



## **Chinese Human Rights Defenders (CHRD)**

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Promoting human rights and empowering grassroots activism in China

### **Information Submitted to the UN Committee on the Rights of the Child**

Chinese Human Rights Defenders (CHRD)

November 29, 2012

## **Table of Contents**

Preface

(1) General Measures of Implementation

(2) General Principles

Right to Life

Non-Discrimination

(3) Civil Rights and Freedoms

Corporal Punishment

(4) Basic Health and Welfare

Children with Disabilities

Standard of Living

Health and Healthcare

(5) Education, Leisure and Cultural Activities

Education

(6) Special Protection Measures

Economic Exploitation Including Child Labor

Trafficking in Children

Sexual Abuse

Appendices:

Appendix 1. "I Don't Have Control over My Own Body!" Abuses Continue in  
China's Family Planning Policy

Appendix 2. The Right to Basic Education of Rural Children in Suizhou, Hubei  
Province

Appendix 3. Equal Rights to Education in Urgent Need of Implementation

Appendix 4. An Investigative Report on Rights Violations of Marginalized  
Women and Social Support Networks

Appendix 5. A Civil Society Report on the Chinese Government's  
Implementation of the UN Convention on the Rights of the Child

## Preface

1. This civil society report responds to the third and fourth periodic reports of the People's Republic of China (CRC/C/CHN/3-4, "State party report") submitted to the Committee on the Rights of the Child ("CRC" or "Committee") in July 2010. In this report, Chinese Human Rights Defenders (CHRD) assesses the extent to which the State party has or has not implemented the recommendations contained in the Concluding Observations from the CRC's second periodic review of China in 2005 ("COBs") and, in some instances, raises questions about the State party report and provides more information to the Committee.
2. This report draws on sources of information provided by several non-governmental groups in China that have worked on issues concerning the rights of children,<sup>1</sup> and also upon Chinese law and information reported in the Chinese media. CHRD has been responsible for collecting the information, compiling this report, and translating source materials into English.
3. This report covers the period from 2005 to 2010, and documents the State party's implementation of the Convention on the Rights of the Child ("the Convention") in mainland China, not including Hong Kong and Macao.
4. CHRD has attempted to follow a section-by-section analysis of the State party report, based on a specific thematic structure. CHRD also makes references wherever appropriate to the COBs issued after the most recent review of China in 2005.

**(1). General Measures of Implementation (Articles 4, 42, 44(6))**

5. In recent years, governmental agencies and the mainstream media in China have claimed that the protection of children's rights has improved to some extent.

According to official information, the number of Chinese in poverty has significantly decreased since 1978 due to rapid and lasting economic development. Many children have avoided suffering from starvation and malnutrition while also benefitting from improved standards of hygiene. Most infants have had planned vaccinations from birth, and the rate of child mortality has dropped. The implementation of nine-year compulsory education has pushed the enrolment rates of children to a level higher than in other developing countries, with more girls being enrolled and more children overall receiving elementary education.

6. With regard to the CRC's concern expressed in the 2005 COBs (para. 6(a)), there has since been little progress related to previous recommendations that the State party establish a national human rights institution (citing CRC/C/15/Add.56, para. 26).

7. The State party report (paras. 7 and 8) states that the government has promulgated some legal regulations and administrative rules, and that the formulation, revision and implementation of these regulations and rules have provided legislative as well as political frameworks for the protection of children's rights. The State party report also notes that the government has issued various national plans related to children's development (paras. 9-11). However, these regulations and plans are neither sufficient nor effective, and they have not yielded desired results in practice.

Infringements of the basic rights of children remain commonplace in China because

of the government's weak implementation and lack of effective oversight and protection mechanisms.

8. The State party report claims that the implementation of the national plans for children's development have been supervised by provincial governmental bodies, and that such bodies have evaluated and measured the "achievements" of specific indicators (para. 13). However, such supervision and evaluation processes have lacked the participation of independent experts and non-governmental organizations. The State party should provide evidence that the results of the evaluations were open for public comments.

9. With regard to the State party report's (para.15) response to the recommendation by the CRC in 2005 on dissemination of the Convention (COB, para. 25), the State party should be asked to provide data to show if and how it has made the Convention available online, and how many copies of the Convention have been printed and how widely they were distributed, especially whether and exactly where these copies have been distributed in rural areas and small towns.

10. With regard to the State party report (para. 16) in response to the Committee's recommendation (COB, para. 17) regarding the establishment of an independent national human rights institution and noting that "such institutions should have a mandate to receive, investigate and address complaints from the public, including individual children, and be provided with adequate financial, human and material resources," such independent human rights institutions still do not exist in China. The State party referred to other legislative and prosecution departments, and claims that

these bodies “performed similar roles.” However, these departments are not independent from the government, nor do they play any such roles. “Letters and visits” offices systematically turn away petitioners with grievances involving rights violations of children, and police routinely and unlawfully detain many such petitioners and their children in “black jails,” sometimes holding them for months.

11. CHRD welcomes the State party’s acknowledgement of serious problems of regional and rural-urban disparities in the area of children’s rights protection (para. 23). However, the State party has poorly implemented the Committee’s recommendation that budget allocations should reach the most vulnerable groups and reduce regional and rural-urban disparities (COBs, para. 20). China has the world’s second-largest economy, and the government’s revenue has increased substantially during the past five years. The State party’s explanation of the persistence of these disparity problems—citing “regional differences in economic development”—is not helpful. The State party must explain why the national government does not use budgetary reallocation to provide sufficient resources to less developed regions, especially rural areas, in order to narrow regional and rural-urban disparities in protecting children’s rights. The current government budgetary allocation is responsible for persistent regional and rural-urban disparities in education. The current compulsory education system adopts a “decentralized” financial mechanism that imposes the responsibility to raise and allocate funds for compulsory education onto local governments. This actually allows regional disparities to affect as well as restrict the compulsory education system; hence, conditions of the compulsory education system rely on the economic development of each region and the region’s financial revenues and expenditures.

