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COMMENTS

THE UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD: ARE CHILDREN REALLY PROTECTED? A CASE STUDY OF CHINA’S IMPLEMENTATION

I. INTRODUCTION

"The flowers of the fields are the children of sunshine and nature. The children of men are the flowers of love and compassion."1

Children around the world face poverty, forced labor, and sexual exploitation. Worldwide, approximately 100 million children are homeless.2 The International Labor Organization estimates that at least 200 million children worldwide are active participants in the work force.3 The United Nations Children’s Fund (UNICEF) estimates that in Asia, approximately one million children under eighteen are child prostitutes.4 In Thailand alone, the number of child prostitutes ranges from 200 thousand to 800 thousand.5 While in Brazil, it is estimated that up to 2 million children and teenagers are prostitutes.6 Wars have also had a devastating effect on children. UNICEF estimates that in wars dating back to 1985 more than 2 million children have been killed, approximately 5 million children have been disabled, more than 12 million children have been left homeless, and 10 million children traumatized, suffering from nightmares and devastating psychological effects.7

6. See Chidley et al., supra note 4, at 10.
The outlook for U.S. children mirrors the dismal world outlook. Among developed countries, the United States has the highest percentage of children living in poverty. By the year 2000, 25% or 16 million U.S. children will be living in poverty. In addition, since 1980, the reported abuses on U.S. children have tripled to approximately 3 million. Furthermore, almost 12 million U.S. children currently suffer from chronic hunger.

On November 20, 1989, the United Nations General Assembly adopted the Convention on the Rights of the Child (Children's Convention). The Children's Convention was intended to place children's rights at the forefront of the international arena.

This Comment analyzes the pragmatic effect of the Children's Convention. Part II describes the protection children enjoyed prior to the Children's Convention. This historical background helps measure the strides and shortcomings of the current Children's Convention. Furthermore, this analysis explores the origins of the Children's Convention, describing the drafting process, explaining the substantive rights offered, and examining its implementation mechanisms.

Part III compares China's law and policy to the standards provided by the Children's Convention. On March 2, 1992, China ratified the Children's Convention, thereby agreeing to "respect and ensure" the rights identified by the Convention. By ratifying the Children's Convention, China also agreed to "undertake all appropriate legislative, administrative and other measures for the implementation" of the Children's Convention.

Over five and a half years have passed since China ratified the Children's Convention. This Comment examines whether the

9. See id. at 143.
10. See id.
13. See id.
Children's Convention currently provides greater protection for children than did previous international instruments. Specifically, this Comment analyzes the Convention's substantive rights and implementation mechanisms to determine their effectiveness. China is used only as an example—any loopholes also apply to any ratifying country.

Part IV evaluates the successes and failures of the Children's Convention. In addition, this Comment recommends changes to provide greater protection for children. Part V acknowledges the positive steps taken by the Children's Convention, but ultimately concludes it has failed.

II. CHILDREN'S RIGHTS: THE PAST AND THE PRESENT

From Roman times until the mid-1800s children were sold, shipped off to sea, exploited, beaten, or ignored at the whim of their parents or guardians. During this period, people equated children with animals and slaves, essentially stripping away their identity. Children's anonymous status allowed parents to barter children as exchangeable and replaceable property. The concept that children had rights of their own developed only in the last few hundred years.

With a general movement toward humanitarian reforms in the nineteenth century, substantial changes in the treatment of children took place. Attention eventually focused on removing children from adult prisons, establishing special schools for children with handicaps, opening orphanages, securing better treatment for the mentally ill, and expanding public education.

In the early 1900s, attention expanded towards preventing child labor and protecting children from unsafe and exploitive working conditions. The first international movement for children's rights, however, did not occur until the end of World War I. This international movement sprung almost entirely from the

19. See id.
21. See id.
23. See Levesque, supra note 18, at 209.
work of child activist Eglantyne Jebb. In 1923, the Save the Children International Union (SCIU), led by Jebb, drafted and approved the first Declaration of the Rights of the Child, commonly known as the Declaration of Geneva.

The roots of the Children's Convention stem from the Declaration of Geneva, which first catalyzed worldwide acknowledgment that children represented an under-protected segment of the population. Over eighty international legal documents have subsequently focused on the special status of children. Particularly, there has been an active movement for children’s rights in the twentieth century. To analyze the Children’s Convention, it is necessary to review the two major international agreements that preceded it.

A. The Declaration of Geneva

In 1924, the fifth assembly of the League of Nations adopted the Declaration of Geneva. The Declaration of Geneva was the first human rights Declaration adopted by any inter-governmental organization. Notably, it preceded the Universal Declaration of Human Rights by twenty-four years.

The preamble of the Declaration of Geneva establishes that

24. See Cohen, Human Rights, supra note 20, at 371. In 1913, Eglantyne Jebb was moved by the plight of children she observed in the war-torn Balkans. She began working for the British Save the Children Fund and following World War I, she was successful in establishing the Save the Children International Union (SCIU). See id.
25. Records of the Fifth Assembly, LEAGUE OF NATIONS O.J. Supp. 23 (1924) [hereinafter LEAGUE OF NATIONS].
27. See Levesque, supra note 18, at 209.
31. See BUEREN, supra note 29 at 6.
32. The Declaration of Geneva sets five principles. The Declaration provides:
By the Present Declaration of the Rights of the Child, commonly known as the Declaration of Geneva, men and women of all nations, recognizing that mankind owes to the child the best that it has to give, declare and accept it as their duty that, beyond and above all considerations of race, nationality or creed:
1. The child must be given the means requisite for its normal development, both materially and spiritually;
2. The child that is hungry must be fed; the child that is sick must be helped; the child that is backward must be helped; the delinquent child must be reclaimed; and the orphan and the waif must be sheltered and succored;
“mankind owes to the child the best it has to give.”

Although this Declaration fell far short of being a sufficient children’s rights document, it did protect children’s most basic material needs. Despite its limited focus, the Declaration also establishes the necessary requirements to foster normal child development.

Although revolutionary for its time, the Declaration of Geneva has three major limitations. First, rather than addressing civil and political rights, the Declaration is almost entirely devoted to economic, social, and cultural interests. Second, the term “right” does not appear in the actual text. Finally, the Declaration lacks enforcement mechanisms because its drafters never intended to create an instrument which bound states. The Declaration avoids placing duties on the states, but rather places them on the men and women of all nations.

Despite these limitations, the Declaration of Geneva has contributed to improving children’s rights. It represents the first step towards protecting children internationally. Its acknowledgment of needed protection for the welfare of children set the foundation for future international children’s rights agreements. Although limited, the Declaration of Geneva was a stepping stone for the future of international children’s rights and served as the first link in a chain that eventually led to the Children’s Convention.

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3. The child must be the first to receive relief in times of distress;
4. The child must be put in a position to earn a livelihood, and must be protected against every form of exploitation;
5. The child must be brought up in the consciousness that its talents must be devoted to the service of its fellow men.

LEAGUE OF NATIONS supra note 25, at 23, reprinted in SAULLE, supra note 30, at 3.
33. Saulle, supra note 30, at 3.
34. See Levesque, supra note 18, at 209.
35. See id.; see also BUEREN, supra note 29, at 7.
36. See Levesque, supra note 18, at 210.
37. See BUEREN, supra note 29, at 8. The Declaration is silent on such rights as life and liberty, freedom from torture, due process of law, religion and thought. These rights do appear, however, in the Universal Declaration of Human Rights of 1948. See id. at 19.
38. See Levesque, supra note 18, at 210. Instead of using terms such as “rights” and “freedoms,” the Declaration speaks only of “principles.” See id.
39. See id.
40. See BUEREN, supra note 29, at 7.
41. See id. Adults must ensure the welfare of children because children are not regarded as holders of specific rights but instead are recipients of treatment by adults. See id.
42. See Cohen, United Nations, supra note 26, at 1448.
43. See BUEREN, supra note 29, at 8.
B. 1959 Declaration of the Rights of the Child

The dislocations, severed families, abuse of children, and economic upheaval of World War II prompted the United Nations to call upon the International Union for Child Welfare (IUCW) to draft a new Declaration of the Rights of the Child. Countries with different social, economic, and cultural backgrounds submitted comments to the United Nation’s Secretary-General. In 1949, the United Nations General Assembly adopted the new Declaration of the Rights of the Child (DROC).

