

The diverse and complex issues impacting on the rights of children in China range from the myriad effects of the one-child policy, to discrepancies in access to public services arising out of birth registration, to on-going domestic violence, trafficking and child labor concerns. Addressing these issues requires an accurate understanding of their scope, causes, and the effectiveness of measures taken to date – including whether social, legal and political policies and practices adopted to advance and protect children's rights in China comply with both domestic law and international standards.

HRIC has carefully reviewed China's responses to the Committee's List of Issues (LoI). **This briefing note highlights three issues** that are particularly relevant to assessing and protecting the rights of girl children, especially those who belong to multiple vulnerable groups:

- I. Human trafficking;**
- II. Infanticide, forced abortion and forced sterilization; and**
- III. Sexual abuse and exploitation of minors.**

The Committee has repeatedly emphasized the importance of and requested State parties to provide accurate, disaggregated and comparable data collected consistently and systematically over time. One significant overarching challenge to an effective and constructive review of China's progress is the lack of consistent, current, disaggregated and transparent statistical data regarding children (including total population of children under 18, number of ethnic minority children, number of rural and migrant children, number of children living with disabilities and number of female children in these respective groups).

While the State party's third and fourth periodic report provided statistics for the population of children under 18, more recent statistics publicly available from the 2010 census present three problems:

- The data are not disaggregated as fully as the data publicly available from the 2000 census (which disaggregated by each age from 0-99, gender, and geographic location), indicating a potential step backward in transparent data collection and disclosure.
- The relevant publicly reported census population groups are now 0-14 and 15-59. Since Chinese law defines minors as citizens under the age of 18,ⁱ the new age categorization scheme hinders an accurate determination of the total child population (i.e., persons 0-18).
- The inconsistencies in reported census data from census to census, a key source of baseline population data, undermine the usefulness and comparability of the data to assess trends, progress, and challenges.

As this information clearly pertains to matters of public interest and affects citizens' rights, responsible government organs also have an obligation under China's own Open Government Information Regulations (2008) to proactively make such information public and accessible.

I. HUMAN TRAFFICKINGⁱⁱ

The Committee's LoI for the State party's upcoming review included a question regarding whether data related to child trafficking are considered a state secret. In its response, the State party asserts that information related to child trafficking is "not classified as a state secret" and that the government "releases the data of child trafficking every year." (see the State party's response to Question No. 6, Part I in the LoI)

The State party's reports to the Committee have consistently included some criminal data from the Ministry of Public Security; however, these data are not responsive to the Committee's specific requests for the following reasons:

- The data are **limited in scope** to statistics on a subset of cases, which have included "cases cracked," "criminal elements apprehended," "children rescued," etc. The statistics have not included the total number of cases reported or additional details regarding the disclosed cases. In particular, the extremely limited information in regard to actual sentences handed down is concerning due to the allegations of corruption and officials' involvement in trafficking cases.
- Key terms are **not sufficiently defined**. For instance, it is unclear from the State party's report when a case is considered "cracked" or a child "rescued."
- The data reported **cannot be compared from year to year** (see HRIC appendix for specific data previously provided) because the nature of the cases, category of victims and timeframes of the statistics vary in each of the State party's reports. This variance makes it impossible to meaningfully track progress or on-going challenges encountered in the prosecution of traffickers.
- The data are also **limited to information collected by the Ministry of Public Security**, the highest government organ that oversees public security work nationwide. In order to address the problem of child trafficking, information is needed regarding the scope, patterns and causes of the problem, as well as the efficacy of assistance and remedies available to victims. In addition to information regarding criminal prosecutions, statistics are needed from other bodies affiliated with the government, such as the All China Women's Federation, which provide important social services to trafficking victims.

