the United States and Somalia². The People’s Republic of China (PRC) signed the Convention on 29 August 1990³, and therefore is bound by the Convention just as the other states parties⁴. Unfortunately, despite their ratification of the Convention, numerous issues remain that severely threaten children’s well-being in China. Some of these issues are created by the sheer magnitude of China and her people, and the difficulty governing such a large and varied land. Other issues are the creation of the neglect of the central government, which has not made efforts to codify and enforce the laws protecting children. Numerous reports of child

¹ *Benedict XVI: In every child is the face of Jesus*, Catholic Television, June 11, 2011.

² U.N. Treaty Collection Chapter IV §11, Convention on the Rights of the Child, Status as at 19-03-2013 10:04:04 EDT, http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en.

³ *Id.*

⁴ Vienna Convention on the Law of Treaties art. 26, May 23, 1969, 1155 U.N.T.S. 331.

trafficking and labor surface regularly from China, and the opaque and confusing nature of Chinese law makes it difficult for ordinary Chinese citizens to enforce their rights under the UNCRC. These problems are certainly broad and far-reaching, and solutions to them will not come easily. Long-term possible remediation of the issues facing China's youth rests on two pillars: the rising standards of living that are coming to China with industrialization and capitalism, and a more robust level of government oversight along with more efforts at the grassroots and international level to hold the PRC government accountable for its failures. Both of those fixes will take time, but given the massive strides that China has taken in the scant 40 years since Deng Xiaoping took over, we can be hopeful that the PRC will continue to progress towards a greater recognition and protection of the rights of the child. In the meantime, increasing the age of compulsory education and adopting the Third Optional Protocol to the UNCRC will aid in the long-term betterment of every Chinese child.

History of the Convention, and China's Ratification

Children's rights as an issue has existed for countless generations, in various ways and against various ills. The most awful and gruesome propaganda leveled against a society in ancient times was that the culture practiced child sacrifice. The ancient Israelites levied this charge against the ancient Canaanites⁵, and the Romans levied a similar charge against the Carthaginians⁶. The type of large-scale, institutionalized intervention on the behalf of children,

⁵ "Thou shalt not give any of thy seed to be consecrated to the idol Moloch, nor defile the name of thy God" Leviticus 18:21.

⁶ "There was in their city a bronze image of Cronus, extending its hands, palms up and sloping toward the ground, so that each of the children when placed thereon rolled down and fell into a sort of gaping pit filled with fire." Diodorus Siculus, *Bibliotheca Historica* 20:14 (Loeb Classical Library 1954).

however, is largely a product of non-governmental organizations in the late 19th century. In large part, these efforts grew from earlier efforts to eradicate the slave trade, and focused on human trafficking. These efforts culminated in the International Agreement for the Suppression of the White Slave Traffic, which entered into force 18 July 1905⁷. The then-developing field of workers' rights, in the wave of ever-increasing industrialization, also lent itself to the protection of children. The first international conference on workers' rights, held in Berlin starting 15 March 1890, produced, among other suggestions, the proposal that no one under the age of 14 be allowed to work in a mine⁸. While the Berlin Conference led to no formal agreements, it did create the impetus that these sorts of issues could be dealt with on the international level.

The end of the Great War led to a burst of internationalism, that such a horror might never be allowed to take place again. The immediate post-war saw the creation of numerous non-governmental organizations (NGOs), such as Save the Children in 1919. The victorious powers also signed the Convention on Slavery in that same year. Surely the most radical change was the formation of the League of Nations. The foundation of the League of Nations created a real push to put into place substantive standards for children's rights. Article 23 of the Covenant of the League of Nations establishes that, "subject to and in accordance with the provisions of international conventions existing or hereafter to be agreed upon, the Members of the League will endeavour to secure and maintain fair and humane conditions of labour for men, women and children ... [and] will entrust the League with the general supervision over the

⁷ International Agreement for the Suppression of the White Slave Traffic, May 18, 1904, 1 L.N.T.S. 83.

⁸ Int'l Labour Office [ILO], International Labour Standards, 1998.

execution of agreements with regard to the traffic in women and children.”⁹ The League adopted the First Declaration of the Rights of the Child in 1924, also known as the Geneva Declaration. The Geneva Declaration laid down five principles of children’s rights, including the right to food, to education, to health, and “The child must be brought up in the consciousness that its talents must be devoted to the service of its fellow men.”¹⁰ Unfortunately, the global economic collapse and then the coming of the Second World War sidelined any further progress on children’s rights until after the war’s end.

A renewed burst of internationalism followed the end of the Second World War. The creation of the United Nations offered a new, more robust vehicle for the propagation of children’s rights that the ineffectual League. When the responsibilities of the League were transferred to the new United Nations, an update and expansion to the 1924 Declaration was considered and promulgated in 1959. This new declaration was much more expansive than the five principles of the 1924 declaration, now being expanded to ten principles. In light of the horrors of the Second World War, new principles related to discrimination and cruelty were added. This non-binding statement would serve as the position of the United Nations for twenty years.

Over the next twenty years, the United Nations would work on many of the centerpieces of the body of international law, including the two great Covenants, on Civil and Political Rights, and on Economic, Social, and Cultural Rights, respectively. Coinciding with the twentieth anniversary of the promulgation of the 1959 declaration, work began on the UNCRC

⁹ League of Nations Covenant art. 23.