The DROC announces ten general “principles” for the care and protection of children. The DROC directly and indirectly incorporated the original five principles of the Declaration of Geneva. Similar to the Declaration of Geneva, the preamble of the DROC proclaims that “mankind owes to the child the best it has to give.” It proclaims further the hope that the child “may have a happy childhood and enjoy for his own good and for the good of society the rights and freedoms set forth.” To accomplish this, the DROC charges upon parents, men and women as individuals, volunteer organizations, local authorities, and governments to recognize the rights in the DROC and to strive for their observance “by legislative and other measures progressively.”

Many of the principles in the DROC reflect the reality that the horrors of World War II were ingrained in the minds of the drafters. The first principle prohibits any type of discrimination or distinction among children. Principle three responds to the horrors of World War II child refugees by proclaiming that “the child

44. Formally known at SCIU. See Cohen, Human Rights, supra note 20, at 372.
45. See id.
46. Twenty-one countries submitted comments to the Secretary-General. These countries included: Belgium, Burma, Canada, Columbia, Czechoslovakia, Denmark, Dominican Republic, Ecuador, Egypt, India, Iraq, Mexico, Netherlands, New Zealand, Panama, Philippines, South Africa, Sweden, United Kingdom, United States, and Venezuela. See BUEREN, supra note 29, at 9.
50. DROC, supra note 47, at 19.
51. Id.
52. Id.
53. See id. princ. 1, at 19.
shall be entitled from his birth to a name and nationality." Principle ten protects the child from discriminatory practices.

In addition, the DROC takes both an aspirational and protectionist stance. It states that: (1) the child shall have special protection, to develop in a healthy and normal manner; (2) there shall be adequate pre-natal and post-natal care; (3) the child’s personality, needs, love and understanding shall have full development in the care of his or her parents wherever possible; (4) children are entitled to free and compulsory education which will promote the child’s general culture and develop the child’s abilities, at least in the elementary years; (5) the child shall be the first to receive relief and protection, in all instances; and (6) there shall be protection against all forms of child neglect, cruelty and exploitation. Finally, the DROC protects the physically, mentally or socially handicapped by proclaiming that they shall have special treatment, education and care as their conditions require.

Although the DROC and the Declaration of Geneva are similar, significant differences exist. First, the DROC uses the term “right” in the actual text. Second, the DROC arguably creates civil and political rights. Third, the DROC declares nations will pass laws that prioritize children. Fourth, unlike the previous Declaration, the DROC boldly refers to the parent-child relationship. Lastly, although the DROC stands as a non-binding

54. Id. princ. 3 at 20; see also Cohen, Human Rights, supra note 20, at 372.
55. See DROC supra note 47, princ. 10, at 20.
56. See Levesque, supra note 18, at 211.
57. See DROC, supra note 47, princ. 2, at 20.
58. See id. princ. 4, at 20.
59. See id. princ. 6, at 20.
60. See id. princ. 7, at 20.
61. See id. princ. 8, at 20.
62. See id. princ. 9, at 20.
63. See id. princ. 5, at 20.
64. See Levesque, supra note 18, at 8.
65. See SAULLE, supra note 30, at 7. This demonstrates how children’s rights have grown from general concepts to specific rights, which furthers the Children’s Convention’s goal of providing formal legal recognition to children’s rights. The DROC principle three states, “the child shall be entitled from his birth to a name and a nationality.” See DROC supra note 47, princ. 3, at 6. The DROC, however, primarily focuses on social, economic and cultural interests. See SAULLE, supra note 30, at 6.
66. See Levesque, supra note 18, at 211.
67. See id. at 212.
68. See id.
resolution, its signatories adopted it unanimously; therefore, they have placed greater weight on it than has been placed on other resolutions.69

Despite the enlargement of children's rights, major weaknesses exist in the DROC. First, instead of focusing on civil and political rights, the DROC focuses almost entirely on economic, social, and cultural interests.70 Secondly, the motivation for creating the DROC has been passionately criticized.71 Lastly, the DROC barely refers to "rights" and "freedoms" but instead labels subsections as either a "principle" or "entitlement" bestowed on the child.72 Thus, the language itself lacks enforcement or compliance measures, thereby casting it in a hollow light.73

Despite its weaknesses, the DROC was progressive in its conceptual thinking of children's rights.74 Whereas the Declaration of Geneva viewed children as objects of international law, the DROC perceived children as subjects of international law.75 The language of both Declarations reflects this dichotomy.76 While the Declaration of Geneva used the language "the child must be given,"77 the DROC states that the child can "enjoy the benefits of."78

Neither the Declaration of Geneva nor the DROC, however, met the mandate that "mankind owes to the child the best it has to give." Thus, children experienced few gains since the days other members of society viewed them merely as property.

69. See BUEREN, supra note 29, at 12.
70. See Bennett, supra note 48, at 18. The closest the DROC comes to declaring a political or civil right is when it states that the child shall be "entitled" to a nationality and "entitled" to protection from discrimination. The DROC avoids addressing such rights as those to life and liberty, freedom from torture, arbitrary arrest and detention, due process of law, privacy and freedom of speech, thought and religion. In contrast, all of these rights appear in the Universal Declaration of Human Rights and these rights would have helped the DROC make significant strides from the Declaration of Geneva. See id.
71. See Cohen, Human Rights, supra note 20, at 372. Allegations surfaced that instead of being worried about child labor, the member states were more concerned with eliminating child competition for jobs sought by adult workers. The purpose of reform schools have been attacked as mere attempts to mold city kids into preconceived adult images. In addition, the children's court system has been accused of actually denying children their rights. See id.
72. See Bennett, supra note 48, at 19.
73. See id.
74. See BUEREN, supra note 29, at 12.
75. See id.
76. See id.
77. SAULLE, supra note 30, at 3.
78. BUEREN, supra note 29, at 12.
C. The Convention on the Rights of the Child

1. Origins and Background

The majority of the United Nations member states opposed the DROC becoming a legally binding treaty.\(^{79}\) Not until twenty years later, as plans for the 1979 International Year of the Child celebration commenced, did the world consider adopting a legally binding children's rights treaty.\(^{80}\)

To highlight the 1979 celebration the Polish government proposed a legally binding children's rights treaty.\(^{81}\) Throughout the drafting of the DROC and the International Year of the Child, Polish United Nations delegates pressed for a legally binding instrument on children's rights.\(^{82}\) Those United Nations member states who had once opposed the drafting of a legally binding instrument consequently withdrew their opposition.\(^{83}\) They did not, however, enthusiastically support the Polish proposal.\(^{84}\) In 1978, the Polish delegation submitted a proposal to the United Nations Commission on Human Rights.\(^{85}\)

This newly proposed convention differed only slightly from

\(^{79}\) See Bueren, supra note 29, at 13.


\(^{81}\) U.N. ESCOR, Supp. No. 16, U.N. Doc. E/CN.4/1347 (1979); see also Developing Jurisprudence, supra note 17, at 10. During World War II, over two million Polish children were killed. The Nazis also persecuted many more children in medical experiments. See LeBlanc, supra note 80, at 16.

\(^{82}\) See LeBlanc, supra note 80, at 16.

\(^{83}\) See id. There are seven principal reasons why the member states accepted the concept of a legally binding treaty on the rights of the child: (1) many states had gone through a fundamental change of thought on children's rights and now viewed the 1959 Declaration as not meeting the needs of children throughout the world; (2) discrimination against children required positive international legislation; (3) states began to realize that children needed a higher standard of protection than that found in existing international law, due to children's special vulnerability and immaturity; (4) the principles of the "evolving capacities of the child" and "the best interest of the child" required new legislation to provide effective application of children's rights; (5) a uniform standard was needed because in the previous twenty years there were no major international agreements dealing with specific issues of children's rights; (6) the states recognized that the two previous Declarations failed to comprehensively protect children's rights; and (7) the fact that 1979 was designated as the International Year of the child, many nations recognized the need for a legally binding instrument on children's rights. See id.

\(^{84}\) See id. at 13.

