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**Child trafficking in China from a human rights-based approach: A case study of three Chinese provinces**

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## Abstract

Child trafficking is a heinous crime and a severe violation of human rights that concerns every country, including China. Child trafficking in China has particularities and is subject that has been under-evaluated. The prohibition of child trafficking in China has historically focused on the domestic abduction and sale of children, which has always existed in Chinese history. In the 1980s, the crime became widespread, and public concern reignited. The existing domestic legal framework based on the first Criminal Law of the People's Republic of China, adopted in 1979, is remindful of a long history of contrasting a widespread practice.

Human rights violations are both causes and consequences of child trafficking, either domestic or transnational. This research examined the crime of child trafficking, as defined in Article 240 of the Criminal Law of China, in three provinces of China (Guangdong, Shandong, and Yunnan) from a human rights perspective, analysing factors that may cause and facilitate child trafficking and human rights issue arise during and after trafficking process, as well as the State's obligations under international human rights law. To ensure that the research questions are adequately addressed, this research adopted a mixed-methods approach.

There are three criminal modes of child trafficking: the abduction and sale of children (M1), the parental sale of children (M2), and the organised child trafficking (M3). The quantitative analysis of 1,567 court judgements at national level drew up the flows of trafficked children in the three provinces of study. Detailed analysis of the court judgements regarding 689 victims in Guangdong, Shandong and Yunnan Provinces unveiled both differences and similarities in the trafficking patterns presented in the three provinces. The crime was concentrated in rural areas. Most of the children were trafficked for illegal adoption. They were primarily infants less than one year old. Both boys and girls were vulnerable to trafficking.

The anecdotic evidence based on case law proved that human rights violations and issues are not only the causes and consequences of crimes related to child trafficking; they continue to exist after the rescue of the victim. Poverty and gender-based discrimination are the main structural factors identified in this research. Discrimination against persons with disabilities and children born out of wedlock are other factors that cause child trafficking. The birth control policy is a proximate factor that interacts with poverty and discrimination, and flourish child trafficking in the three provinces. Child trafficking causes serious violations of the dignity and fundamental human rights of the victim, including the right to life, the right to liberty, the right to security of person, the right to be free from torture and enslavement, the right of the child to preserve his or her identity, the right to not be separated from their parents against their will, and the right of the child to be registered immediately after birth, to have a name and to acquire a nationality. New human rights challenges arose after the rescue of the trafficked children. The issues of concern include, but not limited to, the care of the victims after the rescue, safe return to family, healthcare and assistance to the child victim, and the right to remedy.

China has actively engaged in combating child trafficking, and some of the measures were innovative. However, the policies and measures have failed in many aspects to respond to the realities and particularities of crimes in the country and brought new challenges regarding human rights protections. Some structural defects of the Chinese anti-trafficking law and their consequences emerged in this study. Numerous gaps also need to be filled in when referring to international human rights standards and principles.



## Abbreviation

AI	Artificial intelligence
ASEAN	Association of Southeast Asian Nations
BBHJ	Bao Bei Hui Jia (Baby Coming Home)
CCCPC	Central Propaganda Department of the Central Committee of the Communist Party of China
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
COMMIT	Coordinated Mekong Ministerial Initiative against Trafficking
CRC	Convention on the Rights of the Child
CRC-OPSC	Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography
CRPD	Convention on the Rights of Persons with Disabilities
ECOSOC	United Nations Economic and Social Council
GMS	Greater Mekong Sub-region
GRP	Gross Regional Product
ICAT	Inter-Agency Coordination Group against Trafficking in Persons
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
ILC	International Law Commission
ILO	International Labour Organisation
IMCS	Inter-ministerial Joint Conference System for Anti-Trafficking in Women and Children
IOM	International Organization for Migration
MPS	Ministry of Public Security
NPA	National Plan of Action
OHCHR	United Nations Office of the High Commissioner for Human Rights
OSCE	Organization for Security and Co-operation in Europe
PRC	People's Republic of China
SAAR	South Asian Association for Regional Cooperation
SPA	Subregional Plan of Action
UNAIDS	United Nations Joint Program on HIV/AIDS
UNESCO	United Nations Educational, Scientific and Cultural Organisation
UNDP	United Nations Development Programme
UNICEF	United Nations Children's Fund
UNODC	United Nations Office on Drugs and Crimes
WHO	World Health Organisation



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# **Preface**

## **Introductory remarks**

Child trafficking is a heinous crime and a severe violation of human rights that concerns every country, including China. Generally, China is known as a country of origin and destination of cross border trafficking of persons (UNODC 2006a; 2016). However, it has been for long ignored that child trafficking is also rampant within the country. This study focuses on child trafficking in China after the founding of the People's Republic of China, which is rarely known or studied in the international realm. The phenomenon of child trafficking in China and its legal framework criminalising the practice have a long history and show some particularities. In the 1980s, the crime once again became widespread and public concern reignited. Children were abducted violently and sold afterwards or sold by their parents. Although the Chinese government has taken a series of actions to cope with the crime of child trafficking, the tragedies never stopped for those Chinese families and the public. In addition to police actions to crack down on criminal activities and networks, increasingly harsh penalties were imposed on child trafficking crimes. The civil societies are also actively involved in combatting the crime and protecting the victims. However, the way in which to prevent and combat the crime of child trafficking remains a topic of vibrant discussion in China.

For most of the existing studies, trafficking of children is generally considered as a sub-group of human trafficking. Research dedicated to children as victims and internal trafficking is disproportionately little. Due to the hidden nature of the crime and inadequate data collection methods, there is a lack of homogeneousness and reliable data. Most of the studies on human trafficking have taken a qualitative approach, analysing the underlying factors and human rights violations that cause trafficking. Furthermore, the studies of child trafficking in China conducted by Chinese scholars mainly focus on the legal, sociological and criminological aspects. Empirical studies, addressing the

issue from a human rights perspective are scarce. Some significant gaps in research need to be filled in order to improve policies of combating child trafficking in China.

The purpose of this research is to examine the issue of child trafficking in the Guangdong, Shandong and Yunnan provinces of China from a human rights perspective, analysing factors that may cause and facilitate child trafficking and human rights issues arising during and after trafficking process, as well as the State's obligations under international human rights law. It will answer two main research questions: How human rights issues are related to child trafficking in the context of several Chinese provinces, based on judgements of detected cases in provinces of Guangdong, Shandong and Yunnan, and whether the human rights principles and concrete standards set up by relevant UN agencies have been taken into consideration by the authority when coping with the issue of child trafficking.

## **Structure of the dissertation**

This thesis consists of five core chapters, an introduction and a general conclusion.

Chapter I introduces the historical, factual and legal background of child trafficking in China and the structure of the research. The first section presents the general context in which child trafficking evolved both at international level and at the Chinese national level. It starts with a brief history and the current situation of child trafficking in China, and is followed by an introduction of the multilevel legal framework that concerns child trafficking. More specifically, it compares the international definition of "trafficking in persons" and the "sale of children" and the Chinese legal definition of the "abduction and sale of children". The second section explained the human rights-based approach and its application in policy-making and research regarding child trafficking. It compiles the human rights principles and guidelines in responding to child trafficking, relevant human rights issues and the State's obligations according to international human rights law. This section also contains an introduction of the multilevel mechanism in combating child trafficking. The third section is a review

of the literature on the studies of child trafficking. Special attention was paid to the causes of human trafficking, child trafficking in China and human rights approach. After highlighting the knowledge gaps, the fourth section clarifies key concepts addressed, research questions, the scope of research, and the limitations. The fourth section presents in detail the structure and methodology of this research project, including its research questions, contextual frameworks, research design and research methods. The research is divided into two distinctive but sequential stages. The exploration of the general picture of child trafficking in the Guangdong, Shandong and Yunnan provinces of China is conducted with quantitative methods. It is followed by qualitative analysis with case studies of how human rights issues arose during the process of child trafficking and policy gaps. Quantitative data were collected from court judgements of Guangdong (n1=116), Shandong (n3=455) and Yunnan (n2=118), while the qualitative data collected also refers to literature materials such as newspapers, web news, policy papers and interviews.

Chapter II contains the main findings of the quantitative study, which is a precondition of the analysis of the following two chapters. The first section gives a statistical overview of child trafficking in China. The second section then presents a classification of three child trafficking modes identified in Guangdong, Shandong and Yunnan: abduction and sale of children (M1), parental sale of children (M2), and organised child trafficking (M3). The third section presents the descriptive analysis and crosstabulations that illustrate: dominant modes of trafficking in the three provinces, the profile of the victims grouped by trafficking modes and provinces, the profile of trafficking cases, the profile of offenders, as well as operational and organisational models of traffickers.

Based on the findings of the previous chapter and supported by specific cases and other materials, Chapter III uses anecdotic evidence, taken from the case law, to analyse how human rights issues arise during the trafficking cycle. The widespread nature of child trafficking in the three provinces is caused by a combination of a series of issues including poverty, gender-based discrimination, health and the other statuses, as well as inadequate child protection systems. Human dignity and a series of

rights of the child-victims are violated during the trafficking process, including the right to life, liberty, the security of person, be free from torture and enslavement, and not be arbitrarily separated from their parents. New human rights challenges arise after the victims are released from trafficking cycles, including the care of the child-victim and the right to remedy.

Chapter IV focuses on the State as a duty bearer and its actions in responding to child trafficking. The first section introduces the Chinese national policy on combating child trafficking. The second section presents, following the “3Ps” mechanism, measures taken by the authorities in the fields of prosecution, protection and prevention, as well as the efforts made by civil society. The last section highlights the policy gaps with respect to reality.

Chapter V examined the national policy in responding to child trafficking under the standards set out in the international instruments, in particular the Palermo Protocol and the CRC-OPSC. By underlining the gaps between the State’s obligations under the international law and their implementation at the national level, this chapter highlights the added value of human rights approach in improving the Chinese policy of combating the crime of child trafficking and protecting the right of the child.

## **I. Child trafficking in China: Factual and legal background.**

### **Framing the research in a human rights-based perspective**

Child trafficking is a heinous crime and a severe violation of human rights that concerns every country, including China. Generally, China is known as a country of origin and destination of cross border trafficking of persons (UNODC 2006a; 2016). However, child trafficking is also rampant within the country. This study focuses on child trafficking in China after the founding of the People's Republic of China. The phenomenon of child trafficking in China and its legal framework criminalising the practice have a long history and show some particularities. In the 1980s, the crime once again became widespread and public concern reignited. Children were abducted violently and sold afterwards or sold by their parents. Although the Chinese government has taken a series of actions to cope with the crime of child trafficking, the tragedies never stopped for those Chinese families and the public. In addition to police actions to crack down on criminal activities and networks, increasingly harsh penalties were imposed on child trafficking crimes. In addition, civil societies are actively involved in combatting the crime and protecting the victims. However, the way in which to prevent and combat the crime of child trafficking remains a topic of vibrant discussion in China.

This chapter introduces the historical, factual and legal background of child trafficking. After a brief introduction of the particular historical context and the current situation of child trafficking in China, it moves to illustrate the multilevel legal framework that concerns child trafficking. More specifically, it compares the international definition of “trafficking in persons” and the “sale of children” and the Chinese legal definition of the “abduction and sale of children”. In the section of the literature review, special attention was paid to the causes of human trafficking, child trafficking in China and human rights approach. After highlighting the knowledge gaps, the last section raises key research questions and research methods.

## **1.1. The general context**

Child trafficking is a heinous crime and a severe violation of human rights that concerns every country, including China. Generally, China is known as a country of origin and destination of cross border trafficking of persons (UNODC 2006a; 2016). However, child trafficking is also rampant internally within the country. This study focuses on child trafficking in China after the founding of the People's Republic of China. The phenomenon of child trafficking in China and its legal framework criminalising the crime have a long history and shows some particularities. In the 1980s, the crime became rampant again and went back to public concern. Children were abducted violently and sold afterwards or sold by their parents. Although the Chinese government has taken a series of actions to cope with the crime of child trafficking, the tragedies never stopped concerning Chinese families and the public. In addition to police actions to crackdown criminal activities and networks, increasingly harsh penalties were imposed on crimes of child trafficking. In addition, civil societies are actively involved in combatting the crime and protecting the victims. However, how to prevent and combat the crime of child trafficking remained a topic of vibrant discussion in China.

First of all, what is child trafficking in China – a key concept in this study? In international law and international human rights law, there is not a unified definition of “child trafficking”. However, there are two widely accepted international treaties that contain definitions that this thesis referred to for establishing the conceptual framework – the “trafficking in persons” defined in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, and the “sale of children” in the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography. China is a State party of both treaties. Nevertheless, the Chinese legal definition of trafficking is not fully in line the international definitions, and there is some confusion regarding terminology, especially with regards to translation and the use of certain terms. It is defined in Article 240 of Criminal Law as the “any act of abducting, kidnapping,

buying, selling, transporting, or transferring a woman or a child for the purpose of selling the victim”. As research on child trafficking in China, this thesis adopts the Chinese definition while accepting its shortcomings. Chinese definition while accepting its shortcomings.

For most of the existing studies, trafficking of children is generally considered as a sub-group of human trafficking. Works dedicated to children as victims and internal trafficking are disproportionately few. Due to the hidden nature of the crime, inadequate data collection methods, there is a lack of homogeneous and reliable data of the crime. Most of the studies on human trafficking took a qualitative approach, analysing the underlying factors and human rights violations that cause trafficking. While the studies of child trafficking in China conducted by Chinese scholars mainly focus on legal and sociological criminological aspects. Empirical studies, addressing the issue from a human rights perspective, are scarce. Some significant gaps in research need to be filled in order to improve the policy of combating child trafficking in China.

### **1.1.1. Background and factual context**

Children from every continent are trafficked within or across national borders for various forms of exploitation, including sexual exploitation, forced labour, organ removal, committing crimes, illegal adoption and other purposes. Due to the clandestine nature of the problem, there are no accurate figures on the victims of trafficking, while according to the annual report of United Nations Office on Drugs and Crime (UNODC), the total number of detected victims of trafficking in the world in 2016 was around 25,000, of which 30% were children (UNODC 2018). However, this is only the tip of the iceberg (Kragten-Heerdink et al. 2017, Laczko and Gozdziaik 2005, Liu 2010, Rafferty 2007, Savona and Stefanizzi 2007, UNODC 2006a). As the most populous country in the world, China is not immune to child trafficking. It is a State Party of international, regional and bilateral agreements concerning trafficking in women and children. In international studies, it is usually recognised as a country of both origin and destination of cross border trafficking of persons (UNODC 2006a; 2016). At the same time, it also experiences rampant internal trafficking and the sale of children, a

phenomenon that has been generally overlooked in international studies (Laczko and Gozdzia 2005, Shen et al. 2013, UN-ACT 2012).

The issue of child trafficking, as a subcategory of human trafficking, became a concern of international politics at the beginning of the Twentieth Century (Gallagher 2010). Initially, the focus was almost exclusively on the trafficking of women and children for the purposes of prostitution<sup>1</sup>, also known as “White Slave Traffic”, which referred to slavery-like practices of recruitment and trade of women and young girls for prostitution (Gallagher 2010, Obokata 2006). The first Convention against White Slavery – the International Agreement for the Suppression of the White Slave Traffic of 1904 – sought to protect women and girls from being procured abroad for “immoral purpose”. The following International Convention for the Suppression of the White Slave Traffic of 1910 also concerned the trafficking of women and girls, emphasising the process of procurement and transportation. By the adoption of the International Convention for the Suppression of Traffic in Women and Children of 1921, it was recognised that children of both sexes and of any race could be subjected to trafficking. Regarding child trafficking, the International Convention for the Suppression of the Traffic in Women of Full Age of 1933 did not make much significant breakthrough, while the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others of 1949 added domestic trafficking as a subject of concern. To summarise, the international concern on child trafficking originated to suppress the procurement and traffic of women and girls for prostitution and/or other forms of sexual exploitation.

The Chinese historical context of banning child trafficking is not the same as that commonly researched in international studies. Although in 2000 China ratified two of the most important international treaties concerning child trafficking: the *Optional Protocol to the Convention on the*

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<sup>1</sup> UN Commission on Human Rights, (1999) *Report of the Special Rapporteur on the sale of children, child prostitution and child pornography, Ms. Ofelia Calcetas-Santos*, 29 January 1999, E/CN.4/1999/71, at para. 6.

*Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography* and the *Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime*, the prohibition of child trafficking in China has historically focused on domestic abduction and sale of children, which has always existed in Chinese history. In feudal societies (Hou 2007, Lenski and Cameron 2018, 388-411), there were two forms of sale of people: On the one hand, the sale of slaves was legal and regulated by authorities. On the other hand, non-slaves, especially women and children, were trafficked by means of abduction, violence, coercion and fraud, and then sold to become slaves maids or prostitutes (Ma 1997). Starting from the Tang dynasty (AD 618 – AD 907), the abduction and sale of non-slaves and children under ten-years-old was prohibited by law (Yu 2000). This prohibition was inherited by the following dynasties such as those of Song (AD 960 – AD 1279) and Qing (1644 - 1912), and harsh penalties were imposed for the abduction and sale of people including children (Qiao 2002, Shi 1991, Yang 2006, Yao and Guo 2008). For instance, the criminal code of the Qing dynasty prohibited the procurement of women and children for the purpose of selling, keeping as wife or concubine, or adopting as one's family children. The principal offender in child trafficking, who abducted children by using narcotic drugs, was to be sent to the gallows (Qiao 2002). On 2 March 1912, the president of the Provisional Government of the Republic of China (January 1912 – April 1912) Sun Yat-Sen issued a Presidential Decree, abolishing slavery and prohibiting all forms of sale of persons in China (Yang 2006).

After the founding of the People's Republic of China (PRC) in 1949, for almost three decades, the crime of child trafficking was wiped out as the result of the strict control of the central government over food and household registration (Yang 2006), as well as the severe punishment for those involved (Chu 1996). However, following the reform and opening-up policy, the child trafficking in China resurged at the end of the 1970s and became widespread in the 1980s – 1990s (Li 2000, Yuan and Yang 2001, Zhang 2006). The methods of child trafficking used in this period by recruiters and

traffickers are very similar to those in the past: child victims, mostly male, were taken away from their family by mean of abduction and fraud (Wang 1992). The flourishing of the abduction and sale of children coincided with the enforcement of the one-child policy, imposed in the early 1980s. In this domestic context, in 1979, the National People's Congress adopted the first Criminal Law of the People's Republic of China (hereinafter Criminal Law), and the abduction and sale of persons was prohibited in Article 141. It can be seen as an embryonic form of the current anti-trafficking legal framework.

Child trafficking boomed in the country in the 1980s (Li, Tan, et al. 2017, Li, Wang, et al. 2017, Liu 2003, Shen et al. 2013, Zhang 2006). Since the late 1970s, the central government has seen the need to crack down on the crime of trafficking in women and children (Wang 1992, 139-142). In 1983, according to an order of the President of China to crackdown crimes that endanger public security, harsh punishments up to the death penalty were applicable to those responsible of child trafficking<sup>2</sup>. The crackdown actions against the crime continued in the 1990s when many provinces established temporary coordination offices to combat trafficking in women and children (Wang 1992, 141). In this period, children were abducted and then sold to buyers for a series of purposes, including illegal adoption, forced begging, sexual exploitation, and conducting criminal activities (Chen 2000, Lin 2015, Liu 2010).

Although the Chinese government has taken a series of actions to crack down the crime of child trafficking, tragedies never stopped affecting Chinese families and the broader society. In many cases, children were abducted violently and sold afterwards, while in many others, children were sold by their parents (Li et al. 2013, Wang 1992). Child trafficking became a sensitive subject of literature

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<sup>2</sup> Standing Committee of the National People's Congress, (1983) 关于严厉打击刑事犯罪活动的决定 [Decision of the Standing Committee of the National People's Congress Regarding the Severe Punishment of Criminals Who Seriously Endanger Public Security (Expired)], Issued on 9 February 1983, invalidated by: Criminal Law of the People's Republic of China.

works (Wang 1992), cinematographic works, newspaper reports, TV coverages, social media discussion, and academic research. For instance, from 1994 to 2015, there were at least six Chinese films that spoke about trafficked children and their parents<sup>3</sup>. Heart-breaking stories on the silver screen mirror the mainstreaming understanding of Chinese society to child trafficking: children are kidnapped and sold to someone for illegal adoption, forced street begging, or committing criminal activities; and parents of the victims desperately look for their loved children for years all over the country. Parents made all their efforts to distribute photos of their children and make enquiries on their own or in groups, just like looking for a needle in a haystack. With the development of the internet, more people could get involved in the anti-trafficking activities and new technologies were designed to assist the police agents in combatting the old crime. In 2007, the first family tracing website run by a non-governmental organisation named *Bao Bei Hui Jia* (“Baby Coming Home” in Chinese, hereinafter BBHJ) was established. In 2011, social media started to be used in the fight against child trafficking. An event named “Take a Photo and Save a Child” was initiated by a Chinese scholar on *Weibo*<sup>4</sup>, one of the largest social media in China. The initiative was welcomed and followed by tens of thousands of users, and it became an event worth remembering for Chinese civil society and social media. In 2016, when this research started to be conceptualised, the Ministry of Public Security of the Republic of China (hereinafter China) launched the first Chinese Child Abduction Emergency Alert Platform “Tuanyuan 1.0”<sup>5</sup>. The participation of civil society in combating child trafficking in China will be further developed in Chapter IV.

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<sup>3</sup> The films are the followings: Wang Jin (1994) 广州来了新疆娃 [Xinjiang Kids in Guangzhou], Pearl River Film Studio; Guo Kaimin (1994) 天伦 [Tian Lun], Youth Film Studio of Beijing Film Academy; Huang Jun (1996) 陌生人 [Strangers], Children’s Film Studio; Yan Gaoshan (2014) 爱在旅途 [Journey of Love], The Commission of Politics and Legislative Affairs of CPC Xinjiang Uyghur Autonomous Region Committee, Shanghai Xiangsheng Film & TV Production & Distribution Co., Ltd, and Tianshan Film Studio; Peter Chan (2014) 亲爱的 [Dearest], Dongyang Enlight Pictures Co., Ltd; and Peng Sanyuan (2015) 失孤 [Lost and Love], China Film Group Corporation.

<sup>4</sup> “Take a Photo, Save a Child”, *Human Rights in China*, 12 January 2012, retrieved from <https://www.hrichina.org/en/crf/article/6457> [accessed on 16 June 2019].

<sup>5</sup> Xinhua News Agency (2016) “Using ‘Internet+ to combat trafficking’: the Chinese Child Abduction Emergency Alert Platform of the Ministry of Public Security went live [运用“互联网+反拐”公安部儿童失踪信息紧

Despite all the efforts made by multi-level stakeholders to crack down on the crime, how to prevent and combat child trafficking remains an unsolved question. Recently, there have been increasing calls for imposing more severe punishment for traffickers. The suggestion of Ms Zhang Baoyan, the co-founder of BBHJ and deputy of National People's Congress, suggested that for the crime of child trafficking, the sentencing range should be increased to no less than ten years, with as a maximum the death penalty. Her legislative proposal has been widely supported on *Weibo*<sup>6</sup>. However, can the death penalty deter and prevent crimes of child trafficking? Before any judgement on the suggestion can be given, much research on the child trafficking in China, such as its causes, routs and patterns, is needed in order to fill the knowledge gaps.

### **1.1.2. Multilevel international and Chinese legal framework**

Child trafficking is a complex crime and a serious violation of human rights that concerns every State. To contest it, multi-level cooperation and multi-sectoral coordination are required. It is essential to build a widely accepted legal framework at the international and regional level, based on which the States and other stakeholders can set up their internal mechanism. Among international agreements, there are two legal definitions that refer to child trafficking, the Palermo Protocol which defines “trafficking in persons” and the CRC-OPSC which defines “sale of children”, both of which conceptualise the global phenomenon of child trafficking in legal terms. Meanwhile at the national level, the Criminal Law of China provides a definition, inherited from the Chinese traditional legal system, which is not fully in line with the international definitions.

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急发布平台上线]”, retrieved from [http://www.cac.gov.cn/2016-05/15/m\\_1118868850.htm](http://www.cac.gov.cn/2016-05/15/m_1118868850.htm) [accessed on 21/06/2019].

<sup>6</sup> China Youth Daily, (2019) “Over 200 thousand likes for one Weibo message[一条微博超 20 万赞]”, retrieved from [http://m.ce.cn/zt/2019/2019lh/ygs/201903/06/t20190306\\_31625997.shtml](http://m.ce.cn/zt/2019/2019lh/ygs/201903/06/t20190306_31625997.shtml) (accessed on 02/07/2019).

## ***A. International legal framework***

Human trafficking has been a prominent topic since the beginning of the Twentieth Century, the term “trafficking” was not codified in international law until 2000, when the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime* (hereinafter Palermo Protocol) was adopted on 15 November 2000<sup>7</sup> (UN General Assembly 2000). The Palermo Protocol provided the first international agreed-upon definition of what constitutes trafficking in persons. According to Article 3, trafficking in persons, which covers both adults and children, is:

*[T]he recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.*

In the case of trafficking in children, as specified in Paragraph (c) of Article 3, the means through which the prohibited actions were realised are meant to be irrelevant (Gallagher 2010).

In terms of age of children, Paragraph (d) specifies that “child” means “any person under eighteen years of age”. Therefore, it can be deduced that the definition of trafficking in children in the Palermo Protocol is “*the recruitment, transportation, transfer, harbouring or receipt of persons*” under eighteen years of age, “*for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs*”.

Having excluded the means element, the definition of child trafficking contains only two separate elements: action and purpose. The “action element” can be fulfilled by a series of activities including,

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<sup>7</sup> UN General Assembly, (2001) *Resolution adopted by the General Assembly [without reference to a Main Committee (A/55/383)], 55/25. United Nations Convention against Transnational Organized Crime*, 8 January 2001, A/RES/55/25.

but not limited to, “recruitment, transportation, transfer, harbouring or receipt of persons.” This extensive range of actions establishes that the definition covers not only the process (recruitment, transportation and transfer) but also the end situation of trafficking (harbouring and receipt) (Gallagher 2010, 29-30). In other words, trafficking in persons is not limited to “traffic” in its narrow sense; it also includes, for example, buying or taking possession provided that the action is taken for purposes of exploitation. This demonstrates the drafters’ intentions to make punishable every perpetrator in the whole process of human trafficking, from recruiter to the trafficker and the final buyer. The “purpose” element introduces the *mens rea* requirement into the definition of trafficking in persons. The phrase “for the purpose of” requires that the perpetrator intended to take certain actions so as to exploit the victims, while the fulfilment of the purpose element does not require the achievement of the specified intention. It is sufficient that the perpetrator had that aim when committing any of the stipulated offensive acts, namely recruitment, transportation, transfer, harbouring, or receipt (Gallagher 2010, 34). However, the intention may be not as easily held by an initial recruiter or broker as by a final exploiter. To establish “exploitation” as the special intention might narrow down the effective range of applicability to perpetrators acting closely to exploitation, as it is more difficult to establish the necessary *mens rea* with respect to a transporter, a recruiter or a broker, who can deny any knowledge of the final purpose of exploitation. It is especially true in cases of trafficking in children that involves multiple persons or criminal organisations, to which tasks are usually assigned meticulously.

The Palermo Protocol does not define “exploitation” instead, it provides an open-ended list including, at a minimum, “the exploitation of the prostitution of others, or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude, or the removal of organs” (Gallagher 2010, 35, OHCHR 2010, 35). The terms “exploitation of the

prostitution of others” and “other forms of sexual exploitation” were deliberately left undefined<sup>8</sup>, nonetheless, the definition of “exploitation of the prostitution of others” is included in the *UN Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others* of 1949. “Other forms of sexual exploitation” may refer to pornography, forced marriage and other forms of sexual abuse (Dottridge 2006). “Forced labour” has been the subject of concern of the major conventions of the International Labour Organization<sup>9</sup>, and its definition is contained in Article 2 of the 1930 *Forced Labour Convention*<sup>10</sup>. It also includes the exploitive activities such as recruitment of children for hazardous work or for begging or committing crimes (Dottridge 2006, 15). The 1926 Slavery Convention adopted by the League of Nations provided a definition of slavery<sup>11</sup>, whereas the term “practices similar to slavery” is a reference to the 1956 *Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery* (Gallagher 2010, 36). According to Article 1 of the 1956 Convention, debt bondage, serfdom, servile forms of marriage, and the sale of children for exploitation are all defined as practices similar to slavery.

Compared to the practice of forced labour, sexual exploitation, and other forms of egregious exploitation, it becomes much more problematic to argue that exploitation also exists in cases of illegal adoption. According to the interpretation of *travaux préparatoires*, illegal adoption will be considered exploitive when it “amounts to a practice similar slavery” as defined in the 1956

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<sup>8</sup> The *travaux préparatoires* of the negotiations for the elaboration of the United Nations Convention against Transnational Organized Crime and the Protocols thereto specify: “The terms ‘exploitation of the prostitution of others’ or ‘other forms of sexual exploitation’ are not defined in the Protocol, which is therefore without prejudice to how States Parties address prostitution in their respective domestic laws.”

<sup>9</sup> Including Forced Labour Convention of 1930, Abolition of Forced Labour Convention of 1957, and Worst Forms of Child Labour Convention of 1999.

<sup>10</sup> Article 2, para. 1 defines the term ‘forced or compulsory labour’ as: “all work or service which is exacted from any person under the menace of any penalty, and for which the said person has not offered himself voluntarily.”

<sup>11</sup> Article 1 provides that: “Slavery is the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.”

Convention (UNODC 2006b, 347). As Gallagher (2010) explains, literal interpretation of international law excludes the illegal adoption from the definition of trafficking, as the illegal adoption per se is not exploitive. However, this literal interpretation is not universally accepted. Many countries, such as Russia, China, and Albania, convict offenders under trafficking laws for the traffic and sale of children for illegal adoption (Gjermeni et al. 2008, Leifsen 2008, Liu 2000, Meier and Zhang 2008). The Working Group of Trafficking in Persons also referred the “challenges that some States were facing in the context of forms of exploitation not mentioned explicitly in the (Palermo) Protocol, such as [...] illegal adoption of any child; and sale of babies/infants [...]”<sup>12</sup>. Many scholars argue that the commodification of children in the practice of illegal adoption frequently involves coercion and is, therefore, a form of child trafficking (Gallagher 2010, Leifsen 2008, Meier and Zhang 2008, Rafferty 2007, Smolin 2004; 2007). Ms Maud de Boer-Buquicchio, United Nations Special Rapporteur on the Sale and Sexual Exploitation also affirmed that illegal adoption can meet the purpose of exploitation element established by the Palermo Protocol for trafficking in persons, because it not only exploits the need of love and bond but also exploits the particular vulnerability and poverty of the adopted children and infants (de Boer-Buquicchio 2017). This position is also supported by relevant international organisations. For instance, in its handbooks, UNICEF states that illegal adoption should be considered as a form of exploitive practice, and it is connected to the trafficking of children (Inter-Parliamentary Union and UNICEF 2005, 14, UNICEF Innocenti Research Centre 2009). Similarly, regional studies on child trafficking of UNICEF also count illegal adoption for commercial purpose as a form of child trafficking (UNICEF East Asia and Pacific Regional Office 2009, UNICEF Regional Office for CEE/CIS 2009). This analogous position is also found in the United Nations Development Programme (UNDP 2004) and the United Nations Action for Cooperation Against Trafficking in Persons (UN-ACT 2012). Furthermore, the experts of

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<sup>12</sup> UN CTOC, Conference of the Parties, (2013) *Report on the meeting of the Working Group on Trafficking in Persons held in Vienna from 6 to 8 November 2013*, 26 November 2013, CTOC/COP/WG.4/2013/5, para. 58.

UNICEF Regional Office for CEE/CIS hold that in the case of trafficking of children, if the recruitment or transportation involves any of the means contained in Article 3 of the Palermo Protocol, i.e. threat, violence, abduction, or deception, the case is also considered trafficking, regardless of the end intent (Dottridge 2006). This interpretation also includes abduction and sale of children for illegal adoption in the range of trafficking.

The Inter-American Court of Human Rights has addressed the issue of illegal adoptions in a number of cases without allegations of abuses, mistreatment, forced labour or servitude. In the case of *Gelman v. Uruguay*<sup>13</sup>, the court stated that the “results achieved by the illegal kidnapping and abductions, these could correspond to a form of trafficking for the irregular adoption of children”. (Harvey-Blankenship et al. 2010, 13-14).

The other international instrument that spells out a definition of child trafficking is the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (CRC-OPSC) adopted on 25 May 2000. Although the protocol does not mention trafficking in the title, the preamble considers the subjects of this protocol – the sale of children, child prostitution and child pornography – the exploitive purpose of trafficking in children. The term “the sale of children” is defined in Article 2 of the protocol as:

*(a) Sale of children means any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration;*

Trafficking and sale of children are two similar but distinct concepts. Trafficking may happen without generating any remuneration in its whole process; while the sale of children is not necessarily linked to the purpose of exploitation (UNICEF Innocenti Research Centre 2009). However, the preamble of the CRC-OPSC considers the sale of children as one of the purposes of trafficking in

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<sup>13</sup> Case of *Gelman v. Uruguay*, Judgement of 24 February 2011, (Merits and Reparations), at para.63. [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_221\\_ing.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_221_ing.pdf).

children<sup>14</sup>, that is to say, the recruitment and transportation of children for selling them should be considered as child trafficking. Also, the UNODC (2009a, 17-18) affirmed that the sale of children is on the list of human rights violations that shall be considered as a form of modern-day slavery. International criminal law has recognised that the sale of a human being is a primary indicator that a course of conduct constitutes enslavement (Harvey-Blankenship et al. 2010, 12), which enables to prosecute the sale of children under the umbrella of trafficking crimes.

Although the Palermo Protocol is aimed at preventing and suppressing international trafficking in persons and the organised crime, it is not required in the definition that the crime has to be cross-border. Paragraph 1 of Article 3 of the CRC Protocol on the sale of children requires State Parties to criminalise the prohibited offences committed either domestically or internationally, by an individual or a criminal organisation<sup>15</sup>, making it applicable also to the sale of children and trafficking in children committed within the national border. Similarly, the Special Rapporteur on violence against women, Ms Radhika Coomaraswamy, also suggested replacing the widely accepted distinction between internal and cross-border traffic with the focus on the separation of the victim from his or her community<sup>16</sup>. Therefore, it is legitimate to conclude that the definition and standards compiled in the international agreements mentioned in this section are valid also for the internal trafficking of children.

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<sup>14</sup> The preamble of the CRC-OPSC expresses concern at “the significant and increasing international traffic of children for the purpose of the sale of children, child prostitution and child pornography.”

<sup>15</sup> Article 3 of the CRC-OPSC: 1. Each State Party shall ensure that, as a minimum, the following acts and activities are fully covered under its criminal or penal law, whether these offences are committed domestically or transnationally or on an individual or organised basis [...].

<sup>16</sup> UN Commission on Human Rights, (2000), “Integration of the human rights of women and the gender perspective – violence against women”, *Report of the Special Rapporteur, Ms Radhika Coomaraswamy, on violence against women, its causes and consequences, on trafficking in women, women’s migration and violence against women*, 29 February 2000, E/CN.4/2000/68, para. 13.

## ***B. The Chinese legal framework***

While many countries did not have criminal law prohibiting trafficking in persons before the entry into force of the Palermo Protocol and the CRC-OPSC, China has criminalised the abduction and sale of children since the Tang dynasty, and an embryonic form of the current Chinese definition of child trafficking can be found in the Criminal Code of Qing dynasty. The existing domestic legal framework based on the first Criminal Law of the People's Republic of China, adopted in 1979, is reminiscent of a long history of combatting a wide-spread practice. The definition of "child trafficking" in the Chinese Criminal Law is formulated in its particular domestic context, that is the prevalence of internal trafficking of children and women, for illegal adoption and forced marriage. China is a State Party to both treaties; nevertheless, the international instruments had little impact on the Chinese legal definition of trafficking in persons. Chinese Criminal Law is not fully in line with the international definition (Pan 2012), and there is some confusion regarding terminology, especially with regards to translation and the use of specific terms.

Before explaining child trafficking within the Chinese legal framework, it is necessary to clarify the use of terms in Chinese and the problem of translation between English and Chinese. The official Chinese translation of "trafficking (in persons)" contained in the Palermo Protocol is *Fanyun* (贩运). However, this term is not mentioned in the Chinese legal framework or policy, nor is it an expression known to the public. The term generally used is *Guaimai* (拐卖), the literal meaning of which is "abduction and sale," and it is commonly translated also as "trafficking".

After the founding of the PRC, the first law that criminalised human trafficking (*Guaimai*) was the 1979 Criminal Law adopted by the National People's Congress. Article 141 stipulated that whoever commits the crime of "abduction and sale of persons" shall be sentenced to imprisonment

for up to five years<sup>17</sup>. However, legislators did not offer any explanation of what consists “abduction and sale”. Only in 1997, a more detailed definition of the offence was provided; however, the range of victims was narrowed from “persons” to “women and children”. The term “abduction and sale” of women and children is defined in the new Article 240 of Criminal Law revised in 1997 (hereinafter Criminal Law):

*Abducting and trafficking women or children refers to any act of abducting, kidnapping, buying, selling, transporting, or transferring a woman or a child for the purpose of selling the victim*<sup>18</sup>.

According to the most recent judicial interpretation issued by the Supreme People’s Court, “child” under Article 240 refers to any person under fourteen years of age<sup>19</sup>. This maximum age of children is in stark contrast to the standards established by the Palermo Protocol<sup>20</sup> and CRC<sup>21</sup>, i.e. 18 years old. Because Chinese anti-trafficking law only protects children and women, male minors above 14 and under 18 years old are left without protection under Article 240 and all other national policies related to child trafficking.

What is prohibited by the law were violent and fraudulent acts of “abduction, recruitment and transportation” of children for “selling”. Therefore, the purpose element is “selling the victim”. It is not necessary to prove that victims were abducted and transported for any other exploitive purpose, as stipulated in the Palermo Protocol. As the kidnapper or recruiter is not necessarily aware of or interested in the purpose of a buyer, nor is a trafficker, especially in the modern forms of trafficking,

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<sup>17</sup> If the circumstance is serious, the sentence shall be over five years.

<sup>18</sup> This research involves translation of law and legal instruments. If not specified otherwise, the source of Chinese-English translation is the Peking University Institute of Legal Translation Studies (<http://en.pkulaw.cn/>).

<sup>19</sup> Supreme People’s Court of PRC, (2016) 最高人民法院关于审理拐卖妇女儿童犯罪案件具体应用法律若干问题的解释 [Interpretation of the Supreme People’s Court on Several Issues concerning the Application of Law in the Trial of Cases regarding Crimes of Trafficking in Women and Children], Interpretation No. 28 [2016] of the Supreme People’s Court, issued on 21 December 2016, entered in force on 1 January 2017, at Article 9, retrieved from <http://www.court.gov.cn/zixun-xiangqing-33641.html>.

<sup>20</sup> Article 3 paragraph (d) specifies that for the purpose of this protocol, “child” means “any person under eighteen years of age”.

<sup>21</sup> UN Convention on the Rights of the Child, at Article 1.

in which multiple criminal organisations are involved. This purpose element means that each person responsible for any single knot of the whole criminal network is deemed punishable, as long as the selling purpose is proved. The final purpose of the trafficking chain (exploitation or not) is irrelevant to convicting perpetrators involved in previous parts of a trafficking process. However, according to this definition, if the prohibited action is taken only for the purpose of exploitation without selling, it is not punishable under Article 240. Consequently, a potential child-victim, for example, who is recruited for labour exploitation but not for sale, is not considered a victim of trafficking (*guaimai*) in China.

Any person can be an offender of child trafficking, including the parents of a victim. When one or both parents are involved in the trafficking or sale of their child, the situation becomes more complicated. Chinese legislation considers them guilty under Article 240 when they sell their children for a large sum of money without considering the purpose of the buyer, thereby putting the child in danger of being exploited. In 2010, before the ratification of the Palermo Protocol, the Supreme People's Court issued the *Opinions on Legally Punishing the Crimes of Abducting and Trafficking in Women and Children*, in which a detailed explanation to the applicability of Article 240 of Criminal Law in the case of parental sale of children was provided<sup>22</sup>. The selling of one's own children, in the following four conditions, is considered a crime of trafficking in children:

- (1) *using fertility as a means of profit and selling one's own children immediately after the parturition;*
- (2) *selling one's own child for the purpose of profit, knowing that the buyer has no intention of raising the child or not taking into consideration the intention of the buyer;*
- (3) *"sending" one's own children for obtaining the disproportionately large amount of money in*

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<sup>22</sup> Supreme People's Court, Supreme People's Procuratorate, Instrumentalities of the State Council, All Ministries, Ministry of Public Security, Ministry of Justice, (2010) 最高人民法院、最高人民检察院、公安部、司法部印发《关于依法惩治拐卖妇女儿童犯罪的意见》的通知 [Notice of the Supreme People's Court, the Supreme People's Procuratorate, the Ministry of Public Security and the Ministry of Justice on Issuing the Opinions on Legally Punishing the Crimes of Abducting and Trafficking in Women and Children], Documents of Judicial Interpretation Nature, No. 7 [2010] of the Supreme People's Court, issued and entered in force on 15 March 2010, at para. 17, retrieved from <http://en.pkulaw.cn/display.aspx?cgid=095d828db4ce796bbdfb&lib=law>.

*the form of refund or compensation;*

*(4) other actions, the purpose of which can be proved as illegal economic gain.*

The list is followed by one more specification stating that when parents give their child to others due to not having the economic ability to raise them, or due to discrimination against female children, and if they receive a small amount of compensation, it is not considered a case of trafficking in children but “civil adoption”. However, legislators failed to give a precise figure for the “small amount of compensation” that distinguished “civil adoption” from trafficking. This legal provision has put parental selling of children on the same level as the illicit sale of children.

Table 1 Comparison of key elements in the definition of child trafficking within the international and national legal framework

	Palermo Protocol	Chinese legal framework
Age	Under 18 years old	Under 14 years old
Action	Recruitment, transportation, transfer, harbouring or receipt	Abducting, kidnapping, buying, selling, transporting, or transferring
Purpose	Exploitation	Selling

By ratifying the Palermo Protocol and the CRC-OPSC, China has the obligation to implement these treaties by taking legislative, policy and other appropriate measures, such as establishing as a criminal offence the conduct set forth in Article 3 of Palermo Protocol<sup>23</sup>. However, the current legal definition of child trafficking not in line with international standards (see Table 1). The most critical difference lies in the limits of the age of the victims and the purpose element. Children, in particular boys over 14 years old, are not protected by anti-trafficking law and consequently, other relevant policies. The selling purpose element excludes those who abduct, recruit, transport, or transfer children for the purpose of exploitation only, i.e. not for selling. Therefore, final buyer and exploiter who recruited the victim without money transactions are not punishable under Article 240.

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<sup>23</sup> Article 5 of the Palermo Protocol stipulates that “Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the conduct set forth in Article 3 of this Protocol when committed intentionally.”

Nevertheless, the definition does not exclude the condition of exploitation completely. The subparagraph (4) of Article 240 provides that those who exploit the victims of trafficking sexually or sell victims to a condition of possible sexual exploitation are not only punishable, but the penalty is aggravated. In this case, sexual exploitation is not intentional but effectively took place. However, “exploitation” here includes only forced prostitution; labour exploitation or slavery and practices similar to slavery are not considered as a condition for aggravating penalties.

Another crime directly related to trafficking in women and children is stipulated in Article 241 – “crime of buying trafficked women or children”. It partially filled the blank left by the previous article, criminalising those who buy a trafficked woman or child, whether for the purpose of exploitation or not. Contrary to the international definition, according to which the purpose of buying is essential for the existence of trafficking, in the Chinese Criminal Law, the crime of trafficking (Article 240) is the precondition of the crime of buying a trafficked woman or child (Article 241). Penalties to trafficker and buyer are very different. The impunity to buyers who did not abuse the child victim nor obstruct the trafficked woman from returning to her original place of residence according to her will was not abolished until 2015, when the article was amended to “Where in buying an abducted or trafficked woman or child, the bought child is not abused, and their rescue is not obstructed, a lighter punishment may be convicted; where it is in accordance with the woman’s wishes, and her return to her residence was not obstructed, it may be given a lighter punishment, or punishment may be commuted”<sup>24</sup>.

There are some other crimes related to the international definition of trafficking in persons; the crime of selling human organs (Article 234A), the crime of forced labour (Article 244), crime of abducting children, and organising people with disabilities and children for begging or engaging in criminal activities (Article 262), crime of organising and forced prostitution (Article 358), and crime

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<sup>24</sup> Standing Committee of the National People’s Congress, (2015) *Amendment (IX) to the Criminal Law of the People’s Republic of China* [中华人民共和国刑法修正案(九)], Order No. 30 of the President, at Article 15.

of luring others into prostitution (Article 359). The shortcomings of this decentralised legislation are apparent (Liu 2010, Pan 2012). According to Palermo Protocol, victims of aforementioned crime activities can be easily identified, while in the Chinese legal framework, victims of forced labour or forced prostitution, for instance, are not considered victims of trafficking if they were not sold into the exploitive condition. As a consequence, they cannot enjoy the protection and assistance services offered to victims of trafficking. In addition, the inconsistency of Chinese definition with the international definition on the issue of child trafficking increases the challenges of data collection of the crime, and consequently undermines research on the situation of the issue worldwide (Laczko and Gozdziaik 2005).

## **1.2. A human rights-based approach to child trafficking**

Child trafficking is a multi-disciplinary issue and can be dealt with from a variety of perspectives including economics, migration, child protection and crime control, public order (Budiani-Saberi and Columb 2013, Gallagher and Skrivankova 2015, 918). A human rights approach affords a comprehensive understanding and response to the complex issue. Such an approach seeks causes and consequences of child trafficking, as well as appropriate solutions (Budiani-Saberi and Columb 2013), focusing primarily on the rights of victims and potential victims, as well the responsibility of duty bearers.

“Human rights-based approach is a conceptual framework for dealing with a phenomenon; normatively based on international human rights standards; operationally directed to promoting and protecting human rights.” (OHCHR 2014, 8). There are three essential attributes for a policy, programme, or research adopting a human rights-based approach (McConnell and Smith 2018, OHCHR 2006; 2014):

- As policies and programmes are formulated, their main objective should be to promote and protect rights;
- A human rights-based approach identifies rights holders, duty bearers (usually States) and respective entitlements and obligations. This approach works towards strengthening the

capacities of rights holders to secure their rights and of duty bearers, to meet their obligations; and:

- Core principles and standards derived from international human rights law (such as equality and non-discrimination, the universality of all rights, and the rule of law) should guide all aspects of the response at all stages.

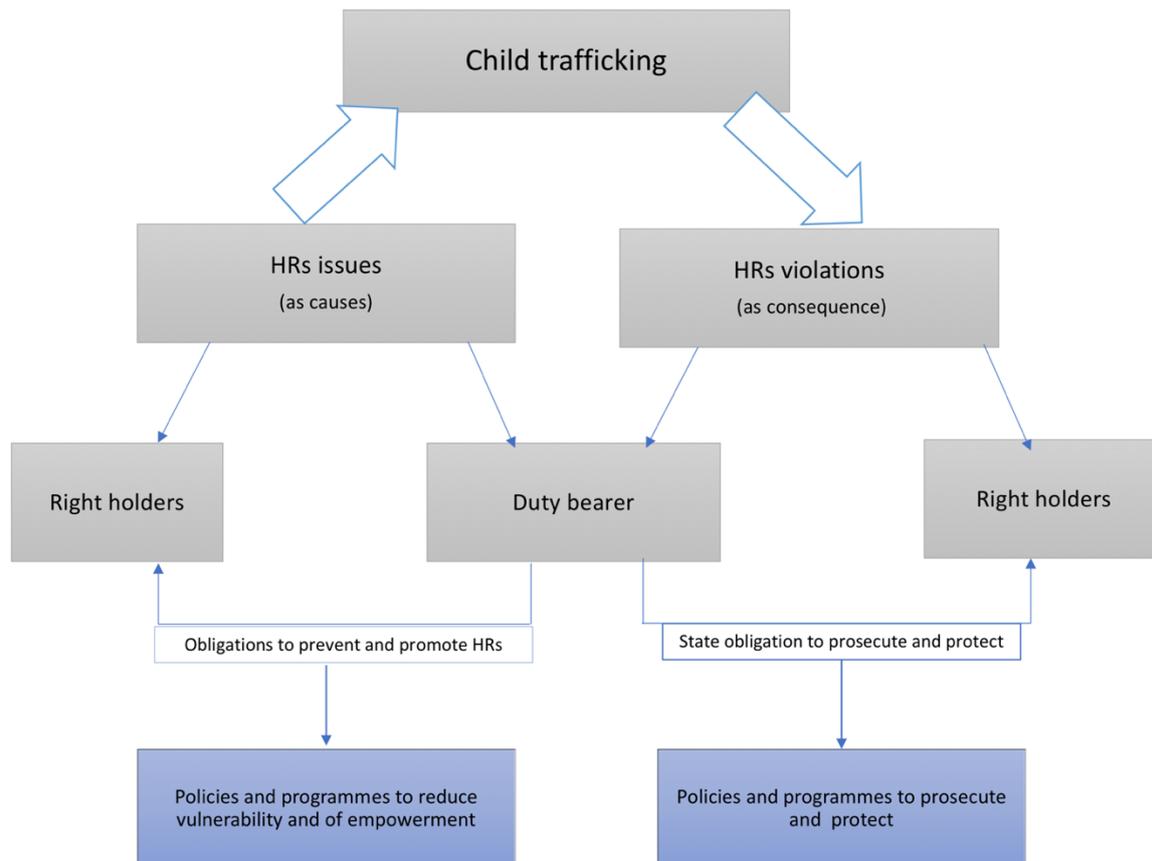
The requirements of the human rights-based approach also apply to research that is not directly related to programming activities. It means that first, the main objective of the research should be to fulfil, promote, and protect human rights; second, the research should contribute to empowerment and capacity building by addressing the entitlements of right holders and the corresponding obligations of duty-bearers; and third, the research should respect and be guided by human rights standard and principles (McConnell and Smith 2018, 8). Human rights principles can guide the research at all stages – conceptualisation, planning, information/data gathering, analysis, and dissemination. The human rights approach requires that the research do no harm, and the outputs meet human rights standards.

The experts of the OHCHR (2014, 1) suggested that the human rights approach requires governments and others, when dealing with trafficking in persons, to understand the following two aspects: firstly, “the ways in which human rights violation arise through the trafficking cycle”; and secondly, “the ways in which States’ obligations under international human rights law are engaged”. Therefore, it provides the basic evaluation criteria for national policy and programmes. Whether the programmes of preventing child trafficking has addressed the vulnerability of the victims, or whether the measures of combating child trafficking are in line with international human rights standards shall be taken into consideration when evaluating the national anti-trafficking policies. In addition, the policies and programmes in response to child trafficking and their outputs shall do no harm to core human rights principles, including universality and inalienability, interdependence and indivisibility, and non-discrimination.

Therefore, a human rights-based approach to child trafficking in this research has three aspects (see Figure 1):

1. Human rights principles and standards. On the one hand, they shall be respected through the research. On the other hand, they shall be respected, fulfilled and promoted by State's policies and programmes dealing with child trafficking.
2. Human rights issues that arise during the child trafficking cycle from the perspective of victims, including the vulnerability of the victim before, during, and after the trafficking process.
3. The State's obligations under international human rights law and the way in which the State's obligation are engaged.

Figure 1 Child trafficking and human rights issues



Human rights violations are both causes and consequences of child trafficking (OHCHR 2014, 5). Child trafficking can be caused by human rights violations such as child abuse and gender-based discrimination, or general human rights issues such as poverty and inequality. Child victims, whose rights are violated in the process of child trafficking and who are entitled to protection, are the main rights-holders. However, before the trafficking occurs, parents or legal guardians of children and their human rights are equally crucial, as their vulnerability directly affects their children. Therefore, other possible relevant rights holders or key actors are parents of children. In some circumstance, these

right holders and key actors can be subject entitled with specific protection, such as women, migrants, or persons with disabilities. The human rights issues that arise during the child trafficking process in two forms include the causes that render certain children vulnerable to trafficking, the violation of human rights occurred during the process of child trafficking, and other human rights issues arising after the victims after being released from the trafficking process.

The corresponding duty-bearer, who are held directly accountable under international human rights law, is primarily the State. In the case of child trafficking, the State's obligation can be examined from two different perspectives: firstly, the specific obligation to prohibit child trafficking, to prevent the crime, and to prosecute and punish traffickers; secondly, the general obligation of States to respect, fulfil, protect, and promote human rights and children's rights, the violation of which may cause child trafficking. The source of the State's obligation is international law and international human rights law, including specific treaties, conventions, general international law, as well as customary law and general principles.

It is legitimate to adopt this approach to international law and international human rights standards in research that focus on a national context and its internal legal framework for several reasons. Child trafficking, either internal or transnational, is a human rights issue. The State has the obligation to implement international commitments at the national level, in the form of legislation, policy, and administrative regulation and other necessary measures. Therefore, the human rights approach, beyond examining the effectiveness of the national legal framework, addresses the way in which the State's obligations are engaged. Moreover, by addressing the root causes of child trafficking from a victim's perspective, the human rights approach enables a comprehensive understanding of the problem, which is essential for the prevention of the crime in the future and the protection of the victims.

### **1.2.1. Human rights principles and guidelines in responding to child trafficking**

Human rights law provides universal principles and standards that should guide State policies and programmes in responding to child trafficking, despite the diversity and complexity of the issue (OHCHR 2010). The United Nations High Commissioner for Human Rights has provided a list of recommended principles that cover every aspect of trafficking-related policies of States<sup>25</sup>. In addition, as children are involved in the issue, the State shall make decisions in accordance with the four general principles of international children's rights law (Peleg 2018). UNICEF also provides several guiding principles on protecting the child-victims of trafficking. These principles shall be taken into account in cases of either international trafficking or internal trafficking of children (Dottridge 2006, 10).

The general human rights principles are as follows (OHCHR 2010, 51-83):

- The primacy of human rights. States and international agencies should make the human rights of victims of trafficking at the centre of all efforts to prevent and combat human trafficking, and make sure that the anti-trafficking measures do not adversely affect the human rights and dignity of persons, in particular, the rights of the victims of trafficking.
- Non-discrimination. All legislation and measures shall apply to every victim of trafficking without discrimination of any kind, such as race, sex, language, religion, ethnic or social origin, birth, or other status, including immigration status.
- Do no harm to established rights. Anti-trafficking measures shall not adversely affect the human rights or dignity of persons, in particular, the right of those who have been trafficked.

In addition, the Commentary of the OHCHR (2010) also provides a list of specific principles and guidelines that must be respected when policies and activities are identified as “prevention”, “protection”, and “prosecution” respectively.

Prevention (OHCHR 2010, 95-126):

- Preventing by addressing demand as root causes of trafficking. Strategies aimed at trafficking shall address demand as a root cause of trafficking.

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<sup>25</sup> UN Office of the High Commissioner for Human Rights (OHCHR), (2002) *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, 20 May 2002, E/2002/68/Add.1.

- Intervention to address factors increasing vulnerability. States and other stakeholders shall ensure that their interventions address the factors that increase vulnerability to trafficking, including inequality, poverty, and all forms of discrimination.
- Identity and addressing public-sector involvement in trafficking. State shall exercise due diligence in identifying and eradication public-sector involvement or complicity in trafficking. All public officials suspected of being implicated in trafficking shall be investigated, tried and, if convicted, appropriately punished.

Protection of and assistance to victims (OHCHR 2010, 127-181):

- No detention or prosecution for status-related offences. Trafficked persons shall not be detained, charged or prosecuted for the illegality of their entrance and residence in countries of transition and destination, or for their involvement in unlawful activities to the extent that such involvement is a direct consequence of their situation as trafficked persons.
- Protection and assistance for victims. States shall ensure that trafficked persons are protected from further exploitation and harm and have access to adequate physical and psychological care. Legal and other assistance shall be provided to trafficked persons for the duration of any criminal, civil or other actions against suspected traffickers.
- The special rights and needs of children. Children who are victims of trafficking shall be identified as such. Their best interests shall be considered paramount at all times. Child-victims of trafficking shall be provided with appropriate assistance and protection. Full account shall be taken of their special vulnerabilities, rights and needs.
- Safe and voluntary return. The safe and voluntary return shall be guaranteed to trafficked persons.

Prosecution (OHCHR 2010, 183-231):

- Criminalisation of trafficking. States shall adopt appropriate legislative and other measures to criminalise trafficking, its component acts and related conduct.
- Effective investigation, prosecution and adjudication. States shall effectively investigate, prosecute and adjudicate trafficking, including its component acts and related conduct, whether committed by governmental or by non-State actors.
- Effective and appropriate sanctions. Effective and appropriate sanctions shall be applied to individuals and legal persons found guilty of trafficking or of its component or related offences.
- Asset confiscation and disposal. States shall, in appropriate cases, freeze and confiscate the assets of individuals and legal persons involved in trafficking. To extent possible, confiscated assets shall be used to support and compensate victims of trafficking.
- Access to remedies. States shall ensure that trafficked persons are given access to effective and appropriate legal remedies.

Regarding trafficking of children, the four general principles set forth in CRC shall be taken as reference, including the principle of non-discrimination (Article 2), the best interests of the child

(Article 3.1), the child's rights to life and development (Article 6), and the child's rights to be heard (Article 12)<sup>26</sup>. More specifically, UNICEF sets up four key principles to be applied in efforts to prevent child trafficking and protect and assist child victims in the guidelines on child trafficking (Dottridge 2006, 11):

- Non-discrimination. States shall respect and ensure the rights set forth in the CRC to each child without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth, or other status. In addition, States shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members. (CRC, Article 2)
- The best interest of the child. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be the primary consideration. (CRC, Article 3.1).
- Each child has a right to have his or her views listened to and taken into account in all matters affecting him or her. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child. (CRC, Article 12)
- The child's right to privacy. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation. (CRC, Article 16)

### **1.2.2. Child trafficking and human rights issues**

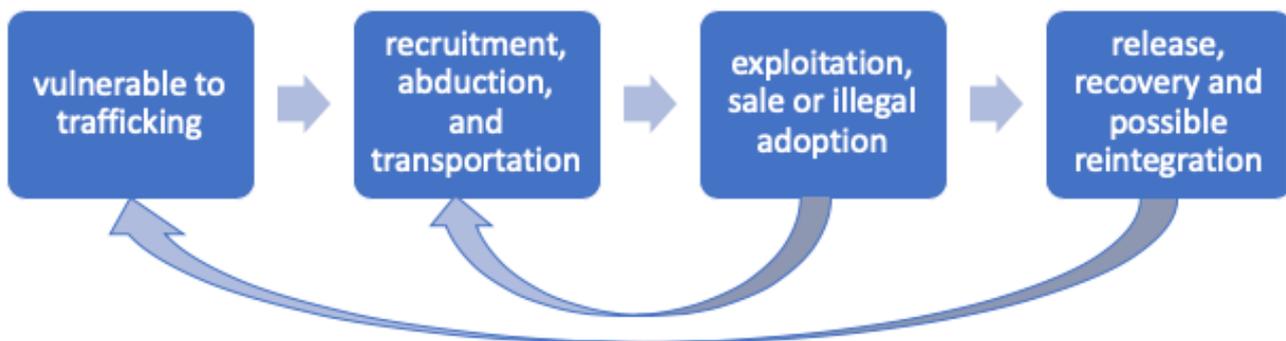
In general, child trafficking is a process that can be divided into at least three different phases: the recruitment and transportation, the exploitation of the child, and the release and recovery (see Figure 2). While from a human rights-based approach, the trafficking cycle starts before the incident, when vulnerabilities of the victims emerge. It is followed by the trafficking process where children are recruited, abducted, transported, and then sold or exploited. The last phase is rescue and rehabilitation,

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<sup>26</sup> UN Committee on the Rights of the Child (CRC), (2003) *General Comment No. 5 (2003): General measures of implementation of the Convention on the Rights of the Child* (arts. 4, 42 and 44, para. 6), 27 November 2003, CRC/GC/2003/5, para.12.

where the victims are identified, released from traffickers, and then rehabilitated. Sometimes, children escape from a phase of trafficking but get caught up in it again before recovery. Sometimes some phases of trafficking are repeated, children are sold once again into the trafficking cycle after having been exploited. While in some cases, the rescued children ended up again into the first phases of the trafficking cycle, remained vulnerable to trafficking.