¹⁰ Assembly of the League of Nations, *Declaration of the Rights of the Child*, League of Nations Official Journal, Special Supplement 23, 179.

with a proposed draft by the Polish People's Republic. This draft received wide praise, from both NATO and Warsaw Pact countries. No observations or recommendations from China, however, are noted in Human Rights Commission records of that time. At that time, the PRC had held the China seat for eight years, but was not active in the United Nations. The history of the Convention's drafting, however, reveals that China sent representatives to the working groups that oversaw the development of the UNCRC text. They proposed a new article to the draft convention in 1984, which stated that "The States Parties to the present Convention should protect the interests of the children born out of wedlock and ensure to them the rights as enjoyed by those born in lawful wedlock."¹¹ This proposal was discussed in the 1986 session of the Commission, but did not make it into the final draft of the Convention. By 1989, the thirtieth anniversary of the 1959 declaration, China was very involved in the Human Rights Commission, and Qian Jiadong of the PRC chaired it in 1989. The representative of China to the Commission praised the draft of the UNCRC, and said that the "[Chinese] Government had always attached great importance to the well-being of children, who represented the future of mankind and the hope of society. It was implementing various programmes to provide for the moral, intellectual, and physical development of children and had taken a number of measures for pregnant women in order to guarantee the healthy development of the foetus."¹² However, a Chinese representative at the Third Committee meeting of the General Assembly in November of 1989 went on to say that "Because of the variety of social systems and cultural traditions in the world, the convention could not have satisfied everyone. Although [the PRC]

¹¹ 1984 Report of the Working Group to the Commission on Human Rights, U.N. Doc. E/CN.4/1984/71, annex II.

¹² Discussion in the Commission on Human Rights on 6 and 8 March 1989, U.N. Doc. E/CN.4/1989/SR.50.

delegation, like others, had reservations concerning some of the convention's provisions, such as its definition of the child, that would not prevent it from supporting its adoption."¹³

And indeed, China did sign the Convention a few months after its opening to signatures on 20 November 1989. China signed on 29 August 1990, and then the National People's Congress ratified and the ratified treaty was deposited with the Secretary-General on 2 March 1992. The treaty had already gone into force on 20 September 1990. China signed the UNCRC with three reservations. A reservation modifies the effect of the treaty for the reserving party, unless banned by the treaty.¹⁴ China's first reservation relates to the governance of Macao. At that time, sovereignty over Macao was in the process of transferring from Portugal to the PRC, and Portugal and China were specifying that the Convention would apply to Macao throughout the process. The second reservation was more complicated, and related to Hong Kong, which at that time was transferring from the sovereignty of the United Kingdom of Great Britain and Northern Ireland (hereinafter the United Kingdom) and the PRC. The application of these special provisions that China had reserved for Hong Kong are not relevant to the larger discussion of China's adherence to the UNCRC and will not be discussed here. The third reservation, promulgated by the National People's Congress in 1991, related to China's family planning policy, and stated that the right to life for children enshrined in the Convention would not affect China's family planning policy.¹⁵ Otherwise, the PRC accepted the terms of the UNCRC without reservation, which has the effect of making all the Convention's terms binding on the PRC.

¹³ Discussion in the Third Committee of the General Assembly on 20 November 1989, U.N. Doc. A/C.3/44/SR.41.

¹⁴ Vienna Convention on the Law of Treaties art. 21, May 23, 1969, 1155 U.N.T.S. 331.

¹⁵ 1991 Gazette Of The Standing Committee Of The National People's Congress 662 (P.R.C.)

Why Ratify?

A question of no small consequence in discussing China's implementation of the Convention on the Rights of the Child is why they ratified such a treaty in the first place. China has ratified many international human rights instruments over the past 40 years. U.N. Convention on Rights of the Child, Optional Protocol to the Convention on Rights of Child on the Sale of Children, Child Prostitution, and Child Pornography, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination Against Women, the Worst Forms of Child Labor Convention, and the Hague Convention on the Protection of Children and Cooperation in Respect of Intercountry Adoption. The PRC has also signed but not ratified the International Covenant on Civil and Political Rights.¹⁶

There are competing views on why China has voluntarily bound itself in these agreements, but the prevailing view seems to be that authoritarian states, like China, ratify these treaties as a form of window-dressing. Emilie M. Hafner-Burton and Kiyoteru Tsutsui write that, "global human rights treaties supply weak institutional mechanisms to monitor and enforce regime norms, offering governments strong incentives to ratify human rights treaties as a matter of window dressing rather than a serious commitment to implement respect for human rights in practice."¹⁷ Furthermore, the ratification of these treaties can embolden states to further acts of repression, given that they are protected from scorn by their "commitment"

¹⁶ Laney Zhang, Children's Rights: China, Law Library of Congress (Jan. 25, 2013), <http://www.loc.gov/law/help/child-rights/china.php>.