**(2). General Principles (Articles 2, 3, 6, 12)****Right to Life**

12. The State party report claims that, “[t]he infant mortality rate has declined from 32.2% in 2000 to 14.9% in 2008; the mortality rate for children under five years of age has declined from 39.7% in 2000 to 18.5% in 2008” (para. 46). These aggregate numbers should be disaggregated to reflect regional, rural-urban and ethnic minority-majority disparities.

13. The Committee should continue to be concerned, as it was in 2005, about “selective abortions and infanticide as well as the abandonment of children, in particular girls and children with disabilities,” especially in rural and less developed regions (COBs, para. 28). Little progress has been made in implementing the Committee’s recommendations relating to the negative effects of China’s family planning policies (Id. para. 29). The State party stated in its periodic report that, “Since 2002, we have put in place accountability systems in regions where there was governmental inaction and high gender ratios. At present, the gender ratio problem has been effectively addressed in 14 targeted provinces, including Anhui, Hunan and Jiangxi” (para. 48). However, the State party must still provide data proving its claim by disclosing the sex ratios at birth in these provinces in 2009 (the most recent year that the State party report covered), or in the most recent year where such data are available, and how the ratios have improved in comparison to those in 2002.

14. In CHRD's report on abuses in China's family planning policy published in December 2010, CHRD observed: "Though the enactment of the National Population and Family Planning Law in 2002 was ostensibly aimed at reining in abusive practices associated with the family planning policy, coercion and violence continue to be used in its implementation. Regardless of the number of children each couple is allowed to have, family planning policy continues to violate citizens' reproductive rights, and will continue to do so until the current form of the policy is abolished."<sup>2</sup> In the same report, CHRD documented serious violations of human rights associated with the implementation of the policy between 2005 and 2010: "Married women are pressured to undergo regular gynecological tests to monitor their reproductive status; When a married woman reaches her birth quota, she is pressured to have an IUD inserted or be sterilized, thus denying her a choice of birth control method; If a woman becomes pregnant out-of-quota, including premarital pregnancy, she is often forced to abort the fetus, even if the pregnancy is advanced;..."

15. CHRD has documented other cases involving neglect or violation of children's right to life, and persecution of citizens who tried to conduct independent investigations and help parents of victims to seek justice. For instance:

*"Tofu-dreg" construction projects harm children's right to life*

Due to shoddy construction of school buildings, tens of thousands of Chinese children died in the Wenchuan earthquake in Sichuan Province on May 12, 2008, and the Chinese government must accept responsibility for the horrific loss of life. Children made up a very large percentage of those who perished in the earthquake. As Sichuan human rights activist Tan Zuoren pointed out in his independent research conducted

from December 2008 to March 2009, a far higher percentage of schools collapsed than did other buildings, and the death rates of teachers and students were also far higher than those of other people. His research further shows that the deaths of teachers and students were directly caused by collapsed school buildings. More importantly, the collapse of the buildings had little to do with the intensity of the earthquake and the age of buildings, but rather from unsafe construction. The problems leading to the inadequate construction, including corruption and shortages of educational expenditures, remain widespread all over China. The poor quality of school buildings is still an alarming problem that threatens Chinese children's lives.

In retaliation for Tan Zuoren's investigation and the publication of his findings, Chinese authorities detained him on charges of "subversion of state power" in March 2009 and later sentenced him to five years in prison.<sup>3</sup> Sichuan authorities also suppressed the rights defense activities launched by parents of students who died in the earthquake.<sup>4</sup> In addition, Huang Qi, co-founder of the 6/4 Tianwang Human Rights Center, was sentenced to three years in prison in November 2009 for his role in posting information online about the plight of parents who questioned the truth behind the collapse of school buildings.<sup>5</sup> The artist and activist Ai Weiwei also conducted an investigation into children's deaths from the earthquake, but authorities obstructed his efforts and also shut down Ai's blogs after he posted online the names of the perished children.

### **Non-Discrimination**

16. Despite adding "non-discrimination" to the Law on Protection of Minors<sup>6</sup>, the

State party has made little progress in implementing the Committee's recommendation that "the State party strengthen efforts to eliminate discrimination against girls; children infected with or affected by HIV/AIDS; children with disabilities; Tibetan, Uighur and Hui children and children belonging to other ethnic and religious minorities; internal migrant children and other vulnerable groups" (COBs, para. 32).

17. The State party report provided statistics on the 2009 enrollment of girls in primary school (para. 28), but failed to provide statistics on girls' enrollment numbers for middle school. The State party should provide data on the sex-ratio of school drop-outs for primary and middle schools, as well as racial and rural-urban breakdowns for school drop-outs.

18. Discrimination against rural children's right to education remains of grave concern, as many children in rural China continue to face difficulties in attending schools. In 2006, Civil Rights and Livelihood Watch (CRLW), a human rights NGO based in China, published "Report on the Right to Basic Education of Rural Children in Suizhou, Hubei Province,"<sup>7</sup> which, based on studies of education in rural areas within Suizhou City, pointed out the main reasons why rural children leave school. According to the report, poverty is the primary factor. The findings further showed that migrant workers' children often drop out, and that school management also impacts the drop-out rate of rural children. As stated in the report, "[C]urrently, one of the most important areas school managers focus on is ensuring school [financial] accounts do not fall into the red. This has resulted in parents being charged arbitrary fees and generated the use of extreme measures to boost enrolment rates, causing

students to drop out of school.”

In addition, some issues particular to rural China also affect children’s drop-out rates. For example, the CRLW report states that “many schools in rural areas have been forced to close down because of the dramatic shrinking of student numbers due to the effects of stringent family planning policies on the already thinly spread population of rural villages.” Also, due to long distances between school and home, rural students have to become boarders, which “considerably increases the cost of their education,” according to the report. Concerning these problems, CRLW suggests that the State party should “develop the system of education funding and increase the amount of funds for the rural education system,” “implement free education for rural primary and secondary students,” and “establish a ‘supplement or grant-based’ assistance program for poor rural children.”