Figure 2 The cycle of child trafficking



It is widely accepted that child trafficking itself is a serious violation of human rights. The dignity of the victim is damaged by the inhumane treatment and dehumanising nature of the crime. Child trafficking is prohibited by specific international and regional human rights instruments: for instance, the prohibition is explicitly contained in Article 6 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Article 35 of the CRC, as well as the CRC-OPSC, the Charter of Fundamental Rights of the European Union, the Council of Europe Convention on Action against Trafficking in Human Beings, the African Charter on the Rights and Welfare of the Child, and so forth.

In addition, human rights issues arise in different phases of trafficking, but they are relevant in different ways. The causes of child trafficking are not necessarily specific violations of the rights of the child; however, most of the causative factors are related to human rights, for instance, poverty, gender-based violation, the lack of an adequate child protection system, and corruption. Besides, child trafficking involves a series of direct or indirect violations of human rights. The most prominent human rights violation happens in the phase of exploitation. Many of the offences that are closely

associated with human trafficking are explicitly prohibited under international human rights law (OHCHR 2010, 37), such as forced marriage, child prostitution, and enslavement. Some are offences that cause human rights violations, for instance, the right to life, liberty and security of person and right of the child to know and be cared for by his or her parents. Moreover, new human rights concerns arise after the rescue, including, among others, the right to privacy, the right to justice and remedy, and child protection issues.

### ***A. Relevant human rights in child trafficking cycle***

Different human rights will be relevant in different phases of child trafficking cycle. According to international human rights declarations and treaties, human rights most relevant to human trafficking are, among others (OHCHR 2014):

- The prohibition of discrimination on the basis of race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status
- The right to life
- The right to liberty and security of person
- The right to justice
- The right to remedy
- The right to privacy
- The right not to be submitted to slavery, servitude, forced labour or bonded labour
- The right not to be subjected to torture and/or cruel, inhuman, degrading treatment or punishment
- The right to be free from gender-based violence
- The right to freely choose a spouse and to enter into marriage only with free and full consent;
- The right to freedom of movement
- The right to adequate standard of living
- The right to the highest attainable standard of physical and mental health
- The right to benefit from social security
- The right to just and favourable conditions of work

In addition, human rights issues arose in child trafficking will be different from those concerning adult victims. Some specific human rights relevant to child trafficking are, among others:

- The right of the child to survival and development
- The right of the child to special protection

- The right of the child to freedom from all forms of violence
- The right of the child to know and be cared for by his or her parents
- The right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law

### ***B. Human rights issues as causes of child trafficking***

The human rights issues arise before the tragedy of child trafficking happens. By addressing the vulnerability of victims and factors that make them vulnerable to trafficking, the human rights-based approach to child trafficking leads one of the focal points of analysis on how the violation or the lack of protection of human rights causes child trafficking. It provides a comprehensive understanding of child trafficking, which is essential for targeted, appropriate, and effective preventive policies.

Just like human trafficking, child trafficking is a very complex crime that manifests in different ways (Kragten-Heerdink et al. 2017), and its causes vary in different contexts. Our knowledge of the root causes of the phenomenon is far from complete. Nonetheless, some common factors have been identified, which make a child, family, or community more vulnerable to trafficking. These factors include human rights issues such as poverty and inequality, as well as a series of human rights violations such as gender-based violence and discrimination against women (OHCHR 2014, 39).

Social and economic problems, such as socio-economic deprivation, that are proven to be fundamental conditions of vulnerability, are structural and fundamental causes of vulnerabilities of which child trafficking is a manifestation (Cameron and Newman 2008, 2). Moreover, vulnerability to trafficking can be caused by particular characteristics of the victims themselves. Frequently, they are inherited from the victims' families, or are caused by the social context in which victims live. These vulnerabilities may be short-term or long-term, general or specific, economic, social, or political (OHCHR 2014, 39).

Poverty is a ubiquitous factor that exposes children to the risk of being trafficked (Cameron and Newman 2008, Ebbe 2007, Gallagher and Skrivankova 2015). It is widely recognised that poverty is a pushing factor that exists in the countries of origin of the victim. At the same time, poverty is an

urgent human rights concern and a violation of human dignity. Persons living in extreme poverty are deprived of fundamental economic and social rights, such as the right to food and safe water, health, adequate housing, and the right to education (Roth 2004, 65). Choices of persons living in a poor economic condition are very limited, and they are forced to or more willing to take the risk of moving to another place in seek a means of living. Poverty increases the vulnerability of children to trafficking in different ways. The extreme poverty of the region in which a child lives may deprive him or her of adequate education opportunities and push the child in his or her early age to the labour market, migration, or marriage. In other cases, in a low-income family, a child may be considered an economic burden or responsible for contributing to the family income. They may be forced to work, to prostitute themselves, or to enter into marriage in exchange money, possibly by the parents themselves.

Poverty can be absolute, as explained in the previous paragraph; it can also be relative. Inequality in sectors of wealth, income, and opportunity between countries or regions within a country stimulates people for voluntarily migrating to countries with a higher level of development, or moving from rural areas to urban areas (Cottingham et al. 2013, UNICEF East Asia and Pacific Regional Office 2009). Internal or cross-border migration of people may also impact young children, who may become unaccompanied minors during the process of migration or be left alone at home. Unaccompanied children, either migrants or left behind, do not have capable guardians and are exposed to crimes targeting them specifically, including violence, exploitation and human trafficking. Furthermore, children of migrants can be victimised as a consequence of the violation or lack of protection of their parents' rights.

Discrimination based on race, colour, sex, language, religion, national, ethnic or social origin, property, disability, birth, or other status is another common human rights violation that impacts directly or indirectly child trafficking. Discrimination against women and gender-based violations are a known cause of human trafficking, closely related to sex trafficking and sexual exploitation of female victims (Zhang 2009). The latest global data on trafficking in persons showed that, although

the proportion of detected male victims has increased over the years, most of the victims detected across the world are female (UNODC 2018). Gender-based discrimination and violence make women and girls more vulnerable than men and boys to trafficking (ICAT 2016a). For example, women and young girls may accept the danger migration so as to escape from conditions such as family violence or arranged marriage (Kaye and Winterdyk 2011, OHCHR 2014, Winterdyk et al. 2011). In families and communities dominated by patriarchal values, girls are often more likely to drop out of school than boys, as they are required to work to support their family (Kaye and Winterdyk 2011, 58). In addition, women and girls experience intersectional and multiple discrimination and become even more vulnerable to trafficking when gender discrimination overlaps with other disadvantaged statuses, such as poverty, belonging to an ethnic or language minority group. Discrimination can be linked to child trafficking in an indirect way. Young children may also suffer the consequences of discrimination against their parents, for example if children have been born out of wedlock or in other circumstances that deviate from traditional values<sup>27</sup>.

The violation or neglect of the right of the child to special care and protection is another causative factor of child trafficking. Because of physical and mental immaturity, they need special safeguards and care, including appropriate legal protection and social welfare. For instance, an inadequate birth registration system increases the vulnerability of children to trafficking, as it is more difficult to identify or detect the criminal activities. Another example may be children working and/or living on the street, whose rights of being cared for by their family, education, be free from inhuman, degrading treatment, as well as many others, are not fulfilled. Due to the lack of protection, these “street children” are exposed to violence and exploitation, including child trafficking (OHCHR 2012).

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<sup>27</sup> UN Committee on the Rights of the Child (CRC), (2005) *General comment No. 7 (2005): Implementing Child Rights in Early Childhood*, 20 September 2006, CRC/C/GC/7/Rev.1, para. 12.

While the human rights issues which cause child trafficking are not limited to poverty, discrimination, or inadequate children protection, they are common causes that also affect China. Previous studies on China ascribe the increase of child trafficking to poverty, discrimination against women, a weak child protection system, and other factors (e.g. ILO/IPEC and Yunnan Province Women's Federation 2002, Li, Tan, et al. 2017, Shen et al. 2013, Xing 2017, Yuan and Yang 2001). These common causes provide a basis for this study analysing human rights issues that generate child trafficking in some areas of China. More specifically, research will be carried out on economic, social, cultural, and political factors that provoke and aggravate the vulnerability of the victims.

### ***C. Human rights issues as consequences of trafficking***

There is no doubt that child trafficking involves a series of direct or indirect violations of human rights. Many of the practices that are closely associated with child trafficking are explicitly prohibited under international human rights law (OHCHR 2010, 37). The most common human rights violations related to child trafficking happens in the phase of exploitation. For instance, forced marriage is a serious violation of human rights explicitly prohibited by international human rights instruments, including the Universal Declaration of Human Rights (Article 16), the International Covenant on Civil and Political Rights (Article 23), the Convention on the Elimination of All Forms of Discrimination against Women (Article 16). As a form of violence and harmful practice, it is also prohibited by the Convention on the Rights of the Child (Articles 19 and 24.3). Similarly, international human rights law forbids other practices such as, among others, forced labour, debt bondage, child marriage, enforced prostitution, and exploitation of prostitution.

Violation of human rights also happens during and after the process of trafficking as a consequence of ordinary criminal offences. First of all, child trafficking violates the right of the child

to freedom from all forms of violence<sup>28</sup>. Moreover, the right to liberty and security of person and the right to freedom of movement are systematically undermined in the cycle of trafficking committed in form of child abduction and illicit imprisonment of the victim. Illegal adoption triggers a series of children's rights violations such as the right to know and be cared for by his or her parents and the right to preserve their identity, including family relations (de Boer-Buquicchio 2017, 7-8). Furthermore, human rights challenges continue to arise after the rescue. For instance, the right to justice and remedy might not be fulfilled if the State fails to respond appropriately to the crime of child trafficking. The rights and best interest of the child must be the primary consideration of all measures taken after their release from the trafficking process.

The international community has also reached the agreement that trafficking in persons, including child trafficking, is a serious violation of fundamental human rights, independent from the forms of exploitation associated with the trafficking. It is not only the United Nations General Assembly and the Human Rights Council who have addressed repeatedly that trafficking violates and impairs human rights<sup>29</sup>, this has also been affirmed by many of the international and regional human rights mechanisms. For instance, prohibition is explicitly contained in Article 6 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Article 35 of the CRC, as well as the CRC-OPSC. Trafficking in human beings is also prohibited by regional human rights law, including the Charter of Fundamental Rights of the European Union (Article 5), the Council of Europe Convention on Action against Trafficking in Human Beings, the African Charter on the Rights

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<sup>28</sup> UN Committee on the Rights of the Child (CRC), (2011) *General comment No. 13 (2011): The right of the child to freedom from all forms of violence*, 18 April 2011, CRC/C/GC/13, para. 7.

<sup>29</sup> For instance, Resolution 11/3 on Trafficking in persons, especially women and children, 17/06/2009, A/HRC/RES/11/3; Resolution 14/2 on Trafficking in persons, especially women and children: regional and subregional cooperation in promoting a human rights-based approach to combating trafficking in persons, 23 June 2010 A/HRC/RES/14/2; Resolution 23/5 on Trafficking in persons, especially women and children: efforts to combat human trafficking in supply chains of businesses, 19 June 2013, A/HRC/RES/23/5; and Resolution 32/3 on Trafficking in persons, especially women and children: protecting victims of trafficking and persons at risk of trafficking, especially women and children in conflict and post-conflict situations, 30 June 2016, A/HRC/RES/32/3.

and Welfare of the Child (Article 24 and 29), and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Article 4).

### **1.2.3. The State's obligation**

The third aspect of the human rights-based approach to child trafficking regards the way in which the State's obligations under international human rights law are engaged. The sources of State's obligations include international treaty law and soft law such as international customary law, general principles of law, and decisions of international tribunals. Furthermore, specific treaties on child trafficking provide States with precise obligations in responding to child trafficking, including the obligation to take appropriate measures to prevent the crime of child trafficking, to criminalise relevant offences and prosecute the offenders, and to provide protection and assistance to the victims of trafficking.

The levels of legal obligations are various. Some provisions are mandatory, for instance, the criminalisation and prosecution of offences relevant to child trafficking. Some obligations require States to make positive efforts, for example, "endeavour to undertake measures [...] to prevent and combat trafficking in persons"<sup>30</sup>. Some others are optional, for instance, States "shall consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons"<sup>31</sup>. A State will be held legally responsible if it breaches any of the international obligations or fails to take measures to prevent or respond as required. It will also be responsible if any action or omission related to child trafficking is conducted by its State organ or by any person with its authorisation.

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<sup>30</sup> Palermo Protocol, at Article 9 (2).

<sup>31</sup> Palermo Protocol, at Article 6 (3).

## ***A. Responsibility of States***

States have a responsibility under international law in three circumstances (Gallagher 2010). First of all, it is a general principle of international law that “every internationally wrongful act of a State entails the international responsibility of that State”<sup>32</sup>. Therefore, States will be held legally responsible for actions or omissions that breach international human law, proving that the wrongful conduction is committed by any State organ or any person or entity which has that status, as well as when a person or entity acts with governmental authority<sup>33</sup>. As previously stated, the state is directly responsible if any action or omission related to child trafficking is conducted by its State organ or by any person with its authorisation.

Secondly, a State is held legally responsible when there is a breach of an international obligation derived from binding international instruments<sup>34</sup>, which attribute “positive obligation” to States. States are required not only to abstain from committing violations but also to take positive measures to fulfil, respect, protect, and promote human rights. A State cannot avoid responsibility for failing to take measures to prevent or respond to child trafficking as required (OHCHR 2014).

Thirdly, under the standard of “due diligence”, “a State may be responsible for the effects of the conduct of private parties, if it fails to take necessary measures to prevent those effects” (ILC 2001, 38). In other words, the State will be held responsible for human rights violations, including child trafficking, committed by private actors, if it failed to do everything possible to prevent the harmful conduct of the private individual or to impose suitable punishment on the offender (Gallagher 2010, 237). The principle of “due diligence” is the standard of judgement on whether the State has taken all

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<sup>32</sup> UN General Assembly, (2002) “Responsibility of States for Internationally Wrongful Acts”, *Resolution adopted by the General Assembly [on the report of the Sixth Committee (A/56/589 and Corr.1)]*, 28 January 2002, A/RES/56/83, at Article 1-2.

<sup>33</sup> *Ibid.*, Article 4-5.

<sup>34</sup> *Ibid.*, Article 12.

the necessary measures in preventing and responding to the offensive conduct. Failure to prevent an anticipated human rights abuse or to remedy such violation is a breach of the standard of due diligence (Gallagher 2010, 241-242). The State has the responsibility under international law to act with due diligence to prevent trafficking, to investigate and prosecute traffickers, and to assist and protect trafficked persons (OHCHR 2010, 75).

### ***B. Sources of State obligations with respect to child trafficking***

The State's obligations derive from international treaty law and soft law. The primary source of State obligation is international treaties, which are legally binding and only binding for State parties. Treaties relevant to child trafficking involve various issues, including rights of the child, women's rights, transnational organised crimes, sexual exploitation, international adoption, migration, labour issue, and so on (OHCHR 2010, 17). The first series of treaties dealing with the issue of trafficking was concluded in the first half of the last century, the focus of which was mainly sex trafficking of women and children. In addition, since child trafficking is a human rights issue, another major source is international and regional human rights treaties. There are also some treaties dealing with specific forms of exploitations, for instance, slavery and forced labour (see Box 1).

The most significant UN human rights treaties that address child trafficking are the Convention on the Rights of the Child (CRC) and its Optional Protocol on sale of children (CRC-OPSC), as well as the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which provide fundamental principles to State Parties and impose the obligation to take appropriate measures to prevent and suppress the trafficking in women and children on States. In Article 35, the CRC highlights both trafficking in and the sale of children for any purpose and imposes obligations to States to fulfil, protect, and promote the rights of the child in general. The CRC-OPSC makes more detailed requirement focusing on the sale of children, child prostitution, and child pornography. Article 6 of the CEDAW expresses explicitly that "States Parties shall take all appropriate measures,

including legislation, to suppress all forms of traffic in women and exploitation of the prostitution of women.” The Committee on the Elimination of Discrimination against Women has further elaborated this article in the General Recommendation No. 19, addressing the traffic of women and young girls as a form of violation against women<sup>35</sup>.

Box 1 List of relevant international and regional treaties associated with child trafficking

**Specialist trafficking treaties and crime control treaties:**

- 2000 UN Convention against Transnational Organized Crime
- 2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime

**Human rights treaties:**

- 1966 International Covenant on Civil and Political Rights
- 1966 International Covenant on Economic, Social and Cultural Rights
- 1965 Convention on the Elimination of All Forms of Racial Discrimination
- 1979 Convention on the Elimination of All Forms of Discrimination against Women
- 1984 Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment
- 1989 Convention on the Rights of the Child
- 2000 Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography
- 1990 Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
- 2006 Convention on the Rights of Persons with Disabilities

**Other international treaties:**

- 1926 Convention on Slavery
- 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery
- 1930 ILO Forced Labour Convention (C29)
- 1957 ILO Abolition of Forced Labour Convention (C105)
- 1973 ILO Minimum Age Convention (C138)
- 1999 ILO Worst Forms of Child Labour Convention (C182)
- 1980 Hague Convention on the Civil Aspects of International Child Abduction
- 1993 Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption

**Regional treaties:**

- 2002 SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution
- 2002 SAARC Convention on Regional Arrangements for the Promotion of Child Welfare in South Asia
- 1981 African Charter on Human and Peoples’ Rights
- 1990 African Charter on the Rights and Welfare of the Child
- 1994 Inter-American Convention on International Traffic in Minors
- 1994 Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women
- 2000 Charter of Fundamental Rights in the European Union
- 2005 Council of Europe, Convention on Action against Trafficking in Human Beings

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<sup>35</sup> UN Committee on the Elimination of Discrimination Against Women (CEDAW), (1992) *CEDAW General Recommendations No. 19: Violence against Women*, 1 February 1992, A/47/38.

The key international treaties that specialise in trafficking issues is the United Nations Convention against Transnational Organized Crime and the Palermo Protocol, which provide nations with a first agreed definition of “trafficking” in persons (including children) and specific guidelines to combat trafficking and crimes related to trafficking through international cooperation.

International customary law is another source of State obligation. It has the same value as treaty law, and its rules operate to bind all States, including those which do not take parts in relevant treaties. Norms of customary law relevant to child trafficking are: the prohibition of slavery, including contemporary forms of slavery; the prohibition of discrimination; and the prohibition of torture. (OHCHR 2010, 23)

General principles of law also provide obligations to States. A principle relevant to trafficking is that a person should not be held responsible for a crime he or she was compelled to commit (OHCHR 2010, 24). The decisions of international tribunals are subsidiary sources of State obligation. The most relevant courts are the International Criminal Court and the ad hoc tribunals, and the European Court of Human Rights.

At last, non-binding instruments such as declarations, recommendation, guidelines, and resolutions issued by relevant UN agencies are important sources of guidance in identifying the nature of rights and obligations. As “soft law”, these instruments contribute to the development of State obligations, although these instruments do not directly impose obligations on States (OHCHR 2014).

The most relevant “soft law” in the field of child trafficking are, among others: (OHCHR 2010, 27-28)

- OHCHR (2002), *Recommended Principles and Guidelines on Human Rights and Human Trafficking*<sup>36</sup>

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<sup>36</sup> UN Office of the High Commissioner for Human Rights (OHCHR), (2002) *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, 20 May 2002, E/2002/68/Add.1.

- UN (2005), Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law<sup>37</sup>
- UNICEF (2006), Guidelines on the Protection of Child Victims of Trafficking (UNICEF 2006)
- ASEAN (2007), Criminal Justice Responses to Trafficking in persons: ASEAN Practitioner Guidelines<sup>38</sup>
- COMMIT (2004), Memorandum of Understanding on Cooperation against Trafficking in Persons in the Greater Mekong Subregion<sup>39</sup>
- OSCE (2003), OSCE Action Plan to Combat Trafficking in Human Beings<sup>40</sup>
- European Union (2005), EU Plan on Best Practices, Standards and Procedures for Combating and Preventing Trafficking in Human Beings<sup>41</sup>

The obligations derived from international treaties and guidelines are relevant to the subject of this study. Firstly, child trafficking in China is not limited to internal trafficking but refers to internal or cross-border child trafficking within the Chinese jurisdiction. In addition, the Palermo Protocol and the CRC-OPSC equally apply to trafficking in and the sale of children occurred within or across a national border (Dottridge 2006, Gallagher 2010). Secondly, treaties are binding upon a State in respect of its entire territory<sup>42</sup> and international obligation of a State exists independently from the provisions of its internal law<sup>43</sup>. Therefore, the international legal obligation assumed by China to

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<sup>37</sup> UN General Assembly, (2006) Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law: resolution / adopted by the General Assembly, 21 March 2006, A/RES/60/147.

<sup>38</sup> Criminal Justice Responses to Trafficking in Persons: ASEAN Practitioner Guidelines was developed and finalized by the ASEAN Ad-Hoc Working Group on Trafficking in Persons, 25 June 2007, Vientiane, Lao PDR; and endorsed by the 7<sup>th</sup> ASEAN Senior Officials Meeting on Transnational Crime, Vientiane, Lao PDR, 27 June 2007, retrieved from <https://www.aaptip.org/wp-content/uploads/ASEAN-Criminal-Justice-Responses-to-Trafficking-in-Persons-ASEAN-Practitioner-Guidelines.pdf>, [accessed 31 July 2019].

<sup>39</sup> COMMIT, (2004) *Memorandum of Understanding on Cooperation against Trafficking in Persons in the Greater Mekong Subregion*, 29 October 2004, retrieved from: [http://un-act.org/wp-content/uploads/2015/07/COMMIT\\_MoU.pdf](http://un-act.org/wp-content/uploads/2015/07/COMMIT_MoU.pdf), [accessed 31 July 2019].

<sup>40</sup> OSCE, (2003) *OSCE Action Plan to Combat Trafficking in Human Beings*, 24 July 2003, PC.DEC/557, retrieved from: <https://www.osce.org/odihr/23866>, [accessed 31 July 2019].

<sup>41</sup> European Union (2005), *EU Plan on Best Practices, Standards and Procedures for Combating and Preventing Trafficking in Human Beings*, 9 December 2005, 2005/C 311/01, retrieved from: [https://ec.europa.eu/anti-trafficking/eu-policy/council-eu-plan-best-practices-standards-and-procedures-combating-and-preventing\\_en](https://ec.europa.eu/anti-trafficking/eu-policy/council-eu-plan-best-practices-standards-and-procedures-combating-and-preventing_en), [accessed 31 July 2019].

<sup>42</sup> Vienna Convention on the Law of Treaties (1969), Article 29.

<sup>43</sup> *Ibid.*, Article 27.

respond to child trafficking are independent from if and how child trafficking is prohibited in its internal legal framework.

### ***C. Obligations of States in responding to child trafficking***

The Palermo Protocol and the CRC-OPSC stipulate specific legal obligations to State Parties in response to child trafficking. The following obligations are elaborated with reference to the OHCHR (2010) Commentary on the Recommended principles and guidelines on human rights and human trafficking and the UNICEF Reference guide on protecting the rights of child victims of trafficking in Europe, prepared by Dottridge (2006). They are sorted into three main aspects corresponding to prevention, protection and prosecution.

- *The obligation to make the best interest of the child a primary consideration in all actions concerning children*

As an issue closely related to children, States shall ensure that all the measures in responding to child trafficking, carried out either by State agencies or private bodies and organisations, make the best interest of the child a primary consideration (Dottridge 2006, 30). Potential conflicts between the best interests of a child or a group of children, and those of another group of children or children in general have to be resolved on a case-by-case basis, carefully balancing the interests of all parties and finding a suitable compromise. The same must be done if the rights of other persons are in conflict with the child's best interests. If harmonisation is not possible, authorities and decision-makers will have to analyse and weigh the rights of all those concerned, bearing in mind that the right of the child to have his or her best interests taken as a primary consideration<sup>44</sup>. The assessment of the child's best interest shall take into account, among others, the child's views, the child's identity, preservation of the family environment and maintaining relations, protection, care and safety of the child, the

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<sup>44</sup> UN Committee on the Rights of the Child (CRC), (2013) *General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (Article. 3, para. 1)*, 29 May 2013, CRC /C/GC/14, para. 39.

vulnerability of the child, as well as the child's right to education. These elements may be in conflict when considering a specific case. For instance, when assessing whether to return a victim of child trafficking to his or her original family, preservation of the family environment may conflict with the need to protect the child from the risk of violence or abuse by parents. In such situations, the elements shall be weighted in favour of what serves the child best<sup>45</sup>.

### **Prevention of trafficking**

- *The obligation to prevent child trafficking* (Dottridge 2006, 30)

By ratifying or accessing to the CRC, the CRC-OPSC, and the Palermo Protocol, States Parties accept their obligation to prevent child trafficking<sup>46</sup>. It is mandatory for the States to carry out preventive measures (UNODC 2004, 295), including laws, administrative measures, social policies, and programmes. Dissemination and awareness-raising activities and training must be carried out to the public at large and relevant practitioners, such as lawmakers, police officers, and medical workers.

- *The obligation to address the demand*

More specifically, States Parties and other actors, where appropriate, are required to prevent child trafficking by discouraging the consumer demand that fosters child trafficking and all forms of exploitations of children that causes trafficking<sup>47</sup>. Principle 4 on Human rights and Human Trafficking identifies demand as a root cause of trafficking. Guideline 7 reinforces that “[S]trategies aimed at preventing trafficking should take into account demand as a root cause” and States should “[A]nalyse the factors that generate demand” for all forms of exploitation. The demand for trafficked children is frequently shaped by discrimination based on gender, age, ethnicity, or other status. Human rights-based strategies to address demand should focus on addressing discriminatory

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<sup>45</sup> Ibid., para 81.

<sup>46</sup> CRC, at Article 35, CRC-OPSC, at Article 9, and Palermo Protocol, at Article 9.

<sup>47</sup> Palermo Protocol, at Article 9.5, CRC-OPSC at Preamble.

attitudes, cultures, and traditional practices. States are also able to shape demand for trafficked children through laws and policies. For instance, in China the failure to provide effective protection to children and the birth control policy create an environment in which illegal adoption is possible and highly profitable. Such demand is fostered by the institutional or practical failure of States to prosecute or punish buyers of trafficked children (Liu 2000). Demand in the context of child trafficking in China is still poorly understood. Research is an essential aspect for improving the understanding of demand (OHCHR 2010, 102). Although it is not explicitly required either by the Palermo Protocol nor by the CRC-OPSC, the criminalisation of those “who knowingly use or take advantage of the services of victims of exploitation” is possible measure for demand reduction (OHCHR 2010, 102, UNODC 2004, 297).

- *The obligation to address vulnerability to trafficking*

States and intergovernmental organisations are required to address the factors that increase the vulnerability of an individual or a group of children to trafficking. The factors include, among others, inequality, poverty and all forms of discrimination (OHCHR 2010, 105). States shall reduce vulnerability by addressing poverty, inequality, gender-based discrimination, and violation against women. Guideline 7 on Human rights and Human Trafficking identifies a list of measures, including developing programmes that offer livelihood options for traditionally disadvantaged groups, improving children’s access to education, compulsory birth registration, and review of policies that may compel people to make dangerous decisions. In particular, States shall take specific measures to reduce children’s vulnerability. It is worth noting that factors that increase vulnerability tend to impact differently and disproportionately on children with different status and family background. The vulnerability of a child to trafficking is frequently related to that of his or her family. In order to respond effectively and appropriately, it is important to understand the nature of particular forms and causes of vulnerability (OHCHR 2010, 105).

- *The obligation to identify and eradicate public-sector involvement in trafficking*

Principle 6 on Human Right and Human Trafficking requires States to exercise due diligence to identify, eradicate, investigate, and punish public-sector involvement or complicity in trafficking (OHCHR 2010, 117). Public-sector complicity in child trafficking undermines public confidence in the rule of law, fuels demand of and the illegal market of the trafficked children and facilitates the operation of traffickers and criminal groups.

### **Protection of and assistance to victims**

- *The obligation of no prosecution for status-related offences*

Principle 7 on Human Right and Human Trafficking states that “[T]rafficked persons shall not be detained, charged or prosecuted for their illegal entry into or residence in countries of transit or destination, or for their involvement in unlawful activities to the extent that such involvement is a direct consequence of their situation as trafficked persons.” Principle 7 is supplemented by Guideline 2.5, which, in the context of the need for trafficked persons to be identified quickly and accurately, calls on States and others to ensure that “trafficked persons are not prosecuted for violations of immigration laws or for the activities they are involved in as a direct consequence of their situation as trafficked persons”. States shall consider ensuring no prosecution for status-related offences through legislation<sup>48</sup>. The principle of no prosecution for status offences has been accepted by UNICEF (2006, 20) and other relevant UN bodies<sup>49</sup>.

- *The obligation to identify victims*

Although neither of the major international legal instruments on trafficking explicitly imposed an obligation to States to take positive measures to identify victims trafficking, the Principles and Guidelines on Human Rights and Human Trafficking impose the obligation of States to identify

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<sup>48</sup> UN Office of the High Commissioner for Human Rights (OHCHR), (2002) *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, 20 May 2002, E/2002/68/Add.1, at Guideline 4.5.

<sup>49</sup> See, for example, UN General Assembly, (2009) *Trafficking in Women and Girls*, 30 January 2009, A/RES/63/156, at para. 12.

victims in Guideline 2. The Guideline emphasises the importance of distinguishing victims of trafficking from people in other similar or related conditions, such as migrant smuggling. It is essential for protecting victims from further human rights violations and avoiding prosecution to victims for offences they committed as a direct consequence of their situation as trafficked persons. In addition, Principle 10 requires that “[C]hildren who are victims of trafficking shall be identified as such”. Where the age of the victim is uncertain and there are reasons to believe that the victim is a child, the presumption shall be that the victim is a child. Pending verification of the victim’s age, she or he is to be treated as a child and accorded all the necessary special protection measures (OHCHR 2010, 162-163, UNICEF 2006, 14-15). The identification of child victims of trafficking shall not depend on the identification, prosecution, or detection of traffickers or criminals<sup>50</sup>. The identification measures shall be pro-active (UNICEF 2006, 14), and the procedure shall be rapid<sup>51</sup>.

- *The obligation of protection and assistance*

Article 8 of the CRC-OPSC and Article 6 of the Palermo Protocol, and Principle 8 on Human Right and Human Trafficking require that States shall protect trafficked persons from further exploitation and harm. States also have the obligation to provide the victims safe shelter, adequate physical and psychological care, as well as legal and other assistance for the duration of any criminal, civil, or other actions against suspected traffickers. Principle 8 and 9 have reaffirmed this obligation and require that such protection and assistance “shall not be made conditional upon the capacity or willingness of the trafficked person to cooperate in legal proceedings.”

The measures of protection and assistance must be adapted to recognise the special needs and vulnerability of children. In particular, “[a]s soon as a child victim is identified, a guardian shall be

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<sup>50</sup> Palermo Protocol, at Article 3.

<sup>51</sup> See, for example, UN Office of the High Commissioner for Human Rights (OHCHR), (2002) *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, 20 May 2002, E/2002/68/Add.1, at Guideline 8.2. UN Human Rights Council, (2009) *Trafficking in Persons, Especially Women and Children*, 17 June 2009, A/HRC/RES/11/3, at para. 3. UNICEF, (2006) *Guidelines on the Protection of Child Victims of Trafficking*, p. 33.

appointed by a competent authority to accompany the child throughout the entire process until a durable solution that is in his or her best interests has been identified and implemented” (UNICEF 2006, 16). States are required to take positive measures to enable children to recover from abuse inflicted either while being trafficked or in other circumstances (Dottridge 2006, 30). “Child victims should especially be hosted in safe and suitable accommodation, taking due account of their age and special needs” (UNODC 2004, 290). During the entire legal proceedings, states shall ensure that direct contact between the child victim and the suspected offender be avoided (UNODC 2004, 290).

## **Prosecution**

- *The obligation of criminalisation*

It is “a central and mandatory obligation (UNODC 2004, 269) of all State parties to the Palermo Protocol to “adopt appropriate legislative and other measures necessary to establish, as criminal offences, trafficking, its component acts and related conduct”<sup>52</sup>. The States are obligated to criminalise child trafficking, in accordance with the definition set forth in Article 3 of the Protocol in their domestic legal systems, independent from its transnational nature or the involvement of an organised criminal group (Gallagher 2010, OHCHR 2010, 186). A similar obligation regarding the sale of children can be found in Article 3.1 of the CRC-OPSC. Its definition in domestic law does not have to be a verbatim replication of that set forth in Article 3 of the Protocol, although it needs to be “similar enough to support efficient international cooperation in investigating and prosecuting cases” (UNODC 2004, 269). The criminal liability must be imposed to both natural and legal persons, who commit, attempt to commit, participate as an accomplice in, or organise or direct other persons to commit trafficking offences<sup>53</sup>. The Conducts or offences related to trafficking include, among others,

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<sup>52</sup> UN Office of the High Commissioner for Human Rights (OHCHR), (2002) *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, 20 May 2002, E/2002/68/Add.1, at Principle 12.

<sup>53</sup> Palermo Protocol, at Article 5.2. See also, the UN Office of the High Commissioner for Human Rights (OHCHR), (2002) *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, 20 May 2002, E/2002/68/Add.1, at Guideline 4.2. Also, CRC-OPSC, at Article 3.2.

exploitation of prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery and servitude, debt bondage, and enforced prostitution<sup>54</sup>. In addition, Article 3.1 of the CRC-OPSC requires the criminalisation of a number of offences that are directly associated with trafficking in and the sale of children, including 1) offering, delivering or accepting a child for the purpose of sexual exploitation, transfer of organs for profit, and forced labour; 2) improperly inducing consent, as an intermediary, for the illegal adoption of a child; and 3) offering, obtaining, procuring or providing a child for child prostitution. Only intentional conduct need to be criminalised (UNODC 2004, 276).

- *Effective investigation, prosecution, and adjudication*

Principle 13 on Human Rights and Human Trafficking requires States to “effectively investigate, prosecute and adjudicate trafficking, including its component acts and related conduct”. It is a State’s responsibility under international law to investigate, prosecute and adjudicate trafficking with “due diligence” (Gallagher 2010, 382). It is also confirmed by Principle 2, which declares that “States have a responsibility under international law to act with due diligence to [...] investigate and prosecute traffickers”. Furthermore, Principle 13 confirms that the State’s duty to investigate and prosecute is applicable to offences related to trafficking, such as sexual exploitation, forced labour or services, slavery or practices similar to slavery and servitude, debt bondage, the worst forms of child labour and forced marriage (OHCHR 2010, 193). Moreover, it requires that the duty of effective investigation applies both when an allegation of violation is committed by governmental or when committed by non-State actors.

- *The obligation to impose sanctions*

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<sup>54</sup> Palermo Protocol, at Article 3. See also, the UN Office of the High Commissioner for Human Rights (OHCHR), (2002) *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, 20 May 2002, E/2002/68/Add.1, at Guideline 4.1

Principle 15 on Human Rights and Human Trafficking requires States to impose effective and proportionate sanctions applicable to both individuals and legal persons found guilty of trafficking or of its component or related offences. This obligation is confirmed and extended through Guideline 4.3, which compels States to make “legislative provision for effective and proportional criminal penalties”. Guideline 4.3 also suggests that States shall provide additional penalties for aggravating circumstances, including trafficking in children or offences involving or committed by State officials.

- *The obligation to seize and confiscate assets derived from trafficking*

Principle 16 on Human Right and Human Trafficking requires States to “freeze and confiscate the assets of individuals and legal persons involved in trafficking. Principle 16 and Guideline 4.4 requires States to use the confiscated proceeds to support and compensate victims of trafficking, and to consider establishing “a compensation fund for victims of trafficking and the use of confiscated assets to finance such a fund”.

- *The obligation to provide remedy*

States have the obligation to provide remedies to victims of trafficking for the human rights violation and harms they faced. The obligation to provide remedy can take many forms in the context of child trafficking. First of all, child trafficking is a form of violation of human rights. It is well-grounded in international law that a State have the obligation to “provide a domestic legal remedy to victims of violations of international human rights and humanitarian law norms committed in its territory” (OHCHR 2010, 224). The right to access an effective remedy is a fundamental human rights, explicitly articulated in a series of international human rights instruments, including the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights, Universal Declaration of Human Rights (Article 8), the ICCPR (Article 2), the European Convention on Human Rights (Article 13), the CERD (Article 14), and so forth. A State is legally responsible for the violation of human rights committed in its territory whether when it is found directly guilty for committing such offence or when it fails to take appropriate measures to prevent the violative conduct of a private actor (OHCHR 2010, 223-224). Secondly,

remedy access is a treaty-based right. Trafficking-specific legal instruments, either in the field of human rights treaties or that of international criminal law, require the State to provide remedies to victims of trafficking. Principle 17 on Human Rights and Human Trafficking identifies that “[S]tates shall ensure that trafficked persons are given access to effective and appropriate legal remedies”. Guideline 9 confirms that States parties have the obligation to provide remedy to victims of trafficking. “Effective and appropriate remedies” include, for instance, restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition (OHCHR 2010, 230). Article 6.6 of the Palermo Protocol requires States to ensure the victims the possibility of obtaining compensation in the domestic legal system. Similarly, Article 9.4 of the CRC-OPSC requires States to ensure that all victims of the sale of children and other related offences have access to compensation for damages from those legally responsible. As the obligation to remedy is confirmed in relevant treaties, i.e. the Palermo Protocol and the CRC-OPSC, the failure of the State to provide remedies becomes an additional breach of these specific legal instruments.

#### **1.2.4. Mechanisms in combating child trafficking**

In addition to the identification of right holder and duty bearer, as well as their rights and obligations respectively, a human rights-based approach requires that core principles and standards derived from international human rights law guide all aspects of programme and policies, of which the main objective is to fulfil, promote, and protect human rights. The principles can be general, applicable to every policy and programme at all stages, or specific, targeting certain human rights issues, such as trafficking in persons, and/or targeting specific right holders, for example, children and women. In the context of child trafficking, the United Nations and relevant UN agencies have developed the general principles into a mechanism of action, known as “3Ps”: prevent, prosecute, and protect. The “3Ps” mechanism transforms general principles into specific requirements and applicable measures, facilitating the implementation of States and the cooperation between them.

### ***A. International instruments addressing child trafficking***

There is no doubt that the United Nations Office on Drugs and Crime (UNODC) is the global leader in the fight against trafficking in persons. Established in 1997, the UNODC now operates in all regions of the world. It is specialised in providing legal and technical assistance to its Member States with their struggles against organized crime including trafficking, corruption, drug abuse and terrorism. The assistance programmes are mainly in three areas: technical cooperation projects of capacity building to the Member States, research and analytical work to increase knowledge and its dissemination, and legal assistance to the Member States in the ratification and implementation of the relevant international treaties and in their domestic legal framework building<sup>55</sup>. Based on Article 32 of United Nations Convention against Transnational Organized Crime, a Conference of the Parties to the Convention is established, which has the function of improving the capacity of States Parties and to promote and review the implementation of the Convention and the Protocol thereto. In 2018, a mechanism for the review of the implementation of the Convention was established<sup>56</sup>. This inter-governmental mechanism reviews, under the authority of the Conference, the implementation of each State Party on of the Convention and the Protocols thereto. Information necessary for the review of implementation is gathered by self-assessment questionnaires, which shall be responded by each State Parties on a voluntary basis<sup>57</sup>.

Many other UN agencies address human trafficking, including child trafficking, from their specific and professional angles. The International Labour Organization (ILO) addresses human

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<sup>55</sup> See UNODC, “About UNODC”, retrieved from <https://www.unodc.org/unodc/en/about-unodc/index.html?ref=menutop> [accessed on 1 July 2019].

<sup>56</sup> UNODC, (2018) Resolution 9/1: *Establishment of the Mechanism for the Review of the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto*, retrieved from <https://www.unodc.org/documents/treaties/UNTOC/Review%20Mechanism/Resolution/English.pdf> [accessed on 1 July 2019].

<sup>57</sup> *Ibid.*, at Section B and Section and para. 52.

trafficking as a form of slavery, closely related to topics such as forced labour, child labour and migrant labour. The ILO establishes standards for States to respect, including the Minimum Age Convention (C138)<sup>58</sup> and Worst Forms of Child Labour Convention (C182)<sup>59</sup>. The ratification and implementation of these fundamental conventions by State Parties may help preventing the exploitation and reducing demands of human trafficking. The International Organization for Migration (IOM) assists States in combating migrant smuggling and trafficking in persons, through specific programmes, training projects and researches. The United Nations Children's Fund (UNICEF) addresses child trafficking and sale of children as a violation of the rights of the child. It covers multiple areas including child protection from violence, exploitation and abuse, education, gender equality, and so on (e.g. Dottridge 2006, UNICEF 2006, UNICEF East Asia and Pacific Regional Office 2009, UNICEF Innocenti Research Centre 2009, UNICEF Regional Office for CEE/CIS 2009). The United Nations Development Programme (UNDP) also plays an important role in the field of combating human trafficking, by addressing the prevention of trafficking through projects of capacity building, local development, gender equality and so forth (e.g. Laczko and Danailova-Trainor 2009, UNDP 2004). The World Health Organization (WHO) studies human trafficking from the aspect of health, paying particular attention to victims of trafficking (e.g. WHO and Pan American Health Organization 2012, WHO et al. 2003).

Trafficking in persons is a multi-disciplinary crime that involves organisations in different sectors; therefore, it is essential to coordinate these international organisations, to guide regional organisations and to assist states in countering human trafficking. The Inter-Agency Coordination Group against Trafficking in Persons (ICAT) was established in 2007 with this mandate<sup>60</sup>. The UNODC was

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<sup>58</sup> ILO, Convention concerning Minimum Age for Admission to Employment, Geneva, 1973, Entry into force: 19 Jun 1976.

<sup>59</sup> ILO, Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, Geneva, 1999, Entry into force: 19 Nov 2000.

<sup>60</sup> UN General Assembly, (2007) "Improving the coordination of efforts against trafficking in persons",

assigned to coordinate, within ICAT, the efforts of other UN entities including ILO, IOM, OHCHR, UNHCR and UNICEF, so as to fight more efficiently against the trafficking in persons. Other member organisations of this policy forum include: Department of Peace Keeping Operations (DPKO), International Criminal Police Organization (ICPO-Interpol), United Nations Joint Program on HIV/AIDS (UNAIDS), United Nations Development Program (UNDP), United Nations Educational, Scientific and Cultural Organisation (UNESCO), United Nations Interregional Crime and Justice Research Institute (UNICRI), UN Women and the World Bank. The ICAT takes a gender and age-sensitive and human rights-based approach. It provides a platform to national, regional, and international stakeholders to exchange information, experiences and good practices on anti-trafficking activities, and to promote effective and efficient use of existing resources. It also contributes to the implementation of international standards and instruments relevant to the prevention and the combat of human trafficking, as well as the protection of victims of trafficking.

### ***B. Regional mechanisms in Asia***

In Asia, there is no inter-governmental organisation like the European Union or the African Union that includes the majority of Asian countries. The only similar organisation is the Association of Southeast Asian Nations (ASEAN). Established in 1967 in Thailand, the ASEAN now has ten Member States, namely Brunei Darussalam, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, Philippines, Singapore, Thailand, and Viet Nam. It has adopted several instruments regarding women's rights, including the Declaration on the Advancement of Women in the ASEAN Region (1988), the ASEAN Declaration Against Trafficking in Persons Particularly Women and Children (2004), the ASEAN Leaders' Joint Statement in Enhancing Cooperation Against Trafficking in Persons in Southeast Asia (2011), the ASEAN Human Rights Declaration (2012), the Declaration on

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*Resolution adopted by the General Assembly on 20 December 2006 [on the report of the Third Committee (A/61/444)], 8 March 2007, A/RES/61/180.*

the Elimination of Violence against Women and Elimination of Violence against Children in ASEAN (2013). In 2015, the Convention against Trafficking in Persons, Especially Women and Children was adopted by the ASEAN Summit, accompanied by the Plan of Action Against Trafficking in Persons, Especially Women and Children. However, this ASEAN Convention was nothing more than a verbatim replication of the Palermo Protocol. The main limitations of the mechanism of ASEAN lie in its restricted members, the not-binding nature of most of its instruments, and the lack of a treaty body to monitor the implementation of the binding provisions.

The ASEAN is the only inter-governmental organisation in Asia with a supranational character that deals with trafficking in persons; however, China is not a State Party. Nevertheless, the Chinese authority showed its willingness to cooperate with other Asian countries in combating human trafficking. There are two anti-trafficking mechanisms of which China is a Member State. In the Asia-Pacific region, China is a member state of the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime (Bali Process), which is a voluntary and non-binding forum with 48 members, including the United Nations High Commissioner for Refugees (UNHCR), UNODC, and IOM. However, the Bali Process fails to take gender and age-sensitive approach or a human rights-based approach. The core of their anti-trafficking activities is more related to people smuggling and irregular migration. Its work is carried out in the form of Ministerial Conferences and Senior Officials Meetings, with a sovereignty-oriented approach.

At the sub-regional level, China is Party in the Coordinated Mekong Ministerial Initiative against Trafficking (COMMIT), established in 2004 by the signature of a Memorandum of Understanding (MoU) between six countries in the Greater Mekong Sub-region (GMS) – Cambodia, People’s Republic of China, Lao People’s Democratic Republic (Lao PDR), Myanmar, Thailand, and Vietnam<sup>61</sup>. This intergovernmental process is aimed to strengthen cooperation in the field of

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<sup>61</sup> COMMIT, (2004) *Memorandum of Understanding on Cooperation against Trafficking in Persons in the*  
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implementation of international standard and consistent bilateral and multilateral efforts among governments and NGOs in the GMS in combatting human trafficking. To support the governments and other stakeholders in Southeast Asia, the UNDP established a 5-year regional project UN Action for Cooperation against Trafficking in Persons (UN-ACT) 2014-2018. The UN-ACT builds upon the work previously undertaken by the United Nations Inter-Agency Project on Human Trafficking (UNIAP), which operated in the Greater Mekong Sub-region from 2000 and functioned as the secretariat to the COMMIT until 2013. The COMMIT has operated on the basis of annual COMMIT work plans as well as Sub-regional Plans of Actions (SPA), which are further translated into a National Plans of Actions (NPAs). The First Subregional Plan of Action (COMMIT SPA I 2005-2007) was adopted in 2005, comprised of twelve Project Proposal Concepts (PPCs). The Second Plan of Action (COMMIT SPA II 2008-2010) was agreed by the Ministers of the six COMMIT Governments in December 2007, bringing some improvements over the COMMIT SPA I. While the Third Plan of Action (COMMIT SPA III 2011-2013), adopted in 2010, brought structural changes to the action plan, outlining the activities in a less prescriptive manner in recognition of the flexibility required by each country to approach activities in different ways. The Fourth Plan of Action (COMMIT SPA IV 2015-2018) was agreed in 2015 and will guide the COMMIT Process until 2018. It requires that the output of concrete activities bring immediate changes in skills, abilities, and capacities of individuals and institutions. Moreover, the civil society should be given voice in monitoring the key institutions and their activities<sup>62</sup>. The COMMIT Process emphasised in its MOU that women and children are particularly vulnerable and need special protection. Recalling Universal Declaration of Human Rights, CRC, CEDAW, Palermo Convention and Protocol, as well as

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*Greater Mekong Subregion*, 29 October 2004, retrieved from: [http://un-act.org/wp-content/uploads/2015/07/COMMIT\\_MoU.pdf](http://un-act.org/wp-content/uploads/2015/07/COMMIT_MoU.pdf), [accessed 31 July 2019].

<sup>62</sup> COMMIT, (2015) *COMMIT 4<sup>th</sup> Sub-Regional Plan of Action (COMMIT SPA IV 2015 – 2018)*, April 2015, retrieved from: [http://un-act.org/wp-content/uploads/2015/10/COMMIT\\_SPAIV\\_Final\\_Version.pdf](http://un-act.org/wp-content/uploads/2015/10/COMMIT_SPAIV_Final_Version.pdf), [accessed 31 July 2019].

fundamental conventions of ILO, the COMMIT Process takes a human rights-based approach in its operations.

### ***C. The “3Ps” paradigm for combating trafficking in persons***

The operational framework of combating child trafficking was established in the international instruments against trafficking in persons, guided by the aforementioned principles and standards provided by international human rights instruments (see §1.1.2). States and other stakeholders are required to take concrete action, based on a paradigm for combating trafficking in persons consisting of three pillars of intervention (“3Ps”): Prevention, Prosecution and Protection (UNODC 2009b). The UNODC explained in detail the “3Ps” paradigm in a technical assistance tool for the effective implementation of the Palermo Protocol (UNODC 2009b, p.10). The prevention of trafficking in persons requires a series of measures including conducting systematic research on root causes of trafficking in persons and developing measures to reduce the demand, addressing the factors that increase vulnerability to trafficking, strengthening national child protection system, to empower women and youth of working age, promoting lawful migration and regulate labour market, increasing the capacity of law enforcement officers for identifying possible victims and reacting quickly as well as to create a rapid response mechanism of abduction and trafficking in persons. The multidimensional, complex, and evolving underlying factors of the sale of children require the establishment of comprehensive, proactive, and sustainable prevention<sup>63</sup>. To improve the prosecution efforts, States shall take measures to strengthen their national legal frameworks in compliance with the Palermo Protocol and ensure their implementation, in order to reinforce the national anti-human trafficking legislation, and to establish relevant institutions, such as specialised police units and judicial structures. The protection of victims of trafficking is possible only when the victim is

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<sup>63</sup> UN Secretary-General, (2013) *Effective prevention strategies in combating the sale and sexual exploitation of children: note by the Secretary-General*, 6 August 2013, A/68/275, at para. 7.

identified (UNODC 2009b, 10-11). Besides strengthening the identification process, the authority shall adopt a comprehensive protection and assistance system capable of providing personalised supports to victims with different needs. It is also necessary to adopt measures to rehabilitate and empower victims and to prevent the re-victimisation. States shall also ensure the application of international standards as well as a rights-based and age-sensitive approach to victim protection irrespective of their cooperation with law enforcement.

Considering the complexity and transnational nature of the crime of trafficking, the UNODC pointed out two more pillars, necessary to the implementation the Palermo Protocol: national coordination and cooperation, and international cooperation and coordination (UNODC 2009b, 11), It is also referred to by UNICEF as “partnership”, the fourth “P” of the “4Ps” paradigm (ICAT 2010, 24-26). Trafficking in persons is a multidisciplinary and transnational issue. Neither any single country nor a police force crackdown can resolve the problem. It requires the involvement and active participation of national institutions from all sectors as well as organisations from civil society. The cooperation of agencies and organisations need to be coordinated in order to avoid inefficient use of resources, incoherent interventions, or other forms of ineffectiveness. At the same time, trafficking in persons is an international crime; therefore, it requires the cooperation of stakeholders including states and regional and international organisations, the efforts of which must be coordinated by international mechanisms and structures (UNODC 2009b, 12). At the national level, they cooperate directly with relevant ministries of national counterparts, while at the international level, they cooperate with other organisations, and their work is coordinated by UNODC as well as other international mechanisms. The coordination and cooperation are essential not only for States, but also for regional and international organisations. For example, the European Commission defined the “enhanced coordination and cooperation among key actors and policy coherence” as one of the five key priorities for the Member States when addressing trafficking in human beings (European Commission 2013, 5). In the Greater Mekong Sub-region (GMS), the Coordinated Mekong

Ministerial Initiative against Trafficking (COMMIT) and its Member States included elements of cooperation and coordination in their key strategies<sup>64</sup>. Similarly, a number of international organisations that operate in the field of trafficking in persons have established partnerships with national ministries, other international and regional organisations, NGOs and other organisations of civil society, including UNIFEM, UNCHR, IOM, UNDP, UNICEF, UNESCO, and so forth (ICAT 2010, 6-34).

### **1.2.5. International commitments of China**

For many years, China has shown itself willing to participate in international cooperation in combating the crime of child trafficking. From international human rights treaties to regional agreements, China has made a series of commitments relevant to responding to child trafficking, which provide China obligations to take appropriate actions.

At the international level, China has ratified or acceded to most of the international human rights treaties and other international treaties related to child trafficking (see Table 2), as well as specialised treaties regarding human trafficking, child abduction, and intercountry adoption (see

Table 3). In 1980, China ratified the UN Convention on the Elimination of All Forms of Discrimination against Women of 1979, and ratified in 1991 the Convention on the Right of the Child of 1989. Both conventions assigned the States Parties the responsibility to prevent and suppress human trafficking. In implementing these two conventions, the Chinese government issued Programs for the Development of Chinese Women and Chinese Children separately, both of which include measures to prevent and suppress human trafficking and to protect fundamental rights of women and children. The ratification of the aforementioned conventions led to some legal adjustments in China,

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<sup>64</sup> See COMMIT, (2004) *Memorandum of Understanding on Cooperation against Trafficking in Persons in the Greater Mekong Subregion*, 29 October 2004, retrieved from: [http://un-act.org/wp-content/uploads/2015/07/COMMIT\\_MoU.pdf](http://un-act.org/wp-content/uploads/2015/07/COMMIT_MoU.pdf), [accessed 31 July 2019].

for instance, the amendment of articles related to trafficking in persons of Criminal Law in 1997. The implementation of obligations under relevant international instruments will be further developed later in Chapter V.

Table 2 List of relevant international treaties associated with child trafficking

UN core human rights international instruments:	Signature date	Ratification, Accession(a) Date
International Covenant on Civil and Political Rights (1966)	05 Oct 1998	
International Covenant on Economic, Social and Cultural Rights (1966)	27 Oct 1997	27 Mar 2001
Convention on the Elimination of All Forms of Racial Discrimination (1965)		29 Dec 1981 (a)
Convention on the Elimination of All Forms of Discrimination against Women (1979)	17 Jul 1980	04 Nov 1980
Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (1984)	12 Dec 1986	04 Oct 1988
Convention on the Rights of the Child (1989)	29 Aug 1990	02 Mar 1992
Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (2000)	06 Sep 2000	03 Dec 2002
Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990)		
Convention on the Rights of Persons with Disabilities (2006)	30 Mar 2007	01 Aug 2008
Other international treaties:		
Slavery Convention (1926)		22 Apr 1937 (A)
Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery (1956)		(B)
Forced Labour Convention (ILO C 29) (1930)		
Abolition of Forced Labour Convention (ILO C105) (1957)		
Minimum Age Convention (ILO C 138) (1973)		28 Apr 1999
Worst Forms of Child Labour Convention (ILO C182) (1999)		08 Aug 2002

Note (A): Signed on behalf of the Republic of China on 14 December 1955. In addition, upon resuming the exercise of sovereignty over Hong Kong, China notified the Secretary-General that the Convention will also apply to the Hong Kong Special Administrative Region.

(B): The Government of the People's Republic of China also declares that the signature and ratification by the Taiwan authorities in the name of China on 23 May 1957 and 28 May 1959 respectively of the [said Convention] are all illegal and therefore null and void. In addition, the Convention has applied to Macau and Hongkong since 27 April 1999 and 6 September 1957 respectively.

Table 3 List of specialist crime control treaties and conventions of international private law

Specialist trafficking treaties and crime control treaties:	Signature date	Ratification, Accession(a) Date
Convention for the Suppression of the Traffic in Persons and of the Expression of the Prostitution of Others (1949)		(A)
UN Convention against Transnational Organized Crime (2000)	12 Dec 2000	23 Sep 2003
Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (2000)		8 Feb 2010 (a)
<b>International Private Law:</b>		
Convention of 25 October 1980 on the Civil Aspects of International Child Abduction		(B)
Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption	30 Nov 2000	16 Sep 2005

Note (A): On 7 July 1999, the Government of Portugal informed the Secretary-General that the Convention would apply to Macao. Upon resuming the exercise of sovereignty over Macao, China notified the Secretary-General that the Convention will also apply to the Macao Special Administrative Region.

(B): This Convention applies to the Special Administrative Regions of Hong Kong and Macao only, as a result of extensions made by the United Kingdom of Great Britain and Northern Ireland and Portugal, respectively. When Hong Kong and Macao were restored to the People's Republic of China on 1 July 1997 and 20 December 1999, respectively, China declared that the Convention will continue to apply for Hong Kong and Macao. Date of entry into force of the Convention for Hong Kong: 1 September 1997; date of entry into force for Macao: 1 March 1999.

At the regional level, based on the COMMIT Process, China committed to cooperate with other GMS countries through the MoU<sup>65</sup> and three Joint Declarations<sup>66</sup>. In addition, China built bilateral cooperation mechanisms with other GMS countries (see

Table 4). Since the initiation of the COMMIT Process in 2004, China's anti-human trafficking efforts have improved significantly. It not only provided an essential platform for China to create networks and enhance cooperation with neighbouring countries, but also played an important role in

<sup>65</sup> COMMIT, (2004) *Memorandum of Understanding on Cooperation against Trafficking in Persons in the Greater Mekong Subregion*, 29 October 2004, retrieved from: [http://un-act.org/wp-content/uploads/2015/07/COMMIT\\_MoU.pdf](http://un-act.org/wp-content/uploads/2015/07/COMMIT_MoU.pdf), [accessed 31 July 2019].

<sup>66</sup> COMMIT, (2007) *Joint Declaration of the Coordinated Mekong Ministerial Initiative Against Human Trafficking*, Beijing, 14 December 2007, retrieved from: <http://un-act.org/publication/2007-commit-joint-declaration/>, [accessed 31 July 2019]; COMMIT, (2012) *The Second Joint Declaration of the Coordinated Mekong Ministerial Initiative Against Human Trafficking*, Ha Noi, 16 February 2012; and COMMIT, (2015) *The Third Joint Declaration of the Coordinated Mekong Ministerial Initiative Against Human Trafficking*, Phnom Penh, 30 April 2015, retrieved from: <http://un-act.org/publication/third-commit-declaration/>, [accessed 31 July 2019].

China’s accession to the Palermo Protocol. In addition to strengthening China’s capacity to deal with cross-border trafficking by facilitating its cooperation with other countries and international institutes, the COMMIT also expedited China’s response to trafficking in persons at the national level by reforming its policy and legal framework. Examples of this include the issuing of the first China National Plan of Action on Combating Trafficking in Women and Children (2008-2012) in December 2007, the special actions of the police to combat trafficking in women and children (2008-2012), and the amendment of legislation related to trafficking in women and children.

Table 4 Bilateral agreements on combating trafficking in persons between China and other GMS Members

Bilateral agreements	Signature date
MoU between the Government of the Union of Myanmar and the Government of the People’s Republic of China on Strengthening the Cooperation on Combating Human Trafficking	11 Nov 2009
Agreement between the Government of the Socialist Republic of Vietnam and the Government of the People’s Republic of China on Strengthening Cooperation on Preventing and Combating Human Trafficking	15 Sep 2010
Agreement between the Government of the Lao People’s Democratic Republic and the Government of the People’s Republic of China on Cooperation in Preventing and Combating Trafficking in Persons	1 Sep 2014
MoU between the Government of the Kingdom of Thailand and the Government of the People’s Republic of China on Cooperation in Prevention and Suppression of Trafficking in Persons	2 Nov 2018

### 1.3. Literature review

Trafficking in persons has attracted worldwide attention in the last two decades. As an issue closely related to global migratory movements and transnational crimes, a great number of studies took a traditional state-centred perspective, associating trafficking issues with problems such as smuggling, transnational crime, immigration, and prostitution (e.g. French 2014, Holmes 2010, Kelly 2013, Lindquist and Piper 2013, Morehouse 2009, Okubo and Shelley 2011, Shelley 2013, Weitzer 2014), or trying to identify the process and causes of trafficking in persons, as well as strategies and policies against the crime (Davis et al. 2003, Ebbe 2007, Holmes 2010, Mishra 2015, Moloney 2015, Palmiotto 2014, Shen et al. 2013, Wylie and McRedmond 2010).

For most of the existing studies, trafficking of children is generally considered as a sub-group of human trafficking. Papers focusing solely on children are relatively few (e.g. Bang et al. 2013, Chung 2009, Cohen 2003, Gjermeni et al. 2008, Goździak and Bump 2008, Howard 2017, Kelso 2007, Leifsen 2008, Rafferty 2007; 2013, Rigby and Ishola 2017, Salvo Agoglia and Alfaro Monsalve 2019, Scarpa 2005, Shen 2016, Smolin 2007, Wang et al. 2018). Most relevant studies on child trafficking or trafficking in persons in general concern cross-border traffickings (e.g. Amahazion 2014, Davy 2013, Englund et al. 2008, French 2014, Gjermeni and Van Hook 2012, Kranrattanasuit 2014, Morehouse 2009, Okubo and Shelley 2011, Rafferty 2013, Yik-Yi Chu 2011), while internal trafficking has been largely ignored (Shen et al. 2013). In recent years, States and scholars have been paying more attention to internal trafficking (Gjermeni and Van Hook 2012, Kragten-Heerdink et al. 2017, Li, Tan, et al. 2017, McCarthy 2016, Shen 2016, UNODC 2018, Wang et al. 2018, Xing et al. 2017). In particular, Kragten-Heerdink et al. (2017) have introduced an identification model of the trafficking routes from the perspective of a single country, which permit studies on human trafficking to take equal consideration of internal and cross-border trafficking. The study took the Netherlands as an example and highlighted that a person could be trafficked from, to, within or through a country for exploitative purposes. By identifying all the trafficking routes and relevant victims, the State can take appropriate policies and measures to combat the crime and protect the victims.

