



Child- rights and Corporate Social Responsibility In China

- An Introduction

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China's rapid development and rising position on the international scene is front-page news around the world. The strong economic growth and the expanding business operations, both in China and abroad, have attracted the world's attention. But these developments are also a cause for questions. What responsibility does China have for its investments in Africa? How can Chinese workers' rights be ensured when competition stiffens and productivity has to increase? How can the Chinese government and its businesses ensure that children of domestic migrant workers are kept out of the factory floors and ensured their right to education?

Corporate Social Responsibility (CSR) is a concept that revolves around the integration of social and environmental concerns in a company's business operations. The rights of a child can be affected, both positively and negatively, in any part of the business process. The responsibility of companies towards children has its basis in legal obligations. However, going beyond the traditional approach of fundraising and charities, more far reaching commitments regarding child-rights is becoming an important part of companies' CSR strategies, also in China.

The aim of this paper is to give a brief overview of child-rights and CSR in China, as it relates to the work of the Centre for Child-Rights and Corporate Social Responsibility (CCRCR). Much has been written on child-rights, CSR and China, respectively. But a purposeful contribution

that focuses specifically on the child-rights aspects of CSR in China is lacking. This paper aims to fill part of that gap.

After a brief background on socio-economic indicators and the situation for children in China, child-rights at the international level and in China will be addressed. Following that, CSR standards that are relevant to actors in China will be presented before the concluding remarks.

Socio-economic indicators and the situation for children in China

Key points

- *There are more than 300 million children in China*
- *China is developing rapidly in almost all areas of society, but challenges remain*
- *China is a party to several of the international instruments that protect child-rights*

China is the world's most populous country. The results of the latest census, released in April 2011, revealed that the total population is approximately 1.34 billion.ⁱ According to the same census over 220 million, or more than 16 per cent of the population, are between 0 and 14 years old. The census did not provide any information about the 0-18 year's bracket, but UNICEF estimates that there are over 330 million children under the age of 18 in the country.ⁱⁱ China is a lower middle-income country according to the World Bank. Annual GDP growth for 2010 was 10.3 per cent and GDP per capita was USD 4393. 2.8 per cent of the population lived below the national poverty line in 2004.ⁱⁱⁱ China ranks 89 in the United Nations Development Programme Human Development Index (HDI) rankings for 2010,^{iv} three steps up from the previous year. China is far behind neighbouring countries such as Japan, Korea and Russia, but finds itself ahead of countries to the south, such as India, Thailand and Vietnam.

The situation for children in China is complex and although the rapid decline in poverty, the rising living standards and increased budgetary allocations for e.g. education and health, challenges do remain. There are also significant regional disparities regarding almost all development indicators that are relevant to children. China has a very high literacy rate and primary school enrolment and attendance ratios are high,

but there are still many children that do not go to school. They are often children of migrant workers and those who have not been properly registered at birth and therefore lack the necessary household registration. A consequence of China's well-known one-child policy is that that the second child in a family that is only allowed one child can have difficulties in registering the birth.

Infant mortality rates are almost five times higher in the most impoverished parts of China, compared to the wealthiest provinces. In rural areas, infant mortality is also much higher for girls compared to boys. China has a large internal migrant population of around 150 million, of which many are children.^v This group often have limited access to basic social services. The many children that are left behind in rural areas when their parents migrate also suffer from inequalities and are at a much higher risk of both physical and psychological harm. There are moreover many homeless children in China and each year around 100,000 children, mostly girls and children with disabilities, are abandoned and left to State operated orphanages. Children belonging to certain groups, e.g. religious and ethnic minorities, children with disabilities and children infected with or affected by HIV and Aids are facing discrimination in many part of the country. Child labour is reportedly widespread in China, but there is no official data concerning its prevalence.

Child-rights protection at the international level and in China

Key points

- *The Convention on the Rights of the Child is the most important child-rights document and it contains many provisions that are relevant for CSR*
- *The convention is legally binding in China*
- *There are several laws in China that concern child-rights and CSR*

Child-rights protection at the international level

Child-rights concern the human rights of a person below the age of 18. In 1989 the UN General Assembly adopted the Convention on the Rights of the Child (CRC). Although there are standards relating to child-rights in other UN human rights conventions, the CRC is the first legally binding international document that comprehensively addresses the civil, cultural, economic, political and social rights of a child. The CRC also confirmed that a child, as a human being, is the subject of her or his own rights.