19. Discrimination against children of migrant laborers persists despite the promulgation of new laws and policies as noted in the State party report (para. 30). Along with increasingly rapid urbanization over the past 20 years in China, a large number of migrant laborers have flooded into the cities. Nevertheless, since they are still identified as “rural residents” by China’s *hukou* (household registration) system, their rights cannot be properly protected in urban areas, thus leading to extremely unfair treatment of their children in terms of education rights. According to an article published in *Continuing Education Research*,<sup>8</sup> a Chinese journal, there are 120 million individuals among China’s “floating population,” including nearly 20 million children of migrant laborers. Also, according to a study on the children of migrant laborers in nine major cities conducted by the National Working Committee on

Children and Women Under the State Council and the China National Children's Center<sup>9</sup>, 6.85 % of migrant children in these cities have never gone to school, and 2.45% of them dropped out of school—far higher rates than those for urban children. These numbers mean that about one million children of Chinese migrant laborers are unable to attend school at the appropriate age.

An article in the journal *China Agricultural Education* indicates two main problems in protecting migrant children's right to education.<sup>10</sup> First, these children are rejected from public schools even though they are legally entitled to be enrolled. Second, due to the discriminatory circumstances, they must go to special schools set up for migrant children, but such schools are extremely poorly equipped and may be closed down at any time. All of these factors adversely affect the physical and psychological development of migrant children. The problems facing these children are primarily caused by the long-implemented household registration (*hukou*) system, which divides Chinese people into two categories: urban and rural. Under this system, urban and rural children receive disparate educational resources and opportunities. Migrant children face clear discrimination even in the public schools that may accept them. For instance, they are usually isolated from urban students in the school environment. Making matters worse, schools that are especially designated for rural children rarely obtain support from the government.

20. The State party report noted that, since 2001, the National Working Committee on Children and Women Under the State Council has launched studies on migrant children in nine Chinese cities, as mentioned above, as well as experimental projects aimed to protect their rights (para. 31). The State party should provide data showing

the results of this survey and the experimental projects.

21. CHRD also would like to draw attention to phenomena indicating another aspect of discrimination, in violation of Article 2 (2): “States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child’s parents, legal guardians, or family members.” In China, children of some political prisoners and persecuted human rights defenders and dissidents face serious discrimination due to their parents’ exercising their right to free expression. Although the Chinese government has subjected many such individuals to relentless harassment and imprisonment, it believes that perhaps the most effective ways to force them to give up their rights activism is to “disappear” them and also threaten them by mistreating their families, including their children. In this sense, authorities target children as a way to attack and suppress human rights defenders and dissidents, with their children in turn becoming victims of suppression. For example:

*(a) Human rights lawyer Gao Zhisheng’s children were persecuted*

Human rights lawyer Gao Zhisheng’s wife Geng He, after suffering unbearably cruel persecution from Chinese authorities, finally took their 16-year-old daughter and 5-year-old son to seek asylum in the United States in March 2009. According to Geng, when they were in China, four to five police officers “escorted” their daughter Gege to school every day. Due to the authorities’ concern that she would make contact with the outside world on behalf of her father, Gege was not allowed to attend computer classes (where she may have had access to online communication tools). Her teachers and classmates also intentionally kept a distance from her and isolated her. All these

measures took a debilitating toll on Gege; she became agitated and isolated, and even attempted to starve herself. From September of 2008 until she left China, Gege was forbidden to go to school and stayed in her family's home in Beijing. Cut off from any connection with the outside world, Gege was on the edge of a breakdown, and actually attempted to commit suicide several times.<sup>11</sup>

*(b) Rights activist Guo Feixiong's children were denied education*

Human rights defender Guo Feixiong (aka: Yang Maodong) was sentenced to five years in prison in 2007. After this conviction, his wife Zhang Qing lost her job, and their son and daughter were denied admission to school. Zhang Qing sent an open letter to Premier Wen Jiabao to ask for his attention to this issue, but she did not receive a response. In February 2009, Zhang Qing fled China with their two children, and eventually made it to the United States, where they received political asylum in the fall of 2009.<sup>12</sup>

*(c) Rights activist Chen Guangcheng's young daughter was put under surveillance*

After rights activist Chen Guangcheng was released from prison in September 2010, he and his family, including his young daughter, Chen Kesi, were placed under house arrest. They were subjected to tight monitoring, constant harassment, and nearly complete isolation. At six years of age, Chen Kesi finally began attending school in September 2011, but her movements were still tightly controlled. She was "escorted" to and from school by guards who monitored her family, and she could not go home to have lunch during the school day. Stationed around the school entrance and at other locations on the grounds, guards monitored her movements within the school and limited her interactions with her fellow students and teachers. These oppressive

circumstances only came to an end after her father fled house arrest in April 2012. Shortly after Chen Guangcheng's escape, his family members, including Chen Kesi, were brought to Beijing and then permitted to go with him to the United States in May 2012.<sup>13</sup>

### **(3) Civil Rights and Freedoms (Articles 7, 8, 13, 14, 15, 16, 17, 19, 37(a))**

22. The State party should provide data showing the number of persons under the age of 18 currently detained in Re-education through Labor facilities, where a person can be sent by police and detained for as long as four years without a trial.

23. The Committee should continue to press for data showing any progress in implementing the recommendation related to registering all children immediately after birth and reforming the rural-urban *hukou* system (COB, para. 43). In its 2010 report, "I Don't Have Control over My Own Body" (Appendix 1), CHRD maintains that for "couples who have violated the policy...their out-of-quota children [were] denied registration of the family's household registration (*hukou*) booklet."<sup>14</sup>

### **Corporal Punishment**

24. The existing regulations banning corporal punishment in schools remain unevenly implemented, and corporal punishment in the home is not banned and continues to be socially acceptable (COB, para. 46). The State party reported that only 26 of the country's 33 provinces, municipalities or autonomous regions have adopted regulations on family violence (para. 118). With the seven other provinces,

municipalities or autonomous regions lacking such regulations, a key point that the State party has omitted is that there is no national law in China to ban corporal punishment in the home.

