



ngo group for the crc

STATE PARTY EXAMINATION OF CHINA'S INITIAL REPORT ON THE OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE CHILD ON THE SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY

40TH SESSION OF THE COMMITTEE ON THE RIGHTS OF THE
CHILD

12 - 30 SEPTEMBER 2005

Contents

Opening Comments.....	1
Sale of Children.....	1
Child Prostitution.....	2
Child Pornography.....	2
Other Issues.....	3
Macao SAR.....	4
Hong Kong SAR.....	4

The Optional Protocol (OP) was ratified by the People's Republic of China (China) in 2002, entering into effect in 2003 and applying to Mainland China and Macao Special Administrative Region. On 20 September 2005, the Committee on the Rights of the Child (the Committee) examined China's Initial Report.

Opening Comments

The delegation consisted of 17 representatives from the central government, 7 representatives from the Hong Kong SAR and 9 from Macao SAR, headed respectively by H.E. Ambassador Sha Zukang, Mr Stephen Fisher and Mr Jorge Costa Oliveira.

The Committee congratulated China for ratifying the OP without any reservations, but was concerned that there was no plan of action for its implementation. The predominant role of the Ministry of Public Security was perhaps not appropriate, with a focus on suppressing these crimes rather than addressing their socioeconomic causes. Legislation needed to be brought into line with the Optional Protocol.

Sha explained that the government was working on a programme of action at national level. He recognised that there were weaknesses regarding the implementation of the OP. Cooperation between the government and NGOs could be increased and more work was needed to mobilise the entire society. Professionals required greater training; a more diversified approach was needed with regard to prevention; and the relevant facilities for abducted children and their reintegration into society needed improving.

Sale of Children

The Committee noted that cross-border trafficking of children was a real concern, with China exhibiting both inbound and outbound trafficking. They asked if there were plans to address the root causes of this problem and to establish cooperation with neighbouring countries. The Committee further noted the need for disaggregated data for boys and girls. The delegation responded that China had been trying to suppress crimes involving the sale of children and women since the 1980s, with a

focus on trying to rescue children and send them back to their places of origin. The Penal Code did not specifically mention human trafficking but rather referred to the abduction and sale of women and children, with a focus on children under 14. The maximum sentence for such crimes before 1997 had been five to seven years imprisonment but there could be life imprisonment and, in extreme cases, even the death sentence.

In terms of cooperation with other countries, the delegation explained that there were agreements signed with the police authorities in neighbouring countries such as Vietnam, Cambodia, Laos and Thailand. Extradition treaties had been signed with 21 countries, judicial assistance treaties with 32 countries, and police cooperation agreements with 41 countries including a prominent place for the crime of the sale of women and children. A project focussing on the sale of Vietnamese children to China had resulted in 170 women being freed and over 70 criminals arrested, more than 50 were Vietnamese who were in violation of the immigration law of China.

With regard to prevention, the government was cooperating with UNESCO, the Commission on Human Rights and Equality of Australia, the Children's Organisation of the United Kingdom, and the ILO. Awareness-raising campaigns in the countryside included various materials, posters and textbooks. The Ministry of Public Security had an information centre in operation for five years, with specific information regarding women rescued and those not rescued and data on transnational crimes including the names of suspects and traffickers already sentenced. The delegation emphasised that there were quite accurate figures on the abduction of children since such cases were normally reported by the parents. However, with regard to women there could sometimes only be data once women had been rescued. Estimates indicated that the number of women abducted but not yet freed was around 400, and efforts were being made to trace their whereabouts.

The Committee expressed concerns about reported cases of babies sold for international adoption and asked if there might be a connection between the sale of children and international adoption and what measures were being taken.

Child Prostitution

The Committee noted with concern the problem of sexual exploitation or "sex tourism" of children and asked what was done to prevent such practices as well as the rehabilitation services in place. The delegation noted that prostitution was illegal and there were no legitimate red light districts or brothels. Nevertheless, the issue had recently become a matter of great concern and in 1997 the Penal Code was revised to include a reference to child prostitution, with the drafting of further specific regulations. Management of massage salons and other institutions of pleasure had been tightened, with regular inspections and increased regulations. In the period 2000-4, more than 125,000 individuals had been convicted of inducing girls to engage in prostitution. Supervision had been tightened to fight sex tourism. The Youth League and its relevant counterparts had initiated a cross-border programme to disseminate information and increase awareness. There had also been positive results registered through cooperation with British organisations to prevent abductions within the communities and the programme would be extended into other parts of China.

The Committee asked what would happen to a girl of 16 caught engaging in prostitution, whether forced to do so or simply trying to earn money. The delegation explained that a girl forced against her free will would be placed under protection with a focus on fighting those who brought her into prostitution. In the case of voluntary prostitution, a girl over the age of 16 would be placed in a re-education centre for three months, questioned, given medical treatment if required and education, and usually sent home after three months.

