Seminar on the Convention on the Rights of the Child and its Domestic Implementation

Beijing, 1st July 2009

Working Report
Seminar on the Convention on
the Rights of the Child and its Domestic
Implementation

Beijing, 1st July 2009
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agenda</td>
<td>2</td>
</tr>
<tr>
<td>List of participants</td>
<td>4</td>
</tr>
<tr>
<td>Convention on the Rights of the Child (CRC): General presentation</td>
<td>6</td>
</tr>
<tr>
<td>Mrs Paola Riva Gapany, Deputy Director of International Institute for</td>
<td>6</td>
</tr>
<tr>
<td>the Rights of the Child</td>
<td></td>
</tr>
<tr>
<td>Where do Children’s Rights stand?</td>
<td>15</td>
</tr>
<tr>
<td>Mr Jean Zermatten, Director of International Institute for the Rights</td>
<td>15</td>
</tr>
<tr>
<td>of the Child, Vice-President of the UN Committee for the Rights of the</td>
<td></td>
</tr>
<tr>
<td>Child</td>
<td></td>
</tr>
<tr>
<td>Participation rights and the case of children in street situations</td>
<td>28</td>
</tr>
<tr>
<td>Mr Daniel Stoecklin, Scientific collaborator at International Institute</td>
<td>28</td>
</tr>
<tr>
<td>for the Rights of the Child</td>
<td></td>
</tr>
<tr>
<td>On Child Participation in China</td>
<td>44</td>
</tr>
<tr>
<td>Mrs. Zhan Wenjuan, Vice Director, Beijing Juvenile Legal Aid and</td>
<td>44</td>
</tr>
<tr>
<td>Research Center</td>
<td></td>
</tr>
<tr>
<td>Discussion</td>
<td>51</td>
</tr>
</tbody>
</table>
AGENDA
Beijing July 1, 2009

08:30–09:00 Opening Ceremony

Chairperson: Associate Prof. Liu Huawen
Director, Department of Research Administration, Institute of Law, Chinese Academy of Social Sciences (CASS)

Opening Remarks:
Dr. Guan Jian
Vice Director, Department of Law and Treaty, Foreign Ministry, People’s Republic of China

Prof. Jean Zermatten
Vice-Chairperson of the UN Committee on Rights of the Child (CRC Committee), Director of the International Institute for the Rights of the Child (IDE) (Switzerland)

09:00-12:00 Part ONE: Convention on Rights of the Child (CRC) and its Basic Principles

Chairperson: Associate Prof. Liu Huawen
Director, Department of Research Administration, Institute of Law, Chinese Academy of Social Sciences (CASS)

09:00-10:40 Speeches by IDE Experts

Speakers:
1. Speaker Mrs Paola Riva Gapany
Deputy Director of the International Institute for the Rights of the Child (IDE)
Topic: Convention on the Rights of the Child (CRC): General presentation

2. Speaker Prof. Jean Zermatten
Vice-Chairperson of the UN CRC Committee, Director of the IDE
Topic: Where do Children’s Rights stand?

Discussant: Prof. Feng Rui, Institute of Law, CASS

10:40-11:00 Tea Break
11:00-12:00 Discussion
12:00-13:30 Lunch
13:30-17:00  Part Two Rights to Participation of the Child

13:30-14:50  Speeches by both IDE and Chinese Experts

Chairperson:
Prof. Wang Xuemei  Director, Editorial Office, Global Law Review, Institute of Law, CASS

Speakers:
1. Speaker  Mr Daniel Stoecklin  Scientific Collaborator of the IDE  
   Topic: Participation rights and the case of children in street situations

2. Speaker  Mrs. Zhan Wenjuan  Vice Director, Beijing Juvenile Legal Aid and Research Center  
   Topic: On Child Participation in China

Discussant: Prof. Tong Xiao Jun, Associate Dean, School of Social Work, China Youth University For Political Sciences

14:50-15:20  Discussion

15:20-15:40  Tea Break

15:40-17:00  Discussion

Chairperson:
Associate Prof. Liu Huawen  Director, Department of Research Administration, Institute of Law, Chinese Academy of Social Sciences (CASS)

Topic: Follow-up Actions and Co-operations

17:00–17:20  Closing Ceremony

Chairperson:
Mrs. Li Xixia  Vice Director, Department of Research Administration, Institute of Law, CASS

Closing Remarks:
Prof. Jean Zermatten  Vice-Chairperson of the UN CRC Committee, Director of the IDE
Associate Prof. Liu Huawen  Director of Research Administration Department, Institute of Law, CASS

17:30  Dinner
# LIST OF PARTICIPANTS

<table>
<thead>
<tr>
<th>Name</th>
<th>Position</th>
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<tbody>
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THE UN CONVENTION ON THE RIGHTS OF THE CHILD

Mrs Paola Riva Gapany
Deputy Director of International Institute for the Rights of the Child

PART I: GENERAL INTRODUCTION TO HUMAN RIGHTS INSTRUMENTS

I.1: Terminology

Types of documents: Charter, Declaration, Convention, Protocols, and so on… Among these documents, the Convention, protocols and the Treaty are binding instrument; which means that the State is bound and obliged by the articles and their contents. The Convention may be completed by one or more protocols, like the CRC and the CEDAW. Protocol is an international instrument linked to a specific treaty, which it completes either by addressing new issues, or by stipulating the procedure. It may bind a State which has not ratify the main instrument. It imposes new obligations to States.

Status: signature or ratification. Signature means that the State express its intention to ratify the convention, but still needs some time; it is not bound by a signature. Ratification-acceptance-approval means the State has accepted the content of the convention and will respect it. It is legally bound by the ratification and may be accountable. Reservations: when a State ratifies a convention, it may reserve one or somearticles, which means it doesn’t consider itself bound by the content of the article. It excludes the legal effect of certain provisions.