25. The State party reported that, from 2002 to 2008, Chinese courts convicted 915 individuals for crimes involving abuse and abandonment (para. 122). But the State party did not provide data showing how many of those convicted for such crimes involved victims who were minors.

26. As one recent incident revealed, abuse and abandonment of minors remains a widespread problem, and the Law on Protection of Minors<sup>15</sup> does not adequately address the issue. In October 2012, Chinese media reported that a teacher in Zhejiang Province had physically abused schoolchildren for two years until she was caught when pictures posted online were discovered. However, none of the 72 articles in the Law on Protection of Minors was relevant for charging the teacher, and so she was arrested on suspicion of “instigating to create a disturbance,” a relatively light crime. In October 2012 alone, Chinese media reported several other serious incidents of corporal punishment involving young children in Shanxi, Hubei, and other provinces. Some Chinese legal experts commented that the Law on Protection of Minors is more like a kind of moral declaration, providing guidelines of what should be done under certain circumstances but without prescribing punishments (when individuals fail to act) or implementing mechanisms. Legal experts acknowledge that recent statistics show that child abuse is becoming frequent in China. To address the problem, they believe, the Chinese law should establish that a child does not simply belong to a family, but that the state also has a role in protecting minors whose rights have been

violated.<sup>16</sup>

#### **(4) Basic Health and Welfare (Articles 18, 23, 24, 26, 27)**

##### **Children with Disabilities**

27. According to the State party report, one survey found that in 2006 there were more than five million children with disabilities in China, and nearly 90% of them lived in rural areas (para. 136). The State party must explain this severe urban-rural disparity and clarify where any remedial measures have been taken since 2006 to assist rural children with disabilities. The government also reported that 1.28 million babies were born with birth defects in 2004, and claimed the state has taken measures to reduce the ratio of birth defects (para. 138). However, the State party should provide data to show whether, as of 2010, these measures have effectively reduced birth defects.

28. CHRD would like to draw the attention of the Committee to evidence that the State party has failed to implement the Committee's recommendation from 2005 to strengthen "the implementation of the International Code of Marketing of Breastmilk Substitutes in all parts of the State party" (COBs, para.63). The State party report refers to the adoption of several government measures and policies to promote breastfeeding and regulate breastmilk substitutes, but was too vague in addressing the Committee's concerns (para. 152). Instead, the Chinese government has tried to suppress and silence critics of government policies and regulations deemed responsible for deaths and illnesses of children from toxic milk products. In 2008,

official statistics show that excess melamine in milk powder caused tens of thousands of children becoming ill, and led to at least four deaths. The government has reported that more than 50,000 children suffered kidney stones, but the number of victims may actually be over 100,000. Parents of affected children and their supporters were intimidated and threatened for trying to disclose details about the incidents and seek accountability. One parent, Zhao Lianhai, became the spokesperson for other parents, and was consequently arrested and detained. (For details, see the communiqué filed by CHRD to the Special Rapporteur on the Right to Food et al in December 2010.<sup>17</sup>)

In addition, the Chinese government blocked news about children who contracted kidney stones from the tainted milk powder, and has left compensation issues unresolved. The government has also not undertaken systematic reforms to prevent such problems from recurring. In fact, more reports of harmful effects of tainted milk powder emerged not long after the initial public outrage; for instance, in August 2010, it was revealed that a certain brand of milk powder could lead to sexual precocity in children.

29. To follow up on paragraph 32 of the Committee's COBs, and responding to the State party report (para. 27), CHRD would like to draw the Committee's attention to the fact that, though the Chinese government determined in 2010 that children carrying the Hepatitis B virus (HBV) had the right to be enrolled in kindergarten and would not be screened for HBV as a prerequisite for enrollment, such rules were not executed well in practice, according to an NGO report released in August 2012. The investigative study shows that 68.6% of kindergartens nationwide in 2011 had been screened for HBV during the physical exam done as part of the enrollment process,

and that 31.4% of such kindergartens had turned away children with the virus.<sup>18</sup>

30. To follow up on paragraph 59 of the COBs, and in response to the State party report (para. 128), in China's Criminal Law (1997),<sup>19</sup> the "crime of prostituting minor girls" was put into a separate category from "rape," a differentiation that may allow the former offense to evade appropriate criminal punishment, since the punishment stipulated for "crime of prostituting minor girls" is lighter than that for rape. The distinction between the two offenses violates principles outlined by the Convention on the Rights of the Child to equal protection (Article 2) and special protection (Article 3). Moving the "crime of prostituting minor girls" from the chapter of "crimes of infringing upon a citizen's personal rights and democratic rights" in the Criminal Law to the chapter of "crimes of obstructing the administration of public order" also indicates the skewed priorities upheld by the Chinese government: the administration of public order is more important than children's rights to health and life.<sup>20</sup>

### **Standard of Living**

31. The State party report made reference to the adoption of plans or regulations, but failed to address major concerns about infections spread through government-administered immunization programs (para. 154). Between 2006 and 2008, nearly 100 children in Shanxi Province were inexplicably killed, disabled, or stricken with serious illnesses after receiving vaccines, according to reports by the journalist Wang Keqin.<sup>21</sup> After the disclosure of this "vaccine scandal," the Shanxi Province Department of Health claimed that the report was untrue, and many concerned parents as well as the journalist received threatening text messages.<sup>22</sup> Later,

due to widespread public attention, the Ministry of Health explicitly admitted the problem and promised to compensate the families of the sick children. However, parents of the children who died or became disabled because of the vaccinations have not yet received any compensation. On the contrary, parents who sought justice through petitioning have often been put under surveillance, controlled by the police or forcibly returned home from Beijing to prevent them from seeking redress. Similar problems with vaccines causing deaths or disabilities in children have also occurred in many other parts of China.<sup>23</sup>

32. CHRD would also like to alert the Committee to the detrimental effects of industrial pollution on children's health. For example, a report in early 2012 disclosed that nearly 300 children contracted lead poisoning in Chenzhou, Hunan Province, an incident that attracted much media attention. However, the enterprise that caused the incident was closed down for only one month after the poisoning occurred. It was further reported that only 18 of the 300 children were hospitalized for treatment. The parents of these children intended to be examined themselves to see if they were also poisoned, but they were intercepted by local government personnel before they could reach the medical facility, and three of them were even detained.

