

LAW LIBRARY OF CONGRESS

CHINA

CHILDREN'S RIGHTS

Executive Summary

China has ratified major international documents with regard to children's rights protection. China's domestic legislation also provides protection for a wide range of children's rights. The reality, however, is disputable. Few accurate statistics could be obtained directly from the official source. In practice, enforcement of the treaty obligations and the legislative declarations remains a huge problem.

I. Introduction

The People's Republic of China (PRC)¹ declares to protect a wide range of children's rights through domestic legislation and by ratifying and joining the relevant international treaties. The PRC Constitution provides for the state protection of children, and prohibits maltreatment of children.² Among many laws and regulations providing children's rights protection, the primary law in this field is *The PRC Law on the Protection of Minors* (first passed in 1991, revised in 2006) (Minors Protection Law).³ The newly revised Minors Protection Law entered into force on June 1, 2007.⁴ This law sets up responsibilities of the families, the schools, and the government with regard to the protection of children's rights, and judicial protection, as well.⁵

Children under Chinese Law

Eighteen is the age of majority in China. Under the Minors Protection Law, "minors" are defined as citizens less than eighteen years old.⁶ The civil law of China provides that people above eighteen years old and those from sixteen to eighteen who make a living on their own have full civil conduct capacity.⁷ People aged from ten to eighteen have limited capacity of civil conduct, and may only engage in civil activities appropriate to the age range and intellect. People under ten years old have no civil conduct

¹ For purposes of this report only, the "PRC" and "China" used hereafter refers to the mainland of the People's Republic of China, with the exclusion of the Hong Kong Special Administrative Region, the Macau Special Administrative Region, and Taiwan.

² XIAN FA [CONSTITUTION] art. 49 (1982) (P.R.C).

³ The PRC Law on the Protection of Minors, 2007 GAZETTE OF THE STANDING COMMITTEE OF THE NATIONAL PEOPLE'S CONGRESS 5 (P.R.C) (official source).

⁴ *Id.*

⁵ The Minors Protection Law has seven chapters as follows: Chapter 1, General Principles; Chapter 2, Family Protection; Chapter 3, School Protection; Chapter 4, Society Protection; Chapter 5, Judicial Protection; Chapter 6, Legal Penalties; and Chapter 7, Miscellaneous.

⁶ The Minors Protection Law, art. 2.

⁷ Minfa Tongze [General Principle of Civil Law] (promulgated by the NPC, effective Jan. 1, 1987), art 11, 1986 FAGUI HUIBIAN 1, 4 (official source).

capacity.⁸ Unless otherwise indicated, “children” or “minors” hereinafter refers to people under the age of eighteen.

II. Implementation of International Rights of the Child

Major international documents relating to children's rights that the PRC government has signed and ratified are as follows:

- (i) U.N. Convention on Rights of the Child 1989 (CRC) (Entry into force for China: April 1, 1992);⁹
- (ii) Optional Protocol to the Convention on Rights of Child on the Sale of Children, Child Prostitution, and Child Pornography 2000 (Entry into force for China: January 3, 2003);¹⁰
- (iii) International Covenant on Economic, Social and Cultural Rights 1966 (Entry into force for China: June 27, 2001);¹¹
- (iv) The Convention on the Elimination of All Forms of Discrimination Against Women 1979 (Entry into force for China: December 3, 1981);¹²
- (v) Worst Forms of Child Labor Convention 1999 (Entry into force for China: August 8, 2003);¹³
- (vi) The Hague Convention on the Protection of Children and Cooperation in Respect of Intercountry Adoption 1993 (Receipt of Instrument: September 16, 2005).¹⁴

It is worth noting that when deciding on ratification of the CRC, the PRC Standing Committee of the National People's Congress (NPC, China's top legislative body) made a reservation to Article 6 of the

⁸ *Id.*, art. 12.