Difficulties in conducting quantitative research and data collection of human trafficking have been pointed out in the previous studies. Due to the hidden nature of the crime, inadequate data collection methods, as well as many other reasons, there is a lack of, both national and international, homogeneous and reliable data of the crime (Davy 2013, Kragten-Heerdink et al. 2017, Laczko and Gozdziaak 2005, Liu 2010, Lobasz 2019, 7-12, Rafferty 2007, Savona and Stefanizzi 2007, UNODC 2006a). In Chinese studies, data collection has other barriers, including non-transparency of official statistics, limited access to information, restriction on conducting interviews, and so on (Shen 2016).

However, effective prevention of trafficking in persons, including child trafficking is possible only if the State understands the scale and nature of the problem (UNICEF 2007, 675).

Many scholars and experts have provided explanations on why trafficking happens in a specific region or country (Cohen 2003, Davis et al. 2003, ILO/IPEC and Yunnan Province Women's Federation 2002, Liu 2000, Obokata 2006, Rafferty 2007, Shen et al. 2013, UNICEF Regional Office for CEE/CIS 2009, Wylie and McRedmond 2010, Xing 2017), or in global perspective (Bales 2007, Cameron and Newman 2008, Ebbe 2007, ECOSOC 2000, Gallagher and Skrivankova 2015, Shelley 2010). Causes of trafficking may differ from one place to another and from pattern to pattern, while several key factors are widely considered common causes of child trafficking.

Poverty is among the main reasons for human trafficking that are generally identified by experts (Bales 2007, Gallagher and Skrivankova 2015, ILO/IPEC and Yunnan Province Women's Federation 2002, Inter-Parliamentary Union and UNICEF 2005, Rafferty 2007, UNDP 2004, UNICEF Regional Office for CEE/CIS 2009). Poverty is closely related to other factors, including the lack of opportunities, unemployment, and income gaps (UNDP 2004). It is a causative factor of child trafficking, as it leads to low enrolment rate at primary school, which is another factor that makes children vulnerable to trafficking (Cohen 2003). Two studies on the trafficking of women and children in Yunnan Province in China also confirm that poverty is a major cause of human trafficking in that region. In particular, many children were sold by their parents because their families were too poor to afford the maintenance allowance (ILO/IPEC and Yunnan Province Women's Federation 2002, Yuan and Yang 2001).

Discrimination on the various ground is a deep-rooted cause of child trafficking (Obokata 2006, UNICEF Regional Office for CEE/CIS 2009). Discrimination against women happens at different levels: the family unit, community, the State, and the market (ECOSOC 2000, 19-21). The discriminatory conditions make the harsh living condition worse for girls (Cohen 2003). Compared

to boys, girls face a higher probability to be abused within their families, to drop out of school, and to be sexually abused (Inter-Parliamentary Union and UNICEF 2005, 17).

Gender and age-based discrimination generate demand, another causative factor of trafficking, which lies on the other side of the trafficking chain. Women and children are traded and “consumed” as commodities in the sex industry (Inter-Parliamentary Union and UNICEF 2005, 17, Obokata 2006) and exploited as cheap unskilled labour force (UNDP 2004, 9). In China, there is a demand for trafficked women for marriage and for children for adoption (ILO/IPEC and Yunnan Province Women’s Federation 2002, 20).

Tradition and culture values are also widely considered as a causative factor. It includes the traditional role of extended families as caregivers and the promotion of early integration of children into the labour force (Inter-Parliamentary Union and UNICEF 2005, 19), as well as the traditional mindset of having a big family or a male child to inherit the family name (Xing 2017).

The lack of birth registry has also been raised as a factor that facilitates child trafficking (Davis et al. 2003, Inter-Parliamentary Union and UNICEF 2005). Without a legal identity, it is easier to traffic a child and more challenging to identify the crime. The lack of birth registration may be a consequence of other factors, including conflicts, inadequate health care system, and weak law enforcement.

Family disintegration and children without caregivers are other factors that affect child trafficking. According to the ILO, orphaned children are more vulnerable than non-orphans to be exploited (Inter-Parliamentary Union and UNICEF 2005, 18). Children may be left without an appropriate caregiver in several situations, including humanitarian disasters, diseases (for example HIV/AIDS) (Cohen 2003), family disharmony (such as divorce), and migration (ILO/IPEC and Yunnan Province Women’s Federation 2002, 22).

Frequently, the abovementioned factors are classified as push or pull factors for trafficking (Gallagher and Skrivankova 2015, ILO/IPEC and Yunnan Province Women’s Federation 2002, 80

UNDP 2004). Push factors drive people to migrate from their homeland. They include poverty, discrimination, tradition, and culture values. Pull factors consist of, among others, the desire of migrants for a better life, and demand in destination countries. However, this dichotomy between push and pull factors has some weakness. For instance, discrimination is usually considered as a push factor, while it is also the root cause of the existence of demand from the sex industry. Similarly, poverty, being a common push factor, is also a reason for forced marriage (ILO/IPEC and Yunnan Province Women's Federation 2002, Liu 2000).

Box 2 Examples of structural and proximate factors involved in trafficking.

<p><b>Structural factors</b></p> <p><i>Economic factors:</i> Globalization; poverty; deprivation and economic downturns and trends; free market economics; deregulation; migratory movements</p> <p><i>Social factors:</i> Social inequality; gender discrimination; discrimination and marginalization based upon age (children and minors); gender status; disadvantaged cultural, regional and linguistic status; prostitution</p> <p><i>Ideological factors:</i> Racism; xenophobia; gender and cultural stereotyping</p> <p><i>Geopolitical factors:</i> War; civil strife; violent conflict; military bases and operations</p> <p><b>Proximate factors</b></p> <p><i>Legal and policy aspects:</i> Inadequate national and international legal regimes; poor law enforcement; immigration/migration laws and policies; inadequate and poorly enforced labour laws and standards</p> <p><i>Rule of law:</i> Corruption; complicity of state in criminal activities; support by state officials of underground criminal networks; organized criminal/parallel entrepreneurship including underground sex trade; smuggling; trade in arms and drugs</p> <p><i>Inadequate partnership between civil society and state:</i> Weak education campaigns; low awareness among vulnerable communities; apathetic civil society; poor accountability of state organizations</p> <p><i>Note</i> Some structural and proximate factors apply to both source and destination countries; some apply solely to one or the other.</p>
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Source: (Cameron and Newman 2008, 3)

Although most trafficking happens in relatively poor regions and countries, a great number of children living in poverty will not become victims of trafficking. To understand why certain people are more vulnerable to trafficking, the simple piling up of possible causative factors is far from being sufficient. Cameron and Newman (2008) suggested that human trafficking should be explained by the interaction of a series of multi-dimensional factors. Socio-economic deprivations are structural and fundamental causes of vulnerability of which child trafficking is a manifestation. However, these

factors cannot constitute the entire casual paradigm of human trafficking (Cameron and Newman 2008, 2-3). It is the conjunction of the structural factors with other proximate factors, such as corruption, that explains where and why child trafficking happens (see Box 2). They can be caused by individual victims, having particular characteristics. More frequently, vulnerabilities are inherited from victims' families, or caused by the social context in which victims live. Vulnerabilities may be short-term or long-term, general or specific, economic, social, or political (OHCHR 2014, 39).

The experts of UNICEF EAPRO did a similar but more detailed classification of factors which render children vulnerable to trafficking in East Asia and the South-East Asian region (UNICEF East Asia and Pacific Regional Office 2009, 24-28). The pattern of child trafficking varies significantly according to the age of the victim, as does the role of the victim's family. According to the experts, the particular factors which render children vulnerable to trafficking vary between or within countries. Nevertheless, key common elements can be identified and classified into four categories: individual factors, family-related factors, social-economic factors, and demand. This approach considers child trafficking as an overall process, more than just a sequence of abduction, transportation, and selling of children. Instead, it includes the original family the victim, the broad socio-economic context in which they live, and the demand for exploitation. Comparing to other approaches, the classification of UNICEF EAPRO is more comprehensive and better structured. By introducing the individual and family-related factors, this approach may help relevant authorities to adopt appropriate targeted preventive policies and measures by providing information on the characteristics of potential victims.

### **1.3.1. Child trafficking in China**

Studies of child trafficking in China conducted by Chinese scholars mainly focus on legal and sociological aspects, including legislation (Liu 2010, Liu 2003, Yang 2008, Zhao and Meng 2014). Some others focus on the criminological study on its features and causes (Gao 2010, Li et al. 2013, Liu 2000, Shen 2016, Xing 2017), as well as its criminal investigation (Lin 2015, Zhang 2006, Zhang 2007).

There are very limited empirical studies on the issue, and those are usually limited to a small area or a small number of cases (Li 2000, Shen 2016, Yang 2000, Yuan and Yang 2001). In recent years, empirical studies on child trafficking applying quantitative analysis methods began to emerge. Li Gang, together with other scholars, using data collected from the website of the NGO named BBHJ, has conducted two studies on the geographic and spatiotemporal characteristics of the phenomenon (Li, Tan, et al. 2017, Li, Wang, et al. 2017), focusing on geography aspects of child trafficking in China, including features of victims, the variation of the crime in time and space, the flow of victims, and so on. With the same source, Wang et al. (2018) studied the child trafficking network at the provincial and city level. Some other scholars relied on national court judgement data, available at “China Judgements Online”<sup>67</sup>, which is the only official national online archive of court judgements. Two inter-related studies were carried out based on 447 judgements issued during 2013 and 2015 on the crime of child trafficking. One study provided a general description of the characteristics of the crime in China (Xing et al. 2017), while the other one focused on the parental sale of children (Xing et al. 2017). Xin and Cai (2018), again using the data of courts, explores the characteristics, patterns, and related factors for child trafficking in China. The previous quantitative studies brought about some common findings, for instance, most of the child trafficking victims were younger than three years, and there were more boy victims than girls. They found that a great majority of the trafficking cases were committed by the guardians of the victims and that the dominant purpose of trafficking was illegal adoption. All of the mentioned quantitative studies analyse child trafficking at a national level, which means that differences in geographical, economic, and cultural aspects between provinces cannot be adequately addressed.

A significant majority of Chinese scholars concluded their articles with suggestions on how to prevent and combat human trafficking (Li 2000, Lin 2015, Liu 2000, Wang et al. 2018, Yang 2000,

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<sup>67</sup> See <http://wenshu.court.gov.cn>.

Yuan and Yang 2001). The recommendations include harsh penalty, crackdown actions, reducing poverty, raising awareness among vulnerable people, enhancing law enforcement, and inter-sectoral cooperation. Nevertheless, in-depth analysis on the vulnerability of the victims, before and after the trafficking process, is scant, which is the premise of developing adequate policies regarding crime prevention and victim protection (UNICEF Innocenti Research Centre 2009, UNODC 2009b). Moreover, very few studies addressed the issue from a human rights perspective (Shen et al. 2013, Yuan and Yang 2001), thus focusing on the vulnerability of victims and their protection. These significant gaps in study need to be filled in order to improve the policy of combating child trafficking in China.

### **1.3.2. A human rights-based approach**

The human rights-based approach was initially adopted in human development programmes, defined as “a conceptual framework for the process of human development that is normatively based on international human rights standards and operationally directed to promoting and protecting human rights” (OHCHR 2014, 8). According to the *Common Understanding on a Human Rights-Based Approach to Development Cooperation* adopted by the UNPD in 2003, programmes should, on the one hand, contribute to the development to the capacities of rights holders to claim their rights and, on the other hand, the capacity of duty-bearers to meet their obligation (UNDP 2003).

While there is a lack of universal recipe for the human rights-based approach (McConnell and Smith 2018), it has three essential attributes. First, as policy and programmes are formulated, the main objective should be to fulfil, promote, and protect human rights. Second, the human rights-based approach identifies rights holders, their entitlements, and the corresponding duty-bearers and their obligations, and works towards strengthening the capacities of rights holders to make their claims and of duty-bearers to meet their obligations. Third, core principles and standards derived from international human rights law should guide all aspects of programmes, research and response at all stages (McConnell and Smith 2018, OHCHR 2006; 2014). The human rights-based approach focuses

on not only the outcome of a policy or programme, but also on how the outcome is achieved (McConnell and Smith 2018, 7).

Similarly, research adopting a human rights approach is also framed within the three pillars. Firstly, the main objective of the research should be to promote and protect human rights. Secondly, the research should emphasise, beyond the phenomenon, on the entitlements of right holders and their eventual violation, as well as the corresponding obligations of duty bearers. Finally, the research should be guided by human rights principles and standards at all stages. The research methods and outputs should do no harm to human rights principles and standers (McConnell and Smith 2018, 8).

It has been widely accepted that child trafficking is a human rights issue (Dottridge 2006, Gallagher 2012). There has been an increasing number of studies that adopt the holistic human-centred approach on the topic of trafficking in persons (Brysk and Choi-Fitzpatrick 2012, Budiani-Saberi and Columb 2013, Dottridge 2006, Gallagher and Skrivankova 2015, Gallagher 2008, Obokata 2006, Rijken 2009, Segrave 2009, Uhl 2010). The Special Rapporteur on trafficking in persons, especially women and children, Ms Giammarinaro has also emphasised in her report that “trafficking in persons is primarily a human rights violation, which should be addressed within the international human rights framework”, and stated that human rights elements and the primacy of persons must be incorporated in the traditional criminal law approach<sup>68</sup>. Contrary to a state-centred perspective, studies in child trafficking from a human rights perspective give priority of consideration to rights of victims (Bang et al. 2013, Gallagher 2008, Obokata 2006, OHCHR 2014, Shin 2017). Child trafficking is both a cause and a consequence of the violation of human rights. On the one hand, the rights and dignity of victims of human trafficking are abused by practices prohibited by international human rights law, for instance, forced labour, child sexual exploitation, forced marriage, and

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<sup>68</sup> UN General Assembly, (2018) *Report of the Special Rapporteur on trafficking in persons, especially women and children*, 17 July 2018, A/73/171.

exploitation for prostitution. On the other hand, human trafficking is caused by a serious human rights violation, including gender-based discrimination, inequality, poverty, and violence against women. In addition, the human rights approach addresses the obligation of States to take appropriate actions to prosecute perpetrators and to address the root causes that facilitate child trafficking (Bales and Choi-Fitzpatrick 2012, de Boer-Buquicchio 2017, Gallagher 2012, Obokata 2006).

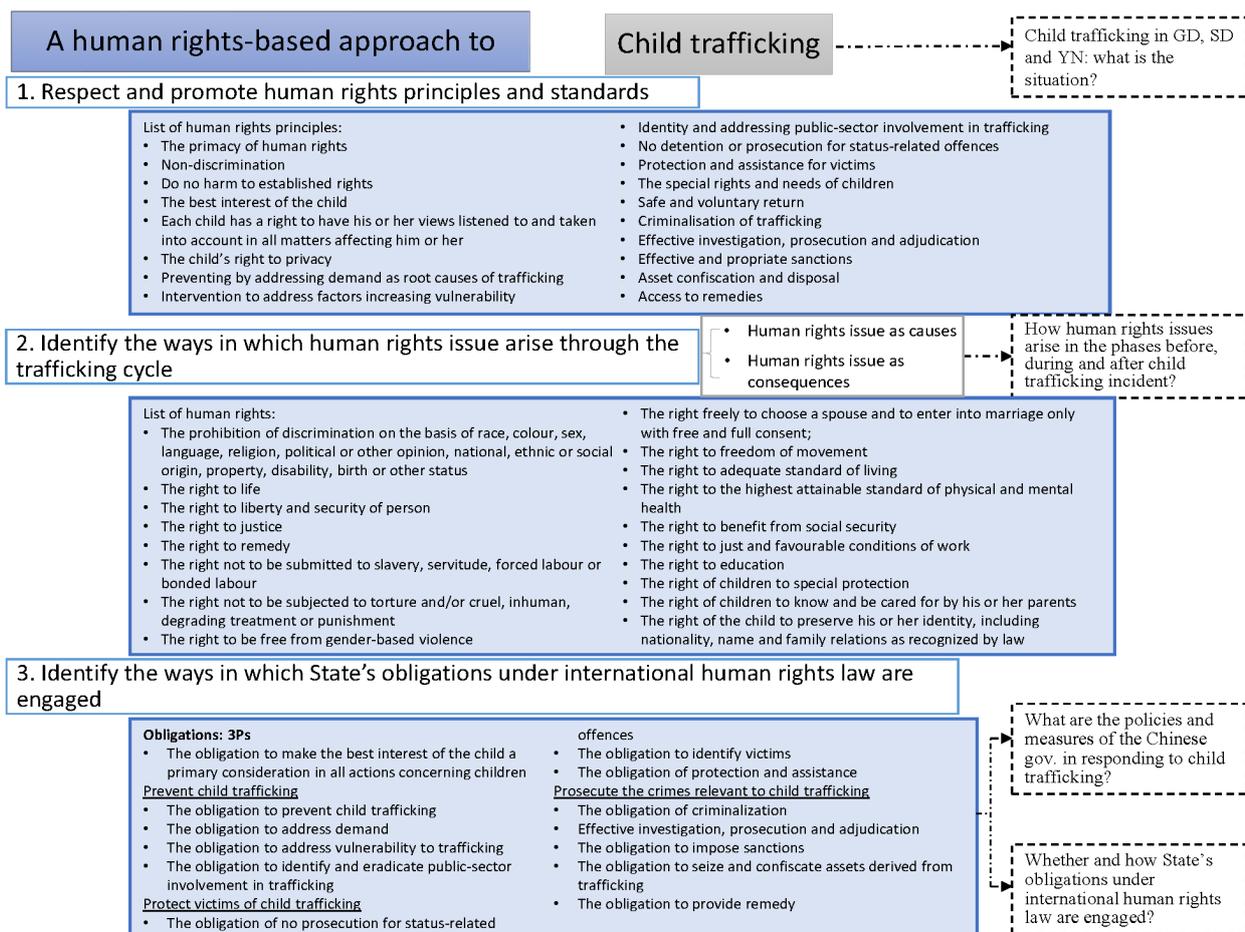
#### **1.4. Framing the study and methodology**

As explained in previous sections, child trafficking can be studied from various perspectives, such as criminal networks, child abduction and its prevention, migrants, illegal adoption, and jurisprudence regarding trafficking in children. These perspectives can provide a comprehensive consideration of this very complex issue, which can be offered by the human rights-based approach. As required by relevant international treaties and mechanisms, States must respond to child trafficking, and an adequate response consists of three aspects: prevention, prosecution, and protection. Research on child trafficking from a human rights perspective by addressing both the vulnerability of victims and the States obligations is necessary for policymaking as well as the monitoring and evaluation of such policies and strategies.

Given that research on child trafficking in China that adopt a human rights-based approach is scarce, this work aims to fill the research gap in this respect. The purpose of this research is to examine the issue of child trafficking in some areas of China from a human rights perspective, analysing factors that may cause and facilitate child trafficking and human rights issues arise during and after trafficking process, as well as the State's obligations under international human rights law. This research explores if and how a human rights-based approach can be framed to analyse the causative factors of child trafficking in China and to combat this phenomenon as a crime under Chinese law. It is expected that this study will make a concrete contribution to the subject by addressing the deficiencies in relevant Chinese policies.

As Figure 3 shows, a human rights-based approach to child trafficking in China requires the researcher to respect human rights principles and standards in every aspect of the study, and that the outcome of the research should promote human rights in China. The research is structured in two phases: first, identify the ways in which human rights issues arise through the child trafficking cycle, and second, identify how the State's obligations under international human rights law are engaged. More specifically, this study focuses on child trafficking detected in three Chinese provinces: Guangdong (GD), Shandong (SD), and Yunnan (YN). To ensure that the research questions are adequately addressed, this research adopts a mixed-methods approach.

Figure 3 A human rights-based approach to child trafficking: framing the study



### 1.4.1. Research questions and Contextual framework

By adopting a human rights-based approach, this work is structured in two phases: first, identify the ways in which human rights issues arise through the child trafficking cycle and second, identify how the State's obligations under international human rights law are engaged. Therefore, the *central research questions* are:

1. How are human rights issues related to child trafficking in the context of several Chinese provinces, based on judgements of detected cases in provinces of Guangdong, Shandong and Yunnan?
2. Whether and how the human rights principles and concrete standards set up by relevant UN agencies have been taken into consideration by the authority when coping with the issue of child trafficking?

In order to answer the first research question, it is necessary to obtain a clear understanding of the overall situation of the matter, for instance, the prevalent trafficking models, trafficking routes, and victimology, while the answer of the second research question shall be based on the knowledge of the State's policy and measures in responding to child trafficking. Therefore, before resolving the central questions, it is necessary to answer in the first place the following two *guiding questions*:

1. What is the situation of child trafficking in China?
2. What are the policies and measures taken by the Chinese government and other parties in responding to child trafficking?

Human rights issues are related to child trafficking not only when sexual or labour exploitation are committed, but along the trafficking cycle – before and during the trafficking process and even after the victims being released. Child trafficking is a result of a series of human rights issues. Although trafficking models and concrete causative factors might not be the same in different countries and regions, all the factors, usually related to human rights violations, interact within the social, cultural, and political dimensions as suggested Cameron and Newman (2008). Child trafficking also generates various human rights violations and challenges. The right to life, freedom of movement, the right to security, and many other human rights are violated during the trafficking process and during the exploitation phase. Even when victims of child trafficking are rescued, new

human rights issues continue to arise, such as privacy, right to remedy, and child protection. Therefore, the analysis of human rights issues related to child trafficking shall be divided into three steps: human rights issues as causative factors, human rights abuse during the process of trafficking, and human rights challenges after the rescue.

Considering the geographical dimension and socio-economical diversities within China, it is reasonable to presume that the criminal trends and models of child trafficking vary in different areas of the country. The prevalent trafficking modes may vary from region to region. Some provinces are mainly a sending province where the children come from, and some provinces are the major receiving market, while some are both sending and receiving provinces (Li, Wang, et al. 2017, Wang et al. 2018). Additionally, the trafficking model, the purpose and criminal activities of offenders, victimology, and causes of the crime vary in regions with different socio-economic backgrounds. Therefore, instead of studying the child trafficking situation in China as a whole, this work focuses on individual Chinese provinces. It is expected that research focusing on representative provinces in China will bring concrete and specific outputs that can hardly be obtained from a general study of the issue from a national or international perspective.

China, in this study, refers to the People's Republic of China<sup>69</sup>. All the child trafficking cases analysed in this research were under the jurisdiction of the central government of China; therefore, Hongkong, Macao, and Taiwan are not included in this study. It is insignificant as to whether the

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<sup>69</sup> According to Article 30 of the Constitution of the PRC, China's first (provincial) level of the administrative divisions includes provinces, autonomous regions, municipalities, and special administrative regions. At present, there are 34 provincial-level administrative regions in China, including 23 provinces (Hebei, Shanxi, Liaoning, Jilin, Heilongjiang, Jiangsu, Zhejiang, Anhui, Fujian, Jiangxi, Shandong, Henan, Hubei, Hunan, Guangdong, Hainan, Sichuan, Guizhou, Yunnan, Shaanxi, Gansu, Qinghai, and Taiwan), 5 autonomous regions (Inner Mongolia Autonomous Region, Guangxi Zhuang Autonomous Region, Tibet Autonomous Region, Ningxia Hui Autonomous Region, and Xinjiang Uygur Autonomous Region), 4 municipalities (Beijing, Tianjin, Shanghai, and Chongqing), and 2 special administrative regions (Hong Kong Special Administrative Region and Macao Special Administrative Region). Retrieved from Government of the People's Republic of China, [http://www.gov.cn/test/2005-06/15/content\\_18253.htm](http://www.gov.cn/test/2005-06/15/content_18253.htm), [accessed on 30/06/2019].

trafficking was domestic or transnational; nor is the nationality of the victim and the offender important in terms of this study.

Figure 4 Map of selected provinces: Shandong, Yunnan and Guangdong



Specifically, based on a series of considerations, this study selected Guangdong, Shandong, and Yunnan provinces for in-depth analysis (see Figure 4). First of all, these three provinces are geographically representative. Located in three different parts of China, they have very distinct geographic and economic features. Guangdong is on China's southeast coast and is one of the provinces with the highest Gross Regional Product (GRP) and population. It is dominated by Han Chinese and has a high number of internal migrant workers. The criminal rate in Guangdong is very high. Nearly one-tenth of the criminal cases of the country was under the jurisprudence of Guangdong Province. Shandong is the second-most populous province in China, and its demographic composition is highly homogeneous with 99.32% of Han Chinese and only 0.68% ethnic minorities. Its GRP ranks the third in the country, after Guangdong and Jiangsu. Yunnan Province, located in the southwest of China bordering Vietnam, Laos and Myanmar, is one of the provinces with the lowest income level. The demographic composition is very diversified: over one-third of the population belongs to 25

ethnic minority groups. It is expected that the difference between the three provinces in economic, social, and cultural aspects can be reflected in child trafficking cases, including the cause, pattern, and victimology.

Secondly, all these three provinces have high trafficking rates but different trafficking routes: Guangdong is known as a province of both destination and origin of trafficked children; Shandong is one of the main provinces of destination in north-eastern China; while Yunnan is considered a province of origin for internal trafficking and a province of transition or destination for cross-border trafficking (Li, Tan, et al. 2017, Yik-Yi Chu 2011). Therefore, they are significant for a study on child trafficking in China.

The third consideration regards feasibility. Since there were no statistical data available for direct analysis, this research needs to collect data in the first place, which had several challenges. The major difficulties include the lack of research methods for reference and that the judgements need to be analysed manually. In order to guarantee the quality of data and bring out valuable findings at the same time, three representative areas were selected for this study. The number of verdicts in Guangdong, Shandong and Yunnan (from 116 to 455 verdicts per province) permitted the author to have sufficient cases to generate findings and have the feasibility to compare the data among them and to make adjustments regarding variables and categories when necessary.

This research adopts the definition of child trafficking defined in Article 240 of the Criminal Law of China, as it focuses on child trafficking in the Chinese context. Following the previous practices (Dottridge 2006, McCarthy 2016), in this thesis “child trafficking” refers to the criminal offence defined in Article 240 of the Chinese Criminal Law, which contains, as explained previously (see §1.1.2 B), the closest definition to the international ones. It is the only article within the Chinese legal framework that contains a definition of trafficking parallel to the one included in the Palermo Protocol, based on which the Chinese government carries out cooperation with other States and international institutes. Although other articles related to trafficking, including forced labour, forced prostitution,

and forced begging (Article 244, 262, 358, and 359) are not included for the case study and data analysis, it does not mean that this research excludes child trafficking for those purposes. Article 240 does not exclude child trafficking for sexual or labour exploitation; therefore, criminal offences falling within this article are not limited to the sale of children or child abduction. The existence of any form of exploitation does not prevent the application of Article 240, as long as “selling” element is proved. By focusing on crimes under Article 240, this study and its results can highlight the way in which the issue of child trafficking is perceived under the current Chinese legal framework, as well as the gaps between the latter and international human rights law and standards.

#### **1.4.2. Methodology**

The human rights approach provides a general framework of the research, which considers child trafficking as a complex process in which human rights issues arise before, during, and after the incident. To ensure that the research questions are addressed adequately, this research adopts a mixed-methods approach, which is widely adopted in human rights research (McConnell and Smith 2018, 5). It is a procedure of collecting, analysing, and integrating both qualitative and quantitative data at some stage of the research process within a single research design (Creswell and Plano Clark 2017). The rationale of mixing both types of analysis is that neither quantitative nor qualitative methods are sufficient by themselves to capture various aspects of the subject of study, considering the complexity of the human rights issue. In human rights studies, a qualitative analysis is often necessary to establish the impact of particular practices on individuals, while quantitative analysis is useful for uncovering and understanding the condition of human rights protection, as well as analysing the phenomenon and identifying trends and patterns of relevant human rights issues (McConnell and Smith 2018).

In specific, both explanatory sequential mixed methods design and exploratory sequential design were adopted in the research. The explanatory sequential design consists of two distinct phases. It starts with quantitative data collection and analysis. This first phase is followed by the collection and analysis of qualitative data (Creswell and Plano Clark 2007; 2017). While the quantitative data and

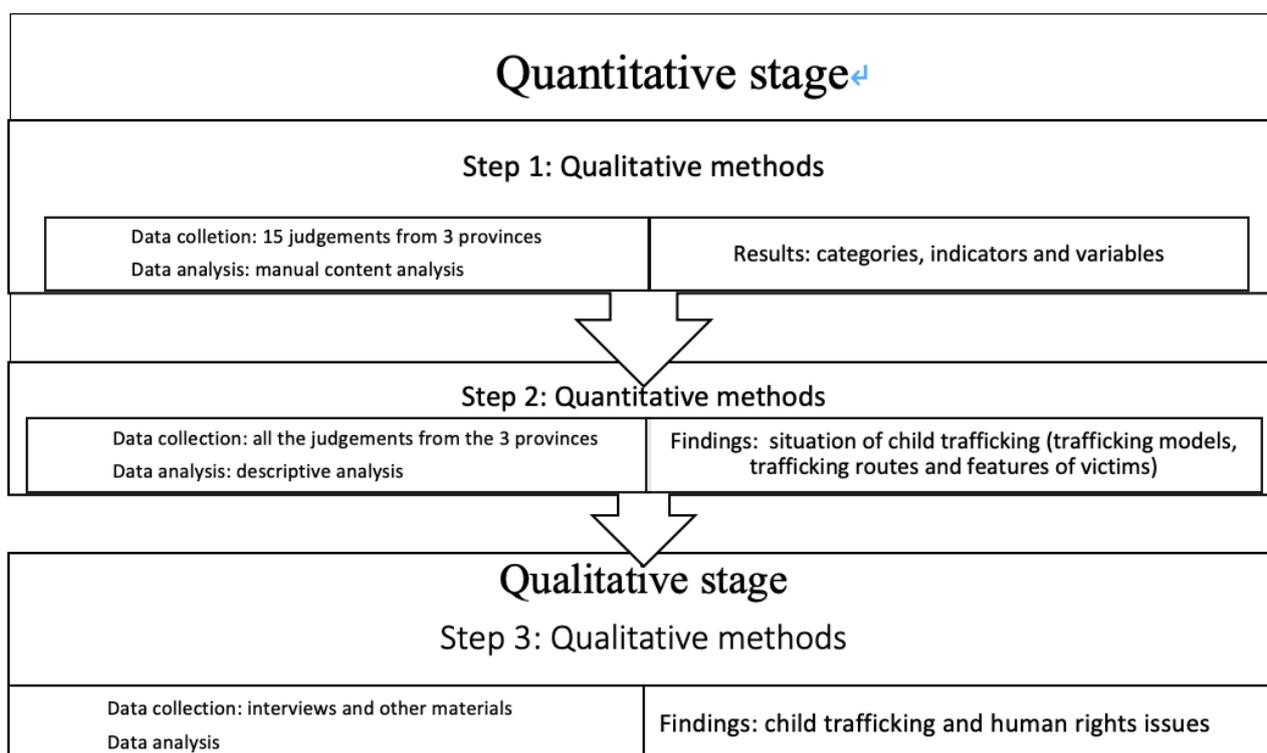
results provide a general picture of the research problem, the qualitative data and analysis explain and expand some specific statistical findings for which the researcher considers additional explanation is needed. (Creswell and Plano Clark 2007, 72). In this design, the priority was given to the qualitative approach (Creswell and Plano Clark 2017).

While the intent of the exploratory sequential design is that the results of the first, the qualitative methods are adopted first to explore a phenomenon and had a greater emphasis on addressing the study's purpose (Creswell and Plano Clark 2017, 119). The quantitative methods followed to assess the extent to which the initial qualitative findings can be generalised to a population (Creswell and Plano Clark 2017). When the research is aimed to explore a phenomenon in-depth and measure the prevalence of its dimensions, this design becomes very useful (Creswell and Plano Clark 2017, 145). More specifically, the taxonomy development model is used. In this model, the initial qualitative phase produces specific categories or relationships which are then used to direct the research questions and data collection used in the second, quantitative phase (Creswell and Plano Clark 2007). The priority in this design was given to the quantitative approach.

#### ***A. Research design – mixed methods***

This research was designed with two distinct stages consisting of three sequential phases (see Figure 5). As previously mentioned, in order to analyse child trafficking from a human rights perspective, it is firstly necessary to know what the situation of child trafficking is in China. Therefore, the first (quantitative) stage was designed to explore the general picture of child trafficking in Guangdong, Shandong and Yunnan provinces of China. This quantitative stage was composed of two sequential steps.

Figure 5 Research design: sequential mixed methods



The first step was qualitative data collections and analysis, based on a small number of judgements in three provinces in China. More specifically, five cases from each province were selected randomly. The results of this step were instruments necessary for the following quantitative step, including classification, categories, indicators and variables. The selection of indicators followed the theory of Cameron and Newman (2008), having included all the structural and proximate factors contained in the judgements (see Box 2). The recommendations of the CRC Committee were also provided guides for the data collection<sup>70</sup>.

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<sup>70</sup> UN Committee on the Rights of the Child (CRC), (2005) *Consideration of reports submitted by States Parties under Article 12 (1) of the Optional Protocol to the Convention on the rights of the child on the sale of children, child prostitution and child pornography, Concluding observations: China (including the Macau Special Administrative Region)*, 24 November 2005, CRC/C/OPCC/CHN/CO/1, at para. 9: “The Committee recommends that the State party strengthen its efforts to collect disaggregated data on the victims of trafficking, sale of children, child prostitution and child pornography, including data on the number of boys and girls affected, broken down by SAR, the mainland, the provinces and regions within the mainland, and, where applicable, neighbouring countries.”

The second step of the first stage was quantitative data collection and analysis. Based on the instrument developed previously, quantitative data are collected from a broader number of child trafficking judgements. Then, descriptive analysis was carried out to uncover and understand the situation of child trafficking in the selected provinces in China. The statistical results produced a picture with details about the child trafficking situations in the selected regions, which were indispensable for the following study. The product of this step included prevalent trafficking modes, trafficking routes, and features of the victims and offenders of child trafficking.

In the qualitative stage, which is the third step of research, qualitative data collection and analysis were conducted. Extensive data was collected from multiple sources, including the sources used in the previous steps, online semi-structured interviews, policy papers, press reports, and websites of relevant organisations. Case studies were used to explain details that could not be reflected in numbers, such as the social and family background of the victim, the motivation of the offender to commit the crime, and vulnerabilities of the victim after the incident. Detailed analyses were given on how child trafficking and human rights, in particular children's rights, were closely interrelated. Other additional sources were considered to complement the information that could not be obtained from judgements, in particular, the policies and measures taken by the central government and local authorities in responding to child trafficking. The results of this stage explained how human rights issues arose during the process of child trafficking, and what policies and measures were taken by the Chinese government and other parties in responding to child trafficking. It is followed by an evaluation of the Chinese policies on combating child trafficking, addressing gaps between policies and actual needs as well as the State's obligations derived from international human rights law.

### ***B. Data collection***

It is believed that better data is crucial to combat child trafficking more efficiently (Laczko and Gozdzik 2005); however, there is a lack of reliable data on child trafficking in China, which is similar

to research on trafficking in persons in other regions. It is difficult to obtain such data for different reasons. First of all, due to the nature of the crime of child trafficking, most of the populations relevant to child trafficking are so-called “hidden populations”, such as victims of trafficking, kidnappers or traffickers, and buyers of children (Laczko and Gozdzia 2005). It is difficult to get access to their information or get in contact with them. It is especially true when the victims are children and infants, who rarely have the capacity to report their cases to law enforcement agents, as they might even be unaware of their real identity. In addition, the detailed information of the identified victims and their families are under protection from further harms. The NGO Bao Bei Hui Jia (BBHJ), which has close contact with the victims of trafficking and their families, strongly recommends that all the volunteers of the NGO shall not expose any privacy of the victims and their families. Last but not least, challenges also come from the complexities of the country’s geographical and administrative divisions, the lack of official figures, as well as obstacles in accessing crime-related data, which are considered as State secrets (Shen et al. 2013).

This research mainly relied on data from the pre-prepared source, specifically court judgements of. Other complementary resources were collected from interviews with relevant personnel and social workers, as well as official reports. The official database of court judgements at the national level, administrated by the Supreme People’s Court of China, is “China Judgements Online”, where all the verdicts and other court judgements are published<sup>71</sup> in Chinese and five other languages<sup>72</sup>. The source of judgement texts comprises of only the detected cases of child trafficking in the country, excluding

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<sup>71</sup> According to Article 4 of Provisions of the Supreme People’s Court on the Issuance of Judgments on the Internet by the People’s Courts, issued on 21 November 2013, an effective judicial document of a court should be published online, except under the following circumstances: 1) when involves state secret or personal privacy; 2) when involves juvenile delinquency; 3) when concluded by mediation, and 4) other circumstance where it is not appropriate to publish the judgement online.

<sup>72</sup> Some court judgements are written in Tibetan, Mongolian, Uighur, Korean, or Kazakh.

a great number of uncovered cases. However, it does not reduce the quality of data, as the purpose of this research is not to explore the exact number of the incidents or the victims.

Compared to other official data sources, (for instance, the official statistics and data released by police organs in reports and press releases) the court judgements, containing transcriptions of confessions and testimonies, provide more details about the trafficking incident and information relevant to its economic, social, cultural, and other backgrounds of the case. There is another source holding quantitative data about details of child trafficking cases: the website of the NGO BBHJ, which is further explained in Chapter IV. Comparing to the information contained in the BBHJ website and in other sources such as newspaper articles, the data contained in the judgements is more reliable.

The collection of data for the first stage qualitative analysis was conducted in October 2017. Firstly, by searching on the databank of “China Judgements Online” with the keyword “child trafficking”, five judgements of each of the three provinces were downloaded for qualitative analysis and the development of instruments for the following extensive data collection. In March 2018, using the same keyword, all the judgements in China were downloaded for quantitative analysis, including the judgements of Guangdong, Shandong, and Yunnan Provinces.

The tests of judgements were coded manually in the following categories: basic information of the trial, including the date, the code of the verdict, number of perpetrators (not only defendants), and number of victims; offenders, including sex, age, nationality, ethnicity, status of residence, education level, and relationship with the victim; and victims, including gender, age, nationality, prices (since many children are sold more than once, we only record the lowest and highest prices), native province or country, and province of destination.

Based on the categories and variables developed in qualitative step, in the second phases, texts of all the judgements in Guangdong (n1=116), Shandong (n3=455), and Yunnan (n2=118) were transformed in numeric data. Data were then analysed with SPSS version 25, and the descriptive

statistics of the collected data is presented in Chapter II. By adopting a model developed by Netherland experts, Kragten-Heerdink et al. (2017), the routes of trafficking by province (and country) and by area are drawn up. Then, frequency tables were generated to describe and compare patterns of trafficking in the two provinces. Subsequently, cross-tabulation between patterns of trafficking and demographic features of victims was applied, aiming to identify different or common features between victims of each trafficking pattern. In the end, rescue results and follow-up protection of victims were examined.

### ***C. Interviews***

Due to the hidden nature of the crime and the protection of the identity of the victims, it is unlikely to conduct survey or interviews with a large number of victims. Interviews with convicted traffickers in prison is a method rarely adopted in the Chinese academy (Shen 2016), and interviews with judges has never been used in previous studies on child trafficking. In this research, interviews were conducted as supplements, aiming to complete and enhance the materials obtained with other methods.

Online interviews with open questions were conducted with members of BBHJ. Only two persons accepted the interview request. One of the participants was part the administrative staff of the BBHJ (see Appendix I), while the other one was a volunteer of Shanxi Province (see Appendix II). The purpose was to obtain information about the victims and their families that was unavailable in the judgements, for instance, the education level of the parents of the victims, and the follow-up activities offered to victims after been released. The participants were recruited through personal contacts, and the interview were conducted via *WeChat*<sup>73</sup>. Due to the regulations of the NGO on privacy protection, volunteers in provinces other than Shanxi were not available for interview.

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<sup>73</sup> *WeChat* is a multi-purpose messaging, social media, and mobile payment App that is very popular in China.

One written interview with four questions was conducted with the person in charge of Guangzhou Intermediate People's Court (see Appendix III). The interview was informal and conducted through the personal contact of the supervisor of the author, Professor Yang from the Human Rights Centre of Guangzhou University. The questions focused on the practices of judges in cases of child trafficking, including the interpretation of the law, the decision-making criteria regarding the child custody, as well as the responsibility distribution regarding the protection of child victims. The purpose is to clarify some doubts that could not be resolved by other materials. The questions were sent through official correspondence, while the responses were received via *WeChat*. Interview requests were also sent to courts in Yunnan Province, again through personal contacts; however, the contact person declined to be interviewed at the last minute.

### **1.4.3. Limitations**

The lack of reliable data is a common limitation for research on human trafficking (Shen et al. 2013, Surtees 2008), which our study was unable to avoid. The research relied on secondary data – court judgements, which have been preselected by the authority before becoming public. The findings are based on the published part of detected child trafficking cases, which, therefore, cannot lead to any conclusive result regarding the scale and nature of the crime in the provinces researched for this study, nor can we deduce child trafficking situation at the national level from this research.

Crimes relevant to trafficking contained in other articles are not included in the study, for instance the crime of selling human organs (Article 234A), the crime of forced labour (Article 244), the crime of abducting children, and organising people with disabilities and children for begging or engaging in criminal activities (Article 262), crime of organising and forced prostitution (Article 358), and the crime of luring others into prostitution (Article 359). By definition, Article 240 does not exclude child trafficking for sexual or labour exploitation. The existence of any form of exploitation does not prevent the application of Article 240, as long as “selling” element is proved. By focusing on crimes under Article 240, this study can obtain a direct and real result on how the issue of child trafficking

is perceived and criminalised in China and whether the current legal framework can address the issue of trafficking in children in a comprehensive manner. However, there is a risk that some victims of child trafficking would be involuntarily excluded from this research. It was noticed that very few cases (3) of child trafficking for exploitation were identified in this research.

## **Conclusion**

Child trafficking in China has a particular historical background, and its legal framework regarding child trafficking also has particularities. Although in international studies, China is known as a country of origin and destination of cross border trafficking of persons, little is known about the crime of child trafficking within China. Trafficking in persons has attracted worldwide attention and been examined collectively with other issues, such as global migratory flows and transnational crimes. In the Chinese context, child trafficking has been a severe public concern for decades, while research on the issue is rather scarce and limited to legal and sociological aspects and criminological studies.

A human rights approach affords a comprehensive understanding and response to the complex issue. Such an approach seeks the causes and consequences of child trafficking, as well as appropriate solutions (Budiani-Saberi and Columb 2013), focusing primarily on the rights of victims and potential victims, as well as the obligation of relevant duty bearers. As a State party of the Palermo Protocol and the CRC-OPSC, as well as other human rights treaties, China bears a series of obligations under international law, including to prevent child trafficking, to prosecute trafficking and relevant crimes, and to protect the victims. Therefore, this study applies a human rights approach and international human rights standards in a national context, aiming to highlight the root causes and other relevant human rights issues that have been ignored for a long time. By adopting a human rights-based approach, this study will explain, in the following chapters, how human rights issues are related to child trafficking in China and how the State's obligations derived from international human rights

instruments have been engaged. More specifically, in this study, three provinces, i.e. Guangdong, Shandong, and Yunnan, have been selected as case studies.

Basic knowledge on the situation of child trafficking is indispensable for answering the research questions. The following chapter will provide a general description of child trafficking in the selected Chinese provinces, based on data collected from court judgements.



## **II. Child trafficking in China: cases of Guangdong, Shandong and Yunnan provinces**

This chapter describes the situation of the child trafficking in three selected Chinese provinces: Guangdong, Shandong, and Yunnan. After a statistical overview of the sale and routes of child trafficking in the country, the focus falls on the pattern of child trafficking in the three provinces. The first output is an original classification of child trafficking modes in China. Afterwards, description analyses and crosstabulations were developed, so as to describe the incident, the feature of the perpetrators, and the characteristics of the victims.

### **2.1. A statistical overview of child trafficking in China**

It is difficult to estimate how many children are trafficked every year within China and across the national border. Nonetheless, it is still possible to draw a general picture of the geographic characteristics of crime utilising secondary resources, such as government statistics and data from NGOs. Although the figures do not represent the real scale of the crime, they are still useful in understanding the severity of the situation, and in which of the three provinces the crime has been more rampant in the last two decades.

#### **2.1.1. The scale and routes of child trafficking in China**

There is a lack of official statistics on the number of children trafficked every year; however, some resources can contribute to creating an overview of the extent of child trafficking in China. For instance, the China Statistical Yearbooks<sup>74</sup> provide numbers related to trafficking of women and

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<sup>74</sup> National Bureau of Statistics of China, *China Statistical Yearbook*, retrieved from <http://data.stats.gov.cn/publish.htm?sort=1>, [accessed: 26/06/2018].

children each year. According to the official data, from 1997 to 2016, the public security organs filed 176,082 cases of criminal cases of “abduction and sale of women or children” (see

Table 5). There were two peaks of the number filed cases of abduction and sale of women and children during the two decades. The first peak appeared in 2000 and the second in 2013. While there was a lack of reasonable explanation for the peak in 2000, the second peak was the result of a series of the State’s efforts, including the accession to the Palermo Protocol in 2010, the issue of the NPA (2008-2012), the special actions of the police to combat trafficking in women and children<sup>75</sup>, and amendment of legislation related to trafficking in women and children<sup>76</sup>. According to the report of State Council, in the police actions of anti-abduction and trafficking of women and children during 2009 and 2011, a total of 36,369 women and children were rescued, of whom 36.5% (13,284) were children<sup>77</sup>. Presuming that the proportion of child victims of this crime remained the same across the years, the estimated number of children trafficked during 1999 and 2016 as filed by the police would be over 64,000.

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<sup>75</sup>Ministry of Public Security, (2009) 公安部部署打击拐卖儿童妇女犯罪专项行动 [Ministry of Public Security deploys a special campaign against crimes of trafficking in children and women], *全国公安机关打击拐卖儿童、妇女犯罪专项行动* [National Public Security Organs’ Special Action to Combat Trafficking in Children and Women], retrieved from <http://www.mps.gov.cn/n2255079/n2255231/n2255233/c3579140/content.html>, [accessed on 19/07/2018].

<sup>76</sup>In specific: Standing Committee of the National People’s Congress, Standing Committee of the National People’s Congress, (2009) 全国人大常委会关于严惩拐卖、绑架妇女、儿童的犯罪分子的决定(2009 修正) [Decision of the Standing Committee of the National People’s Congress Regarding the Severe Punishment of Criminals Who Abduct and Traffic in or Kidnap Women or Children (2009 Amendment)], Order No. 18 of the President of the People’s Republic of China, issued and entered in force on 27 August 2009, retrieved from [http://www.gov.cn/flfg/2009-08/27/content\\_1403326.htm](http://www.gov.cn/flfg/2009-08/27/content_1403326.htm). And Supreme People’s Court, Supreme People’s Procuratorate, Instrumentalities of the State Council, All Ministries, Ministry of Public Security, Ministry of Justice, (2010) 最高人民法院、最高人民检察院、公安部、司法部印发《关于依法惩治拐卖妇女儿童犯罪的意见》的通知 [Notice of the Supreme People’s Court, the Supreme People’s Procuratorate, the Ministry of Public Security and the Ministry of Justice on Issuing the Opinions on Legally Punishing the Crimes of Abducting and Trafficking in Women and Children], Documents of Judicial Interpretation Nature, No.7 [2010] of the Supreme People’s Court, issued and entered in force on 15 March 2010, retrieved from <http://en.pkulaw.cn/display.aspx?cgid=095d828db4ce796bbdfb&lib=law>.

<sup>77</sup> State Council of China, (2011) ‘公安部公布’打拐’专项行动十大典型案例 [The Ministry of Public Security communicated the ten typical cases of the special action against the crime of “abduction and trafficking”], retrieved from: [http://www.gov.cn/fwxx/sh/2011-04/02/content\\_1836946.htm](http://www.gov.cn/fwxx/sh/2011-04/02/content_1836946.htm), [accessed on 26/06/2018].

Table 5 Number of filed cases of abduction and sale of women or filed by public security organs (1997-2016)

Year	No. of filed cases	Year	No. of filed cases
1997	6,425	2007	2,378
1998	6,513	2008	2,566
1999	7,257	2009	6,513
2000	23,163	2010	10,082
2001	7,008	2011	13,964
2002	5,684	2012	18,532
2003	3,712	2013	20,735
2004	3,343	2014	16,483
2005	2,884	2015	9,150
2006	2,569	2016	7,121
Total			176,082

Source: *China Statistical Yearbooks (1999-2017)*

The periodic reports of China submitted to human rights treaty bodies of the United Nations also provided some data regarding the victims of child trafficking. According to the third and fourth periodic report of China submitted to the Committee on the Right of the Child (CRC), 704 minors were rescued in 2009 by the police from child prostitution (CRC 2012, §256). In addition, according to the same report (Annex XVIII), from 2000 to 2008, Public Security organs detected 12,937 cases of child trafficking, which means at least the same number of victims were rescued or identified. The number of suspects arrested from 2003 to 2009 for the crime of child trafficking is 20,314, and 18,828 of them were brought to trial.

Li Gang and others studied the child trafficking situation in China between 1980 and 2015, basing their research on data from the online public platform of the NGO BBHJ (Li, Tan, et al. 2017, Li, Wang, et al. 2017). According to their studies, in at least thirty-five years 14,352 children in China have been trafficked. This number is much lower compared to the official reports previously mentioned. The possible explanations may be that not all the victims reported to police are registered on the platform of BBHJ, and the data of BBHJ do not include resolved cases. The number of male

victims is much higher than females, with 10,236 boys versus 4,116 girls. Over 60% (8,998) of the victims were under four years of age when they were trafficked, and the proportion of victims under six years old is up to 80% (12,166). Most of the infants and young children were trafficked and sold for illegal adoption, while the older children were trafficked for different forms of exploitation, including committing crimes, forced labour, forced marriage, servitude, and forced prostitution (Li, Tan, et al. 2017). Regarding the perpetrator, a significant proportion was committed by parents of victims, who sold their children for the lucrative purpose<sup>78</sup>. According to a recent study, around 35% of child trafficking cases were committed by parents of victims (Xing 2017), while according to a news report, up to 72.4% of victims were sold by their own parents (Gong 2017).

Generally speaking, the flow of trafficking in persons moves from countries or regions with a relatively low level of development to those with a higher standard of living. For instance, Western and Southern Europe is a destination region for trafficking flows mainly from South-Eastern and Central Europe, East Asia, and West Africa (UNODC 2016). Although worldwide cross-border trafficking is the dominant pattern, a significant percentage of victims are trafficked domestically (UNODC 2016, 40-41).

In international studies of trafficking in persons, China is known as a country origin, destination and transition (UNODC 2012, 49-51, 2016, 9, 105). Chinese men, women, and children are subject to trafficking for forced labour and sexual exploitation in many countries, such as Argentina, America, European countries, and Japan (UNODC 2016, 58, 76, 105). China is also a destination or transition country for victims of trafficking, mainly women and girls from South Asian, Southeast Asian, and African countries (U.S. Department of State 2018, 141). In addition, domestic trafficking is rampant

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<sup>78</sup> People.cn, (2015) “最高人民法院：大多被拐儿童系被父母出卖遗弃 [Supreme People’s Court: Most trafficked children were sold out by their parents]”, retrieved from <http://bj.people.com.cn/n/2015/0228/c14545-24015042.html>, [accessed on 26/06/2018].

in China, in particular, the trafficking of children for illegal adoption and of women and girls for forced marriage (UN-ACT 2012).

Child trafficking has been reported in every province in China. While some provinces are known more as origin province where victims come from, some other provinces are generally considered as receiving provinces where victims are sold for illegal adoption or exploitive purpose. The main sending provinces are Yunnan, Guizhou, and Sichuan, all located in southeast China. The receiving provinces are mainly in East China. Children from the southeast provinces are trafficked to the east through two paths: in the north, they are transferred to the provinces of Henan, Hebei, and Shandong through the Shaanxi Province; while in the south, children are transferred to Fujian and Guangdong in the southeast through the Guangxi Province (Li, Tan, et al. 2017). Li and others (2017) also identified a significant dimension of the internal trafficking of children within the provinces of Fujian, Guangdong, and Henan.

### **2.1.2. The scale and routes of child trafficking in Guangdong, Shandong, and Yunnan provinces**

For the purpose of this research, a preliminary study on the situation of child trafficking was conducted, which is based on the judicial decisions from the online database of court judgements “China Judgements Online”. After the search with the keyword “*Guǎi mài ér tóng* (拐卖儿童)”, the Chinese legal term used in criminal law which means “abduction and sale of children” and frequently is used as the translation of “trafficking in children”, all of the 1,567 files of judicial decisions at the national level were downloaded, for the crime of child trafficking committed between 1988 and 2017. Excluding the repeated files, commutation verdicts, as well as verdicts with little information about the case, 2155 victims of child trafficking were rescued or identified. Of these children, 296 did not have information about the province or country of origin, while 195 did not have information about the destination. The available data proves that child trafficking affects almost every Chinese province, no matter how rich or poor it may be. These children were from 30 provinces and were trafficked to

28 Chinese provinces, autonomous regions, or municipalities under the direct administration of central government. Among the 31 provincial-level administrative divisions of China (excluding Hong Kong, Macao, and Taiwan), only the Tibet Autonomous Region did not have any court judgement on the crime of child trafficking.

Although the cases of this study were detected and tried in China, it does not necessarily mean that all the cases are internal trafficking of children. At least 7 child victims were foreigners, and all of them were from Vietnam. The number of international trafficking victims might be higher, considering that the Yunnan Province borders with Vietnam, Laos and Myanmar, and the origin of many victims in Yunnan could not be identified. One of the Vietnamese victims was trafficked when he was already in China. In two cases, the children were trafficked from Vietnam to China together with their mothers, who were also victims of human trafficking, and one child was trafficked from China to a bordering country. Violence and criminal networks were involved in these cases of international trafficking.

Not every judgement contains the information related to the province and the area of origin and destination of the victim. Presumably, it happened for three reasons: first, many of the victims were too young to provide information about their origin. If a victim was rescued during the process of trafficking, especially when criminal networks were involved, it was difficult to identify his/her origin and destination. Secondly, some victims died during the process or were still reported missing when the perpetrators were brought to justice. Finally, much information was not mentioned in the judgement.

The description of the route of trafficking in the following paragraphs was based on judgements issued by courts in Guangdong (75), Shandong (228), and Yunnan (61), as well as 116 judgements from other 17 provinces, in which the victims were trafficked from or into the three provinces of this study. In total, 480 judgements were related to victims trafficked from or to Guangdong, Shandong, and Yunnan, and the total number of victims was 933 (see

Table 6).

Table 6 Place and numbers of cases and victims for this study

No. of cases		No. of victims		No. of cases		No. of victims	
Anhui	2	2		Liaoning	1	1	
Fujian	23	47		Shaanxi	3	3	
Guangxi	17	34		Shanghai	1	1	
Guizhou	4	4		Shanxi	9	15	
Hebei	10	22		Sichuan	15	34	
Henan	16	44		Tianjin	1	1	
Hubei	2	3		Zhejiang	2	15	
Hunan	1	1		Guangdong	75	116	
Jiangsu	7	8		Shandong	228	455	
Jiangxi	2	9		Yunnan	61	118	
				Total	480	933	

The flow of victims related to the three provinces were shown in Tables 7 to 9. Guangdong Province (see Table 7) has a mixed feature of trafficking. Although the proportion of incoming cases is higher than outgoing and internal trafficking, the difference is not very significant. Therefore, it is both a receiving and a sending province for child trafficking in China. Among a total of 148 victims related to Guangdong Province, 47 (32%) of them were trafficked within the province. The number of incoming victims was 60, i.e. the victims trafficked or planned to be trafficked from other provinces or countries to Guangdong. Child victims were originally from seven Chinese provinces and one foreign country (Vietnam). A vast majority (70%) of the incoming victims came from Yunnan Province. From Guangdong Province, 41 children were trafficked to nine other provinces. The top three receiving provinces were Hebei (17), Shanxi (8), and Henan (7), all of which are in North China.

Table 7 Routes and numbers of victims of child trafficking in Guangdong Province

No. of victims of intra-province trafficking:				47
Inter-provincial child trafficking:				
Outgoing	No. of victims		Incoming	No. of victims

1	Hebei	17	Yunnan	42
2	Shanxi	8	Guangxi	4
3	Henan	7	Vietnam	4
4	Fujian	4	Fujian	3
5	Shanghai	1	Hubei	2
6	Shandong	1	Jiangxi	2
7	Hubei	1	Sichuan	2
8	Guizhou	1	Hebei	1
9	Anhui	1		
No. of victims of inter-provincial trafficking:		41		60
<b>TOTAL: 148</b>				

Table 8 Routes and numbers of victims of child trafficking in Shandong Province

No. of victims of intra-province trafficking:			232	
Inter-provincial child trafficking:				
	Outgoing	No. of victims	Incoming	No. of victims
1	Hebei	2	Sichuan	92
2	Henan	2	Yunnan	30
3	Anhui	1	Shanxi	21
4	Jiangsu	1	Guizhou	10
5	Fujian	1	Henan	7
6			Shaanxi	5
7			Tianjin	4
8			Guangxi	2
9			Hebei	2
10			Zhejiang	2
11			Guangdong	1
12			Hainan	1
13			Hubei	1
14			Jiangsu	1
15			Liaoning	1
16			Shanghai	1
No. of victims of inter-provincial trafficking:		7		181
<b>TOTAL: 420</b>				

The main routes of child trafficking related to Shandong Province are internal and incoming trafficking. As Table 8 shows, in this province, a total of 420 victims were identified, of which over half were intra-province trafficking, and 181 (43%) were trafficked from other provinces to Shandong. Only 7 (1.6%) victims were trafficked from Shandong to another province. Victims were trafficked from Shandong to five other provinces, while children from sixteen other provinces were transported and sold to Shandong. The major sourcing provinces were Sichuan (92), Yunnan (30), Shanxi (21), Guizhou (10), and Henan (7). All of the victims of this province were trafficked within the country. It can be concluded that Shandong is a receiving province of child trafficking in China with a significant proportion of trafficking within the province.

Table 9 Routes and numbers of victims of child trafficking in Yunnan Province

No. of victims of intra-province trafficking:			19	
Inter-provincial child trafficking:				
	Outgoing	No. of victims	Incoming	No. of victims
1	Fujian	60	Guizhou	1
2	Guangdong	42	Sichuan	1
3	Henan	36	Vietnam*	1
4	Hebei	35		
5	Shandong	30		
6	Zhejiang	10		
7	Guangxi	4		
8	Jiangsu	4		
9	Guizhou	3		
10	Sichuan	3		
11	Anhui	1		
12	Hunan	1		
13	Inner Mongolia	1		
14	Qinghai	1		
15	Vietnam*	1		
No. of victims of inter-provincial trafficking:		232	3	
<b>TOTAL: 254</b>				

\* A foreign country.

Contrary to Shandong, the routes of trafficking in Yunnan Province is mainly outgoing (see Table 9). Among the 254 victims identified in Yunnan, only 19 (7.5%) of them were trafficked within the same province, and only 3 children were sent from another province or abroad, namely Guizhou, Sichuan, and Vietnam; while 232 children originally from Yunnan were trafficked to fourteen Chinese provinces and one foreign country. The major receiving provinces, to which the victims were trafficked or planned to be trafficked, include Fujian (60), Guangdong (42), Henan (36), Hebei (35), and Shandong (30). It is possible to conclude therefore that Yunnan is a sending province of victims of child trafficking in China.