¹⁷ Emilie M. Hafner-Burton & Kiyoteru Tsutsui, *Human Rights in a Globalizing World: The Paradox of Empty Promises*, 110 Am. J. Sociology, March 2005, at 1373.

to human rights. Eric Neumayer agrees, and would go on to say that “in the absence of civil society and/or in pure autocracies, human rights treaty ratification often makes no difference and can even make things worse.”¹⁸ However, China is not a pure autocracy, and it does have some civil society. This brings us to Hafner-Burton and Tsutsui’s second point, that ratification of such treaties increases linkage to international human rights civil society, and this linkage increases respect for norms by socializing leaders.¹⁹

Child Policy in Historical China

The role of the child in Chinese history, before the foundation of the Republic of China, began to develop with the rise of the Han Empire around 200 years before the Common Era. The Han development of the Confucian civil service, and the rigidization of society under state Confucianism, led to an increasing public educational system for young boys. Additionally, due to concerns about women having a role in politics, there was a push to educate girls about their roles in society. There emerged a dichotomy of belief in the child. Children were of low value to individual families, but became of high value to the state. Under the earlier first Qin emperor, “we see the new imperial government registering, taxing, and demanding labor and military service from each household in the empire according to the age and gender of its family members. We also see the enactment of laws punishing infanticide, infant abandonment, and filicide in this period in order to husband state resources.”²⁰ This is the first time we see child protection laws promulgated by the government, but they were enacted not due to an

¹⁸ Eric Neumayer, *Do international human rights treaties improve respect for human rights?*, 49 J. Conflict Resol., 2005, at 925.

¹⁹ Hafner-Burton & Tsutsui, *supra* note 15.

²⁰ Anne Kinney, *Ancient China, Children and Youth in History*, 2008, <http://chnm.gmu.edu/cyh/teaching-modules/187>

innate recognition of the child's personhood, as in the UNCRC, but due to the usefulness of population to the burgeoning Chinese state.

This perception of the child persisted through the Imperial period. In pre-modern times, a nation's power was in its soldiers and farmers, and growing the population required protecting children. These laws predate the Anglo-American conception of *parens patriae* by several centuries, though are nowhere near as expansive. The laws mandating public education predate public education in Europe also by several hundred years. It is worth noting, though, that China did not have the extensive system of non-governmental organizations to care for orphans and to educate children that Europe did. Notably, no analogue of the Catholic Church existed in China, which was responsible in large part for schooling and orphanages in Europe during the Medieval period. The government in Peking, moreover, had little interaction with the peasants in the countryside, such that the efficacy of these imperial decrees cannot be actually ascertained.²¹

Upon the fall of Imperial China in 1912, following the Chinese Revolution of 1911, the Republic of China adopted many westernizing reforms to its government and legal structure, though they kept the model of the law of Japan that had been carried over in the early 20th century.

Mainland China did not see these reforms for long, however. The nascent Chinese state fell to the Workers' and Peasants' Army in 1949, and Mao declared all laws of the Republic of China null and void. The state ruled via edict for many years thereafter. In 1954, the First

²¹ Id.

Constitution of the People's Republic of China was promulgated. Article 94 of the 1954 Constitution provides that "Citizens of the People's Republic of China have the right to education. To ensure that citizens can enjoy this right, the state establishes and gradually expands schools of various types and other cultural and educational institutions. The state pays special attention to the physical and mental development of young people."²² However, despite this aspirational document, the Chinese world remained in a state of almost-anarchy and lawlessness for generations. Mao encouraged more births, for a similar rationale as the Emperors of China. However, due to socialist economic policies and political repression, countless millions died, and countless more were maimed. According to a report developed by the Chinese Academy of Social Sciences,

"A ferocious, abiding hunger had settled across much of the land, and top official Zhao Yushu issued this ruling: Children abandoned in roads and fields by their starving parents must be left to die. People were so desperate in one Fengyang County commune during the monstrous famine, which was caused by Mao Zedong's 1958-60 industrialization drive called the Great Leap Forward, that on 63 occasions they ate others who had died – or resorted to killing, carving up and eating their own children. 'In Damiao commune, Chen Zhangying and her husband Zhao Xizhen killed and boiled their 8-year-old son Xiao Qing and ate him,' said a startling report that has recently become available in the West. 'In

²² Constitution of the People's Republic of China (promulgated by the Nat'l People's Cong. Sept. 20, 1954) (China).

Wudian commune, Wang Lanying not only picked up dead people to eat, but also sold 2 jin [2.2 pounds] from their bodies as pork.”²³

A renewed recognition for the law came with the rise of Deng Xiaoping. A new constitution was promulgated, and the previous lawlessness and uncertainty endemic under the Cultural Revolution were somewhat alleviated. However, a contentious new law related to child policy was put in place in 1978, called the family planning policy. In the West, this rule is usually called the One Child Policy, and remains controversial for its impact on children and their parents to this day, as parents can only, per the quotas, have one child.²⁴

Modern Child Policy in the People’s Republic of China

Over the succeeding thirty years, China has created, almost ex nihilo, a legal code encompassing the full range of laws necessary for modern society. China also signed and ratified many international human rights agreements relating to children, including the UNCRC, the first Optional Protocol to the UNCRC, the International Covenant on Economic, Social, and Cultural Rights (ICESCR), the Convention for the Elimination of All Forms of Discrimination Against Women, the Worst Forms of Child Labor Convention, and the Hague Convention on the Protection of Children and Cooperation in Respect of Intercountry Adoption.²⁵ Additionally, the current Constitution of the PRC provides for the protection of children, for compulsory

²³ Daniel Southerland, *Uncounted Millions: Mass Death in Mao’s China*, Wash. Post, July 17, 1994 at A1.