\(^{85}\) See LeBlanc, supra note 80, at 17. Many nations considered the Polish proposal to be the International Year of the Child's main achievement. See id.
the DROC. These differences consisted of minor changes of wording in the preamble as well as the addition of nine articles that dealt with procedural matters, such as ratification.\textsuperscript{86} In addition, this proposal failed to identify the duties and responsibilities of signatory nations, and lacked a definite age group to be covered by the word "child."\textsuperscript{87} The adoption of this first draft would have been relatively meaningless.\textsuperscript{88} Fortunately, the Commission on Human Rights did not feel pressured to adopt this Polish proposal.\textsuperscript{89}

In retrospect, during these initial stages there were no serious discussions about the need for a Children’s Convention and no thorough or comprehensive studies established to determine if such a need existed.\textsuperscript{90} Nevertheless, during this period, the Commission on Human Rights formed a working group to begin drafting an expanded Children’s Convention.\textsuperscript{91}

2. The Drafting Process of the Children’s Convention

During the Commission on Human Rights Session in 1979, the first working group met for five days.\textsuperscript{92} During this time, it proposed several new paragraphs for the preamble and wrestled with new wording and contexts of other articles in the Children’s Convention.\textsuperscript{93} Although many considered the early meetings of the working group admirable, they were not considered serious drafting exercises.\textsuperscript{94}

In the fall of 1979, Poland submitted a new draft to the 1980 working group.\textsuperscript{95} This new draft differed vastly from the earlier model; it contained more extensive and specific children’s rights.\textsuperscript{96} Poland’s new draft represented the turning point in the international concept of children’s rights.\textsuperscript{97} Instead of placing all decision-making power in the hands of adults as had the previous dec-

\textsuperscript{86} See Cohen, \textit{Human Rights}, supra note 20, at 373.
\textsuperscript{87} See id.
\textsuperscript{88} See id.
\textsuperscript{89} See id.
\textsuperscript{90} See \textit{LEBLANC}, supra note 80, at 23.
\textsuperscript{91} See Cohen, \textit{Human Rights}, supra note 20, at 373.
\textsuperscript{92} See id.
\textsuperscript{93} See id.
\textsuperscript{94} See Cohen, \textit{Developing Jurisprudence}, supra note 17, at 11.
\textsuperscript{95} See Cohen, \textit{Human Rights}, supra note 20, at 373.
\textsuperscript{96} See id. at 374.
\textsuperscript{97} See Cohen, \textit{Developing Jurisprudence}, supra note 17, at 11.
larations, Article 7 of the new draft recognized that the child "has a right to have an opinion and a right to be heard." 98

By the end of the 1980 Commission of Human Rights Session, with this new model as a framework, the working group had adopted by consensus 99 all nine of the preamble's paragraphs, all of Article 1, and paragraph 1 of Article 2. 100

During this drafting process, a high degree of tension developed between states of the Eastern and Western coalitions. 101 The impact of the non-governmental agencies, 102 which carefully scrutinized the text while remaining politically neutral, fortunately diffused some of the tension. 103

The working group set 1989 as the goal for completing the new Children's Convention. 104 With this lofty goal, however, the working group's task became rushed and it failed to fully discuss several important issues. 105 For example, the issues of child consent to medical treatment and prohibition of medical experimentation on children were proposed and informally accepted. 106 Because there was little time to fully address these complex issues, the working group dropped these proposals. 107 Although these issues were not resolved, certain "hot topics" or highly controversial

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98. Id. at 12. In addition, this new model focused on the "best interest of the child" and set standards on foster care and adoption, juvenile justice, mass media, the parent-child relationship and prohibited exploitation. See id.

99. The working group reached all of its decisions by "consensus." The chairs at the meetings would determine when a consensus was reached. See LEBLANC, supra note 80, at 26.

100. See Cohen, Human Rights, supra note 20, at 374.

101. See Cohen, Developing Jurisprudence, supra note 17, at 17.

102. Non-governmental organizations played a crucial role in developing the Convention. They attended and participated in the working group sessions; met and consulted on the working group's proposed or adopted text; and finally reported their conclusions, support for the text or any modifications they felt were necessary to governmental delegations. See id.

103. See id.

104. See BUEREN, supra note 29, at 15.

105. See id. The working group did not complete its first reading of the Convention until February 1988. The working group held 12 meetings from Nov. 28 to Dec. 9, 1988 in order to complete its second reading. The working group established at least 16 drafting groups during these meetings, leading to several state delegates and non-governmental representatives in two groups simultaneously. This approach rushed the work in order to complete the second reading of the 54 articles and preambular paragraphs. See id. at 14-15.

106. See id. at 105.

107. See id.
issues emerged as important areas.108

These "hot topics" included the rights of the unborn child, freedom of religion, the right to foster care and adoption, and the minimum age for participation in armed combat.109 The working group reached a compromise regarding the rights of the unborn child, which resulted in the drafting of Article 1. Article 1 defines the child as "every human being" and allows the State Party to define "human being."110

In addition, the working group determined that every child was entitled to the freedom to choose their own religion.111 The Islamic delegation criticized this right to religious choice as being against the teachings of the Koran, which states that no child can choose or change his religion.112 Furthermore, the Koran does not recognize the right to adoption.113 Lastly, while the working group supported raising the minimum age of children that could participate in war to eighteen years of age,114 the United States as the lone dissenter refused this position and thus prevented a consensus from being reached.115

On January 21, 1989, after more than ten years of debating, proposing, and expanding the original Polish model, the working group adopted its report and presented it to the Commission on Human Rights for consideration and transmission to the General Assembly.116 On November 20, 1989, the General Assembly adopted the Children's Convention.117 This adoption signifies the United Nations' recognition of the need to institutionalize the concept of children's rights in international law.118
3. The Substantive Rights

The Children's Convention implies four major themes of substantive rights: the best interest of the child, the evolving capacities of the child, non-discrimination on basis of race and gender, and respect for the child's human dignity.119 With these themes underlying the Children's Convention, one can recognize three categories of children's rights: (1) survival and development rights, (2) protection rights, and (3) children's empowerment rights.120 These are discussed below.

a. Survival and Development Rights

The Children's Convention first recognizes survival and development rights. Article 6 of the Children's Convention defines survival rights as the right to life and the right to sustain life.121 Survival rights encompass civil, political, economic, social, and cultural rights.122

Article 6 does not explicitly direct how to achieve the survival and development rights of the child. Instead, the Children's Convention offers other articles to further the "right to life" and the "right to survival and development."123 The Convention, for example, declares that "State Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development."124

To establish this adequate standard of living, the Convention provides the following rights: the right to health care;125 the right to an education;126 the right to an educational system developed by State Parties to fulfill the child's potential;127 the right to alternative care (when the child is deprived of his or her family environ-

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119. See Cohen, Developing Jurisprudence, supra note 17, at 19. The best interest of the child is regarded as a self-imposed limitation of adult power to make a decision on behalf of a child. The adult is in this position only because of the child's lack of experience and judgment. The concept of evolving capacities of the child reflects the view that children develop at different rates and that State Parties respect children's individual differences. See BUEREN, supra note 29, at 45.

120. See Struensee, supra note 118, at 594.

121. See LEBLANC, supra note 80, at 65.

122. See id.

123. See id.

124. Children's Convention, supra note 12, art. 27, reprinted in 28 I.L.M. at 1467.

125. See id. art. 24, reprinted in 28 I.L.M. at 1465.

126. See id. art. 28, reprinted in 28 I.L.M. at 1467.

127. See id. art. 29, reprinted in 28 I.L.M. at 1468.
ment); and the right of the mentally or physically disabled to enjoy a full and decent life.

To ensure the development of the child, the Children’s Convention expresses rights specifically provided to children, including the right to identity. The children’s right to identity attempts to prevent adults from treating children as possessions or commodities to be bargained and traded. In addition, the Children’s Convention recognizes the right to a name, the right to acquire a nationality and the right to know and be cared for by the child’s parents. Finally, the Children’s Convention recognizes the right of the child to enjoy his or her own culture, religion, and language.

b. Protection Rights

Protection rights represent the second category of rights offered by the Children’s Convention. These rights can be divided into three areas of protection: exploitation and abuse; abduction and trafficking of children; and the use of children in war.