⁹ G.A. Res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989); 28 I.L.M. 1448 (1989). Available online at the Office of the U.N. High Commissioner for Human Rights (UNHCHR) Web site, <http://www.ohchr.org/english/law/crc.htm> (last visited Aug. 7, 2007). For the status of signatures, ratifications, and accessions, see the OHCHR Web site, <http://www.ohchr.org/english/countries/ratification/11.htm> (last visited July 27, 2007).

¹⁰ G.A. Res. A/RES/54/263 of 25 May 2000. For an online text, see the UNHCHR Web site, <http://www.unhcr.ch/html/menu2/dopchild.htm> (last visited Aug. 7, 2007). For the status of ratifications and reservations, see the OHCHR Web site, http://www.ohchr.org/english/countries/ratification/11_c.htm (last updated July 13, 2007) (last visited Aug. 3, 2007).

¹¹ G.A. Res. 2200A (XXI), 21 U.N. GAOR, 21st Sess., Supp. (No. 16) at 49, U.N. Doc. A/6316 (Dec. 16, 1966), 993 U.N.T.S. 3. For an online text, see the OHCHR Web site, <http://www.ohchr.org/english/law/cescr.htm> (last visited Aug. 7, 2007). For the status of ratifications and reservations, see the OHCHR Web site, <http://www.ohchr.org/english/countries/ratification/3.htm#ratifications> (last visited Aug. 7, 2007).

¹² G.A. Res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46. For an online text, see the U.N. Division of the Advancement of Women Web site, <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm#article1> (last visited Aug. 7, 2007). A list of the status of signatures, ratifications, and accessions is available on the same Web site, at <http://www.un.org/womenwatch/daw/cedaw/states.htm> (last visited Aug. 7, 2007). China made a reservation to paragraph 1 of article 29 with regard to dispute resolution.

¹³ 2002 GAZETTE OF THE STANDING COMMITTEE OF THE NATIONAL PEOPLE'S CONGRESS 308 (P.R.C.) (official source). See also 2003 ZHONGGUO FALV NIANJIAN [2003 CHINA LAW YEARBOOK] 701 (official source). For an online text for the convention, see the OHCHR Web site, <http://www.ohchr.org/english/law/childlabour.htm> (last visited Aug. 7, 2007).

¹⁴ 2005 GAZETTE OF THE STANDING COMMITTEE OF THE NATIONAL PEOPLE'S CONGRESS 371 (P.R.C.) (official source). See also, 2006 ZHONGGUO FALV NIANJIAN [2006 CHINA LAW YEARBOOK] 491 (official source). For an online text, see the HCCH Web site, http://www.hcch.net/index_en.php?act=conventions.text&cid=69 (last visited Aug. 7, 2007).

CRC on the inherent right to life, stating that China shall fulfill its obligation provided by this article under the prerequisite of planned birth provided by Article 25 of the PRC Constitution.¹⁵

In addition, China signed but did not ratify the International Covenant on Civil and Political Rights 1966 on October 5, 1998, which, up to now, has not taken effect in China.¹⁶

With regard to the implementation of its promises for international cooperation, the Chinese government reported in its 2004 human rights white paper that it “conscientiously wrote its first reports on the implementation of the “International Covenant on Economic, Social and Cultural Rights” and the “Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography.”¹⁷ It also claimed to have held a seminar on the questionnaire of the UN Independent Expert on Violence against Children, “given an honest, detailed answer to it, and submitted it to the United Nations.”¹⁸ In addition, “in December 2004, China submitted to the United Nations its answer to the questionnaire on child pornography on the Internet based on careful study.”¹⁹

III. Child Health and Social Welfare

The PRC Law on Maternal and Infant Health Care

The primary law governing child health in China is *The PRC Law on Maternal and Infant Health* (promulgated by the NPC Standing Committee, effective June 1, 1995) (Maternal and Infant Health Law).²⁰ According to Article 2 of the Maternal and Infant Health Law, “[t]he State shall develop maternal and infant health care projects and provide the necessary environments and material aids so as to ensure that mothers and infants receive medical and health care services.” As the body authorized to implement the law, the PRC State Council (China’s cabinet) issued an *Implementation Rules of the Maternal and Infant Health Law* in 2001.²¹