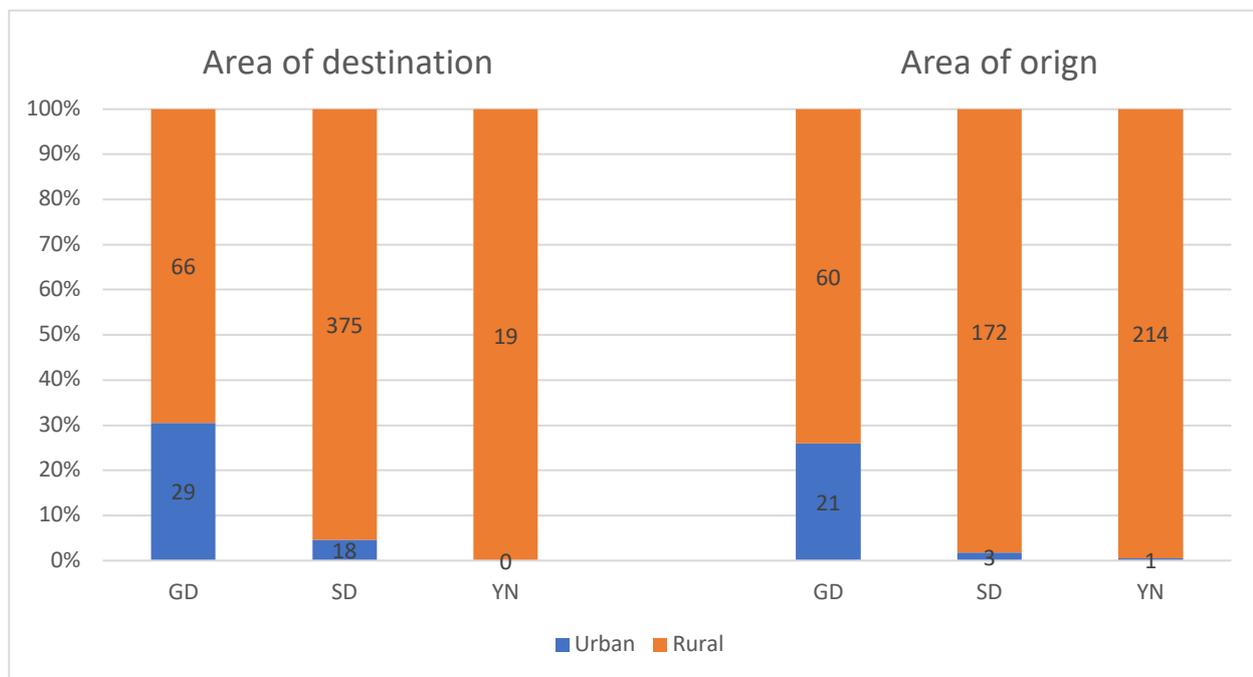
Figure 6 Routes of child trafficking: cases related to provinces of Guangdong, Shandong, and Yunnan.



Figure 6 presents the flow of inter-provincial trafficking of children of the three provinces, based on the data collected from the court judgements at the national level. The routes of victims cover almost every province in central and eastern China. The most significant flows are Sichuan to Shandong, Yunnan to Shandong, Yunnan to Guangdong, and Yunnan to Fujian. Provinces in north-

eastern and western China were less involved in child trafficking cases in this research; however, it does not necessarily mean that children are better protected in those places. It might be a result of the low report and detection rates of relevant crimes, or because the victims in those provinces might be trafficked from/to provinces other than Guangdong, Shandong, and Yunnan. The distance of trafficking varies dramatically. The victims can be trafficked to a neighbouring province or a very distant province. For instance, in total 11 victims were trafficked from Yunnan to three neighbour provinces (Sichuan, Guizhou, and Guangxi) and one bordering country (Vietnam), while 71 victims were trafficked to Hebei and Shandong, which are over 2000 kilometres away.

Figure 7 Area of destination and origin of victims of child trafficking in Guangdong, Shandong, and Yunnan province



GD = Guangdong      SD = Shandong      YN = Yunnan

Another indicator related to trafficking routes is the area of origin and destination, which has two values: urban area and rural area. Unfortunately, the relevant information is not complete. In addition to cases without data related to the province of origin and destination, in many judgements, the specific place of origin and destination is not recorded: in Guangdong, 95 victims were recorded with information of destination area and 81 victims have information of the origin area. In Shandong Province, victims recorded with information of the area of destination and area of origin were 393

and 175 respectively. In cases related to Yunnan Province, only 19 victims had destination information, while the area of origin was identified for 215 victims. As Figure 7 shows, In cases related to Guangdong, around 70% of victims were originally from rural areas and almost 75% of the victims were trafficked to rural areas. The proportions of rural areas either as the place of origin or destination in cases of Shandong and Yunnan are even higher, reaching over 95%. The concentration of victims in rural areas reveals that causes child trafficking in China are not the same as human trafficking in European countries, the main cause of which is to seek a better life. Although poverty might be one causative factor of child trafficking in the three provinces of this study, it is necessary to explain why children were trafficked to rural areas instead of big cities.

## **2.2. Patterns of child trafficking**

Mapping crime patterns is a way for criminologists to gain insight into the nature of the crime (Siegel 2008, 47). Comprehensive knowledge on the patterns of child trafficking in China and in each province is a precondition for the identification of different forms of human rights violations that cause trafficking and helps to inform adequate policies for the prevention of the crime and protection of the victims. Existing studies show that patterns of human trafficking vary across the world (UNODC 2006a). The patterns of recruitment change from year to year, and differ in cases concerning different types of victims (Dottridge 2006). However, little is known about the pattern of child trafficking in China.

The data analysis was conducted in two sequential steps. Firstly, based on fifteen judgements (five judgements per province) selected randomly, categories, indicators, and variables were developed. Each judgement contains four categories of data: general information of the judgement, information of each trafficking case and incidents, information of the defendants, and victims' features and family background. The purpose is to identify all the factors that have caused child trafficking, as listed in Box 2 (see §1.3), and human rights issues related to the issue (see §1.2.2 A).

The information of the judgement includes the trial date, the trial number, and the court's decision. The indicators of each trafficking incident include the date of the incidents, means of action, forms of exploitation, result of the case, date of release of the victim, guardian of the victim after the rescue, and the relationship between the principal perpetrator(s) and the victim. The indicators of the defendants include gender, ethnicity (nationality if non-Chinese), education level, residence, and his or her relationship with the victim or the original family. The indicators of victims and their family background include gender, age, nationality, prices (since many children are sold more than once, only the lowest and highest prices were recorded for this research), native province or country and province of destination, and the marital status of parents.

Gender is a dichotomous variable with 1 = male and 2 = female. Age of victims is measured by six variables ranged from 0 to 14 years old as defined in the relevant regulation<sup>79</sup>: 1 = younger than 1 month, 2 = 1-5 months, 3 = 6-11 months, 4 = 1-2 years, 5 = 3-5 years, and 6 = 6-14 years. The ethnicity has seven variables, of which the first three represent the most populous ethnic groups and other three represents other ethnic groups with a high number of suspects: 1 = Han, 2 = Hui, 3 = Zhuang, 4 = Miao, 5 = Yi, 6 = Yao, 7 = others. Education is an ordinal variable with five variables: 1 = illiterate, 2 = elementary school, 3 = middle school, 4 = high school and technical school, 5 = college and higher degrees. The marital status of victim's parent is divided in four categories: 1 = unmarried, 2 = separated, divorced or widowed, 3 = extramarital affairs, 4 = married. Relationship with victims or victims' families is measured with five variables: 1 = parents, 2 = legal guardians other than biological parents or relatives and other family members, 3 = acquaintance of the family including colleagues, neighbours, and friends. 4 = strangers, 5 = medical workers. The indicator

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<sup>79</sup> Supreme People's Court of PRC, (2016) 最高人民法院关于审理拐卖妇女儿童犯罪案件具体应用法律若干问题的解释 [Interpretation of the Supreme People's Court on Several Issues concerning the Application of Law in the Trial of Cases regarding Crimes of Trafficking in Women and Children], Interpretation No. 28 [2016] of the Supreme People's Court, issued on 21 December 2016, entered in force on 1 January 2017, at Article 9, retrieved from <http://www.court.gov.cn/zixun-xiangqing-33641.html>.

“means of action” has two variables: 1= physical violence, abduction, coercion, fraud, 2 = with the consent of the victim’s parent(s). The “forms of exploitation” has four variables: 1 = illegal adoption, 2 = forced marriage, 3 = forced labour, 4 = begging and committing crimes. The result of the case has three variables: 1= released, 2 = remained missing and 3 = dead before rescue. The indicator “guardian of the victim after rescue” includes: 1 = parent(s) who was not the perpetrator of the trafficking of the same child, 2 = parents(s) who was perpetrator(s) of the trafficking of the same child, 3 = extended family, 4 = welfare home or foster family, 5 = buyers of the same child trafficking case.

### **2.2.1. Classification of child trafficking modes**

Child trafficking is not committed uniformly. On the one hand, Different modes of trafficking may reflect different causes of the problem, and generate violations of human rights in different ways on the other hand. Trafficking in persons can be classified by a series of variables. For instance, it is common to categorise the crime with the characteristics of the victims, with the trafficking routes, and with the forms of exploitation. The first output of this research is an original classification of child trafficking modes, which is developed based on the empirical data and the following reasoning.

Child trafficking as defined in Article 240 of the Criminal Law of the PRC is a concept that covers different forms of conducts and various actors. The general understanding of the Chinese public of child trafficking is the abduction of children on streets and in public places by means of violence or deception. However, as defined in Article 240, the “action element” of child trafficking also consists of non-violent conducts, for instance, buying, selling, transporting, and transferring, proving that the action is carried out with the purpose of selling the victim. The crime of abduction of children can be committed by strangers or by acquaintances of the victim, while the offenders of the non-violent sale of children are frequently committed by the victim’s parents or close relatives.

Therefore, in this research, child trafficking in China can be first divided into two broad categories:

1) the abduction and sale of children, and 2) the sale of children by parents. In the first category,

children are taken away from their parents or guardians by means of abduction, physical violence, coercion, deception, abuse of power, or other means of violence. In the second category, children are sold with the consent of one or both parents and guardians. In addition, it has been noticed that some parents took the initiative and action to sell their children, while some others were induced or recruited by professional traffickers. These two forms of sale of children are different in some respects, including the motivation of parents to sell the children, the trafficking process, and the rescue result.

This research analyses child trafficking in three Chinese provinces, classifying the crime into three modes:

1. The abduction and sale of children (M1): children are taken away from their parents by means of abduction, violence, coercion, deception, abuse of power, or other means of violence. The violent and fraud actions are committed against the child victims directly, or against their parents. In this mode, not only children are victims of the crime, also their parents become victims of trafficking in an indirect way. Offenders of this traffic mode can be strangers, acquaintances or friends of the family, as well as relatives of the victims. In general, most of the incidents are reported to the police by the victims' family, shortly after the abduction. When the victims are rescued by the police, they are usually sent back to their parents.
2. The parental sale of children (M2): children are sold to a middleman or another family by either one or both of their parents or guardians. The initiative is taken by the parents of the victims, who also take actions to find the middlemen or buyers. The middlemen can be professional traffickers, but more frequently, they are relatives, friends, and neighbours of the family, or professionals who have direct contact with the family. Parents, instead of being guardians of their children, become perpetrators in this case. Children are not wanted by one or neither of their parents; therefore, after being rescued, their protection becomes a follow-up issue.
3. The organised child trafficking (M3): children are sold by their parents to a middleman, who is usually a part of a trafficking network. The parents rarely take the initiative to sell their children; instead, they are induced or recruited by the middleman. The induction and recruitment happen either after or even before the childbirth. Victims are often transported and sold more than once and a long distance away by multiple traffickers, and it may take months for the children to be transported to the final buyer. During the process of transportation, the safety of children is largely ignored by the brokers. To hide the victims, mostly new-borns, trafficker might feed them sleeping pills or put them under blankets, in luggage or even in plastic bags. After the rescue, it is difficult to track the original family of the victims, due to multiple resales and transfer. This mode of trafficking is rarely reported to the police before the crime is disclosed by the witnesses or the police.

## 2.2.2. Patterns of child trafficking in the provinces of Guangdong, Shandong, and Yunnan

As previously mentioned, different regions and countries may have different patterns of human trafficking. The same conclusion also applies to China. The three provinces of this study are situated in different parts of China, with very different demographic, economic, and cultural features. It is not surprising that trafficking patterns in each province is different. In this section, the analysis used the detected trafficking cases under the jurisdiction of (75), Shandong (228), and Yunnan (61), and the number of the victims were 116, 455 and 118 respectively.

Only four child victims of the detected cases were trafficking for exploitive purpose – forced marriage. In all the other cases, children were abducted or recruited for resale, or to be sold for illegal adoption. The ultimate purpose of the buyer is not mentioned in the court decision, and it is not clear if the victims were subject to sexual or labour exploitation in the “adoptive” families.

### *A. Dominant modes of trafficking in Guangdong, Shandong, and Yunnan provinces*

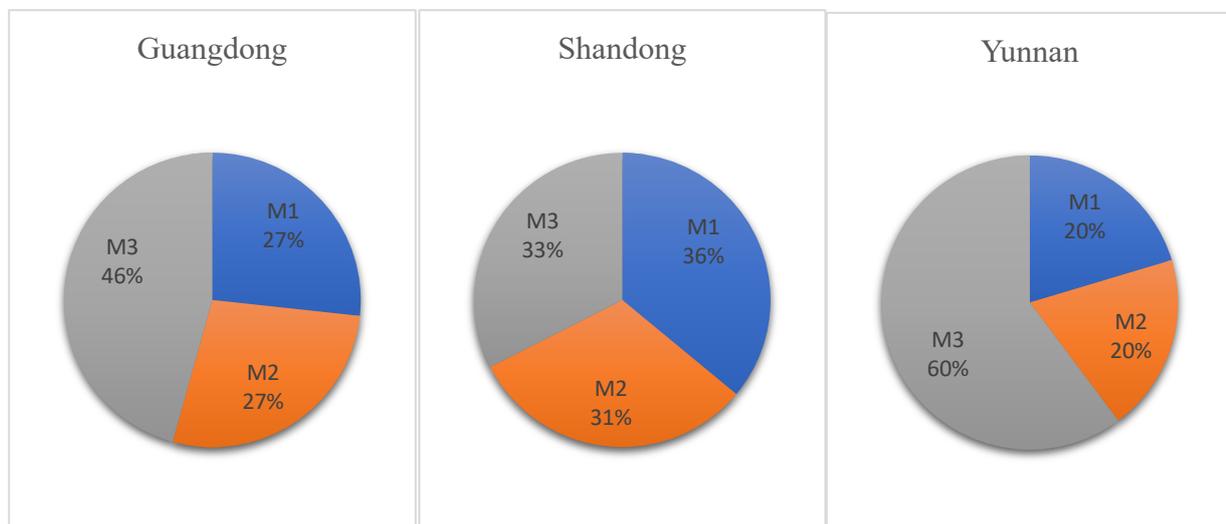
Table 10 displays the modes of trafficking found within the judgements of the three provinces. The proportion of victims between M1 and M2 is not very distinct, with 219 (31.8%) victims trafficked by the abduction and the sale of children (M1), and 198 (28.7%) trafficked by the parental sale of children (M2). The remaining 272 (39.5%) victims were trafficked by criminal organisations or networks (M3).

Table 10 Victims of child trafficking by modes in Guangdong, Shandong, and Yunnan (number and percentage) (n=689).

	<b>Guangdong</b>	<b>Shandong</b>	<b>Yunnan</b>	<b>Total</b>
<b>M1</b>	31 (26.7%)	164 (36.0%)	24 (20.3%)	219 (31.8%)
<b>M2</b>	32 (27.6%)	143 (31.4%)	23 (19.5%)	198 (28.7%)
<b>M3</b>	53 (45.7%)	148 (32.5%)	71 (60.2%)	272 (39.5%)
<b>Total</b>	116 (100%)	455 (100%)	118 (100%)	689 (100%)

As shown in Figure 8, the prevalence of the three modes of trafficking is not the same in the three provinces. In Guangdong and Yunnan, organised child trafficking accounts for the highest proportion of the three modes. In Guangdong Province, the proportion of the three modes is similar to that of the total victims. Almost half of the children were trafficked by organised criminal groups and networks (M3), whereas the proportion of the other two modes is almost identical, slightly over a quarter of the victims of this province. In Yunnan Province, more than 60% of the victims were trafficked by criminal networks (M3), while the proportion of the other two modes is again almost identical, around 20%. Contrary to Guangdong and Yunnan, the victims of the three modes are distributed more equally in Shandong Provinces. The dominant mode is the abduction and sale of children (M1), which involves 36% of the victims, whereas the proportion of victims of the other two modes is similar and slightly above 31%. Among the 148 victims trafficked by criminal groups or networks, 12 of them were involved in cases of trafficking of pregnant women for selling their new-born babies.

Figure 8 Victims of child trafficking by modes



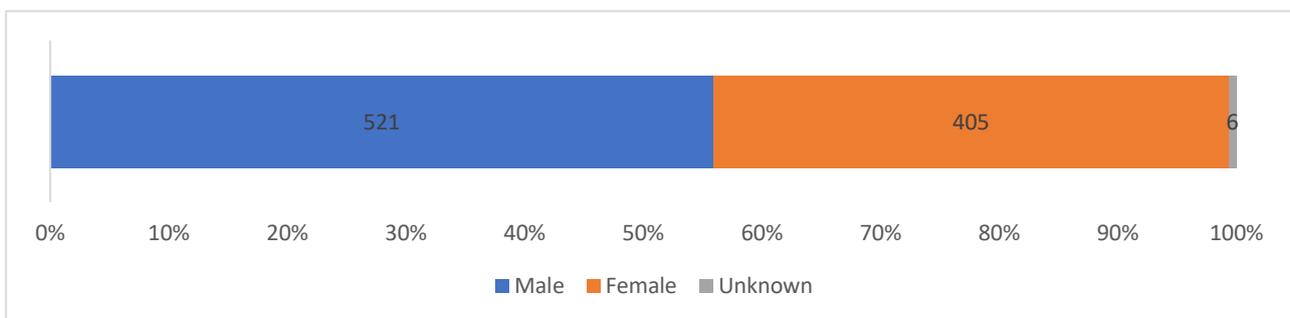
The conclusion can be drawn that the prevalence of child trafficking modes is different in the three provinces. In Shandong, the proportion of the abduction and sale of children (M1) is higher than any of the other two modes; however, it is hard to conclude that the M1 was committed more frequently than the M2 or M3, because the M2 and the M3 are not as easily identifiable, considering that most of the parents of a victim of the M1 would report to the police but the report rates of the M2

would be lower. In all the three provinces, there were more victims sold by their parents (M2) or criminal groups (M3) than abducted by mean of violence and fraud (M1). Consequently, strategies and measures of combating and preventing child trafficking in these provinces shall take full consideration of proper trafficking modes.

**B. Profile of the victims**

Drawing the profile of the victims of child trafficking makes it clear who is targeted by traffickers and which groups of children are more vulnerable to trafficking. Information such as gender, age, modes of trafficking, and rescue result should guide the processes of crime prevention and victim protection. Contrary to international child trafficking, of which most of the victims are girls (UNODC 2016), more male victims than female have been registered in child trafficking cases related to Guangdong, Shandong, and Yunnan. Of the 932 victims, the number of male and female victims is 521 and 405 respectively, and the gender of 6 victims is unspecified (see Figure 9).

Figure 9 Gender breakdown of detected victims of child trafficking in Guangdong, Shandong, and Yunnan (N=932)



The sex ratio of victims of the three trafficking modes is manifested differently. As shown in Figure 10, the proportion of male victims is almost twice as much as that of female in M1 and M2, whereas the proportion of female victims is slightly higher than male in M3. It means that boys and male infants are more likely to be abducted or sold directly by their parents, whereas girls and female infants are more likely to experience resale and negligent treatment during the trafficking process.

Figure 10 Gender breakdown of detected victims, by trafficking mode (missing=8)

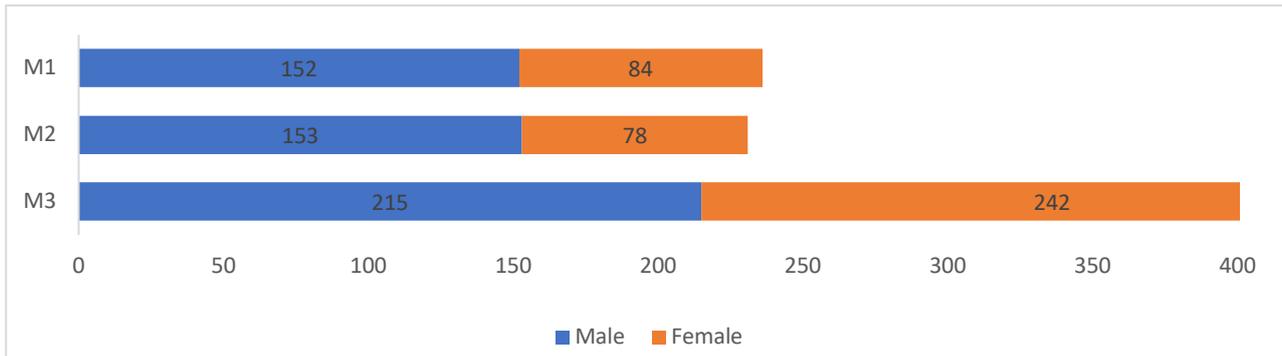
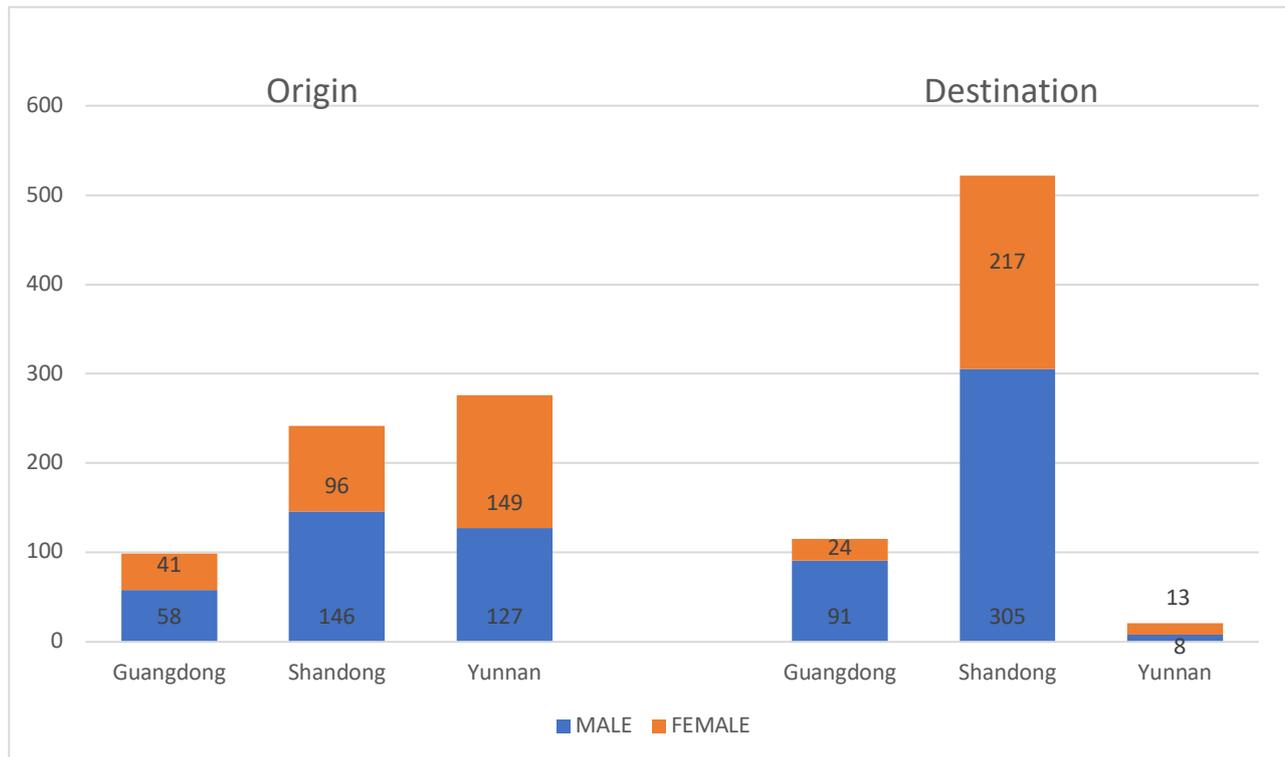


Figure 11 In Guangdong and Shandong, the proportion of male victims either from or to these two provinces is higher than female. There is a slight higher percentage of male victims (58.6%) originally from Guangdong, whereas the percentage of male victims increases significantly (79.1%) when Guangdong is the destination. In Shandong Province, the proportion of male victims is almost the same when it is examined as a province of origin and destination. In both cases, the male victims account for around 60%. However, in the case of Yunnan as an origin province, the proportion of female victims (54%) is slightly higher than that of male (46%). The higher percentage of female victims become even more notable when Yunnan is considered as a receiving province: 61.9% of victims trafficked to or within the province were female versus compared to 38.1% male. To conclude, in general, the number of male victims is higher than female, which is especially true in Guangdong and Shandong. However, more girls than boys were trafficked in Yunnan, which is consistent with the previous conclusions regarding trafficking modes of the province and gender composition of each trafficking mode.

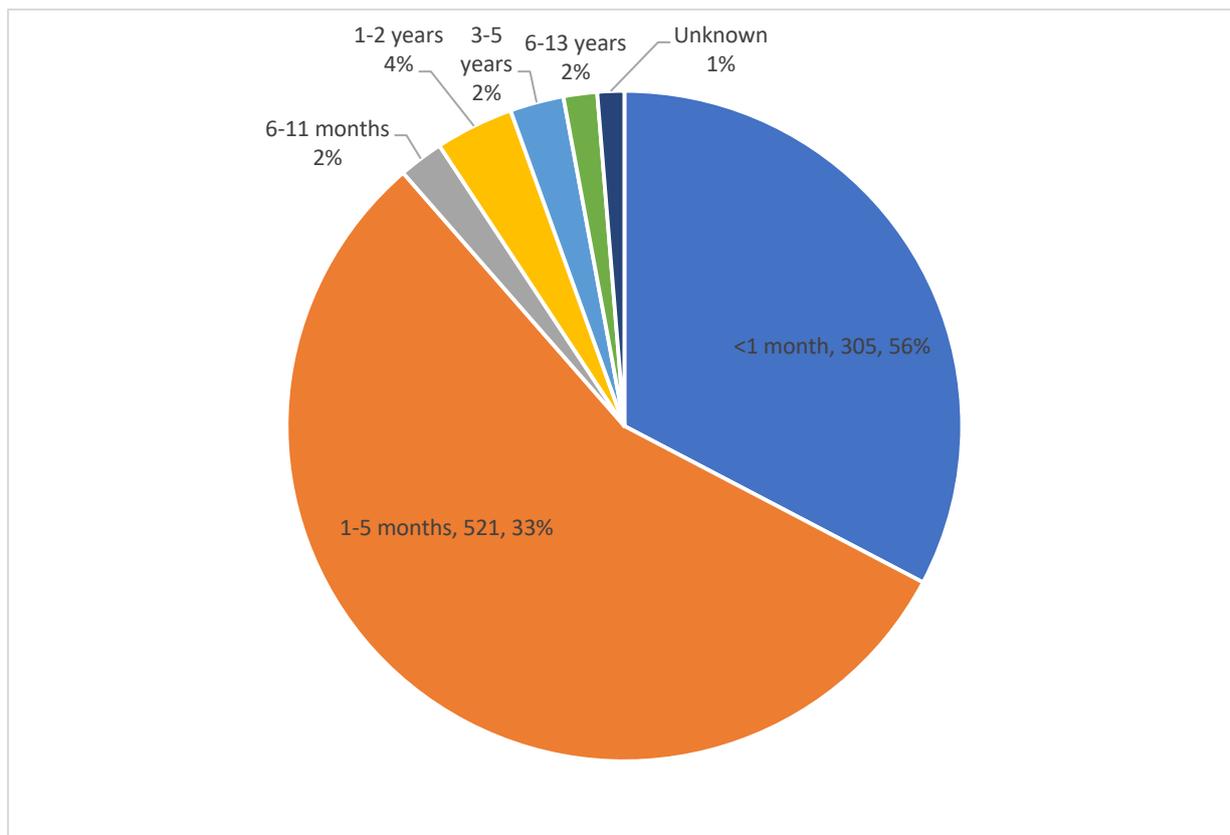
Figure 11 Gender breakdown of detected victims trafficked from and to Guangdong, Shandong, and Yunnan (origin

missing = 130, destination missing =62)



According to Article 240 of Criminal Law, the age of victims of child trafficking is less than 14 years old. Therefore, data on child-victims aged between 14 to 18 years old was not available. With regards to the age structure, Figure 12 displays that a great majority (89%) of the children in this study were younger than 6 months of age when they became victims of child trafficking. The number of children aged from 6 months to 5 years was 79, 10% of the total victims; whereas only 15 victims (1.6%) had reached school age (6 or 7 years old) when they were trafficked.

Figure 12 Age structure of victims of child trafficking in Guangdong, Shandong and Yunnan (n=932)



As showed in Table 11, in trafficking mode M1, victims of all the age groups were identified. Almost 60% of them were aged 1-5 months, and 13% of them were less than 1 month. The proportion of children aged 1-2 years old and that 3-5 years old was similar, around 9%. Only 5% of the victims of this trafficking mode were more than 6 years old at the time of the incident, whereas less than 4% of the victims were between 6 and 11 months of age. Similar to M1, victims of parental sale of children (M2) cover all age groups. The difference is that the proportion of victims less than one-month-old (50.2%) is higher than that of victims aged 1-5 months (37.9%). Almost all of the victims trafficked by criminal groups and networks (M3) were young infants. The dominant age group is 1-5 months old (64.5%), followed by new-born babies less than a month old (34.8%). The overall proportion of victims older than 6 months old was less than 1%, and no victim over 6 years old was identified. From this table, we can conclude that most of the victims of child trafficking are infants. While child abduction affected children of all age groups, parents and criminal networks were more inclined to sale new-born babies and infants.

Table 11 Age of victims by trafficking modes crosstabulation (missing=14)

		Trafficking modes			Total	
		M1	M2	M3		
age	under 1 month	Count	31	114	159	304
		% within mode	13.2%	50.2%	34.8%	33.1%
	1-5 months	Count	140	86	294	520
		% within mode	59.8%	37.9%	64.3%	56.6%
	6-11 months	Count	9	9	2	20
		% within mode	3.8%	4.0%	0.4%	2.2%
	1-2 years	Count	22	12	1	35
		% within mode	9.4%	5.3%	0.2%	3.8%
	3-5 years	Count	20	3	1	24
		% within mode	8.5%	1.3%	0.2%	2.6%
	6-13 years	Count	12	3	0	15
		% within mode	5.1%	1.3%	0.0%	1.6%
Total		Count	234	227	457	918
		% within mode	100.0%	100.0%	100.0%	100.0%

Sometimes, especially in the cases of parental sale of children (M2), children were sold directly to the final buyer, who claimed or intended to adopt the purchased children. Middlemen in M2 are usually paid either by the parents of children (who were also the seller) or by the buyers, or sometimes even by both sides. There are also situations in which middlemen do not ask for or refused any payment, whereas in some other cases, especially in the cases of child trafficking committed by criminal networks (M3), children were sold several times, and the price of the same child might rise from several thousand *yuan* to over a hundred thousand *yuan*.

It was impossible to calculate the amount of illegal transaction generated by the child trafficking in the three provinces, as only the final price is mentioned in most verdicts. As shown in Table 12, the “buy price” refers to, in the case that a victim was sold more than once, the price that the victim was traded for the first time; while the “sale price” refers to the last price of a victim in the trafficking process. Only 161 victims were recorded with both the buy price and sale price, while 82 victims did not have any information about their trading price. In the cases where only one price was provided,

it was recorded under the name of “sale price”. The buy price ranges from 2,600 *yuan* (325 euros)<sup>80</sup> to 76,000 *yuan* (9,500 euros), while the sale price ranges from 500 *yuan* (62.50 euros) to 120,000 *yuan* (15,000 euros). The mean sale price is almost twice as much as the mean buy price, which means, on average, the price of a child doubles during the trafficking process. At least 33.92 million *yuan* (4.24 million euros) were spent on purchasing babies.

Table 12 Summary of prices of victims (RMB *yuan*)

	Buy price	Sale price
N	161 (missing=771)	843 (missing=82)
Minimum	2,600	500
Maximum	76,000	120,000
Mean	22,129.07	39,911.28
Sum	3,562,780	33,924,589

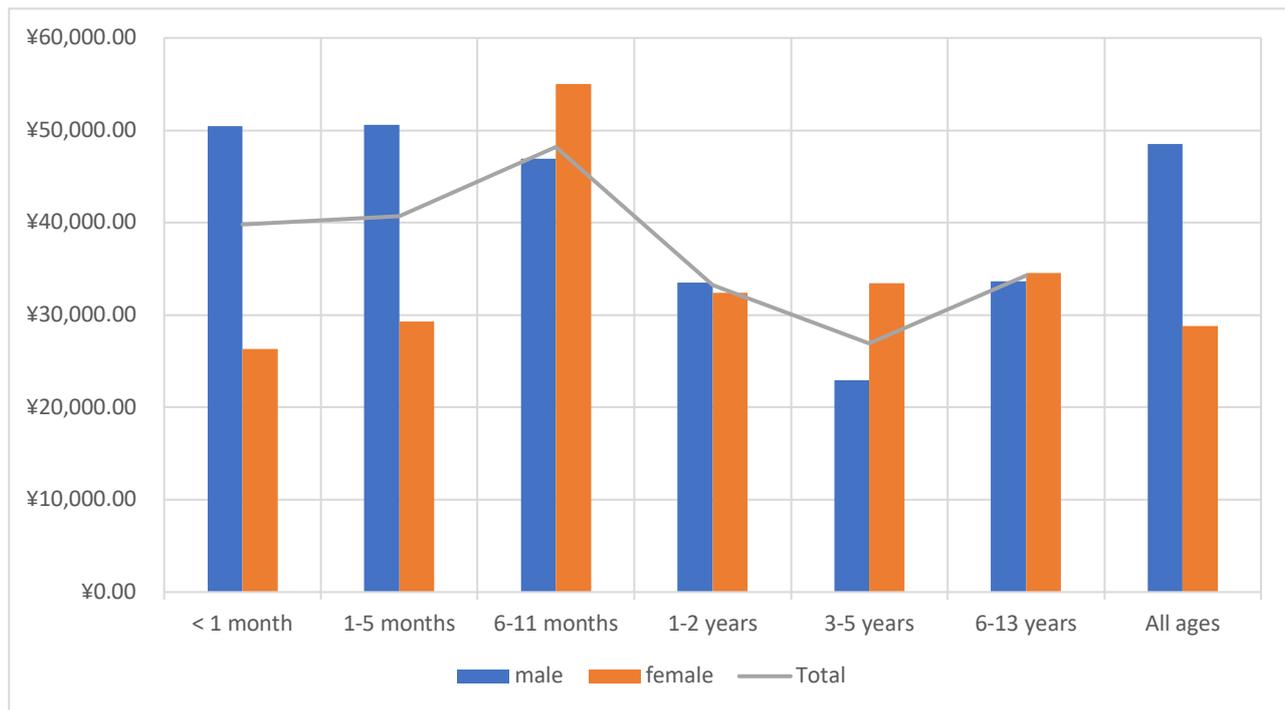
As shown in Table 13, the mean price of child victims of M1 and M2 is roughly identical, around 41,000 *yuan* (5,125 euros); whereas the mean price of the victims of M3 is remarkably lower, slightly over 38,000 *yuan* (4,750 euros). In all the three trafficking modes, the maximum price of victims reached 10,000 *yuan*, while the minimum price of a child only 500 *yuan* (62.50 euros) in the case of M3 and no more than 1,500 *yuan* (187.50 euros) in the other two modes.

Table 13 Sale price of victims by modes of trafficking (RMB *yuan*) (missing=89)

Pattern	No. of victims	Mean	Sum	Minimum	Maximum
M1	211	41,019.81	8,655,179	1,500	100,000
M2	223	41,674.89	9,293,500	1,400	120,000
M3	415	38,327.49	15,905,910	500	113,000
Total	849	39,875.84	33,854,589	500	120,000

<sup>80</sup> 100 *yuan* =12.50 euros, *sic passim*.

Figure 13 Mean sale price of victims by age and by gender (RMB yuan).



In general, the mean price of male victims is nearly twice as much as that of female victims (see Figure 13). The fact of a higher number and the higher price of male victims can lead to the conclusion that the demand for male children and infants is much higher than females. Looking at the price differences of victims by gender and age, the mean price of children under 6 months old, which represents the majority of cases, is around 40,000 *yuan* (5,000 euros), and on average a boy costs almost twice as much as a girl. The mean price of female victims surpasses that of the male when the victims are older than 6 months of age, with the exemption of children aged between 1-2 years, where the mean price the two genders is nearly identical. It is worth noting that when child-victims are more than 3 years old, the price of girls is almost 1.5 times that of boys. In general, the mean price of young infants is higher than older children. The mean price of child-victims decreases when the victim is over one year old but increases again when the victim is older than 6 years of age. Young children of 1-5 years old are the least in demand. Presumably, buyers whose purpose is illegal adoption do not want “adopt” children with memories of their original family and the trauma because it is difficult to create

a close relationship with them, and their resistance may lead to the disclosure of the crime. On the other hand, for buyers who intended to exploit the victim, children of this age group are too young to be exploited physically or sexually, which may be easier when victims are over 6 years old.

Figure 14 Mean price of male and female victims by origin province and destination province: Guangdong, Shandong, Yunnan (RMB yuan)



The mean price of victims varies in Guangdong, Shandong, and Yunnan. As shown in Figure 14, among the three provinces, the highest price of the trafficked children is in Shandong, both when it is examined as a province of origin and as a destination. As sending provinces, the mean price of children in Guangdong and Yunnan is almost identical, around 34,000 yuan (4,250 euros); whereas in Shandong, it almost reaches 42,000 yuan (5,250 euros). Looking at the same price grouped by gender, in Guangdong and Yunnan, the mean price of male victims is more than twice that of female, while in Shandong, the difference is only 1.5 times. When the three provinces are examined as receiving provinces, the mean price of children trafficked into or within Yunnan is less than 16,000 yuan (2,000 euros), roughly half of that of Guangdong (38,300 yuan) and one-third of that in Shandong (43,600 yuan). Again, the price gap of children of different genders is the smallest in

Shandong (43,5000 *yuan*). Male children cost twice as much as females in Guangdong; whereas the mean price of female trafficked into or within Yunnan is slightly higher than of males.

### C. Profile of the trafficking cases

All the judgements in this research were issued between 2008 and 2018, while some of the crimes were committed decades before the trial. The first child trafficking crime dates back to 1988, and the latest ones were committed in 2017. Excluding one case in which the date of the incident is not provided, only 23 victims (2.5%) were trafficked in the 1990s. Most of the cases happened between 2010 and 2016.

Figure 15 Time and quantity distribution of child trafficking cases in Guangdong, Shandong and Yunnan provinces in this study (n=932)

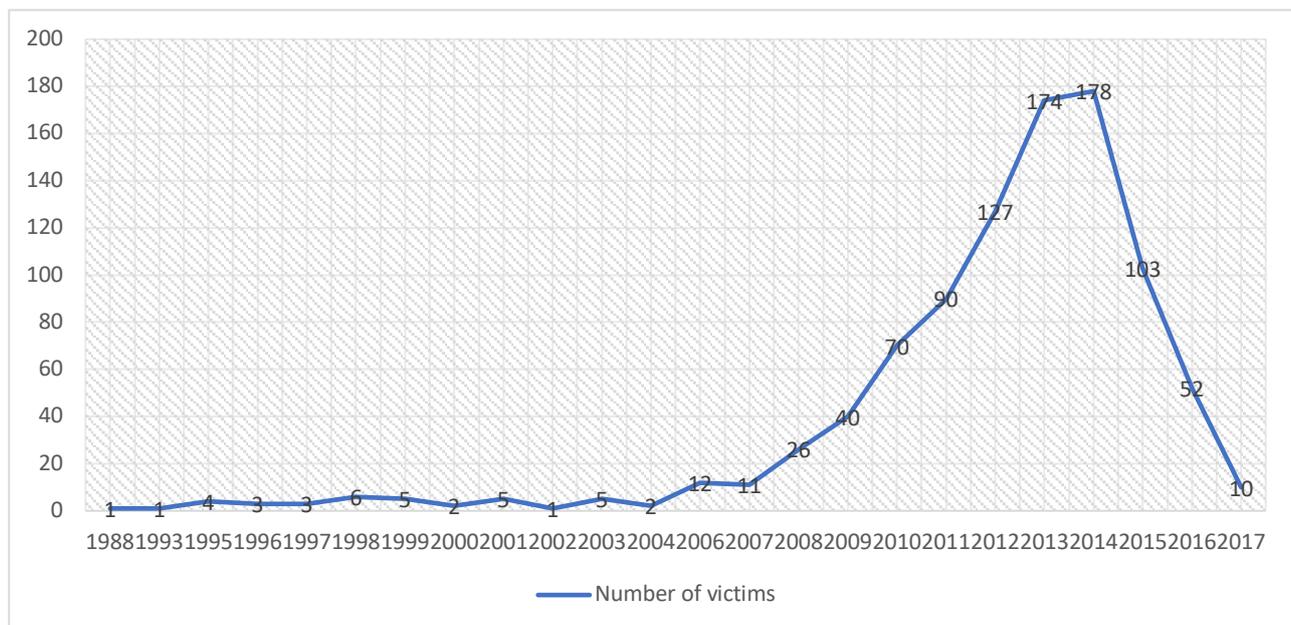
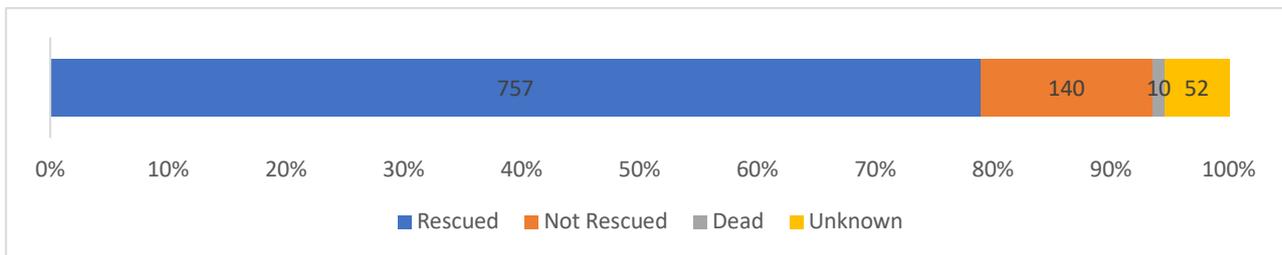


Figure 15 showed a steady increase in the number of victims between 2007 and 2014. After the number of trafficking cases hit a peak in 2014, it decreased sharply. However, these figures only represent detected cases, the offenders of which were brought to trial from 2008 to 2018. It did not include any unsolved cases, unidentified victims or confidential judgements. It is possible to deduce that from 2010 to 2015, the Chinese authority made special efforts to prosecute offenders of child trafficking. The sharp reduction in the number of crimes committed in recent years may be caused by

the following reasons: firstly, the crime rate of child trafficking has dropped, as criminals were discouraged by special actions of the police, strict prosecution and severe punishment; secondly, contesting the crimes related to child trafficking was no longer the priority of authority after 2014; thirdly, some of the victims are not presented in the figures as some of the crimes related to trafficking committed in recent years have not yet been resolved.

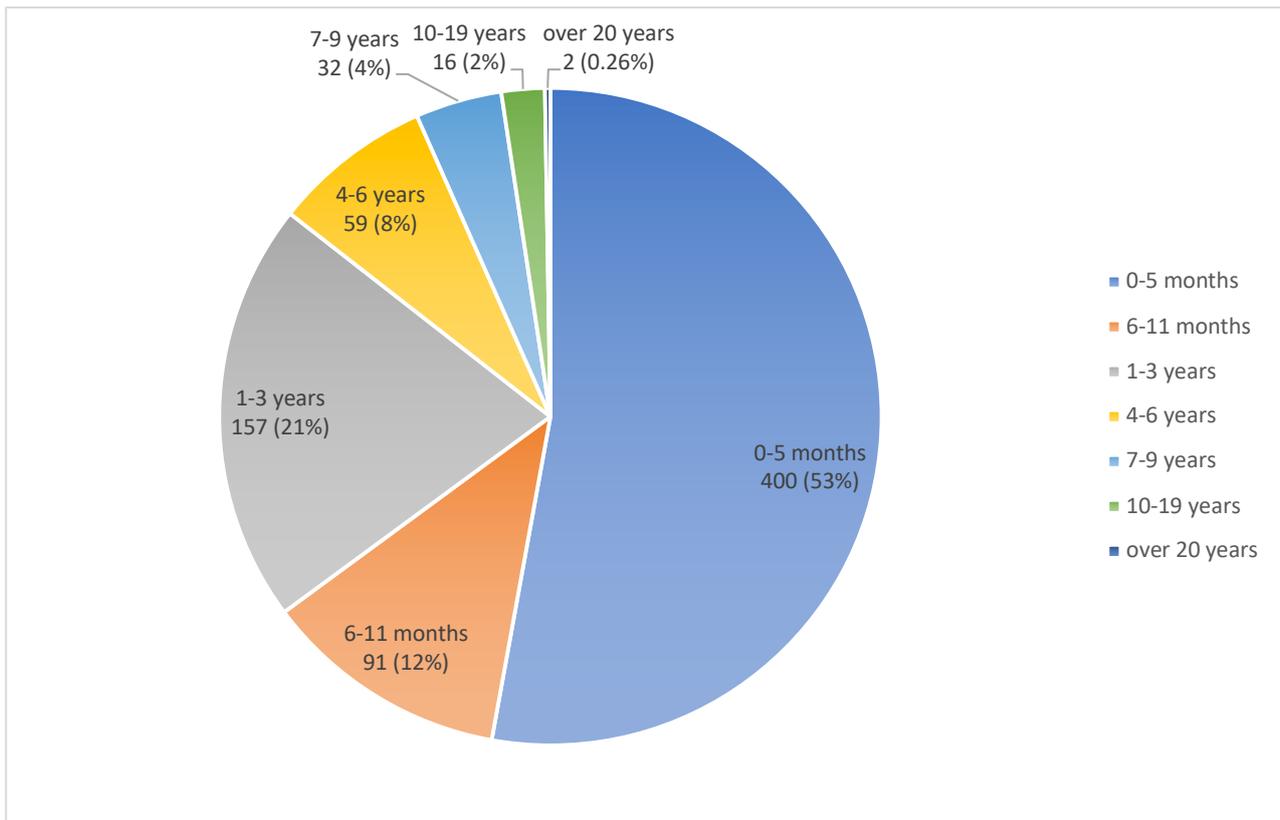
Of the 932 victims in this study, 757 (81.2%) children were rescued, 140 (15%) victims remained missing, 10 children died before being rescued, and the rescue results of 25 victims were unspecified (see Figure 16). It is necessary to underline that this rescue rate is based on detected cases, which probably just represents a tip of the iceberg. The proportion of victims who are still missing of the three modes are 10%, 9%, and 22% respectively. Among the ten victims who died during the trafficking process, five of them belong to the first trafficking mode (abduction and sale of children). There are two cases of death in each of the other two modes.

Figure 16 Situation of rescue results (n=932)



A child trafficking case may be uncovered before the victim is sold, during the process of transportation, or after the trafficking cycle. Therefore, a victim can be rescued during trafficking, years or even decades after being separated from the original family. As shown in Figure 17, more than half (65%) of the victims were rescued within the first year, and it takes 1-3 years for 21% of the victims to be removed from the trafficking cycle. Almost 15% of the victims had been separated from their family for at least 4 years, of whom 2.26% had been trafficked for over 10 years.

Figure 17 Number of cases by duration of trafficking (n=757)



After being rescued or identified by the police, the child victims should be put under protection.

Based on the information contained in the judgements, in this study, there are five types of resettlements after the victims were rescued or identified:

1. Return to the parent(s) who did not commit the crime of trafficking of the same child. The child victim was returned to his or her parent(s), as one or both parents were unaware of or against the trafficking of the child. Usually, these parents are the first ones to report the case to the police.
2. Return to the parent(s) who was the perpetrator(s) of the trafficking of the same child. The child was given back, by the police, to his or her parent(s), who took the initiative of selling the child, aided or abetted the crime, or gave consent or acquiescence to the selling of the child.
3. Live in the extended family. Sometimes, both parents of the victim rejected the custody, or had no capacity to exercise it for economic, health, or legal reasons. The victim was given to his/her relatives, including grandparents, uncles and aunts.
4. Taken care by welfare home or foster family. When a child was trafficked by criminal networks, it is difficult or even impossible to trace his or her biological parents, who in any case had no willing and should not take care of the victim again. These children are usually sent to local welfare home or foster families.
5. Remain in the buying family. Many children were trafficked and sold to families who indeed wanted to adopt the children. Although the adoption was realized through illegal means, the buying family considered the victims as their children and had taken care of the children

before the disclosure of the crime. In some cases, victims remained in the buying family because they were adults (over 18 years old) at the moment of rescue. In some other cases, children remained in the buying family because their biological parents gave them back to the buyers after the rescue. There are also cases in which local welfare institutions did not have sufficient funding to take care of the rescued victims. The police or judges appointed the buyer as the foster family. This practice is not allowed according to the *China National Plan of Action on Combating Trafficking in Women and Children (2013-2020)* issued by the State Council of China in 2013 (see §3.3.1).

Table 14 Post rescue situation by trafficking modes

			Trafficking Mode			Total
			M1	M2	M3	
After Rescue	Return to parent(s) - non-perpetrator	Count	37	22	4	63
		% within pattern	17.4%	10.4%	1.2%	8.3%
	Return to parent(s) - perpetrator	Count	0	10	0	10
		% within pattern	0.0%	4.7%	0.0%	1.3%
	Live with extended family	Count	0	4	0	4
		% within pattern	0.0%	1.9%	0.0%	0.5%
	Welfare home or foster family	Count	13	12	80	105
		% within pattern	6.1%	5.7%	23.9%	13.9%
	Remained in the buying family	Count	20	17	63	100
		% within pattern	9.4%	8.0%	18.8%	13.2%
	Unspecified	Count	140	147	188	475
		% within pattern	65.7%	69.3%	56.1%	62.7%
	Total	Count	213	212	335	757
		% within pattern	100.0%	100.0%	100.0%	100.0%

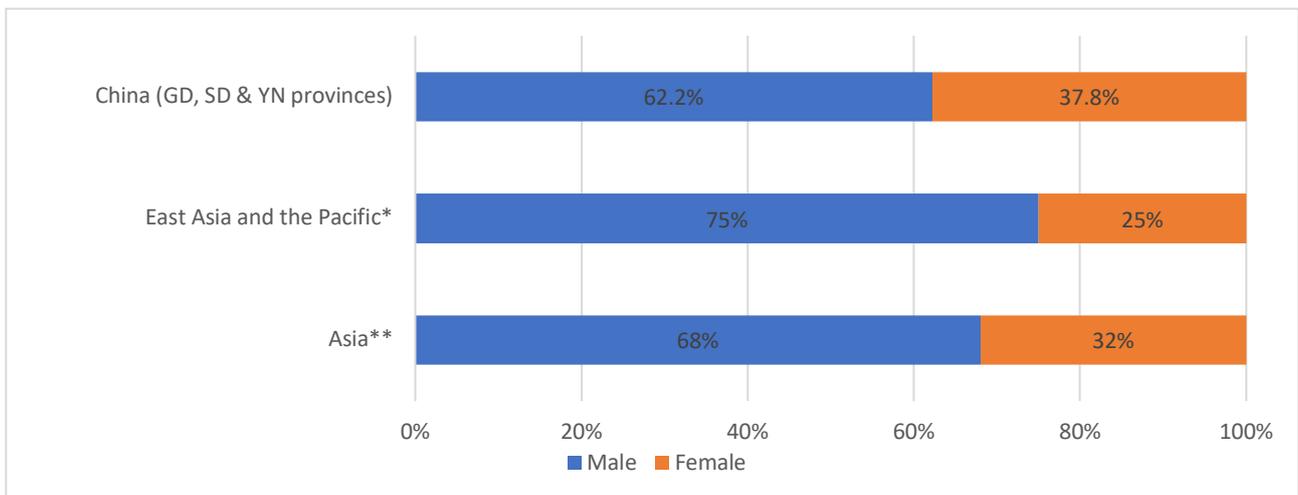
The post-rescue information is not mentioned in over 60% of the total trafficking cases, which may be a sign of insufficient attention to the protection of children's rights. As shown in Table 14, in total only 63 (8.3%) of the rescued victims returned to parents who were not perpetrators of the same cases, and the proportion of this post-rescue situation drops to 1.2% when the crime was committed by criminal networks. Welfare homes or foster families provide protection to 105 victims (13.9%), and most of them (80) were trafficked by criminal groups. Four victims, who were sold by their parents, were taken care of by their extended families. What raises concern is that there are situations

in which children may be re-victimised: at least 10 children were given back to their parents who had not wanted to raise them and had taken the initiative to sell them. It is also worth noticing that, in total, 100 children were remained in the buyers’ families, which should be illegal and improper for the protection of the children’s rights.

#### ***D. Profile of the perpetrators***

In the 480 child trafficking judgements in this research, between 2008 and 2018, 1,403 offenders were convicted of the crime of trafficking for having engaged actively in activities of abducting, kidnapping, buying, selling, transporting, or transferring 932 children for the purpose of selling. Although the profile of victims of the child trafficking in this study differs from that in international studies, the perpetrators meet some general characteristics of traffickers at the global and regional level (see UNODC 2016; 2018).

Figure 18 Proportion of men and women among convicted offenders, national and regional averages



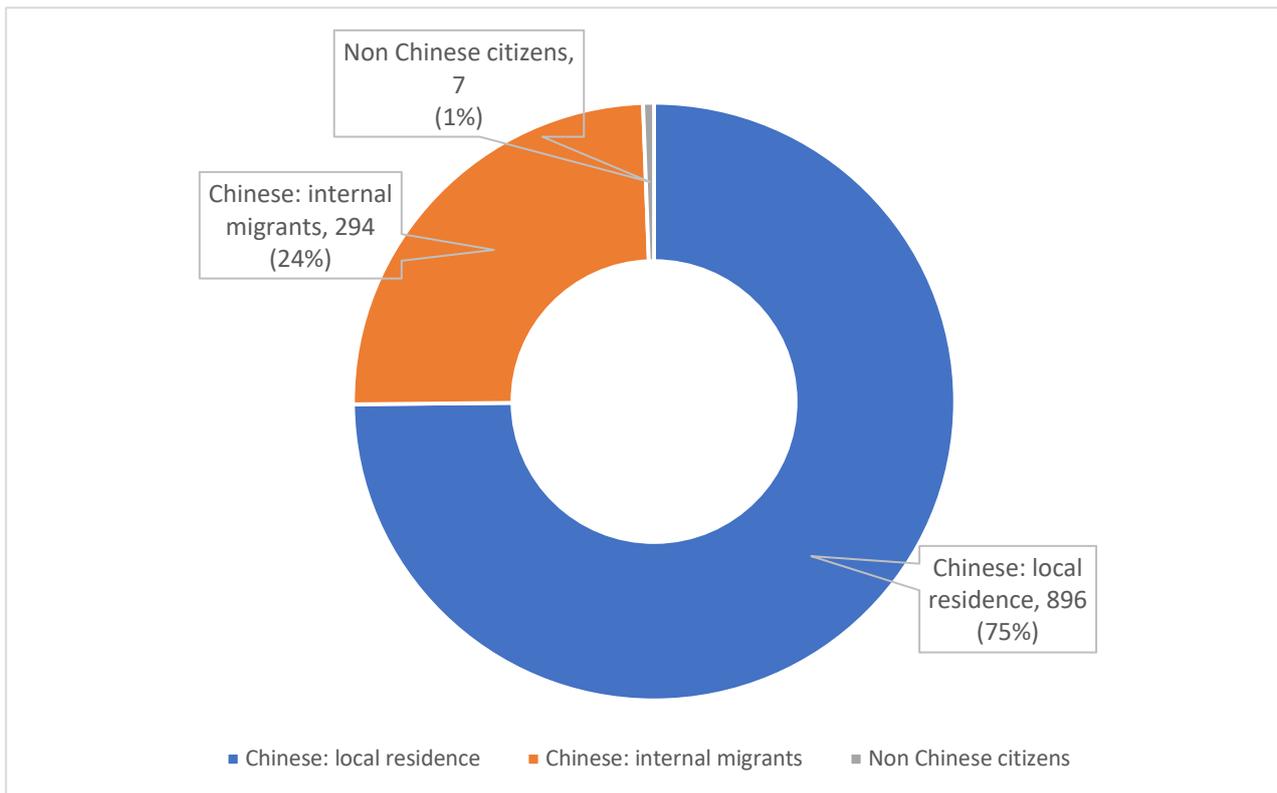
\*Source: UNODC, Global Report on Trafficking in Persons, 2012, p. 31.

\*\*Source: UNODC, Global Report on Trafficking in Persons, 2016, p. 33.

First of all, most traffickers are male. Excluding 363 offenders without relevant information, roughly 6 in 10 convicted offenders are male (see Figure 18). The share of female offenders in Chinese child trafficking is slightly higher but in line with the gender composition of traffickers in East Asia and the Pacific region and at global level (UNODC 2012, 31, 2016). Due to data limitation,

it is impossible to make any conclusion regarding the trends in the shares of females among persons involved in child trafficking. The median age of the prosecuted offenders is 40.16 years old. There is not significant difference between the median age of male and that of female offenders, which is 40.03 and 41.10 respectively.

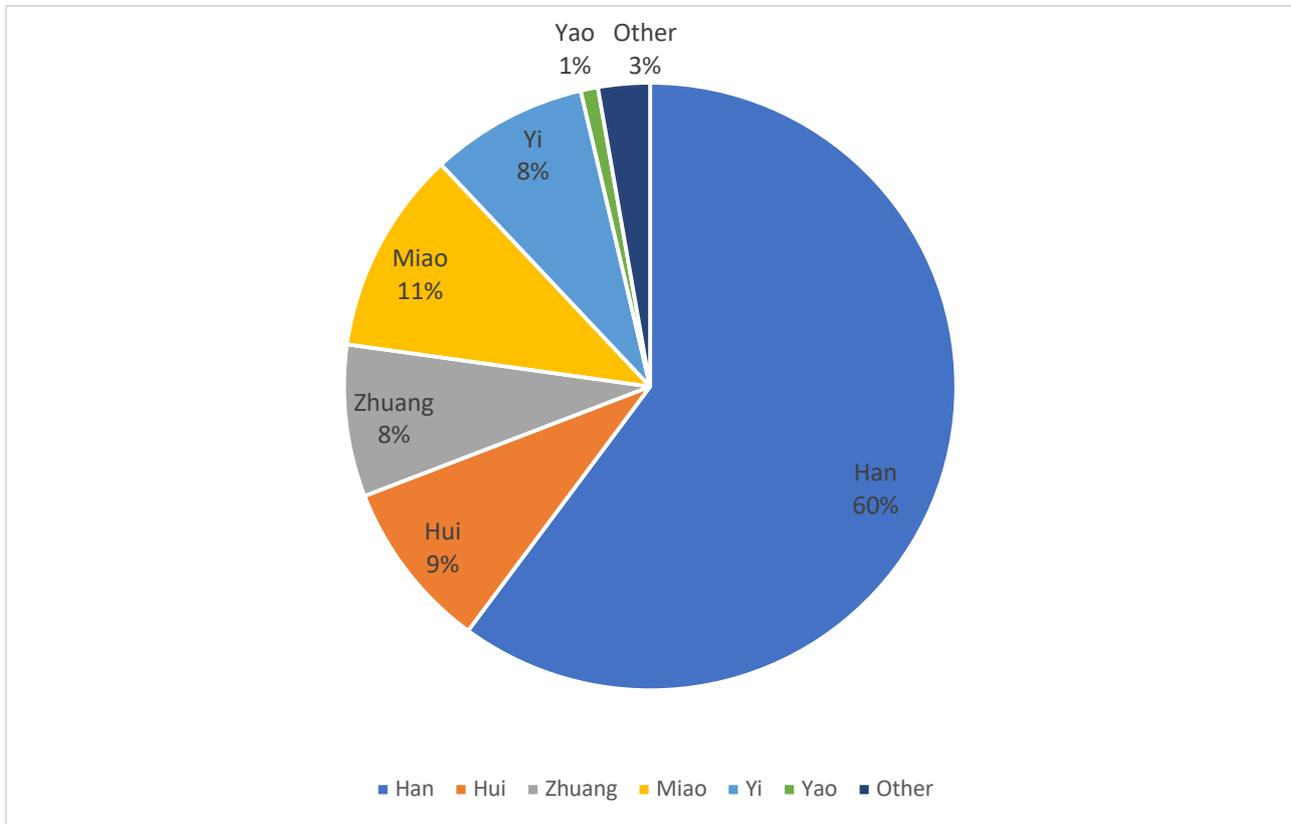
Figure 19 Breakdown of convicted persons, by nationality (non-Chinese) and residence.