Exploitation and abuse encompass both sexual and economic exploitation. Article 34, drafted to curtail this world-wide problem, declares that “States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse.” Furthermore, the working group drafted Article 19 to prevent sexual, physical, or mental abuse of children who are in the care of their parents, legal guardians, or caretakers. Exploitation also includes economic exploitation. The Children’s Convention protects the child from hazardous work conditions or work that would be adverse to the child’s education and development.

128. See id. art. 20, reprinted in 28 I.L.M. at 1464.
129. See id. art. 23, reprinted in 28 I.L.M. at 1465.
130. See id. art. 8, reprinted in 28 I.L.M. at 1460.
131. See Struensee, supra note 118, at 602.
133. See id. art. 30, reprinted in 28 I.L.M. at 1468.
134. See LEBLANC, supra note 80, at 123.
135. See id. at 124.
136. Children’s Convention, supra note 12, art. 34, reprinted in 28 I.L.M. at 1469.
137. See Struensee, supra note 118, at 612-13; see also Children’s Convention, supra note 12, art. 19, reprinted in 28 I.L.M. at 1463.
138. See LEBLANC, supra note 80, at 130.
139. See Struensee, supra note 118, at 610; see also Children’s Convention, supra note 12, art. 32, reprinted in 28 I.L.M. at 1468.
Two articles specifically address protection from abduction and trafficking of children. First, under Article 35 "State Parties shall take all appropriate . . . measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form." Additionally, Article 11 declares that "States Parties shall take measures to combat the illicit transfer and non-return of children abroad." Finally, Article 38 requires State Parties to take all feasible measures to ensure that children under fifteen do not take a direct part in hostilities. Moreover, it requires that State Parties shall refrain from recruiting any child under fifteen into their armed forces.

c. Empowerment Rights

The third category of rights under the Children's Convention are "empowerment" or "participation" rights. These are based on the right to be heard on matters that affect one's life. The Children's Convention grants a child the right to express his or her view; freedom of expression; freedom of thought, conscience, and religion; freedom of association and peaceful assembly; and privacy.

States may restrict these rights only to the extent allowed by the law and by the exigencies of a democratic society that further the interest of national security, public safety, order, health, morals, or the protection of the rights and freedoms of others. Unlike past international treaties, the Children's Convention vests the child with these rights, rather than the parents or guardians.

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140. Children's Convention, supra note 12, art. 35, reprinted in 28 I.L.M. at 1469. This Article applies irrespective of boundaries between State Parties. See BUEREN, supra note 29, at 281; see also Children's Convention, supra note 12, art. 35, reprinted in 28 I.L.M. at 1469.

141. Children's Convention, supra note 12, art. 11, reprinted in 28 I.L.M. at 1461.

142. See Children's Convention, supra note 12, art. 38, reprinted in 28 I.L.M. at 1467.

143. See id.

144. See LEBLANC, supra note 80, at 157.

145. See id.

146. See Children's Convention, supra note 12, art. 12, reprinted in 28 I.L.M. at 1461.

147. See id. art. 13, reprinted in 28 I.L.M. at 1462.


149. See id. art. 15, reprinted in 28 I.L.M. at 1462.

150. See id. art. 16, reprinted in 28 I.L.M. at 1462.

151. See id. arts. 13, 14, reprinted in 28 I.L.M. at 1462.

152. See Cohen, Developing Jurisprudence, supra note 17, at 19.
4. Implementation: The Protection and Enforcement of the Children's Convention

The Children's Convention emphasizes the world community's aspirations for children. Therefore, improving children's lives throughout the world requires both implementation and compliance.153

As of April 1, 1996, 187 nations had ratified the Children's Convention, thereby becoming State Parties and agreeing to implement the Convention's standards in their territories.154 All of the United Nations members, except the Arab Emirates, the Cook Islands, Oman, Somalia, Switzerland, and the United States, have ratified the Children's Convention.155

Article 43 forms the starting point of the Children's Convention's implementation process. This article establishes a monitoring body, entitled the Committee on the Rights of the Child (CRC),156 which is composed of ten experts from different legal systems and regions of the world.157 It is responsible for monitoring the implementation of the Convention, primarily through the examination of the reports submitted by State Parties.158 The CRC discusses these reports with State Parties' representatives and publicizes its observations and recommendations.159

Article 2 places a duty upon State Parties to "respect and ensure" that the rights in the Children's Convention are guaranteed to every child.160 Furthermore, Article 4 describes how to achieve the guarantees of "respect and ensure."161 State Parties have a duty to "undertake all appropriate legislative, administrative, and other measures" to implement the rights contained in the Chil-

153. See Struensee, supra note 118, at 626.
155. See id. The United States did sign the Children's Convention, but failed to ratify it. See id.; see also infra IV.C.
156. See Children's Convention, supra note 12, art. 43, reprinted in 28 I.L.M. at 1472.
157. See id.
158. See AMNESTY INTERNATIONAL, THE CONVENTION ON THE RIGHTS OF THE CHILD 9 (Oct. 1994). State Parties must report to the CRC on measures which it has taken to implement the rights in the Convention. These reports are to be made widely available to the public in the State Party's own state. In addition these reports should include both factors and difficulties affecting the degree of fulfillment of the Children's Convention. See BUEREN, supra note 29, at 389.
159. See AMNESTY INTERNATIONAL, supra note 158, at 9.
160. See BUEREN, supra note 29, at 391.
161. See id.
Although each State Party decides which measures are appropriate; the CRC will scrutinize their decisions if necessary.

The CRC, however, has no enforcement powers and must rely entirely on international pressure from other State Parties to implement its recommendations. The measures designated to monitor State Parties’ compliance with the Children’s Convention, therefore, are only effective to the extent that State Parties are willing to implement them.

In addition, the Children’s Convention does not establish formal mechanisms to enable the CRC to examine complaints by individual children, persons on their behalf, or State Parties who allege a violation of the rights guaranteed to children by the Children’s Convention.

The most significant weakness of the CRC, however, turns on the breadth of reservations State Parties have attached to their ratification. Most reservations to the Children’s Convention specifically intend to exclude or modify the legal effect of certain rights. Under Article 51, however, “[a] reservation incompatible with the object and purpose of the present convention shall not be permitted.”

Even with Article 51, some State Parties’ reservations remain general or vague.

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162. See Children’s Convention, supra note 12, art. 4, reprinted in 28 I.L.M. at 1459.
163. See BUEREN, supra note 29, at 391-92.
164. See AMNESTY INTERNATIONAL, supra note 158, at 11.
165. See id.
166. See id. at 9-10. The CRC does have the power to transmit the State Party’s reports and its observations and suggestions to the United Nations and non-governmental bodies. Thus, implementing the Children’s Convention requires cooperation. See BUEREN, supra note 29, at 396.
167. See AMNESTY INTERNATIONAL, supra note 158, at 11; see also BUEREN, supra note 29, at 396.
168. See AMNESTY INTERNATIONAL, supra note 158, at 11.
170. See Convention on the Rights of the Child 203, U.N. Doc ST/LEG/SER.E/15 203, 203 (1996). For example, the Iranian government, “reserves the right not to apply any provisions or Articles of the Convention that are incompatible with Islamic laws and the international Legislation in effect.” Id. at 209. The Indonesia government’s reservation states the ratification of the Children’s Convention “does not imply the acceptance of obligations going beyond the Constitutional limits nor the acceptance of any obligation to induce any right beyond those prescribed under the Constitution.” Id. The Malaysia government will only apply Articles 1, 2, 7, 13, 14, 15, 22, 28, 37, 40 (paragraphs 3 and 4), 44 and 45 to the extent that these articles conform with its Constitution, national laws and national policies. See id. at 210. In addition, Thailand made reservations with respect to Articles 7, 22 and 29, which are to be applicable subjection to the national law, regula-
In summary, the CRC must rely upon State Parties to submit reports which assess the State Party's implementation of the Children's Convention. Therefore, implementation of the Children's Convention rests primarily on the legislative, administrative, and judicial institutions of the individual State Party. The CRC is responsible for monitoring the application through the examination of reports and through recommendations by the CRC to the State Party.

