

On International Law Protection of Child Sexual Assault

-- Also on Protection of Children's Rights in China

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ABSTRACT

The spate of child sexual abuse has raised awareness of the need and urgency to protect children from sexual abuse. In international law, sexuality is increasingly linked to human rights and is increasingly recognized as a fundamental human right, and the Convention on the Rights of the Child highlights the perspective of sexual human rights. We have ratified the Convention on the Rights of the Child and the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography. But let's face it, there are still many children in the world who are being sexually abused. To this end, we should sum up our experience, improve relevant laws in light of national conditions, and build a comprehensive and multi-level system for the protection of children's sexual rights, so as to provide a safe and harmless environment for children's growth.

KEYWORDS

Child Sexual Abuse; International Law; China; Protection.

1. PREFACE

In recent years, there have been more and more reports of sexual assault of minors, and we always see a variety of heinous crimes, both at home and abroad. According to an academic study posted by the Harvard Kennedy School of Government, about 19% of minors worldwide may be threatened with sexual abuse; The situation is particularly acute in Africa. The situation is particularly acute in Africa. The results of the above two studies show that the mortality rate of sexual assault received by minors in China is far lower than the current world average. However, we have to face this point anew, because due to the conservative traditional concept of China, the lack of education on self-interest protection awareness, and the serious lack of a modern legal protection system, the victims of actual sexual assault in China mostly use silence to try to deal with this kind of mental harm, so the number of victims of actual sexual assault in China far exceeds the number of actual known victims. But we have to face up to this, because of the conservative traditional concept, the lack of self-protection education, and the lack of a legal system, Chinese sexual assault victims often respond to such harm with silence, so the actual number of sexual assault victims in China far exceeds the known number. According to the 013 Global Survey on Violence against Children released by the United Nations on October 17, 013, about 1.8 million minors worldwide are exploited by pornography and prostitution, including digital pornography.

2. DEFINITION AND CLASSIFICATION OF CHILD SEXUAL ABUSE

2.1. Definition

Child sexual abuse, also known as child sexual abuse, refers to any person who violates the sexual rights and interests of children under the age of 14 and commits acts that endanger children's physical and mental health for the purpose of satisfying their sexual desires or other purposes. This includes: rape, indecent assault, prostitution, enticing underage girls into prostitution, organizing or forcing children into prostitution, disseminating pornographic materials to children, making pornographic materials with children as the subject matter, and other acts that endanger children's physical and mental health.

2.2. Classification

The first is to divide child sexual abuse into physical sexual assault and non-physical sexual assault: child sexual assault with physical contact is easy to detect and prevent; However, child sexual abuse without physical contact, such as enticing or forcing children to watch pornography, using sexually suggestive language to tease children, forcing children to show their bodies, and forcing children to film inappropriate pornography, is often overlooked.

According to the Convention on the Rights of the Child promulgated by the United Nations[1], child sexual abuse can be divided into sexual exploitation and abuse. The former UN Special Rapporteur on children, Vitit Muntarbhorn, explained child sexual abuse and child sexual exploitation, from which it can be seen that there is both a difference and a connection: child sexual abuse can be understood as sexual violence against children, unlike child sexual exploitation, child sexual abuse is not determined by the existence or absence of remuneration, which can be in cash or in kind; At the same time, however, it should be noted that sexual exploitation also includes sexual abuse, for example, in brothels where children are the main victims. According to the Convention on the Rights of the Child, child sexual abuse can be further divided into sexual exploitation and abuse. The former UN Special Rapporteur on children, Vitit Muntarbhorn, explained child sexual abuse and child sexual exploitation, from which it can be seen that there is both a difference and a connection: child sexual abuse can be understood as sexual violence against children, unlike child sexual exploitation, child sexual abuse is not determined by the existence or absence of remuneration, which can be in cash or in kind; At the same time, however, it should be noted that sexual exploitation also includes sexual abuse, for example, in brothels where children are the main victims.

3. INTERNATIONAL LAW PROTECTS CHILDREN FROM SEXUAL ABUSE

3.1. Overview

Child sex crimes have existed for more than 100 years, only in the professional literature. At the end of the 60s of the 20th century, the academic journal of the Chinese Medical Association of United States first published an academic article entitled "Battered Child Syndrome" co-written by more than 10 people including United States Chinese pediatrician Li Hhenrykempe, which has since created a world precedent for the special psychological protection of Chinese children. Since then, the West has pioneered special protection for children. In the late '70s, United States survivors who had father-daughter incest bravely broke their silence again as United States feminists to uncover a dark family secret that had been sealed for a long time. Since then, the issue of sexual abuse of children has received extensive attention from the international community in the West as a serious national social security issue. It has received wide attention from Western society. At the end of 1970, the United States first conducted in-depth research on the psychological phenomenon of early childhood sexual

abuse in China, and United Kingdom, Canada, Australia and other foreign countries also joined in following suit. Canada, Australia and other countries have followed suit.