The 135-article law covers pre-marital healthcare, pre-natal and post-natal healthcare, administrative provisions for medical assistance and facilities for treatment and health. The law requires medical institutions to offer pre-marital healthcare service, including health instruction, consultation, and medical examination.²² In cases of certain serious genetic disease found through the examination, long-term contraceptive measures or performance of tubal ligation operations shall be taken upon the agreement of the marrying couple.²³ Medical institutions are also required to provide pre-natal and post-

¹⁵ G.A. Res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989); 28 I.L.M. 1448 (1989). See also 1991 GAZETTE OF THE STANDING COMMITTEE OF THE NATIONAL PEOPLE’S CONGRESS 662 (P.R.C.) (official source).

¹⁶ G.A. Res. 2200A (XXI), 21 U.N. GAOR, 21st Sess. Supp. (No. 16) at 52, U.N. Doc. A/6316 (Dec. 16, 1966), 999 U.N.T.S. 171. For an online text, see the OHCHR Web site, <http://www.ohchr.org/english/law/ccpr.htm> (last visited Aug. 7, 2007). For the status of ratifications, see the OHCHR Web site, <http://www.ohchr.org/english/countries/ratification/4.htm> (last visited Aug. 7, 2007).

¹⁷ The Information Office of the PRC State Council, *China’s Progress in Human Rights in 2004*, available at the official news Web site, http://news.xinhuanet.com/english/2005-04/13/content_2822511.htm.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Muying Baojian Fa [Law on Maternal and Infant Health] (promulgated by the NPC Standing Committee, effective June 1, 1995), 1994 FAGUI HUIBIAN 158 (official source).

²¹ Muying Baojian Fa Shishi Banfa [Implementation Rules of the Maternal and Infant Health Law] (promulgated by the State Council, effective June 20, 2001). ChinaLawInfo (Chinalawinfo for ID No. 35752) (unofficial source).

²² *Id.*, art. 7.

²³ *Id.*, art. 10.

natal healthcare, including instructions, healthcare services for pregnant women, lying-in women, fetuses, and newborns.²⁴

It is worth noting that although the law sets up the duties for medical institutions and local governments in offering and assisting maternal and infant healthcare, the services are not always free. The only service clearly provided by this law to be free is in Article 19: “The operations of terminating gestation or ligation operations in accordance with the law are free of any charge.”²⁵

Medical Insurance

China has been in the process of reforming the health care system for more than one decade. Under the old system implemented in the planned economy, “the labor insurance system” provided that all the “socialist workers” get healthcare from the state for free, with children’s healthcare covered through their parents’ labor insurance. According to article 13 of *The 1950 PRC Regulation on the Labor Insurance*, a worker’s medical bill shall be paid by the state-owned enterprises for which he or she works, and their children get fifty percent of their medical costs reimbursed.²⁶

The labor insurance was replaced by “the employee’s basic medical insurance” in 1998. The State Council of China issued *The Decision on Establishing the Urban Employees’ Basic Medical Insurance System* at the end of that year.²⁷ Children’s health care is not covered in this decision, which actually pushes them out of the state’s medical insurance system.²⁸ The State Council is now considering a new medical insurance system, aiming to cover children and other citizens who are not eligible to join the employees’ basic medical insurance. Local governments, especially those in developed areas, are establishing local medical insurance systems for the children residing in those areas.²⁹

Birth Control

Birth control is established by the Chinese Constitution as a fundamental policy of the nation.³⁰ Citizens bear the statutory obligation to practice birth control under the law.³¹ *The PRC Law on the Population and Family Planning* “advocates” one couple to have only one child, with exceptions provided by provincial-level population control regulations when a couple “may apply” to have two children (most likely to couples in rural areas whose first child is female).³²

²⁴ *Id.*, art. 14.

