



FACULTY OF LAW
Lund University

Jingjing Han

Examination of Chinese System on Protecting Children
from Violence in the Family under International Human
Rights Law

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Supervisor: Göran Melander

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Preface

Violence against children in the family is an upsetting topic. Although I knew this may be common in the lives of children, I was not aware of the magnitude and severity of this problem worldwide only until I started to write this thesis. The cases of helpless children who were exposed to violence by parents I encountered in China urged me to wonder whether there is benchmark to measure the domestic system and could provide the insight on how to improve the protection of children from violence in the family. Although there is remarkable progress on combating violence against children by parents in China since 2013, much more need to be done. The study in Lund University provided me such opportunity to explore the answer.

There are many persons who I feel gratitude to. I am thankful to Swedish Institute for providing the study scholarship (SISS) to me for being part of this program. I would like to give many thanks to my supervisor Göran Melander. His constructive comments, patient supervision and continuous encouragement not only helped me to improve my thesis structure and content, but also benefited me of learning how to perceive problems in a more reasonable way. I would like to thank the teachers of this program for sharing their knowledge from which I got lots of enlightenment. Also so much gratitude to my friends who inspired, encouraged and supported me during this process.

At last I want to thank my family. Their support makes me be able to focus on what I am interested in. Also special gratitude to Qiang and Xuhan for their accompanying with me in Sweden. They never let the warmth of family leave me even I am far away from home country. Your love and support will motivate me to go further in future.

Summary

Violence against children in the family is the global epidemic. According to the latest global report from UNICEF in 2017, 3 in 4 children are subject to violent discipline regularly by their caregivers at home worldwide. Deciding when and how to intervene family is always challenging both for policy makers and practical professionals. This is particularly concerning in China considering its huge number of children and groups of vulnerable children. This thesis aims to examine the system on protecting children from such violence in China under international human rights law and tries to find ways to improve the protection to children under Chinese context.

Children are the independent rights holders under international human rights law. They are protected from all forms of violence in all settings including in the family by the most widely ratified convention, the Convention on the Rights of the Child of which China is a State Party. The approaches and guidelines on how to realize the international obligations identified by UNCRC Committee provide effective ways to prevent and protect children from such violence. However, whether these international obligations play the expected roles on the ground depends on whether and how the state parties implement them in their domestic contexts. The regional human rights system in Europe provides an entry point of the insight into the national implementation in European states, which could provide experience and lessons for China.

Through benchmarking the system on protecting children from violence in the family in China against UN Convention on the Rights of the Child, it reveals that the current approach which has the negative impact on the practical effectiveness of the current system in China is not consistent with UN standard. Targeting the problems identified and drawing experience from European states, the approach needs to be shifted from piecemeal to holistic in China. The child rights approach should be the orientation for improving the system. The specific intervention mechanisms also need to be improved based on these approaches.

Abbreviations

| | |
|-----------------|---|
| VACIF | Violence against children in the family |
| UN | United Nations |
| UNICEF | United Nations International Children's Emergency Fund |
| WHO | World Health Organization |
| EU | European Union |
| CRC | United Nations Convention on the Rights of the Child |
| UDHR | Universal Declaration of Human Rights |
| CRPD | Convention on the Rights of Persons with Disabilities |
| ICCPR | International Covenant on Civil and Political Rights |
| ICESCR | International Covenant on Economic, Social and Cultural Rights |
| CEDAW | Convention on the Elimination of All Forms of Discrimination against Women |
| ECHR | European Convention for the Protection of Human Rights and Fundamental Freedoms |
| CRC Committee | The Committee on the Rights of the Child |
| CEDAW Committee | The Committee on the Elimination of Discrimination against Women |
| ECtHR | European Court of Human Rights |

1. Introduction

This chapter introduces the magnitude and severe nature of the violence against children in the family. It points out the research purpose and the key research question. The research methodology, delimitation and the structure are also described.

1.1 Background

Violence against children¹ in the family is prevalent worldwide. The current available data reveals that household members are the most common perpetrators of physical and emotional violence against children.² Article 19 of UNCRC protects children from all forms of violence in any setting including in the family, requiring states to take “all appropriate legislative, administrative, social and educational measures” to address this issue. While there are various persons under the definition of the caregivers in this article, this paper focuses on the violence conducted by persons who have the primary responsibility for the upbringing and development of the child in the context of the family. These persons include biological parents, adoptive parents and other legal guardians with such recognized responsibility.³

According to the first global study on violence against children in 2006 by UN, in every society, a large proportion of children were exposed to severe violence in their homes, which was largely ignored by the international community.⁴ The most recent global report produced by UNICEF in 2017 reveals that worldwide 3 in 4 children, closely to 300 million children, experience violent discipline by their caregivers at home regularly, only 9% of children under five-years-old live in the countries which legally prohibit the corporal punishment at home.⁵ In Europe, at least 850 children under 15 years old die

¹ Children in this paper refers to the human being under the age of eighteen years, which is consistent with Article 1 of UNCRC.