Far from being unique to Hunan, lead poisoning from industrial contamination occurs throughout China. For example, in September 2006, an incident took place in Gansu Province that caused lead poisoning in about 2,000 people, including approximately 300 children. Between 1994 and 2007, the activities of a battery smeltery in Fujian Province caused approximately 200 children to suffer from excessive lead levels in their blood. In 2008, after a large-scale accident in Sanhe Village of Jiangsu Province,

41 of the 100 children under 14 years old in Sanhe suffered from lead poisoning, with the youngest under one year old.<sup>24</sup> Asia's largest lead recycling enterprise was located less than 100 meters from the village. Although the government has taken some measures after these incidents were exposed, regulations have not been issued to restrain industrial pollution or establish effective prevention mechanisms. The frequent lead poisoning incidents in China have exposed local governments' greed and skewed notion of development, as officials have largely appeared to be more concerned about whether the polluters wanted to remain in their communities than citizens' right to health.

### **Health and Healthcare**

33. The State party report (paras. 160 and 161) failed to address the Committee's concern about the disparities in access to child health care, and it has done little to implement the Committee's recommendation to "take all necessary measures to provide universal access to maternal and child health services for all children in its jurisdiction, including non-registered children" (COBs, para. 63). The State party report mentioned government subsidies for children with urban residential registration to participate in health insurance plans. However, more than two-thirds of children in China live in rural areas or have migrated to cities with parents without urban residential registration. The State party should provide evidence that necessary measures have been taken to provide universal access to child health care, or at least reduce disparities in access by all children, regardless of their urban or rural residential registration status.

**(5) Education, Leisure and Cultural Activities (Articles 28, 29, 31)****Education**

34. With regard to the Committee's recommendation that the State party "eliminate all miscellaneous and other 'hidden' fees for primary education in order to ensure that it is truly free" and ensure "all children, in particular girls, children with learning difficulties, and ethnic minority and migrant children, complete nine years of compulsory education and have equal access to early childhood education and development programmes," the State party has made little progress in implementation (COBs, paras. 77(a) and 77(b)). According to a 2011 report by an independent NGO partnering with CHRD, "Equity in Education Waits To Be Met – Taking The Right to Education of Children of Three Disadvantaged Groups As An Example,"<sup>25</sup> 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, including children of migrant labors, children of petitioners, and children of individuals in prison or in Re-education through Labor (RTL) facilities. The percentages of rural and urban populations, respectively, receiving access to higher level education are: 6% and 21% in high schools; 0.8% and 13.2% in secondary specialized or technical schools; 0.2% and 11.1% in junior colleges; and 0.02% and 5.63% in universities. People in urban areas with degrees from high schools, secondary specialized or technical schools, junior colleges and universities are, respectively, 3.5 times, 16.5 times, 55.5 times and 281.55 times greater than in rural areas.<sup>26</sup>

35. Unequal access to education by migrant children is of particular concern. The result of the Fifth Nationwide Population Census in November 2000 shows that 4% of all school-age migrant children never attend school, and 0.8% drop out. Among 14-year-old migrant children, 15.4% had left school and become “child laborers” or vagrants, and 60% of migrant children between 12 to 14 years old who had dropped out of school already had started to work.<sup>27</sup>

According to one research conducted in 2010-11, public schools continue to charge high hidden fees, making education unaffordable for migrant children, as one NGO reported.<sup>28</sup> The report also finds that 84% of the public schools in Beijing charged migrant students various fees and tuition, the amount of which could be as high as 50,000 yuan (or about \$8,500 USD) per year. Most migrant students were not granted reduced tuition or scholarships. A 2008 survey on school selection fees (fees paid in order for rural migrants to choose schools in urban areas) in Beijing, Shanghai, Guangzhou, Chengdu and Xi’an shows that the average school selection fee in these cities was 3,150 yuan, and the highest amount was 4,767 yuan, charged by public schools in Beijing.

36. Due to these problems, migrants and others create private or community schools to provide education to migrant children. These schools—commonly known as “migrant schools”—do not receive state funding, face severe funding shortages, lack qualified teachers, and are often set up in unsafe buildings. Since mid-June of 2011, nearly 30 migrant schools in the Daxing, Chaoyang and Haidian districts in Beijing have been ordered to close down, which affected up to 30,000 students.<sup>29</sup> Common reasons leading to schools being shuttered include the lack of operating licenses or

property ownership certification, and school buildings being deemed illegally constructed and with security risks. Migrant schools often are forced to go “underground” due to difficulties in meeting government requirements for legal registration, a situation that puts the safety of children at risk. In response to the Committee’s recommendation (COBs, para. 32) and the State party report (paras. 30 and 31), CHRD would like to point out that since 2006, the Beijing government has continually closed down migrant schools, even using aggressive tactics to achieve its aims. In August of that year, a migrant school in Chaoyang District, the “Tongxin Experimental School,” refused to comply with the government’s demand to close. In response, the government cut off the school’s water supply, leading hundreds of students’ parents to gather in protest.<sup>30</sup> According to media reports, of the migrant schools in Beijing that were closed down in 2011, 32% of the students had been forced to return to their places of household registration (*hukou*), and thus were separated from their parents who were working in Beijing.<sup>31</sup>