²⁵ *Id.*, art. 19 § 2.

²⁶ Laodong Baoxian Tiaoli [Regulation on the Labor Insurance] (promulgated by Zhengwu Yuan (then China’s cabinet), effective Feb. 26, 1951). ChinaLawInfo (Chinalawinfo ID No. 44332) (unofficial source).

²⁷ Guowuyuan Guanyu Jianli Chengzhen Zhigong Jiben Yiliao Baoxian Zhidu de Jueding [The Decision on Establishing the Urban Employees’ Basic Medical Insurance System] (issued by the State Council on Dec. 14, 1998). ChinaLawInfo (Chinalawinfo ID No. 21638) (unofficial source).

²⁸ The State Council Instructive Opinions on Launching Testing of Urban Residents Basic Insurance (July 10, 2007), available at the central government official Web site: http://www.gov.cn/zwqk/2007-07/24/content_695118.htm.

²⁹ *E.g.*, Suzhou, a rich city of Jiangsu Province in east China, implemented the Children’s In-Hospital Medical Insurance System. *Ertong Dabing Yiliao Baozhang Xu Jinkuai Quanguo Tongyi* [Children’s Major Medical Insurance Needs to be Uniformed throughout the Country], http://news.xinhuanet.com/comments/2007-03/05/content_5800253.htm (last visited Aug. 7, 2007).

³⁰ Article 25 of the PRC Constitution reads: “The state promotes family planning so that population growth may fit the plans for economic and social development.” XIAN FA art. 25 (1982) (P.R.C).

³¹ Renkou Yu Jihua Shengyu Fa [Law on the Population and Family Planning] (promulgated by the NPC Standing Committee, effective Sept. 1, 2002), art. 17, 2001 FALÜ HUIBIAN 316, 320 (official source).

³² *Id.*, art. 18, 2001 FALÜ HUIBIAN 316, 320 (official source).

The government, however, implements the “advocated” policy strongly, which is widely criticized to be violating international human rights standards set up in the international children’s right documents mentioned in above part II. The Congressional-Executive Commission on China (CECC) detailed the coerced compliance with the policy performed by the officials to be “through a system marked by pervasive propaganda, mandatory monitoring of women’s reproductive cycles, mandatory contraception, mandatory birth permits, coercive fines for failure to comply, and in some cases, forced sterilization and abortion.”³³ In its 2007 Annual Report, the CECC concludes that in 2007:

China continues to implement population planning policies that violate international human rights standards. These policies impose government control over women’s reproductive lives, result in punitive actions against citizens not in compliance with the population planning policies, and engender additional abuses by officials who implement the policies at local levels. In 1007, the Party and government leadership reaffirmed its commitment to its population planning policies, and continues to implement such actions as charging large “social compensation fees” to families that bear children “out of plan.”³⁴

IV. Education, including Special Needs

Compulsory Education

The PRC Law on Compulsory Education (Compulsory Education Law) codifies school-age children the right to receive nine years of compulsory education (a six-year primary school and a three-year middle school).³⁵ The law lays down the principle that the state shall establish a funding system to guarantee implementation of compulsory education.³⁶ Under the Compulsory Education Law, children shall be sent to school at the age of six (or seven in the undeveloped areas) to receive education, and no tuition fees and miscellaneous fees shall be charged during the nine years of compulsory education.³⁷ In order to promote balanced development of all the schools, the local government educational authorities are prohibited from dividing schools into key schools and ordinary schools, and the schools are prohibited from dividing classes into elite classes and non-elite classes, which were actually the common situation before implementation of the law.³⁸ The law also bans any entrance examinations for basic education.³⁹

The curriculum in all Chinese schools is decided by the governmental educational authority, namely the Ministry of Education.⁴⁰ Text books will be reviewed and may be censored by the government and may not be used without pre-approval of the state.⁴¹

The local-level government implementation of their statutory obligations of compulsory education varies from the economically developed east to the undeveloped west, from urban areas to the rural areas. According to a report by an official news agency in 2006, China “will exempt primary and

³³ CONGRESSIONAL EXECUTIVE COMMISSION ON CHINA, 2007 ANNUAL REPORT 108, available at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_house_hearings&docid=f:38026.pdf (last visited Aug. 7, 2007).