Another pattern regarding offenders' profile, consistent with international studies, is that child trafficking in Guangdong, Shandong, and Yunnan provinces largely involves national traffickers. According to the study of the UNODC, in East Asia and the Pacific region, roughly 95% of the convicted traffickers were citizens of the country in which they were convicted (UNODC 2016); while the proportion of offenders with Chinese nationality reaches 99% in the present study. Out of the 1,403 offenders who were convicted of trafficking in children in the selected three Chinese provinces, only 7 persons were not Chinese citizens. In addition, considering China's huge size and unique household registration system, it is useful to look more specifically at the permanent residence of offenders. Out of the 1,396 Chinese traffickers, 1,190 persons have relevant data, of whom 75%

committed the crime in the province of their permanent residence, while 25% were internal migrants (see Figure 19).

Figure 20 Breakdown of convicted persons by ethnicity (missing=525)



It is worth noticing that, roughly 40% of the convicted offenders with valid data are ethnic minorities. As shown in Figure 20, the proportion of offenders who belong to the Han majority (60%) is several times higher than that of any other single ethnic minority group. However, comparing to the proportion of Han Chinese in the overall population, either at national level or at provincial level, the proportion of Han offenders is much lower. According to the data of the last National Population Census (Census Office of the State Council and Department of Population and Employment Statistics 2012), the proportion of Han Chinese in the national population is 92.63%, coincidentally the same as the average proportion of Han Chinese in Guangdong, Shandong, and Yunnan. The ethnic minorities, accounting for 40% of the total offenders, are overrepresented in the child trafficking offenders, not only when compared to the average population, but also when compared to the proportion of ethnic minorities in the population of Yunnan Province (33.39%).

The education level of offenders is very low. Out of 785 persons with relevant information, 25% were illiterate and barely 45% completed primary education. The proportion of offenders who completed junior high school education is 25%. Only 5% of the convicted offenders continued after compulsory education.

### ***E. Operation and organisation***

As briefly mentioned above, child trafficking may involve violence, coercion, deception, or the voluntary sale of children. In different circumstances, the relationship between offender and victim also varies. An offender can be a stranger to the victim, but very often, an offender is someone from or very close to the victim's family, such as a relative or friend. In a significant proportion of the cases, the perpetrators are the parents of the victims.

In the mode of abduction and sale of children, offenders can be strangers to the victim and his or her family. Having planned to abduct a child and then sell them for profit, offenders hunt randomly on streets of small towns or villages. Their target is unaccompanied children, preferably a young male child, who is playing alone or with other children near the home or workplace of their guardians. Offenders may also break into the family home and abduct the young child or infant, sometimes as a person close to the victim's family, for instance, the offender may work in the same factory or quarry as the victim's parents, and live in the same accommodation provided by the employee. The plan of abducting and selling the victim is often incited by another trafficker, and only happens after gaining confidence with the victim's parents to leave their child alone with him or her. With the excuse of helping them to take care of the child, the offender easily abducts the victim. In many cases, the offender is a relative of the victim, including grandparents, uncles, aunts, or other distant relatives. The incident may occur as in the previous cases, or in a very different condition, for instance, an offender sells the child-victim with an initial promise to "protect" the family or his or her child, who is a single parent. This might happen in particular to young single mothers, who were pregnant but

too young to get married, or unable to marry the biological father because of opposition of their parents. In this condition, the child is welcomed by neither the families of the mother nor the father. Although the victim's parents wanted to raise him/her, it is impossible because of their minor age or lack of economic financial ability to do so. The parents or relatives of the single parent consider having child out of wedlock as something shameful on the family and will destroy the future of their child. They sell the child regardless of the opposition of the child's parents, who may be reluctant to report the incident to the police. Therefore, the parents of the victims of child trafficking are also victims of violence, physical, or psychological, that may come from a stranger, friends, or their own families.

In the abduction and sale of children (M1), parents are also victims, direct or indirect, of the offence. On the contrary, the parent(s) becomes the offender or accomplice in the mode of parental sale of children (M2) and that of organised child trafficking (M3). Out of 112 victims with information related to the original family, over half (54%) were from a single-parent family, and a great majority of these victims were sold by the unmarried parent(s). Single parents caused by divorce or widowhood represent only a small proportion of offenders. However, the proportion of parent(s) from a traditional marriage is not much lower than that of single parent(s). They take the decision to sell their own children for a variety of reasons. In any case, the parent(s) takes the initiative to contact people to sell their children, and in most of the cases, at least one middleman is involved. By selling their children to the middlemen without checking whether the children will be taken care of, they irresponsibly put their children in a situation where the children's safety cannot be guaranteed. They ask for a huge amount of compensation, which is tens of hundreds of times higher than the real amount they claim to have spent. They bargain with the middleman or the buyer, to get the maximum profit from the sale of their children, without any concern for their safety, health, or wellbeing. Some young couples, married or not, consider the child as a burden that deprives them of the possibility to enjoy their lives. They put up a notice of "searching for adoptive family" in online chat groups or illegal

child adoption groups and bargain with buyers. They use the money from the sale of their child to buy jewellery, motorcycles, and other things that they could not afford before, to pay for online games, to pay off debts, or to buy drugs. Some single parents sell their children to get into a new relationship (see 错误!书签自引用无效。 ).

Box 3: Case 2014-GD-HD-Preliminary Criminal Trial-No.271

**2014-GD-HD-Preliminary Criminal Trial-No.271 [(2014)惠东法刑一初字第271号]**

Date: 9 September 2014

Before: People's Court of Huidong County, Guangdong Province

Public Prosecution Agency: People's Procuratorate of Huidong County, Guangdong Province

Defendants:

Lin (Male, born on 8 August 1992).

Lian (Female, born on 16 March 1987).

Case summary:

The defendants Lin and Lian were co-habitants, but Lin's family was against their marriage. In early 2013, Lian was pregnant, Lin's family refused to raise the baby, and Lian's family could not afford to raise the child. Therefore, the couple decided to find an "adoptive family" for the upcoming child. Lin posted a message on the Internet looking for an "adoptive family" and asking for 50,000 yuan (6,250 euros). Many persons contacted Lin willing to buy the child. One person from Shanghai, named Ni, made a deal with Lin by offering 70,000 yuan (8,750 euros), and Lian was informed of the agreement. In late October 2013, Ni visited Lian and paid the hospital deposit as Lian needed to be hospitalised for medical treatment. On 7 November 2013, Lian gave birth to a baby boy. The day after, Ni came to the hospital, gave 70,000 yuan (8,750 euros) to Lian and gave three gold necklaces to Lian, her mother and aunt. After Lian having signed an adoption agreement, Ni took the new-born to Shanghai. Lin was absent when the child was born and sold, but he took 35,000 yuan (4,375 euros) from the bank account of Lian when he was informed.

Court decisions:

Lin, having committed the crime of child trafficking, was sentenced to five years in prison and fined 20,000 yuan (2,500 euros).

Lian, having committed the crime of child trafficking, was sentenced to five years in prison and fined 20,000 yuan (2,500 euros).

When criminal groups are involved, the role of parents in the crime changes. On the one hand, it is the parents who actually sell their children; on the other hand, they are not the principal offenders as it is not the parents who take the initiative to sell the children. They are recruited or persuaded by traffickers, who take advantage of the parents and lure them by high payment.

Figure 21.1 Operation of child trafficking networks (1)

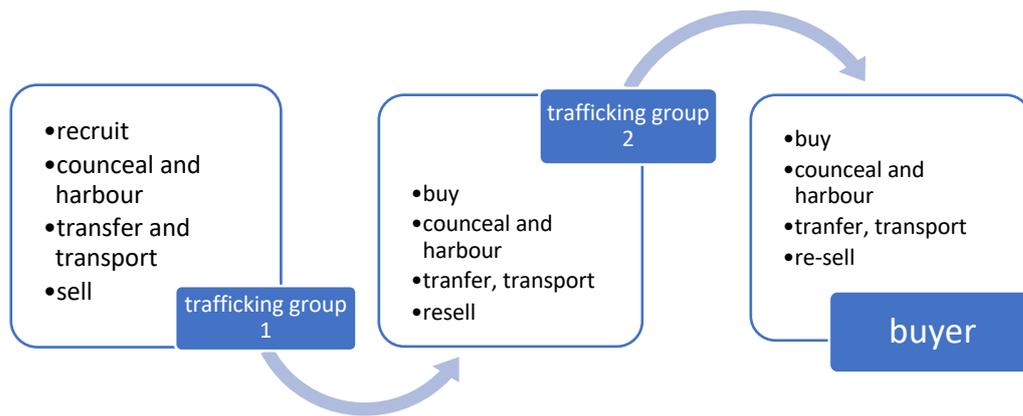
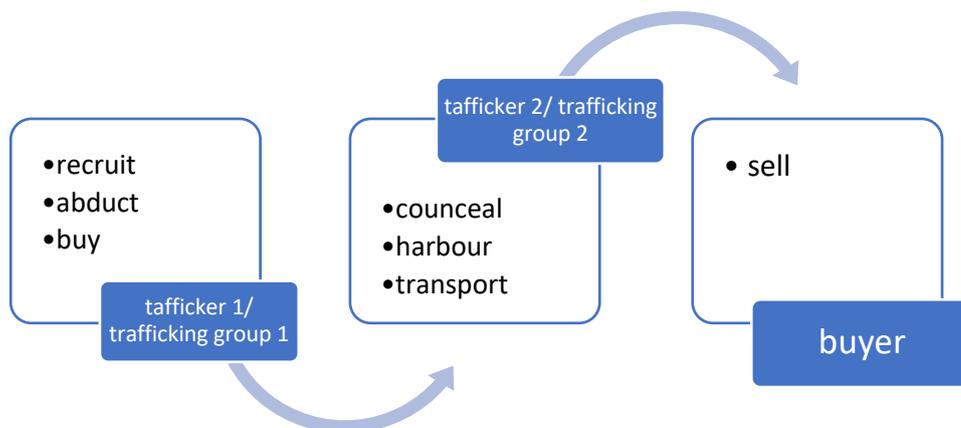


Figure 21.2 Operation of child trafficking networks (2)



The trafficker, who is specialised in looking for profitable families with young children, is only a single element in the entire criminal network. There are cases in which a single criminal organisation deals with all the activities in the process of trafficking, although more frequently, child trafficking involves networks connecting several single traffickers or/and loose groups composed of two or more persons, which operate on their own. The criminal groups also operate in different ways. In some circumstances, as shown in Figure 21.1, a trafficking circle, from recruitment/buying to the transportation and selling of a victim, is concluded within a single criminal group and repeated several times by different trafficking groups until the victim is sold to the final buyer. Each group benefits directly from the sale of the victim. While in some other cases (see Figure 21.2), a trafficker or a criminal group deals with only a part of the trafficking circle. They do not profit directly from selling and reselling the victim but are paid by the principle co-offender(s) in forms of commission. Usually, the connection between trafficking groups is very weak. Offenders of one trafficking group barely

know other traffickers, even though they cooperate in the process of child trafficking. While in the organisation pattern shown in Figure 21.2, the traffickers and groups of traffickers can also have very close relationships, for instance, relatives, partners, or people who come from the same place.

## **Conclusion**

In the detected cases in Guangdong, Shandong, and Yunnan, child trafficking can be classified into three modes: the abduction and sale of children (M1), the parental sale of children (M2), and the organised child trafficking (M3). In general, the M3 is the most prevalent trafficking modes. The quantitative data showed a series of thought-provoking findings.

Child trafficking routes and patterns were not the same in the three provinces. While Yunnan was clearly a sending province, Shandong and Guangdong had a mixed (both sending and receiving) trafficking routes with a high rate of intra-province trafficking. Guangdong and Yunnan were dominated by the M3, in Shandong, the proportion of the detected M1 cases was higher than the other two modes. Most of the victims were trafficked between rural areas.

In general, both boys and girls were vulnerable to child trafficking, while the number of male victims was slightly higher than females. In specific, the proportion of boys was much higher than girls in the M1 and the M2, while there were more female victims in the M3. Most of the victims were less than one year old, which means that they had no capacity to defend themselves or to report to the police. While child abduction affected children of all age groups, parents, and criminal networks were inclined to sell new-born babies and infants. The mean price of the boys was much higher than that of the girls, and the price of the infants under one year old is higher than that of the children of other ages. The result is twofold: the demand of boys is higher than girls in the black market or boys are valued higher than girls and the higher market price makes boys more vulnerable to be targeted by traffickers. Although Guangdong is more prosperous than the other two provinces, the price of trafficked children in Shandong Province is the highest, followed by Guangdong and

Yunnan. The vast majority of the victims in this study were trafficked for illicit adoption, while only very few children were trafficked for sexual exploitation.

The detection of the child trafficking cases took months, years, or even decades. In some of the detected cases, the victim remained missing when the offenders were brought to court. While some parents of the victims were waiting for their children, some child-victims were waiting for their biological parents after their release. Most of the victims of M1 were returned to their parents, while it is concerning that some of the victims of M2 were given back to their parents, who were the offender(s) of the same child trafficking case. The protection of children who remained in the buyer's family and were fostered in social welfare institutes also need to be further addressed. The perpetrators were male-dominated, and the relative proportion of the ethnic minorities is high. Children are usually sold more than once before being bought by the final buyer.

This chapter provided a general picture of the child trafficking scale and routes in the selected provinces, as well as some details of the trafficking incident and the victims. The following chapter is dedicated to interpretations of the child trafficking problem from a human rights perspective, supplementing case laws to the figures displayed in this chapter.

### **III. Child trafficking in China and human rights abuses and violations**

The previous chapter drew a picture of child trafficking in the three provinces of study in China. After answering the question of “what is the situation of child trafficking in China”, this chapter uses anecdotic evidence, taken from the case law, to analysis “how human rights issues arise during the trafficking cycle”. The case law was taken from judgements issued by courts of Guangdong, Shandong, and Yunnan. The focus is on ways in which human rights violation arise though the trafficking cycle, identifying relevant rights holders and their entitlements. The right holder is not limited to the potential victims of trafficking, but also includes or mainly refers to the parents of the direct victim, as well as certain communities, for instance, ethnic minority groups.

Following the list of structural-proximate factors introduced by Cameron and Newman (2008), and taking a child-sensitive approach, this chapter explains how human rights issues arise in child trafficking. First of all, human rights issues exist, before child trafficking occurs, as causative factors of child trafficking. It includes poverty, discrimination based on gender, age and another status, as well as inadequate protection of children. Secondly, human rights abuse occurs during the process of trafficking, from the moment of separation of a child from his or her parents to the rescued of the victims by the police. In addition to the fact that child trafficking per se is a form of violation of human rights and human dignity, a series of children’s rights of the victim are violated, including the right to life, to not be separated from his or her parents, to preserve his or her identity, and to be registered immediately after birth. Furthermore, new human rights challenges arise after the child trafficking process and the rescue of the child. For instance, the care of the victims after being released from traffickers, and the right to remedy.

#### **3.1 Human rights issues as causative factors**

As previously mentioned (see Box 2), Cameron and Newman (2008) suggest that human trafficking is caused by the combination of a series of structural and proximate factors. This theory

provides a scheme of analysis of human rights issues that causes child trafficking. In practice, it suggests that the analysis of causative factors of human trafficking shall focus on four structural aspects (economic, social, ideological, and geopolitical) and three proximate aspects (legal and policy, the rule of law, and partnership). The following analysis of human rights issues that cause child trafficking the Guangdong, Shandong, and Yunnan provinces of China is based on the combination of the scheme of structural-proximate factors, and the human rights contained in international human rights instruments.

### **3.1.1. Poverty**

Poverty is an urgent human rights concern that the global community has fought against for decades. From the 1993 Vienna Declaration and Programme of Action<sup>81</sup>, to the United Nations Millennium Declaration of 2000<sup>82</sup> and the Millennium Development Goals, and then to the 2030 Agenda for Sustainable Development<sup>83</sup>, poverty has always been one of the core issues that all UN member states have committed to combat. It limits and undermines the enjoyment and fulfilment of many human rights and raises other human rights issues such as the right to life, right to adequate standard of living, right to education, equality, and free from discrimination. Poverty, lack of livelihood opportunities and illiteracy are the root causes that compound vulnerability of families and children to child trafficking.

In general, poverty is considered as one of the primary causes of human trafficking (Bales 2007, Cameron and Newman 2008, Cohen 2003, Davis et al. 2003, Ebbe 2007, Gallagher and Skrivankova 2015, Inter-Parliamentary Union and UNICEF 2005, Kaye and Winterdyk 2011, Lee 2013). It pushes victims to take all the risks to leave the place where they belong (Howard 2017, ILO/IPEC and

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<sup>81</sup> Adopted by the World Conference on Human Rights in Vienna on 25 June 1993, <https://www.ohchr.org/en/professionalinterest/pages/vienna.aspx>

<sup>82</sup> Adopted by the General Assembly on 18 September 2000, A/RES/55/2.

<sup>83</sup> Adopted by the General Assembly on 25 September 2015, A/RES/70/1.

Yunnan Province Women's Federation 2002, UNDP 2004). This conclusion is also proven to be true in this study in China. As mentioned in the previous chapter, the vast majority of the child victims were originally from the economically impoverished regions of China. According to the data of the court judgements at the national level, the following five provinces have the highest number of child-victims been trafficked to another province: Yunnan (235), Sichuan (164), Guizhou (59), Shanxi (28), and Guangxi (43). Unsurprisingly, all the five provinces are among the ten provinces with the lowest GDP per capita in China. The situation does not change very much regarding the child trafficking cases related to the Guangdong, Yunnan, and Shandong provinces. The top five sending provinces of outgoing child trafficking are Yunnan, Sichuan, Guangdong, Shanxi, and Guizhou. The GNP of three of these provinces (Shanxi, Guizhou and Yunnan) ranks in the lowest ten in the country. The relation between poverty and child trafficking can be further proved by the area of origin of the victims. In all the trafficking cases related to the three provinces of this research, over 93% of the victims were from the rural areas.

Extreme poverty increases the vulnerability of children to trafficking. In some area of Yunnan Province, selling children has become common and it is used as a method to increase the family income and get themselves out of poverty (ILO/IPEC and Yunnan Province Women's Federation 2002, Yuan and Yang 2001). In data collected for this research, significant numbers of child victims were from Wenshan Zhuang and Miao Autonomous Prefecture of Yunnan Province, which is one of the State-level poverty-stricken counties. In October 2018, the minimum living standards of rural area varied from 181 yuan (22.91 euros) to 345 yuan (43.67 euros) per month<sup>84</sup> (Qian and Liu 2018). The impoverished condition can be aggravated by other factors.

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<sup>84</sup> Qian, H., and Liu, F., (2018) '广南县继续提高城乡低保和特困人员救助供养标准, 切实保障困难群众权益 [Guangnan County continues to raise the standard of relief for urban and rural low-income and extremely poor people, and effectively protect the rights and interests of the people in need]', retrieved from: <https://www.yngn.gov.cn/Item/40537.html>, (accessed on 20/07/2018).

**2016-YN-2628-Preliminary Criminal Trial-No.83 [(2016)云2628刑初83号]**

Date: 1 July 2016

Before: People's Court of Funing County, Yunnan Province

Public Prosecution Agency: People's Procuratorate of Funing County, Yunnan Province

Defendants:

Wang (Male, born on 3 July 1977. Residence: Funing County, Yunnan Province)

Yang (Female, born on 14 September 1973. Residence: Funing County, Yunnan Province)

Case summary:

In the first lunar month of 2015 (around February and March 2015), when the defendants Wang and Yang was working in Ningde (Fujian Province), they met Zhong (accused in Fujian Province) in the street. Zhong noticed that Yang was pregnant and told them if they could not afford the baby, they could give the baby to others. Wang then recorded the phone number of Zhong. During the third and fourth lunar months of 2015 (around May and June 2015), Yang gave birth to a baby boy, and Wang contacted Zhong. On 15 June 2015, in a hotel in Nanan Fujian, Wang and Yang, through the intermediary of Zhong, sold their son to a local couple for 100,000 yuan (12,500 euros).

The defence counsel of Wang suggested that the act of Wang constituted the crime of the "abduction and sale of children" but mitigating circumstances should be considered. Firstly, the reason why the defendant gave the child to others was that this child was born in breaking of child control policy, and they could not afford to raise the child because of financial difficulty of the family. Secondly, the behaviour of Wang did not cause serious consequences, as the child had been released from buyers, who had taken care of the child with love. Thirdly, the infertility of the buyers was the main cause for them to adopt a child. Fourthly, Wang did not have any criminal record [...]. The defence counsel of Yang also claimed similar mitigating circumstances specifying that there were two children and aged parents at home who were left unattended.

Court decisions:

The court held that the defendants Wang and Yang sold their own children for the purpose of making profits. The actions of the two defendants have violated the provisions of Article 245 of the Criminal Law of the People's Republic of China, which constitutes the crime of child trafficking. The court did not support either of poverty nor the family condition of having two children and aged parents to take care as the mitigating circumstances of neither defendants.

Wang, having committed the crime of child trafficking as the principal offender, was sentenced to five years and six months in prison and fined 2,000 yuan (250 euros).

Yang, having committed the crime of child trafficking as the accomplice, was sentenced to three years and six months in prison and fined 2,000 yuan (250 euros).

The unlawfully obtained 75,000 yuan (9,375 euros) was confiscated according to law.

For instance, the victim child is born exceeding the stipulated limit of a birth-control policy, which leads to fines that are too heavy for those who are already living in a bad economic condition. In case *2016-YN-2628-Preliminary Criminal Trial-No.83* (see Box 4), two defendants, Wang and Yang, sold their third son, who was born in breach of the birth-control regulation, for 100,000 yuan (12,500 euros), which is thirty-five times of the annual income according to the national rural poverty line of 2015 (Xian et al. 2016, p. 6). Both defendants were farmers, and both claimed that they lived in an impoverished condition, and already had two children. They decided to sell the child because they could neither afford a third child nor the sanction for breaking the birth-control regulation. Similar cases are also reported in Shandong. In *2016-SD-0832-Preliminary Criminal Trial-No.126* (see 错

误!书签自引用无效。), the defendant Dai sold his third son for 29,000 yuan (3,625 euros) because the family could not afford, as the defendant claimed, one more child and the sanction.

Box 5: Case 2016-SD-0832-Preliminary Criminal Trial-No.126

**2016-SD-0832-Preliminary Criminal Trial-No.126 [(2016)鲁 0832 刑初 126 号]**

Date: 29 June 2016

Before: People's Court of Liangshan County, Shandong Province

Public Prosecution Agency: People's Procuratorate of Liangshan County, Shandong Province

Defendants:

Dai (Male)

Zheng (N/A)

Case summary:

After the Spring Festival of 2007, the defendant Dai's wife was pregnant. Considering that they already had two children and the economic difficulties, Dai conspired with the defendant Zheng to sell the baby after birth. Afterwards, Zheng contacted a couple who wanted to buy the child. At night of 24 April 2007, the defendant Dai's wife gave birth to a baby boy in the central health centre of Liangshan County. The next day, the defendant Dai, through the intermediary of Zheng, sold their son to the couple previously contacted by Zheng in the hospital for 28,000 yuan (3,500 euros), with additional 1,000 yuan (125 euros) for hospitalisation expenses.

The defence counsel of Dai suggested that the defendant Dai did not sell his child for the purpose of profit. First, the family had difficulties to raise the new-born, as they already had two children. Second, the proceeds were used for refund. Thirdly, the adopters have intention and ability to raise the child. [...] Even if the defendant's act constitutes a crime, he voluntarily confessed and pleaded guilty, and had obtained the forgiveness of the child's mother, therefore, the punishment should be mitigated according to law [...].

Court decisions:

The court held that the defendant Dai's purpose was profiting from selling his child; therefore, his act constituted the crime of child trafficking. The defendant Zheng provided help and intermediaries for the selling of the child; therefore, he is also guilty of child trafficking.

Dai, having committed the crime of child trafficking as the principal offender, was sentenced to five years in prison and fined 5,000 yuan (625 euros).

Zheng, having committed the crime of child trafficking as the accomplice, was sentenced to two years in prison and fined 2,000 yuan (250 euros).

The unlawfully obtained 29,000 yuan (3,625 euros) was confiscated according to law.

In addition to the extreme poverty, which is a causative factor that makes people sell their children, also relative poverty or the gap between the rich and the poor has a strong influence on child trafficking. It is especially true for regions with better economic development. As one of the wealthiest provinces in China, Guangdong still has 1.79 million persons living under the provincial relative poverty line, i.e. the disposable income less than 4,000 *yuan* (500 euros) per year (Cheng 2016). The province has, at the same time, the best-developed cities and the remotest rural areas. It is the same case in Shandong, which ranked the third in GDP of all the Chinese provinces while having 2.42 million persons living under the provincial poverty line (Shi 2016). The process of modernisation has widened the gap between the rich and the poor, and the development of communication

technology transmits the image of modern cities to remote areas. The pursuit of a better or even luxurious life has become a faith for many Chinese people, and the desire for wealth is even stronger for the youth living in rural areas. However, due to the lack of proper education, values are distorted. Children may be seen as an obstacle on their path of seeking wealth or a tool for making money, for instance, in the case of *2014-SD-F-Preliminary Criminal Trial-No.79* (see Box 6), the twenty-four-year-old defendant Fan sold his son for 56,000 *yuan* (7,000 euros) in the hospital two days after his girlfriend gave birth. Although the man claimed that he is too poor to raise the baby and to pay for the medical expenses for his girlfriend, after having sold his son, Fan used the money to pay for the hotel and a used car and spent it all in a month.

Box 6: Case 2014-SD-F-Preliminary Criminal Trial-No.79

***2014-SD-F-Preliminary Criminal Trial-No.79 [(2014)费刑初字第79号]***

Date: 27 February 2014

Before: People's Court of Fei County, Shandong Province

Public Prosecution Agency: People's Procuratorate of Fei County, Shandong Province

Defendant:

Fan (Male, born on 20 April 1989. Residence: Fei County, Shandong Province).

Case summary:

On 4 October 2013, Fan's cohabiting girlfriend An gave birth to a baby boy at a hospital, and Fan wanted to sell the child for profit. On 16 October 2013, Fan sold his son to Wang A for 56,000 *yuan* (7,000 euros), through the intermediary of a doctor (Doc. Wang B) from the Department of Obstetrics and Gynaecology of the hospital where his son was born and of another person.

According to the statements and testimony of Fan, An, Wang A and Doc. Wang B, the sister of Wang A told her that she wanted to adopt a boy, and Wang A asked Doc. Wang B, who is one of her distant relatives. Several months later, Doc. Wang B was told that a couple in her department gave birth to a boy and wanted to sell the child. She contacted Fan and Wang A, the child's father, while concealing the facts from An. The doctor also examined the child and informed Wang A and the buyer that the child had cardiac hypoplasia, though it was not severe. Initially, Fan asked for 70,000 *yuan* (8,750 euros), while the buyer bargained over because the child was not healthy. Finally, the child was traded for 56,000 *yuan* (7,000 euros). Fan spent the money for a second-hand car and other expenses. An broke up with Fan because he beat her several times.

Court decisions:

The court held that the defendant Fan sold children for the purpose of profit, and his act constituted the crime of child trafficking.

Fan, having committed the crime of child trafficking, was sentenced to two years in prison and fined 10,000 *yuan* (1,250 euros).

Economic difficulties sometimes are related to other disadvantaged social status, such as marital status. A typical case is *2014-GD-HD-Preliminary Criminal Trial-No.271* (see Box 3 in Chapter II). Two defendants Lin and Lian had a child out of wedlock and then sold the new-born baby for 70,000 *yuan* (8,750 euros). Lin was 21 years old when he committed the crime, one year younger than the

Chinese legal age of marriage, and five years younger than his girlfriend, which is against Chinese customs. In the defence statements, both perpetrators explained that being both unemployed, they sought help from their families, who opposed their relationship and the birth of the child. Without any help from the family or decent income, they could not afford the medical expenses for childbirth, which was very high for the child born out of wedlock. The accumulated difficulties pushed this young couple to make the wrong decision.

Poverty leads to low enrolment rate at school and higher education and limits the quality of education, which raises the vulnerability of children living in low-income families. Low enrolment rate at school means children are at risk of been exploited physically, sexually, or for committing criminal activities (UNICEF East Asia and Pacific Regional Office 2009). Although this situation was not identified in the Chinese cases examined for this study, there have been news reports of similar conditions. Nonetheless, poor education aggravates the vulnerability of children in the Chinese provinces. First of all, without proper sex education, many children are born from unwanted pregnancies. Their births aggravate the already bad economic situation of their parents or put single mothers in a disadvantaged situation. These babies are more likely to be abandoned or trafficked. Moreover, illiteracy and poor education of parents may also limit their ability to protect their children. Sometimes the parents did not know that they should report to police when their children were abducted by traffickers<sup>85</sup>. Also, poor education is closely related to offenders of child trafficking. Among the 785 perpetrators with information on their education level, 24.6% of them were illiterate, 69.8% did not complete compulsory education, while only 4.7% of them had received secondary or higher education. Presumably, due to the low education level, they had little employment opportunities, and they were not aware of the law. It is not rare that defendants were convinced that what they were doing, to sell or buy children, was not a crime.

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<sup>85</sup> See the transcription of the interview with a volunteer of BBHJ in Appendix II.

This study also identified a rarely recognised way in which poverty flourishes child trafficking. Specifically, poverty not only increases the vulnerability of children living in families with economic hardship, which are the sources of potential victims of child trafficking, it also fosters the demand for child trafficking. As the data in the previous chapter showed, a vast majority of the victims were sold to rural areas (see 错误!未找到引用源。 ). Many buyers did not have a rich economic background. It is not rare that the buyer cannot have his or her own child because of poverty, which makes him or her unmarried and unqualified for legal adoption. For instance, in the case *2013-SD-F-Preliminary Criminal Trial-No.325* (see Box 7), the defendant Lu A trafficked a 28-year-old Burmese woman and her one-year-old daughter into China, and sold them to Lu B, who bought the woman and her daughter for his cousin Lu C. Lu B stated that he was worried about his cousin as he was still unmarried at his fifties, and persuaded him to buy a wife. Lu A asked for 48,000 *yuan* for the woman and her daughter, while Lu C only had 2,000-*yuan* deposit. In order to pay Zhao, he borrowed 35,000 *yuan* from his sisters, and 13,000 *yuan* from his cousin Lu B. Poverty make Lu C and many other Chinese men living in rural areas impossible to build a normal family with a woman who voluntarily marries them. Consequently, they turn to the black market of human trafficking for pursuing a woman or a girl to be their wives or a boy to carry on his family name.

Box 7: Case 2013-SD-F-Preliminary Criminal Trial-No.325

**2013-SD-F-Preliminary Criminal Trial-No.325 [(2013)费刑初字第325号]**

Date: 10 September 2013

Before: People's Court of Fei County, Shandong Province

Public Prosecution Agency: People's Procuratorate of Fei County, Shandong Province

Defendant:

Lu A (Male, born on 1 February 1972. Residence: Fei County, Shandong Province).

Case summary:

In early April 2013, the defendant Lu A bought, a Vietnamese woman as "wife" (with a 1-year-old daughter), for the price of 48,000 yuan (6,000 euros) for his cousin (Lu B). However, the woman did not want to live with Lu B and resisted fiercely. Lu A tried to return the woman and her daughter to the seller (Zhao, accused separately) but was refused. Then he sold the Vietnamese woman's daughter to a couple living in the same county for 28,000 yuan (3,500 euros).

On 26 April 2013, Lu A hosted Zhao, Vietnamese women (Yi, and Di) and a 13-year-old Vietnamese girl (Na), all victims of trafficking. On 3 May 2013, Lu A and Zhao sold Na to a local resident Yao A. Yao A stated that he bought the girl to be the wife of his son (Yao B), who was 24 years old and mentally disabled because of an accident. The victim Na refused to have sex with Yao B or marry him. When she was living with the Yaos, she lived with Yao B, but was not violated or abused by Yao B or his father.

Court decisions:

Zheng, having committed the crime of child trafficking as the accomplice, was sentenced to seven years in prison and fined 10,000 yuan (1,250 euros).

### **3.1.2. Discrimination**

It is a fundamental human right that everyone is entitled to be free from discrimination of any kind, such as race, colour, sex, language, religion, political or other opinions, national or social origin, property, birth, or other status. The right to freedom from discrimination is not only recognised in the Universal Declaration of Human Rights, but also enshrined in all international human rights treaties, including, the ICCPR, ICESCR, ICERD, CEDAW, CRC, CRPD, and ICMW. In many studies, discrimination is considered as one of the root causes of trafficking in persons (Cohen 2003, Davis et al. 2003, ECOSOC 2000, Gallagher and Skrivankova 2015). Discrimination has also been verified as a causative factor of child trafficking in the research. Grounds of discrimination, against the victims or their families, include gender, age, health, and social status.

#### ***A. Gender-based discrimination and violation***

Just as in most parts of the world, women and girls in China are victims of gender-based discrimination and violence. According to Chinese tradition, only men can carry on the family name and blood. Women are subordinate to men, and a daughter is not considered as a real member of the family as she will marry someone and then belong to the family of her husband. Although nowadays

women have the same civil rights as men, for instance inheriting property and land, keeping her family name, and giving her family name to her children, the patriarchal attitudes still prevail in many places, especially in rural areas. In the countryside, families without sons will be looked down on by their neighbours. The extent of gender discrimination in the selected provinces is also reflected in other statistics. For instance, according to the data of the 2000 and 2010 population census of China, the ratio of male births of the second, third, and fourth child in Guangdong Province are much higher than the national level in 2000 (See Table 15). It was similar in the case of Shandong in 2010. The sex selection is aggravated by the one-child policy, which is reflected in the significant difference between the sex ratio of the first and the second child (Wu et al. 2006).

Table 15 Sex ratio at birth (male births per 100 female births)

	2000 Population Census				2010 Population Census			
	1 <sup>st</sup> child	2 <sup>nd</sup> child	3 <sup>rd</sup> child	4 <sup>th</sup> child	1 <sup>st</sup> child	2 <sup>nd</sup> child	3 <sup>rd</sup> child	4 <sup>th</sup> child
National	107.12	151.92	160.29	161.42	113.73	130.29	161.56	146.5
Guangdong	117.34	179.7	183.92	191.01	122.3	138.72	153.42	142.64
Shandong	106.28	132.76	159.49	211.54	113.39	144.76	242.54	207.32
Yunnan	102.94	117.62	128.92	133.7	108.88	116.5	138.93	128.57

Source: National Bureau of Statistics

The preference of boys is also reflected in the data of this study. As Figure 10 in the previous chapter showed, the proportion of male victims is much higher than female in the mode of abduction and sale of children (M1), as well as in the mode of parental sale of children (M2). In the organised child trafficking mode, there are more female victims than males, which means that the sale of girls is more arbitrary. Parents do not really care about the background of the buyer; instead, they only want to get rid of their daughter in exchange for some money. Among the three provinces, trafficking in Guangdong and Shandong are more related to gender discrimination. In these two provinces, the proportion of male victims, either trafficked from or into the provinces, is much higher than females.

The sex factor plays a different role in different phases of trafficking and different modes of the crime. The findings showed that gender-based discrimination or discrimination against women not

only makes girls vulnerable to be sold, trafficked, or exploited but also increases the vulnerability of boys to be targeted by traffickers. The demand for male children was stimulated by the tradition of preference of male children and increased by the birth control policy. The demand and price of male children and infants are much higher than that of female (see Figure 14), which means boys are at more risk than girls of becoming victims of abduction and sale of children. Usually, those who abduct children by means of violence target mainly young boys or male infants, for instance, in the case *2014-GD-SZ-Intermediary Criminal Trial -No.650* (see Box 8), the defendant Cheng heard that someone offered 10,000 *yuan* to purchase a boy. He and his accomplices targeted an internal migrant family who had a male infant and had moved to the apartment next to their family. After more than ten days of premeditation and building a relationship with the family, they abducted the infant and sold him to the buyer living in the same district. The police found the victim 14 years after the incident. The root cause of this criminal case was that the buyer wanted to buy a boy as her grandson because all of her grandchildren were female. Similar cases also happened in the other two provinces of China.

Box 8: Case 2014-GD-SZ-Intermediary Criminal Trial -No.650

**2014-GD-SZ-Intermediary Criminal Trial -No.650 [(2014)深中法刑一终字第650号]**

Date: 16 July 2014

Before: Intermediate People's Court of Shenzhen, Guangdong Province

Public Prosecution Agency: People's Procuratorate of Longgang District, Shenzhen, Guangdong Province

Defendants:

Xie (Female).

Cheng (Male).

Chen (Male).

Liu (Male).

Case summary:

In July 1999, the defendants heard that someone wanted to buy a boy; therefore, they planned to abduct the child of Li, who had a new-born baby boy. Cheng rented an apartment next to Li and established a good relationship with the Li family. On 20 July 1999, the defendant Chen distracted the mother of the victim and Cheng abducted the six-month-old child. Then the defendant Xie contacted the buyer and took the child to a hospital for a health examination. Afterwards, the child was sold for 9,000 yuan (1,125 euros). On 31 July 2013, the victim was traced.

According to the testimony of the buyer's son, all the grandchildren of his mother were girls, so she wanted to buy a boy as her grandson.

Court decisions:

The court held that the four defendants jointly committed the crime of child trafficking.

Xie, committed the crime of child trafficking as the principal offender, was sentenced to nine years in prison and fined 9,000 yuan (1,125 euros).

Cheng, having committed the crime of child trafficking as the principal offender, was sentenced to eight years in prison and fined 7,000 yuan (875 euros).

Chen, having committed the crime of child trafficking as the principal offender, was sentenced to six years and nine months in prison and fined 7,000 yuan (875 euros).

Liu, having committed the crime of child trafficking as the accomplice, was sentenced to three years and six months in prison and fined 4,000 yuan (500 euros).

Ironically, the preference of boys can make them an economic burden for the family, which has also been a cause of some parents to sale their sons. Where childbirth is not strictly controlled, many families may have more than two children. Those families with economic difficulties might sell their youngest son if they already had one or more male offspring. The reason is that parents tend to give more attention and better care to their sons than daughters: raising a son will cost much more than a daughter for the family. In addition to ordinary expenses, parents have to prepare at least a house and high bride price for their sons. More sons signify an enormous economic burden for the family. Therefore, although sons are given more value, the preference can also make them vulnerable to trafficking. In the case *2014-YN-GN-Preliminary Criminal Trial-No.98* (see Box 9), the defendant Yang sold his new-born son for 36,900 *yuan*, confessing that he and his wife already had two sons and they intended to have a girl for the third child. When he knew that the new-born child was a boy again, Yang thought the burden of raising three sons was too heavy and decided to sell him. Similar

cases were also identified in Shandong, see, for instance, Box 6: Case 2014-SD-F-Preliminary Criminal Trial-No.79.

Box 9: Case 2014-YN-GN-Preliminary Criminal Trial-No.98

**2014-YN-GN-Preliminary Criminal Trial-No.98 [ (2014) 广刑初字第98 号]**

Date: 13 June 2014

Before: People's Court of Guangnan County of Yunnan Province

Public Prosecution Agency: People's Procuratorate of Guangnan County, Yunnan Province

Defendants:

Yang Zhichun (Male, born on 11 August 1971. Residence: Guangnan County, Yunnan Province)

Yang XX (Male, born on 11 May 1988. Residence: Guangnan County, Yunnan Province)

Case summary:

On 19 October 2013, the wife of Yang Zhichun gave birth to a boy, who was the third son of the family. A local leader asked him whether he wanted to sell the child, reminding him that the birth of the child violated the birth control policy. Yang Zhichun also thought that he wanted a daughter, and the burden of raising three sons was too heavy: he sold the child, through the intermediary of Yang XX, for 36,900 yuan (4,612.50 euros). Yang XX received 1,000-yuan (125 euros) commission from the buyer.

Court decisions:

Yang Zhichun, having committed the crime of child trafficking as the principal offender, was sentenced to four years in prison and fined 2,000 yuan (250 euros).

Yang XX, having committed the crime of child trafficking as the accomplice, was sentenced to three years in prison and fined 2,000 yuan (250 euros).

The unlawfully obtained 37,900 yuan (4,737.50 euros) was confiscated according to law.

Gender-based violence is also an indirect cause of child trafficking. The mother of the trafficked child was the direct victim of discrimination against women and gender-based violence, who had no capacity to protect her child, for instance, in Box 6: Case 2014-SD-F-Preliminary Criminal Trial-No.79 (see Box 6), the mother of the trafficked child was a victim of domestic violence. She was not allowed to oppose the sale of her child and had experienced physical violence from her partner. Due to this gender-based violence, the mother could not protect her child from being trafficked.

Although there is no evidence to show that the gender-based discrimination pushes girls to sexual exploitation industries in the three provinces, it does not mean that the trafficking of women and girls for forced prostitution does not exist in China. The lack of examples of children trafficked for sexual exploitation is probably due to the way child trafficking and relevant acts are criminalised in the Chinese legal system, as previously explained. Nevertheless, gender-based discrimination does play a key role in increasing the vulnerability of children, both male and female, to be trafficked in their early childhood.

## ***B. Persons with disabilities***

Discrimination against persons with disabilities is another factor that increases the vulnerability of children to trafficking. Persons with disabilities too often face marginalisation or exclusion from the community to which they belong and violations of their human rights. Because of the barriers to their participation in social life, some persons with disabilities and their families live in economic hardship. Women and girls with disabilities are often at high risk of violence, abuse, and exploitation.

In the three Chinese provinces, discrimination against persons with disabilities affects child trafficking in different ways. In general, because of discrimination, children with disabilities are less likely to become victims of trafficking. Instead, they are more likely to be abandoned or maltreated by their family members. However, there are some exceptions: mentally retarded children, especially teenagers, are facing risks of being physically and sexually exploited. There have been reports on boys and men with mental retardation been forced to work as slaves in illegal brickyards<sup>86</sup>. Mentally retarded girls are vulnerable to be trafficked for sexual and reproductive exploitation. Some of them become victims of trafficking directly, being abducted and then sold to someone for forced marriage or prostitution. In the case *2016-SD-1403-Preliminary Criminal Trial-No.136* (see Box 10), a man sold five children that he had with a woman with severe mental retardation. The forensic identification proved that the offender also had mild mental retardation; therefore, he has limited criminal responsibility. While the women, who had been cohabiting with the offender since 2000, had no sexual defence ability at all and no capacity to protect her child thereof.

Box 10: Case 2016-SD-1403-Preliminary Criminal Trial-No.136

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<sup>86</sup> BBC News. (2007). *China “will catch slave owners”*. Retrieved from <http://news.bbc.co.uk/2/hi/asia-pacific/6759399.stm>, [accessed on 30 June 2019].

**2016-SD-1403-Preliminary Criminal Trial-No.136 [(2016) 鲁 1403 刑初 136 号]**

Date: 28 February 2017

Before: People's Court of Lingcheng District, Dezhou City, Shandong Province

Public Prosecution Agency: People's Procuratorate of Lingcheng District, Dezhou City, Shandong Province

Defendant:

Song (Male, born in March 1960. Residence: Lingcheng District, Dezhou City, Shandong Province).

Case summary:

The defendant Song cohabited with a woman with mental retardation. From 2008 to 2016, he sold 5 children, all new-born at the time, to five different buyers.

1. In the Autumn of 2008, Song's cohabitant, who was mentally retarded, gave birth to a baby boy. Song sold him for 10,000 yuan (1,250 euros). The child was illicitly adopted by the buyer.
2. In early 2010, another buyer asked Song for a child. On 21 May 2010, the same woman gave birth to a baby boy, and Song sold the child for 10,000 yuan (1,250 euros). The child was illicitly adopted by the buyer.
3. In March 2011, Song's cohabitant was pregnant again, and Song contacted a buyer before the child was born. In September 2011, Song's cohabitant gave birth to a boy, and Song sold the child for 10,000 yuan (1,250 euros). The child was illicitly adopted by the buyer.
4. In the Summer of 2014, Song's cohabitant was pregnant, and Song contacted a buyer before the child was born. On 29 November 2014, Song's cohabitant gave birth to a girl, and Song sold the child for 18,200 yuan (2,275 euros). The child was illicitly adopted by the buyer.
5. In late 2015, a middleman contacted Song for buying his upcoming child. In March 2016, Song's cohabitant gave birth to a girl, and Song sold the child for 24,000 yuan (3,000 euros).

According to the forensic psychiatric examination, the Defendant Song has mild mental retardation. When he committed the crime, he was a person with limited criminal responsibility. The woman cohabited with him is severely mentally retarded and has no sexual defence capability.

Court decisions:

The court held that the defendant Song committed the crime of child trafficking, while the penalty should be reduced considering that the defendant was a person with limited criminal responsibility when committing the crime.

Song, having committed the crime of child trafficking, was sentenced to eight years in prison and fined 20,000 yuan (2,500 euros).

The unlawfully obtained 38,200 yuan (4,775 euro) was confiscated according to law.

As previously mentioned, poverty is both a push and a pull factor of child trafficking in China. Similarly, discrimination against persons with disabilities can also be a factor that fosters the demand of children, as disability makes the person unable to get married or to adopt a child through legal procedures. In the Case 2013-SD-F-Preliminary Criminal Trial-No.325 (see Box 7), the defendant Lu A sold a 16-year-old Burmese girl to Yao, who intended to buy a "wife" for his 24-year-old mentally retarded son. Yao stated that his son had an incident and broke the brain at the age of five. Because of the disability, his son could not find any girlfriend; therefore, he decided to buy him a "wife". Another example is the case 2017-SD-1724-Preliminary Criminal Trial-No.94 (see Box 11), the defendant Lu sold a male infant to Wang, who claimed that he bought the baby for his son and daughter-in-law, who were both mentally disabled and infertile.

Box 11: Case 2017-SD-1724-Preliminary Criminal Trial-No.94

**2017-SD-1724-Preliminary Criminal Trial-No.94 [ (2017) 鲁1724 刑初94 号 ]**

Date: 17 April 2017

Before: People's Court of Juye County, Shandong Province

Public Prosecution Agency: People's Procuratorate of Juye County, Shandong Province

Defendant:

Lu (Male, born on 7 July 1958. Residence: Juye County, Shandong Province).

Case summary:

The defendant Lu intermediated and assisted the sale of a child for 74,000 yuan (9250 euros) outside a hospital. The buyer, Wang, was the father of an intellectually disabled person, whose wife was also mentally ill. As he stated in the testimony, he bought the child for his son and daughter-in-law, who were infertile.

Court decisions:

Lu, having committed the crime of child trafficking, was sentenced to seven years in prison and fined 10,000 yuan (1,250 euros).

Teenagers with mental illness are likely to be trafficked for labour or sexual exploitation, while young children of people with disabilities are vulnerable to trafficking because of the limited capacity of their parents to protect them. In addition, being marginalised in society, persons with disability and their relatives might pursue illegal ways to have a traditional family with a wife and child. To sum up, the discrimination and marginalisation of persons with disabilities is a causative factor, direct or indirect, of child trafficking in China.

### ***C. Other status***

Family is the first place where children could receive protection. Consequently, the marital status of the parents affects the vulnerability of children to child trafficking directly. In general, a single mother is discriminated against in Chinese society, and children born out of wedlock are discriminated against by the family (see Box 3: Case 2014-GD-HD-Preliminary Criminal Trial-No.271), in society, and in law. Commonly, parents and/or other relatives of a single mother persuade or force the unmarried pregnant woman to abort the child. It is also not rare that parents and/or relatives of a single mother sell her child, especially concerning unmarried young women or girls. In addition, family disintegration caused by divorce, widowhood, or other reasons is another factor that increases the vulnerability of children to trafficking.

The birth control policy and relevant regulations worsen the condition of children born out of marriage. The policy seriously affects the childbirth registration (Li et al. 2010), binding it to the

designated residence of mother or father, the medical birth certificate and the birth permission issued by the Population and Family Planning department. Women or unmarried couples face a series of difficulties for a child born out-of-law. Firstly, without legal marriage registration, it is difficult for the birth permission to be issued, without which women could be refused by the hospital, and the cost of medical treatment related to parturition will be much higher than the normal childbirth. Secondly, until 1997, children of unmarried couples could not receive birth registration, which is a basic right of the child and affects other fundamental human rights such as the right to acquire a nationality and right to education. Among 204 victims of child trafficking in the three Chinese provinces, 41% of them were born out of marriage. All these obstacles increase the vulnerability of children to become victims of trafficking committed by their parents or other relatives.

The child control policy not only aggravated the already strong discrimination of the society against children born out of wedlock but also put some legitimate children at risk. This point will be further developed in the next section.

### **3.1.3. Inadequate protection of the rights of the child**

Poverty, imbalanced economic growth between regions and areas, as well as discrimination based on gender, health and other status, are structural human rights violations that cause discrimination. The vulnerability of children belonging to a disadvantaged group is aggravated by a series of policies and legislation that breach international human rights law and principles (Cameron and Newman 2008). It is a general principle that children are entitled to special care and assistance. The best interests of children shall be a primary consideration in all actions considering children. However, in practice, the rights and best interests of children are not taken into consideration by relevant stakeholders. The lack of protection to children facilitates the operation of child trafficking; therefore, it increases the vulnerability of children, in particular, those who are part of disadvantaged groups.

### *A. Family planning policy*

The birth control policy has played an active role in child trafficking in China. Strictly enforced at the end of the 1970s and loosened only recently, the controversial family planning policy aims at controlling the population of China. Before 2015, the policy was mainly “one-child policy”. Every urban family was allowed to have only one child, with some exceptions: ethnic minorities, rural families and families with children with disabilities could have two or three children. The breach of family planning regulation would lead to a series of sanctions, including high amount penalties, dismissal of both couples, denial of household registration of the baby and consequently denial of the baby’s ration coupons, schooling, as well as other social benefit and rights (Feng et al. 2013, Whyte et al. 2015, 150). The “one-child policy” has been criticised for the violation of human rights, and its negative consequences including sex-selective abortion, female infanticide, and child abandonment (Feng et al. 2013).

Due to the lack of data and research, it is not clear to what extent the “one-child policy” affects child trafficking in China. Nevertheless, the case laws of Guangdong, Shandong, and Yunnan in this research proved that the birth control policy was one of the factors that amplifies the crime of child trafficking in these provinces. The most direct impact is that some parents sold their children because they did not want to pay, or were too poor to pay the sanction for the child born in breach of the birth control policy (see Box 4 and Box 9). The family planning policy influences other laws and regulations that affect child trafficking. For instance, according to Criminal Law (Article 261), General Principles of Civil Law (Article 14), the Marriage Law (Article 21) and the Law on the Protection of Minors, parents cannot abandon children or refuse their maintenance obligation. According to the Adoption Law, the “adoption shall not contravene laws and regulations on family planning” (Article 3) “persons having placed out a child for adoption may not bear any more children, in violation of the regulations on family planning, on the grounds of having placed out their child for adoption” (Article 19). These regulations, on the one hand, intended to protect children from

abandonment; on the other hand, could place some children at risk of been mistreated or neglected (Cao 2014, 165). Due to the strict limitation of the legal procedure of giving a child to social welfare institutes, parents who have difficulties in raising the child have to seek illegal solutions, such as infanticide, abandonment, or selling the child. Following the same logic, it is impossible for those who already had a child but want to adopt another one to do so through a legal procedure. This inevitably results in someone seeking to buy, or “adopt” as they claim, children from traffickers.

### ***B. Child protection system***

It is the State’s obligation to provide special care, protection, and assistance to children, taking the best interests of the children as the first consideration. A comprehensive child protection system is comprised of the set of laws, policies, regulations, and services across all social sectors that provide adequate preventive measures to vulnerable or disadvantaged children as well as their families, and effective protection to victims of child violence, abuse, exploitation, and neglect (Man et al. 2017, UNICEF 2008). In addition to some basic elements (including a statutory responsible agency for child protection, a mandatory reporting system, a specified process of addressing child abuse cases, and a system providing alternative out-of-home care), child protection also requires prevention mechanisms that support and strengthen families so as to reduce social exclusion and to lower the risk of violence and exploitation. It is the State’s responsibility under international human rights law to protect children from all forms of violence<sup>87</sup>.

It has been noted that there is a lack of a complete child protection system in China (Man et al. 2017, Peng et al. 2015, Philanthropy Research Institute and UNICEF 2011, Zhao et al. 2017). Although there are a series of legislation to protect children’s rights, including the *Law on the*

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<sup>87</sup> UN Committee on the Rights of the Child (CRC), (2011) *General comment No. 13 (2011): The right of the child to freedom from all forms of violence*, 18 April 2011, CRC/C/GC/13, para. 32.

*Protection of Minors* adopted in 1991, the *Criminal Law*, and the *Domestic Violence Act* adopted in 2016, there is a lack of comprehensive and unified child protection act which is directly applicable at the national level. In addition, there is no specified agency with responsibility for child protection in China. Instead, the responsibility is shared by several agencies, including civil affairs departments, Working Committees on Women and Children, and public security departments. The compulsory reporting system was created only recently via the adoption of the *Domestic Violence Act*. Staff at institutes that have direct contact with children as well as their families, including schools, kindergartens, medical institutions, social work service institutions, welfare institutions, and other relevant organisations “should report to the local public security organisation without delay when people with limited or no capacity for civil conduct are suffering or suspected to suffer domestic violence”<sup>88</sup>. However, the effectiveness of the reporting system has been criticised by scholars (Man et al. 2017, Zhao et al. 2017). Children of families with economic hardship and people (in particular women) with disabilities are not given special or adequate protection. Without a channel to ask for help and assistance, people belonging to disadvantaged categories were hardly able to provide appropriate protection to their children and were at risk of being exploited by traffickers.

Since the great majority of victims in this study were infants, the weakness of child protection in medical institutions was more pronounced than other institutions such as schools. Personnel working in medical institutions, in particular in gynaecology, paediatrician and obstetrics, usually have direct contact with children and their families (Hadjipanayis et al. 2018). They are expected to provide protection to children; however, children at risk of trafficking were failed to be identified in the early stage. In most of the parental sale of children and organised child trafficking cases, hospitals or medical institutions were somehow involved (see For instance, the victim child is born exceeding the stipulated limit of a birth-control policy, which leads to fines that are too heavy for those who are

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<sup>88</sup> Article 14 of Anti-domestic Violence Law of the People’s Republic of China.

already living in a bad economic condition. In case *2016-YN-2628-Preliminary Criminal Trial-No.83* (see Box 4), two defendants, Wang and Yang, sold their third son, who was born in breach of the birth-control regulation, for 100,000 yuan (12,500 euros), which is thirty-five times of the annual income according to the national rural poverty line of 2015 (Xian et al. 2016, p. 6). Both defendants were farmers, and both claimed that they lived in an impoverished condition, and already had two children. They decided to sell the child because they could neither afford a third child nor the sanction for breaking the birth-control regulation. Similar cases are also reported in Shandong. In *2016-SD-0832-Preliminary Criminal Trial-No.126* (see [错误!书签自引用无效。](#)), the defendant Dai sold his third son for 29,000 yuan (3,625 euros) because the family could not afford, as the defendant claimed, one more child and the sanction.

Box 5: Case *2016-SD-0832-Preliminary Criminal Trial-No.126*). The most common way in which hospitals were involved was that traffickers and buyers always bring the infant or young child victims of trafficking for medical examination. Some infants were sold a couple of days after their births in the ward of the hospital. In all of these cases, medical workers would have witnessed or had the chance to notice the signs of trafficking, and subsequently report the suspected child trafficking to police; however, none of the detected cases in this study were reported by medical workers. Obviously, medical workers, who have direct contact with children and their parents were not effectively involved in child protection networks. However, in some cases medical workers could be directly involved in the trafficking chain as perpetrators, for example, in the Case *2014-SD-F-Preliminary Criminal Trial-No.79* (see Box 6), it was medical workers who offered middlemen information about new-born babies and their parents, who were at risk of being targeted. On occasion, parents of the child also asked medical workers to help them sell their children (see Box 8: Case *2014-GD-SZ-Intermediary Criminal Trial -No.650*).

## **3.2 Human rights abuse during the process of trafficking**

Trafficking in persons is not a single action, but a process that may last for months, years, or even decades. From a victim's point of view, the incident of child trafficking begins at the moment of illicit action taken against the child or/and his or her family and lasts until the victim is freed from the control and exploitation of perpetrators. In child trafficking, the human rights violation is not necessarily presented in sexual or labour exploitations. The dignity and basic human rights are at risk of being violated at any moment during the process of trafficking, including right to life, liberty and security of person, right of the child to preserve his or her identity, right of child to not be arbitrarily separated from his or her parents, right to be free from violence and exploitation, right to be free from slavery, and so forth.

### **3.2.1. Human dignity**

First of all, trafficking in children and the sale of children are prohibited by international human rights treaties. Therefore, the crime of child trafficking per se is a form of violation of human rights, for instance, in the Case *2016-SD-0181-Preliminary Criminal Trial-No.410* (see Box 12). In this case, the court explicitly pronounced that, although the criminal act of selling the child was not completed, the conduct of the offender did violate the freedom of the victim, and had severely damaged the physical and mental wellbeing of the child.

Box 12: Case 2016-SD-0181-Preliminary Criminal Trial-No.410

2016-SD-0181-Preliminary Criminal Trial-No.410 [(2016)鲁 0181 刑初 410 号 ]

Date: 23 November 2016

Before: People's Court of Zhangqiu City, Shandong Province

Public Prosecution Agency: People's Procuratorate of Zhangqiu City, Shandong Province

Defendant:

Zhang (Female, born on 28 November 1988. Residence: Shandong Province).

Case summary:

On 16 June 2016, the defendant Zhang attempted to sell her 6-year-old daughter for 80,000 yuan (10,000 euros). Zhang had divorced the child's father. The child was living with her father and stepmother. until several days before the incident. The father of the child then gave the child to Zhang. Zhang stated that she did not want to take care of the child; therefore, she asked the owner of a clothing store whether she wanted to buy a child. The store owner reported to the police when Zhang offered her a price and made an appointment for selling her the child.

Court decisions:

The court held that the defendant Zhang had the purpose of illegally profiting from the sale of the child. Her conduct violated the personal freedom of the victim. Although the criminal act was prevented, Zhang's behaviour still severely damaged the physical and mental wellbeing of the victim and was socially harmful.

Zhang, having committed the crime of child trafficking, was sentenced to three years in prison and fined 10,000 yuan (1,250 euros).

Undoubtedly, the dignity of the victims is violated in the phase of exploitation, while sometimes the victim sexual exploitation in child trafficking is the child's mother. There have been recorded several trafficking cases in which women's reproductive right was abused by the trafficker. As a form of forced marriage, the victim, a young girl or woman with mental disabilities, was sold to a buyer and imprisoned in their home. Usually, she would be raped, forced to be pregnant, and exploited as fertility tools. Sometimes the woman was manipulated by the man with whom they lived with, especially when she had mental disabilities. For instance, in the Case 2016-SD-1403-Preliminary Criminal Trial-No.136 (see Box 10), a woman with mental retardation gave birth to five children during eight years, and all of them were sold by the biological father of the children. While in some other cases, pregnant women were recruited, usually from poor areas, and then transported to and concentrated on the place controlled by traffickers. They were taken to a hospital or clinic only at the moment of the birth, and their babies were sold right straight after. There was no evidence that these women were forced to be pregnant or to sell their children; however, it does not prevent from concluding that women's reproductive capacity were exploited by the traffickers.

The violation of human rights and dignity also exists before or when there is no exploitation of victims. As defined in the Chinese legal framework, regardless of how child trafficking was committed, the key act that determines child trafficking is the "sale". In this definition, the intrinsic

quality of child trafficking is the commodification of children. When children are treated and traded like commodities, they are deprived of their inherent human dignity and rights. By trading children in the black market, offenders (including traffickers, parents who sell their children and buyers) negate the humanity of victims and consequently denied all the human rights that children equally hold as human beings. The commodification of children is reflected in the prices and their differences offered and required. Children and infants were marked with a price with no difference with any goods. The fact that the price of boys is much higher than that of girls in the black market has consolidated this argument. Boys are considered more valuable than girls; therefore, traffickers asked, and buyers offered a higher price for boys. It was very common that buyers bargain with the trafficker because of some small physiological defects, such as a mole on the face, a birthmark, or the infant was thin, and so forth. The commodification of children is also reflected in the attitude of the perpetrators; for instance, in the mode of parental sale of children (M1), the offenders exchange children as if these children were their properties. Although they claim that they could not afford children and only want their children to grow up in a wealthy family, the fact of exchanging their children for a great amount of money reveals their real purpose, that is, to profit from their children.