**(6) Special protection measures (Articles 22, 30, 32, 33, 34, 35, 37, 38, 39, 40)**

**Economic Exploitation Including Child Labor**

37. The State party made little progress in implementing the Committee’s recommendations concerning ILO Conventions Nos. 138 and 182 regarding child labor (COBs, paras. 83 and 84). 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 widespread in China, as evidenced by child labor incidents exposed by the media in recent years, including the large number of secondary specialized or technical school

students working in companies as “interns.” Government departments in many provinces (i.e., Henan, Shanxi, Shaanxi, Gansu, Xinjiang, Ningxia, Sichuan, Yunnan, Guizhou and Anhui) do not strictly oversee this issue, and in fact tacitly approve of schools sending students to factories in the Yangtze River Delta and Pearl River Delta areas. Most of those students are not of legal working age, and some are even under 16 years old. Although they work in “internships,” the content, schedule and intensity of their work are the same as those of full-time employees. The following two cases illustrate the seriousness of the problem of child labor in China:

*(a) Child Labor in the Shanxi Black Brick Kilns in 2007*

The State report (para. 217) mentioned this case in Shanxi Province but did not provide details that are important for understanding the lack of protections to prevent children from being trafficked into child or slave labor. The media reported that a total of 400 parents maintained that their children were lured into or forced into Shanxi Black Brick Kilns as hard laborers.<sup>32</sup> The journalist investigating this story in Wanrong County found that among all the children sold to work in the kilns, the youngest was just eight years old and the oldest was 13 years old, and the children were performing manual labor that even adults would be unwilling to do. In helping to save these children from the illegal brick kilns, the journalist said that the strongest obstacle was the lack of cooperation and even illegal behavior on the part of local law-enforcement authorities. Special operations launched by government officials resulted in the rescue of 570 individuals, including 51 children, in the provinces of Shanxi and Henan. However, the number of rescued children was only 5% of the approximately 1,000 children reported missing, who are believed to be suffering from horrible conditions.<sup>33</sup>

*(b) KYE Factory in Dongguan, Guangdong Province, where a large number of children are employed*

Media reports disclosed that that the KYE factory, which makes products for Microsoft, “recruited hundreds—even up to 1,000—‘work study students’ who were 16 and 17 years old and work 15-hour shifts for six or seven days a week.” And “[i]n 2007 and 2008, dozens of the work study students were reported to be just 14 and 15 years old.”<sup>34</sup> After this information was released by the media, the government did not conduct any review or exercise more oversight of the factory. In the end, the matter went unaddressed after the government deliberately played it down, and KYE even denied that any issue existed.

38. The Committee should continue to raise concerns about the widespread practice of “Re-education through Labor” (COBs, para. 83). The State party report (para. 219) defends the practice in China of sending children who are 16 and 17 years old to Re-education through Labor (RTL) facilities. The State party mistakenly claims that imposing RTL on juveniles under the age of 18 but above the age of 16 is not a violation of ILO Conventions 138 and 182. However, ILO Convention 182 clearly stipulates, “For the purposes of this Convention, the term ‘child’ shall apply to all persons under the age of 18” (Article 1), and ILO Convention 138 stipulates, “The minimum age for admission to any type of employment or work which by its nature or the circumstances in which it is carried out is likely to jeopardize the health, safety or morals of young persons shall not be less than 18 years” (Article 3(1)). Chinese police have the power to issue decisions to send anybody, including children under the age of 18, to RTL without a trial. RTL detainees can be locked up and forced to

engage in hard labor for up to four years without ever seeing a lawyer or having their case heard by a judge.

**Trafficking in Children (Article 35, and Optional Protocol on the sale of children, child prostitution and child pornography)**

39. Statistics disclosed in the Chinese media shed some light on the seriousness of child trafficking in China. 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%.<sup>35</sup> Also, child trafficking cases were becoming more serious, and cases in which children of migrant laborers were trafficked were growing. Another media outlet reported that, by the end of 2009, the Chinese police had rescued 3,455 abducted children and 7,365 abducted women.<sup>36</sup> Hong Kong-based TVB, a media company, interviewed several abducted children's parents, most of whom were migrant laborers. All these parents indicated that police initially did not put much effort into investigating their children's whereabouts, and the government even banned media reports on the children's plights and suppressed parents who demanded accountability.<sup>37</sup>

Though the Chinese government has taken a variety of measures to crack down on child trafficking, it is still widespread in China. The root causes have to do with current laws and government policies. First, the inadequate rural pension system has reinforced the traditional bias of raising sons to support parents in their old age, contributing to a huge "buyer's market" for trafficked children. Second, current laws ignore investigating the responsibility of parents or other adults who sell or buy

children. Third, punishments of “extra quota” births imposed by family planning officials have created incentives for discarding and abducting children. Due to the inherent disadvantages under the law of having more children than official birth quotas allow and having children out of wedlock, children born under such circumstances were more likely to be discarded or trafficked.

### **Sexual Abuse**

40. One survey conducted in 2011 by a group of independent academics and activists in China shows that, of the 82 women and girls surveyed and interviewed, the youngest victim of violent sexual abuse in the group was only 8 years old; girls under 18 years old comprise 30% of those who were victims of sexual violence among those interviewed; and 6% of the under-age victims suffered sexual violence when their parents were not present to protect them.<sup>38</sup> The report points out that some perpetrators in cases of sexual assaults against under-age girls understood that the law only prescribes light punishments for such crimes. This problem with the law greatly threatens the safety of under-age girls. In addition, after the girls were sexually abused, government and non-governmental institutions failed to provide psychological rehabilitation and other forms of assistance that could help remedy the trauma experienced by the abuse victims.

41. The following are a few cases that caused media sensation in China in recent years. In these cases, the Chinese government did not assume sufficient responsibility to protect or assist children to recover from sexual assault, and some government officials and other public servants, including teachers, who had sexually abused

children were not held legally accountable.