² Who perpetrates violence against children? A systematic analysis of age-specific and sex-specific data, 2017, <http://bmjpaedsopen.bmj.com/content/2/1/e000180>, visited at 2018/3/2.

³ Committee on the Rights of the Child, General comment No. 13 (2011), The right of the child to freedom from all forms of violence, para33.

⁴ Paulo Sérgio Pinheiro, World Report on Violence against Children, UN Independent Expert for the United Nations Secretary-General’s Study on Violence against Children, 2006, p.6 and p.11.

⁵ UNICEF, A familiar face: violence in the lives of children and adolescents, 2017, p.21 and p.30.

from violence in the family each year which is only the tip of iceberg and around 80% of these deaths are attributed to the maltreatment of biological parents.⁶ The research of the UNICEF in 2014 indicated that in the Pacific and East Asian region, about 33% of boys have experienced physical abuse in lower and middle income countries while 22% of girls have suffered sexual abuse which often happened behind the closed doors.⁷ In China, from 2008-2013 the media has reported 697 cases in which children suffered serious violence in the family. In more than 50% of these cases violence has resulted in deaths.⁸ What these reports have revealed is an incomplete picture. Since the reliable and effective detection systems are lack in most countries, the acknowledged magnitude of this problem may be the tip of the iceberg. Such cases are always not reported and many children are the hidden victims who may never be found.

Whatever the form and how slight the violence is, it is harmful to children. The scientific research has found the negative impact of violence on the survival and development of child and the significant, long-lasting harm in many cases.⁹ Violence against children infringes on their human dignity, physical and physiological integrity. Societies have to pay great social and economic costs to respond to such violence. The ‘cycle of violence’ may be produced by the trans-generational transmission of the children who were victims or witnesses of violence experienced in the family.¹⁰

While violence happens in any setting, combating violence against children in the family is the most challenging. The perception on children as the possession of parents has been ingrained in a large number of societies, resulting in the lack of fully legal protection to children at home and the reluctance of states to intervene such cases. Although UNCRC provides children with the right to live from violence, this legal promise is still far from realization. While there is progress, the severity of the violence against children at home is still shocking. It is much closer than people think and home is always the first place where children expose to violence.¹¹

⁶ WHO, European report on preventing child maltreatment, 2013, p.9.

⁷ Violence against Children in East Asia and the Pacific: A Regional Review and Synthesis of Findings, UNICEF, 2014, p8 and p14.

⁸ Beijing Children’s Legal Aid and Research Center, Report on the analysis of the cases on domestic violence against children, 2014, <http://www.chinachild.org/b/rd/7041.html>, last visited at 2018/5/23.

⁹ UNICEF, A familiar face: violence in the lives of children and adolescents, 2017, p.10.

¹⁰ WHO, European report on preventing child maltreatment, 2013, p.3.

¹¹ <https://www.unicef.org/endviolence/>.

Eliminating violence against children in the family is a matter of urgency. It is included in the UN Sustainable Development Goals. Goal 5 requires elimination of all forms of violence against girls both in public and private spheres and Goal 16 addresses ending all forms of violence against children. To what extent this problem is tackled is directly related to the fulfillment of these sustainable development goals. Since the importance of the stable and safety family units in protecting children from violence in all settings has been confirmed,¹² protecting children from violence at home is the essential prerequisite for the enjoyment and exercise of other rights by children. The positive effect of preventing and addressing VACIF not only provides protection to children and families, but also is an effective way to combat violence against children in all settings.

1.2 Research purpose and questions

The international rules could be the benchmark to examine domestic systems and provides guidance for their improvement. Implementation of international obligations in the national contexts is also crucial. The European human rights system has provided the source of inspiration on how to interpret the international obligations in specific contexts and the possibility to examine the national implementation of article 19 of UNCRC in European states, which could provide experience and lessons for China. This thesis aims to examine the system on protecting children from such violence in China under international human rights law and discusses how to improve the protection to children. The key research questions are how children are protected from violence in the family under international human rights law and how to realize its potential under Chinese context.

1.3 Methodology

This paper conducts the analytical study of the contents and the implementation of international conventions, mainly grounding on UNCRC. It also conducts analytical investigation of the case law of international human rights institutions. The domestic

¹² UN General Assembly: Promotion and protection of the rights of children, sixty-first session, 29 August, 2006, paragraph 33.

legislation, policies and jurisprudence in China and the national implementation on article 19 of UNCRC by European states are examined. A comparative perspective is introduced to make the comparison between Chinese system and international obligations under UNCRC. The materials referred to include UN and regional conventions in Europe, general comments and other relevant international, regional documents including resolutions, recommendations and guidelines. Literature review include academic books, articles and research papers both on international human rights law and child protection. The reports and research papers produced by UN, UNICEF and other regional, international organizations are also important resources.