³⁴ *Id.*, at 16.

³⁵ Yiwu Jiaoyu Fa [The PRC Law on Compulsory Education](promulgated by the NPC Standing Committee on April 12, 1986, amended June 29, 2006, effective Sept. 1, 2006), art 2, VII 2006 XIN FAGUI HUIBIAN 6 (official source).

³⁶ *Id.*, art. 2 § 4.

³⁷ *Id.*, arts. 2 and 11.

³⁸ Before the middle 1980s, because educational resources were scarce, selected “key schools” — usually those with records of past educational accomplishment — were given priority in the assignment of teachers, equipment, and funds. They were also allowed to recruit the best students for special training to compete for admission to top schools at the next level.

³⁹ *Id.*, art. 12.

⁴⁰ *Id.*, art. 35.

⁴¹ *Id.*, art. 39.

junior high school students in its rural west from tuition and other education expenses this year, pledging to implement similar policies in other areas starting 2007,”⁴² evidencing that at least in the western rural areas, compulsory education has not been fully established. The government published a national net enrollment statistic ratio to primary schools, which is 99.2% in 2005.⁴³ This number may have excluded the children of the migrant workers in the cities, who are not present at their household registration addresses and therefore hard to be calculated in the statistics. Their education resources are so insufficient that in 2003, the State Council circulated an official notice urging the local-level governments to improve equal education rights of the migrant children, in which it admits that the education of the migrant children has been an increasingly difficult problem of the county.⁴⁴ Approximately 9.3% of the migrant children do not get access to schools in the cities, according to a report of the China Youth Daily, a government related newspaper.⁴⁵

Special Education for Disabled Children

The local government at or above county level is required to set up special schools to provide compulsory education for school-age children who have disabilities in vision, hearing, and intelligence.⁴⁶ These special schools are to be equipped with sites and facilities which adapt to the study, recovery, and living needs of the disabled children.⁴⁷ For those special-needs children who are capable of studying in the ordinary school, the schools must accept them without discrimination and provide aids for their study and recovery, according to the law.⁴⁸

Correctional Education and Work-Study Schools

The local government is also required to set up special schools for children “who perpetrate serious misbehaviors” as specified in *The Law on Prevention of Juvenile Delinquency* (Prevention Law) as a part of the compulsory education.⁴⁹

The Prevention Law took effect from 1999, aiming to prevent juveniles from committing criminal offenses and assisting in rehabilitation.⁵⁰ The law prohibits parents and other guardians from leaving children under the age of sixteen to live alone.⁵¹ Violation of this provision may result in a reprimand from the public security authorities.⁵²

⁴² *China Pledges Free 9-year Education for Students in Rural West*, XINHUA NEWS AGENCY (Feb. 21, 2006), available at http://english.peopledaily.com.cn/200602/21/eng20060221_244658.html.

⁴³ China Education Statistics, available at <http://www.stats.edu.cn/sjcx.aspx#> (last visited Aug. 7, 2007).

⁴⁴ Guowuyuan Bangongting Zhuanfa Jiaoyubu Deng Bumen Guanyu Jinyibu Zuohao Jincheng Wugong Jiuye Nongmin Zinv Yiwu Jiaoyu Gongzuo Yijian De Tongzhi [State Council Circular Transmitting the Opinion of the Education and Other Ministries Relating to Further Work on Migrant Children's Compulsory Education] (Sept. 17, 2003), available at the online subscription Chinese law database Chinalawinfo (Chinalawinfo ID no. 52706).

⁴⁵ Woguo Liudong Ertong Shixuelv Gaoda 9.3% [The Dropout Rate from School of Floating Children in China Is as High as 9.3%], CHINA YOUTH DAILY (May 14, 2004), available at <http://news.sina.com.cn/c/2004-05-14/16023231841.shtml>.