The United Nations Convention for the Suppression of the Traffic in Persons and of the Prostitution of Persons for Profit was the first time that the prohibition of sexual exploitation was embodied in the United Nations Convention for the Suppression of the Traffic in Persons and of the Exploitation of Others. According to the Convention, "exploitation of prostitution" is sexual exploitation, a violation of the human rights of prostitutes, and a serious crime that should be severely combated. The exploitation of the prostitution of others is prohibited, including, of course, the exploitation of child prostitution. Article 34 of the 1989 Convention on the Rights of the Child not only explicitly prohibits the collective sexual abuse of school-age children, but also further enacts and improves the relevant provisions on the prohibition of collective sexual abuse of school-age children, and the prohibition of sexual abuse and exploitation of school-age children. Subsequently, the Optional Protocol on the sale of children, child prostitution and child pornography, which specifically addresses the sexual violence exploitation of children and adolescents, was considered and adopted, reflecting more fully and concretely the strong determination of the United Nations to specifically protect children and adolescents from sexual violence. It is a more complete and concrete expression of the United Nations' determination to protect children from sexual exploitation.

3.2. Article 34 of the Convention on the Rights of the Child

Article 34 of the Convention on the Rights of the Child states: "States Parties undertake to protect children from all forms of sexual exploitation and abuse. To this end, States parties shall, inter alia, take all appropriate national, bilateral and multilateral measures to prevent: (a) the inducement or compulsion of children to engage in any unlawful sexual activity; (b) exploiting children for prostitution or engaging in other unlawful sexual acts; (c) The use of children for obscene performances and as obscene subjects. "From the above description of child sexual abuse and exploitation, it can be seen that paragraph (a) of this article should emphasize child sexual abuse, while paragraph (b) (c) should emphasize child sexual exploitation. The Convention on the Rights of the Child provides for two types of sexual exploitation of children, one through prostitution (paragraph b) and the other through the sexual exploitation of children through the use of pornography (paragraph c); This shows that the Convention on the Rights of the Child expands the scope of sexual exploitation compared to the 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, which only covers sexual exploitation through prostitution.

3.3. Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography(Hereinafter Referred to as the Optional Protocol)

The main purpose of the Optional Protocol policy is to effectively strengthen the self-protection of Chinese children from any form of violent exploitation, including sexual violence. Protect them from all forms of exploitation, including sexual exploitation. Article 1 of the Optional Protocol states: "States Parties shall prohibit the sale of children, child prostitution and child pornography in accordance with the provisions of this Protocol." Article 2 clearly explains the concepts of "child prostitution" and "child pornography": "Child prostitution is the sexual exploitation of children for the purpose of remuneration or other compensation; Child pornography is any material that depicts a child's sexual organs, whether real or simulated, by any means, or primarily for the purpose of obscenity. Clearly, according to this interpretation, child prostitution and child pornography are "crimes against children" and not "child crimes". This is consistent with the provisions of article 34 (b) (c) of the Convention on the Rights of the Child. And not "child crimes". This is consistent with the provisions of article 34 (b) (c) of the Convention on the Rights of the Child.

4. PUNISHMENT AND PREVENTION OF CHILD SEXUAL PREDATORS IN REPRESENTATIVE COUNTRIES

4.1. Japan: Well-developed Child Protection Mechanisms Make it Impossible for the Demons to Hide

Japan's practice in preventing child sexual abuse and protecting children's rights and interests is worth learning from. In Japan, the criminal law governing the crime of sexual abuse of children (under the age of 18) can be divided into two main categories. The first is the provisions of criminal and special laws on the protection of all persons for sexual offences: the Penal Code, the Act on the Regulation of Stalking, etc., and the Regulations on the Prevention of Harassment. The second is the provisions of the special law that specifically address the crime of sexual assault against minors: the Law on the Punishment of Children and Child Pornography, the Law on the Welfare of Children, and the Regulations on the Protection and Cultivation of Juveniles of local governments. It has very distinctive features:

- 1) Categorizing the five types of child sexual violence crimes is very detailed, and is conducive to accurately combating child criminal conduct with different links, stages, and purposes: the crime of coercing child indecency with Mai Chun, the crime of indecency against children, the crime of mediation of violence against children, the crime of persuading children, and the use of pornography by providing children with sex by Mai Chun.
- 2) The four ways in which the sexual rights and interests of children and adolescents are protected are clearly and clearly defined in four ways through relevant legislation: appropriate protection in search and trial activities; appropriate prohibitions on news media coverage; research on education, inspiration and follow-up surveys; and the protection of children who are suffering from harmful factors in their physical and mental health.