Because the Children's Convention lacks direct sanctions for the failure of a State Party to comply with it, the Children's Convention is not law. A legal commitment to the Children's Convention merely provides a standard against which government actions and polices are evaluated.

III. EXAMINATION OF CHINA'S IMPLEMENTATION: DOES THE CHILDREN'S CONVENTION SIGNIFICANTLY PROTECT CHILDREN?

Through a comparison of China's reactions to the Children's Convention, this Comment demonstrates how State Parties can sidestep the Children's Convention. The question remains whether the Convention actually provides any greater protection than its predecessors.

China ratified the Children's Convention on March 2, 1992. This section examines children's rights in China and compares these rights to the standards required by the Children's Convention. Using China as a measure of the Children's Convention, this

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171. See LeBLANC, supra note 80, at 286. Under Articles 44 and 45, a State Party's report will consist of the measures the State Party has adopted to promote the rights affirmed in the Children's Convention and the progress made towards the enjoyment of these rights. The report must also be sufficiently provide the CRC with a comprehensive understanding of the implementation progress. Furthermore, the initial report of the State Party has to be submitted to the CRC within two years of the State Party's ratification date. Thereafter reports will be submitted every five years. See Children's Convention, supra note 12, arts. 44, 45, reprinted in 28 I.L.M. at 1473-74.

172. See id.

173. See LeBlanc, supra note 80, at 286.

174. See Cohen, Developing Jurisprudence, supra note 17, at 92.

175. See id. at 96 n.513. John Austin describes law as being "a rule laid down by an intelligent being having power over him." Furthermore, law is the "command of a sovereign to an inferior and that command must be backed by a "noxious evil," should the command be disregarded. In contrast, the classical legal positivist defines law as a command of a sovereign, enforced by a sanction. See id.

176. See LEBLANC, supra note 80, at 287.

Comment shows that although the Convention elaborates on the rights given to children, it does not sufficiently protect children. Thus, this Comment uses China as an example of the numerous loopholes in the Convention available to any ratifying country.

A. Background of China

The Constitution of the People's Republic of China (PRC) enumerates specific citizen rights, including: equality before the law; freedom of speech, press, assembly, association, procession, and demonstration; freedom of religious belief; and personal freedom. These rights, however, are severely limited, and said to exist only on paper. The exercise of these rights and freedoms may not infringe upon the interests of the state, society, or the collective. The rights and freedoms granted depend upon their usefulness to the state, society, or the collective, as determined by the Communist Party. Children's rights, therefore, are determined by what the Communist party views as desirable.

B. China's Family-Planning Program

1. China's Policy and Effects

In the early 1970s, the Chinese government attempted to lower birth rates with a new slogan, "later, farther apart, and fewer." This slogan intends to encourage later marriages, longer intervals between births, and fewer children. In the late 1970s China's family-planning included forced abortion and sterilization. This family-planning program has caused the current social practice of female infanticide and abandonment of infant girls.

178. See P.R.C. CONST. ch. II., art. 33.
179. See id.
180. See id. art. 36.
181. See id. art. 37.
183. See P.R.C. CONST. ch. II., art. 51.
186. See id.
In 1979, China's goal for controlling its population growth had not been met. China, therefore, implemented its "One-couple, One-child policy" (One-child). This policy aimed to cap China's population at 1.2 billion by the year 2000 and to further reduce it during the next century. The 1982 Constitution asserts that "the state promotes family planning so that the population growth may fit the plans for economic and social development." In addition, the Constitution itself states that both the husband and wife must practice family planning.

The Marriage Law of 1980 made "family planning" an obligation for all couples. The government's goal behind the One-child policy is to achieve a higher standard of living. The government views the alternatives, as poverty, high infant mortality, and malnutrition.

The One-child policy in pertinent part provides:

(1) Couples should apply for birth permits before trying to conceive a child.

(2) At least one spouse must use long term and "effective" contraception after having the permitted number of children.

(3) Those who proceed with unauthorized pregnancies, especially after they have already had the permissible number of births, must have their pregnancies terminated. If the parent has an out-of-plan birth, the spouse must be sterilized.

Although in existence for nearly twenty years, this One-child policy has lost none of its original coercive effect. To illustrate,

188. See id.
190. See id.
191. See id.
192. P.R.C. CONST. ch. I, art. 25.
193. See P.R.C. CONST. ch. II, art. 49.
195. See Li, supra note 187, at 150.
196. See id.
197. See id. at 152-53.
198. See Lazarus, supra note 189, at 70-71.
on March 19, 1995, Party General Secretary Jiang Zemin stated that “under no circumstance” could family planning efforts be relaxed. Furthermore, Premier Li Peng proclaimed that current policies will continue until at least the end of this century.

If a couple ignores the One-child policy, the penalties and consequences fall into three categories:

1. Penalties openly imposed by the policy: (1) stiff fines; (2) the child being disqualified from benefits such as subsidized child day care, health care, housing, and education; and (3) administrative demotion and dismissal from employment.

2. Penalties and psychological intimidation sanctioned by the policy: (1) policy-created pressures from co-workers or fellow-villagers; and (2) intimidation and humiliation, including mandatory study sessions, visits by authorities, and public posting, and monitoring of menstrual periods.

3. Violence used by government agents: physical brutality and property destruction, including detention, beatings and the demolition of residences by local officials, militia acting in a governmental capacity, and the police.

China's central government does not authorize the use of particular coercive methods to force compliance with the official policy. Instead, enforcement varies widely from region to region

199. See id. at 71.
200. See id.
201. See Li, supra note 187, at 154; see also Unfair Burdens Impact of the Population Control Policies on the Human Rights of Women and Girls, CHINA RTS. F., Fall 1995 at 30, 33 [hereinafter Unfair Burdens]. For example, in some areas, each parent of a second child must pay a fine of 10 to 20% of their salary. After having three or more children, workers will lose their benefits, peasants may lose their land, and state workers will be subject to administrative punishments. Those children born out-of-the-plan will not be allowed to register as legal residents or to obtain birth certificates. Therefore, these children will be denied admission to day care, educational schools and health care benefits. See id.
202. See Li, supra note 187, at 154.
203. See id. For example, a former population control official who worked in a Northwestern province described a typical experience:

If the woman does not show up at the clinics on time [for abortion or sterilization], we go to her house trying to find her. If she is not home, we go again at night, often with 4 or 5 tractor-loads of local militia or police, each carrying a large flashlight. We go into the village quietly; surround the woman's house and then knock on her door. When someone opens the door we try to take the woman away... if we catch the woman, she is sent to the township clinic to get sterilized in the middle of the night by half-asleep nurses and doctors. The woman usually screams and kicks, and our men hold her down for anesthesia.

Unfair Burdens, supra note 201, at 31.
and year to year.  

These three categories of penalties affect mostly children born out-of-the-plan, i.e., the second, third or fourth child. Most regional regulations deny these children state subsidies, admission to public day care or schools, and access to public health care. This policy, which bans assistance notwithstanding the family’s circumstances, especially penalizes poor families.

Not all occurrences of abortion under the One-child plan are voluntary—in some instances the pregnant woman was detained and threatened until she agreed to undergo an abortion. There have been instances where doctors under pressure from government officials have killed “above-quota” newborns. In addition, in some areas of China, forced compliance with the family planning has resulted in a high rate of female infanticide and abandonment of girls. Therefore, this One-Child policy has endangered the lives of out-of-plan babies, and those that do live with their family will face the severe penalties.