*(a) Shenzhen official faced no legal consequence for attempted assault on an underage girl*

On October 29, 2008, in a Shenzhen restaurant, Lin Jiaxiang, the former (CPC) party secretary of the Shenzhen Maritime Bureau in Guangdong Province, grabbed an 11-year-old girl by the throat and attempted to drag her into the men's bathroom. The restaurant's closed-circuit television showed that when the girl's parents complained, Lin shouted at them, claimed he had been sent by the Ministry of Transport and intimidated them with his high position in the government. Though he actually admitted to his misconduct and offered to pay off the parents,<sup>39</sup> police in Shenzhen later declared that Lin had not committed any crime. In a decision that shocked the public for its leniency, Lin was merely sacked by the Ministry of Transport for his misconduct.<sup>40</sup>

*(b) Public servants convicted of rape involving under-age teenage girls received light sentences*

From October 2007 to July 2008, a number of young teenage girls were raped by local officials in Xishui County in Guizhou Province. Under close media and public scrutiny, this case was tried by the Zunyi City Intermediate People's Court on June 30, 2009. After a close-door trial, the court announced that seven adult males—including a legal affairs official, a local legislator, and a county migration official—had committed sex crimes against children under the age of 14 and were sentenced to prison.<sup>41</sup> Nevertheless, the court decision provoked nationwide outrage since the public believed that the trial had been manipulated and that the officials had received

lighter sentences that were not fitting for their crimes.<sup>42</sup>

*(c) A case involving multiple under-age rape victims was only partially handled*

On April 28, 2008, several girls from the Bihu Middle School in Lishui City, Zhejiang Province were raped in an incident involving a village committee director and other officials. According to media reports, at least 10 junior middle school girls between 13 and 16 years old were victimized.<sup>43</sup> The local public security bureau conducted an investigation and arrested the owner of a local night club and the village committee director. In July 2007, two of the defendants were sentenced to death by the Lishui City Intermediate Court; however, even after the convictions, the Lishui government continued to deny that any other government officials were involved in this sex crime, and dodged journalists' inquiries. It was later learned that the victims had been threatened by the village party secretary not to disclose any information.

These cases are just a few examples of how national law and local governments are failing to protect children from the growing problem of sexual assault in China, particularly in cases where the perpetrators were government officials.

## Appendices

Appendix 1. “I Don’t Have Control over My Own Body!” Abuses continue in China’s Family Planning Policy. <http://chrdnet.com/?p=2420>

Appendix 2. The Right To Basic Education of Rural Children in Suizhou, Hubei Province. <http://chrdnet.com/?p=1674>

Appendix 3. Equality in Education Waits To Be Met – Receiving the Right to Education for Children of Three Disadvantaged Groups (教育平等权亟待落实——以三大弱势群体子女的受教育权为例 <http://weiquanwang.org/?p=28286>)

Appendix 4. An Investigative Report on Rights Violations of Marginalized Women and Social Support Networks (In Chinese only: 边缘女性受暴力侵害状况与社会支持网络调查报告 <http://weiquanwang.org/?p=21856>)

Appendix 5. A Civil Society Report on the Chinese Government’s Implementation of the UN Convention on Rights of the Child (In Chinese only: 关于中国政府落实联合国《儿童权利公约》状况的民间报告 <http://weiquanwang.org/?p=29506>)

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**Endnotes:**

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- <sup>1</sup> Names of NGO informants are not being made public due to concerns for their safety.
- <sup>2</sup> See Appendix 1. “I Don’t Have Control over My Own Body!” Abuses continue in China’s Family Planning Policy. <https://chrd.equalit.ie/2010/12/20/i-dont-have-control-over-my-own-body/>.
- <sup>3</sup> For more information, see: CHRD, “Prisoner of Conscience – Tan Zuoren,” <http://chrdnet.com/?p=4561>
- <sup>4</sup> See Radio Free Asia report: [http://www.rfa.org/cantonese/multimedia/earthquake\\_students-12312008094306.html?encoding=simpli](http://www.rfa.org/cantonese/multimedia/earthquake_students-12312008094306.html?encoding=simpli).
- <sup>5</sup> See [http://www.amnesty.org.uk/news\\_details.asp?NewsID=18512](http://www.amnesty.org.uk/news_details.asp?NewsID=18512).
- <sup>6</sup> See <http://www.china.org.cn/english/government/207411.htm>.
- <sup>7</sup> See <http://chrdnet.com/?p=1674> or Appendix 2.
- <sup>8</sup> “Legal Guarantee of Migrant Laborer Children’s Right to Education” (进城农民工子女受教育权的法律保障), in *Continuing Education Research* (继续教育研究), No. 9, 2009.
- <sup>9</sup> See study: [http://www.npc.gov.cn/delegateCenter/proscenium/2010/2010-01/21/content\\_1542056.htm](http://www.npc.gov.cn/delegateCenter/proscenium/2010/2010-01/21/content_1542056.htm).
- <sup>10</sup> See *China Agricultural Education* (中国农业教育), August 2008, “Effectively Address the Issue of Education Facing Migrant Laborers’ Children,” [http://www.cnier.ac.cn/snxx/wenxian/snxx\\_20081024162510\\_6225.html](http://www.cnier.ac.cn/snxx/wenxian/snxx_20081024162510_6225.html).
- <sup>11</sup> For more information, see: CHRD, “Update to UN on Gao Zhisheng – July 23, 2012” <http://chrdnet.com/?p=6336>; and <http://www.epochtimes.com/gb/9/3/14/n2462700.htm>.
- <sup>12</sup> See <http://www.peacehall.com/news/gb/china/2008/06/200806302348.shtml>.
- <sup>13</sup> For more information, see: <http://chrdnet.com/?p=4030>, <http://chrdnet.com/?p=5214> and <http://chrdnet.com/?p=4214>.
- <sup>14</sup> See <http://chrdnet.com/2010/12/20/i-dont-have-control-over-my-own-body/> or Appendix 1.
- <sup>15</sup> For full text of law, see: <http://www.china.org.cn/english/government/207411.htm>.
- <sup>16</sup> “Children Can’t Be Protected by Relying on Legislation,” *Southern Weekend* (南方周末), November 1, 2012, <http://www.infzm.com/content/82546>.
- <sup>17</sup> See: CHRD, “Communiqué on Detention of Chinese Citizen Zhao Lianhai for Advocating on Behalf of Victims of Tainted Milk Powder Scandal,” <http://chrdnet.com/?p=3752>.
- <sup>18</sup> See *China Daily*: “Kindergartens refuse hepatitis B carriers,” [http://www.chinadaily.com.cn/china/2012-08/31/content\\_15722645.htm](http://www.chinadaily.com.cn/china/2012-08/31/content_15722645.htm); *Global Times*, “When B is worse than F,” <http://www.globaltimes.cn/content/731118.shtml>.
- <sup>19</sup> For full text of law, see: <http://www.china.org.cn/english/government/207320.htm>.
- <sup>20</sup> For more information, see: <http://www.woman-legalaid.org.cn/detail.asp?id=2489>.
- <sup>21</sup> “Nearly 100 Children Died or Became Disabled for Unknown Causes,” *China Economic Times* (中国经济时报), March 17, 2010, <http://jiaren.org/2010/03/21/shanxi-yimiao/>.
- <sup>22</sup> For more information, see <http://sina.web109.zgasp.com/sina-news/shanxiyimiao>.
- <sup>23</sup> More information can be found on Wang Keqin’s blog, located at <http://wangkeqin.blog.sohu.com/>.
- <sup>24</sup> See information on Zhonggu Net: <http://news.9ask.cn/yljf/rmzt/201003/376951.html>, <http://news.9ask.cn/yljf/rmzt/201003/377011.html>, and also