The CRC entered into force in 1990 and China ratified the convention two years later. The convention is thus legally binding in China. China has also ratified the optional protocols to the CRC on the sale of children, child prostitution and child pornography and on the involvement of children in armed conflict. In addition to the CRC, China is a state party to five more of the nine core United Nations human rights conventions.^{vi} China has also ratified four of the eight core ILO human rights conventions, including the two conventions on the abolition of child labour.^{vii}

The CRC covers many rights, including the rights to life, education, health and the right not to be discriminated against, as well as the freedoms of expression and association. All

of these rights are important in relation to CSR. Article 32 in the CRC specifically concerns issues relevant for CSR. It states that:

“1. States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.

2. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular:

- a) Provide for a minimum age or minimum ages for admission to employment;
- b) Provide for appropriate regulation of the hours and conditions of employment;
- c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article”

A similar provision is found in the International Covenant on Economic, Social and Cultural Rights (article 10), which China is also bound by.

The CRC also establishes the basic principle of the best interest of the child. The principle entails that the best interest of the child

should be the primary consideration for public and private social welfare institutions, courts of law, administrative authorities and legislative bodies when undertaking actions concerning children.

The UN Committee on the Rights of the Child oversees the implementation of the CRC. Each State party is required to submit periodic report on how the convention is being implemented in their country. China submitted its latest State party report in 2003 and the Committee considered the report in 2005. In its concluding observations,^{viii} in addition to addressing many of the issues listed above, the Committee expressed its concern about the absence of specific data on child labour and the lack of legislation and specific administrative regulations defining and protecting children from exploitation in hazardous work. In this respect, the Committee recommended China to:

- Gather specific disaggregated data on child labour and using them to develop, in cooperation with working children, effective measures to prevent and eliminate all forms of child labour; and
- Develop detailed regulations on the forms of hazardous and dangerous work in which all persons under 18 should not be engaged, in consultation with the affected children.

Child-rights protection in China

China has a comprehensive legal framework relating to issues that concern children, starting with the constitution. The constitution was amended in 2004 to include a passage on human rights.^{ix} Article 33 states that: “the state respects and guarantees human rights”. There are also other provisions in the constitution that is relevant for children, e.g. rights to education and to

develop. The 2006 Law on the Protection of Minors contain several child-rights provisions, including the minimum age for employment.^x According to this law and other Chinese labour laws, no company is allowed to hire a person under the age of 16. So-called ‘young workers’ between the ages of 16 and 18 may be hired, but only under certain conditions pertaining to types of jobs, working hours and a few other conditions.

Provisions relevant for children can also be found in other laws, including the Criminal Law, the Criminal Procedure Law (amended 1997), the Law on Adoption (amended 1999), the Marriage Law (amended 2011), the Law on Adoption (1992), the Law on Maternal and Infant Health Care (1994), the Law on Compulsory Education (1995) and the Labour Law (2007). Amendments in several of these laws has been made to ensure compliance with the CRC and after observations made by the CRC Committee.

The main governmental body responsible for children’s issues is the National Working Committee for Children and Women under the State Council. At the provincial, district and county levels there are working committees for children and women responsible for formulating and monitoring local child development plans. Between 2001 and 2010 a National Program of Action for Child Development was implemented with the purpose of promoting child development and to monitor the implementation of various international goals in the field of child-rights. A new national program of action has recently been adopted. The National Human Rights Action Plan of China (2009-2010) contained a section on children’s rights, which in its turn included a passage on prohibiting the employment of child labour.

International and National Corporate Social Responsibility standards relevant for China

Key points

- *There are many international CSR standards and guidelines available that are relevant from a child-rights perspective*
- *CSR standards are not legally binding, but voluntary undertakings*
- *Several Chinese organisations have developed their own CSR standards*

There is no universally accepted definition of CSR. A definition that has won widespread acceptance is that of the European Commission. The Commission defines CSR as “a concept whereby companies integrate social and environmental concerns in their business operations and in their interaction with their stakeholders on a voluntary basis”.^{xi} The concept of CSR is perhaps best explained by addressing the various standards that have been developed in the field over the years. Here focus will be on standards that include child rights either explicitly or implicitly. In the latter cases, child rights are often recognised as part of broader formulated human rights standards and principles.