I.2: Authors

Most of the international documents are produced by the United Nations (General Assembly) or by one of their agencies such as the International Labour Organisation (ILO) or the United Nations Educational, Scientific and Cultural Organization (UNESCO); but, organisations, such as the International Committee for the Red Cross also draft international conventions (ICRC: Geneva Conventions on humanitarian laws ), or the Hague Conference on Private International Law, a melting pot of different legal traditions, develops and services conventions which respond to global needs in the areas of International Protection of Children, International Family and Family Property Relations1.

I.3: Regional human rights law

Besides international documents, there are several regional instruments of human rights, adopted by :


There is no regional human rights documents for Asia nor for the Middle-East region.

1 http://hcch.e-vision.nl/
I.4: Enforcement mechanism

The enforcement mechanism of international conventions depends on the type of documents:

- for treaty bodies, such as the CRC, a Committee of independent experts is set up, in order to help States to implement the convention, by monitoring the implementation and recommending further action.

- International Court of Justice in the Hague.
  For regional document, there are specific courts, such as the African Court on Human and Peoples’ Rights, the European Court of Human Rights, the Inter-American court of Human Rights, or the International criminal court based on the Roma Status.
II. 1 Short historical background

The United Nations Convention on the Rights of the Child (CRC) was adopted on November 20, 1989 by the General Assembly of the United Nations, exactly 30 years to the day, after the Declaration on the Rights of the Child, also adopted by the General Assembly of the UN (Nov.20, 1959). This Declaration can be considered as the basis for the CRC, although a great amount of reflection was needed during 10 years (1979-1989) to confer on a new status of the Child. In addition, we went from an international declarative based document to a constraining document that holds the countries that sign and ratify it accountable.

The treaty was open to signature and ratification on January 26, 1990 and was entered into force on September 2, 1990. In less than 10 years, the CRC has been signed and ratified by almost all the nations of the globe (193 of 195), to the point where we can say that it has become a universal instrument, a reference in the Rights of the Child for the entire world. China ratified it on March 2nd 1992.

Two optional protocols

The Convention, in its vision to settle everything, could not have foreseen all the situations of protection is a precise manner and a certain number of poignant problems have appeared in current events over the past ten years: two problems captured the attention of the States: the question of recruitment of children in armed conflict and the painful reality of sexual exploitation of children. Thus, two optional protocols on Children in Armed Conflict and Children and child pornography, child prostitution and the sale of children were adopted and opened to signature and ratification by the States. Both were ratified by China in 2008 for the OPAC and 2002 for the OPSC.

II.1 Introduction

The International Convention for the Rights of the Child, the founding text of a new concept: Children’s Rights. Compared to other UN documents related to human rights, the “Convention”, is Innovative, Participative, Egalitarian, Universal.

Innovative: it completely modifies the vision that we have of the child, going from the conception of a paternalistic protection of children to a veritable status of the child: from the child-object (where he was the property of adults), he becomes the child-subject, entitled to certain rights. It is a new child that is born.

Participative: the child is given the right to express himself in article 12: the child who has the capacity of forming his or her own views has the right to express those views freely in all matters affecting him, views that must be given due weight in accordance with the age and maturity of the child.

Egalitarian: its first principle rests on the idea that all rights must be granted to all children without exception (art 2 ch 1).

Universal: 193 of 195 States are party to this constraining text. It’s exceptional. This enthusiasm must not only be saluted for the momentum that expresses towards the new
concept of the child subject of rights, but especially for the scope that it confers to this legal instrument. Indeed, one can say that the rights of the child, through the support of almost all States Parties, become a new legal reality impossible to circumvent.

The convention is also a reference on which the “rights of the child” movement rests, but it is also the starting point for other instruments and will inspire other treaties. This has notably already been the case in the field of International Adoption with the Convention of The Hague on the Protection of Children and Cooperation in Respect of Inter-country Adoption adopted on 10.05.1993 and put into force on 23.01.1995. Besides being a reference, the CRC could fill a gap or replace a treaty: when a State hasn’t ratified a Hague Convention it is bound and thus applies the CRC.

The CRC is the longest text for Human Rights and is certainly the most exhaustive and comprehensive. From the beginning, its vocation is universal. It is not a neutral instrument, but one which has a consensual basis since it cannot be the holder of such an ideology, policy or philosophy compared to another, but that it must take into account the range of traditional values, cultures, political systems and of the convictions that exist in the world; it can thus appear in certain views, too “fuzzy” and “frilly”. But it must be given credit for having succeeded in finding a universal consensus on the basic principles. It also has the advantage of addressing the notion of child protection in the field of human rights, allowing judicial status, whereas, before it was only an ideal of nice principles and benevolence. Notorious progress.

II. 3. General mechanism and principles

General mechanism

The Convention applies (art.1) and defines a child as “every human being below the age of eighteen years”.

Next in the substantial part composed of 41 articles and principles, it affirms a series of child rights, which are not only rights and freedoms granted to children, but obligations that the States parties engage themselves to respect to favour the growth of a child part of a harmonious family, a family that is supported by the State and a basic welfare system. The rights that are listed are civil, social, economic and cultural rights, to resume human rights terminology. Unlike what many think, there are no “purely political” rights stated by the CRC. We could be tempted to see among these 41 articles some rights that are more important than others, and define a “core” of child rights, meaning extract certain rights to say that they are more important than others. This is nevertheless a dangerous position to take since it tends to make us think that certain rights should be defended over others and this would bring us to weakened situation for the rights that would make up this small intangible circle. All the rights presented in this treaty must be considered with the same value on a level playing field and apply to all children without any distinction.