⁴⁶ Compulsory Education Law, art. 19.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*, art. 20.

⁵⁰ Yufang Wei Chengnian Ren Fanzui Fa [The Law on Prevention of Juvenile Delinquency] (promulgated by the NPC Standing Committee, effective Nov. 1, 1999). 1999 GAZETTE OF THE STANDING COMMITTEE OF THE NATIONAL PEOPLE'S CONGRESS 276 (P.R.C.) (official source).

⁵¹ *Id.*, art. 19.

⁵² *Id.*, art. 50.

The Prevention Law spells out a list of “serious misbehaviors,” which refers to certain offenses that “seriously harm the society but are not enough for criminal punishment.”⁵³ For a juvenile who has committed such offenses, his parents or other guardians may apply, through approval of the government educational authorities, to send him to one of the special correctional work-study schools.⁵⁴ It is worth noting that before the law took effect in 1999, it was not necessary that the parents or guardians agree to special placement; it could simply be enforced by the public security authorities. It is reported that the first work-study school was established in Beijing in 1955; the highest number of such schools around the country was 180; by 2004, however, only eighty-three were left.⁵⁵ The curriculum provided in such work-study schools is to be consistent with the ordinary schools, with additional “education on legality.”⁵⁶

V. Child Labor and Exploitation

The minimum age for working in China is sixteen. Before *The PRC Labor Law* (Labor Law) was passed in 1994, the State Council issued *The Provisions on the Prohibition of Using Child Labor* (Child Labor Provisions) in 1991, which were amended in 2002.⁵⁷ In 2003, eight central government authorities including the Ministry of Labor, the Ministry of Public Security, and the Ministry of Education jointly issued a notice to reinforce implementation of Child Labor Provisions.⁵⁸

Article 15 of the Labor Law prohibits an employer to recruit minors under the age of sixteen, with exception made for institutions of literature, art, physical culture, and special crafts which may recruit minors through investigation and approval of the government authorities, and must guarantee the minors' rights to compulsory education.⁵⁹ Using child labor without government approval may result in RMB5,000 (equivalent to about USD \$660) fine per child worker per month.⁶⁰

Despite the legislative requirements, the practice of child labor is believed to be “a persistent problem within China” by some China watchers.⁶¹ Though the CECC agrees that “the overall extent of child labor in China is unclear due to the government categorizing data on the matter as ‘highly secret,’”⁶² it cited a report on child labor in China finding that “child labors generally work in low-skill service sectors as well as small workshops and businesses, including textile, toy, and shoe manufacturing enterprises.”⁶³

VI. Sale and Trafficking of Children

⁵³ *Id.*, art. 34.

⁵⁴ *Id.*, art. 35.

⁵⁵ *Guanzhu Weichengnian Ren: Shemeyang de Haizi Song Gongdu Xuexiao?* [Focus on Minors: To Send What Kind of Children to the Work-Study School?], an official Xinhua News Agency report, available at http://news.xinhuanet.com/newscenter/2004-05/26/content_1491207.htm (last visited Aug. 7, 2007).

⁵⁶ *Id.*, art. 36.

⁵⁷ *Jinzhì Shiyong Tonggong Guiding* [The Provisions on the Prohibition of Using Child Labor] (promulgated by the State Council, effective April 15, 1991, amended Oct. 1, 2002, effective Dec. 1, 2002). 2002 FAGUI HUIBIAN 1210 (official source).

⁵⁸ *Guayun Guanche Luoshi Jinzhì Shiyong Tonggong Guiding de Tongzhi* [Notice on Implementation of the Child Labor Provisions] (April 18, 2003), iSinoLaw (iSinoLaw ID No. 10063 -2004579) (last visited Aug. 7, 2007).

⁵⁹ *Lao Dong Fa* [Labor Law] (promulgated by the NPC Standing Committee, effective Jan. 1, 1995), art. 15. 1994 FAGUI HUIBIAN 91, 94 (official source).