CSR standards developed under the auspices of international organisations

The point of departure for the child-rights aspects of CSR is the Universal Declaration on Human Rights (UDHR). The UN General Assembly adopted the UDHR in 1948. In the preamble it is established that ‘every organ of society’ has a role to play in promoting respect for and securing human rights. This includes also businesses. A handful of documents have been developed over the years that elaborate on key standards in the field of CSR as relevant for

child-rights. These standards have their foundation in the UDHR and international human rights law. Some of the most relevant documents are: the OECD Guidelines for Multinational Enterprises; the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy; the UN Global Compact; the Guiding Principles on Business and Human Rights; and the ISO 26000. Although these documents all rest of international human rights instruments the documents are not legally binding. However, since they are negotiated instruments at the international level and have a basis in international law, they are often referred to as soft law instruments.

The OECD Guidelines for Multinational Enterprises^{xii} was adopted in 1976 and has since been updated regularly, the latest in May of 2011. The guidelines are recommendations addressed by governments to multinational enterprises that work in or from countries that adhere to the guidelines. The guidelines provide voluntary principles and standards for responsible business conduct in several areas, including human rights. Child-rights are not explicitly mentioned, other than the issue of child labour. However, child-rights fall under the general human rights principles

and standards in the guidelines, which is highlighted in the commentary. The guidelines are recommendations and thus not legally binding. To date, China is not an adhering country to the guidelines. However, the guidelines apply to companies from adhering countries that are active in China.

The ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy^{xiii} was adopted in 1977 and updated latest in 2006. Compared to the OECD guidelines, which cover a broad range of corporate activities, the ILO Tripartite Declaration focuses more specifically on labour issues. The declaration targets governments, employers' and workers' organisations and the multinational enterprises themselves and sets out principles in the fields of employment, training, conditions of work and life and industrial relations. The declaration itself is not legally binding, but it includes a list of legally binding conventions (and non-binding recommendations) that are relevant also for multinational enterprises. Included in that list are the ILO conventions China bound by. Regarding child-rights, the declaration contains recommendations on the issues of minimum age for admission to employment or work in order to secure the effective abolition of child labour and the prohibition and elimination of the worst forms of child labour.

The UN Global Compact^{xiv}, launched in 2000, is a strategic policy initiative that encourages businesses to align their operations and strategies with ten principles in the areas of human rights, labour, environment and anti-corruption. Coupled with the objective of aligning with the ten principles, another objective is to catalyse

actions in support of broader UN goals, including the Millennium Development Goals. Under the UN Global Compact, companies should 'embrace, support and enact, within their sphere of influence, a set of core values in the areas of human rights, labour standards, the environment and anti-corruption'. The principles are derived from e.g. the UDHR and the ILO's Declaration on Fundamental Principles and Rights at Work. Principle 1 states that businesses should support and respect the protection of internationally proclaimed human rights. Principle 5 concerns the effective abolition of child labour. Today, the UN Global Compact is the largest voluntary corporate responsibility initiative in the world. More than 200 Chinese companies have joined the UN Global Compact, including both state-owned and private companies, and in 2009 the Global Compact Local Network China was formed.

In 2010, the UN Global Compact, UNICEF and Save the Children initiated the drafting of the Children's rights and business principles. The objectives of the principles are to provide practical guidance for business to embed children's rights into business strategy and operations, inform government engagement with business, offer a unifying framework for existing and future initiatives, promote business-multi-stakeholder collaboration, and raise awareness of the positive and negative impact of business on children. The development of the principles is taking place, among other processes, through multi-stakeholder consultations around the world. In China, such consultations were held in Beijing and Shanghai in June 2011 with the purpose of providing input into the drafting process as well as discussing how the

principles can be implemented in China. When the principles are adopted, it will be the first comprehensive set of principles offering concrete guidance on what business can do to respect and support child-rights. The principles will be added to UN Global Compact's ten principles, and will help to elaborate on the existing principles through the perspective of child-rights.