²⁴ Population and Family Planning Law of the People’s Republic of China, art. 18 (promulgated by the President of the People’s Republic of China, Dec. 29, 2001, effective Sept. 1, 2002) (China)

²⁵ Laney Zhang, *Children’s Rights: China*, Law Library of Congress (Jan. 25, 2013), <http://www.loc.gov/law/help/child-rights/china.php>.

education, for the prohibition of child labor, and prohibits the maltreatment of children. The PRC Law on the Protection of Minors, passed in 1991 and revised in 2006, provides for the protection of minors from abuse and maltreatment. The PRC Law on Maternal and Infant Healthcare provides for pre- and post-natal care for babies. Most controversially, the PRC Law on the Population and Family Planning provides for the “one child policy,”²⁶ in defense of which the National People’s Congress recorded a reservation to article six of the UNCRC, which provides for the inherent right to life of every child.²⁷

The PRC Law on Compulsory Education provides for nine years of compulsory education. Six years are spent in primary school, and a further three years in middle school. This education is to be provided universally, without any charge or entrance examinations. Funding is provided by the central government, and the local people’s governments are prohibited explicitly from engaging in the kind of unequal funding that takes place in the United States and elsewhere, where elite schools have more money and other schools have less. The Law further provides for the establishment of schools for the blind, for the deaf, and for students with special learning needs. There is also a provision for main-streaming children who are capable.

More controversially, the PRC Law on Prevention of Juvenile Delinquency provides for reform schools for juvenile offenders. These offenders have not engaged in behavior that would constitute criminal activity; the age of criminal responsibility in China is 16, though minors under the age of 18 are to be given lesser sentences.²⁸ Parents can apply, if their

²⁶ Id.

²⁷ Supra note 1.

²⁸ Law of the People's Republic of China on Protection of Minors (promulgated by the President of the People’s Republic of China , Sept. 4, 1991, effective Jan. 1, 1992) (China)

children are engaging in serious misbehavior, to have them committed to reform school. This provision only came into effect in 1999, however. Prior to 1999, the state could unilaterally commit children to reform school without input from their parents. In the event that a minor is held criminally responsible, the Minor Protection Law provides for special legal protections during trial, separate jails and prisons for juvenile criminals, and the continuance of compulsory education while in prison.²⁹

The minimum age to work in China is 16. This age is codified in the PRC Labour Law in 1994, and had previously been codified in a ruling of the State Council entitled Provisions on the Prohibition on the Use of Child Labor in 1991.³⁰ Only special fields, such as cultural and craft work, with the permission of the government, are allowed to recruit workers under 16. A fine of ¥5000 per worker per month is levied for the use of child laborers.³¹

Trafficking in persons is a serious crime in China, carrying a penalty from five years imprisonment to the death penalty.³² Buying a trafficked person can carry a penalty of three years imprisonment. Impelling minors into prostitution carries a penalty of five to ten years imprisonment; if the child is under 14, that crime can also carry the death penalty along with the confiscation of property.³³ Notably, the PRC Criminal Law does not specifically regular child pornography, though it levies heavy penalties for human trafficking. According to the Congressional Executive Committee on China, “The Chinese government has taken some steps to establish a national-level anti-trafficking coordinating mechanism, to increase public

²⁹ Supra note 20.

³⁰ Laney Zhang, Children’s Rights: China, Law Library of Congress (Jan. 25, 2013), <http://www.loc.gov/law/help/child-rights/china.php>.

³¹ Id.

³² Supra note 25.

³³ Id.

awareness, to expand the availability of some social services for victims of trafficking, and to improve international cooperation.”³⁴ The Ministry of Public Security argues that these efforts have reduced some types of trafficking, but the problem still remains through China, especially in regards to sex trafficking and the traffic in slave labor.

Implementation of the Convention, and Violations Thereof

The government of the PRC has taken great steps in the protection of minors since the days of Mao and the Cultural Revolution. However, large steps remain to be taken, and the state of minors, especially in the countryside, remains precarious. Fully implementing the UNCRC in China will require additional effort on the part of the central government. In particular, there are three principle areas of concern:

Forced and Underage Labor

The UNCRC and other international instruments ban child labor. Article 32 of the UNCRC states, “States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.”³⁵ Despite these prohibitions and the ban on underage labor in the PRC Labour Law, child labor remains a major problem in China, though one that is officially unknown. According to the Congressional-Executive Commission on China, “It is unclear how widespread the use of child labor is in China, in part because the government does not release data on child

³⁴ Annual Report of the Congressional-Executive Commission on China, 2007.