⁶⁰ Child Labor Provisions, art. 6.

⁶¹ *E.g.*, The CECC 2007 Annual Report, *supra* note 33, at 70).

⁶² *Id.*

⁶³ *Id.*

China is on the “Tier 2 Watch List” in the U.S. State Department Trafficking in Persons Report. According to this report, “The People’s Republic of China is a source, transit, and destination country for men, women, and children trafficked for the purposes of forced labor and sexual exploitation. A significant number of Chinese women and children are trafficked internally for forced marriage and forced labor.” The report admits the PRC government is making significant efforts to comply with the minimum standards for the elimination of trafficking. Its placement on the Tier 2 Watch List is due to its failure to provide evidence of increasing efforts to combat trafficking, specifically its inadequate protection for trafficking victims, particularly foreign women and P.R.C. women identified from Taiwan.⁶⁴

The Chinese government claims that it has taken effective measures to prevent and severely punish crimes in the trafficking of women and children, in the national report on child development mentioned above.⁶⁵

Crime of Abducting and Trafficking a Woman or Child

To commit the crime of abducting and trafficking a woman or child in China may result in a range of punishments from five years imprisonment to the death penalty, according to *The PRC Criminal Law*.⁶⁶ One of the circumstances the judge may consider in imposing a heavier sentence is whether the abducted child has been sold abroad.⁶⁷ Buying an abducted child may result in up to three years imprisonment.⁶⁸

Age of Consent for Marriage

The PRC Marriage Law sets the minimum age of marriage at twenty-two for a male and twenty for a female.⁶⁹

Statutory Rape

Having sexual intercourse with a girl under fourteen years of age is statutory rape, with a sentence of heavier punishment within the range of punishments for rape.⁷⁰ Committing rape in China may result in sentencing of a fixed-term imprisonment from three years to ten years, and if one of a list of “serious circumstances” spelled out in The PRC Criminal Law happens, a fixed-term imprisonment from ten years up to the death penalty may be imposed. The “serious circumstances” include (i) raping women or minors; (ii) raping a number of women or girls under the age of fourteen; (iii) raping a woman in public; (iv) raping in rotation by more than two offenders; and (v) causing serious injury or death to the victim or any other serious consequences.⁷¹

Indecent Assault

⁶⁴ THE U.S. DEPARTMENT OF STATE, 2005 REPORT VICTIMS OF TRAFFICKING AND VIOLENCE PROTECTION ACT OF 2000: TRAFFICKING IN PERSONS REPORT, available at <http://www.state.gov/g/tip/rls/tiprpt/2005/> (last visited Aug. 7, 2007).

⁶⁵ The National Working Committee report, *supra* note 34.

⁶⁶ Xing Fa [Criminal Law], art. 240. 1997 FAGUI HUIBIAN, 18, 83 (official source).

⁶⁷ *Id.*, art. 240 §8.

⁶⁸ *Id.*, art. 241.

⁶⁹ Hun Yin Fa [Marriage Law] (promulgated by the NPC, amended and effective April 28, 2001), art. 6. 2001 GAZETTE OF THE STANDING COMMITTEE OF THE NATIONAL PEOPLE’S CONGRESS 40 (P.R.C.) (official source).

⁷⁰ Criminal Law, art. 236.