The State party's past reporting to the Committee cites other bodies that also have monitoring and data collection responsibilities relevant to child trafficking, which may be potential sources for more diverse data. For instance:

- The State party's 2005 reportⁱⁱⁱ on its implementation of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, details the **National Working Committee for Women and Children's monitoring and statistics group**. Composed of statistics bureaus at various levels of government, this group is responsible for putting in place systems to monitor the targets set out in the National Program for the Development of Children,^{iv} and for collecting, organizing, and analyzing related data (including trafficking data).
- The State party's current report to the Committee describes the work of a nationwide networked **anti-abduction and trafficking DNA database**, which assists in reuniting parents and abducted children. The Ministry of Public Security has instructed all police forces to, once being notified of a missing or abducted child, immediately open a case file, initiate a search and investigation, and collect blood sample for the DNB database.^v Authorities overseeing this database, therefore, should have access to additional data, including the total number of cases reported, the sex and age of the children missing or abducted, and the geographical distribution of the cases.

Recommendations

In order to constructively contribute to the Committee's review of China's progress and to advancing protections for children from trafficking and related abuses, the Committee may wish to request additional information regarding:

1. **Criminal prosecution**
 - clarification of MPS terminology, including "cracked" cases, "children rescued," and "criminals apprehended"
 - total number of case prosecuted for **trafficking children**
 - number of prosecutions of perpetrators of all the above crimes
 - outcome of trials of the above prosecutions, including information on the penalties and compensation offered to victims
2. **Data collection and disaggregation** at the national, provincial and local levels, as well as the responsibilities of relevant government **organs, agencies and mass organizations** carrying out these efforts
3. **The number of instances reported by other government organs and affiliated organizations related to:**
 - trafficking of children
 - abduction of children
 - infanticide
 - the rape of children
 - number of cases reported of abuse and violence against children
 - information on the type of assistance given to child victims and the follow-up provided.
4. **Disaggregated data** by region where reported cases occurred (urban/rural), and sex, age and ethnicity of the children involved; and children with disabilities

II. INFANTICIDE, FORCED ABORTION AND FORCED STERILIZATION

While it has collected and provided limited data on child trafficking, the State party has provided no data at all regarding the killing or injuring of children, forced abortions and infanticide. In response to the Committee's question on whether the killing or injuring of children is classified as a state secret, the State party asserted that it is **not classified as a secret**. China further stated that killing or injuring of children "falls into the category of the crimes of deliberate killing and deliberate injuring according to Articles 230 and 232 of China's *Criminal Law*. Therefore, **no data has been collected**." However, the failure to track and report statistics specifically regarding the killing or injuring of children limits the ability of the Chinese authorities to assess the degree of infanticides, forced abortions and forced sterilizations and to identify effective and adequate measures to address these issues.

In addition, these issues are not solely criminal in nature, but a range of social service providers and government organs play a role in developing and implementing effective measures to address the killing or injuring of children. However, clearly related information, including infanticide, forced abortions and sterilizations, were previously classified as state secrets. Specific state secrets regulations set forth requirements on how to access and transport the identified information, training requirements for officials, and how state secrets are to be made, received, dispatched, transmitted, used, copied, excerpted, preserved and destroyed.^{vi} Under the 1995 *Regulation on State Secrets and the Specific Scope of Each Level of Secrets in Family Planning*, issued jointly by the State Family Planning Commission and the National Administration for the Protection of State Secrets, some statistics relevant to infanticide and surgical birth control procedures^{vii} were classified as secret or internal (*neibu*) depending on the level of aggregate information. It follows that although statistics specifically on criminal charges related to the killing of children may not be tracked by the Ministry of Public Security, relevant statistics to the problem of infanticide, forced abortions and forced sterilization were previously classified and regulated by other

government organs such as the State Family Planning Commission. So if the killing and injuring of children is no longer classified as a state secret, relevant data collected and held by authorities other than the MPS should be disclosed and made publicly available.

Recommendations

In light of the inconsistent provision of data concerning crimes affecting children, the Committee should request clarifications and additional information regarding:

1. Following the revision of the State Secrets Law in 2010, whether there are any revised state secrets regulations concerning the killing or injuring of children, including information on infanticides, forced abortions and forced sterilizations. And, if yes, identification of the promulgating authorities for the regulations and explanation of the scope and classifications of this information.
2. Government organs responsible for collecting and publishing the requested data and provide these data in a timely manner and in accordance with the Committee's requirements and other relevant international standards.