The CRC is one of the UN treaty bodies, which means that its implementation by States parties is controlled by an UN Committee, the UN Committee on the Rights of the Child.

Articles and Principles
There are many different ways to group articles and principles of the CRC.

a) **The rights and principles linked to “the person” of the child**

Here are the fundamental rights linked to their existence.

- The right to life and development (art.6): principle
- The rights to not be discriminated against (art.2): principle
- The right to a name, and a nationality (art.7)
- The right to know and be cared for by his or her parents (art.7)
- The right to preserve his or her identity (art.8);

b) **The rights regarding the family**

- the primary responsibility of the parents in respect of the National legislation (art.5);
- To ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child (art.18)
- To ensure that a child shall not be separated from his or her parents against their will (art.9)
- The right to family reunification (art.10)
- The right not to be subjected to arbitrary or unlawful interference with his or her family (art.16)
- The protection against the illicit transfer and non-return of children abroad (art.11)
- The protection against passive or active abuse while in the custody of the family (art.19)
- The priority given to the solutions similar to foster care (art.20) or to adoption (art.21) when a child is deprived of his/her home of origin.

c) **The role of the community**

First and foremost, there are the measures of protection or social benefit:

- Access to all educational mediums (art.17)
- The protection for child refugees (art.22)
- The right to special care for disabled children (art.23)
- The right to a high standard of health and medical treatment (art.24)
- To abolish traditional practices prejudicial to the health of children (art.24)
- The right to social security (art.26)
- The right to education (art.28)
- The right to rest and leisure (art.31)
The protection against performing work (art.32)

The protection from the use, production and trafficking of controlled substances (art.33)

The protection against all forms of exploitation (art.36), the sale, traffic and abduction (art.35), and sexual exploitation (art.34)

The protection of children who are affected by armed conflicts (art.38)

The right to measures of recovery and reintegration for child victims of exploitation (art.39)

The protection against torture, capital punishment and life imprisonment (art.37 which has enormous importance, to be considered notably in relation to art.40).

d) The new rights related to the participation of the child in City life

Here lies the principle innovation of the CRC: without going too much into political rights, the CRC recognises that the child has an active role, specifically with:

- The necessity to be provided with the opportunity to be heard in any judicial and administrative proceedings affecting the child (art.12)
- Freedom of expression (art.13)
- Freedom of thought, conscience and religion (art.14)
- Freedom of association (art.15)
- The respect for his or her private life (art.16)
- The respect of human dignity (art.28)
- The respect for a child belonging to such a minority, to enjoy his/her own culture to practice his/her own religion or to use his/her own language

e) The rights relating to the administration of Juvenile Justice

Article 40 of the CRC, which is the longest of this treaty, gives importance to young in conflict with the law since his/her situation makes him/her particularly vulnerable. The child can also be a victim and be stripped of his/her rights. Article 40 develops at the same time respect of fundamental rights, (basic guarantees like: presumption of innocence, the right to an attorney, the right to an independent and partial hearing, the possibility for appeal, etc.) and the general principles desired in juvenile justice (for example putting into place specialized instances, the elaboration of a minimal age of intervention, the priority of health and education, the development of alternatives for incarceration and institutional solutions).

f) The role of the State

It can be seen as the reverse side of the rights for the child, since it is the State that must take on many tasks, either primarily, or subsidiary in relation to the family, like:

- The best interest of the child shall be a primary consideration (art.3)
The State shall assure that the child’s point of view is heard (art.12)

- The child shall have the right to freedom of expression (art.13), of thought, conscience and religion (art.14), of association (art.15)
- The enjoyment of the highest attainable standard of health (art.24)
- Social security (art.26)
- Education (art.28)
- Protection against all forms of exploitation (art.32, 33, 34, 35, 36, 37, 38)
- Establishment of authorities and institutions specifically applicable to children (art.40).

As mentioned before, there are rights (civil, social, economic and cultural) and four principles; these aren’t more important than rights, but need to be understood as a way of working, as an influence and guiding professionals in relation with children. These principles are:

1) right to life, development and survival (art. 6)
2) non-discrimination principle (art. 2)
3) best interest of the child (art. 3)
4) child participation (art. 12)

II.4. Key –provisions concerning social work

Introduction

The work of the social workers is more concerned by certain rights and of course principles, even if, as stated before, all rights and principles apply to all children without any distinction, which means that professional should keep this mechanism in mind and consider children’s rights as a whole, which is also a part of an human rights approach.

⇒ Working from a child-centred perspective: which means placing children in the centre of the work and to reach this goal, children need to express themselves, to give their opinion, and they need to be listened to and understood = art. 12 CRC

⇒ Hague Conference on Private international Law: this encloses the large issue of family (adoption, abduction, child and adult protection, ….) = Preamble, art. 5, 8, 9, 10, 18, 20, 21, .. CRC

⇒ Child best interests = art. 3 CRC

II.5. The Additional Optional Protocols

The Convention, in its vision to settle everything, could not have foreseen all the situations of protection is a precise manner and a certain number of poignant problems have appeared in current events over the past ten years: two problems captured the attention of the States:
a) the question of recruitment of children in armed conflict

b) sexual exploitation of children.

Thus, two optional protocols were adopted and opened to signature and ratification by the States. Both protocols were signed by China on February 20th 2008 for the OPAC and December 3rd 2002 for the protocol of sexual exploitation (OPSC)

a) Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (OPAC)

This field has become a very sensitive issue following several interventions, notably those of the Red-Cross and the Red-Crescent in 1995 requesting that they raise the age of youth that can be involved in armed conflict and the disputes that had taken place in a certain number of war zones where children had been used for military ends. It also appeared that there was a necessity for harmonization of this field with the CRC on one side (protection for those under 18) and on the other, the new convention No 182 on the child labour, which prohibits, the forced recruitment of children in armed conflict. Consequently work from experts led to an Optional Protocol, one that the States can accept or not, to ratify. There is thus no obligation, but obviously an insistent desire for them to do so.