³⁵ Convention on the Rights of the Child art. 32, Nov. 20, 1989, 1577 U.N.T.S. 3.

labor despite frequent requests by the U.S. Government, other countries' governments, and international organizations."³⁶ The news media gets frequent reports of child laborers being uncovered in China. For instance, "in February 2012, Suzhou authorities reportedly found over 10 child workers at an electronics factory in Suzhou."³⁷ An internal audit by Apple, the electronics company, "found a flipside to the western consumer's insatiable thirst for innovative and competitively priced gadgets. It uncovered 106 cases of underage labour being used at Apple suppliers last year and 70 cases historically."³⁸ One Chinese company, a circuit board component maker called Guangdong Real Faith Pingzhou Electronics that is involved in Apple products, employed 74 workers under the age of 16.³⁹ Even more horrifying, "bonded labour was discovered at eight factories." These workers were debt slaves to recruitment agencies, forced to work until they had paid off the debt incurred in finding the job.⁴⁰ Immediately before the Olympics, in 2008, "Authorities in southern China's Guangdong Province, near Hong Kong, said they had made several arrests and had already 'rescued' more than 100 children from factories in the city of Dongguan, one of the country's largest manufacturing centers for electronics and consumer goods sold around the world. The officials said they were investigating reports that hundreds of other rural children had been lured or forced into captive, almost slavlike conditions for minimal pay."⁴¹ The prevalence of child labor in China may be related to the large number of children who drop out of school after the

³⁶ Ann. Rep. of the Cong.-Exec. Commission on China, Oct. 10, 2012, <http://www.gpo.gov/fdsys/pkg/CHRG-112shrg76190/pdf/CHRG-112shrg76190.pdf>.

³⁷ Id.

³⁸ Juliette Garside, *Child labor uncovered in Apple's Supply Chain*, Guardian, January 25, 2013.

³⁹ Id.

⁴⁰ Id.

⁴¹ David Barboza, *China Says Abusive Child Labor Ring is Exposed*, Times (New York), May 1, 2008, <http://www.nytimes.com/2008/05/01/world/asia/01china.html?pagewanted=all>.

end of compulsory education. Education in China, as stated above, is only compulsory until the eighth grade, and a large number of children drop out after the eighth grade and are supposed to have joined the workforce. However, some schools, under the auspices of a “work-study” program⁴², have been allowing and even compelling child labor for students that are still in compulsory education. “In September 2011, for example, a school in the [Xinjiang Uyghur Autonomous Region] reportedly postponed classes for 15 days so that students as young as third grade could pick cotton, leading some to suffer heat stroke and hand injuries.”⁴³

China has been taking efforts to remediate this practice. Aside from statutory penalties imposing harsh sentences for those who compel child labor, and fines for companies that employ children, local governments have also been responding to the problem. “In May 2012, the Dongguan Municipal People’s Government in Guangdong province offered incentives to whistleblowers when it issued municipal regulations authorizing cash awards to those who report cases of child labor.”⁴⁴ Despite these measures, “a 2010 report by a global risks advisory firm rated China ‘amongst those with the most widespread abuses of child workers’ and estimated there were “between 10 to 20 million underage workers.”⁴⁵ The Chinese Human Rights Defenders report goes further in saying, “There is still no detailed data provided by the State party on the inherent problems of child labor. Yet, the use of child labor remains

⁴² Ann. Rep. of the Cong.-Exec. Commission on China, Oct. 10, 2012, <http://www.gpo.gov/fdsys/pkg/CHRG-112shrg76190/pdf/CHRG-112shrg76190.pdf>.

⁴³ Id.

⁴⁴ Id.

⁴⁵ Id.

widespread in China, as evidenced by child labor incidents exposed by the media in recent years.”⁴⁶

The “One Child Policy”

Article Six of the UNCRC states that “States Parties recognize that every child has the inherent right to life. States Parties shall ensure to the maximum extent possible the survival and development of the child.”⁴⁷ However, this article is not well-enforced in China. “Chinese officials continue to actively promote and implement population planning policies which, in both their nature and implementation, violate international standards.”⁴⁸ According to the United States government, “The PRC Population and Family Planning Law is not consistent with the standards set forth in the 1995 Beijing Declaration and the 1994 Programme of Action of the Cairo International Conference on Population and Development. Controls imposed on Chinese women and their families, and additional abuses engendered by China’s population planning system, from forced abortion to discriminatory policies against “out-of- plan” children, also violate standards in the Convention on the Rights of the Child, and the International Covenant on Economic, Social and Cultural Rights. China is a state party to these treaties and is bound to uphold their terms.”⁴⁹ China specifically reserved its rights to the UNCRC so that it could continue its family planning policy, but the steps that China has taken to ensure a just implementation of the policy have not been effective in preventing the worst abuses. There are widespread reports of local PRC officials mandating that women receive abortions upon

⁴⁶ Chinese Human Rights Defenders, Information Submitted to the UN Committee on the Rights of the Child, Nov. 29, 2012, http://www.crin.org/docs/China_Chinese%20Human%20Rights%20Defenders_CRC%20Report.pdf.

⁴⁷ Convention on the Rights of the Child art. 6, Nov. 20, 1989, 1577 U.N.T.S. 3.

⁴⁸ Supra note 40.