In its draft form (April 2011), the principles state that business enterprises should:

- Make a commitment to children and their families as key stakeholders of business
- Respect and support children's rights in the workplace and value chain
- Make sure products and services are safe and make a positive contribution to children's lives
- Use marketing and advertising that advances children's rights
- Take care of the environment where children live and grow
- Help protect children affected by emergencies
- Reinforce community and government efforts to fulfil children's rights

In 2005, the UN Secretary-General appointed a Special Representative on Business and Human Rights (SRBHR).^{xv} The task of the SRBHR was, among other issues, to identify and clarify standards of corporate responsibility and accountability regarding human rights. The SRBHR has reported back on his mandate at several occasions and in March 2011 he submitted his final report to the UN Human Rights Council. The final report summarised his work, and presented the "Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect,

Respect and Remedy' Framework". The principles highlight what steps States should take to foster business respect for human rights; provide a blueprint for companies to know and show that they respect human rights, and reduce the risk of causing or contributing to human rights harm; and constitute a set of benchmarks for stakeholders to assess business respect for human rights. The principles are organised under three pillars: the State Duty to Protect; the Corporate Responsibility to Respect; and Access to Effective Remedy. The UN Human Rights Council endorsed the guiding principles in June of 2011.

In 2010, the International Organization for Standardization issued the ISO 26000 Guidance on Social Responsibility.^{xvi} ISO 26000 is an ISO international standard giving guidance on behaviour and action in the field of social responsibility. ISO 26000 targets not only businesses, but also public sector organisations. In contrast to ISO management system standards, the ISO 26000 it is not intended for certification purposes. There are seven core subjects in the ISO 26000, of which human rights and labour practices are two. The ISO 26000 is a detailed document and its provisions concerning child-rights are more far reaching than most other documents. A general responsibility stipulated is for organisations to exercise due diligence to identify, prevent and address actual or potential human rights impacts resulting from their activities or the activities of those with which they have relationships. Activities that can affect or involve children is identified as one area where organisations are more likely to face challenges and dilemmas relating to human rights. Children are also highlighted as a particularly

vulnerable group, in part because of their dependent status. The ISO 26000 also refers back to the CRC and states that when taking action that can affect children, primary consideration should be given to the best interests of the child. The instruments further specifies certain areas where due consideration to children should be taken. In relation to advertising and marketing, primary consideration should be given to the best interests of vulnerable groups, including children. Regarding community involvement and development issues that organisation partake in, they should encourage the enrolment of children in formal education and contribute to the elimination of barriers to children obtaining an education (such as child labour). ISO 26000 was drafted to be in compliance with the other documents mentioned under this section. China was one of 83 countries that participated in the drafting process.

CSR standards developed in China

There have been a number of CSR initiatives developed in China. Although many of them contain references to international standards and laws, they are predominantly based on Chinese laws and policies.

In 2010, the China International Contractors Association (CHINCA) developed a Guide on Social Responsibility for the Chinese International Contracting Industry.^{xvii} In the foreword to the guide, references are made to the UN Global Compact and the ISO 26000. The aim of the guidelines is to establish benchmarks of social responsibility and to encourage enterprises to uphold their global responsibilities and operate overseas contracting projects in a more responsible

manner. The guide applies to all relevant activities of Chinese enterprises operating overseas contracting projects, as well as all relevant activities conducted in China that support overseas contracting projects. The guide is fairly detailed and has a section on human rights. Regarding child-rights, child labour is included in the guide.

In 2008, the China Federation of Industrial Economics and ten national industrial associations and federations jointly issued the Guidelines on the Social Responsibility for Industries of China (GSRI-CHINA). The guidelines were revised in 2009. GSRI China includes basic principles and requirements of social responsibility as well as a framework for social responsibility reporting. It targets industrial enterprises and associations and is intended to reflect the conditions prevailing for the industry in China. The guidelines have a clear national focus and its scope of references is laws and policies of China. GSRI-CHINA has a short section on human rights wherein it is stated that enterprises should ensure that they do not infringe the basic rights and interests as defined by national laws and that equal opportunities should be guaranteed to all employees. Children are mentioned only in relation to vulnerable groups, where it is stated that their rights should be respected and safeguarded.