The principal content of this protocol is to set the age limit for involvement in armed conflict to 18 years, while the CRC (art.38, 3) fixed the age limit to 15. This is an important principle that should suffer little or no exceptions. Nevertheless, the protocol allows the recruitment of children in armed conflict under the age of 18, but only under certain conditions (voluntary, consent from the legal guardian, complete information on the obligations of military life, exclusive commitment to the national armed forces or military school). Child recruitment by non-national armies (militia etc.) and at fortiori, their implications in hostilities is prohibited. It is asked that each State, in accordance with the main principles of the CRC, make this protocol accessible to both adults and children, and to support not only its acknowledgment, but also its application. The rules of control by the Committee for the Rights of the Child are also applicable to the protocol.

To this day, the protocol has been ratified by 128 States

b) Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (OPSC)

Following the work of the Stockholm Conference of 1997, a resolution from the United Nations asked for the preparation of an additional protocol regarding these problems. This subject has become painfully obvious due to the explosion of pornographic Internet sites implicating children as well as sex tourism, where children from underdeveloped countries are easy pray for wealthy and immoral adults who are sometimes acting with the help of local agencies. The question regarding the sale of children, also illegal adoption and the organ trafficking has reinforced the uneasiness surrounding this drama.

The Protocol anticipates that the States must explicitly prohibit the sale of children, child prostitution and pornography that involves children (art.1); the different prohibited behaviours are defined in a rather large manner in article 2, and article 3 imposes that the States legislate in order to penalise this type of action towards children. Forced child labour, organ
trafficking, illegal adoption are also taken into account in article 3. Article 4 allows double territorial incrimination, either in the country of origin of the person at fault, or the country of origin of the victim. Article 5 extends itself on the necessity to consider infraction of art.3 allowing extradition between countries with treaties, whereas part 2 of art.5 foresees that in the case of non-existent bilateral treaties, the additional protocol must be considered as a viable judicial base to justify extradition. Article 8 focuses particularly on child victims, on their rights and the aid that must be given to them during penal procedures as well as in the prospect of their treatment. It is also evident that this protocol mainly looks to the prevention of abuse and to the surveillance of this kind of situation and also devotes a few lines to information.

This protocol becomes binding for the States that ratify it, and is therefore subject to the regular controls of the Committee for the Rights of the Child.

To this day, the protocol has been signed by 116 States and ratified by 131 States.
WHERE DO CHILDREN’S RIGHTS STAND?
Mr Jean Zermatten
Director of International Institute for the Rights of the Child
Vice-President of the UN Committee for the Rights of the Child

Where do Children’s Rights Stand?

Jean Zermatten
IDE Director
Vice-Chair of the UN CRC Committee

Where Children’s Rights stands

- Introduction
- The CRC; presentation
- Problems in implementation; general measures
- Poverty
- Health
- Education
- Sexual Exploitation
- Children in armed conflict
- Child Labour
- Some examples of progress
- Final remark
INTRODUCTION

- 20 years: a very short lifetime for an instrument of international law.
- The Convention received a very enthusiastic echo throughout the world, with the "spontaneous" ratification of 193 (out of 195) countries.
- China sign. 29.08.90; ratified: 02.03.1992
- It has become a universal tool in a very short period of time.
- Application is possible at a universal level, even in the two last countries that are not bound by the treaty.
- This presentation will focus on a certain number of recurrent problems (half empty...).
- ...and mention the improvements made over the last years (half full)!

The CRC

- Human rights treaty with the broadest coverage
- Contains political, civil, economic, cultural and social rights (holistic approach)
- Novelty: those rights are no more reserved to adults but recognized to be effective for children as well
- The child is considered as a person, and not only as an adult in miniature
- Questions of its implementation at the national level: lack of knowledge, of training, of translation of the texts, of child friendly versions...
- In many countries, children's rights are not on the political agenda
The questions of implementation

General measures of implementation.
- A lot has been done in legislation (compatibility between CRC and national law)
- But there are many problems in
  - coordination
  - allocations of resources
  - dissemination
  - data
  - independent monitoring

Coordination

- Coordination at the horizontal level (between the different Ministries) at the vertical level, between the national, regional and municipal authorities
- Example for China: The Committee recommends that China further strengthen coordination between the bodies and institutions working on the implementation of the National Children’s Development Programme (2001-2010) at all levels in order to ensure uniform implementation in all regions and provinces (14 Cobs 2005)
Allocation of resources

- The allocation of resources (art 4) to ensure the full enjoyment of all the rights
  - financial (to the maximum extent)
  - human resources (Professional, problem of training + specialization)
- The concept of progressive realization of the rights, with the help of international cooperation

Allocation of resources (2)

- Example: China: to ensure that its budgetary allocations to key areas for children, in particular health and education, keep pace with increases in government revenue; and develop an adequate monitoring system to ensure that budgetary allocations effectively reach the most vulnerable groups and reduce regional disparities, in particular between rural and urban areas and eastern and western provinces (20 Cobs)
Dissemination

- The dissemination of the Convention to the public at large, to the children in particular, comprehensive strategy
- Example China: in all areas jurisdiction strengthen its efforts to disseminate the Convention in all languages, and also through the use of child-friendly materials and school curricula; expand its programmes to sensitize parents and children about the Convention; and increase its efforts to provide adequate and systematic training rights for professional working with and for children (25 Cobs)

Data

- The recurrent and systematical lack of data: a universal problem
- Example China: strengthen its efforts
- to collect reliable and comprehensive statistical data on all areas covered by the Convention and
- ensure that such data are systematically made available to the public in a timely manner in all parts of the State party
Data (2)