⁴⁹ Id.

discovering “out-of-plan” pregnancies. The blind Chinese legal advocate, Chen Guangcheng, was imprisoned and persecuted for bringing light to this practice in Shandong.⁵⁰ One example of an incident in Shandong,

“In October 2011, local family planning officials forcibly brought Ma Jihong, six months pregnant with her third child, to the local hospital for a forced abortion. Officials reportedly ignored Ma’s onset of respiratory difficulties, forced her to provide her fingerprint to indicate consent, and performed the procedure. After hours of waiting with no information, Ma’s family reportedly forcibly entered the operating room to find that Ma had died during the procedure and the medical team had left.”⁵¹

Despite the practice of mandatory abortions being explicitly banned by the central government, “Acts of official violence committed in the implementation of population planning policies and the fact that these acts are not clearly punishable under Chinese law contravene provisions under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which China has signed and ratified.”⁵² Additionally, despite China having recorded its reservation on the record concerning the UNCRC, the one child policy can still be said to violate the UNCRC, given that the cruel and unhuman treatment of children by the Chinese government defeats the purpose of the Convention, and reservations cannot do

⁵⁰ Joseph Kahn, *Advocate for China’s Weak Crosses the Powerful*, N.Y. Times, July 20, 2006, <http://www.nytimes.com/2006/07/20/world/asia/20blind.html?ref=chenguangcheng>.

⁵¹ Ann. Rep. of the Cong.-Exec. Commission on China, Oct. 10, 2012, <http://www.gpo.gov/fdsys/pkg/CHRG-112shrg76190/pdf/CHRG-112shrg76190.pdf>.

⁵² *Id.*

so.⁵³ In its last review of China's compliance, the Committee on the Rights of the Child said that, though "[they] note with satisfaction the legal measures enacted to prohibit selective abortions and infanticide in mainland China...[the Committee] remains concerned that selective abortions and infanticide as well as the abandonment of children, in particular girls and children with disabilities, continue as negative consequences of existing family planning policies and societal attitudes."⁵⁴ That report was issued in 2005. A report issued to the Committee in 2012 by the Chinese Human Rights Defenders concludes that "Little progress has been made in implementing the Committee's recommendations relating to the negative effects of China's family planning policies."⁵⁵

Trafficking in Children

Article 35 of the UNCRC states, "States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form."⁵⁶ The plight of child laborers in China is closely tied to worries of human trafficking, in which children are sold to employers and then forced to work under unhuman conditions. "In February 2012, officials in Suzhou city launched an investigation into a local electronics factory after Suzhou police received an online tip reporting child labor there. The police found at least 10 underage workers, including one as young as 9 years old, employed at the factory. The youths were reportedly forced to work under harsh conditions, including 12-

⁵³ Vienna Convention on the Law of Treaties art. 19, May 23, 1969, 1155 U.N.T.S. 331.

⁵⁴ Comm. On the Rights of the Child, Concluding Observations: China, Nov. 24, 2005, U.N. Doc. CRC/C/CHN/CO/2

⁵⁵ Chinese Human Rights Defenders, Information Submitted to the UN Committee on the Rights of the Child, Nov. 29, 2012, http://www.crin.org/docs/China_Chinese%20Human%20Rights%20Defenders_CRC%20Report.pdf.

⁵⁶ Convention on the Rights of the Child art. 25, Nov. 20, 1989, 1577 U.N.T.S. 3.

hour daily shifts, and they reportedly suffered from poor nutrition.”⁵⁷ Another case took place in Yunnan Province. “Eight persons between the ages of 12 and 22 in... Kunming ... have disappeared in a series of alleged abductions since May 2011. Police launched an investigation into these cases only after another young person escaped a brick kiln on April 25, 2012, and reported to authorities that he had been abducted off the street and forced into labor. Parents of the disappeared reported that when they approached the police about the disappearances, the police accused them of “starting rumors.”⁵⁸ The problem, as child labor, is more pervasive farther from the industrialized coastline. “An internal memo issued in 2012 by the Lhasa Public Security Bureau in the Tibet Autonomous Region (TAR) reported a recent spike in the trafficking of women and children from the TAR to other areas of China to serve ‘as ‘brides’ or household servants.”⁵⁹ Additionally, children have been illegally abducted for both foreign and domestic adoptions throughout China.

The central government has taken many measures to prevent the trafficking of children. The National People’s Congress acceded to the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, in 2009.⁶⁰ However, China also often conflates the trafficking in slaves with human smuggling, and given the restrictions on movement in China, some victims of trafficking are held as criminals themselves.⁶¹ China avoided a mandatory downgrade to a Tier 3 offender in the United States State Department’s

⁵⁷ Ann. Rep. of the Cong.-Exec. Commission on China, Oct. 10, 2012, <http://www.gpo.gov/fdsys/pkg/CHRG-112shrg76190/pdf/CHRG-112shrg76190.pdf>.

⁵⁸ Id.

⁵⁹ Id.

⁶⁰ U.N. Treaty Collection Chapter XVIII §12.a, Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Status as at 20-04-2013 22:10:25 EDT, http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12-a&chapter=18&lang=en.

⁶¹ Supra note 46.