⁷¹ *Id.*

Indecent assault against a woman's will, or by force, may result in up to five years imprisonment. If the offence happens in public, the sentence may be over five years.⁷² Fingering or sodomy committed against minors under fourteen years old may result in heavier punishment in the abovementioned range of punishments.⁷³

Child Prostitution

Promiscuity may result in imprisonment for up to five years or forced labor under the PRC Criminal Law. Those who lure minors into promiscuity will be punished by a heavier penalty.⁷⁴

Organizing or compelling others to prostitution may result in fixed-term imprisonment from five years to ten years and a fine. Organizing or compelling girls under the age of fourteen to prostitution, however, may result in a fixed-term imprisonment from ten years to life imprisonment or even the death penalty and confiscation of property.⁷⁵

Inducing girls under the age of fourteen into prostitution may result in fixed-term imprisonment of five years and fine.⁷⁶

Having sex with girls under the age of fourteen who are acting as prostitutes may result in a fixed-term imprisonment of five years and fine.⁷⁷

Child Pornography

The PRC Criminal Law does not specifically regulate child pornography. Distributing pornography to minors under age eighteen is punishable by a heavier penalty within the punishments for distributing pornography.⁷⁸

VII. Juvenile Justice

Age Requirement for Bearing Criminal Responsibility

The general age requirement for bearing criminal responsibility under Chinese law is sixteen. A person aged from fourteen to sixteen bears criminal responsibility in intentionally committing serious criminal offenses spelled out in the Criminal Law, including homicide, rape, and robbery. An offender aged from fourteen to eighteen shall be given a lighter or mitigated punishment.⁷⁹ An offender under the age of fourteen does not result in criminal punishments under Chinese law.

Judicial Protection of the Juvenile

⁷² *Id.*, art. 237.

⁷³ *Id.*

⁷⁴ Criminal Law, art. 301.

⁷⁵ Criminal Law, art. 358.

⁷⁶ Criminal Law, art. 359.

⁷⁷ Criminal Law, art. 360 §2.

⁷⁸ Criminal Law, art. 364 §4.

⁷⁹ Criminal Law, art. 17.

The Minors Protection Law requires the judiciary to protect minors' legal rights during judicial proceedings.⁸⁰ There are ten articles in this law specifically dealing with judicial protection. Unfortunately, most of these legislative declarations are not enforced effectively in practice.⁸¹

Article 51 of the Minors Protection Law provides prompt trial of cases brought by minors whose lawful rights and interests are injured. However, no specific time line is found in this law to decide how prompt the case shall be brought to trial.⁸² This article also requires the legal aid institutions or the courts to provide legal aid to the minors, which in practice is yet not fulfilled.⁸³ Article 52 requires the court to protect the property rights of the minors, and respect the minors' wishes in handling the disputes over foster care.⁸⁴ This article just repeats existing laws. Article 57 provides separate custody or imprisonment of minors from an adult jail or prison population, and provides for compulsory education for minors in prison.⁸⁵ Article 55 requires the judiciary to appoint a special institution or personnel to handle juvenile cases. Up to 2007, China is reported to have organized 2420 juvenile tribunals in the courts around the country.⁸⁶ Broadcasting of any information on minor criminal offenders is prohibited.⁸⁷

Prepared by Laney Zhang
Foreign Law Specialist
August 2007

⁸⁰ The Minors Protection Law, art. 50.

⁸¹ See Fan Rongqing, *Weichegnian Ren Sifa Baohu de Kunjing Yu Sikao [Difficulties of and Thoughts on Judicial Protection of Minors]*, 2 QINGSHAONIAN FAZUI WENTI [ISSUES ON JUVENILE CRIMES AND DELIQUENCY] 42-45 (2005). According to the author, a prosecutor in the People's Procuratorate in Shanghai, the Minors Protections Law has never been cited by the court when trying cases with minors as defendants. *Id.* at 43.

⁸² *Id.*, art. 51 §1.

⁸³ *Id.*, art. 51 §2.

⁸⁴ *Id.*, art. 52.

⁸⁵ *Id.*, art. 57.

⁸⁶ Tian Yu, *Zhongguo Shaonian Fating Goujian Shiying Wei Chengnian Ren Tedian Shenpan Zhidu [China Juvenile Tribunals Forming Judicial Systems Adapted to the Minors Characteristics]*, CHINA COURT NET (June 1, 2007), <http://www.chinacourt.org/public/detail.php?id=249471> (last visited Aug. 7, 2007).

⁸⁷ The Minors Protection Law, art. 58.