2. Compliance with the Children’s Convention

When China ratified the Children’s Convention it agreed to “respect and ensure” the enumerated rights in the Convention. China also agreed to “undertake all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the present Convention.” A two-part analysis

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204. See Zhang, supra note 185, at 563.
205. See Li, supra note 187, at 157.
206. See id.
207. See id. at 158. One regulation reads: such poor families with out-of-plan children should not be given any “poverty assistance” until they take effective measures. All preferential assistance should be suspended. See id.
208. See AMNESTY INTERNATIONAL BRIEFING, CHINA: NO ONE IS SAFE 6 (1996) [hereinafter NO ONE IS SAFE].
209. See id.
210. See Li, supra note 187, at 159. Some areas, however, allow couples to have a second child if the first is a girl. But the polices allowing for a second child after the first is a daughter will sometimes impose conditions such as; one parent must also either been a mining worker for five consecutive years, or have become disabled. See id. Traditionally, it has been the responsibility of the sons to provide old age security to the parents, whereas the daughter is considered a part of her husband’s family. See Zhang, supra note 185, at 564.
211. See Children’s Convention, supra note 12, art. 2, reprinted in 28 I.L.M. at 1459.
212. Id. art. 4, reprinted in 28 I.L.M. at 1459. One of the major flaws of the Children’s Convention, however, is not defining when the life of the child begins. Article 1 states the Children’s Convention applies to “every human being.” Its failure to define “human be-
must be undertaken to evaluate China’s One-child policy: (1) Does China’s use of a reservation minimize the conflicts between the One-child policy and the Children’s Convention? (2) Even with this reservation, does China still violate the Children’s Convention?

First, China exploits one of the major weaknesses of the Children’s Convention—reservations. China’s reservation applies to Article 6 of the Children’s Convention, which states that “every child has the inherent right to life and the State Party will insure to the maximum extent possible the survival and development of the child.” China’s reservation states that with respect to Article 6, the Children’s Convention must subordinate itself to China’s family planning policy. The effect of China’s reservation allows China to continue its coercive methods of forcing abortions, sterilizations and pressuring doctors to kill out-of-plan babies, without violating Article 6.

Second, China violates the Children’s Convention, regardless of this reservation. China’s One-child policy which punishes the out-of-plan child, breaches Article 2, which states “State Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of status, . . . or family members.” In addition, by denying the out-of-plan child access to health care or denying the economically poor family assistance that they normally would receive, China clearly violates Article 24 of the Convention. Article 24 specifically states: “State Parties recognize the right of the child to the enjoyment of the highest attainable standard of health” and “State Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.”

Furthermore, when China signed and ratified the Children’s Convention, it agreed to follow Article 27 which protects every child’s right “to a standard of living adequate for the child’s physical, mental, spiritual, moral and social development.” Thus, when China denies the child such benefits as day care, health care,

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213. Children’s Convention, supra note 12, art. 6, reprinted in 28 I.L.M. at 1460.
216. Id. art. 24, reprinted in 28 I.L.M. at 1465.
217. Id. art. 27, reprinted in 28 I.L.M. at 1467.
housing, and education, the child is not provided an adequate standard of living.

Finally, along with violating the foregoing articles, China disqualifies out-of-plan children from education, thus breaching Article 28. This Article requires “State Parties [to] recognize the right of the child to education.”218 In addition, Article 28 states that China should achieve this right “progressively and on the basis of equal opportunity.”219 Moreover, Article 28 explicitly states that State Parties shall “make primary education compulsory and available free to all.”220 China violates Article 28 by giving in-the-plan children education while denying education to out-of-plan children.

Consequently, China's family planning program flagrantly violates numerous enumerated rights in the Children's Convention. Although, it has been over five years since China ratified the Children's Convention, China seems content to keep the method and means of the “One-child” policy in effect. The question left is: why did China ratify the Children's Convention? Perhaps it did because it knew that the Children's Convention relies only upon the State Parties themselves to implement these rights. In addition, China's ratification of the Children's Convention would be a politically expedient way to appease Western concerns regarding individual rights in China. China, therefore, could continue abusing Children's rights but appear to be implementing a treaty that protects children.

C. Children's Religious Rights in China

1. China's Laws and Policies

Article 36 of the PRC Constitution states that all citizens, including children, shall enjoy freedom of religious belief.221 Notwithstanding this explicit right, Article 51 declares that citizens “in exercising their freedom and rights, may not infringe upon the interests of the state, of society or of the collective.”222

218. Id. art. 28, reprinted in 28 I.L.M. at 1467.
219. Id.
220. Id.
221. P.R.C. CONST. ch. II., art. 36. The extent to which Children's rights extend to adults citizens is unclear, but the contrast between how China deals with these rights given and how the Children's Convention requires China to act is significant.
Although religion legally exists in China, the Communist party strictly regulates the activities of religious adherents, places of worship, the construction of new religious sites, religious training for students, and the distribution of religious literature.\(^2\) Religious groups must be registered with the government and if children join an unregistered group, those children face harassment, imprisonment, and even death from torture.\(^2\) Since 1994, new national regulations used police raids to repress unauthorized religious activities.\(^2\) These police raids included beating, threatening, and detaining attendees.\(^2\)

2. Compliance with the Children’s Convention

Children in China can engage in authorized “normal religious activity” only if the activities do not disrupt public order.\(^2\) Nevertheless, China retains a tight grip on children’s religious activities. This violates Articles 2, 14 and 30 of the Children’s Convention. In Article 2, China agreed to “respect and ensure the rights” guaranteed in the Children’s Convention, including religious freedom, “without discrimination of any kind, irrespective of the child’s or his or her parent’s . . . religion.”\(^2\) Per Article 14, China must “respect the right of the child to freedom of thought, conscience and religion.”\(^2\) Finally, in Article 30, China agreed to allow a member of a minority religion to profess and practice his or her own religion.\(^2\)

As the Chinese government restricts religious freedoms, China prevents children from exercising their religious rights, thus violating the Children’s Convention. Furthermore, these restrictions have the effect of preventing children from practicing minority religions, as China will not allow practice of these religions.

\(^2\) See NO ONE IS SAFE, supra note 208, at 6.
\(^2\) See id.
\(^2\) See id.
\(^2\) Children’s Convention, supra note 12, art. 2, reprinted in 28 I.L.M. at 1459.
\(^2\) Id. art. 14, reprinted in 28 I.L.M. at 1462.
\(^2\) See id. art. 30, reprinted in 28 I.L.M. at 1468.


D. Child Labor in China

1. Chinese Laws and Policies

China's One-child policy denies many out-of-plan children public education, thus forcing these children to engage in income-earning activities.\(^{231}\) It is estimated that children make up twenty percent of China's work force.\(^ {232}\) In 1993, it was conservatively calculated that about 10.66 million children worked rather than attended school.\(^ {233}\) Because the majority of these children live in very poor areas, they work in the fields or in "sideline" jobs to help their family alleviate financial burdens.\(^ {234}\) Many rural enterprises often force children to work long hours, without training, in extremely hazardous conditions.\(^ {235}\)

China's response has been to point to its legal sanctions against child labor. Nonetheless, in its initial report to the Children's Convention, China explained that child labor represents the "natural consequence of an economic situation—rich coastal cities attracting young children from poor villages—which at present the government can do little to change."\(^ {236}\)

2. Compliance with the Children's Convention

Article 32 of the Convention stipulates that China should protect the child from "economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education."\(^ {237}\) China's One-child penalty of preventing access to public education forces out-of-plan children into the work force. China shifts the blame to the economic situation, rationalizing that many poor children have no choice but to work. China ig-

\(^{231}\) See Mark Goellner, Unequal Opportunities, As School Fees Rise, More Children are Sent to Work, CHINA RTS. F., Spring 1996 at 1, 10.

\(^{232}\) See id.

\(^{233}\) See id. at 10-11.

\(^{234}\) See id.

\(^{235}\) See id. at 11. To illustrate, a foreign-invested enterprise employed 400 rural migrants, of which 160 were children. One of these children was a 14 year old girl, who became exhausted from working 18 hours a day and fainted on the job. Her hair was pulled into a machine, which resulted in her death. Another example involves a brick shop which used forced child labor. The brick shop forced over 40 children to carry bricks for over ten hours a day and fed them only melon in plain soup. See id.

\(^{236}\) Id. at 10.

\(^{237}\) Children's Convention, supra note 12, art. 32, reprinted in 28 I.L.M. at 1469.
nores this problem by characterizing it as beyond its control.\footnote{238}{See Goellner, supra note 231, at 12.} Theoretically, China provides a free basic education to all children. Ineffective village governments, however, can only provide minimal educational services. The villagers themselves bear all of the miscellaneous educational expenses.\footnote{239}{See id. at 13. For example, the government places miscellaneous charges on: application fees, examination fees, extra lesson fees, paper fees, insurance fees, health care fees, heating fees, water fees, electricity fees, etc. To illustrate, in one province, the annual per capital income is 335 yuan (US $40.40) annually. Yet, the local school’s miscellaneous charges amounted to 400 yuan (US $48.20) annually. See id.} Because the villagers cannot afford these expenses, many children are thrown into the work force. Thus, even in-the-plan children may not attend school because of the policies in poor villages.