2012 report on trafficking in persons by promising a National Plan of Action to further combat trafficking in persons. It remains as a Tier 2 offender, due to serious concerns regarding its performance in remediating human trafficking.⁶² There are examples of the People's Armed Police raiding sweatshops and brothels, but these showy raids constitute a depressingly small proportion of the total number of people believed to be held in bondage. Despite the PRC government's efforts, "One news report noted that from January to October 2009, courts nationwide had tried 1,107 child trafficking cases, which have seen a year-on-year increase of 11.25%. Also, child trafficking cases were becoming more serious, and cases in which children of migrant laborers were trafficked were growing."⁶³

Conclusions and Recommendations

China is making headway against the forces that threaten its children, the most vulnerable members of society. The rapid pace of industrialization is both lifting numerous children from poverty⁶⁴, and threatening them by creating incentives to forced labor. The Chinese government must more-closely monitor its compliance with the UNCRC, and much more stringently enforce its own laws. The laws of China provide an adequate framework from which to ensure compliance with the convention; however, China's enforcement of its own laws is lax. In some part, this lack of enforcement is due to China's size and complexity. After only forty years under the rule of law, the PRC is still getting used to being responsive to its own laws, and many government organs are still not functional or efficient. Additionally, corruption

⁶² Laney Zhang, *Children's Rights: China*, Law Library of Congress (Jan. 25, 2013), <http://www.loc.gov/law/help/child-rights/china.php>.

⁶³ Chinese Human Rights Defenders, *Information Submitted to the UN Committee on the Rights of the Child*, Nov. 29, 2012, http://www.crin.org/docs/China_Chinese%20Human%20Rights%20Defenders_CRC%20Report.pdf.

⁶⁴ *Supra* at 51.

and a lack of governmental oversight of the local governments impedes efforts to remediate these problems. Beijing seems to turn a blind eye to the problems in the provinces, as with the case of Chen Guangcheng⁶⁵, and only takes notice when it needs to save face on the international stage. Despite these concerns, there is still hope, as the situation has undoubtedly improved for numerous children over the past forty years, and undoubtedly will continue to improve as the Chinese people continue to hold their government more accountable and the living standards in China continue to improve.

Given the issues raised in this paper, it would seem prudent that some recommendation of redress be proffered. Obviously, China, though it has made strides in recent years, is far from full compliance with the Convention. However, increasing compliance with such a far-reaching treaty is difficult, given the multitude of different areas of life that it touches. However, there is one reform, relatively easy to make in a country governed as China is, that could greatly increase compliance with the treaty, while also improving China's economy and competitiveness in the global economy. China ought to increase the requirement of compulsory education from nine to eleven years. At present, the PRC Law on Compulsory Education requires that citizens complete six years of primary and three years of junior secondary (middle school) education.⁶⁶ All students have a right to the standard secondary education, lasting a further four years, but are not obliged to continue their education into secondary school. Furthermore, enforcement of the Compulsory Education Law is lacking.

⁶⁵ Joseph Kahn, *Advocate for China's Weak Crosses the Powerful*, N.Y. Times, July 20, 2006, <http://www.nytimes.com/2006/07/20/world/asia/20blind.html?ref=chenguangcheng>.

⁶⁶ *Supra* at 63.

History has shown that increasing the age at which one may withdraw from schooling has great benefits for both the citizens individually and for society as a whole. In the early half of the twentieth century, compulsory education ages began to creep up throughout the Western world. In the United States, compulsory attendance laws have existed since Massachusetts passed the first in 1852. By 1918, all states had such a law.⁶⁷ However, in the period preceding 1915, these laws were rarely enforced. “The United States Commissioner of Education said in 1886 that ‘in many instances (...) the compulsory education law, if not actually dead letter, is practically so.’”⁶⁸ From 1915 until the Second World War, the age at which one might leave education, and concurrently enforcement of the law both increased. Furthermore, that age increased in the post-war period as well. “Specifically, over the period 1950–2000, the fifteen Western European countries ... have extended the school-leaving age by one year or longer.”⁶⁹ As of 2011, the last year data is available, no state in the United States requires compulsory education only to the end of middle school.⁷⁰ All require at least until the age of 16.⁷¹ As jobs have become increasingly knowledge-based, having skilled labour has become increasingly important. This rise in the knowledge-based economy has necessitated more educational attainment by the citizenry. And in the United States, “Lang and Kropp (1986),

⁶⁷ Adriana Lleras-Muney, *Were Compulsory Attendance and Child Labor Laws Effective? An Analysis from 1915 to 1939*, 45 *J. Law and Economics*, October 2002, at 401.

⁶⁸ *Id.*

⁶⁹ Fabrice Murin & Martina Viarengo, *The Expansion and Convergence of Compulsory Schooling in Western Europe, 1950-2000*, *Economica*, 2011, at 501.

⁷⁰ National Center for Educational Statistics, *Digest of Education Statistics*, Table 175, 2011.