4.2. United States: Child Sexual Abuse? Zero tolerance!

Zero tolerance refers to laws that increase the penalties for minors and severely punish crimes. For example, if you hit a little boy on the bare buttocks a few times, you could be charged. In the United States, there is indecent assault, sexual violence, etc., and is sentenced to several months or years in prison; More serious acts against children, whether of the same sex or the opposite sex, are characterized as sexual assault in the United States and are subject to increased penalties of more than 10 years in prison. Because of the strict protection of children, the zero-tolerance policy is strict but indispensable.

1) The "High Voltage Line" for Child Sexual Abuse Crimes

In United States law, the sentence for the crime of sexual abuse against children is very severe, and it can even be "branded" as life imprisonment. Many states in the United States, under the guidance of the FBI, have established a database of sexual assaulters (a registration system for sex offenders) and open it to the public (a sex offender notice system), and the public can learn in advance about people at high risk of sex crimes by viewing the database.

In addition, for the two 12-year-old abused children who have been legally released on parole for two years, and two young offenders, the police also strictly require them to wear G, G, GPS and other safety foot guards and wristbands at the same time, and can conduct on-site security monitoring anytime and anywhere, and strictly prohibit them from entering large children's parks, schools, playgrounds and other large public places where sexually abused and abused children often gather.

2) Protection is everywhere

Because such cases of violations of children's rights and interests often occur in hidden public places such as homes and schools, and a United States poll can also confirm that the majority of crime

victims and children are deliberately violated by unrecognized and untrustworthy victims, it is not enough to establish strict infringement laws, and it is also important to prevent, detect and effectively detect such crimes. [3]

In order to detect crime as early as possible, the whole society of United States has been mobilized to weave a tight protective net to monitor possible child sexual abuse incidents at any time. Anyone who finds something suspicious (such as a child with a suspicious wound) can call the police, and the police must go to the police to investigate after receiving the report.

In order to promptly investigate and solve illegal crimes, the United States Community Law Enforcement Supervision Department attaches great importance to investigating and dealing with illegal crimes involving sexual abuse of children and adolescents. Even the United States Federal Bureau of Investigation (FBI) in the United States already has an investigative unit dedicated to tracking child sexual abuse and child abduction cases in a timely manner (the United States Protection of Children from Sexual Abuse Act of '98 clearly stipulates that the FBI needs to establish an emergency investigation leadership center, that is, an emergency investigation emergency operations investigation leadership team, to assist United States federal, state and other local government agencies in timely investigation of child abduction victims, unexplained death and disappearance of children, murder of child victims and prevention of sexual abuse of children, etc.). cases of unexplained disappearances of children, murder of children and sexual abuse of children).

4.3. France: Equal Emphasis on Prevention and Punishment, Multi-layered and Multi-faceted Protection of Children's Sexual Rights

In France, the Boulogne case in 2001 and the Angers case in 2005 have attracted great attention throughout the France and even the whole world, France the government and citizens realize that for child sexual abuse, punishment alone is not enough; For child sexual offenses, strict legal prevention should also be actively carried out in four aspects: guidance, restraint, liaison, and protective measures, and a monitoring network that must be built in order to prevent child sexual offenses.

1) Strict legal net

France has always been committed to safeguarding the protection of the legal rights of minors, with the goal of combating crimes against sexual violations against children and adolescents, and weaving a tight criminal net. In accordance with the relevant provisions of the France Germany Penal Code and the Germany Law on the Protection of the Rights and Interests of Minors, the France Germany Penal Code imposes severe penalties for sexual grooming, illegal and forcible sexual indecency, forcible sexual indecency, rape and five different types of sexual assault and minors – with a maximum penalty of 0 years and a fine of up to 150,000 euros. Sexual assault against minors is punishable by severe penalties – up to 0 years in prison and a fine of 150,000 euros.