Furthermore, Article 32 states that State Parties must provide “appropriate penalties or other sanctions to ensure the effective enforcement of the present article.”\footnote{240}{Children’s Convention, supra note 12, art. 32, reprinted in 28 I.L.M. at 1469.} China, however, claimed in its initial report to the CRC that it is often impossible to check violations; arguing that it is impossible to take prompt and effective control of the situation or to investigate sufficiently to stop violations.\footnote{241}{See Goellner, supra note 231, at 13.} In fact, local officials, ex-officials, or individuals closely tied to the government administer many of the locations where children work.\footnote{242}{See id.}

The Chinese government has not provided the appropriate penalties or sanctions, and has not taken legislative, administrative, social, and educational measures to ensure implementation of Article 32.\footnote{243}{See Children’s Convention, supra note 12, art. 32, reprinted in 28 I.L.M. at 1469.} Instead of alleviating these problems, the Chinese government hypocritically shifted the blame of child labor to the economic situation in poor villages, which the government itself fostered.

**E. Juvenile Justice in China**

1. China's Juvenile Justice System

In China, many cases have been reported about teenage children being held as political prisoners in the same detention prisons, sometimes even in the same cells with adults. They have also
been treated and made to work like adult prisoners. For example, a 12 year old Tibetan girl from Lhasa was detained for over four months for participating in demonstrations in which a group of teenagers used slings to throw stones at military police officers. During the interrogation, military police officers kicked her on the head, body, and administered electric shocks. In addition, they forced her to work with a team of fifteen women at various work sites, including waste pits containing noxious gases. She was released after four months without ever being charged.

In China, juvenile crimes account for at least ten percent of all cases, exposing tens of thousands of children to the Chinese judicial process. Nonetheless, the articles of Chinese Criminal Procedure Law governing arrest, detention and the investigation of criminal offenses, including interrogation of suspects, do not contain separate provisions for juveniles. More tragically, children risk being tortured by government authorities, especially criminal suspects who may be tortured until they confess. The most common forms of torture include: severe beatings by either kicking, whipping, or the use of electric batons that give powerful shocks; the prolonged use of handcuffs or leg-irons in ways that cause intense pain; and suspension by the arms.

Juveniles, furthermore, may face various forms of arbitrary detention under the discretion of the Public Security Bureau police. China's regulations require that juveniles be detained separately from adults; however, an exception states that juveniles can be held with adults when there are insufficient facilities. Consequently, no provisions for criminal procedure specifically

244. See AMNESTY INTERNATIONAL, TORTURE IN CHINA 44 (1992).
245. See id.
246. See id.
247. See id.
248. See id.
249. See Protections for Children Fail to Protect, CHINA RTS. F., Spring 1996 14, 15 [hereinafter Fail to Protect].
250. See id. at 15.
251. See NO ONE IS SAFE, supra note 208, at 3.
252. See id. For example, in 1995 four girls under sixteen were tortured by a Public Security, who intended to make them confess to hooliganism and promiscuous behavior. These girls were repeatedly hit and given shocks with an electric baton. See id.
253. See Fail to Protect, supra note 249, at 15.
254. See id.
exist for juveniles, causing juveniles to be detained with adult criminals.

2. Compliance with the Children’s Convention

Under Article 37 of the Children’s Convention, “[n]o child shall be deprived of his or her liberty unlawfully or arbitrarily.” 255 The Chinese justice system, however, seems arbitrary, because juveniles can be arrested and detained without being charged with a crime. 256

Furthermore, Article 37 states that “every child deprived of liberty shall be separated from adults unless it is considered in the child’s best interest.” 257 China, however, allows juveniles to be detained with adults whenever the community does not have sufficient juvenile facilities. 258 China’s re-education through labor policy may result in the incarceration of minors for up to four years with adults, for crimes in which these juveniles were never prosecuted. 259

Moreover, Article 37 states that a juvenile detained with adults “shall have the right to maintain contact with his or her family through correspondence and visits,” except in exceptional circumstances. 260 China’s pretrial detentions, in contrast, do not grant parents or legal representatives access to the minors, even though these detentions can last up to four months. 261

Therefore, although the Children’s Convention states that signatory nations “shall undertake all appropriate legislative, administrative, and other measures for the implementation of” these rights, China has failed to ensure the protection of children under
Article 37.262

F. The Effect of the Children's Convention

China’s treatment of children illustrates that the substantive rights of the Children’s Convention will not be recognized without proper enforcement mechanisms.

Therefore, children in China can only hope that the Chinese government radically changes its attempts to comply with the Children’s Convention. Worse yet for the children in China, the CRC can only wait for the next Chinese report. Even then, the CRC can only give more suggestions and recommendations. Thus, the Convention continues merely to represent a symbolic leap for the protection of children.

IV. EVALUATION AND RECOMMENDATIONS

A. Progress of the Children’s Convention

The Children’s Convention has nevertheless made significant strides that cannot be overlooked. Most significantly, the Children’s Convention endowed “rights” upon children, unlike the Declaration of Geneva which only spoke of “principles” and the DROC which spoke mostly of “principles” and “entitlements.” This is significant, moreover, because the Children’s Convention viewed children, for the first time as the holders of these rights.

In addition, the Children’s Convention encompassed more than just economic, social, and cultural interests by addressing civil and political rights, such as: the right to life;263 the right to express their views;264 freedom of expression;265 freedom of thought, conscience, and religion;266 freedom of association;267 the right to privacy;268 the right to enjoy own culture, religion, and language;269 and the right to due process.270

The third major impact of the Children’s Convention is its

262. See Children's Convention, supra note 12, art. 4, reprinted in 28 I.L.M. at 1459.
263. See id. art. 6, reprinted in 28 I.L.M. at 1460.
264. See id. art. 12, reprinted in 28 I.L.M. at 1461.
265. See id. art. 13, reprinted in 28 I.L.M. at 1462.
266. See id. art. 14, reprinted in 28 I.L.M. at 1462.
267. See id. art. 15, reprinted in 28 I.L.M. at 1462.
268. See id. art. 16, reprinted in 28 I.L.M. at 1462.
269. See id. art. 30, reprinted in 28 I.L.M. at 1468.
270. See id. art. 37, reprinted in 28 I.L.M. at 1469-70.
ratification protocol. The Children’s Convention does not require that any country ratify it and indeed, not all countries have.\footnote{271. See Convention on the Right of the Child, supra note 15, at 203-04. For example, the United States is one of the few countries that have not ratified the Children’s Convention. See id. at 204.} Thus, as a means of added international pressure, the ratifying State Party assumed an obligation to “respect and ensure”\footnote{272. See Children’s Convention, supra note 12, art. 2, reprinted in 28 I.L.M. at 1459.} the rights of the Children’s Convention and to take all “appropriate legislative, administrative, and other measures for the implementation” of the Children’s Convention.\footnote{273. Id. art. 4, reprinted in 28 I.L.M. at 1459.}

**B. Remaining Failures of the Children’s Convention**

Although the Children’s Convention is conceptually impressive, it has no significant practical effect without world-wide implementation and enforcement. First, it is inefficient because it relies on the State Party to make a report on its implementation efforts.\footnote{274. See id. arts. 44, 45, reprinted in 28 I.L.M. at 1473-74.} For example, the State Party itself must report the “factors and difficulties” it faces in implementing the substantive rights expressed in the Children’s Convention.\footnote{275. See id. art. 44, reprinted in 28 I.L.M. at 1473. This allows a State Party to shift the blame to other factors, without taking personal responsibility. For instance, China in its initial report to the CRC, has managed to shift the blame of child labor to “economic factors” out of its control. Yet, China’s requirements of miscellaneous fees in public education and its prohibition of an out-of-plan child attending school virtually force children to work. See supra Part III.D.\footnote{276. See Fail to Protect, supra note 249, at 14. Although China has become more candid in reports submitted to treaty bodies over the past 15 years, this initial report to the CRC, like most of China’s other reports, is designed to improve China’s international image rather than to examine the issues in question. For example, China’s report to the CRC failed to examine some of the serious deficiencies: child abuse, trafficking, arbitrary detention of juveniles, child labor, and the millions of “missing” infant girls. See id.} Therefore, a country’s report can contain only flattering information. To illustrate, China’s initial report praised the country’s achievement in enacting laws and regulations protecting children.\footnote{277. See id.} China, however, did not provide detailed descriptions of its laws and provided few statistics to show how children’s conditions had improved.\footnote{277. See id.}

Second, the CRC can only make suggestions and general recommendations based on this report. Without the ability to directly or indirectly sanction, the effect of the Children’s Convention is frustratingly limited. For example, signatories must submit the
first report two years after ratification; however, another report is not required until five years later. Even at that time, the CRC can still only make suggestions and recommendations.\textsuperscript{278} If real protection for children is to occur, individual countries must themselves make the appropriate changes. The problem is that this can be accomplished without the Children’s Convention, thereby diluting any gain accomplished by the Convention.