- and explore the possibility of developing central databanks for statistics on children, so as to ensure that statistical data are used
- for the development,
- implementation and
- monitoring of appropriate policies and programs for children (23 Cobs)

Independant monitoring

- Independent monitoring bodies, or Ombudsman
- Example China: establish, a national human rights institutions with a clear mandate to monitor children’s rights and implement the Convention at national, regional and local levels in accordance with the Principles relating to the status of national institutions for the promotion and protection of human rights ...(Cobs 17)
Independant monitoring (2)

- 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

The CRC: mechanisms

Four general principles

- The non-discrimination (art. 2)
- The best interests of the child (art. 3)
- The right to life, survival and development (art. 6)
- The right to be heard (art. 12)
Children’s Rights: 3 important events

1. World Summit on Children (WSC) NY, 90
   A Declaration and a plan of action focused on health, education, children in especially difficult circumstances

2. Millenium Summit NY, 09.2000
   - GOALS to 2015
     > Eradicate extreme poverty and hunger
     > Achieve universal primary education
     > Promote gender equality and empower women
     > Reduce child mortality
     > Improve maternal health
     > Combat HIV/AIDS

3. A World Fit for children NY, May 2005
   - A Declaration and a plan of action focused on
     > Promoting healthy lives
     > Providing quality education
     > Protecting children against abuse, exploitation and violence
     > Combating HIV/AIDS
**Children’s Rights:**

**Study Violence against children**

- Started 2001, after CRC Committee Recommendation to the GA.
- Prof. Pinheiro conducted this worldwide study and UN published the world report on violence in 2006.
- First comprehensive and global study on all forms of violence against children
- Violence: all forms of physical or mental, injury and abuse, neglect, maltreatment or exploitation, incl sexual abuse
- Message: *No violence against children is justifiable, and all violence against children is preventable.*

**Poverty**

- Poverty is a crucial issue: children experience poverty with their hands, minds and hearts
- Material poverty
- Environment that provides little stimulation or support
- Deprived children are not used to knowing or exercising their rights
- Helping children to reach their full potential is also investing in the very progress of humanity.
- Promises made to children cannot be forgotten!
Health

- 29,000 children under five die every day
- 21 each minute
- 11 million child deaths every year
- 70% of them are due to 6 medical causes
- 50% to malnutrition and the lack of safe water
- Deaths occur mainly in the developing world
- **The majority are preventable**
- However, disease is not inevitable, nor do children with these diseases need to die

Real progress is made in reducing the child mortality, immunization and polio eradication.

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Education

Over 140 million children in developing countries – 13% of those aged 7 to 18 – have never attended school

- Discrimination against girls: central question
- Educated girls: marry later, give better chances to their children, prevent abuse and exploitation
- Educating children helps reduce poverty
- Educating children helps promote gender equality

Free primary school for all children is a fundamental right to which governments committed themselves.
Sexual Exploitation

- **Stockholm Congress (1996)**: Agenda to combat and prevent CSEC
  Result: extraterritorial jurisdiction
- **Yokohama Conference (2001)** result: a better legislation
- **Rio Congress (2008)** about implementation
- Designation of a Special Rapporteur on the sale of children, children prostitution and child pornography
- **UN General Assembly (2000)**: Optional Protocol to the CRC on the sale of children, child prostitution and child pornography: signed and ratified by 130 countries. China is part (rat. 03.12.2002)
- Key role of NGOs (e.g. ECPAT, UNICEF, ILO)

Children in armed conflict

In the past decade, more than 2 million children killed in armed conflicts
- 68 Countries where children live with the fear of landmines
- 10'000 Children killed or maimed yearly by mines
- Children involved in armed conflicts: 300'000
- **1996**: Graça Machel’s report:
  - appointment of a Special representative of the Secretary-General
  - Security Council annual debate
  - UN General Assembly 2000:
  - Optional protocol to the CRC on the involvement of children in armed conflicts, ratified by 127 SP
- China is part (rat. 20.02.2008)
  Goal: full and effective ban on the recruitment and involvement of children
Child Labour

- ILO Convention 138 (1973): Minimum age for admission to employment
- ILO Convention 182 (1999): Elimination of the worst forms of child labour
- Some examples of good practices:
  - Rugmark initiative (label on carpets)
  - Garment industry in Bangladesh
  - Soccer ball stitching industry Pakistan
- Necessity to provide education and to involve the community and the children in the projects
- Formal and export sector: only 5% of working children. Agriculture and informal sector (domestic work): 70%
- Problem of invisibility

Some examples of progress

- Any motive for satisfaction?
- Empty glass: countless violations
  - Full glass: progress achieved
- The CRC exists and is known
- «Culture» of children’s rights increases
- Obligation of Periodic reports
- NGO involvement determinant for the implementation of the CRC
- Children’s involvement is welcome
- Role of the UN agencies (UNICEF...)
- State parties reflect on their position towards children and reform their structures
Final remark

- A lot remains to be done...
- 20 years to build the juridical and sociological framework
- Common commitment will recognize that children today are citizens with rights.

But

Children cannot wait: they cannot wait for the care they need; they cannot wait for the education, health they need. They cannot wait for peace: they need peace now.

- All this is intrinsically related. Where peace is absent, reliable and trustworthy relationships are endangered; care, health and education are obstructed.
PARTICIPATION RIGHTS AND THE CASE OF CHILDREN IN STREET SITUATIONS

Mr Daniel Stoecklin
Scientific collaborator at International Institute for the Rights of the Child

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**Child participation: a new paradigm**

- Children are active: they are able to take part in family life, school life and community life.