The Responsible Supply Chain Association (RSCA) under the China National Textile and Apparel Council (CNTAC) has developed the China Social Compliance 9000 for Textile & Apparel Industry (CSC9000T).^{xviii} The CSC9000T is a social responsibility management system, targeting textile and apparel related business enterprises, which is based on China's laws

and regulations and international conventions and standards. The CSC9000T makes references to the UDHR, CRC and other international human rights instruments, the UN Global Compact and various ILO conventions. In terms of child-rights, similar to many of the other standards, child labour is included. However, compared to the CHINCA guidelines and the GSRI-CHINA, CSC9000T contains recommendations on how to deal with child workers, if they are found. If that is the case, the enterprise should establish, document and maintain procedures for remediation of the child workers, and guarantee their right to compulsory education. Also certain requirements for juvenile workers are included.

The preferred international standard regarding auditing and certification of work facilities in China is the SA8000.^{xix} The SA8000 was developed by Social Accountability International and is a certification standard that is based on the UDHR, CRC and ILO conventions. The latest version was released in 2008. The SA8000 contain nine elements, of which child labour is one. With over 350 facilities certified, covering more than 270,000 workers, China is one of the countries with most SA8000 certifications in the world.^{xx}

Voluntary initiatives, codes of conduct and certification schemes

There are also numerous voluntary initiatives for business that exist with the purpose of addressing a variety of issues related to CSR, including social and environmental responsibility, supply chain ethics and human rights. They include codes of conduct, standardisation and certification

criteria and reporting, social audits, fair trading schemes and social investment programmes. Voluntary initiatives are adopted by companies to express its commitment toward a particular conduct, and do not necessarily have a foundation in legal obligations.

The Global Reporting Initiative (GRI) is a recognised sustainability reporting framework that sets out principles and performance indicators that can be used to measure and report the economic, environmental and social performance of a business. GRI is active in China since 2007. In 2010, out of the around 700 Chinese sustainability reports registered on various databases, 61 were based on the GRI guidelines.^{xxi}

Summing up - Child-rights and CSR in China

The international and national laws in place in China constitute the bottom-line for any business – they are the minimum standards that all companies have to uphold. On top of that, the international and Chinese CSR standards provide further guidance on how to operate a business in line with good practises. The CSR standards are not legally binding and companies do not have to follow them, but often do, as they understand the value of a good and sustainable business operation. On top of the laws and the CSR standards are various other initiatives. There is no upper limit when it comes to good business practices. Companies themselves can chose to engage in community projects, improving safety standards and ensuring good advertisement schemes. This is done since it has been shown that a good business operation is good business, and that consumers place a lot of value in buying products from responsible companies.

Although most of the standards in the CSR field focus mainly on child labour, there are many more child-rights issues that are of concern from a CSR perspective in China.

The large group of internal migrants is the cause for many delicate issues related to children. Difficulties in transferring registration to the new place of living may make it difficult to access education and health services. Children are naturally affected by their parents' situation and companies maternity and paternity policies will have an impact also on the children. The large migration also raises question regarding duty of care on employers for children of

migrant labourers. Should companies support education and community programmes? Since not all children join their parents in the search for better employment opportunities, children that are left behind in rural areas and are raised by grandparents or other extended family members are often left in a vulnerable state.

There are many 'young workers', seasonal workers and interns in Chinese factories. Employers must ensure that they are benefitting from the safeguards in Chinese law regarding working hours and types of jobs they are allowed to carry out. There are reports of arrangements being made between factories and schools regarding summer jobs for students, where contracts and salaries may never reach the students.

There are many state-owned enterprises and corporations that mix private and public capital in China. From a child-rights perspective this is interesting since the State, and its subsidiaries, are the primary duty-bearer for the country's human rights obligations. While companies have to abide by the law, States have to respect, protect and fulfil human rights. When government and business mix, the borders are blurred and new questions are posed when it comes to child-rights promotion and protection.

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