2) Four-dimensional defense network

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From the perspective of scientific guidance and education, the France government principle requires that protective education for minors be carried out from primary school onwards to establish a correct awareness of the protection of adult sexual rights and interests; From the perspective of control, France media has its strict classification system, including television, Internet, movies, etc., which strictly classify programs to prevent minors from receiving information that does not meet their age; At the liaison level, family protection units have been established at all levels of government to coordinate child protection matters among ministries. The staff of the Family Protection Service and social workers visit primary and secondary schools in France and have in-depth exchanges with students to understand the unpleasant incidents encountered by students at home and school, so as to detect harm; From the perspective of protective measures, in order to prevent offenders from recidivism, offenders need to accept government supervision and psychological counseling after being released

from prison; If the case is severe, medical treatment, such as chemical castration, is required to prevent recidivism. In order to protect the rights of victims of sexual assault against minors, the France Law on the Protection of Minors provides for special procedural provisions.

5. HOW SHOULD CHINA PROTECT CHILDREN FROM SEXUAL ABUSE?

5.1. The Current Situation of Child Sexual Abuse in China and the Current Laws Have been Introduced

Some experts and scholars have personally surveyed 697 undergraduate students at a university in Zhejiang Province, and used a questionnaire on sexual abuse in the family and a questionnaire on the factors of domestic violence in children. The results showed that the proportion of sexual abuse among six-year-olds among university students was 10.5 per cent, 11.7 per cent for girls and 5.6 per cent for boys. Due to the privacy concerns of the survey, many child respondents believed that the facts about early sexual abuse were being concealed, and in fact, the average incidence of early childhood sexual abuse was much higher than the average data rate of this special survey. At the same time, a significant proportion of boys are sexually abused. Because sexual assault is inherently hidden, this information may be just the tip of the iceberg when it comes to sexual abuse of children.

Children, as the future of the motherland, have always been the objects of national protection. In 1991, China ratified the United Nations Convention on the Rights of the Child (and in 00 ratified the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography), and in the same year, China promulgated the Law of the People's Republic of China on the Protection of Minors. At this point, our country has a special child protection law. However, various social practices have shown that there are still problems in the protection of children's rights in China, and in particular, there are huge shortcomings in the protection of children's sexual rights. Therefore, how to effectively protect children from sexual abuse is the focus of our country.

5.2. Complete the Legal System Against Child Sexual Abuse

The law is the foundation of the nation, and in order to effectively protect the sexual rights of children, the completion of the relevant laws should be the primary goal. Although China already has the Law of the People's Republic of China on the Protection of Minors, which is a relevant protection law, this law alone is not sufficient to protect the sexual rights of children in China. Therefore, it is imperative to improve the legal system against child sexual abuse. However, this law alone is not sufficient to protect the sexual rights of children in our country. Therefore, it is imperative to improve the legal system against child sexual abuse.

1) Enact a specific anti-child sexual abuse bill

A specific anti-child sexual abuse bill must be enacted on the premise that the concept of child sexual abuse must be clarified. According to the Convention on the Rights of the Child, child sexual abuse can be divided into sexual exploitation and abuse; However, it is easy to confuse these two concepts in Chinese law. China's Law on the Protection of Minors, promulgated in 1991, does not distinguish between child sexual abuse and child sexual exploitation; Although the Law on the Protection of Minors, amended in 2006, prohibits "child sexual abuse" (the equivalent of "sexual abuse" in the Convention on the Rights of the Child), "child sexual exploitation" is still not taken seriously. Therefore, a specific anti-child sexual abuse bill can only be established if the concept of child sexual abuse is first clarified.

The legislative prohibition of sexual abuse against children has always been one of the key and basic provisions of the Convention on the Rights of the Child, especially for "sexual exploitation of children", which is once again specifically provided for in the form of a separate protocol. As one of

the first countries to ratify the Convention on the Rights of the Child and its Protocols, it is possible to enact a special Law against Child Sexual Abuses; In response to the growing phenomenon of child sexual abuse and exploitation, both at home and abroad, there is a need for a specific Law against Child Sexual Abuse. The Convention on the Rights of the Child contains special provisions in the form of a separate protocol. As one of the first countries to ratify the Convention on the Rights of the Child and its Protocols, it is possible to enact a special Law against Child Sexual Abuses; In response to the growing phenomenon of child sexual abuse and exploitation, both at home and abroad, there is a need for a specific Law against Child Sexual Abuse.