- Children have their own views: they are able to express their opinions in decisions affecting their lives in order to influence them, according to age and maturity.

- Children are social actors: they are able to reflect about their own life experience and their environment, and therefore acquire progressive responsibility as citizens.

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**Child participation: a challenge to adult-child relationships**

- Children are active, **but** do adults accept that they take part in family life, school life and community life?

- Children have their own views, **but** do adults accept that they express these opinions in decisions affecting their lives?

- Children are social actors, **but** do adults accept that they reflect about their own lives and environments and therefore acquire progressive responsibility as citizens?
Socialization: a give and take process

Role-taking                      Role-making

community

school

family

The 3 Ps of the CRC

- Protection
- Provision
- Participation
Participation rights

- Art. 12: the right to be heard
- Art. 13: the right to freedom of expression
- Art. 14: the right to freedom of thought, conscience and religion
- Art. 15: the right to freedom of association and the right to freedom of peaceful assembly
- Art. 16: the right to privacy
- Art. 17: the right to access to information

Art. 12 CRC: the right to be heard

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.
Indivisibility of rights

- Link with Art. 3 (Best interests of the child): it is necessary to include the child’s opinion into the process of decision-making.

- Link with Art. 5: responsibilities, rights and duties of parents or legal guardians: « to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention ».

- Link with civil rights and liberties:
  - Art. 17: the right to information
  - Art. 13: the right to expression because the right to receive and impart information is an important precondition to child participation.

The group « children »

- Article 12 is linked to other rights (best interests CRC art. 3, relations with parents CRC art. 5), and to civil rights and liberties, like the right to expression (art. 13) and the right to information (art. 17).

- Therefore, article 12 is not only for the individual child, but for the group « children »: the child has the right to be heard not only regarding his/her own personal situation but also regarding the whole group « children » to which he/she belongs when decisions affecting this group of the population are being taken.
Participation as a right to development (evolving capacities)

- Day of General Discussion to the theme “Speak, Participate and Decide – The Child’s Right to be Heard” (15.09.06)

- Committee on the Rights of the Child: “the importance of encouraging opportunities for child participation as a tool to stimulate the evolving capacities of the child”.

- Victor Karunan: “Participation is critical to self-development”; participation “fosters learning, builds life-skills and enables self-protection”.

Self-development and social development

- Capabilities (Amartya Sen) = personal skills + social opportunities.

A process of double structuration (A. Giddens):
- personal skills to work out social opportunities,
- opportunities offered by society to develop one’s personal skills.
Illustration of a « group » of children: the « street children »

- How are the best interests of “street children” decided upon?... What are the preconditions to help “street children” become part of the decisions affecting them?

- It takes time to be able to define the best interests of these children (trust building).

- strong participation of the child can only be achieved if he/she is consulted from the very beginning of intervention.

Labeling process

- Street children?

or

- Children in street situations?
Categories of «street children»

(From the point of view of project implementing agencies)

There are categories of street children:

- Children on the street
- Children of the street
- Children of street families

Limits to the definitions of categories of street children

R. Lucchini, 1993

Contact with family (social dimension)

On

Of

Time spent on the street (physical dimension)
Limits to the definitions of categories of street children

- Only two dimensions: time and socialization
- No consideration for shifting situations
- Qualitative assessment based on unquestioned assumptions and representations ("of" the street is worse than "on" the street)
- Statistical and organizational purposes (not child-centred)

Children in street situations: emphasis on the set of interactions configuration
Child-centred approach

Deal with the child’s subjective perception of the situation

Child-centred (insider’s) point of view

From the point of view of the child:

Street life depends on the quality of the existing interactions within and outside the street.

Implications:

- Listen to what the child says about street life.
- Cast light also on those who are in contact with these children, because they are part of the problem, and hopefully also of the solution.
Situation as a set of interactions

Configuration

situation

Child-Streert System
(Prof. Riccardo Lucehini, Fribourg University)

What the child says about ...

Collect data along these 8 aspects through interviews.
Analysis of data is made along a systemic approach, considering that a phenomenon is made of elements that linked together and influencing each other in a specific way that has to be discovered. All these aspects form a system because the elements affect each other. The CSS-Tool helps understand the dynamics behind the child’s biography.

Profiles and career

- Children in street situations may have quite different "profiles”, according to the differential importance these dimensions of street experience may have for them.

- By linking these different dimensions together, one comes to a more accurate image of the way the children actually experience street life.

- It helps identify the child’s life course (street “career”). The child’s life conditions on the streets are the outcome of:
  - The constraints that may affect the child
  - The child’s own survival strategies according to competences he/she has acquired outside and in the street.
Bottom-up model of action

**Structures**: Use and networking of spaces appropriate for the required activities (or creation of such spaces if lacking)

**Options**: Profile-wise choice and combination of empowerment and promotion & prevention options, in order to satisfy children’s needs and develop their skills

**People**: Assessment of needs and abilities and identification of typical profiles thanks to the “Child-Street System”

The best strategy is to make the child an active participant

**Resources**
- Social inputs and child’s resources

**Principles**
- UN Convention on the Rights of the Child

**Methods**
- Child-friendly Tools
Principle: The obligation to hear the child (also those in street situations)

- The obligation to hear the child should cover all settings: home, community level, school, judicial and administrative proceedings.

- Obligation to hear the children = design policies and programmes that actually enable children to have their views taken into account.

- The responsibility of state parties to the CRC, and the concrete organisations taking care and empowering such children is to provide them with sufficient and adequate spaces and opportunities for meaningful child participation.

the CRC as a set of principles for the development of capacities

- A fundamental precondition to the development of children’s capacities is the enjoyment of such basic rights as the right to life (art. 6 CRC) and adequate shelter (art. 27 (3) CRC).