⁷¹ *Id.*

using data from 1908 to 1970, show that compulsory education laws affect enrolments, even for groups not targeted by the laws.”⁷²

One large problem preventing this goal of two more years of education is that education in China is already not free for many rural youth. The Committee in their review in 2005, stated that China must “eliminate all miscellaneous and other ‘hidden’ fees for primary education in order to ensure that it is truly free.”⁷³ Unequal distribution of state resources plays a role in the presence of fees for Chinese schools, despite a commitment to free education by the central government.⁷⁴ According to the Chinese Human Rights Defenders, “due to some problematic systems such as with household registration (hukou) and government fiscal allocation to education, unequal access to education exists widely in China, especially for disadvantaged groups.”⁷⁵ Due to the unequal distribution of resources, school administrators, forced to keep their schools solvent, have cut corners in both construction (created so-called “tofu-dreg” buildings) and have resorted to hitting children with fees to attend school.⁷⁶ These fees must be removed to ensure the efficacy of an increase in mandatory schooling.

The second recommendation I have to offer, which is certainly the less likely to be implemented by the PRC, is that the PRC should ratify the Third Optional Protocol to the UNCRC. The Third Optional Protocol allows for individuals to petition the Committee on the

⁷² Fabrice Murtin & Martina Viarengo, *The Expansion and Convergence of Compulsory Schooling in Western Europe, 1950-2000*, *Economica*, 2011, at 501.

⁷³ Comm. On the Rights of the Child, Concluding Observations: China, Nov. 24, 2005, U.N. Doc. CRC/C/CHN/CO/2

⁷⁴ *Id.*

⁷⁵ Chinese Human Rights Defenders, Information Submitted to the UN Committee on the Rights of the Child, Nov. 29, 2012, http://www.crin.org/docs/China_Chinese%20Human%20Rights%20Defenders_CRC%20Report.pdf.

⁷⁶ *Id.*

Rights of the Child to hear their complaints concerning the violation of their rights.⁷⁷ By allowing for Chinese citizens to petition for an outside review of China's compliance with the UNCRC, China would have an increased stake in ensuring that its regional and local governments are in full compliance. However, the spectre of outside interference with China's internal affairs is the main reason why the PRC will never ratify the Third Optional Protocol.

Many human rights treaties contain some mechanism for outside review and enforcement of their provisions. The European Convention on Human Rights has the European Court of Human Rights (ECHR). The adoption of Protocol 11 of that treaty made accepting the ECHR's jurisdiction mandatory.⁷⁸ North and South America have the Inter-American Commission on Human Rights, which can hear petitions from citizens of the nations of the Americas that are parties to the American Declaration of the Rights and Duties of Man. The International Covenant on Civil and Political Rights (ICCPR) has the United Nations Human Rights Committee, which hears complaints from citizens of those states that have ratified the First Optional Protocol to the ICCPR⁷⁹. As of present, however, the UNCRC is only reviewed on the state level.⁸⁰ The Committee on the Rights of the Child takes in the reports of state parties, and issues recommendations on how they can increase their compliance.⁸¹ Individual citizens cannot petition the Committee for the redress of their own personal grievances. The Third Optional Protocol would change that. While the Committee certainly would still not have any

⁷⁷ Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure, G.A. Res. 66/138, U.N. Doc A/RES/66/138 (Dec. 19, 2011).

⁷⁸ Protocol No. 11 to the Convention for the Protection of Human Rights and Fundamental Freedoms art. 1, Nov. 1 1998, E.T.S. 155.

⁷⁹ Optional Protocol to the International Covenant on Civil and Political Rights, art. 1, March 23, 1976, 999 U.N.T.S. 302.

⁸⁰ Convention on the Rights of the Child art. 44, Nov. 20, 1989, 1577 U.N.T.S. 3.

⁸¹ *Id.*

way to enforce its opinion on states, it would be able to hear the cases of aggrieved citizens and issue judgments, which would have moral weight.⁸²

As of this writing, the Third Optional Protocol has 36 signatories, and only four parties. Thailand, Gabon, Germany, and Bolivia are the only countries to have ratified the Third Optional Protocol. It has been open to signature since 28 February 2012. It will go into effect three months after the receipt of the tenth ratification.⁸³ It is almost certain that China will not be one of the countries to allow individual petitions. China has long made it clear that it will not tolerate foreign intervention or oversight of its domestic practices. Indeed, the very first message that the Chinese government sent to newly-elected Pope Francis was that the Vatican “must stop interfering in China’s internal affairs, including in the name of religion.”⁸⁴ Even though the Committee would have no power to enforce their rulings in China, it is probably too much to hope that China would allow petitions from its citizens, given that Beijing does not even like the citizens to petition Beijing.

However, it is only when the current leadership in China acknowledges that there are powers greater than themselves, referring both to international human rights norms, and to the people themselves, that change for the better will come to China. China is presently more wealthy and powerful than it has ever before been, but the people of China still have no power to decide their own destiny. An openness to outside oversight may presage an openness to inside oversight, perhaps through free and fair elections.

⁸² Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure, G.A. Res. 66/138, U.N. Doc A/RES/66/138 (Dec. 19, 2011).

⁸³ U.N. Treaty Collection Chapter IV §11.d, Optional Protocol to the Convention on the Rights of the Child on a communications procedure, Status as at 24-04-2013 12:32:47 EDT, http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en.

⁸⁴ Gerry Mullany, *Beijing cautions new pope on meddling in China*, The New York Times, March 14, 2013, http://www.nytimes.com/2013/03/15/world/asia/beijing-cautions-new-pope-on-meddling-in-china.html?_r=0

The children of China deserve no less.