Child Pornography

The Committee commended the measures adopted by China but noted the increase in the crime of child pornography around the world. It asked about the extent of national and international coordination to punish such crimes. The delegation noted there were many types of products that

needed to be targeted in the fight against child pornography. An institution had been set up under the All China Media Administration to fight pornographic and other illegal publications, trying to block the sea routes and targeting such publications as cartoons in the form of a pocket book for children. The Ministry of Culture had established an expert group to supervise work in fighting violent and pornographic audio and video products. There was also a nationwide institution set up to fight the spread of pornographic messages and images via mobile phones, with the licences of many telephone stations engaging in such activities being removed.

The Committee noted the use of modern technology and the need for rapid action to alter legislation, asking how punishments would be applied to those aware of the existence of pornographic material in their own computers or in borrowed machines. They enquired about the agreements that had been made with internet service providers and asked how children's needs to use internet services could be fulfilled while ensuring proper protection. The delegation declared that the fight against internet pornography had been intensified. There were two parts to this problem. First, there was direct communication with children through websites, emails, chat, and so on to spread or induce sexual services. Second, there was the use of the computer as a mechanism to copy different pornographic and violent products. The restrictions on internet cafés were intended to clamp down on "blacknet cafés", which operated without licences. In the event of a discovery of pornographic content, such material would be eliminated while protecting the identity of the provider. Cases would then be handled according to the law. The aim was to provide a better environment for children, with many children's portals and encouragement of access for children with the help of parents, teachers and guardians.

Other Issues

The Committee noted that there was no precise definition of the child in domestic legislation prohibiting conduct under the OP. The delegation responded that the terms in Chinese law were consistent with the CRC with regard to their legal meaning.

The Committee asked about the possibility of the government choosing not to prosecute a Chinese national who had committed a crime abroad and recommended that the government extend jurisdiction to include Chinese offenders outside of Chinese territory. The delegation explained that a Chinese national committing a crime abroad and punishable for a sentence of less than three years imprisonment would not need to be prosecuted in Chinese criminal law. If the country in which the crime was committed did not punish the individual or meted out a very light punishment, it was possible to prosecute that person according to the Chinese penal code but this had never occurred. With regard to extradition, the Chinese policy was to reject all requests for extradition to another state. However, the relevant country would be asked to provide documents and other evidence to enable China to establish jurisdiction and prepare the prosecution of the alleged offender.

The Committee expressed concern that children's views were only heard through a guardian or legal representative in court proceedings. The delegation explained that children had the right to participate in legal procedures but that they could ask an agent to speak for them if they did not wish to appear in court. This did not, however, negate the child's right to participate.

The Committee was further concerned about the possibility of the "re-victimisation" of an already vulnerable child subjected to difficult court proceedings and asked about the provision of psycho-social assistance and other support services. The delegation explained that the court ensured that private materials were not disclosed before, during, or after the trial. Child victims could provide written comments and be represented by an agent and so be excused from appearing in court. No psycho-social assistance was provided by the court. Such assistance was instead the responsibility of governmental child protection agencies or other social entities and public security organs.

Macao SAR

The Committee referred to reports of Macao becoming "the next Las Vegas" and expressed concern about the associated problems such as organised crime and prostitution. The delegation recognised the problems related to the increase in gambling and maintained that Macao was preparing for a greater impact on the social tissue of the region. A number of proactive measures were being taken and international standards such as not allowing minors into the gaming areas or neighbouring bars would be specifically laid out in laws, with enhanced supervision.

In terms of sexual exploitation, the delegation explained that there was no specific programme but there was constant monitoring of compliance with the law. Prostitution was not illegal but the exploitation of prostitution was illegal. Macao was trying to curtail the negative effects of the cross-border trafficking and acknowledged that the statistics probably did not accurately reflect the numbers of children involved. Numbers had been growing, from 98 cases in 2002 to 174 cases in 2004.

The Committee asked about data on the number of internet users and enquired about Macao's approach with regard to child internet users. The delegation had no data on child pornography and the internet, but would send such data at a later date.

Hong Kong SAR

The Committee expressed hope that Hong Kong would expedite its process of acceding to the OP. The delegation noted that Hong Kong had every intention to sign the OP and would hopefully present its Initial Report at the next session. The delegation explained that the reason for the omission was a technical one: the common law jurisdiction of the Hong Kong SAR required the introduction of specific legislation or an amendment of existing laws. Articles 26 and 27 of the Vienna Convention on the Law of Treaties meant that a state could not invoke an internal law as justification for its failure to abide by an international obligation. They noted, however, that the laws conformed quite closely to the OP and that any differences were small. The sale of children and child prostitution were illegal and as far as they knew non-existent.

The Prevention of Child Pornography bill aimed to limit the production and dissemination of pornography and to prevent the spread of materials abroad and sex tourism. In December 2003, 42 persons were arrested for pornography-related offences; 28 of these were charged after investigations, and 22 were convicted. The delegation noted that prostitution itself was not a crime; rather, the crime consisted in living off the earnings of prostitution or organising a brothel.