- The indivisibility of rights contained in the CRC is clearly bound to the necessity of an integrated approach where participation is just as important as food and shelter.

- It is quite important to first assess the capacities already possessed by “children in street situations” in order to acknowledge them and to foster further capacity building.
Resources: Acknowledging children’s skills

- Children’s capacities may be quite diverse, Children in street situations have developed, mostly out of necessity, some social, symbolic and instrumental competences that are quite important and often more developed than with other children of their age.

- Transposition of skills from deviant areas to socially and legally conform behaviour is in fact the main objective of a project addressing the needs and capacities of children in street situations.

- More sensitive assessment: Acknowledgment of the capacities of children in street situations is a precondition to their participation within the project.

Methods: the challenge to develop child-friendly tools

- They must be understood by the children.

- They must be tested and developed to guarantee that the child will actually be heard.

- They must allow integration of children’s voices in the definition of situations and not define the situations beforehand.
Processes of participation

- Levels of child participation vary according to the procedures of competent authorities dealing with issues regarding children. The Committee:
  - "calls for States parties to clearly designate (an authority which) establishes direct contact with child and youth led organisations in order to engage with them".
  - recommends "that children and youth be directly included in the planning, design, implementation and evaluation of National Plans of Action which relate to children’s rights, in recognition of their role as core stakeholders in the process”.
  - encourages "the direct involvement of children in monitoring the implementation of all rights enshrined in the Convention. The Committee recommends that States parties actively involve children in the periodic review process of the Convention".

Processes: Levels of participation

- level 8: Child-initiated shared decisions with adults
- level 7: Child initiated and directed
- level 6: Adult-initiated shared decisions with children
- level 5: Consulted but informed participation
- level 4: Assigned but informed participation
- level 3: Tokenism
- level 2: Decoration
- level 1: Manipulation

(Roger Hart, Innocenti Studies)
Conclusion

- Processes for child participation should include the children’s own competences.

- It is the best way to include them as social actors and partners in the projects for personal and social development.

- Principles of action inspired with the norms contained in the CRC can be best translated into practice when they are coupled with child participation.
演讲提纲

- 儿童参与权理解
- 儿童参与权的立法统计
- 儿童参与的立法规定
- 体现儿童参与权的具体事例
- 中国强化儿童参与权的努力方向

CRC第12条

1. 缔约国应确保有主见能力的儿童有权对影响到其本人的一切事项自由发表自己的意见，对儿童的意见应按照其年龄和成熟程度给以适当的看待。

2. 为此目的，儿童特别应有机会在影响到儿童的任何司法和政策诉讼中，以符合国家法律的诉讼规则的方式，直接或通过代表或适当机构陈述意见。
儿童参与权理解

- 三个层次：知情、表达、尊重意见
- 方式上：参与资格确定和帮助提高参与能力
- 范围上：宏观、中观和微观层面

儿童参与权的立法统计

- 2003年修订的《北京市未成年人保护条例》是中国第一个全面引入儿童参与权的地方专门立法
- 2002年以来，16个专门立法，9个规定了儿童参与权，占到56.25%
- 2006年以后，8个专门立法中，6个规定了参与权，占到75%
- 六项专门立法中将其确定为基本原则，如未保法2006修订，广东、北京、江苏、湖南的地方未保立法，广东预防犯罪条例等。
儿童参与权的立法内容体现

- 作为一项基本权利规定的，未保法2006修订、广东未保条例2008修订、北京未保条例2003修订
- 从全社会的义务角度规定的，湖南、江苏、北京等最新未保专门立法修订
- 家庭中的儿童参与权，涉及处理未成年人的事务、离婚子女抚养、委托监护，如未保法2006修订和湖南地方立法
- 学校中的儿童参与权，主要是活动开展和处分
- 特殊处境儿童的参与资格和参与能力规定

儿童参与权的具体事例

- 立法中征求未成年人的意见
- 两会小记者
- 儿童小领袖项目
- 少年陪审员探索
- 小主人报、儿童主持人
- “我是城管小卫士”活动
- 父母和老师儿童参与意识的增强
强化儿童参与权的努力方向

- 强化社会宣传，逐步改变官员和民众的传统意识，让儿童主体意识主流化
- 要将儿童参与作为家庭教育指导的核心内容，儿童参与要从家庭开始
- 强化少年司法法官、检察官、警察和律师的儿童参与意识，并且要通过提高法律援助的专业化，提高儿童的参与能力
- 要进一步审查法律和政策，就与儿童参与原则不相符的内容及时进行修改

让法律的阳光公平照耀每个孩子，是我们的最大愿望。

联系：wendyzhang@chinachild.org
       www.chinachild.org

       Thank you!
       July 1st 2009
未成年人享有生存权、发展权、受保护权、参与权等权利，国家根据未成年人身心发展特点给予特殊、优先保护，保障未成年人的合法权益不受侵犯。

北京未保条例（2003修订）第五条第一款 未成年人有权对涉及本人利益的事项发表意见。

（江苏）第七条第二款：家庭、学校、国家机关和社会处理与未成年人有关的事务，应当优先考虑未成年人的利益，并根据未成年人的年龄和智力发展状况，以其可以理解的方式告知未成年人，通过多种途径听取其意见。

（湖南）第三十条 有关国家机关、社会团体在制定涉及未成年人切身利益的政策、制度或者作出相关决定时，应当通过多种渠道听取未成年人意见，对合理的意见应当采纳。

有关单位和个人应当对未成年人依法就涉及自己权益的事项发表的意见或者建议予以尊重。
未保法（2006修订）第十四条 父母或者其他监护人应当根据未成年人的年龄和智力发展状况，在作出与未成年人权益有关的决定时告知其本人，并听取他们的意见。