Similarly, even though most of them wanted the child for adoption and not for exploitation, buyers also thought that it was not a big deal to buy a child if necessary. The most common excuses of buying a child recorded in this research are the following ones: childlessness; the absence of a male child in the family; already had a son but needed a daughter to make a perfect family. What the buyers really cared was not the interests of the child, but that of themselves. The bought child was nothing else but an object to complete their lives and plans of a “perfect family”. Obviously, in the eyes of middlemen and traffickers of organised criminal groups, children and infants are simply commodities. Moreover, in the slang of traffickers in Yunnan Province, male children are called “big goods” (see Box 13: Case 2013-SD-PY-Preliminary Criminal Trial-No.458) and female children are called “small goods” (see

Box 14: Case 2013-SD-DM-Preliminary Criminal Trial-No.132).

There was not any case in the research in which trafficked children were forced into the sex industry, labour exploitation, street selling, begging, or criminality. However, the absence of example is because that those cases did not go to trial as the crime of trafficking in persons but other crimes such as forced prostitution, forced labour, and so on. There have been reports about trafficked children being forced into begging and sometimes being tortured to be disabled. The exploitation of children and women in the trafficking industry brutally damages the dignity of victims.

**2013-SD-PY-Preliminary Criminal Trial-No.458 | (2015) 平刑初字第458号**

Date: 31 October 2016

Before: People's Court of Pingyi County, Shandong Province

Public Prosecution Agency: People's Procuratorate of Pingyi County, Shandong Province

Defendants: Ma HF (Female. Residence: Shandong Province).  
Jike SR (Male. Residence: Sichuan Province).  
Han JZ (Male. Residence: Heilongjiang Province).  
Zhao LR (Female. Residence: Shandong Province).  
Hu FX (Male. Residence: Shandong Province).  
Li GK (Male. Residence: Shandong Province).  
Wang XY (Female. Residence: Shandong Province).  
Zhang ZC (Male. Residence: Shandong Province).

Case summary:

From 2010 to August 2014, the defendants Ma HF and Jike SR, through the introduction of Han JZ, Zhao LR, Hu FX, Li GK, Wang XY and Zhang ZC, committed 9 child trafficking cases in Shandong Province. Ma HF and Jike SR engaged in all the 9 cases; Han JZ, Zhao LR and Hu FX engaged in 3 cases; Li GK engaged in 2 cases; Wang XY and Zhang ZC engaged in 1 case. According to the testimony of an accomplice, when communicating with the defendant Jike SR, they use "big stuff" to refer to "boys or male infants".

1. One day in October 2010, Ma HF and Jike SR, through Hu FX, sold a new-born boy to a buyer for 45,000 yuan (5,625 euros). Eight months later, the buyer found that the child was infected with HIV/AIDS, then returned to Ma HF and Jike SR.
2. On 17 May 2014, Ma HF and Jike SR, through Li GK, sold a new-born boy to a buyer for 40,000 yuan (5,000 euros). Li GK was paid for 200 yuan (25 euros).
3. On 11 July 2014, Ma HF and Jike SR, through Han JZ and Zhao LR, sold a new-born girl to a buyer for 40,000 yuan (5,000 euros). On the next day, the girl was returned to Jike SR because the girl was found unhealthy after a medical examination.
4. On 15 August 2014, Ma HF and Jike SR, through Han JZ and Zhao LR, sold a new-born girl to a buyer for 53,000 yuan (6,625 euros). After several days, the girl was returned to Jike SR because the girl was found unhealthy after a medical examination.
5. On 16 August 2014, Ma HF and Jike SR, through Han JZ and Zhao LR, sold a new-born boy to a buyer for 78,000 yuan (9,750 euros). On the next day, the girl was returned to Jike SR because the girl was found unhealthy after a medical examination.
6. On 17 August 2014, Ma HF and Jike SR, through Hu FX, planned to sell a boy for 50,000 yuan (6,250 euros). The trade was cancelled because the two parties failed to make an agreement on the price.
7. On 19 August 2014, Ma HF and Jike SR, through Wang XY, sold a new-born boy for 68,700 yuan (8,587.50 euros), of which 2,000 yuan (125 euros) was given to Ma HF and 6,500 (812.50 euros) was given to Wang XY.
8. On 24 August 2014, Ma HF and Jike SR, through Li GK, sold a new-born boy for 35,000 yuan (4,375 euros), of which was given 5,000 yuan (625 euros) to Ma HF and 600 yuan (75 euros) was given to Li GK.
9. On 31 August 2014, Ma HF and Jike SR, through Zhang ZC, sold a new-born boy for 65,000 yuan (8,125 euros), of which 5,000 yuan (625 euros) was given to Ma HF and 5,000 yuan (625 euros) was given to Zhang ZC.

Court decisions:

Ma HF, having committed the crime of child trafficking, was sentenced to twelve years in prison and fined 100,000 yuan (12,500 euros).  
Jike SR, having committed the crime of child trafficking, was sentenced to eleven years in prison and fined 80,000 yuan (10,000 euros).  
Han JZ, having committed the crime of child trafficking, was sentenced to five years and six months in prison and fined 60,000 yuan (7,500 euros).

Zhao LR, committed the crime of child trafficking, was sentenced to five years and six months in prison and fined 60,000 yuan (7,500 euro).

Hu FX, having committed the crime of child trafficking, was sentenced to five years in prison and fined 60,000 yuan (7,500 euros).

Li GK, having committed the crime of child trafficking, was sentenced to three years in prison, suspended for five years and fined 50,000 yuan (6,250 euros).

Wang XY, having committed the crime of child trafficking, was sentenced to two years and six months in prison, suspended for three years and fined 30,000 yuan (3,750 euros).

Zhang ZC, committed the crime of child trafficking, was sentenced to two years and six months in prison, suspended for three years and fined 30,000 yuan (3,750 euro).

**2013-SD-DM-Preliminary Criminal Trial-No.132 [(2013)东刑一初字第132号]**

Date: 19 December 2013

Before: People's Court of Dongming County, Shandong Province

Public Prosecution Agency: People's Procuratorate of Dongming County, Shandong Province

Defendants: Cui YS (Male, born on 25 April 1968. Residence: Shandong Province).  
Shi ZSQ (Male, born on 13 May 1981. Residence: Sichuan Province).  
Bi TZE (Male, born on 21 July 1985. Residence: Sichuan Province).  
Li SL (Male, born on 7 April 1969. Residence: Shandong Province).  
Bian XX (Male, born on 10 May 1947. Residence: Shandong Province).  
Chen XY (Female, born on 1 February 1967. Residence: Shandong Province).  
Sun XX (Male, born on 16 October 1962. Residence: Shandong Province).  
Sun XA (Female, born on 10 November 1965. Residence: Shandong Province).  
Wang XX (Male, born on 19 December 1965. Residence: Shandong Province).  
Wang XA (Female, born on 23 August 1988. Residence: Shandong Province).  
Li XX (Male, born on 17 April 1968. Residence: Shandong Province).

Case summary:

1. One day in October 2010, the defendant Cui YS sold a male infant to the defendant Sun XA for 45,000 yuan (5,625 euros).
2. On 16 February 2013, the defendant Cui YS sold a female infant to a buyer (accused separately) for 48,500 yuan (6,062.50 euros).
3. One day in February or March 2012, the defendant Cui YS sold a male infant to the defendant Sun XA for 52,000 yuan (6,500 euros).
4. On 10 March 2013, the defendants Cui YS, Li SL, Shi ZSQ, Bi TZE, and Bian XX, sold a female infant to a buyer (accused separately) for 46,000 yuan (5,750 euros).
5. On 14 March 2013, the defendants Cui YS, Li SL, Chen XY, Shi ZSQ, Bi TZE, Bian XX, Li XX and Wang XX sold a female infant to the defendant Wang XA for 33,000 yuan (4125 euros).

The defendant Cui YS was the principle middleman in this child trafficking network. The defendants Shi ZSQ and Bi TZE were middlemen who had direct contacts with parent-sellers of the trafficked children and provided children to Cui YS. The defendants Li SL, Chen XY, Sun XX and Bian XX had contacts with buyers, who bought children for illicit adoption. Cui YS bought children from other persons including Shi ZSQ and Bi TZE and then resold them to buyers through Li SL, Chen XY, Sun XX and Bian XX. According to the statement of the defendant Shi ZSQ, when communicating with the defendant Cui YS, they use "small goods" to refer to "girls or female infants", and "goods" was used to refer to "child or children". The buyers and the relevant traffickers always took the child to a hospital for a health examination before the transaction.

Court decisions:

Cui YS, having committed the crime of child trafficking, was sentenced to fourteen years in prison and fined 20,000 yuan (2,500 euros).

Shi ZSQ, having committed the crime of child trafficking, was sentenced to seven years in prison and fined 5,000 yuan (625 euros).

Bi TZE, having committed the crime of child trafficking, was sentenced to seven years in prison and fined 5,000 yuan (625 euros).

Li SL, having committed the crime of child trafficking, was sentenced to four years in prison and fined 5,000 yuan (625 euros).

Bian XX, having committed the crime of child trafficking, was sentenced to three years in prison and fined 5,000 yuan (625 euros).

Sun XX, having committed the crime of child trafficking and buy a trafficked child, was sentenced to three years and six months in prison and fined 5,000 yuan (625 euros).

Chen XY, having committed the crime of child trafficking, was sentenced to two years in prison and fined 2,000 yuan (250 euros).

Sun XA, having committed the crime of buying a trafficked child, was sentenced to one year in prison and suspended for two years.

Wang XA, having committed the crime of buying a trafficked child, was sentenced to one year in prison and suspended for two years.

Wang XX, having committed the crime of buying a trafficked child, was sentenced to six months in prison and suspended for one year.

Li XX, having committed the crime of buying a trafficked child, was sentenced to six months in prison and suspended for one year.

### 3.2.2. Rights of the child

Due to physical and mental immaturity, the child needs special safeguards and protection. The best interests of the child should be the paramount consideration<sup>89</sup>. However, this right of the child is violated in the process of trafficking. In the parental sale of children and organised child trafficking, parents sold their child to a stranger or a trafficker, without any concern as to whether the child would receive appropriate care and ignoring the risks of exploitation and abuse. The traffickers do not consider the best protection for the child, nor do they care about whether the buyer would provide an adequate environment to the child for his or her physical, mental, and moral development. The only consideration is to get a profit from the child.

According to Article 9 of the CRC, “a child shall not be separated from his or her parents against their will”. In the mode “abduction and sale of children”, the child-victim is separated from his or her parents against their will. Offenders, either strangers or relatives of victims, by arbitrarily separating children from their parents, violate the right cited above held by both the child and their parents. Moreover, the illegal separation also deprived parents of the rights to their children, including providing guidance and direction to the child in the exercise of his or her rights. In many cases, the violation of this right and the harm caused is impossible to rehabilitate. For instance, in the above-cited case *2016-GD-19-Final Criminal Trial-No.85* (see Box 15), in 1995, two children were abducted and sold by eight traffickers. One of the victims was found by police twenty years later, but the other victim remained missing. When the rescued victim met his parents again after twenty years, he was already an adult and used to his previous life. While willing to keep in contact with his parents, he refused to go back to his original family. Similar cases are reported every year. Sometimes, desperate parents devote their whole life in looking for their missing children, and some of them never

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<sup>89</sup> CRC, at Article 3.1, and UN Committee on the Rights of the Child (CRC), (2013) *General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1)*, 29 May 2013, CRC /C/GC/14.

arrive at the moment of reunion. They are deprived of any possibility and rights to raise, to teach, or to protect their children.

Box 15: Case 2016-GD-19-Final Criminal Trial-No.85

**2016-GD-19-Final Criminal Trial-No.85 [ (2016) 粤19 刑终第85 号]**

Date: 3 September 2016

Before: Intermediate People's Court of Dongguan, Guangdong Province

Public Prosecution Agency: People's Procuratorate of the Second Urban District of Dongguan City, Guangdong Province

Defendants:

Li Lianggui (Male, born on 15 February 1966. Residence: Sichuan Province).

Chen Minggao (Male, born on 11 May 1974. Residence: Chongqing Municipality).

Zhou Jianxin (Male, born on 19 March 1965. Residence: Sichuan Province).

Jiang Shiyou (Male, born on 9 September 1966. Residence: Sichuan Province).

Jiang Banggen (Male, born on 17 October 1950. Residence: Sichuan Province).

Case summary:

On 5 September 1995, five defendants and three others (accused separately) broke into the house where lived the Chen family and the Li family. The defendants beat them and tied them up. They abducted two children (Chen A and Li A, both male) and sold them to two different places. Chen A was nine months old and sold for 10,000 yuan (1,250 euros). Chen A was traced and had his name changed by his "adoptive parents" who bought him from the defendants. He expressed that he would not go back with his biological parents but would keep in touch with them. There was no detailed information about Li A, who remained missing when the defendants were brought to court.

Court decisions:

The court held that the defendants abducted children with violent means for the purpose of selling the victims. Their actions constitute the crime of child trafficking and the violent means constitute aggravating circumstance.

Li Lianggui, having committed the crime of child trafficking, was sentenced to nine years in prison and fined 8,000 yuan (1,000 euros).

Chen Minggao, having committed the crime of child trafficking, was sentenced to thirteen years in prison and fined 10,000 yuan (1,250 euros).

Zhou Jianxin, having committed the crime of child trafficking, was sentenced to eleven years in prison and fined 9,000 yuan (1,125 euros).

Jiang Shiyou, having committed the crime of child trafficking, was sentenced to eight years in prison and fined 7,000 yuan (875 euros).

Jiang Banggen, having committed the crime of child trafficking, was sentenced to three years in prison and fined 3,000 yuan (375 euros).

Child trafficking, especially the trafficking of infants for illegal adoption, violates "the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law"<sup>90</sup>. By separating children from his or her original family and selling him or her to another family, the relation between the child and his or her family is cut off. Due to the fear of losing the bought child, the buyer tends to conceal the child's real identity from him or her. However, when the family secret is leaked by neighbours or family members, the child is always eager to find his or her

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<sup>90</sup> CRC, Article 8. See also European Court of Human Rights Case of *Godelli V. Italy*.

biological parents, which is usually not supported by the adoptive parents. On the website of *Bao Bei Hui Jia* (see Chapter §4.2.4), tens of thousands of posts are about victims of child trafficking, who are now adults, looking for their biological parents. The only clues that they have are rumours from neighbours or some family members, or vague memories about the incident, the dialect, food, or landscape of the hometown, names that they used to be called, and so on. What they are looking for is their real identities and an intrinsic link with their original family, which they have right to preserve.

In addition, the right of the child to be registered immediately after birth, to have a name, and to acquire a nationality are violated in many cases. As previously mentioned, some of the victims of parental sale of children and organised child trafficking are “illegally” born. Their birth might not be registered in the health care system, which leads to a series of human rights issues. In this regard, a more detailed explanation will be given in the following sub-paragraph.

### **3.2.3. Other human rights violations**

The violation of fundamental human rights, including the right to life, liberty and security of person, and the right to be free from torture and enslavement is usually associated with child trafficking. The victims are deprived of liberty after the abduction or being sold by parents, during transportation, and during the exploitation phase. In addition, the right to security of person is violated by traffickers. It is especially true in the mode of abduction and sale of children (M1), as children-victims were taken away from their parents or legal guardians by means of abduction, physical violence, coercion, deception, abuse of power, or other means of violence. The violence was committed not only against the child victim. Sometimes the victim of violence was the child’s family members or both of them, such as in Case 2016-GD-19-Final Criminal Trial-No.85 (Box 15); the defendant Chen and seven other persons broke into the victim’s house during the night, beat and tied up three adults in the house and abducted their two children. It is a typical example of child trafficking committed by means of violence against the family members of the child.

There were also cases in which child trafficking happened as a consequence of the trafficking of women. The child was abducted or transported together with his or her mother and then sold separately, or the child was born by a victim of trafficking who was forced to be pregnant. An example of this is in Case 2013-SD-F-Preliminary Criminal Trial-No.325 (see Box 7), the child in the case was the daughter of a victim of cross-border trafficking in woman. The child was separated from her mother by the trafficker and sold to another family. Another example is the Case 2015-YN-FN-Preliminary Criminal Trial-No.168 (see Box 16).

Box 16: Case 2015-YN-FN-Preliminary Criminal Trial-No.168

***2015-YN-FN-Preliminary Criminal Trial-No.168 [(2015)富刑初字第168号]***

Date: 13 October 2015

Before: People's Court of Funing County, Yunnan Province

Public Prosecution Agency: People's Procuratorate of Funing County, Yunnan Province

Defendant:

Ma MJ (Male, born on 25 November 1987. Residence: Yunnan Province).

Case summary:

On 14 June 2010 at 3 AM, three persons (all accused in other trials) broke into the house of the victim Wang, and abducted Wang, her son Zhang (8 months old), her three daughters – Ma A (14 years old), Ma B (13 years old) and Ma C (12 years old). They were transported to and imprisoned in a cave near the village. One day in June 2010, the defendant Ma MJ and another trafficker sold the victim Zhang to a man in a neighbouring village for 18,000 yuan (2,250 euros). On 24 June 2010, the defendant Ma MJ and other two traffickers sold the victim Wang for 16,000 yuan (2,000 euros), to a man living in a neighbouring village, who bought the victim for forced marriage. On 22 August 2010, Wang escaped from the buyer's house. On 2 September 2010, the victim Wang and her husband reported the crime to the police. Afterwards, Ma A, Ma B, and Ma C were rescued by police, while Zhang was still missing at the moment of the trial.

Court decisions:

Ma MJ, having committed the crime of child trafficking as an accomplice, was sentenced to seven years in prison and suspended for two years, and fined 2,000 yuan (250 euros).

Even when trafficking was committed in a non-violent circumstance, the health and security of the victim were still at risk at every stage of trafficking, for instance, during the process of transportation, it is common for traffickers to feed the child or infant sleeping pills in order to silence the victim. Traffickers sometimes enclose new-born babies in plastic bags or travel bags so as to hide the victims from police checks and surveillance cameras (see Box 17: Case 2014-YN-FN-Preliminary Criminal Trial-No.183). Some of the victims die during the process of trafficking because of the lack of proper care. Victims of child trafficking become subject of enslavement when they are trafficked into the sex industry, forced marriage, and forced labour. There have also been reports about victims

of child trafficking being tortured and forced to conduct heavy labour, street begging, and pickpocketing.

Box 17: Case 2014-YN-FN-Preliminary Criminal Trial-No.183

**2014-YN-FN-Preliminary Criminal Trial-No.183 [(2014) 富刑初字第 183 号]**

Date: 11 December 2014

Before: People's Court of Funing County, Yunnan Province

Public Prosecution Agency: People's Procuratorate of Funing County, Yunnan Province

Defendants:

Yang ZH (Male, born on 13 September 1979. Residence: Yunnan Province).

Yang YH (Male, born on 10 November 1969. Residence: Guangdong Province).

Case summary:

On 16 April 2014, the defendant Yang YH bought a newborn girl from an unidentified man with the price of 5,500 yuan (687.50 euros). He then sold the child to Yang ZH for 7,500 yuan (937.50 euros). When Yang ZH and his father-in-law were transporting the child to their home, they were seized by patrol policeman, and the child was found in a travel bag.

Court decisions:

Yang YH, having committed the crime of child trafficking, was sentenced to five years and six months in prison and fined 1,000 yuan (125 euros).

Yang ZH, having committed the crime of child trafficking, was sentenced to two years in prison and suspended for five years, and fined 1,000 yuan (125 euros).

Child trafficking also causes a series of human rights issue even if the child was sold into a loving family for adoption, and no violence was committed during the trafficking process. According to the Chinese regulation, children without medical birth certificates could not be registered in the Household Registration until 2015, when the State Council issued the *Opinions concerning the Issue of Solving the Problem of Household Registration for Persons without Registered Residence*<sup>91</sup>. Persons without a registered residence, including victims of child trafficking and persons adopted out of legal procedures, were given the possibility to obtain legal status as Chinese citizens. However, for those who had bought children for illegal adoption, they still could not register the child in their household through a legal procedure, as they had broken criminal law. Without a registered residence, a child could not benefit from social welfare, including health insurance and free education. Moreover,

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<sup>91</sup> The State Council, (2015) 国务院办公厅关于解决无户口人员登记户口问题的意见[Opinions concerning the Issue of Solving the Problem of Household Registration for Persons without Registered Residence], No.96 [2015] of the State Council, issued and entered in force on 31 December 2015, retrieved from [http://www.gov.cn/zhengce/content/2016-01/14/content\\_10595.htm](http://www.gov.cn/zhengce/content/2016-01/14/content_10595.htm).

a person without a registered residence cannot have the Resident Identity Card, which is necessary for anyone wanting to take the college entrance examination, have a bank account, be legally employed, take part in the election, register a marriage, or to travel by public transport such as trains and planes. As a consequence, victims of child trafficking might experience different kinds of violation of their basic human rights, including political, civil, economic, and social rights, even though they were not exploited by the buyers.

### **3.3 Relevant human rights challenges after the child trafficking process and rescue**

The link between child trafficking and human rights continues even after the trafficking process. The victims, and sometimes also their legal guardians, are right holders of a series of fundamental human rights that are closely related to child trafficking and related crimes. The issues of concern include, but are not limited to, the care of the victims after the rescue, safe return to their families, healthcare and assistance to the child-victim, and the right to remedy.

#### **3.3.1. The care of the victims after rescue**

The first critical issue is about the proper settlement, including the return to family, of the rescued child. When a child is controlled by a trafficker or when a child is taken away from the buyer's family, he or she is deprived of the family environment, temporarily or permanently. In this condition, the child is entitled to special protection and assistance provided by the State<sup>92</sup>. The State shall take necessary measures to reunite the child with his or her original family, making the best interests of the child a primary consideration. Evidence shows that a series of issues related to child protection after rescue operation needs to be addressed.

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<sup>92</sup> CRC, Article 20.

First of all, there are no clear regulations or guidelines about the procedure of immediate protection and settlement of victims of child trafficking. According to the *Notice of the Ministry of Civil Affairs and Ministry of Public Security on Carrying out Works of adoption of the rescued child victims of child trafficking who cannot find a biological parent*<sup>93</sup> issued in 2015, when children are rescued by police, those whose parents are found shall be returned in a timely manner to their parents, while those whose parents cannot be found, for the time, shall be fostered by social welfare agencies or child assistance and protection agencies. However, the Notice did not explain who is responsible for the care of the victim immediately after the rescue or when and which child protection agency should intervene.

Another critical issue is, whether the child should be returned to his or her parent(s) once rescued if the parent(s) is the original seller of the child. As previously mentioned, the *Notice of the Ministry of Civil Affairs and Ministry of Public Security on Carrying out Works of Adoption of the Rescued Child Victims of Child Trafficking Who Cannot Find a Biological Parents* issued in 2015 requires that when children are rescued by police, they should be returned to their parents if the latter is found. However, the regulation does not specify how to process if a rescued child's parent(s) is identified by police but proved to be an offender in the same child trafficking case, who sold or abandoned the child in the first place and probably do not want to raise the child. The figures presented previously in Table 14 showed that at least ten children, who had been previously sold by their parent(s), were returned to the perpetrator after been rescued. Although the number is not high, it still reveals a loophole in the child protection system in China. In practice, even if the parent(s)-perpetrator had expressed his or her unwillingness or incapacity to raise the child, the child was returned to them

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<sup>93</sup> The State Council, (2015) 民政部、公安部关于开展查找不到生父母的打拐解救儿童收养工作的通知 [Notice of the Ministry of Civil Affairs and the Ministry of Public Security on Carrying out Works of Adoption of the Rescued Child Victims of Child Trafficking Who Cannot Find a Biological Parents], No.159 [2015] of the Ministry of Civil Affairs, issued and entered in force on 20 August 2015, retrieved from [http://www.gov.cn/xinwen/2015-09/18/content\\_2934413.htm](http://www.gov.cn/xinwen/2015-09/18/content_2934413.htm).

anyway, or was fostered by other family members, including grandparents, uncles, and aunts. This practice has been testified by the judges of Intermediate People's Court of Guangzhou (see Appendix III).

According to Article 183 of the Criminal Law, Article 52 (4) of the Law on the Protection of Minors, and Article 3 of the Marriage Law, it is illegal for parents and legal guardians to abandon or to refuse to bring up the minors, and it becomes a crime when the circumstances are flagrant. Therefore, the law enforcement departments would not allow the parents who have sold once their children to abandon the child or give up custody, due to its illegality. This is not in accordance with the general principle of best interests of the child and the provision of the CRC, which requires that it is necessary for the competent authorities to determine the separation of child from his or her parents in cases of child abuse or neglect<sup>94</sup>. In China, the legal process for depriving parents of guardianship is not well developed and difficult to implement (Shang and Katz 2014, 556). According to the General Principles of the Civil Law and Article 53 of the Law on the Protection of Minors, the custody of the parents or legal guardians can be deprived by people's court when other persons or institutions with custody qualifications take a proceeding before the court. The vague reference of "persons or institutions with custody qualifications" makes the law difficult to apply. There is a lack of a statutory agency with primary responsibility for child protection (Katz et al. 2011, Peng et al. 2015, Shang and Katz 2014).

In addition, a significant number of children were fostered by the buyers from whom they were rescued by police. According to the *Notice of Ministry of Public Security, Ministry of Justice, Ministry of Civil Affairs and National Women's Federation on the Opinions about Settling Properly Women and Children Rescued from Trafficking* issued in 1988<sup>95</sup>, after being rescued by police, those children

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<sup>94</sup> CRC, Article 9.

<sup>95</sup> Ministry of Public Security, Ministry of Justice, Ministry of Civil Affairs and National Women's Federation, (1988) 公安部、司法部、民政部、全国妇联关于做好解救被拐卖妇女儿童工作的几点意见的通知 [Notice of

who were sold by their parents can be legally adopted by the buyers. This regulation is still valid but in conflict with the latest *China National Plan of Action on Combating Trafficking in Women and Children (2013-2020)*, which, for the first time, requires that the victims of child trafficking cannot be fostered in the buyer's family after their rescue. Due to the non-binding nature of these instruments, there were many children rescued in recent years who have been sent back to the buyer's family by the police or relevant agency. As Table 14 in the previous chapter showed, in the detected cases in Guangdong, Shandong, and Yunnan provinces, at least 100 children were left in the buyers' families.

Children were sent back to the buyer's family for two main reasons: the lack of capacity of local welfare agencies and emotional dependence of children on the buyers. According to the data in the previous chapter, a significant number of victims rescued in the last decade were infants, and in many cases, multiple infants were rescued together in the same operation. However, not all the welfare agencies had the capacity to house all the victims at once, especially in rural areas. Another excuse that the police often used to justify the solution of fostering rescued children in the buyer's family was that some of the rescued children had a strong emotional dependence on the buyer. It is especially true when the child was sold into the buyer's family when he or she was an infant and had lived for a long period of time with the buyer, who had effectively taken care of the child. This is indeed a dilemma for the police and child protection agencies: on the one hand, some of the buyers can provide the child with better growing environment than welfare agencies and the forced separation of the child from the family where they have lived for years would definitely traumatise the child; on the other hand, fostering the child in the buyer's family is against the law and might put child in risk. It is understandable that to house multiple children and infants at once was a challenge for some local welfare agencies. It is also true that children might be traumatised in the police operation of rescue.

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Ministry of Public Security, Ministry of Justice, Ministry of Civil Affairs and National Women's Federation on the Opinions about Settling Properly Women and Children Rescued from Trafficking], No.23 [88] of the Ministry of Public Security, issued and entered in force on 8 December 1988.

However, the decision of the government to leave the victims to a criminal offender cannot be excused. In any case, it is hard to justify that this solution was in accordance with the law or the principle of the best interests of the child, and it is hard to convince people that the government did not have enough resources to house dozens of children and provide them with a safe environment. To sum up, due to the lack of a child protection system and a specific agency to make prompt interventions when a child is at risk of abuse or violence in, some rescued victims of child trafficking were exposed to the risk of secondary victimisation.

### 3.3.2. Alternative care

It has been generally recognised that for the full and harmonious development of his or her personality, the child should grow up in a family environment. A child who is temporarily or permanently deprived of a family environment is entitled to special protection and assistance provided by the State, who shall also ensure alternative care for such a child, including foster placement, adoption, or placement in suitable institutions for the care of children<sup>96</sup>.

As previously mentioned, when a child is rescued from child trafficking, he or she shall be placed in local welfare agencies or child assistance and protection agencies if his or her parents cannot be identified timely<sup>97</sup>. A high proportion of victims were fostered in local welfare institutions - the lucky ones were able to find their biological parents, while others were never able to see that day. According to Article 4 of the *Adoption Law of the People's Republic of China*, only children under 14 years old belonging to one of the following three categories can be adopted: orphans bereaved of parents, abandoned infants or children whose parents cannot be ascertained or found, and children whose

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<sup>96</sup> CRC, Preamble and Article 20.

<sup>97</sup> The State Council, (2015) 民政部、公安部关于开展查找不到生父母的打拐解救儿童收养工作的通知 [Notice of the Ministry of Civil Affairs and the Ministry of Public Security on Carrying out Works of Adoption of the Rescued Child Victims of Child Trafficking Who Cannot Find a Biological Parents], No.159 [2015] of the Ministry of Civil Affairs, issued and entered in force on 20 August 2015, retrieved from [http://www.gov.cn/xinwen/2015-09/18/content\\_2934413.htm](http://www.gov.cn/xinwen/2015-09/18/content_2934413.htm).

parents are unable to care for them due to unusual difficulties. Those infants or children rescued from child trafficking whose parents cannot be found do not belong to any of the three categories, as it is impossible to prove that they are orphans or abandoned children; their biological parents might be desperately seeking their whereabouts. Therefore, the legal guardianship remains in their unknown biological parents. Consequently, these children or infants cannot be adopted or fostered in another family. Although welfare institutions are qualified alternative caregivers for children, it is still problematic that children are deprived of the possibility of growing up in a family environment and have to live in a welfare institution. Following the crack-down actions launched in 2011, an increasing number of children were fostered in welfare institutions. The necessity of giving the rescued children a family was raised by experts and discussed by the media.

This situation didn't change until September 2015 when *the Notice of the Ministry of Civil Affairs and Ministry of Public Security on Carrying out Works of Adoption of the Rescued Child Victims of Child Trafficking Who Cannot Find a Biological Parent* was issued. According to this regulation, if the biological parents and other guardians cannot be found temporarily, the child shall be sent to social welfare institution or child protection institution, which shall bear the responsibility of temporary guardianship. At the same time, the public security organs shall collect the blood samples for all the rescued children, putting them in the national anti-human trafficking DNA database to cross-match with parents looking for their missing children. If biological parents or other relatives of the child cannot be matched within a month, the responsible welfare institution shall publish a family-seeking announcement for the child in newspapers and on the national online platform for family matching. One month after that, if the parent or other relatives still cannot be found, the child shall be officially permanently settled in the local welfare institution, and he or she can be adopted after one year of waiting. When a victim of child trafficking is legally adopted by a family, the adoptive relationship can be revoked when the victim's parent(s) claims for guardianship; however, if the parent(s) is proven to have sold or abandoned the child, the adoptive relationship shall not be revoked.

### **3.3.3. Health care and assistance to victims of trafficking**

Right to health and of access to such health care services are fundamental human rights of every child<sup>98</sup>. According to the WHO, “health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity” and “the enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition”. States shall take appropriate measures to victims of child trafficking for their social, physical, and psychological recovery, including, inter alia, medical and psychological assistance<sup>99</sup>.

The health of trafficked children is at risk and can be damaged at any stage of the trafficking process, including pre-departure, transit, destination, detention, and exploitation, as well as post-rescue and reintegration (IOM 2007, 185). The health consequences associated with trafficking experiences include physical health problems, such as injury, harm to reproductive and sexual health, as well as mental or psychological problems, such as the symptom of post-traumatic stress disorder (PTSD) (IOM 2007, Rafferty 2008). These consequences can be devastating to children and adolescents because the abuse and trauma occur at a time when they are developing physically, psychologically, and socially (IOM 2007, 207).

Physical health problems identified in this research occur in three stages. First of all, children, as well as their guardians, can be harmed in the violent abduction incident. Secondly, in the phase of transition, victims of child trafficking experience inadequate diet and hygiene, neglect, and drug abuse. Thirdly, in the phase of destination, detention, and exploitation, in addition to imprisonment and inhumane living conditions, and girls trafficked for forced marriage are also victims of physical and sexual violence. Their health is threatened by unsafe sexual practices, unwanted pregnancies, and

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<sup>98</sup> CRC, Article 24

<sup>99</sup> CRC-OPSC Article 9.3, and Palermo Protocol Article 6.3.

unsafe parturition environment. Although children trafficked for forced labour, begging, or conducting criminal activities were not identified in cases for this study, there have been many reports about them<sup>100</sup>. The physical health problems experienced by victims of these form of trafficking are a result of injuries related to torture or cruel, inhuman or degrading treatment or punishment, and conditions related to working in difficult or dangerous conditions and for long hours.

The experience associated with child trafficking can lead to a series of long-lasting psychological challenges (Rafferty 2008), including anxiety, depression, hostility, poor social skills, inability to trust and building meaningful relationships, sexualised behaviour, guilt, shame, and PTSD (UNICEF Regional Office for CEE/CIS 2006, 19). The psychological harm can be caused at any stage of trafficking, from pre-capture to exploitation, or even after been rescued. First of all, the physical harms and sexual abuses that a child went through can cause adverse emotional outcomes, including depression, social isolation, and PTSD (Rafferty 2008). In addition, emotional trauma is also caused by the separation and removal of the victims from their homes, families and communities (Rafferty 2008).

Child trafficking cases in this research have highlighted another phase associated with trafficking in which psychological issue may be caused. It has been noticed that victims also emotionally suffered when they were rescued by the police. As previously mentioned, in most of the child trafficking cases in this research, children were trafficked for illegal adoption, and usually, children were well-treated in the “adoptive” families. Although most of them were too young to remember the separation from their biological parents, it does not necessarily mean that the action was harmless. The victims may be traumatised by being separated from their adoptive parents, noticing that 47% of the victims were rescued after five months of been trafficked (see Figure 17). That is to say, although some victims

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<sup>100</sup> See, for instance, BBC News, (2007) *China “will catch slave owners”*, retrieved from <http://news.bbc.co.uk/2/hi/asia-pacific/6759399.stm>, [accessed on 30 June 2019].

might not be mentally harmed when they were abducted or sold, there was a high possibility that they would be traumatised when they were rescued in anti-trafficking operations. Furthermore, emotional challenges arise when the victims cannot find their biological parents or are refused by their parents to be brought home. The sense of uncertainty about their origin and identity may accompany them for the rest of their lives.

Emotional, mental, and psychological problems not only affect most of the victims of child trafficking, but they also have impacts on parents and families whose children were trafficked by means of abduction, coercion, or fraud. Their lives are shattered by the incident, and their spirit is defeated by emotional problems, such as guilt, depression, and PTSD (see Appendix II). The problem will not disappear automatically after the rescue of their children. The PTSD may plague them for a long time, being fearful of losing their children again. The problem will be much severer when their children were deliberately maimed or went through physical, emotional, or sexual abuse or torture.

The findings of this research show that the health care and assistance provided to victims of child trafficking is, seriously insufficient if not completely absent. Necessary medical treatment is provided to victims who have such needs, for instance, evidently malnourished infants, children with injuries or disease. However, regarding psychological intervention or assistance, it is more problematic. Although the *China National Plan of Action on Combating Trafficking in Women and Children (2013-2020)* requires designated medical institutions to provide basic medical, physiological, and psychological services for victims of trafficking, available psychological institutions and services are far from sufficient<sup>101</sup>. In *Measures for the Administration of Child Welfare Organizations*<sup>102</sup>, the first national regulation on child welfare organizations came into force on 1 January 2019. Psychological

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<sup>101</sup> The author did not find any information about institutes or associations that provide professional psychological assistance to rescued victims of child trafficking.

<sup>102</sup> Ministry of Civil Affairs, (2019) 儿童福利机构管理办法 [Measures for the Administration of Child Welfare Organizations], Order No. 63 of the Ministry of Civil Affairs, issued on 30 October 2018, entered in force on 1<sup>st</sup> January 2019, retrieved from [http://www.gov.cn/xinwen/2019-01/25/content\\_5361171.htm#1](http://www.gov.cn/xinwen/2019-01/25/content_5361171.htm#1).

assistance is not required or even mentioned. The victim's medical and psychological assistance is in charge of local government or relevant institutions before the biological parent being found. Once the rescued child is back in the custody of their biological parents, the parents are responsible for the wellbeing of the child. According to volunteers of BBHJ, few psychological intervention programmes are available for victims and their families.

#### **3.3.4. Right to remedy**

Child trafficking is a serious form of human rights violation; therefore, the victim and his or her legal guardian should have access to monetary compensation payable by the State or the offender, appropriate and proportional to the gravity of material losses and moral suffering incurred as a consequence of child trafficking.

The right to access remedies is a fundamental human rights, explicitly articulated in a series of international human rights instruments, including the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights, Universal Declaration of Human Rights (Article 8), and the ICCPR (Article 2). Access remedy is also a treaty-based right. Trafficking-specific legal instruments, either in the field of human rights treaties or that of international criminal law, require the State to provide remedies to victims of trafficking (OHCHR 2010, 230). The State is required to confiscate the assets of individuals and legal persons involved in trafficking, to use the confiscated proceeds to support and compensate victims of trafficking, and to establish a compensation fund for victims of trafficking (OHCHR 2010, 219-221).

According to the *Opinions on Establishing and Improving a System of State Judicial Relief (for Trial Implementation)*<sup>103</sup>, as issued in January 2014, and its judicial interpretation<sup>104</sup>, issued by the Supreme People's Court in 2016, China has established a state judicial assistance system. The State provides economic assistance to victims of crime who are unable to obtain financial compensation, to help them through any further difficulties. In 2015, a total of 1.67 billion *yuan* were paid to 71,700 victims and their families (State Council Information Office 2016a). However, there is no detailed information about whether any victim of child trafficking or the family of a trafficking victim has ever received judicial assistance. In any case, judicial assistance applies only to victims having difficulties in life. As of time of writing, there is no fund prepared by the State for the material losses and mental damage suffered by the victims of a criminal offence as a consequence of child trafficking or human trafficking.

There is no evidence that financial compensation is provided to victims of trafficking and their families. Among 1,567 files of judicial decisions in China, only two victims have attached civil claims of economic compensation in the criminal procedure, and both claims were dismissed. Judicial decisions regarding financial compensation was not mentioned in any other cases. Monetary compensation can be obtained only when the defendant and the victim or the victim's parent reach a private agreement, and only when it is payable by the defendant.

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<sup>103</sup> Committee of Political and Legal Affairs of the Central Committee of the Communist Party of China (CPC), Ministry of Finance, the Supreme People's Court, the Supreme People's Procuratorate, the Ministry of Public Security and the Ministry of Justice, (2014) 关于建立完善国家司法救助制度的意见(试行) [Opinions on Establishing and Improving a System of State Judicial Relief (for Trial Implementation)], No.3 [2014] of the CPC, issued and entered in force on 17 January 2014, retrieved from [https://www.spp.gov.cn/spp/zdgz/201512/t20151208\\_109020.shtml](https://www.spp.gov.cn/spp/zdgz/201512/t20151208_109020.shtml).

<sup>104</sup> Supreme People's Court, (2016) 最高人民法院关于加强和规范人民法院国家司法救助工作的意见 [Opinions of the Supreme People's Court on Strengthening and Regulating the State Judicial Relief Work of the People's Courts], No. 16 [2016] of the Supreme People's Court, issued and entered in force on 1<sup>st</sup> July 2016, retrieved from <http://www.court.gov.cn/fabu-xiangqing-23171.html>.

## Conclusion

This chapter explained, with anecdotic evidence taken from the case law, how human rights issues are closely related to child trafficking in China. Human rights violations and issues are not only the causes and consequences of crimes related to child trafficking; they continue to exist after the rescue of the victim.

Similar to other countries, poverty and discrimination are the root causes of most of the child trafficking cases in the three provinces of China. This study also identified a seldom-recognised way in which poverty encourages child trafficking. Specifically, poverty not only increases the vulnerability of children living in families with economic hardship, but it also fosters the demand for child trafficking. Similarly, discrimination encourages child trafficking in different ways. The factor of gender-based discrimination makes girls vulnerable to being sold by their parents or trafficked for sexual exploitation; alternatively, it makes boys vulnerable to being trafficked because of the high demand. Ironically, the preference of boys can make them become an economic burden for the family, which has also pushed some parents to sell their sons.

Discrimination against persons with disabilities is another factor that increases the vulnerability of children to trafficking. Mentally disabled children, especially teenagers, face the risk of being sexually and physically exploited. Children of mentally disabled women are also vulnerable to being trafficked, as the mothers have a very limited capacity to protect the child. The discrimination against persons with disabilities is also proven to be a factor that fosters the demand of children, as disability makes the person unlikely to get married or to adopt a child through legal procedures. Discrimination against children born out of wedlock is another factor that increases the vulnerability of those children to trafficking.

The birth control policy is a proximate factor that interacts with poverty and discrimination. The fines applied to children born in breach of the birth control policy, including those born out of wedlock,

increase the vulnerability of those children. The family planning policy also fosters child trafficking by increasing the contradiction between the child adoption system and the needs of people to release their children for adoption or to adopt children. Due to the strict limitation of the legal procedure of giving a child to social welfare institutes, parents who have difficulties in raising the child have to seek illegal solutions, such as infanticide, abandonment, or selling the child. Using the same logic, due to the one-child policy, it is prohibited for those who already had a child to adopt another one through a legal procedure. Therefore, some may seek to buy, or “adopt” as they claimed, children from traffickers.

Undoubtedly, child trafficking causes serious violations of fundamental human rights of the victim, including the right to life, the right to liberty, the right to security of person, and the right to be free from torture and enslavement during the process of child trafficking. In addition, the dignity of the victim is violated independently from the existence of the exploitation. The intrinsic nature of child trafficking is the commodification of children. When children are treated and traded like commodities, they are deprived of their inherent human dignity and rights. Child trafficking also causes the violation of children’s rights, including the right of the child to preserve his or her identity, the right to not be separated from their parents against their will, and the right of the child to be registered immediately after birth, to have a name and to acquire a nationality.

New human rights challenges arise after the rescue of the trafficked children. The issues of concern include, but are not limited to, the care of the victims after the rescue, safe return to family, healthcare and assistance to the child victim, and the right to remedy. When a child victim is released by the police from the trafficker or the buyer, he or she is entitled to special protection and assistance provided by the State. However, the evidence shows that there is a lack of clear regulations or guidelines about the procedure of immediate protection and settlement of victims of child trafficking. The practice of returning the child victim to the original family challenges the principle of the best

interest of the child; while some victims are handed back to their parents who were the original offender of the sale of the child.

The victims of child trafficking are entitled to physical and mental health assistance, which should be provided by the State. The health consequences associated to trafficking experiences include physical health problems, such as injury, harm to reproductive and sexual health, as well as mental or psychological issues, such as the symptom of PTSD (IOM 2007, Rafferty 2008). The case laws of the three provinces highlight another phase associated with trafficking in which psychological problem may be caused. Sometimes, victims also suffered when they are rescued by the police. Although some victims might not be harmed when they are abducted or sold, it is highly probable that they would be traumatised when they are rescued in anti-trafficking operations. Furthermore, the emotional challenges arise also when the victims cannot find their biological parents or are refused by their parents to be brought home.

The right to remedy is also a fundamental human right of a victim of child trafficking. However, there was not sufficient evidence to prove that the right of the victims of child trafficking to remedy was fulfilled in China. There is no fund established by the State for the material losses and mental damage suffered by victims of crime as a consequence of child trafficking or human trafficking.

## **IV. China's national policy and practices in combating child trafficking**

As a member State of the Palermo Protocol and the CRC, China is obliged to take necessary measures in responding to the crime of child trafficking and other crimes related to trafficking. These measures include national policies of combating trafficking, anti-trafficking activities, and cooperation with civil society, other countries, and relevant international instruments.

The quantitative data and case law demonstrate that child trafficking in the selected Chinese provinces is the cause and consequence of a series of human rights issues. This chapter explores what policies and programmes are carried out by the Chinese government in combating child trafficking. After an introduction to the National Plan of Action on Combating Trafficking in Child and Women, this chapter explains what measures have been taken in China following the “3Ps” mechanism, i.e., prosecution, protection, and prevention. This chapter also presents the role of civil society in combating the crime of trafficking. Finally, the last section highlights the gap between real needs and the national policy and measures in responding to child trafficking.

### **4.1. National Plans of Action on Combating Trafficking in Child and Women**

The State Council of China issued the first National Plan of Action (NPA) on Combating Trafficking in Women and Children (2008-2012) in December 2007, which was then substituted by the NPA (2013-2020) formulated in March 2013. It was recognised, although only in the first NPA, that the trafficking of women and children, which would cause enormous harm to victims and their families, is a serious violation of human rights. As a regulatory document, the NPA has built the basic operational framework of combating trafficking in children and women and guilds every aspect relevant to the issue.

First of all, through NPA (2008-2012), an organisational and coordinative mechanism was established. The Inter-ministerial Joint Conference System for Anti-Trafficking in Women and Children (IMCS) was established under the State Council, chaired by the Ministry of Public Security (MPS), and composed of twenty-eight departments and agencies, including MPS, Central Propaganda Department of the Central Committee of the Communist Party of China (CCCPC), Central Office for Comprehensive Management of Public Security<sup>105</sup>, Legislative Affairs Commission of the Standing Committee of the National People's Congress, Ministry of Foreign Affairs, National Development and Reform Commission, Ministry of Education, Ministry of Civil Affairs, Ministry of Justice, Ministry of Finance, Ministry of Personnel, Ministry of Labour and Social Security, Ministry of Railways, Ministry of Communications, Ministry of Agriculture, Ministry of Commerce, Ministry of Culture, Ministry of Health, the National Population and Family Planning Commission of China, State Administration for Industry and Commerce, Civil Aviation Administration of China, State Administration of Radio, Film and Television, Office of Legislative Affairs of the State Council, National Working Committee for Children and Women under the State Council, State Council Leading Group Office of Poverty Alleviation and Development, and All-China Federation of Trade Unions, the Committee of Communist Youth League, All-China Women's Federation<sup>106</sup>. This vast complex mechanism was designed to incorporate all the sectors at the national level, whose work may have contact with or impact on children and their families, in implementing the NPA, to supervise the implementation of the plan and to conduct periodical and final assessments.

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<sup>105</sup> The Central Office for Comprehensive Management of Public Security was abolished in the reform of party's and governmental institutions in 2018.

<sup>106</sup> The State Council, (2007) 国务院办公厅关于印发中国反对拐卖人口行动计划(2008—2012年)的通知 [Notice of General Office of the State Council on the on Issuing China National Plan of Action on Combating Trafficking in Women and Children (2008-2012)], No.69 [2007] of the State Council, issued and entered in force on 2 March 2013, retrieved from [http://www.gov.cn/zw/gk/2007-12/20/content\\_839479.htm](http://www.gov.cn/zw/gk/2007-12/20/content_839479.htm).

In addition, the NPA (2008-2012) attributed concrete action measures to each department. Although the measures contained in the NPA did not follow specifically adopt the “3Ps” mechanism (see §1.2.4.C), which has been generally applied by international and regional anti-trafficking instruments, nonetheless, the plan still covered all three aspects – prevention, prosecution, protection – of combating trafficking in person. Besides the general responsibility of coordination, monitoring, and assessment of the NPA, the IMCS was responsible for two specific actions, both concerning its coordination. The first action regards the exchanging of best practices, information sharing, promoting the working model which integrate prevention, combating, assistance, and rehabilitation, as well as improving the anti-trafficking mechanism and rapid response capacity to combat trafficking. Secondly, the IMCS was responsible for coordinating the cooperation between the main areas of origin and that of destination, by collecting the bilateral letters of intent between provinces autonomous regions and province-level municipalities where victims mainly come from and that of destination.

The NPA (2008-2012) also planned to establish a crime prevention mechanism, which required multi-sectoral and multi-level cooperation<sup>107</sup>. Measures for preventing trafficking in children include: 1) improving the awareness of the public, in particular the parents of minors and other guardians, to respect the Law on the Protection of Minors of People’s Republic of China, in order to provide a good family environment and education for the healthy development of children (Ministry of Justice is the competent agency; the Ministry of Education, the Centre Committee of Communist Youth League and the All-China Women’s Federation are cooperating agencies); 2) raising awareness of teachers and students of trafficking prevention and implementing the Compulsory Education Law of People’s Republic of China, ensuring that all children receive the compulsory nine-year education, so as to prevent them from entering society too early (The Ministry of Education is the competent agency;

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<sup>107</sup> China National Plan of Action on Combating Trafficking in Women and Children (2008-2012), at III-1.

the Ministry of Civil Affairs and the Ministry of Culture are cooperating agencies); 3) providing assistance and training to people who are vulnerable to trafficking, in particular women and children that are socially disadvantaged; actively utilising the assistance and welfare system which is currently available to provide support and aftercare for homeless minors and abandoned babies (The Ministry of Civil Affairs is the competent agency; the Ministry of Justice, the Ministry of Finance and the Ministry of Health are cooperating agency); 4) disseminating anti-trafficking information in priority locations including railway stations, bus stations, ports, entertainment venues, hotels (The Ministry of Railways, the Ministry of Transport and the Civil Aviation Administration of China are the competent agencies; The Ministry of Public Security, the Ministry of Justice, the Centre Committee of Communist Youth League and the All-China Women's Federation are cooperating agencies)<sup>108</sup>.

The latest NPA (2013-2020) has made some supplements in measures of preventing trafficking in children, such as incorporating the requirement of preventing illegal child labour and labour exploitation of persons with mental disabilities. Other preventive measures focused on children are: enhancing pregnancy and birth control in order to reduce unintended pregnancies and birth out of family planning policy; preventing school dropouts; improving the mechanism of assistance and protection of minors living on the streets; awareness-raising of children left behind by migrant parents; reducing and cracking down on the demand of children by controlling the sex ratio at birth, regulating legal adoption, prohibiting the issue of false birth certificate, and establishing a system of mandatory reporting for medical professionals.

Regarding prosecution, the first NPA (2008-2012) required the improvement of capacity and efficiency of identifying and detecting crimes of trafficking in women and children<sup>109</sup>. It only had three points related to child trafficking: 1) to adopt a child-sensitive approach in any working process

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<sup>108</sup> China National Plan of Action on Combating Trafficking in Women and Children (2008-2012), at III-2.

<sup>109</sup> China National Plan of Action on Combating Trafficking in Women and Children (2008-2012), at III-3.

that has contact with children; 2) to reduce the demand of children by criminalising and punishing acts including buying, luring, and forcing victims of trafficking for labour and sexual exploitation; 3) to establish and enhance the system of collecting and exchanging information about relevant crimes. The MPS was the competent agency for all these measures, with the cooperation of the Ministry of Civil Affairs as well as other departments.

The second NPA (2013-2020) made more specific requirements on measures of prosecution. First of all, it required that the special police operations against crimes of human trafficking (carried out after the first NPA) should be continued. Secondly, the mechanism of anti-trafficking of children should be improved and the accountability system should be effectively implemented. Thirdly, the mechanism of quick response to child disappearance should be effectively applied. In addition, the police should conduct thorough searches of children of unknown origin, collect the blood samples of suspected victims of children trafficking and input them into the national anti-trafficking DNA database, making cross-comparison with DNA samples of parents whose children were missing. Finally, it is prohibited to foster the victims of child trafficking in the buyer's family. In addition to these measures of combating the crime of trafficking led by the MPS, the NPA (2013-2020) also mentioned the need to make more stringent criminal penalties for buying child victims of trafficking, the competence of which lies with the Legislative Affairs Commission of the Standing Committee of the National People's Congress.

In both NPAs, actions related to the protection of victims were mainly the responsibility of the Ministry of Civil Affairs. The first NPA (2008-2012) required the establishment of mechanisms for victims of trafficking, which provide necessary assistance and support to victims, including relief, social service, health recovery, and training. In addition, it required that the MPS was responsible for the registration, management, and protection of victims of trafficking, who should create victim archives and follow up their living conditions. Moreover, it noted that there should be more research on the physical and mental health of victims of trafficking, so as to provide more effective

rehabilitation treatment. The civil society was also invoked to participate in providing funding, service and technical support to activities related to victim protections. While having repeated most of the previous measures, the second NPA (2013-2020) required MPS and Ministry of Civil Affairs to establish regulations for the working procedure of the rescue, settlement, recovery and rehabilitation of victims.

In addition to the “3Ps”, both NPAs addressed the coordination between departments and the cooperation with the civil society and international institutes. In addition to establishing the organisational and coordinative mechanism – the Inter-ministerial Joint Conference System for Anti-Trafficking in Women and Children, the cooperation and collaboration between departments were reaffirmed in each section of the NPAs. Moreover, reinforcing international cooperation in combating trafficking in women and children was one of the main areas of operational measures. International partners include, among others, the United Nations and UN agencies such as IOM, UNICEF and UNODC, other inter-governmental organisations, other relevant countries such as countries of GMS, as well as international NGOs. Besides general commitment of bilateral and multi-level cooperation, in specific, the NPAs called for enhancing international police cooperation in combating the criminal acts related to trafficking, as well as international cooperation in border control and capacity building, in order to prevent crimes of trafficking in persons.

Although China’s National Plans of Action to combat child trafficking include measures to prevent the crime, prosecute offenders, protect the victims, it cannot be denied that such plans of action faced many challenges in their implementation, monitoring, evaluation, and follow-up. These challenges regarding policy gaps between the national policy and measures and the actual situation and needs in the field and international standards will be better developed in the following sections.

## 4.1. “3Ps” mechanism in practice

The NPAs provide guidelines of combating trafficking in women and children, which need to be implemented in the ground. Over the years, a series of anti-trafficking measures and actions have been carried out in practice. From special actions of police and the establishment of the DNA databank, to Online Alert System and the application of new technologies such as facial recognition, the effect of some concrete measures has been remarkable.

### 4.2.1. Prosecution – criminalisation and law enforcement

Under the “3Ps” framework of action, prosecution is the first step that China has taken in reacting to trafficking-related crimes. Measures taken include criminalising with severe penalties and sanctions the crimes related to trafficking, police actions of crackdown on trafficking in children and women, and enforcement of national anti-trafficking legislation by strengthening the capacity of criminal justice practitioners.

The first measure taken after the issue of the first NPA (2008-2012) was four-year-long (2009-2012) special police crackdown actions against trafficking in women and children, launched by MPS in April 2009. The National Public Security Organs’ Special Action to Combat Trafficking in Children and Women (hereinafter Police Anti-trafficking Actions) was aimed at “detecting a great number of trafficking cases, rescuing a large number of children and women, and restoring a series of areas and places where minors are organised to carry out illegal and criminal activities”<sup>110</sup>. Local Public Security Departments were required to act proactively and immediately in the following aspects: to conduct population-based surveys and register suspected victims of trafficking in children

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<sup>110</sup> Ministry of Public Security, (2009) 公安部部署打击拐卖儿童妇女犯罪专项行动 [Ministry of Public Security deploys a special campaign against crimes of trafficking in children and women], *全国公安机关打击拐卖儿童、妇女犯罪专项行动* [National Public Security Organs’ Special Action to Combat Trafficking in Children and Women], retrieved from <http://www.mps.gov.cn/n2255079/n2255231/n2255233/c3579140/content.html>, [accessed on 19/07/2018].

and women; to clean up and strike the crimes of forcing and luring minors to beg in the streets and of forcing and luring deaf adolescents to commit crimes; to combat the criminal organisations and individuals behind the above-mentioned crimes. Regarding the working procedure, each trafficking related case must be led by a designated officer who is responsible for the case's investigation and follow-up until it is detected. Focus was placed on assisting street children and minors in criminal gangs, as well as combating prostitution, especially forcing and luring minors into prostitution.

The special actions were promptly deployed at the provincial level. Within around one month, the provincial Public Security Department of eight provinces made provincial settlements and deployment, corresponding to the request of the national campaign<sup>111</sup>, for instance, the Guangdong Province Public Security Department held a conference on special action for combating trafficking in women and children, during which the importance of the action and the responsibility of local public organs were reaffirmed, as well as the measures that should be carried out in the future. First of all, it was required that, in areas beset by trafficking-related crimes, a joint investigation team specialised in combating trafficking must be established in the local public security organs, composed of a deputy police chief, criminal police officers and officers from a police technology team<sup>112</sup>. The anti-trafficking team is responsible for all activities concerning combating trafficking in women and children, including, among others, conducting a population-based survey to identify suspected victims, collecting information of suspects and victims of trafficking-related crimes, establishing and enriching the DNA database, and collaborating with other departments and the civil society<sup>113</sup>.

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<sup>111</sup> Ibid.

<sup>112</sup> Ministry of Public Security, (2010) 广东认真贯彻落实国家反拐行动计划 [Guangdong Province earnestly implements the NPA on Combating Trafficking in Women and Children], *全国公安机关打击拐卖儿童、妇女犯罪专项行动* [National Public Security Organs' Special Action to Combat Trafficking in Children and Women], retrieved from <http://www.mps.gov.cn/n2255079/n2255231/n2255233/c3579508/content.html>, [accessed on 19/07/2018].

<sup>113</sup> Ministry of Public Security, (2009) 广东省公安厅动员部署打击拐卖儿童妇女犯罪专项行动 [Guangdong Provincial Public Security Department mobilized and deployed the Special Action to Combat Trafficking in Children and Women], *全国公安机关打击拐卖儿童、妇女犯罪专项行动* [National Public Security Organs' Special Action to Combat Trafficking in Children and Women], retrieved from

For a short time, the Police Anti-trafficking Actions seemed to be very effective. For instance, by December 2009, the police organs of Guangdong Province detected 50 unresolved child trafficking cases, collected 3654 blood samples, and identified 43 victims of child trafficking utilising the DNA database<sup>114</sup>. At the national level, by the beginning of August 2009, the police organs detected 1092 cases of child trafficking, arrested 824 suspects, eradicated 525 criminal gangs, and rescued 1352 child victims of trafficking<sup>115</sup>. The number of rescued victims of trafficking in women and children rose to over 14 thousand in mid-2010<sup>116</sup>. However, the intensive nationwide Police Anti-trafficking Actions were also concerning. It is worth reflecting and putting into question the justice and legality of law enforcement procedures.

The Police Anti-trafficking Actions of proactive investigation on child trafficking were accompanied by capacity building training to national IMCS members and members of a similar coordination mechanism at the local level. In order to deploy to the anti-trafficking campaign nationwide, from 2009 to the end of 2010, the IMCS organised at least the training sessions twice for chief officers of each ministry and department, as well as for relevant practitioners at the local level<sup>117</sup>.

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<http://www.mps.gov.cn/n2255079/n2255231/n2255233/c3579211/content.html> [accessed on 19/07/2018].

<sup>114</sup> Ministry of Public Security, (2010) 广东认真贯彻落实国家反拐行动计划 [Guangdong Province earnestly implements the NPA on Combating Trafficking in Women and Children], *全国公安机关打击拐卖儿童、妇女犯罪专项行动* [National Public Security Organs' Special Action to Combat Trafficking in Children and Women], retrieved from <http://www.mps.gov.cn/n2255079/n2255231/n2255233/c3579508/content.html> [accessed on 19/07/2018].

<sup>115</sup> Ministry of Public Security, (2009) 全国“打拐”专项行动成效显著 [The national anti-trafficking special actions have achieved remarkable results], *全国公安机关打击拐卖儿童、妇女犯罪专项行动* [National Public Security Organs' Special Action to Combat Trafficking in Children and Women], retrieved from <http://www.mps.gov.cn/n2255079/n2255231/n2255233/c3579140/content.html> [accessed on 19/07/2018].

<sup>116</sup> Ministry of Public Security, (2010) 全国“打拐”专项行动一年多来破拐卖案件 1.2 万余起 [The national anti-trafficking special action has detected more than 12 thousand cases of trafficking in the past year], *全国公安机关打击拐卖儿童、妇女犯罪专项行动* [National Public Security Organs' Special Action to Combat Trafficking in Children and Women], retrieved from <http://www.mps.gov.cn/n2255079/n2255231/n2255233/c3579769/content.html> [accessed on 19/07/2018].

<sup>117</sup> The first training was organised for IMCS members held at Huangshan in Anhui Province on 13 and 14 August 2009 (see <http://www.mps.gov.cn/n2255079/n2255231/n2255233/c3579385/content.html> [accessed on 19 July 2018]). The second training was held at Hulunbuir in Inner Mongolia Autonomous Region on 22 July 2010, with over 140 participants from national and local law enforcement agencies (see <http://www.mps.gov.cn/n2255079/n2255231/n2255233/c3579783/content.html> [accessed on 19/07/2018]).