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[http://news.china.com/zh\\_cn/domestic/945/20100312/15850663.html](http://news.china.com/zh_cn/domestic/945/20100312/15850663.html).

<sup>25</sup> For example, see Appendix 3: Equality in Education Waits To Be Met – Receiving the Right to Education for Children of Three Disadvantaged Groups (教育平等权亟待落实——以三大弱势群体子女的受教育权为例), <http://weiquanwang.org/archives/28286>.

<sup>26</sup> See Zhang Shuying, Liu Chaochen: A Study on the Relationship between Rural Income and Education, in *Scientific Technology and Economy* (《科技与经济》), No. 5, 2009.

<sup>27</sup> These statistics were cited in Duan Chengrong, Liang Hong, “The Conditions of Our Country’s Migrant Children,” *Population Study* (人口研究), No. 1, 2004.

<sup>28</sup> See Appendix 3.

<sup>29</sup> See: CHRD, “Closure of Beijing Schools for Migrant Workers’ Children Ushers in Educational, Social Crises,” China Human Rights Briefing (August 16-22, 2011), <http://chrnet.com/?p=3161>.

<sup>30</sup> See report in *Shandong Commercial News* (山东商报), <http://news.hexun.com/2012-08-03/144308896.html>.

<sup>31</sup> See report in *Beijing News*, August 27, 2012, <http://news.qq.com/a/20120827/000060.htm>.

<sup>32</sup> See Henan Dahe Net, June 5, 2007, “Road of Illegal Labor! Children have been sold to illegal brick-kilns in Shanxi Province,” <http://news.qq.com/zt/2007/sxhzc/>, <http://www.clb.org.hk/en/node/47600>.

<sup>33</sup> See [http://www.china.com.cn/city/txt/2007-06/13/content\\_8380301.htm](http://www.china.com.cn/city/txt/2007-06/13/content_8380301.htm), and <http://news.sina.com.cn/z/shanximaltreat/>

<sup>34</sup> “China’s Youth Meet Microsoft,” April 13, 2010, a report by the American National Labor Committee (NLC), <http://www.globallaborrights.org/reports?id=0034>, and [http://www.globallaborrights.org/admin/reports/files/Chinas\\_Youth\\_Meet\\_Micro.pdf](http://www.globallaborrights.org/admin/reports/files/Chinas_Youth_Meet_Micro.pdf).

<sup>35</sup> “Chinese Courts Handled More Than 1100 Cases of Child Trafficking in the First 10 Months of the Year,” China News Net (中国新闻网), November 26, 2009, <http://news.sina.com.cn/o/2009-11-26/160416673517s.shtml>.

<sup>36</sup> “Ministry of Public Security ‘Crackdown on Trafficking’ Action Freed More Than Ten Thousand Women and Children,” February 24, 2010, [http://news.xinhuanet.com/legal/2010-02/24/content\\_13041740.htm](http://news.xinhuanet.com/legal/2010-02/24/content_13041740.htm).

<sup>37</sup> See Hong Kong TVB, <http://mytv.tvb.com/news/tuesdayreport/102745#page-1>.

<sup>38</sup> See Appendix 4: An Investigative Report on Rights Violations of Marginalized Women and Social Support Networks (边缘女性受暴力侵害状况与社会支持网络调查报告), <http://weiquanwang.org/archives/21856>.

<sup>39</sup> See [http://www.chinadaily.com.cn/china/2008-11/04/content\\_7169949.htm](http://www.chinadaily.com.cn/china/2008-11/04/content_7169949.htm), and <http://news.ifeng.com/society/special/weixiemen/>.

<sup>40</sup> See <http://globalvoicesonline.org/2008/11/08/china-where-s-the-sense-of-shame-of-high-official/>.

<sup>41</sup> For more information on the Xishui sex trial, see: [http://en.wikipedia.org/wiki/2009\\_Xishui\\_sex\\_trial](http://en.wikipedia.org/wiki/2009_Xishui_sex_trial).

<sup>42</sup> See *South China Morning Post*, April 13, 2009, “Under-age sex trial is a test for a shaky system,” <http://www.scmp.com/article/676636/under-age-sex-trial-test-shaky-system>.

<sup>43</sup> See <http://news.163.com/09/0428/08/57VMENRD00011229.html>.