第五十二条第二款：人民法院审理离婚案件，涉及未成年子女抚养问题的，应当听取有表达意愿能力的未成年子女的意见，根据保障子女权益的原则和双方具体情况依法处理。

湖南未保办法（2008修订）第九条第一款规定：父母因外出务工或者其他原因不能履行对未成年子女的监护职责的，应当委托有监护能力的其他成年人代为监护。委托监护前应当听取有表达意愿能力的未成年子女的意见。

《北京市未成年人保护条例》（2003修订）第二十六条：学校应当支持、引导本校共青团、少先队、学生会及其他学生组织开展有利于学生身心健康的活动，听取他们的意见与建议。

《天津市未成年人保护条例》（2007修订）第十二条第二款规定：学校处分未成年学生，应当听取未成年学生及其父母或者其他监护人的申辩，并对申辩的内容予以答复。

《海南省未成年人保护若干规定》（2008修订）第十一条第二款：学校处分未成年学生，应当听取未成年学生及其父母或者其他监护人的申辩，并对申辩的内容予以答复。
北京未保条例（2003修订）第六十六条第一款：对监护人侵害未成年人合法权益或者不履行监护职责的案件，未成年人可以直接申请法律援助；与该争议事项无利害关系的其他法定代理人也可以代为申请法律援助。

《未成年人保护法》（2006修订）第五十六条第一款：公安机关、人民检察院讯问未成年犯罪嫌疑人，询问未成年证人、被害人，应当通知监护人到场。
DISCUSSION
Summarized by Mr Daniel Stoecklin
Scientific collaborator at International Institute for the Rights of the Child

The discussion following the lectures has been quite interesting and participative. Mrs Feng Rui opened the discussion according to her experience as a member of the drafters of the PRC law on protection of minors in the 1990’s and to its revision. The new law now includes the four general principles of the CRC. As the first ten-years plan regarding children in China (2001-2010) will soon be over, and in the process of drafting the second one, it is time to notice that important progress has been made by the government. Still, some gaps ought to be filled. The lack of experts, and the gap between theory and practice has been underlined. The government’s commitment to the CRC should also be translated into a taking a leading role in the breakthroughs in legislation and practical application of laws for the protection of minors.

Notice is made about the progress in the number and quality of NGOs in China, but so far there is not a designated body to protect Children’s Rights. The State Council is coordinating, but not empowered. There is a lack of personal and funds. Nevertheless, among the good practices, one can refer to, Children’s Center in Shijiazhuang (1 mio Rmb provided by the local government), Shanghai Municipal Government established the Center for the Protection of Child (and supports with funds). The lecture by Zhang Wenjuan also showed good examples of child participation in China, especially in a legislative perspective (examples of children involved in drafting rules). Other participants recalled the “Zhengzhou model” and a lot of progress has indeed been achieved with the development of 152 since the 11th five-year plan. But overall, compared to the needs in overall China, such examples are still few.

Therefore, two important questions arise: the question of resource allocation (funds usually go to other aspects, not children…), and the question of the equality of children, especially those children from vulnerable groups. An example leading to contradictory results has been illustrated: in some places in China, many people attach importance to the children of criminal parents. They wonder how society should treat them. In reality it is difficult to protect these children, because of the traditional discrimination attitude towards children of criminal parents. For instance, some villagers would beat the children when they know that their parents are drug criminals. Therefore, some had the idea of concentrating these children into special centers. In the center in Shijiazhuang, these children said there were happy in the center but eventually they are kept aside: they go in separated schools and therefore lack the opportunity for social integration. The question therefore should not be how we treat these children but how does society react to their situation. The question of labelling (“orphans”, “street children”) as part of a discriminating attitude has also been discussed and again the paradox of putting these vulnerable children out of the group of children by addressing them with special care (foster families, protection centers). More inclusive approaches still need to be developed. Some other examples where given, regarding migrant children and the necessity to raise the issue to the attention of the government. The issue of migrant children needs to be further studied.

Another issue is the problem of coordination which is also bound to the input in human resources. The necessity to define the criteria for training of human resources is a priority. The question is what kind of training is needed? A suggestion (JZ) is to define the profiles of trainees. And another question is about the kind of data that is needed (about child labour, sexual abuse, etc.).
The issue of the traditional attitude towards children has also been discussed. In some rural areas, it is considered that talking of child protection is something stupid. Not to speak of child participation… Meanwhile a new phenomenon is observed with parents of single children: the one-child policy (although it doesn’t concern the majority of parents) has put a psychological pressure to be “a good parent” that is sometimes hard to carry.

Today in China, the idea of participation rights is something challenging adult-child relationships. However, the participants acknowledged that China’s policies and laws should comply with participation rights. It is important that children have the opportunity to train and develop their independent thoughts and ideas, for this is a precondition to become citizens, and sometimes leaders, of a democratic society.

Several questions regarding Switzerland have also been discussed, notably the decriminalization of sexual intercourse between adolescents, and the age of sexual consent and the absence of consent in the case of violation of dignity. Other questions included, the age of consent in medical treatment, the participation rights as civil liberties, the direct implementation of art. 12 CRC (self-executive force) within Swiss legislation, and issues regarding social security.

The seminar concluded with a high consent on the need to further develop exchanges and study children’s rights from an interdisciplinary approach. Participants are eager for further collaboration in this regard. Contacts and cooperation will be developed more specifically with Prof. Liu Huawen, Director, Department of Research Administration, Institute of Law, CASS. Further exchanges are also welcome with other participants, some of whom have expressed their will to do so, notably Ms Tong Xiaojun, Associate Dean, School of Social Work, China Youth University For Political Sciences, and Ms Wang Xuemei, Director, Editorial Office, Global Law Review, Institute of Law, CASS.