In addition, as required by the IMSC, each province has issued a regulation for the implementation of the NPA (2008-2012), which should be detailed guides to the anti-trafficking actions at the local level.

Besides guidelines and Police Anti-trafficking Actions, other measures of improving prosecution efforts of trafficking-related crimes were reflected in the legal framework. As mentioned in the first chapter, child trafficking is a criminal offence in the Chinese legal framework. Although China's Criminal Law does not cover all provisions of the Palermo Protocol in a comprehensive manner, several efforts have been made to improve its legal framework. In August 2009, the *Decision of the Standing Committee of the National People's Congress Regarding the Severe Punishment of Criminals Who Abduct and Traffic in or Kidnap Women or Children* issued in 1991 was amended<sup>118</sup>. According to the Amendment, the penalty imposed on the crime of abduction and sale of children was raised to a minimum of 5 years with a fine of no more than 10,000 yuan. If the circumstances are especially serious, the offender shall be sentenced to death with the concurrent punishment of confiscation of property. It was followed by the *Opinions on Legally Punishing the Crimes of Abducting and Trafficking in Women and Children*, jointly issued by the Supreme People's Court, the Supreme People's Procuratorate, the Ministry of Public Security and the Ministry of Justice in March 2010, which clarified, to a certain extent, problems regarding jurisdiction, case filing, forensic and evidentiary requirements, accusation, and sentencing. More recently, the ninth amendment of Criminal Law adopted on 29 August 2015 exclude the impunity from the crime of buying a trafficked child (or woman).

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<sup>118</sup> Standing Committee of the National People's Congress, Standing Committee of the National People's Congress, (2009) 全国人大常委会关于严惩拐卖、绑架妇女、儿童的犯罪分子的决定(2009 修正) [Decision of the Standing Committee of the National People's Congress Regarding the Severe Punishment of Criminals Who Abduct and Traffic in or Kidnap Women or Children (2009 Amendment)], Order No. 18 of the President of the People's Republic of China, issued and entered in force on 27 August 2009, retrieved from [http://www.gov.cn/flfg/2009-08/27/content\\_1403326.htm](http://www.gov.cn/flfg/2009-08/27/content_1403326.htm).

The police action has released thousands of children from the trafficking process and brought justice to many victims and their families. The harsh penalty has increased the expense of committing the crime of child trafficking, therefore, might deter to a certain extent the criminality. However, the special campaign of the police was not a sustainable solution. In fact, the campaign was concluded in 2012.

#### **4.2.2. Protection – DNA databank of anti-abduction**

Victims identification is a prerequisite of the protection of victims of child trafficking (UNODC 2009b, 10-11), followed by a series of appropriate assistance, including remedying the situation, which is a basic right of the victims of the crime. Although there is still not a comprehensive identification process in China and identifying and tracing the disappeared children remain challenging also for international experts (Harvey-Blankenship et al. 2010), significant progress was achieved in effective identification techniques. In April 2009, the national DNA database of anti-trafficking was established, the function of which is to trace the original family of the trafficked child by genetic testing analysis<sup>119</sup>. This new technology was introduced to the anti-trafficking realm by the NPA (2008-2012) and the following legislation<sup>120</sup> and implementation.

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<sup>119</sup> Ministry of Public Security, (2009) 公安机关查找被拐卖儿童 DNA 检验技术应用规范（试行） [Application rules for public security organs regarding DNA testing technology to find victims of child trafficking (trial)], No. 625 [2009] of the MPS Criminal Department, issued on 9 April 2009.

<sup>120</sup> Supreme People's Court, Supreme People's Procuratorate, Instrumentalities of the State Council, All Ministries, Ministry of Public Security, Ministry of Justice, (2010) 最高人民法院、最高人民检察院、公安部、司法部印发《关于依法惩治拐卖妇女儿童犯罪的意见》的通知 [Notice of the Supreme People's Court, the Supreme People's Procuratorate, the Ministry of Public Security and the Ministry of Justice on Issuing the Opinions on Legally Punishing the Crimes of Abducting and Trafficking in Women and Children], Documents of Judicial Interpretation Nature, No. 7 [2010] of the Supreme People's Court, issued and entered in force on 15 March 2010, retrieved from <http://en.pkulaw.cn/display.aspx?cgid=095d828db4ce796bbdfb&lib=law>.

The NPA was given effect by an *ad hoc* national police anti-trafficking action<sup>121</sup> and relevant regulations<sup>122</sup>. The DNA collection and checking were very important measures of the national Police Anti-trafficking Actions. In this anti-trafficking action, police took a proactive approach by conducting a large-scale door-to-door visits and survey, aimed at identifying suspected victims of child trafficking and children with the unspecified origin. When a suspected victim of trafficking is identified, through police initiative or reporting to police, it is obligatory to collect his or her blood sample and put it in the DNA databank for comparison. In this databank, the blood sample of parents of missing children is also collected. According to the “Application rules for public security organs regarding DNA testing technology to find victims of child trafficking (trial)” formulated by the Ministry of Public Security (MPS) in April 2009, it is the duty of local police to collect the blood sample for victims’ biological parents when it has been confirmed by police that their children were victims of child trafficking, or when the blood sample collection was required by the suspected victim’s parents. In addition, blood collection for the anti-trafficking DNA database is obligatory for the following subjects: rescued child victims of trafficking; children of unknown origin and suspected of being trafficked; homeless children and child beggars from the unknown origin; and bodies of unidentified children. Criminal Investigation Bureau of the MPS and relevant DNA test laboratory, both public organs, are responsible for the management and maintenance of the DNA databank. The databank was initially a network of DNA laboratories of 32 provincial and 11 prefecture-level public

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<sup>121</sup> Ministry of Public Security, (2009) 公安部部署打击拐卖儿童妇女犯罪专项行动 [Ministry of Public Security deploys a special campaign against crimes of trafficking in children and women]. 全国公安机关打击拐卖儿童、妇女犯罪专项行动 [National Public Security Organs’ Special Action to Combat Trafficking in Children and Women], retrieved from <http://www.mps.gov.cn/n2255079/n2255231/n2255233/c3579140/content.html>, [accessed on 19/07/2018].

<sup>122</sup> Supreme People’s Court, Supreme People’s Procuratorate, Instrumentalities of the State Council, All Ministries, Ministry of Public Security, Ministry of Justice, (2010) 最高人民法院、最高人民检察院、公安部、司法部印发《关于依法惩治拐卖妇女儿童犯罪的意见》的通知 [Notice of the Supreme People’s Court, the Supreme People’s Procuratorate, the Ministry of Public Security and the Ministry of Justice on Issuing the Opinions on Legally Punishing the Crimes of Abducting and Trafficking in Women and Children], Documents of Judicial Interpretation Nature, No. 7 [2010] of the Supreme People’s Court, issued and entered in force on 15 March 2010, retrieved from <http://en.pkulaw.cn/display.aspx?cgid=095d828db4ce796bbdfb&lib=law>.

security organs and was planned to connect all the DNA laboratories in the country<sup>123</sup>. The blood sample collection and DNA comparison are free of charge. According to information provided by volunteers of BBHJ, in practice, not only child victims can benefit from the DNA testing technology and databank. Adults, who claimed to have been trafficked as children, can also use such facilities and services to look for their original families. After the establishment of the DNA databank, the volunteers of BBHJ also provide assistance and information to the registered users to have their blood samples collected.

The DNA technique facilitates the identification of child victims of trafficking. It effectively prevents child victims from being exposed to further risks of violation remaining in the hands of traffickers. Moreover, it protects victims of trafficking, children or already adults, by increasing the possibility and accelerating the process of their reunification with biological parents. For instance, if a person reports to local police that a child of his neighbour was from unknown origin, the police then have to file the case and investigate whether the reported parents are the biological parent of the child. If the child does not have the birth certificate, or is not legally registered in the residence system, or proved to do not have any blood relation with the current parents, his blood sample must be collected and put into the national DNA database for comparison with those parents looking for their missing children. If the child's biological parents were looking for their child too, their blood sample should be or will be put into the database, which will be matched with their child's sample. The comparison process is much easier and faster than old methods, which required parents looking through constantly all the possible information about their missing child over the country.

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<sup>123</sup> Ministry of Public Security, (2009) 广东省公安厅动员部署打击拐卖儿童妇女犯罪专项行动 [Guangdong Provincial Public Security Department mobilised and deployed the Special Action to Combat Trafficking in Children and Women], *全国公安机关打击拐卖儿童、妇女犯罪专项行动* [National Public Security Organs' Special Action to Combat Trafficking in Children and Women], retrieved from <http://www.mps.gov.cn/n2255079/n2255231/n2255233/c3579211/content.html> [accessed on 19/07/2018].

The DNA technique has been proven very effective in facilitating the identification of child trafficking cases and family reunion of victims. By the end of 2015, over four thousand children were reunited with their birth parents through the national DNA database (State Council Information Office 2016b). However, the DNA database has its limitations. The matching is possible only if the blood sample of both parents and child are entered into the databases. It means that on the one side, the victim has been identified by police, on the other side, the parents of the victim have reported the disappearance of the child to the police. If the child was sold or abandoned by their parents, who would rarely report themselves to the police, or if the child was not identified as a suspected victim of trafficking, the DNA technique cannot be used.

#### **4.2.3. Prevention – Online Alert System**

On 15 May 2016, a Chinese Child Abduction Emergency Alert Platform (hereinafter Alert Platform), or the Chinese version AMBER Alert<sup>124</sup> system, was launched by the MPS, with the technical support of the Alibaba Group. Through a mobile application named “Tuanyuan” (“family unification” in Chinese), anti-trafficking police officers, on receiving missing child or child abduction reports, can broadcast the alert immediately to the Alert Platform<sup>125</sup>. The alert message contains key information of the missing child, including physical features, photo, location of their disappearance, and time of the incident. The message of the missing child is sent to the official account of the Alert Platform on *Weibo*, one of the biggest social media platforms in China. In addition, the message will be sent to users of associated apps and new media promptly. Within one hour of the child’s disappearance, the information will be transmitted to users within 100 km radius of the child’s lost location. Within two hours, the area covered by the alert expands to 200 km radius, then 300 km and

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<sup>124</sup> See U.S. Department of Justice Office of Justice Programs, AMBER alert website: <https://www.amberalert.gov/about.htm>.

<sup>125</sup> Xinhuanet, (2016) 公安部儿童失踪信息紧急发布平台上线 [Child Abduction Emergency Alert Platform of MPS was Launched], retrieved from <http://politics.people.com.cn/n1/2016/0516/c1001-28352090.html> [accessed on 19/07/2018].

over 500 km<sup>126</sup>. In two years, the application “Tuanyuan” has been upgraded to “Tuanyuan 4.0”, connecting 25 new media and apps<sup>127</sup>, including China National Emergency Broadcasting, Tencent News App<sup>128</sup>, OFO (a bike-sharing app), Alipay, AutoNavi<sup>129</sup>, and Ele.me (online food delivery service platform)<sup>130</sup>.

The Alert Platform has been very effective in preventing child trafficking. According to the latest data released by the MPS, in three years, Alert Platform has broadcasted 3,978 alter messages and 3,901 of them were retrieved<sup>131</sup>. While more detailed data is available only for the year of 2018, released at the occasion of the second anniversary of the launch of the Alert Platform: in these two years, 3,053 messages of missing children were broadcasted, and 2,980 children were retrieved, among which 48 were victims of child trafficking, 1,705 children were running away from home, and 424 were lost (Wang 2018). Although victims of trafficking only made up a small proportion of the total number, the Alert Platform effectively prevented over 2,100 children on the run or lost from becoming victims of crimes such as child abduction or trafficking.

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<sup>126</sup> Ibid.

<sup>127</sup> People.cn, (2018) 公安打拐不断升级: DNA 比对、互联网平台 [The public security organs continue to upgrade the anti-trafficking measures: DNA comparison and Internet platform], retrieved from <http://ln.people.com.cn/n2/2018/0525/c378326-31626817.html>, [accessed on 19/07/2018].

<sup>128</sup> 腾讯新闻客户端.

<sup>129</sup> 高德地图. AutoNavi, also known as Gaode Maps, is a Chinese web mapping, navigation and location-based services provider.

<sup>130</sup> People.cn, (2018) 公安打拐不断升级: DNA 比对、互联网平台 [The public security organs continue to upgrade the anti-trafficking measures: DNA comparison and Internet platform], retrieved from <http://ln.people.com.cn/n2/2018/0525/c378326-31626817.html>, [accessed on 25/07/2018]. Beijing Evening News, (2017) 儿童失踪信息紧急发布平台“团圆”3.0 正式上线 [Missing Children’s information emergency release platform “Reunion” 3.0 officially launched], retrieved from [http://www.xinhuanet.com/legal/2017-05/18/c\\_1120996401.htm](http://www.xinhuanet.com/legal/2017-05/18/c_1120996401.htm), [accessed on 25/07/2018].

<sup>131</sup> Xinhuanet. (2019) 公安部: “团圆”系统上线三年来找回近 4000 名失踪儿童 [MPS: The “Tuanyuan” system has been online for three years and has retrieved nearly 4,000 missing children], retrieved from [http://www.xinhuanet.com/2019-06/02/c\\_1124573835.htm?spm=C73544894212.P59511941341.0.0](http://www.xinhuanet.com/2019-06/02/c_1124573835.htm?spm=C73544894212.P59511941341.0.0), [accessed on 25/07/2018].

However, the Alert Platform has several limitations. The first limit regards on its effectiveness in combating child trafficking. As mentioned, in two years, it has helped 48 victims of trafficking and around 2,000 children who might have become victims of child abduction. The post hoc reaction mechanism, which was designed to prevent child trafficking, in effect, cannot prevent the occurrence of child abduction and has very limited effect on combating child trafficking. In addition, the whole alert system relies on the Internet and smartphones. People who do not use smartphones cannot receive alert messages. More importantly, the alert does not pop up on the phones of people within the receivable range. If the person does not have or use the cooperating apps when the alert is posted, then the message does not reach that person. Even though some of the cooperating apps are very popular in China, it is very likely that their users miss the alert message considering the overwhelming amount of information in those apps. For instance, the alert messages published on *Weibo* are not different from ordinary user messages, which means the information can easily be overridden by other incoming communications.

The final concern regards the privacy of the child. As previously mentioned, the alert message contains detailed personal information of the missing child and his or her family, including name, sex, date of birth, home address, name of the school, and at least one photograph that shows clearly the face of the child. The author noticed that on the *Weibo* account of the Alert Platform, all the previous alert messages are still accessible to the public. In cases of the child being retrieved, the police did not delete the information of the child; instead, a message explaining the reason for the child's disappearance was posted after the original post. The privacy of these children and their families are exposed to all the users of *Weibo*.

#### **4.2.4. Civil society**

The civil society is included in a very limited way in the national plans. In both NPAs, social groups, public welfare organisations, private enterprises, and institutions, as well as individuals are encouraged to provide financial support to the national anti-trafficking campaign. Universities,

research institutions, and specialised institutes are included in efforts relating to victims' recovery and assistance, by preparing and providing specialists in psychological consulting<sup>132</sup>.

In practice, civil society has participated actively in combating child trafficking in many aspects, including promoting legislation, establishing a databank of missing children, and introducing new technologies in anti-trafficking activities. First of all, private companies cooperate with the Ministry of Public Security and provide technical support to police activities related to combating child trafficking - for instance, the aforementioned Child Abduction Emergency Alert Platform was established with the technical support by Alibaba Group, which also provides continuous support for the operation, maintenance, and technology upgrade of the platform.

More importantly, civil society has taken up the initiative in providing assistance to the victims of child trafficking and their families. Before the development of the NPA, in 2007 the NGO *Bao Bei Hui Jia* ("Baby coming home" in Chinese) was established by two Chinese citizens, Zhang Baoyan and Qin Yanyou. It has created the first and, at time of writing, the only databank of missing persons (including children) and unidentified persons (including suspected trafficking victims)<sup>133</sup>. By cooperating with the police and coordinating other civil forces, including individuals and companies, BBHJ is now in the core of all activities related to combating child trafficking and leading NGO in China in the realm of combating child trafficking. Supported by 280 thousand volunteers across the country<sup>134</sup>, BBHJ is committed to looking for missing persons including victims of child abduction and sale of children, as well as helping victims of trafficking or child abandonment to find their original families. The activities of BBHJ, including its official website, are sponsored by private enterprises, therefore relatively unstable. BBHJ has cooperated with the Child Abduction Emergency

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<sup>132</sup> See *China National Plan of Action on Combating Trafficking in Women and Children (2013-2020)*.

<sup>133</sup> See the official website of BBHJ: <https://baobeihuijia.com/Index.aspx>.

<sup>134</sup> Information provided by the dependent of BBHJ, see Appendix I.

Alert Platform and the MPS, as well as other enterprises, including a public service programme of China Central Television named “Waiting for Me (等着我)”, Toutiao, Baidu, Tencent, and Microsoft<sup>135</sup>.

One of the achievements of BBHJ that distinguishes it from other NGOs is its participation in policy-making. In 2009, Zhang Baoyan and Qin Yanyou, the founders of the association BBHJ made suggestions to establish a DNA database of anti-abduction and a quick reaction mechanism of police in responding to child abduction, which has been adopted by the MPS<sup>136</sup>. Zhang Boyan was then elected as a representative of the thirteenth National People’s Congress of Jilin Province in 2018 and made new legislative proposals on the punishment of crimes related to trafficking at the annual plenary sessions of the National People’s Congress and the National Committee of the Chinese People’s Political Consultative Conference held in March 2019<sup>137</sup>.

The information and materials published on BBHJ came from two different sides and created an “H” shaped (Wang 2000) data collection and comparison mechanism (see Figure 22). The registers for the assistance of BBHJ are divided into two broad categories. The “searching missing persons” group receives families looking for missing children or adult family members, who were abducted, missing, or with whom they have lost touch. The “searching families” group receives victims of trafficking, selling, or abandonment, who are looking for their original families. Volunteers of BBHJ, also divided in “family group” and “missing person group”, assist the registers to recall the memories of their family and hometown, describe the special features of the missing person and their family

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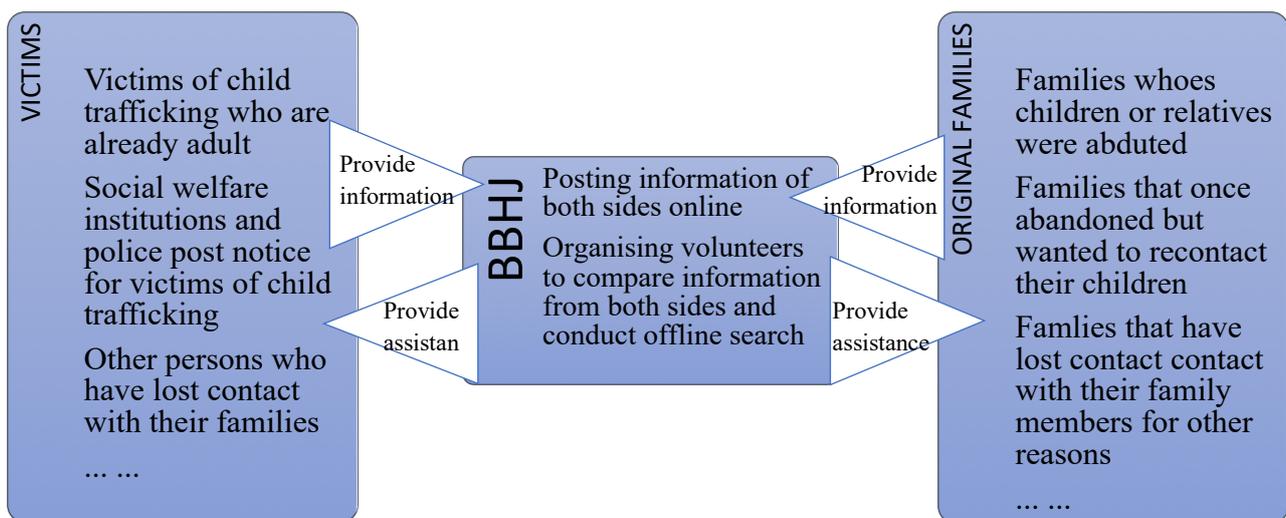
<sup>135</sup> Ibid.

<sup>136</sup> Guo Fengwen, (2017) 秦艳友、张宝艳：宝贝回家之路[Qin Yanyou and Zhang Baoyan: the road of babies going home (the road of BBHJ)]. *Revolutionary Committee of the Chinese Kuomintang*, retrieved from: <http://www.mingge.gov.cn/n1/2017/1211/c415759-29699046.html>, [accessed on 25/07/2018].

<sup>137</sup> Zhou Yunxi, (2019) “两会”好声音：拐卖妇女儿童犯罪应“零容忍” [No tolerance to crimes of trafficking in women and children], retrieved from: [https://www.sohu.com/a/299111394\\_120053571?sec=wd](https://www.sohu.com/a/299111394_120053571?sec=wd), [accessed on 31/07/2019].

members, as well as collect other information that can help the identification of the missing person and the family. When it turns out to be a suspected child trafficking case, the volunteers also provide assistance to the register to report the case to the police and to collect necessary blood sample. Another activity of the volunteers is to compare the information of the two groups, searching for matches. They also visit places and persons based on the information they have.

Figure 22 “H” shaped Operating model of BBHJ



Tens of thousands of pieces of information, grouped by “searching missing persons” and “searching families”, have been posted on the BBHJ website, which has become the biggest missing persons databank in China. It is accessible for public consultation, including photographs of the missing person, year and place of birth, year and place of disappearance, and a description of specific characteristics of the person or the family and of the incident. The basic operating model of BBHJ relies primarily on the databank and networks of volunteers.

The biggest limitation of the “H” shaped mechanism is that it requires the participation of both sides – victims and their families, and the possibility to match the information provided from both sides. Frequently, key messages provided by victims and their families, including the time of child abduction, place of origin, and age of the victim when the incident happened, are not the same. Since

2007, the BBHJ has posted information for over 400 thousand users<sup>138</sup> while only 2,952 persons have found their original family<sup>139</sup>. Nevertheless, this time-consuming mechanism created a hub and platform for the following application of new technologies, as explained in the following paragraphs.

When the information provided by both sides are incompatible, it will be very difficult to match the victim with his or her family. This problem can be minimised by the application of new technologies, namely DNA text and facial recognition. In April 2009, the national DNA databank dedicated to anti-trafficking was established, as suggested by the founder of BBHJ Zhang Baoyan<sup>140</sup>, As previously explained (see §4.2.2) and confirmed by the volunteers of the BBHJ (see Appendix II), the BBHJ cooperates with the MPS and provide assistance and information to the registered users to have their blood samples collected.

New technologies, in particular, the artificial intelligence (AI) facial recognition technology, are contributing to the field of protecting victims of child trafficking and their families. In most of the cases posted by BBHJ, families looking for their missing children or vice versa, the incident happened years or decades before. Years change the child victim into a very different person from the face in the dated photos that his or her family use in their search. Cross-Age facial recognition technology can provide help. Equipped with facial recognition technology and huge database, the AI system is able to automatically integrate the traces of time and match a child with the adult he or she grows into<sup>141</sup>. Tencent and Baidu, both mega Chinese multinational Internet technology companies, have

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<sup>138</sup> China National Emergency Broadcasting, (2018) ‘中国最大寻亲网引入”人脸识别系统” 宝贝回家开启加速模式 [‘Facial recognition’ system introduced in China’s largest person tracing website, BBHJ turned on acceleration mode], retrieved from <http://www.cneb.gov.cn/2018/02/05/ARTI1517833509790687.shtml>, [accessed on 25/06/2019].

<sup>139</sup> Number of successful cases published on the website of BBHJ as of 7 June 2019.

<sup>140</sup> Guo Fengwen, (2017) ‘秦艳友、张宝艳：宝贝回家之路 [Qin Yanyou and Zhang Baoyan: the road of babies going home (the road of BBHJ)]’, *Revolutionary Committee of the Chinese Kuomintang*, retrieved from: <http://www.minge.gov.cn/n1/2017/1211/c415759-29699046.html>, [accessed on 1/06/2019].

<sup>141</sup> Tencent technology, (2017) ‘腾讯 QQ 全城助力科技公益项目摘戛纳创意节中国首金 [QQ alert with the first Gold Lone prize for China in the Cannes Lions Festival of Creativity]’, retrieved from: <http://tech.qq.com/a/20170621/016730.htm>, [accessed on 9/06/2019].

developed the cross-age facial recognition technology dedicated to facilitating families to trace their abducted or missing children. According to the report, “Tencent Youtu”, a series of the product of facial recognition technology of Tencent, has reunited over eight hundred families<sup>142</sup>.

Similarly, Baidu has made a breakthrough in applying cross-age technology to combat child trafficking. In 2017, a 33-year-old man who was trafficked as a child found his family, thanks to the online facial recognition system of Baidu<sup>143</sup>. The BBHJ also offers an app named “Age portrait (年齡人像)” which also works based on this technology. The App can identify the age stage of the person in the photo uploaded by the user and identify possible kinship between two samples. However, there are not any details on the technical supporter and achievement of “Age portrait”.

“AI Huijia (AI 回佳)” platform<sup>144</sup> and “Zhongxun”<sup>145</sup> also operate based on facial recognition technology. Users can upload up to five photographs of the person that they are looking for. The facial recognition technology will compare all the photos in their database and search for matching photos. This technology simplifies the matching process and reduces the time required.

The boom of the application of facial recognition technology causes a series of concerns that have not yet been taken seriously. For instance, the “Tencent Youtu” platform<sup>146</sup> invites the public to take and upload pictures of any suspected abducted children or person, according to their personal

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<sup>142</sup> Xinhua Net, (2019) ‘腾讯优图突破’跨年龄人脸识别’, 助力警方寻回被拐十年儿童 [Tencent “Cross-age facial recognition technology” helped police find a person who was trafficked ten years before], retrieved from [http://www.xinhuanet.com/tech/2019-05/04/c\\_1124447988.htm](http://www.xinhuanet.com/tech/2019-05/04/c_1124447988.htm), [accessed on 9/06/2019].

<sup>143</sup> Mail Online, (2018) ‘Chinese man, 33, abducted as a child finds his real parents after uploading a childhood photo onto a missing persons website that uses facial recognition technology’, retrieved from <https://www.dailymail.co.uk/news/peoplesdaily/article-4492814/Man-33-finds-parents-help-facial-recognition.html>, [accessed on 9/06/2019].

<sup>144</sup> On the “AI Huijia (AI 回佳)” platform users can upload up to five photographs of the person who lost contact with his or her family. The artificial intelligence will compare all the photos in their database and search for matching photos. See the website: <https://www.pcijia.com/>.

<sup>145</sup> “Zhongxun” provides AI facial recognition service based on social media *Weibo*. See the website: <http://www.zhongxun.life/>.

<sup>146</sup> See the website of Tencent Youtu: <https://open.youtu.qq.com/#/open/solution/search>.

judgement, that they meet on the road. “Zhongxun” not only invites people to upload photos of a suspected child victim but will also post the result of the comparison, including the photos of the child, on their *Weibo* account. The right to privacy of the child in the photos without his or her permission has been infringed, and the privacy of any children on the public space is at risk.

The application of facial recognition technology to combat child trafficking also relies on the “H” shaped data collection and comparison mechanism. On the one side, families of abducted children upload victims’ photos to the facial recognition comparison platform, directly or through BBHJ. On the other side, victims themselves, police agents or social workers upload victims’ photos to search for their original families.

The efforts of NGOs to combat child trafficking are supported by Chinese citizens. In addition to the hundreds of thousands of BBHJ volunteers, a great number of *Weibo* users participated the campaign “#To rescue begging children by taking photos#” (#随手拍照解救乞讨儿童#), also called “*Weibo* anti-trafficking”. Launched in 2011 by a scholar of the Chinese Academy of Social Sciences, the campaign called for citizens to take photos when they see begging children on the street and post them on *Weibo* with the hashtag above. The *Weibo* anti-trafficking was popular, with over 2.2 million views by March 2019. Many new mainstream media websites repeatedly reported the campaign<sup>147</sup>, which also received attention and support from the MPS<sup>148</sup>. However, the campaign has been highly questioned and criticised regarding the protection of privacy of begging children and their parents,

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<sup>147</sup> For instance, Tencent News (<https://news.qq.com/zt2011/bbhuijia/index.htm>), IFeng.com ([https://gongyi.ifeng.com/news/detail\\_2012\\_08/29/17180538\\_0.shtml](https://gongyi.ifeng.com/news/detail_2012_08/29/17180538_0.shtml)).

<sup>148</sup> Xinhua News. (2011). 公安部回应微博打拐称会核查每条线索. [The Ministry of Public Security responded to the “*Weibo* anti-trafficking” saying that each clue would be investigated.], Retrieved from: <https://news.qq.com/a/20110209/000690.htm>, [accessed on 9/06/2019].

the authenticity of the photos and the effectivity of *Weibo* in combating child trafficking<sup>149</sup>, as well as falsely believing that begging children were always victims of trafficking<sup>150</sup>.

## 4.2. Policy gaps

Despite the national policy and numerous initiatives aimed at combating child trafficking in China, little evidence shows that crimes related to child trafficking have been effectively deterred. The national policy of combating child trafficking should, on the one hand, correspond to realities on the ground and be effectively implemented, and on the other hand, in compliance with international human rights standards. While taking into account the particular characteristics of child trafficking in the country and making reference to the international human rights instruments in which China takes part, the current policies have much room for improvement. It is necessary, at the end of this study, to address some evident policy gaps in this issue. This section highlights the policy gaps of these two aspects: the gap between Chinese anti-trafficking policy and the concrete situation of child trafficking in China, and the new human rights challenges raised by the new technologies applied in combating child trafficking.

### 4.3.1. National policy detached from reality

Although China's national plans of action to combat child trafficking include measures to prevent the crime, prosecute offenders, and protect the victims, it cannot be denied that these plans of action faced many challenges in their implementation, in adapting them to local situations. Evidence

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<sup>149</sup> Ningbo Evening News [宁波晚报], (2011) ‘随手拍照解救乞讨儿行动给力 难点问题开始显现 [Difficulties and problems in actions of fiery “rescue begging children by taking photos” begin to emerge]’, retrieved from: <https://news.sohu.com/20110209/n279252009.shtml>, [accessed on 9/06/2019]. Beijing Daily.cn [京报网], (2012) 公安部谈随手拍解救乞讨儿童: 要爱心也需要尊重 [The Ministry of Public Security make comments on the “rescue begging children by taking photos”: to love and to respect], retrieved from: <http://baobao.sohu.com/20120831/n351996110.shtml>, [accessed on 9/06/2019].

<sup>150</sup> Workers' Daily [工人日报], (2012) ‘解救被拐儿童不能过度依赖网络 [Rescuing trafficked children cannot over-rely on the Internet]’, retrieved from: <http://www.chinanews.com/fz/2012/08-31/4149185.shtml>, [accessed on 9/06/2019].

presented in Chapter II showed that child trafficking in China has some characteristics that need to be highlighted. The victims of child trafficking in China are mainly infants and males. A great majority of them were sold by parents or relatives. The purpose of buyers was primarily illegal adoption rather than exploitation. However, the current national policies cannot fully address features so as to prevent and combat the crime effectively and protect the victims.

Measures taken by national and local stakeholders related to preventing child trafficking are not fully effective due to a series of limitations. The function of many methods of combating the crime child trafficking, such as the DNA databank and facial recognition, is based on the presumption that parents are looking for children desperately and child victims need to be returned to their family. However, in reality, a great majority of the child were sold by their parents (Li, Wang, et al. 2017, Wang 2015, Xing 2017). As the data presented in Chapter II showed, the prevailing modes of child trafficking in China were the sale of children by parents (M2) and criminal networks (M3). Victims of trafficking were mainly infants in the cases of the sale of children, while in the mode of abduction and sale of children, victims were young children mainly from rural areas. While based on news reports and official reports released by accredited news agencies and governmental agencies, there were two effective measures of prevention: the establishment of the Chinese Child Abduction Emergency Alert Platform (see §4.2.3), as well as a series of dissemination and education activities of self-protection and anti-abduction. In the first place, both measures work for child abduction (M1), while leaving the prevailing modes out of consideration. In addition to the intrinsic shortcomings of the Alert Platform, due to its operational and application limitations, it cannot have any impact on voluntary selling of children.

Regarding the awareness-raising activities carried out in big cities, mainly for young children and their parents, the vulnerable groups of children, rural young children under three years old, were not affected. Besides, the preventability of child abduction needs to be further questioned. In the cases analysed in this study, the abduction and sale of children were committed by two different types of

persons, the acquaintance of the victim's parents and family, including friends, co-workers, and relatives, or random strangers. While acquaintance might abduct the child by means of fraud or coercion, the common means of child abduction adopted by strangers and some of the acquaintance was direct physical violence. In any case, the tips taught to children, i.e. "don't speak with or take candy from strangers" cannot prevent the occurrence of child abduction, because: first, this was not how most of the child abduction incidents were committed; in addition, young children have no ability to defend themselves from violent conduct.

Child trafficking in China involves multiple patterns, such as abduction and sale of children for forced marriage, parental sale of children, and organised child trafficking. Different trafficking patterns have distinct sets of contributing factors and require differentiated preventative solutions (ICAT 2016b, 16). However, child trafficking prevention policy and programmes are rather invariant. The national programmes, especially prevention programmes, are based on assumptions that are not supported by research evidence. The current preventive measures failed to address the root causes of trafficking or the demand for trafficked children. The conflict between the traditional value of male preference and the child control policy remains acute, the same as the contradiction between the demand for adoptable children and the prohibition of giving up custody of a child. Besides, despite the differences in patterns of child trafficking in different Chinese provinces, the implementation of the national plans of action at the provincial and local level was almost identical, failing to address local particularities.

#### **4.3.2. New technologies and the challenges to rights of the child**

The new technology applied in China to combat child trafficking has been highly valuable in the country. The DNA test and facial recognition technologies can facilitate and accelerate family reunion when the conditions are met, and the Alert Platform can reduce the risk of children's rights being violated. However, analysing them from a human rights perspective, these new methods also bring new challenges that have been ignored. According to the principle of primacy of human rights, the

measures to combat child trafficking cannot adversely affect the human rights and dignity of persons, in particular, the rights of children. As the measures concern children, the States and other relevant entities shall ensure that all measures as a minimum respect the key principles emphasising children's rights: the best interests of the child, non-discrimination, right of the child to be listened and taken into account, as well as the child's right to privacy (UNICEF 2006).

The principle of the best interests of the child requires that all the actions to combat child trafficking must make sure that the rights of the child are fully respected and protected. However, in reality, the priority of applying the new technology was given to parents, of whom children are considered property. Although all the measures introduced in this chapter aim to combat child trafficking in a broad sense, their real underlying rationale and what they effectively promote is that children are subject of protection, instead of right holders, the safety of which shall protect at all costs. *The Notice of the Ministry of Civil Affairs and Ministry of Public Security on Carrying out Works of Adoption of the Rescued Child Victims of Child Trafficking Who Cannot Find a Biological Parents* issued in 2015 requires that when a child was rescued by police, the priority of the follow-up protection is to return the child to his or her biological parents. Those whose parents are found should be returned timely to their parents, even if it was proven that the parents were the perpetrator of the selling of their child<sup>151</sup>. In front of parental rights, the rights of the child have been set aside.

As anticipated in the previous sections, new technology infringes on the privacy of the child-victims and children in general. There is no doubt that current technology has not taken the privacy of children into consideration, in particular, the subject whom those applications shall protect. According to the Law of the People's Republic of China on the Protection of Minors, one of the

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<sup>151</sup> State Council, (2015) ‘民政部、公安部关于开展查找不到生父母的打拐解救儿童收养工作的通知 [Notice of the Ministry of Civil Affairs and Ministry of Public Security on Carrying out Works of Adoption of the Rescued Child Victims of Child Trafficking Who Cannot Find a Biological Parents]’, retrieved from [http://www.gov.cn/xinwen/2015-09/18/content\\_2934413.htm](http://www.gov.cn/xinwen/2015-09/18/content_2934413.htm).

principles of child protection is “respecting the personality and dignity of minors”<sup>152</sup>. However, the official account of Alert Platform posts all the personal information of the missing children, including those who were retrieved to the general public. The unnecessary disclosure of personal information might cause revictimization and infringe on the dignity and reputation of the children concerned. The facial recognition applications of Tencent and some other private companies expose all children to the risk of having photos taken without permission by any user of the apps. The right to privacy of children is infringed in the name of combating child trafficking and protecting children.

New technology per se is not discriminative. People of any social, economic, cultural, and political background can refer to all the above-mentioned measures if necessary. Nevertheless, in practice some people are excluded from or disadvantaged in employing those technologies, including people without a smartphone or computer, people with no access to the internet, people incapable of accessing those applications due to disability, illiteracy, or other restrictions. That is to say, the protection that should be brought to children cannot equally benefit children living in poverty or other disadvantaged conditions. There is no evidence that the right of the child to be listened and taken into account has been fulfilled in the process of decision-making or designing the apps, nor in the actions of the so-called “rescue”. Furthermore, this is an issue that also exists in fields other than combating child trafficking.

In conclusion, as measures to combat child trafficking and logically protect children’s rights, the application of new technology, from a human rights-based perspective, brings a series of concerns and adverse impact on human rights. As measures that concern children, they fail to respect the key principles emphasising children’s rights. While the failure to promote the right of the child to be

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<sup>152</sup> Article 5, the protection of minors shall comply with the following principles: (1) Respecting the personality and dignity of minors; (2) Fitting in with the law and features of minors’ physical and mental development; and (3) Combining education with protection.

listened and taken into account is a ubiquitous and institutional issue, the infringement of the right to privacy is rather a legal question which is avoidable in a relatively short period of time.

## **Conclusion**

China issued the first NPA on Combating Trafficking in Women and Children in 2007, which was replaced by the NPA (2013-2020). Based on these policy papers, an organisational and coordinative mechanism was established, that is, the Inter-ministerial Joint Conference System for Anti-Trafficking in Women and Children (IMCS). Twenty-eight departments and State agencies were involved in this mechanism, which was designed to incorporate and coordinate all the sectors at the national level in implementing the NPA, to supervise the implementation of the plan, and to conduct the assessment. Although the measures contained in the NPA did not follow specifically adopt the “3Ps” mechanism in a precise way, the plan still covered all three aspects – prevention, prosecution, protection – of combating trafficking in person.

Under this mechanism, it was required that relevant departments carry out numerous measures including: preventing the crime of child trafficking; improving the capacity and efficiency of identifying and detecting crimes of trafficking and carrying out police crack-down actions; protecting the victims of trafficking, and to cooperate with civil society and international and regional partners. in line with the international standards, it is hard to deny that these plans of action faced many challenges in their implementation, monitoring, evaluation, and follow-up. Some measures, such as the police action and awareness-raising activities, were only carried out in a short timeframe. It is also noticed that the current measures cannot fully address the real problems in China. While the main pattern of child trafficking in China is the parental sale of children and organised child trafficking, and the buyer’s purpose is the illicit adoption, the current measures, including the Online Alert system, the DNA databank, and the facial recognition Apps can affect only the victims of the abduction and sale of children.

Moreover, the measures applying new technology bring a series of new concerns and adverse impact on human rights. As measures that concern children, they fail to respect the key principles emphasising the best interest of the child. The failure to promote the right of the child to be listened and taken into account, and the infringement of the right to privacy are also shortcomings that need to be resolved in the future. These measures challenge the principle of supremacy of human rights.

By presenting the most important policy and measures of combating child trafficking carried out in China in the last two decades, this chapter answered the second guiding question “what are the policies and measures of the Chinese government in responding to the child trafficking?” and highlighted the gaps between policy and the reality, as well as the new challenges to human rights brought by the new technologies. Based on these findings, the next chapter evaluated the China’s reaction under the international human rights standards, aiming to explore if and how the Chinese State obligations under international human rights law are engaged.



## **V. The Chinese policy against child trafficking and the international human rights standards: the added value of a human rights-based approach**

While the Chinese national policies have failed in many aspects to respond the realities and particularities of crimes related to child trafficking in the country, numerous gaps also need to be filled when referring to international human rights standards and principles. More specifically, policies and activities must be consistent with principles and standards established in international human rights instruments, including the CRC and the Palermo Protocol. A comprehensive response to child trafficking needs to be based on human rights principles, be gender- and age-sensitive and follow the principle of non-discrimination, taking into consideration the different needs of individual victims (Working Group on Trafficking in Persons 2018, 3).

International agencies have issued a series of handbooks on evaluating counter-trafficking programmes and NPAs, in which very detailed instructions are provided (Inter-Parliamentary Union and UNICEF 2005, IOM 2007, UNICEF 2007, UNICEF Innocenti Research Centre 2009). However, this chapter is not aimed at assessing (with evidence and data) the relevance, effectiveness, or impact of activities in light of protecting objectives. It is rather a general evaluation of the past and current NPAs, addressing the gaps between national policies and international standards in the field of combating child trafficking. The aim is to answer the second core research question “If and how the State’s obligations derived from international human rights instruments have been engaged when the Chinese authority responds to the issue of child trafficking”.

This analysis of policy gaps is based on the “International Framework for Action: to Implement the Trafficking in Persons Protocol” of UNODC (2009b), emphasising child trafficking and child-victims of trafficking. Considering that trafficking in children, the sale of children, illegal adoption, and child exploitation are all forms of violence against children, the basis of reference also includes,

among others, General Comments issued by CRC, reports of Special Rapporteur on trafficking in persons, especially women and children, reports of Special Rapporteur on the sale and sexual exploitation of children, reports of Special Representative on Violence against Children, UNICEF handbook on the optional protocol on the sale of children, child prostitution and child pornography (2009), policy papers issued by Inter-Agency Coordination Group against Trafficking in Persons (ICAT 2012; 2014; 2016a), as well as other relevant recommendations of human rights treaty bodies. A human rights-based approach is adopted for the evaluation of all the three intervention areas, namely prevention, protection, and prosecution. As a great majority of the cases in this research are domestic child trafficking, measures relevant to the status of victims, smuggling of persons, and other measures dedicated exclusively to foreigners and adults are not within the scope of this chapter.

## 5.1. Prosecution

First of all, the minimum standard of implementing the Palermo Protocol (UNODC 2009b) requires that the State Parties establish a comprehensive criminal offence of trafficking in persons in compliance with the definition of article 3 and distinguish trafficking in persons from other offences. Similarly, the CRC-OPSC requires that clear and comprehensive legislation that criminalise the sale of children, trafficking in children as well as illegal adoption<sup>153</sup>. Although China criminalises the offence of trafficking in persons, it has been criticised by human rights experts that its legal framework is not yet comprehensive<sup>154</sup>. The definitions of trafficking in children and the sale of

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<sup>153</sup> UN Human Rights Council, (2016) *Report of the Special Rapporteur on the sale of children, child prostitution and child pornography*, 22 December 2016, A/HRC/34/55, at para.95.

<sup>154</sup> UN Committee on the Rights of the Child (CRC), (2013) *Concluding observations on the initial report of China submitted under article 8 of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, adopted by the Committee at its sixty-fourth session (16 September–4 October 2013)*, 29 October 2013, CRC/C/OPAC/CHN/CO/1, at para. 11. See also UN Committee on the Rights of the Child (CRC), (2013) *Concluding observations on the combined third and fourth periodic reports of China, adopted by the Committee at its sixty-fourth session (16 September–4 October 2013)*, 29 October 2013, CRC/C/CHN/CO/3-4, at para. 87-88.

children in international treaties are confounded within the same legal term in Chinese legislation. As anticipated in Chapter I (see §1.1.2 B), the only definition similar to trafficking in persons of Palermo Protocol is that contained in article 240 of Criminal Law, which is, however, closer to the definition of the sale of children defined in CRC-OPSC. It is followed by article 241, which prohibits the purchase of child victim of child trafficking defined in article 240.

The definition of trafficking in persons of the Palermo Protocol is reflected partially in several separate crimes in the Chinese legal framework, including Articles 240<sup>155</sup>, 241<sup>156</sup>, 244<sup>157</sup>, 262<sup>158</sup>, 358<sup>159</sup>, 359<sup>160</sup> and 234A<sup>161</sup> of Criminal Law. The main Article 240 does not clearly or precisely define the constituent elements of the offence in line with the Palermo Protocol. Instead of three elements, namely action, means (irrelevant for trafficking in children), and purpose, the Chinese definition has only two elements: action and purpose. The most serious inconsistency between the Chinese and international definitions is within the purpose element. In the Chinese legislation, the purpose element is the “selling the child (or woman)”, which is similar to the purpose of “remuneration” the sale of children defined in Article 2 of the CRC-OPSC<sup>162</sup>, rather than the purpose of “exploitation” in the definition of trafficking in persons of the Palermo Protocol. In line with the article 3.c of the Palermo Protocol, it is not necessary to prove the existence of the means set forth in the definition of trafficking in persons.

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<sup>155</sup> Crime of abduction and sale of women and children.

<sup>156</sup> Crime of buying abducted women or children.

<sup>157</sup> Crime of forced labour.

<sup>158</sup> Crime of abducting children and organizing people with disabilities and children for begging or engaging in criminal activities.

<sup>159</sup> Crime of organising and forced prostitution.

<sup>160</sup> Crime of harbouring prostitution or seducing or introducing others into prostitution.

<sup>161</sup> Crime of organising the sale and removal of organs.

<sup>162</sup> Article 2. For the purposes of the present Protocol: (a) Sale of children means any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration;

The consent of a victim is not mentioned in the Chinese anti-trafficking legislation. However, it failed to make clear that the consent of a victim is irrelevant when coherent or other improper means are used, and consequently prosecution or conviction of victims for illicit or criminal activities for which they were trafficked.

The forms of exploitation contained within international human rights standards, in particular, the Palermo Protocol, are only partially addressed in the Chinese legislation. According to Article 240, the penalty is aggravated when the offender is sexually violent towards the victim of trafficking, forcing the victim into prostitution, or selling the victim to others for forced prostitution. However, other forms of exploitation, including forced labour, child labour, organ removal, and slavery, are not included in this definition. As a consequence, when the purpose of selling the victim is absent, crimes of abduction, transporting, or buying a child for forced labour, organ removal, or slavery are only not categorised as trafficking in children. The materialisation of exploitation does not affect the application of Article 240. However, when the purpose of “selling” is absent, and the abduction, transfer, transport, recruitment, and other similar actions are taken as the purpose of exploitation, Article 240 is not applicable. Most of the forms of exploitation are criminalised in Chinese legislation. As mentioned in the previous paragraph, the Criminal Law criminalises forced labour, forced prostitution, organising children for begging or conducting criminal activities, and removal of organs as separate crimes, however, the crime of slavery or a similar concept has not been included in the Chinese legislation as required by the relevant treaties.

In addition, China does not have a specific law on child trafficking or trafficking in persons, which can cause unfavourable consequences for the victims of trafficking and deviation in relevant data collection. Although Chinese Criminal Law criminalises acts of abduction, transfer and sale of children, the buying of children, as well as most forms of exploitation mentioned in the Palermo Protocol, they are dispersed in different articles in Criminal Law, regulations, and legal interpretations. The lack of a comprehensive anti-trafficking law would be detrimental to the identification of the

crime of trafficking and the protection of the victims; for instance, the defendant He Long was sentenced to death for the crime of statutory rape and forcing women into prostitution, which was approved by the Supreme People's Court and executed by the Intermediate People's Court of Linyi of Shandong Province on 24 July 2019<sup>163</sup>. According to the report, in 2014, the defendant He Long bought a girl (Victim 1) from Henan Province in the name of "adoption". The girl was imprisoned and raped repeatedly in the two weeks after she was brought to He Long's place, after which the victim managed to escape. Afterwards, in July 2014, for the purpose of profiting from the prostitution of the victim, the same defendant abducted a 13-year-old girl (victim 2), who was mentally disabled and imprisoned the victim in his place. He raped the girl and posted a prostitution advertisement online. A client came to his house, raped the girl and paid He Long 3,000 yuan (375 euros). On 23 December 2014, for the same purpose, the defendant abducted a 10-year-old girl (victim 3) and transported the victim with his car to his house, where the girl was imprisoned and raped by He Long. The victim was rescued by the police on the same night. It is obvious that the defendant's conduct against Victim 1 constituted the crime of buying a trafficked child (Article 241), and the sentence should be aggravated because he sexually abused the child. However, according to the report of the People's Court Daily, the defendant was convicted only for statutory rape and forcing others into prostitution. Consequently, Victim 1 was not considered as a victim of child trafficking. This example can, to some extents, explain why so few cases of child trafficking for exploitation were detected in the three provinces in this research. It is, therefore, reasonable to believe that the scale of child trafficking for sexual and other forms of exploitation has been under-estimated in China.

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<sup>163</sup> People's Court Daily, (2019) '强奸幼女并强迫卖淫罪犯何龙被执行死刑[He Long was executed for the crime of statutory rape and forcing others into prostitution]', retrieved from <http://www.court.gov.cn/zixun-xiangqing-172982.html>, [accessed on 30/07/2019].

Articles 240 and 241 of Criminal Law apply only to women and children. In addition, in the same context, a “child” refers to a person under the age of 14<sup>164</sup>, but not 18 as set forth in the CRC, the CRC-OPSC, the Palermo Protocol, as well as Law of the People’s Republic of China on the Protection of Minors. Therefore, female victims between 14 and 18 years old are treated as adult women, meaning that they are not entitled to benefit from assistance provided exclusively to child victims, for instance, the anti-abduction Alert Platform. Moreover, male children between the age of 14 and 18 were excluded from the protection of anti-trafficking law and system, including Alert Platform, access to DNA database, as well as assistance services provided to victims of trafficking. There is no doubt that this regulation is not in line with the principle of the best interests of the child. In consequence, the right to access to justice and the right to remedy of victims within this category is not properly protected. The age threshold of the crime of child trafficking in China is another reason for the low percentage of case law in which the victim was exploited in this research. Trafficked girls aged from 14 to 18 years old are much more likely to be sexually exploited than be adopted; however, they do not belong to the category of child trafficking victims. Boys of the same age group are likely to be trafficked for forced labour, such as the case of black brick kiln in Shanxi Province<sup>165</sup>; nevertheless, the Article 240 is not applicable to males over 14 years old.

As previously mentioned, the means element set forth in the definition of Palermo Protocol is not required in the Chinese legislation, nor for trafficking in women or children. The penalty will not be aggravated when children are involved as victims of trafficking, but if the victim is an infant (from 1

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<sup>164</sup> Supreme People’s Court of PRC, (2016) 最高人民法院关于审理拐卖妇女儿童犯罪案件具体应用法律若干问题的解释 [Interpretation of the Supreme People’s Court on Several Issues concerning the Application of Law in the Trial of Cases regarding Crimes of Trafficking in Women and Children], Interpretation No. 28 [2016] of the Supreme People’s Court, issued on 21 December 2016, entered in force on 1 January 2017, at Article 9, retrieved from <http://www.court.gov.cn/zixun-xiangqing-33641.html>.

<sup>165</sup> BBC News. (2007). *China “will catch slave owners”*. Retrieved from <http://news.bbc.co.uk/2/hi/asia-pacific/6759399.stm>, [accessed on 30 June 2019].

to 6 years of age)<sup>166</sup> and the infant is obtained by stealing, the aggravation of penalty is required<sup>167</sup>. In addition, the legislation provides for aggravating circumstance when the trafficking actions are committed by certain means, including the use of violence, coercion, and anaesthesia. The aggravation is also applicable when the offender is the ringleader of a criminal group engaged in trafficking in women and children, as well as when the number of victims is more than three.

Although the fact that aggravation of penalty applies in the event of “serious crime” and when improper means are used against vulnerable persons is generally in line with international principles, its proportionality must be questioned. The minimum penalty for the abduction and the sale of children (Article 240) is five years of imprisonment, while in circumstances where the gravity is increased (Article 240 [1-8]), the penalty increases to the minimum of ten years of imprisonment until a maximum of death penalty. However, the crime of child trafficking does not include buyers, who buy the trafficking children for illicit adoption or other forms of exploitation. The crime of buying a trafficked child, as stipulated in Article 241, is much less severe than that of child trafficking. The impunity to buyers who did not abuse the child victim nor obstruct the trafficked woman from returning to her original place of residence according to her will was not abolished until 2015, when the article was amended as “Where in buying an abducted or trafficked woman or child, the bought child is not abused, and their rescue is not obstructed, a lighter punishment may be convicted; where it is in accordance with the woman’s wishes, and her return to her residence was not obstructed, it may be given a lighter punishment, or punishment may be commuted”<sup>168</sup>.

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<sup>166</sup> Ibid.

<sup>167</sup> Supreme People’s Court, Supreme People’s Procuratorate, Instrumentalities of the State Council, All Ministries, Ministry of Public Security, Ministry of Justice, (2010) 最高人民法院、最高人民检察院、公安部、司法部印发《关于依法惩治拐卖妇女儿童犯罪的意见》的通知 [Notice of the Supreme People’s Court, the Supreme People’s Procuratorate, the Ministry of Public Security and the Ministry of Justice on Issuing the Opinions on Legally Punishing the Crimes of Abducting and Trafficking in Women and Children], Documents of Judicial Interpretation Nature, No. 7 [2010] of the Supreme People’s Court, issued and entered in force on 15 March 2010, at para. 28. Available at: <http://en.pkulaw.cn/display.aspx?cgid=095d828db4ce796bbdfb&lib=law>.

<sup>168</sup> 中华人民共和国刑法修正案(九) [Amendment (IX) to the Criminal Law of the People’s Republic of  
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The regulation about the liability of legal persons is not clear regarding the crime of trafficking in children. The legal opinion of the Supreme People's Court explained that dependents of medical institutions, social welfare agencies and other public agencies are liable for selling children under the care or custody of the agency, for the purpose of profit<sup>169</sup>, and the NPA (2013-2020) required that both individual and organisation or company shall be held accountable for civil, administrative, and criminal liability when engaging in buying, recruiting, or forcing victims of trafficking to engage in pornographic activities or forcing and forced labour. However, there is neither regulation nor case law regarding the liability of legal persons regarding child trafficking in general or for a purpose other than the abovementioned ones. Where parents or legal guardians are involved in the trafficking of their children, according to the current regulation, they will not be deprived of their parental rights. In practice, the priority of custody was given to biological parents if they can be identified (see Appendix III); however, there are also cases in which parental rights were deprived as the biological parents clearly refused to take care of the child.

In addition to the deprivation of liberty and/or the parental rights, Article 240 of Criminal Law also imposes fines or confiscation, and seizure of property of traffickers as well as assets and proceeds of the crime. A similar sanction is also imposed on exploiters who organise and force victims to engage in prostitution. Whereas, when the sale of children is for forced labour or illegal adoption, fines or confiscation of property or proceeds of crime is not imposed by law. However, contrary to article 14 (2) of the Palermo Protocol, the proceeds of crime or confiscated property of traffickers and/or exploiters can be used to compensate victims of the crime. There is neither regulation nor legal

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China], at Article 15.

<sup>169</sup> Supreme People's Court, Supreme People's Procuratorate, Instrumentalities of the State Council, All Ministries, Ministry of Public Security, Ministry of Justice, (2010) 最高人民法院、最高人民检察院、公安部、司法部印发《关于依法惩治拐卖妇女儿童犯罪的意见》的通知 [Notice of the Supreme People's Court, the Supreme People's Procuratorate, the Ministry of Public Security and the Ministry of Justice on Issuing the Opinions on Legally Punishing the Crimes of Abducting and Trafficking in Women and Children], Documents of Judicial Interpretation Nature, No. 7 [2010] of the Supreme People's Court, issued and entered in force on 15 March 2010, at para. 19, retrieved from <http://en.pkulaw.cn/display.aspx?cgid=095d828db4ce796bbdfb&lib=law>.

interpretation regarding compensation for the victims of trafficking, nor any case law in which victims or their parents or legal guardians have successfully obtained financial compensation as they legally claimed.

Table 16 Table of Framework of Action: Prosecution

MINIMUM STANDARD	IMPLEMENTATION MEASURES	China's implementation situation
Existence of a comprehensive criminal offence in compliance with the definition of article 3 of the Palermo Protocol, covering the full range of trafficking in persons, as well as organising, directing and participating as well as accomplice in any form of trafficking.	Ensure offence reflects the definition of trafficking in persons (article 3 of the Palermo Protocol)	Not implemented
	Ensure legislation clearly and precisely defines the constituent elements of the offence in order to distinguish trafficking in persons from other offences to enable the identification of trafficking victims	Partially implemented
	All forms of exploitation should be properly addressed with reference to relevant international human rights standards including fundamental principles and rights at work such as the abolition of forced labour and child labour	Not implemented
	Ensure legislation also applies when the exploitative purpose has not yet materialised	Implemented
Existence of a comprehensive criminal offence in compliance with the definition of article 2 of the CRC, covering full range of the sale of children	Adopt clear and comprehensive legislation that prohibits and criminalises illegal adoption as a separate offence, as well as the sale of and trafficking in children that result in illegal adoptions	Partially implemented
	Ensure that legislation criminalises at a minimum the acts and activities included in article 3 of the CRC-OPSC	Implemented
Evidence of clear and coherent legislation in line with the trafficking definition (article 3, Palermo Protocol)	Ensure the offence of trafficking in persons reflects the three constituent elements of action, means, and exploitative purpose.	Not implemented
	Ensure that legislation makes clear that the use of improper means renders the consent of a victim irrelevant	Not implemented
	Ensure that legislation criminalises at a minimum those forms of exploitation mentioned in the Protocol while other forms of exploitation may be added	Not implemented

	Legislation or offence applicable to women, men and children	Partially implemented
	Child refers to any person under the age of 18	Not implemented
Existence of legislation criminalising trafficking in children, which specifies that there is no need to establish means as set forth in the definition.	Ensure legislation provides for increasing the gravity of the initial offence of trafficking in persons when children are involved as victims; alternatives can include creating a separate offence concerning trafficking children or ensuring legislation provides for aggravating circumstances to be taken into account	Partially implemented
	Ensure the legal recognition of the internationally recognised status of the vulnerability of persons under the age of 18 (Preamble of the CRC)	Partially implemented
	Pursuant to the principle of vulnerability of children, ensure that the offence of trafficking in persons is established without the need to prove the use of the means as set forth in the definition	Implemented
Penalties and sanctions are appropriate and proportionate to the gravity of the crime	In the event of a “serious crime” the offence is punishable by a maximum deprivation of liberty of at least four years or a more serious penalty (article 2 para. b, Convention against Transnational Organized Crime); In the event of a crime committed against vulnerable persons the sanction must be increased appropriately and proportionately	Partially implemented
	As in the case of the liability of legal persons (article 10 para. 4, Convention against Transnational Organized Crime), additional administrative and/or other non-criminal sanctions must be used, e.g. monetary sanctions; where parents/ legal guardians are involved in the trafficking of their children they can be deprived of their parental rights, with due regard to the best interests of the child	Partially implemented
	Ensure the effective application of sanctions	Implemented
Legislation on the identification, tracing, seizure of assets and confiscation of proceeds of crime of trafficking in persons in place	Establish procedural means such as those set out in article 12 of the Convention against Transnational Organized Crime taking into consideration the national judicial system to ensure effective confiscation and seizure of assets and/or proceeds of crime	Implemented
	Ensure procedures are in place such that the proceeds of crime or confiscated property of traffickers and/or exploiters can be used to compensate victims of the crime or returned to their legitimate owners (article 14, para. 2 Palermo Protocol)	Not implemented
	Make use of international cooperation for confiscation of assets (article 13, Convention against Transnational Organized Crime)	Implemented

Legislation on the use of special investigative techniques (undercover operations, infiltration, surveillance, use of informants etc.) in place to reduce reliance on victim testimony and corroborative evidence	Ensure that special investigative techniques such as electronic surveillance and infiltration operations can be used within national and international investigations (article 20 para. 1, Convention against Transnational Organized Crime) in a timely manner	Implemented
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Source: Adapted from UNODC (2009) and Report of the Special Rapporteur on the sale of children, child prostitution on child pornography, A/HRC/34/55.

## 5.2. Protection

The protection of the victims of child trafficking refers to multifaceted measures and assistance taking place after victims are removed from the trafficking cycle. A comprehensive framework of protection and assistance consists of legislative, administrative, and social measures that State shall make available to victims of child trafficking. In most situations, victims of child trafficking are infants, children, or adolescents, whose needs may be very different from one another; while it is also possible that persons receiving assistance are adults, including parents or legal guardians of the child victims, as well as the victims of child trafficking who are adults when they are identified. The protection is based on legislation and other necessary measures that establish a comprehensive framework, which provide protection and assistance to child victims and their families when necessary, and that includes two categories of measures. Firstly, short-term and immediate safeguards and appropriate services guarantee the physical and psychological well-being of the child, including a safe shelter, health care, and mental recovery. Subsequently, relatively long-term and follow-up services provide children as well as their families possibilities to exercise their rights and opportunities of development, for instance family reunification or alternative care, education, social reintegration, legal assistance, and compensation. Some measures are provided to all victims of trafficking in persons, some are specifically for trafficked children, and some others belong to general child protection and the welfare system. The rights and best interests of the child must be the guiding principles of all measures.