5.3. Establish a Multi-faceted and Multi-level Framework for the Protection of Children's Sexual Rights

However, in light of the scandals that have frequently erupted in various parts of the world and countries in recent years about sexual assault against children, we have to realize that criminal punishment is not a panacea, and a comprehensive and multi-level framework for the protection of rights and interests is the goal pursued by all countries. However, in light of the frequent scandals of child sexual abuse in countries around the world, we also have to realize that punishment is not a panacea, and a comprehensive and multi-layered protection framework should be the goal pursued by all countries.

1) School, family education

According to relevant United Nations research, many children do not speak up even when they are sexually assaulted because they have a limited understanding of sexual abuse and cannot tell that they have been sexually abused, especially among younger children. Therefore, in many countries such as Europe and the United States, sexual enlightenment education for children has long been advanced to the kindergarten stage. Teachers and parents teach children what "bad touch" is by playing games and telling stories, so that children can have a sense of self-protection from an early age. In China, due to people's deep-rooted awareness of sexual culture, we often can't naturally mention "sex", let alone popularize sexual knowledge to children at home and school; However, it is precisely because of our "shyness" that Chinese parents miss the time to teach their children about early sexual assault prevention.

Therefore, changing our concept of sexuality, establishing a correct sense of sexual protection for our children from an early age, and making children clear about the definition of sexual assault have become the practices that parents and teachers in China urgently need to change.

2) Social protection

Human beings are social animals, and our lives are inseparable from society, and due to the highly concealed nature of child sexual abuse crimes, the social protection of children has also become a top priority. To this end, the Australia Government particularly needs to provide rigorous training for educators in order to identify children and adolescents who are or have been victims of various sexual acts in a timely and accurate manner, and to effectively identify individuals who have committed various sexual offences; At the same time, parents and parents are also required to be proficient in the knowledge of sexual assault, and provide a safe and secure home environment for children to stay away from sexual assault. and can effectively identify sex offenders; At the same time, parents are also required to master the relevant knowledge of sexual assault, provide a safe and reliable family environment for their children, and keep children away from sexual assault. In France, family protection offices have been set up in local government departments at all levels, with special personnel and social volunteers cooperating in surveys and visits to primary and secondary school students in various cities. And France has also set up a special telephone hotline to listen to the real voices of minors. France has also set up a special telephone hotline to listen to the voices of minors. In the United States, serious sexual crime punishment policies have shaken the self-confidence of sex offenders and people, and the government has warned and punished people by publishing a large

number of real cases in order to keep people away from sex crimes; At the same time, in order to effectively protect the rights and interests of these minors from sexual abuse, the United States has also carried out a series of social mobilization, whether they are teachers, social workers, doctors or ordinary neighbors, to monitor possible future sexual abuse of children anytime and anywhere. Possible sexual abuse of children is monitored at all times and at all times.

While each country should have its own political, cultural and social foundations, it is not necessarily a good idea to copy the practices of other countries. However, we should all the more humbly accept the excellent and advanced experiences of others and our country, and strive to establish and improve our country's system for protecting children's sexual rights at an early date, so as to provide children with a safe living and learning environment that is harmful to others. Ref. [7] We should also accept the advanced experience of other countries with an open mind, and strive to improve China's system for the protection of children's sexual rights as soon as possible, so as to provide a safe and harmless environment for children to grow up.

6. EPILOGUE

The prevention and control of child sexual abuse is an inevitable requirement for building a harmonious and healthy society. In light of the international community's legal experience in punishing child sexual abuse crimes, while implementing the spirit of the "rule of law", it is also necessary to reflect on the characteristics of child sexual abuse in China's environment, put forward strict requirements in the fields of administration, legislation, justice, legal popularization, education and counseling, and make improvements according to local conditions and the conditions of the times. Establish a responsible administrative and judicial evaluation mechanism for administrative departments, correctly handle illegal acts of sexual abuse of children and adolescents and their deficiencies in judicial work with the socialist rule of law thinking, creatively explore measures for responding to and improving judicial work, and gradually improve China's characteristic socialist rule of law and civilization by effectively punishing and guiding the prevention of illegal acts of sexual abuse of children and adolescents. It is also hoped that government departments will be urged to promote judicial reform through effective information disclosure, effectively implement the principle of maximizing the protection of children's interests in laws, regulations and policies, and gradually improve child protection legislation. At the same time, it is necessary to strengthen the supervision and education of parents and schools, so as to provide children with a safe and happy environment to grow up and stay away from the occurrence of sexual assault.

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