III. CRIMES OF SEXUAL ABUSE OR EXPLOITATION OF MINORS UNDER THE CRIMINAL LAW

China's response to the Committee's latest LoI indicates that instances of "sexual harassment of children" increased between 2010 and 2012 (Part III, 2(d)). Numerous media and citizen reports of sexual abuses of minors have also surfaced.^{viii} Perpetrators included teachers, school administrators, and local government officials. In recent years, these reports have led to widespread public anger and increased citizen demands for more effective measures to prevent and investigate these abuses, and punish those responsible. However, **current laws and regulations undermine effective measures to combat sexual abuse of minors** by:

- creating a separate category of crime for the rape of young girl prostitutes that carries a lesser maximum penalty than the crime of rape of other young girls, and
- in effect shielding suspects who claim ignorance of the victim's age from criminal prosecution.

Reduced Maximum Penalties in Cases of Under-Age Prostitution

China's Criminal Law **article 236** governs punishment for the rape of women and young girls, and stipulates a minimum penalty of three years' imprisonment and a maximum of ten. Perpetrators of rape of girls under the age of 14 shall receive "heavier punishment,"^{ix} and offenses in cases involving grave circumstances, including gang-rape or rape resulting in serious injury or death of the victim(s), carry a penalty of imprisonment of ten years or more, lifetime imprisonment, or death.

When the Criminal Law was revised in 1997, a new category of crime was created. The new provision, **article 360, paragraph 2^x**, stipulates that those who 'prostitute with a young girl under the age of 14' (*piaosu younü*, 嫖宿幼女)^{xi} shall receive a minimum of five years' imprisonment in addition to a fine. Sentencing limits established under a separate provision, article 45,^{xii} further create a 15-year maximum sentence for people convicted under article 360. The result of this addition is that people convicted of raping a girl under the age of 14 can, in grave circumstances, be sentenced to life in prison or death, whereas those convicted of prostituting with a girl of the same age can receive at most a 15-year sentence.

Weakening of Legal Accountability

Subsequent legal interpretations and regulations regarding article 360 have further undermined legal accountability in rape cases.

In January 2003, the **Supreme People's Court** issued an official interpretation of article 360, part of which

clarified that it does not consider sex with a minor a crime when “an actor engages in consensual sex with a girl without truly knowing her age, and that the act has not resulted in any serious consequences and has taken place under innocuous circumstances.”^{xiii} What constitutes “innocuous circumstances” or “serious consequences,” is not clearly defined and lacks reference to appropriate standards, including protecting the best interests of the child.

A subsequent set of regulations issued by the **Supreme People’s Procuratorate and the Ministry of Public Security** in 2008 further recommends investigation into and prosecution of a case under article 360 when the actor involved in the sexual act *knows* the victim is or is likely to be under 14 years of age and solicits sex from her.^{xiv}

Article 360, along with the aforementioned interpretations and regulations, provide discretionary power to law enforcement and judicial authorities not to prosecute cases at all in which girls under 14 are raped, or to selectively prosecute such cases under article 360 instead of article 236 in order to limit maximum penalties.

Collectively, these legal developments present a range of concerns:

- The concept of “consensual sex” is problematic when applied to children, whether they are child sex workers or not. Treating girls under the age of 14 as “consenting” to prostitution would gut protections for children against human trafficking and sexual abuses.
- Allowing claimed ignorance of the age of a sexual partner also presents difficult evidentiary challenges. Can the suspect simply claim ignorance? What evidence would be required to support this asserted belief? What procedural protections would be afforded a child victim to ensure her privacy and to prevent her from being further victimized by the prosecution process?

Recommendations

HRIC urges the Committee to consider suggesting the State party:

1. Review and amend provisions applicable to rape and sexual abuse of minors under the Criminal Law and other relevant law and regulations to ensure they comply fully with China’s obligations under the CRC to provide equal and special protection to children of both sexes, especially under articles 2, 3, 19, 22, 34, 36, and 37.

ⁱⁱ Law on the Protection of Minors (2006), Article 2.