Third, the Children’s Convention lacks formal mechanisms enabling parties to allege violations of the Convention. A child cannot file a complaint or allege a violation even though the Children’s Convention was drawn to protect that child.

Fourth, the Children’s Convention left very important issues undefined. For instance, instead of specifically protecting an unborn child, the Children’s Convention left the task of defining a “human being” to the individual State Parties. As a result, the Children’s Convention offers no protection to an unborn child, regardless of the procedure used to end the unborn child’s life. In addition, by failing to reach a consensus on raising the age of children who can participate in war, the Children’s Convention failed to protect children from participation in warfare.

The reservations to the Children’s Convention represent the fifth shortcoming. Article 51 states that a reservation incompatible with the object and purpose of the Children’s Convention will not be permitted.\textsuperscript{279} Yet, many countries have broad and sweeping reservations that effectively stifle the Convention’s goals.\textsuperscript{280} Other countries have made reservations on a policy or law that otherwise would severely violate the rights granted in the Children’s Convention.\textsuperscript{281} By allowing these reservations the Convention fails to live up to even its own standards—Article 51—because it ironically allows violations of any expressed right of the child.

The sixth and central problem rests in the attitudes of the State Parties. Most State Parties inadequately complete reports because of their unwillingness to sufficiently describe their efforts

\begin{itemize}
\item \textsuperscript{278} See Children’s Convention, supra note 12, art. 45, reprinted in 28 I.L.M. at 1474.
\item \textsuperscript{279} See id. art. 51, reprinted in 28 I.L.M. at 1475.
\item \textsuperscript{280} See Convention on the Rights of the Child, supra note 170, at 205. In addition to those incidents discussed in note 170, Kuwait made reservations on “all the provisions of the Convention that are incompatible with the laws of Islamic Sharia and the local statutes in effect.” Id. at 209.
\item \textsuperscript{281} See id. at 206. For example, China’s reservation on its family planning policy violates children’s rights. See id. Morocco made a reservation to Article 14 with respect to freedom of religion because Islam is the State religion. See id. at 210.
\end{itemize}
in implementing the Children’s Convention.282 These State Parties view ratification of all human rights instruments as important only for political reasons, such as the global image they wish to project.283 True legal protection requires more than standards described on paper. Therefore, the Children’s Convention merely sets guidelines and evaluates children’s conditions around the world. If it serves only as a guide, then the real protection it seeks to offer children is just a vision—nothing more then a political-legal fiction that does not offer true protection. Without a change in the thinking of State Parties to provide the resources necessary to deal with the needs of children, the Children’s Convention is worth less than the paper on which it is printed.

C. Recommendations

As enacted, the Children’s Convention fails to protect children. The framers of the Children’s Convention hoped it would be a legally binding instrument that would provide children with substantive rights; however, it has not met these expectations.

One option to solve the implementation problems is to have an individual petitioning system attached to the Children’s Convention itself.284 Under this system, complaints from human rights organizations and other State Parties would be investigated by a body, such as the CRC.285 The petitioning system would provide a more direct, effective, and efficient complaint mechanism than the submission of State Party reports.286 During the drafting process, the individual petition system was abandoned because the Children’s Convention was to be implemented through cooperation, while the petition system seemed to promote confrontation.287

282. See LeBlanc, supra note 80, at 287. Some State Parties, however, probably fail to meet the reporting criteria for legitimate reasons, such as lack of resources or trained personnel. See id.
283. See id.
284. See Buuren, supra note 29, at 410-11.
285. See id. The individual petition system has already proven effective under the European Convention on Human Rights. See id.
286. See id. at 411. Under the European Convention on Human Rights, complaints can be brought by: (1) individuals, (2) non-Governmental organizations or group of individuals, and (3) one member state against another. See Jonathan L. Black-Branch, Observing and Enforcing Human Rights under the Council of Europe: The Creation of a Permanent European Court of Human Rights, 3 Buff. J. Int’l L. 1, 15 (1996).
287. See Buuren, supra note 29, at 411. Although, the Council of Europe did not find this, under the European Convention on Human Rights, instead it seemed the State Parties consented to abide by any judgment based on the findings of the Complaint. See id.
Furthermore, it has been argued that the petition system would overburden the CRC and open up the floodgates to complaints. On the contrary, effective implementation of children's rights requires a system with the resources to effectively handle children's rights issues throughout the world. An inability to address an increase in petitions, therefore, shows that the CRC is a mere sham with no intention of having a real impact on Children's rights. If the Children's Convention was intended to implement the substantive rights it expresses, then providing sufficient resources to deal with bona fide human rights organizations complaints and/or reports would only advance this objective.

A second option to further children's rights is for the United States to ratify the Children's Convention, adding to the international pressure on State Parties submitting inadequate reports. The United States, however, failed to ratify the Convention based on two main concerns: (1) the Convention would undermine the family; and (2) fear that it would weaken U.S. sovereignty.

These concerns are overstated. For one, the Children's Convention focuses on the family-child relationship, by specifically providing articles which strive to keep families together, to allow parents control over their children, and to preserve the family name and identity.

Regarding the sovereignty concern, the implementation process shows compliance is voluntary. Because United Nations State Parties place high value on their sovereignty, those who ratify a treaty do not diminish their sovereign national powers. Furthermore, the United States has signed other human rights treaties, such as the 1948 Universal Declaration of Human Rights and

288. See id.
289. See id.
290. See id.
291. See U.S. Should OK, supra note 154, at G2.
292. See id.; see also Children's Convention, supra note 12, reprinted in 28 I.L.M. at 1448. Article 3 states, "State Parties undertake to ensure the child such protection . . . taking into account the rights and duties of his or her parents." Children's Convention, supra note 12, art. 3, reprinted in 28 I.L.M. at 1459. Article 5 adds, "State Parties shall respect . . . the right and duties of parents." Id. art. 5, reprinted in 28 I.L.M. at 1459-60. Article 7 adds that the child has a "right to know and be cared for by his or her parents." Id. art. 7, reprinted in 28 I.L.M. at 1460. In addition, Article 8 declares "State Parties undertake to respect the right of the child to preserve his or her . . . name and family relations." Id. art. 8, reprinted in 28 I.L.M. at 1460.
293. See U.S. Should OK, supra note 154, at G2.
was a main proponent to the drafting of the Convention. If the United States ratified the Convention and submitted adequate reports, then other State Parties would feel more international pressure to make stronger efforts to protect children.

V. CONCLUSION

Although the Children's Convention has its disappointments and shortcomings, its recognition that children have such rights is a small step toward real and true legal protection of children's rights. The concept of children's rights is relatively new, slowly gaining public recognition, thus creating appreciation on the gains made by the Children's Convention. The real impact of the Convention, however, is to establish more specific terms on paper. With State Parties having virtually exclusive power to implement and enforce the Children's Convention, effective help for children throughout the world will take too long with too few concerns adequately addressed. Therefore, the Children's Convention has become mere political rhetoric, useless for the children it purports to protect.

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294. See id.

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