### 5.2.1. Legal framework

The legal framework that provides the protection of and assistance to victims of child trafficking is incomplete. In general, the Supreme People's Procuratorate issued a regulation regarding the protection of child-victims of a criminal offence, which states that the People's Procuratorate shall provide child victims legal assistance, legal compensation, psychological assistance, and help child-victims to receive necessary social assistance<sup>170</sup>. Although the regulation is stipulated for the child-victims of any criminal offence, it can also apply to trafficked children.

Medical assistance is not provided directly by the People's Procuratorate, but legal compensation is available where child-victims and their families or legal guardians cannot afford the expenses of an urgently-needed medical treatment caused by the crime. Specifically speaking, a framework of protection dedicated to trafficked women and children was established by the National Plan of Action, through which protection responsibilities were distributed to the relevant ministries according to their functions. The NPA has proscribed a series of services that shall be accessible for the victims, including health care, shelter, legal assistance, education, training, as well as rehabilitation services. However, the implementation at local level of the NPAs was barely satisfactory. For instance, there is no evidence that psychological treatment was available for child victims for the trauma caused by the forced separation with their previous care givers committed by traffickers and/or as a consequence of rescue operation. According to information obtained from the interviews with practitioners, there was no such assistance in their experience (see Appendix II). Similarly, there is no evidence of the availability of legal assistance, training, and activities of rehabilitation dedicated to victims of child trafficking.

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<sup>170</sup> The Supreme People's Procuratorate. (2017) 未成年人刑事检察工作指引（试行）[Guidelines for Criminal Prosecution Involving Minors (for Trial Implementation)]. No. 1 [2017] of the Supreme People's Procuratorate. Adopted on 2 March 2017. Articles 75-79. Retrieved from <http://www.dffyw.com/faguixiazai/ssf/201811/45057.html>.

The minimum standard of services and working procedures, which are specific measures contained in both NPAs<sup>171</sup>, have not yet been regulated. Nevertheless, some progress has been made; for instance, a regulation on the adoption procedure of children released from child trafficking cycle<sup>172</sup>, which remedied the legal lacunae of Adoption Law, making the trafficked children eligible for adoption after a minimum period of 14 months of waiting for their biological parents. Standards for child welfare institutes, where trafficked children are fostered before returning to a family environment, are regulated with details by the Ministry of Civil Affairs.<sup>173</sup>

Due to the lack of legislation, regulation, and other normative measures, China has not yet established a comprehensive and integrated protection and assistance system to victims of trafficking, offering medical, psychological, social, administrative, and legal support, as well as reintegration measures. There is no such systematic protection and assistance dedicated to victims of trafficking, but some services and supports are available for child-victims. Theoretically, victims of child trafficking are entitled of the abovementioned assistance, while in practice, only the basic medical support is guaranteed to child-victims. Sometimes children released from trafficking cycle can obtain some comfort from the practitioners, including police officers, medical workers and social workers, but it is different from professional psychological support. Social welfare institutes, whose responsibility is to provide care to children separated from their family, have also been proved not to

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<sup>171</sup> See: State Council of China. (2007). 中国反对拐卖妇女儿童行动计划 (2008-2012 年) [China National Plan of Action on Combating Trafficking in Women and Children (2008-2012)]. Retrieved from: [http://www.gov.cn/zwggk/2007-12/20/content\\_839479.htm](http://www.gov.cn/zwggk/2007-12/20/content_839479.htm); and State Council of China. (2013). 中国反对拐卖人口行动计划 (2013-2020 年) [China National Plan of Action on Combating Trafficking in Women and Children (2013-2020)]. Retrieved from: [http://www.gov.cn/zwggk/2013-03/08/content\\_2349019.htm](http://www.gov.cn/zwggk/2013-03/08/content_2349019.htm).

<sup>172</sup> The State Council, (2015) 民政部、公安部关于开展查找不到生父母的打拐解救儿童收养工作的通知 [Notice of the Ministry of Civil Affairs and the Ministry of Public Security on Carrying out Works of Adoption of the Rescued Child Victims of Child Trafficking Who Cannot Find a Biological Parents], No. 159 [2015] of the Ministry of Civil Affairs, issued and entered in force on 20 August 2015, retrieved from [http://www.gov.cn/xinwen/2015-09/18/content\\_2934413.htm](http://www.gov.cn/xinwen/2015-09/18/content_2934413.htm).

<sup>173</sup> The Ministry of Civil Affairs, (2013) 儿童福利机构基本规范 [Basic standards for child welfare institution], No. 10 [2013] of the Ministry of Civil Affairs, entered into force on 4 December 2013, retrieved from <http://www.shmzj.gov.cn/Attach/Attaches/201707/201707181011539704.pdf>.

be equipped or prepared to take care of trafficked children<sup>174</sup>. It is worth noting that there is a lack of an effective and comprehensive system to protect the child from all forms of violence; for instance, there was no supervisory measure for rescued children returned to their parents, who were the perpetrator of the trafficking of their children (see Appendix III).

Anti-trafficking training was carried out for members of the Inter-ministerial Joint Conference System for Anti-Trafficking in Women and Children (IMCS)<sup>175</sup>. The training was about situation of trafficking, relevant legislation, victim identification and protection, as well as measures of combating trafficking in women and children. Afterwards, national<sup>176</sup> and provincial<sup>177</sup> training, and provincial inter-departmental conferences<sup>178</sup> were held. However, the training was ad hoc rather than systematic and comprehensive. In addition, there is a lack of evidence of training being held for social workers, medical workers, and other practitioners who may come into contact with trafficked children. Issues such as human rights and special needs of child-victims were not mentioned in this training, as the

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<sup>174</sup> For instance, it was reported that local Social Welfare Institute used to refuse to accept child-victims of trafficking or could not offer appropriate care to children in specialised facilities. See Xue Lei, (2013) ‘被拐孩子的尴尬: 亲父母不留福利院不收养父母不舍 [The embarrassment of the abducted child: abandoned by parents, refused by Social Welfare Institutes, and desired by buyers]’, retrieved from [https://gongyi.ifeng.com/news/detail\\_2013\\_09/02/29224625\\_0.shtml](https://gongyi.ifeng.com/news/detail_2013_09/02/29224625_0.shtml), [accessed on 20/08/2019]. See also Zheng Henan, (2018) ‘被拐儿童“无家可归”难题待解:福利院稀缺 被父母遗弃 [The problem of “homelessness” for abducted children needs to be solved: the welfare home is scarce and abandoned by parents]’, retrieved from [http://news.jcrb.com/jxsw/201804/t20180423\\_1861161.html](http://news.jcrb.com/jxsw/201804/t20180423_1861161.html), [accessed on 20/08/2019].

<sup>175</sup> People.cn, (2009) 国务院反拐部际联席会议办公室在安徽黄山举办第一次成员单位反拐培训班 [The State Council Office of held the first training course for its members in Huangshan, Anhui Province], retrieved from <http://www.mps.gov.cn/n2255079/n2255231/n2255233/c3579385/content.html>, [accessed on 20/08/2019].

<sup>176</sup> People.cn. (2010). 全国打拐反拐培训班开班 [National anti-trafficking training class begins], retrieved from <http://www.mps.gov.cn/n2255079/n2255231/n2255233/c3579783/content.html>, [accessed on 20/08/2019].

<sup>177</sup> For instance, Shaanxi Province held training course on anti-trafficking measures on 25 September 2012. See People.cn, (2012) 陕西省举办反拐打拐工作培训班 [Shaanxi Province held a training course on anti-trafficking], retrieved from <http://www.mps.gov.cn/n2255079/n2255231/n2255233/c3580049/content.html>, [accessed on 20/08/2019].

<sup>178</sup> For instance, Guangdong Province held the first inter-departmental conference on 25 December 2009, during which training video was showed to participants. See People.cn, (2009) 广东省召开反拐联席会议成员单位第一次联络员会议 [Guangdong Province held the first meeting of members of the provincial Joint Conference System for Anti-Trafficking in Women and Children], retrieved from <http://www.mps.gov.cn/n2255079/n2255231/n2255233/c3579494/content.html>, [accessed on 20/08/2019].

main purpose of the training was to coordinate different departments in cracking-down on crime rather than protecting victims.

There was no detailed procedure for victim's identification, nevertheless, in the NPAs and local plans of actions, general guidelines for proactive identification were developed. As previously mentioned (see §4.2.2), during the establishment of the Anti-trafficking DNA database and the police actions to crackdown on the crime of trafficking in children, a series of measures were carried out. An example of these measures is the local police identifying suspected trafficked children by conducting door-to-door visits, encouraging citizens to report criminal activities, and collecting blood samples of children of unknown origin and suspected of being trafficked.

There is no specific regulation that ensures that the trafficked persons are not prosecuted for the activities they are involved in as a direct consequence of their situation as trafficked persons. According to the NPA (2013-2020)<sup>179</sup>, it is required that victims of trafficking who have been deceived or coerced into engaging in illegal or criminal activities shall be *mitigated* or *exempted* from punishment or according to law. That is to say, the principle of no prosecution for status offences is not fully complied with the Chinese anti-trafficking policy.

Not only the victim protection system is weak and incomplete, either for victims of child trafficking or for child-victims of violence in general, there is also a lack of independent monitoring and oversight mechanism in the child protection framework. The data collection system on victim protection and/or child protection still needs to be established. Information contained in the official reports about the outcome of child trafficking was very scarce, usually limited to numbers of trafficked child, sometimes disaggregated by gender. There were also some reports about the number of child-victims returned to their family, however, the data collection was never consistent or

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<sup>179</sup> China National Plan of Action on Combating Trafficking in Women and Children (2013-2020), at II-2 “Crack down the crime and rescue the victims of trafficking”.

systematic. According to the NPAs, the IMCS are responsible for the monitoring and evaluation of the implementation of the NPAs at national and local level, however, no such evaluation has ever been conducted by the IMCS, nor by an independent organ, as required by the General Assembly<sup>180</sup>.

### **5.2.2. Physical, psychological, and reintegration assistance**

The UNICEF Guidelines on the protection of child victims of trafficking set out standards for good practice regarding the protection of and assistance to trafficked children, looking at the protection from identification of child victims up to their recovery and integration (UNICEF 2006). The UNODC framework of action (UNODC 2009b) makes reference to the Guideline as regard to the determination of the victim's age, that is, in case of uncertainty the presumption shall be that the victim is a child. As mentioned in the previous sections, in China there is a lack of regulations or a clear procedure of identification of victims of trafficking, therefore, there is no regulation on the determination of victims age when there is any doubt. The only reference to this aspect is a judicial interpretation of the Supreme People's Court in which it is regulated that "Where there is no sufficient evidence proving that the defendant has reached the age for statutory criminal liability [...] it shall be assumed that he has not reached the corresponding age for statutory criminal liability"<sup>181</sup>. In addition, the current Chinese legislation changed the definition of child, as previously mentioned. Not all children are protected by the anti-trafficking framework. Male children between 14 and 18 years of age are at particular risk, as they are still immature in many aspects, but can be exploited physically, for instance for forced labour. Female children between 14 and 18 years of age, although protected by the anti-trafficking legislations, risk receiving improper assistance or treatment.

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<sup>180</sup> UN General Assembly, (2006) "Rights of the child, Note by the Secretary-General" *Report of the independent expert for the United Nations study on violence against children*, 29 August 2006, A/61/299, at para. 96.

<sup>181</sup> Supreme People's Court, (2006) 最高人民法院关于审理未成年人刑事案件具体应用法律若干问题的解释 [Interpretation of the Supreme People's Court on Some Issues Concerning the Specific Application of Law in the Trial of Criminal Cases Involving Minors], Interpretation No. 1 [2006] of the Supreme People's Court, entered into force on 23 January 2006, retrieved from <http://www.court.gov.cn/fabu-xiangqing-1040.html>.

There is no dedicated centre or shelter specifically for trafficked children. According to relevant regulations<sup>182</sup>, trafficked children shall be fostered in the local child welfare institutes, after the issue of a certificate by relevant police organs<sup>183</sup>. There is no evidence showing that trafficked children are treated differently from other children in the institutes, but there is a checking mechanism for foster families. The child welfare institutes provide physical care to trafficked children, however, psychological treatment remains scarce.

China's policy regarding returning the child to his or her original family fails to take into consideration the best interests of the child in the first place. When a child is rescued by police, the priority of the follow-up protection is to return the child to his or her biological parents. Those whose parents are found should be returned timely to their parents, even if it has been proven that the parents were the perpetrator of the selling of their child. It is clearly set up in the NPA (2013-2020) and the Ministry of Civil Affairs and Ministry of Public Security on Carrying out Works of Adoption of the Rescued Child Victims of Child Trafficking Who Cannot Find a Biological Parents, and proved by the law workers (see the written interview with a judge Appendix III) as well as judiciary cases that when a child was rescued by police, the priority of the follow-up protection is to return the child to his or her biological parents. There are many cases in which a trafficked child was given back to the parents who had sold the child voluntarily. Although it is not a general practice, there have been reports in which the police and prosecutors prevailed on parents who have sold their children to bring them back home. The evaluation of the family's condition based on an on-site investigation is not

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<sup>182</sup> The State Council, (2015) 民政部、公安部关于开展查找不到生父母的打拐解救儿童收养工作的通知 [Notice of the Ministry of Civil Affairs and the Ministry of Public Security on Carrying out Works of Adoption of the Rescued Child Victims of Child Trafficking Who Cannot Find a Biological Parents], No.159 [2015] of the Ministry of Civil Affairs, issued and entered in force on 20 August 2015, retrieved from [http://www.gov.cn/xinwen/2015-09/18/content\\_2934413.htm](http://www.gov.cn/xinwen/2015-09/18/content_2934413.htm). Ministry of Civil Affairs, (2019) 儿童福利机构管理办法 [Measures for the Administration of Child Welfare Organizations], Order No. 63 of the Ministry of Civil Affairs, issued on 30 October 2018, entered in force on 1<sup>st</sup> January 2019, retrieved from [http://www.gov.cn/xinwen/2019-01/25/content\\_5361171.htm#1](http://www.gov.cn/xinwen/2019-01/25/content_5361171.htm#1).

<sup>183</sup> 打拐解救儿童临时照料通知书 [Trafficked Child Temporary Care Notice], retrieved from [http://www.gov.cn/xinwen/2015-09/18/content\\_2934413.htm](http://www.gov.cn/xinwen/2015-09/18/content_2934413.htm).

required in China, and there is a lack of agency responsible for such an evaluation. Moreover, cases in which the trafficked children were illegally fostered in the buyers' family have also been identified. The abovementioned practices are obviously not in line with the UNICEF Guidelines (UNICEF Regional Office for CEE/CIS 2006, 16, 26) the General Comments of the CRC<sup>184</sup>, in contrast with the principle of the best interest of the child, and put children at risk of being revictimized.

Civil society has contributed to providing protection and assistance to trafficked children as well as their families. However, the number of NGOs and private companies active in the field is very small and their contribution is limited to identification and reintegration.

### **5.2.3. Legal assistance and compensation**

The right of the victims to access to justice is fully protected by law. In criminal proceedings, judicial procedure does not inhibit or delay the reunification of the child victim to the family of origin. The privacy of the child victim and the parents are well protected during the judicial procedures<sup>185</sup>. According to the Criminal Procedure Law of China, victims and perpetrators have the right to use their native spoken and written languages in court proceedings. Translators shall be provided for any party to the court proceedings, and in a minority nationality inhabitants concentrated area, documents shall also be issued in the written language commonly used in the locality, e.g., judgements and notices<sup>186</sup>. The victim and his or her representative shall be informed by the people's procuratorate of their right to a litigation representative.<sup>187</sup> In addition, in the *Eight Measures of Procuratorial Organs for Strengthening the Judicial Protection of the Minors*, it is required that various litigious

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<sup>184</sup> UN Committee on the Rights of the Child (CRC), (2005) *General comment No. 6 (2005): treatment of unaccompanied and separated children outside their country of origin*, 1<sup>st</sup> September 2005, CRC/GC/2005/6, at para. 33 and 85.

<sup>185</sup> Standing Committee of the National People's Congress, (2018) 中华人民共和国刑事诉讼法(2018修正) [Criminal Procedure Law of the People's Republic of China (2018 Amendment)], Order No. 10 of the President of the People's Republic of China, entered in force on 26 October 2018, at Articles 54, 152 and 188.

<sup>186</sup> *Ibid.* Article 9.

<sup>187</sup> *Ibid.* Article 46.

rights of child victims shall be protected, including the right to participate and the right to be informed<sup>188</sup>. In general, legal information can be obtained from assistant law workers through legal assistance organs. Legal assistance mechanisms have been established in China since 2003, through the adoption of *Regulation on Legal Aid* by the State Council<sup>189</sup>. This assistance is easily accessible and free of charge for child-victims<sup>190</sup>.

The child-victims of criminal offences have the right to receive compensation through two procedures. Firstly, according to the Criminal Procedural Law, the victim and his or her legal representative or close relative can institute an incidental civil action during criminal procedures for the material loss that the victim suffered as a result of the crime<sup>191</sup>. Secondly, as previously anticipated (see §3.3.4), a victim of a criminal offence or his or her close relatives can apply for compensation through the procedure of national judicial aid<sup>192</sup>. It is a subsidiary aid to the parties that suffer from criminal offence or torts, that are unable to obtain effective compensation through the lawsuit and are

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<sup>188</sup> Supreme People's Procuratorate, (2015) 最高人民检察院关于印发《检察机关加强未成年人司法保护八项措施》的通知 [Notice of the Supreme People's Procuratorate on Issuing the Eight Measures of Procuratorial Organs for Strengthening the Judicial Protection of the Minors], No. 3 [2015] of the Supreme People's Procuratorate, entered into force on 12 May 2015, retrieved from [http://www.spp.gov.cn/spp/nbgz/201505/t20150527\\_98154.shtml](http://www.spp.gov.cn/spp/nbgz/201505/t20150527_98154.shtml).

<sup>189</sup> The State Council, (2003) 法律援助条例 [Regulation on Legal Aid], Order No. 385 of the State Council of the People's Republic of China, entered into force on 1 September 2003, retrieved from [http://www.gov.cn/banshi/2005-07/12/content\\_14080.htm](http://www.gov.cn/banshi/2005-07/12/content_14080.htm).

<sup>190</sup> Ministry of Justice and Ministry of Finance, (2017) 司法部、财政部印发《关于律师开展法律援助工作的意见》的通知 [Notice of the Ministry of Justice and the Ministry of Finance on Issuing the Opinions on the Provision of Legal Aid by Lawyers], No. 15 [2017] of the Ministry of Justice, entered into force on 17 February 2017, retrieved from [http://www.moj.gov.cn/government\\_public/content/2017-03/10/gggs\\_5157.html](http://www.moj.gov.cn/government_public/content/2017-03/10/gggs_5157.html).

<sup>191</sup> Standing Committee of the National People's Congress (26 Oct. 2018) 中华人民共和国刑事诉讼法(2018修正) [Criminal Procedure Law of the People's Republic of China (2018 Amendment)]. Order No. 10 of the President of the People's Republic of China. Article 101. Retrieved from [http://www.npc.gov.cn/npc/xinwen/2018-11/05/content\\_2065631.htm](http://www.npc.gov.cn/npc/xinwen/2018-11/05/content_2065631.htm).

<sup>192</sup> Committee of Political and Legal Affairs of the Central Committee of the Communist Party of China (CPC), Ministry of Finance, the Supreme People's Court, the Supreme People's Procuratorate, the Ministry of Public Security and the Ministry of Justice, (2014) 关于建立完善国家司法救助制度的意见(试行) [Opinions on Establishing and Improving a System of State Judicial Relief (for Trial Implementation)], No.3 [2014] of the CPC, issued and entered in force on 17 January 2014, retrieved from [https://www.spp.gov.cn/spp/zdgz/201512/t20151208\\_109020.shtml](https://www.spp.gov.cn/spp/zdgz/201512/t20151208_109020.shtml). And Supreme People's Procuratorate, (2016) 人民检察院国家司法救助工作细则(试行) [Notice of the Supreme People's Procuratorate on Issuing the Detailed Working Rules for the Judicial Aid of the State Conducted by People's Procuratorates (for Trial Implementation)], entered into force on 16 August 2016, retrieved from [http://www.spp.gov.cn/zdgz/201608/t20160831\\_165236.shtml](http://www.spp.gov.cn/zdgz/201608/t20160831_165236.shtml).

undergoing difficulties in life<sup>193</sup>. In general, the judicial aid can be applied by victims for from serious property damage, physical injury, disability, risks to life, and other serious and ongoing difficulties causes by criminal offence or torts<sup>194</sup>. In order to enforce the protection of children and create a comprehensive judicial assistance system, the Supreme People's Procuratorate issued a working document regulating judicial aid for child-victims, which allows child-victims to also apply for judicial aid for serious psychological damage as a result of trafficking<sup>195</sup>. However, not all the victims of child trafficking can obtain economic compensation. Compensation from criminal offenders are applicable only for victim's material loss as a result of the crime, while the state judicial reparation is only a subsidiary aid to victim and his or her family in a critical situation.

The fund of national judicial aid is guaranteed by governances of all levels, included in the local and national budget, and managed by the People's procuratorates of each level<sup>196</sup>. Donations from enterprises and individuals are also encouraged and welcomed<sup>197</sup>. However, there is no procedure that allows the proceeds of crime or confiscated property of offenders of trafficking in children to be used as a specific compensation fund for victims of trafficking related crimes.

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<sup>193</sup> Supreme People's Procuratorate, (2016) 人民检察院国家司法救助工作细则（试行） [Notice of the Supreme People's Procuratorate on Issuing the Detailed Working Rules for the Judicial Aid of the State Conducted by People's Procuratorates (for Trial Implementation)], entered into force on 16 August 2016, at Article 2, retrieved from [http://www.spp.gov.cn/zdgz/201608/t20160831\\_165236.shtml](http://www.spp.gov.cn/zdgz/201608/t20160831_165236.shtml).

<sup>194</sup> Ibid. Article 7.

<sup>195</sup> Supreme People's Procuratorate, (2018) 最高人民法院关于印发《最高人民法院全面加强未成年人国家司法救助工作的意见》的通知 [Notice of the Supreme People's Procuratorate on Issuing the Opinions of the Supreme People's Procuratorate on Comprehensively Strengthening State Judicial Assistance for Minors], No. 1 [2018] of the Supreme People's Procuratorate, entered into force on 27 February 2018, retrieved from [https://www.spp.gov.cn/xwfbh/wsfbt/201803/t20180306\\_368994.shtml#2](https://www.spp.gov.cn/xwfbh/wsfbt/201803/t20180306_368994.shtml#2).

<sup>196</sup> Supreme People's Procuratorate, (2016) 人民检察院国家司法救助工作细则（试行） [Notice of the Supreme People's Procuratorate on Issuing the Detailed Working Rules for the Judicial Aid of the State Conducted by People's Procuratorates (for Trial Implementation)], entered into force on 16 August 2016, retrieved from [http://www.spp.gov.cn/zdgz/201608/t20160831\\_165236.shtml](http://www.spp.gov.cn/zdgz/201608/t20160831_165236.shtml).

<sup>197</sup> Committee of Political and Legal Affairs of the Central Committee of the Communist Party of China (CPC), Ministry of Finance, the Supreme People's Court, the Supreme People's Procuratorate, the Ministry of Public Security and the Ministry of Justice, (2014) 关于建立完善国家司法救助制度的意见(试行) [Opinions on Establishing and Improving a System of State Judicial Relief (for Trial Implementation)], No. 3 [2014] of the CPC, issued and entered in force on 17 January 2014, retrieved from [https://www.spp.gov.cn/spp/zdgz/201512/t20151208\\_109020.shtml](https://www.spp.gov.cn/spp/zdgz/201512/t20151208_109020.shtml).

Table 17 Table of Framework of Action: Protection

MINIMUM STANDARD	IMPLEMENTATION MEASURES	China's implementation situation
Adoption of legislation and necessary measures to comprehensively protect and assist victims of trafficking in persons in line with Palermo Protocol, CRC-OPSC and other international and regional instruments on protection of human rights.	Adopt appropriate measures for victim assistance and victims/witnesses of trafficking in persons through regulations, directives, guidelines, or a national/regional plan of action ensuring effective implementation	Partially implemented
	Set minimum protection and assistance quality standards, and ensure the minimum standards are applied	Partially implemented
	Establish a comprehensive and integrated protection and assistance system offering medical, psychological, social support (article 6.3), as well as legal and administrative support and integration/ reintegration measures, taking a child- and gender-sensitive approach	Partially implemented
	Establish policies, programmes, monitoring and oversight systems required to protect the child from all forms of violence*	Not implemented
	Ensure effective access to protection and assistance measures	Partially implemented
	Ensure comprehensive training, on victim identification and protection, for law enforcement, judicial authorities, prosecutors, labour inspectors and other relevant actors in combating trafficking in persons, such as social workers, medical workers. The training should take into account, among others, the need to consider human rights and child- and gender-sensitive issues and it should encourage cooperation with non-governmental organizations, other relevant organizations and other elements of civil society (article 10, para. 2, Protocol)	Partially implemented
	Develop or strengthen identification process, including identification guidelines and procedures	Partially implemented
	Ensure cooperation with non-governmental organizations, other relevant organisations and other elements of civil society to identify, inform, support, reintegrate, and protect trafficked children, including prevention from being re-trafficked	Implemented
	Establishing a comprehensive and reliable national data collection system in order to ensure systematic monitoring and evaluation of systems, services, programmes, and outcomes based on indicators aligned with universal standards, and adjusted for and guided by locally established goals and objectives*	Not implemented
Existence of appropriate services and measures to guarantee the physical and psychological well-being of trafficked child, as well as their education	Ensure the implementation of UNICEF Guidelines: Where the age of the child is uncertain and there are reasons to believe that the victim is a child, the presumption shall be that the victim is a child	Not implemented
	Dedicate centres and/or shelters specifically for trafficked children	Not implemented

and reintegration in coordination with existing child protection systems	Ensure minimum standards of care specifically for children placed in residential structures or in alternative care to avoid that they are further traumatised (e.g. codes of conduct for staff, checking/ monitoring mechanisms for foster families etc.)	Partially implemented
	Take specific measures to ensure the physical and psychological care of trafficked children	Partially implemented
	The best interests of the child and possible conditions for return to the family must be evaluated beforehand by an on-site investigation. In keeping with the best interest of the child, and with full participation of the child victim, take specific measures to ensure the reintegration of child trafficking victims in their society or community of origin, and/or in their family	Not implemented
	Ensure alternative care arrangements that respect the rights and dignity of the trafficked child, in situations where the safe return of the child to his or her family is not possible, or where such return would not be in the child's best interest	Implemented
	Take measures to ensure that trafficked children have satisfactory access to education and means of social integration, in line with the best interests of the child and with full participation of the child	Implemented
	Include a clause specifically addressing the needs of child victims of trafficking in cooperation agreements between governmental institutions and non- governmental organisations or other specialised services	Partially implemented
Legal measures in place to provide trafficked persons with information on their rights as well as on applicable administrative and judicial procedures	Ensure trafficked children and/or their parents or legal guardians are informed about relevant judicial and administrative procedures in a language they understand. Information can be either written or oral	Implemented
Legislation enabling victims to claim compensation in place	Establish appropriate procedures to allow victims to obtain compensation and restitution (article 25 para. 2, Convention against Transnational Organized Crime) through criminal, civil, and/or administrative proceedings	Implemented
	Establish a dedicated victim compensation fund or scheme from which victims' claims can be met	Implemented
	Where a general victim compensation fund exists, ensure victims of trafficking in persons have access to it	Partially implemented
	Ensure procedures are in place such that the proceeds of crime or confiscated property of traffickers and/or exploiters can be used to compensate victims of the crime or returned to their legitimate owners (article 14, para. 2)	Not implemented

Source: Adapted from UNODC (2009) and (\*) General comment No. 13 (2011) - The right of the child to freedom from all forms of violence

### 5.3. Prevention

Prevention is one of the most important aspects an effective anti-trafficking mechanism (UNODC 2009b, 11). Prevention focuses on interventions that aim to avoid harm to children or mitigate its effects and ensure that children who have already been the victims of violations are not revictimized. It consists in influencing current behaviour and conditions in order to alter future outcomes (Stagner and Lansing 2009). In order to effectively prevent child trafficking and the sale of children, it is necessary to elaborate and implement comprehensive strategies that take fully consideration of the vulnerability of the child victims and address risk factors that expose children to trafficking, and integrate the preventives strategies into broader policies related to child trafficking<sup>198</sup>. A right-centred approach of prevention requires measures other than merely deterrence for criminals and crime prevention. It also requires strategies that address and reduce vulnerability of children at risk of being trafficked, as well as demands for trafficked children for exploitive purpose and other purposes such as illegal adoption. Such comprehensive and proactive prevention must be an integral part of comprehensive national child protection systems. The ultimate objective is to build a protective environment around children, by enhancing the capacity of various actors, including families, communities, public institutions, the private sector, the media, and academia in order to effectively protect children from all forms of harm, including child trafficking<sup>199</sup>.

In addition to the framework of action provided by the UNODC (2009b) (see Table 18), the evaluation of the gaps of preventive aspects in China's national policies also make reference to relevant United Nations documents regarding the prevention strategies in combating the sale and

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<sup>198</sup> UN Secretary-General, (2013) *Effective prevention strategies in combating the sale and sexual exploitation of children: note by the Secretary-General*, 6 August 2013, A/68/275, at para. 121.

<sup>199</sup> Ibid.

sexual exploitation of children<sup>200</sup>, as well as the establishment of an effective and comprehensive child protection system<sup>201</sup>.

### **5.3.1. Adapting to International standards**

The China has ratified most of international instruments relevant to child trafficking (see Table 2). Human rights principles, in particular the rights of the child, were reflected in the latest NPA. The approach to preventing child trafficking is also based on the respect of some human rights principles, for instance principles of non-discrimination and gender- and age-sensitivity. It addressed some root causes of child trafficking, such as poverty, gender-based discrimination, and improper child protection systems. Nevertheless, actual measures of child trafficking prevention are focused on crime prevention and reduction. It does not adopt a holistic right centred approach. For instance, the birth control policy, considered as a measure of prevention, was criticised as a violation of women's rights. However, in strategies relevant to preventing child trafficking, including poverty reduction and preventing exploitation by regulating labour market, child trafficking has not been properly integrated and addressed.

Over the years, the national preventive policies have improved according to international obligations and national needs, comparing with the first NPA (2008-2012), the latest plan added prevention measures by addressing the demand of trafficked children and by tackling cross-country trafficking, both of which are required by international anti-trafficking instruments. Regarding national needs, the second NPA additional measures addressed relatively new trafficking patterns, that is, trafficking in and the sale of infants for illegal adoption, by regulating adoption procedures

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<sup>200</sup> UN Secretary-General, (2013) *Effective prevention strategies in combating the sale and sexual exploitation of children: note by the Secretary-General*, 6 August 2013, A/68/275.

<sup>201</sup> UN Committee on the Rights of the Child (CRC), (2011) *General comment No. 13 (2011): The right of the child to freedom from all forms of violence*, 18 April 2011, CRC/C/GC/13. UN Economic and Social Council, (2008) *UNICEF Child Protection Strategy*, 20 May 2008, E/ICEF/2008/5/Rev.1.

and prohibiting the issue of fake birth certificates. However, there are still wide gaps between existing legislation and policies and the international obligations and national needs that should be systematically reviewed and filled.

China has adopted some measures to prevent child trafficking. The creation of Chinese Child Abduction Emergency Alert Platform can effectively reduce the risk of children to be abducted or be sold into the child trafficking cycle. Moreover, China enacted the Law on the Protection of Minors in 1991, which has been amended twice, in 2006 and 2012. Similarly, in 1992, the legislative bodies adopted the Law on the Protection of Women’s Rights and Interests, the latest amendment of which was adopted in 2018. Nevertheless, considering that child trafficking remains rampant in China, much more needs to be done in order to effectively prevent child trafficking.

### **5.3.2. Strategies of prevention**

There is a certain degree of coherence among public policies related to child trafficking. Safety education in kindergarten and primary and secondary school has been repeatedly addressed by the Ministry of Education, including preventing sexual abuse, cyber security, anti-abduction, and safety during holidays<sup>202</sup>. Combating child trafficking and prevention of violence against children were measures contained in the national Children’s Development Program (2011-2020)<sup>203</sup>. However, the

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<sup>202</sup> Relevant policy papers are in plentiful, for instance the “Notice of the General Office of the Ministry of Education on Further Strengthening the Work of Preventing Sexual Abuse of Students in Primary and Secondary Schools (Kindergartens) [教育部办公厅关于进一步加强中小学（幼儿园）预防性侵害学生工作的通知] of 2018, retrieved from [http://www.moe.gov.cn/srscsite/A11/s7057/201812/t20181221\\_364370.html](http://www.moe.gov.cn/srscsite/A11/s7057/201812/t20181221_364370.html), [accessed on 30/08/2019]. The Notice of the General Office of the Ministry of Education on launching activities of the 2016 “Safe Production Month” in the Education System [教育部办公厅关于开展 2016 年教育系统“安全生产月”和“安全生产万里行”活动的通知] addressed a series of safety issues including child trafficking, retrieved from [http://www.moe.gov.cn/srscsite/A03/s3013/201606/t20160601\\_247311.html](http://www.moe.gov.cn/srscsite/A03/s3013/201606/t20160601_247311.html), [accessed on 30/08/2019]. Another example is the “Reply of the Ministry of Education to the recommendation No. 1152 of the First Session [教育部对十三届全国人大一次会议第 1152 号建议的答复] of the 13th National People’s Congress, which listed safety education programmes available to students of elementary school, retrieved from [http://www.moe.gov.cn/jyb\\_xxgk/xxgk\\_jyta/jyta\\_jiaocaiju/201812/t20181225\\_364772.html](http://www.moe.gov.cn/jyb_xxgk/xxgk_jyta/jyta_jiaocaiju/201812/t20181225_364772.html), [accessed on 30/08/2019].

<sup>203</sup> State Council, (2011) 中国儿童发展纲要（2011—2020 年）[China’s Children’s Development Program (2011-2020)], No. 24 [2011] of the State Council, issued on 5 August 2011, retrieved from [http://www.gov.cn/zhengce/content/2011-08/05/content\\_6549.htm](http://www.gov.cn/zhengce/content/2011-08/05/content_6549.htm).

prevention of child trafficking and the sale of children are not sufficiently addressed in medical and health care policies. On the one hand, the Ministry of Health and the National Population and Family Planning Commission has prohibited the fetal sex identification for non-medical needs and sex-selective pregnancy termination since 2002, aiming to combat gender-based discrimination and reduce sex-ratio imbalance<sup>204</sup>. On the other hand, the strict control of the number of children born into the family has encouraged a black market of infants. Although the one child policy has become history<sup>205</sup>, policy and regulations of legal adoption of child remain unchanged, which has also raised the demand of trafficked children for illegal adoption.

There is a lack of systematic research on child trafficking, including the nature and extent of the problem, root causes, trends of trafficking, demand for trafficked child, and on the gaps and shortcomings on assistance to prevent re-victimisation. Data collection on the reported victims does exist. However, neither the Statistical Yearbook nor news releases for Child Abduction Alert System provide detailed data of trafficked children disaggregated by gender, age, origin, and destination of trafficking and other information necessary for research on the issue. Due to the lack of data, it is difficult to conduct evaluation or research into the effectiveness and coherence of policies impacting child trafficking.

The lack of data and research into child trafficking leads to a series of policy failures. With very limited data available for public, only a part of groups that are vulnerable to child trafficking can be identified. From the previous studies, child trafficking takes place mainly in rural areas, and compared

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<sup>204</sup> The regulation was replaced in 2016 by “关于禁止非医学需要的胎儿性别鉴定和选择性别的人工终止妊娠的规定 [Provisions on Prohibiting Fetal Sex Identification for Non-medical Needs and Sex-Selective Pregnancy Termination]”, issued by Order No.9 [2016] of National Health and Family Planning Commission, entered in force on 1<sup>st</sup> May 2016, retrieved from [http://www.gov.cn/banshi/2005-10/24/content\\_82759.htm](http://www.gov.cn/banshi/2005-10/24/content_82759.htm).

<sup>205</sup> Standing Committee of the National People’s Congress. (2015). 中华人民共和国计划生育法 [Law of the People’s Republic of China on Population and Family Planning]. Article 18 provides that “The State advocates that one married couple bear two children”. Retrieved from [http://www.npc.gov.cn/npc/xinwen/2015-12/28/content\\_1957360.htm](http://www.npc.gov.cn/npc/xinwen/2015-12/28/content_1957360.htm).

to girls, male infants and children are more vulnerable to being trafficked. However, there are many knowledge gaps to be filled; for instance, the trends of trafficking over the years, the flow of trafficked children, the root causes of child trafficking in different provinces, and so forth. In order to effectively prevent and eradicate illegal child adoption, which constitutes the major purpose of child trafficking in China, “States must take measures to address the push and pull factors, as well as the enabling environment, of the current adoption system, in which illegal adoption persists”<sup>206</sup>. However, due to the lack of sufficient knowledge, it is very difficult to properly address the causative factors that place certain children or children in certain families at risk of trafficking, if not some common causes such as poverty and gender discrimination. The environment that enables illegal adoption and the current adoption system remains untouched.

Vulnerability is a function of the risks to which children are exposed and the ability of the child to resist these risks and/or to mitigate their effects<sup>207</sup>. An understanding of the different kinds and levels of vulnerability faced by children in diverse situations is also very crucial for an adequate preventive strategy<sup>208</sup>. Due to insufficient knowledge of the issue, the awareness-raising campaigns cannot target vulnerable groups as they are still to be identified.

According to information provided by the MPS, all the awareness-raising campaigns were target to children in urban areas, mainly students of primary and secondary schools, in the form of activities that disseminate the means of child abduction. What has been forgotten is that the premise for awareness-raising activities is that the target group lack awareness of some aspects of child trafficking and that “this represents a binding constraint on their ability to take appropriate action in response”

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<sup>206</sup> UN Human Rights Council, (2016) *Report of the Special Rapporteur on the sale of children, child prostitution and child pornography*, 22 December 2016, A/HRC/34/55, at para. 93.

<sup>207</sup> UN Secretary-General, (2013) *Effective prevention strategies in combating the sale and sexual exploitation of children: note by the Secretary-General*, 6 August 2013, A/68/275, at para. 22.

<sup>208</sup> *Ibid.* para. 24.

(ICAT 2016b, 21). The findings presented in the third chapter showed that child abduction was not or no longer the prevalent means of trafficking. Most of the child trafficking were committed by parents, who were aware of the crime. In addition, in the cases of child abduction, the awareness of children regarding the crime can hardly improve their ability to respond, due to their physical limitations in responding to violent abduction. Moreover, the demand for trafficked children is, according to this research, mainly from families willing to adopt a child for different purposes. However, there are no campaigns targeting these groups of people. Consequently, the State or local government has failed to implement appropriate measures to reduce the vulnerability of children at risk of being trafficked.

More importantly, China has not yet established a comprehensive child protection system. States are required to establish an effective and comprehensive child protection system in line with the CRC. From a child protection perspective, it consists of three layers of prevention: provisions of universal quality social services that reduce the likelihood of future problems; targeted support serviced to specific groups of children who are known to be more at risk; and services targeting perpetrators and/or victims in order to limit the effects of the violation and prevent reoffending<sup>209</sup>. Any comprehensive prevention strategy of the sale of children and child protection should take a multidimensional and multisectoral approach, through the strengthening of child protection systems and advancing the realisation of child's rights<sup>210</sup>. As a form of violence against children, the abduction, sale, and traffic of children shall be prevented through a holistic child protection system, which consists of a series of protective measures, including prevention, identification, reporting, referral, investigation, treatment, follow-up, judicial involvement, and effective procedures<sup>211</sup>. This study will

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<sup>209</sup> Ibid., para. 17.

<sup>210</sup> Ibid., para. 9.

<sup>211</sup> UN Committee on the Rights of the Child (CRC), (2011) *General comment No. 13 (2011): The right of the child to freedom from all forms of violence*, 18 April 2011, CRC/C/GC/13.

not go into the details of an appropriate child protection system in China; however, it deserves further research and studies dedicated to this topic.

Last but not least, China needs to establish a regular assessment and monitoring mechanism that conducts systematic assessments of the impacts of preventive interventions on an ongoing basis, and constantly refines indicators and data collection and analysis and adapts them to new patterns of child trafficking and forms of exploitation.

Table 18 Table of Framework of Action: Prevention

MINIMUM STANDARD	IMPLEMENTATION MEASURES	China's implementation situation
Ratification or accession to TOCC and TIPP, and international and regional instruments on human rights	Ensure approach to prevent child trafficking is based on the respect for human rights principles, sensitivity to gender and child issues	Partially implemented
	Review the gaps between existing legislation and/or policies and the international obligations and national needs	Partially implemented
	Amend, complete, or adopt the necessary legal or other measures to prevent child trafficking	Partially implemented
Strategy or comprehensive prevention programmes or/ and other administrative and legal measures, mass media campaigns or other public information campaigns, reduction of demand, and reduce vulnerability to trafficking of persons in place as appropriate.	Ensure coherence among public policies related to child trafficking (crime prevention, education, employment, health, security, non-discrimination, economic development, child protection, and human rights etc.)	Partially implemented
	Conduct research and data collection into the nature and extent of the problem, root causes, trends of trafficking, demand for trafficked child, and on the gaps and shortcomings on assistance to prevent re-victimisation	Partially implemented
	Review/research into policies impacting child trafficking to ensure their complementarily and avoid overlaps	Not implemented
	Identify groups and communities vulnerable to trafficking, those who may come into contact with trafficking situations and the general public, and describe their environment	Partially implemented
	Identify ways to address the root causes of trafficking and factors that place vulnerable children, including their families, at risk, such as social and economic marginalisation, institutional and home-based discrimination, violence, and abuse	Partially implemented

	Implement awareness-raising campaigns to raise awareness among identified vulnerable groups and key /influential audience in destination communities to generate concerns and to address the demand for trafficked children	Partially implemented
	Ensure effective child protection systems and the active participation of children in the development of preventive measures	Not implemented
	Establish rapid response strategy and capacity to prevent trafficking in children in situations of war, natural disaster, and other crises that may result in refugee flows	Implemented
	Conduct regular needs assessment for and impact regulation of prevention measures on the target group and identify gaps and shortcomings	Not implemented

Source: Adapted from UNODC (2009)

## Conclusion

This chapter has explored the way in which the State’s obligations under relevant international law were engaged and displayed the gaps between the national policies and international standards in the field of combating child trafficking. The analysis followed the basic standards of “3Ps” mechanism, and has consulted several instruments provided by the UN agencies, in particular the “International Framework for Action: to Implement the Trafficking in Persons Protocol” of UNODC (2009b), General Comments of the Committee of the Rights of the Child, reports of Special Rapporteur on trafficking in persons, especially women and children, reports of Special Rapporteur on the sale and sexual exploitation of children, reports of Special Representative on Violence against Children, UNICEF handbook on the optional protocol on the sale of children, child prostitution and child pornography (2009), and policy papers issued by Inter-Agency Coordination Group against Trafficking in Persons (ICAT 2012; 2014; 2016a).

The evidence, including statistical figures, case laws, as well as policy and legal documents, displayed that China has actively engaged in combating child trafficking. The evaluation tables in this chapter (see Table 16, Table 17, and Last but not least, China needs to establish a regular

assessment and monitoring mechanism that conducts systematic assessments of the impacts of preventive interventions on an ongoing basis, and constantly refines indicators and data collection and analysis and adapts them to new patterns of child trafficking and forms of exploitation.

Table 18) showed that in the fields of prosecution and protection, the number of implementation measures already taken by the Chinese government is almost the same as that of actions that still need to be considered, and the number of measures needing improvement is slightly higher than the ones mentioned above. In the field of prevention, a lot more effort needs to be made, since only one implementation measure has been fully carried out.

Although China criminalises the offence of trafficking in persons, its legal framework is far from comprehensive. Some structural defects of the Chinese anti-trafficking laws and their consequences have emerged in this study. Firstly, the legal definition is not in line with international standards. It protects only women and children, while the age threshold of child victims of trafficking is 14 years old instead of 18. Therefore, trafficked girls from 14 to 18 years old are considered victims of trafficking of women, while boys over 14 years old cannot be considered as victims, nor can they be protected as such. This incorrectly-set age threshold falsely reduces the number of victims of child trafficking and causes deviation regarding the forms of trafficking. Besides, China does not have a specific law on child trafficking or trafficking in persons yet, which can cause unfavourable consequences for the victims of trafficking and deviation in relevant data collection. The offender who has committed the crime of child trafficking for sexual exploitation might be convicted only for crimes regarding sexual exploitation. It is reasonable to believe that the scale of child trafficking for sexual and other forms of exploitation has been under-estimated in China. It also affects the identification of victims of trafficking, the absence of which may cause them to be wrongfully prosecuted for the activities they are involved in as a direct consequence of their situation as trafficked persons.

The protection of the victims of child trafficking refers to multifaceted measures and assistance took places after victims being separated from the trafficking cycle. Essentially, it consists of two broad categories of protection: the protection of child victims of trafficking and the protection of children as such. While some significant progress has been achieved during the last decade, much still need to be done regarding the protection of children and child-victims of trafficking. China has not yet established any comprehensive and integrated protection and assistance system to victims of trafficking, which, according to the UNODC, should offer medical, psychological, social, administrative, and legal support, as well as reintegration measures. The psychological assistance was offered only on paper, and Social welfare institutes, whose responsibility is to provide care for children separated from their family, were also proven to be unequipped and unprepared to take care of trafficked children. It is worth noting that China does not to have an integrated child protection system that is responsible for protecting children from all forms of violence. The principle of no prosecution for status offences is not fully respected. In addition, measures to prevent revictimization need to be carried out.

Prevention focuses on interventions that aim to avoid harm to children or mitigate its effects and ensure that children who have already been the victims of violations are not revictimized. In order to effectively prevent child trafficking and the sale of children, it is necessary to elaborate and implement comprehensive strategies that take full consideration of the vulnerability of the child-victims, address risk factors that expose children to trafficking, and integrate the preventives strategies into broader policies related to child trafficking.

Over the years, the Chinese government and civil society have constantly been working on the improvement of existing legislation and policies in responding to child trafficking. However, more resources need to be devoted to research and data collection on the issue of child trafficking and to adapt its national preventive policies according to the actual needs and international obligations. It also needs to establish an integrated child protection system preventing children from all forms of

violence. Last but not least, China needs to establish a regular assessment and monitoring mechanism that conducts systematic assessments of the impacts of preventive interventions on an ongoing basis, and constantly refines indicators and data collection and analysis and adapts them to new patterns of child trafficking and forms of exploitation.

## Conclusion

Child trafficking in China has a particular historical background, and its legal framework regarding child trafficking also has its particularities. However, it is not merely an issue that concerns China. According to the information released on latest Senior Officials Meetings of COMMIT Process, in a joint action of combating human trafficking in the Great Mekong Sub-region launched in 2018, the Chinese police has detected 634 cases of cross-border trafficking in women and children, and has rescued 1,130 women and 17 children coming from neighbouring countries including Cambodia, Vietnam, Myanmar, and Thailand<sup>212</sup>. In China, child trafficking has been a severe public concern for decades, while research on the issue is rather scarce and limited to legal, sociological, and criminological aspects.

By applying a human rights-based approach to the study of child trafficking in China, this research provides a more comprehensive understanding of the complex issue. The study is framed within two questions: “How are human rights issues related to child trafficking in China, based on judgements of detected cases in selected Chinese provinces?” and “if and how the State’s obligations derived from international human rights instruments have been engaged when the Chinese authority responds to the issue of child trafficking?”

Both quantitative and qualitative analysis were applied to court judgements of provinces of Guangdong, Shandong, and Yunnan. The research introduced an original model to classify the child trafficking cases in China, on which further analysis shall be based. First, the abduction and sale of children (M1), the parental sale of children (M2), and the organised child trafficking (M3). The

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<sup>212</sup> Ministry of Public Security. (2019). The GMS countries have jointly achieved effective results in combating human trafficking [中国等六国联合打击拐卖人口行动成效显著], retrieved from <http://www.mps.gov.cn/n2254536/n2254544/n2254552/n6536343/n6536358/c6540676/content.html>, [accessed on 30 July 2019].

significance of this classification lies in the difference between each mode regarding the preventative measures and the needs of the victims.

The quantitative data collected from the detected child trafficking cases showed a series of thought-provoking findings. Child trafficking routes and patterns were not the same within the country. Yunnan was clearly a sending province, while Shandong and Guangdong had a mixed (both sending and receiving) trafficking routes with a high rate of intra-province trafficking. The criminal models in the three provinces also had different features. Guangdong and Yunnan were dominated by the organised child trafficking mode, while among the detected cases in Shandong, the proportion of the parental sale of children was higher than the other two modes. Most of the victims of child trafficking were trafficked between rural areas for illicit adoption. In general, both boys and girls were vulnerable to child trafficking, while the number of male victims was slightly higher than that of the female. A vast majority of the victims were infants, who were trafficked for illicit adoption. Only very few children were found being trafficked for sexual exploitation. The detection of the child trafficking cases took months, years, or even decades.

The anecdotic evidence taken from the case law proved that human rights issues are related to child trafficking in China in three phases of the trafficking cycle: before, during, and after. Firstly, human rights violations and issues are causative factors of child trafficking. Poverty and discrimination are the root causes of most of the child trafficking cases in the three provinces of China. This study also identified a seldom-recognised way in which poverty fosters child trafficking. Specifically, poverty not only increases the vulnerability of children living in families with economic hardship, but it also fosters the demand for child trafficking. Similarly, discrimination causes child trafficking in different ways. Gender-based discrimination affects both boys and girls. On the one hand, girls are vulnerable to be sold by their parents or trafficked for sexual exploitation; on the other hand, boys are vulnerable to be trafficked because of the high demand. Discrimination against persons with disabilities is another factor that increases the vulnerability of children to trafficking. Mentally

disabled children, especially teenagers, are facing risks of being sexually and physically exploited. Children of mentally disabled women are also vulnerable to be trafficked, as the mother have a very limited capacity of protecting the child. The discrimination against persons with disabilities is also proven to be a factor that fosters the demand of children, as disability makes the person unlikely to get married or to adopt a child through legal procedures. Children born out of wedlock are vulnerable to trafficking because of the discrimination on their social status.

The birth control policy is a proximate factor that interacts with poverty and discrimination. The fines applied to parents that breach the birth control policy aggravate their economic hardship and increases the vulnerability of children born out of wedlock. The family planning policy also encourages child trafficking by prohibiting parents from releasing their children for adoption on the one hand and prohibiting unmarried persons and families with children from adopting a child.

Undoubtedly, child trafficking in China causes serious violations of fundamental human rights of the victim, including the right to life, the right to liberty, the right to security of person, and the right to be free from torture and enslavement during the process of child trafficking. The commodification of children, which is the intrinsic nature of child trafficking, infringes the dignity of the victim. The child trafficking also causes the violation of some rights entitled to children, including the right of the child to preserve his or her identity, the right to not be separated from their parents against their will, and the right of the child to be registered immediately after birth, to have a name and to acquire a nationality.

New human rights challenges arise after the rescue of the trafficked children. The issues of concern include, but not limited to, the care of the victims after the rescue, safe return to family, healthcare and assistance to the child victim, and the right to remedy. Health consequences associated with trafficking experiences include physical health problems, such as injury, harm to reproductive and sexual health, as well as mental or psychological issues, such as the symptom of post-traumatic

stress disorder. Sometimes, victims were traumatised when they were rescued by the police and separated from their “adoptive families”.

When a child victim is released by the police from the trafficker or the buyer, he or she is entitled to special protection and assistance provided by the State, and the best interest of the child shall be the primary consideration in every decision concerning children. However, the case laws proved that the principle of the best interest was not fully complied in practice, and the psychological assistance was absent. Moreover, there was not sufficient evidence to prove that the right of the victims of child trafficking to remedy is fulfilled.

The Chinese government has been active in responding to the problem of child trafficking in the country. It has ratified or accessed to most of the international human rights instruments, including the ones specialised on child trafficking – CRC-OPSC and the Palermo Protocol. At the national level, it issued the National Plan of Action on Combating Trafficking in Women and Children to guide the anti-trafficking activities and coordinate different departments. The crime of child trafficking is criminalised, and the offenders are effectively prosecuted. Moreover, the police have been engaged in, in cooperation with the civil society, developing new measures to combat the crime, for instance of Online Alert System, the DNA databank, and facial recognition applications.

Nevertheless, some obvious policy gaps also emerge from the analysis adopting a human rights perspective. On the one hand, the prevented policy and measures can hardly respond to the real problem. The current preventive measures fail to address the root causes of trafficking or the demand for trafficked children. The conflict between the traditional value of male preference and the child control policy remains acute, just as the contradiction between the demand for adoptable children and the prohibition of giving up custody of a child. Besides, despite the differences of patterns of child trafficking in different Chinese provinces, the implementation of the national plans of action at the provincial and local level was almost identical, failing to address local particularities. New technology

applied in the field of combating child trafficking has brought new challenges such as infringing on the privacy of the child.

On the other hand, evaluating the policies and measure undertaken in combating child trafficking through the lens of the State's obligations under relevant international law, China still needs to make improvements in many aspects. One of the most urgent issues, according to the author, is to adapt the national legal framework of combating child trafficking to international standards. First of all, the definition of child trafficking in the Chinese Criminal Law is not in line with international standards. By stipulating children in this article as any person under the age of 14, it excludes children aged from 14 to 18 years old from the protection and assistance provided to child-victims. The anti-trafficking law does not protect boys over 14 years old and men. This incorrectly-set threshold falsely reduces the number of victims of child trafficking and causes deviation regarding the forms of trafficking. The lack of a specific law on combating child trafficking or trafficking in persons causes unfavourable consequences for the victims of trafficking and deviation in relevant data collection. It is reasonable to believe that the scale of child trafficking for sexual and other forms of exploitation was under-estimated in China due to the lack of a comprehensive anti-trafficking law. It also affects the identification of victims of trafficking, the absence of which may cause the victims to be wrongfully prosecuted for the activities they are involved in as a direct consequence of their situation as trafficked persons. In any case, the principle of no prosecution for status offences is not fully complied with in the Chinese anti-trafficking policy. It is worth noting that, China has not established any comprehensive and integrated protection and assistance system to victims of trafficking yet, nor does it have an integrated child protection system that is responsible for protecting children from all forms of violence. In addition, more resources need to be devoted to research and data collection on the issue of child trafficking and to adapt its national preventive policies according to the actual needs and international obligations.

In conclusion, a human rights-based approach to child trafficking in China has permitted a comprehensive understanding of the issue. This research explained some of the emerged shortcomings in the Chinese legislation and polices in combating and preventing child trafficking. The enhancement of the abovementioned deficiencies can better prevent and combat child trafficking crimes and, therefore, protect children's rights. By doing so, China can, at the same time, fulfil its obligations derived from international law and international human rights law; that is to say, the human rights standards and principles and State's obligations can be made concrete and direct contributions to resolve a national problem. Internally, it can improve the performance of the government in combating child trafficking; internationally, it can improve China's human rights record and credibility.



## Appendix I

Online interview transcription<sup>213</sup>:

Interviewee: Dong (nickname), Webmaster of the BBHJ.

22 March 2018, through WeChat

Dong:

I joined the BBHJ in 2016. I already knew the association before I started to work here as a webmaster. First, the baby founder Zhang Baoyan and Qin Yanyou were selected as “Touching China top ten people in 2015” on February 2016. My original intention to join the BBHJ was quite simple. First, I wanted to support my hometown people. I searched online about their actions, and I was deeply attracted by the content of “looking for children who were being abducted”. I personally like children. It is heart-breaking when I see the picture of the parents who have lost their loved ones. Therefore, if there is such a good platform that can directly help those families, I had to join in.

BBHJ now has 280,000 volunteers. They are people from every part of the country and of all walks of life. Some of them have physical disabilities or serious illnesses. They all have one thing in common, that is, their care for society and spirit of selfless dedication.

Our activities are full of difficulties. For instance, sometimes our visits to the suspected children-victims were obstructed by the buyers. Some volunteers have even been injured. Our website operates based on donations from companies, which are relatively unstable.

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<sup>213</sup> The text of the interview was originally in Chinese and is translated by the author.

BBHJ has cooperated with the Child Abduction Emergency Alert Platform and the Ministry of Public Security, as well as other enterprises, including a public service programme of China Central Television named “Waiting for Me (等着我)”, Toutiao, Baidu, Tencent, and Microsoft.

In my experience, the prevention of child trafficking should address the demand. They are the root problems of child trafficking. People’s awareness of anti-trafficking needs to be further improved, especially in rural towns and villages.

## Appendix II

Interviewee: Yang Li, Volunteer of the BBHJ<sup>214</sup>.

11 January 2018, through WeChat

Yang Li:

I am a public employee. I heard about this association on a television show. I joined the association in 2014, and I'm in the "family group".

Our work is to receive and to assist families who are looking for their missing children. Every day, "missions" will be shared in our chat group. Those who are available will receive the "mission", and he or she will be responsible for that case. Afterwards, he or she will contact the parent or other family members who filed the case, verify the information, collect the child's information, including physical characteristics and hobbies, collect information of the child missing incidents and any other information that may help trace the child. We will ask the parent to fill in a detailed questionnaire made by the association. Based on the questionnaire, photos of the child and the parents, we will publish a post on our website. Then we will urge and assist the parent to give their blood sample in the local police station, which will be put in the DNA databank of anti-abduction.

In these years, I have seen over 300 cases, most of which were abduction and the sale of children. Six families in the cases under my responsibility have found their children.

Most of the child trafficking incidents took place in rural areas and almost two decades before. At that time, people did not have any awareness of preventing child trafficking, and they had too many children to take care of. Recently, there are more runaway cases than child trafficking. In any case, it is difficult to trace the missing children, just like looking for a needle in the ocean.

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<sup>214</sup> The text of the interview was originally in Chinese and is translated by the author.

Almost all the victims were less than four years old. The traffickers rarely abduct children older than 3 years of age, because they already have memories of their families.

Most of the families of the victim of child trafficking were poor, many of them were illiterate. Some of them even did not know that they should report the missing child incident to the police. In general, the life of the victims' families became tragic after the incident. Tracing their children became the main activity of their daily life. Some of them got divorced, and some of them became depressed. In one of my cases, the mother had depression after losing her child, and in the end, she died by suicide.

I did not know any association or institutes that provide psychological assistance to the victims' families. We always say something to comfort them, but we are not trained for psychological counselling.

## Appendix III

Written interview with open questions<sup>215</sup>:

Interviewee: Intermediate People's Court of Guangzhou, Guangdong Province

28 February 2019, through WeChat.

Question 1: In consideration of your court, how do you distinguish “civil adoption of children” (adoption out of a legal procedure) and “child trafficking” when parents give their child to a family in exchange of money.

Answer: There is not yet any regulation clearly distinguishes the two concepts in China. We make our judgement based on the context of single cases. The principal is that if the parents “profit” from the “adoption”, then their conduct shall be condemned as the crime of child trafficking.

Question 2: If it is proven that a child was sold by and with the initiative of his or her parents, will the child be returned to the parents once released from the trafficking process? If yes, is there any supervisory measures to protect the victim and to prevent the revictimisation?

Answer: If the victim is an infant or young child, the child will be given back to his or her parents. If the child has the ability to express his or her will, the child's opinion will also be considered, but usually, the priority is given to returning parents. Regarding the follow-up supervision or monitoring, it is not the responsibility of the court. The civil affairs department is responsible for this issue. We are not aware of any follow-up supervisory measures.

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<sup>215</sup> The text of the interview was originally in Chinese and is translated by the author.

Question 3: Who is responsible for taking care of the child victim after the rescue? Is there any regulation regarding this?

Answer: The civil affairs department is responsible for providing child custody and protection. The courts do not have any regulation on this issue.

Question 4: In the detected under your jurisdiction, are there any victims of child trafficking that have been abused by the buyer (“adoptive family”)?

Answer: If the child was abused, it is usually written in the judgement. All the judgements that can be published are already made public. However, as child trafficking cases involve the interests of the child, much of the contents is confidential.

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