ⁱⁱⁱ Article 3, paragraph (a) of the Protocol to Prevent, Suppress and Punish Trafficking in Persons defines Trafficking in Persons as the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs

^{iv} First report of the People’s Republic of China on the implementation of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, September 1, 2005, UN Doc. No. CRC/C/OPSA/CHN/1

^v National Program for the Development of Children (2011-2020), <http://www.nwccw.gov.cn/?action-viewnews-itemid-158300>

^{vi} ‘全国“打拐”DNA数据库建立“国家寻亲平台” 解救2700余名被拐儿童 (Nation-wide 'DNB database' sets up 'national platform for the search of family members,' 2700 abducted children rescued), People’s Public Security Daily, June 24, 2013 www.cqga.gov.cn/jfzx/38317.htm

^{vii} Law of the People’s Republic of China on Guarding State Secrets (2010), Articles 17-24.

^{viii} Specific data classified include: “statistics on infanticide...during specific periods of investigation by relevant departments” and “statistics from family planning departments...on the number of deaths resulting from problems with surgical birth control procedures.” (Articles 3.1.2; 3.1.3; 3.2.1-3.2.3; 5.1)

^{ix} See following articles for some of the major incidents involving sexual abuse of minors: 四川宜宾国税分局长花6千元嫖宿幼女被拘 (Sichuan tax official detained for paying for sex with a young girl), Sichuan Online, May 10, 2009,

news.163.com/09/0510/08/58UJIA220001124J.html; 贵州习水县多名公职人员涉嫌嫖宿中小学女生 (Guizhou county-level officials suspected of prostituting young school girls) Phoenix News, April 3, 2009, news.ifeng.com/society/1/200904/0403_343_1089855.shtml;

校长带女生开房案两人以强奸罪获刑 (Two convicted for raping elementary school students in hotel), Beijing News, June 21, 2013 epaper.jinghua.cn/html/2013-06/21/content_2020.htm?div--1. Other cases of abuse of minors can be found at the China Minors Net:

<http://grow.kids21.cn/fljt/dxal/bqhal/>.

^{ix} Article 236 of the Criminal Law reads in full:

- Whoever, by violence, coercion or other means, rapes a woman is to be sentenced to not less than three years and not more than 10 years of fixed-term imprisonment.
- Whoever has sexual relations with a girl under the age of 14 is to be deemed to have committed rape and is to be given a heavier punishment.
- Whoever rapes a woman or has sexual relations with a girl involving one of the following circumstances is to be sentenced to not less than 10 years of fixed-term imprisonment, life imprisonment, or death:
 - (1) rape a woman or have sexual relations with a girl and when the circumstances are odious;
 - (2) rape several women or have sexual relations with several girls;
 - (3) rape a woman in a public place and in the public;
 - (4) rape a woman in turn with another or more persons;
 - (5) cause the victim serious injury, death, or other serious consequences.

^x Article 360 of the Criminal Law reads in full:

- Those engaging in prostitution or visiting a whorehouse knowing that they are suffering from syphilis, clap, or other serious venereal diseases are to be sentenced to five years or fewer in prison or put under criminal detention or surveillance, in addition to having to pay a fine.
- Those who visit young girl prostitutes under 14 years of age are to be sentenced to five years or more in prison in addition to paying a fine.

^{xi} Translation varies. It is also translated as “spend the night in a brothel with a girl child” or “visit young girl prostitutes under 14 years of age.”

^{xii} Article 45. Except as otherwise provided in Articles 50 and 69 of this Law, the term of fixed-term imprisonment is not less than six months and not more than fifteen years. Source of translation: www.refworld.org/docid/3ae6b5cd2.html

^{xiii} 最高人民法院关于行为人不明知是不满十四周岁的幼女双方自愿发生性关系是否构成强奸罪问题的批复, (Supreme People's Court's Response to the Question on Whether Consensual Sex between an Actor and a Girl under the Age of 14 Constitutes Rape When the Actor Does Not Clearly Know the Girl to be under the Age of 14), issued by the Supreme People's Court, January 17, 2003, www.szxingshi.com/298w.html

^{xiv} 最高人民检察院 公安部关于公安机关管辖的刑事案件立案追诉标准的规定 (一) [Regulations on the Criteria for Establishing Files for Investigation and Prosecution in Criminal Cases under the Jurisdiction of Public Security Organs (1)], Article 81, issued by the Supreme People's Procuratorate and the Ministry of Public Security, June 26, 2008, www.jiaxingjs.jcy.gov.cn/flfg/201107/t20110723_579736.shtml