1.4 Delimitation

Violence against children in the family is a multifaceted issue. This paper approaches it from the human rights law perspective. The literature on systematic review of addressing this issue in China is lack due to the initial developing stage of the domestic system. Since it is impossible to examine the national implementation of UNCRC country by country within this paper, it focuses on the national implementation by European states based on the outputs of research projects conducted at regional level.

1.5 Structure

This thesis is divided by six chapters. After the introduction part, Chapter 2 identifies and analyzes how children are protected from VACIF by UN human rights system. Chapter 3 introduces the Chinese system and chapter 4 examines the national implementation of the international obligations in European states. Chapter 5 benchmarks Chinese system against its international obligations under UNCRC. Chapter 6 makes the conclusion.

2. Protecting children from violence in the family under UN human rights system

This chapter provides the overview of legal framework on protecting children from violence in the family at UN level. Although the obligations of states on addressing violence against children in all settings have been interpreted by UNCRC Committee, the specific obligations in addressing VACIF need to be further clarified. This chapter focuses on identifying and analyzing the approaches most relevant to addressing VACIF and discussing international obligations of states in this specific family setting.

2.1 The protection of children and family in international instruments before the adoption of UNCRC

The importance of the family as the fundamental group unit and its entitlement to protection have been recognized in international human rights instruments, such as the UDHR, ICCPR and ICESCR.¹³ The UDHR and ICCPR have general provisions stating that children are entitled to special protection and assistance.¹⁴ Although there is no specific provision on protecting children from violence in these instruments, the right of children to live from violence cannot be excluded from their protection, since this right is implied by other relevant rights, such as the right to life and the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment¹⁵. Although these instruments declare everyone is entitled to human rights protection, the child as the independent human rights bearer has not been expressly recognized and formulated under human rights law at this stage.

The Declaration of the Rights of the Child adopted in 1959 by UN is the first international instrument that specializes on children's human rights, affirming children

¹³ Paragraph 3 in Article 16 of UDHR, paragraph 1 in Article 23 of ICCPR and Article 10 of ICESCR.

¹⁴ Paragraph 3 in Article 25 of UDHR, Paragraph 1 of Article 24 of ICCPR.

¹⁵ Article 3 and Article 5 of UDHR, Article 6 and Article 7 of ICCPR.

enjoy all the rights and freedoms while being entitled to special protection. It is in this instrument that “the best interest of the child shall be the paramount consideration” was first formulated¹⁶. The Declaration emphasizes the responsibility of parents to provide care and an atmosphere of affection, moral and material security for children to grow up. It explicitly expresses that the child should be protected against “all forms of neglect, cruelty and exploitation”¹⁷. However, this document only provides a general outline of principal children’s rights and it is without legal binding effect on states.

2.2 Article 7 of ICCPR

Article 7 of ICCPR protects everyone including children not being subjected to inhuman or degrading treatment or punishment which has been incorporated into other international human rights instruments, such as article 3 of the ECHR. Before the adoption of the UNCRC, this article is the most relevant one on protecting children from violence including at the hands of parents in human rights law. VACIF may constitute inhuman or degrading treatment or punishment. In its interpretation of this article, the Human Rights Committee articulates that the treatment or punishment under this article is detrimental to the dignity and the physical, mental integrity of the individual, regardless of being conducted through the official capacity or by private individuals. It emphasized that this prohibition must extend to corporal punishment and this article particularly protects children from such treatment or punishment. The state parties are required to take legislative, administrative, judicial or other measures to prevent and combat such acts prohibited under this article.¹⁸ It is noteworthy that primarily relying on this right, the ECtHR has promoted effective protection to children from violence by parents through its jurisprudence.

2.3 CEDAW and gender-based violence

Before the adoption of UNCRC, CEDAW is the important convention which addresses the gender-based violence in the family.

¹⁶ Principle 2 of the Declaration on the Right of the Child.

¹⁷ Principle 9 of the Declaration.

¹⁸ The Human Rights Committee: General comment No. 20: Article 7 (Prohibition of torture, or other cruel, inhuman or degrading treatment or punishment), Forty fourth session (1992).

2.3.1 The gender-based violence against children in the family

CEDAW Committee interpreted the gender-based violence as a form of discrimination, which is directed against women due to their sex or affects them disproportionately, occurring in both public and private sphere.¹⁹ It pointed out that the family violence is prevalent in all societies and is one of the most insidious forms of violence²⁰. Some forms of violence against children in the family are noticeably gender-based. Girls are more vulnerable to sexual violence in various contexts including in the family than boys. According to an estimate by WHO, 18% of girls and 8% of boys have experienced sexual violence worldwide, much of which was conducted by family members.²¹ The gender pattern in the conduct of homicide to children is also distinctly gender reflected, since almost half of the female homicide victims are killed by family members or intimate partners.²² In some states, the female infanticide rate is relatively high due to the preference of male gender.²³ Harmful experience such as child marriage and female genital mutilation also fall into the category of gender-based violence.²⁴

2.3.2 Due diligence obligation to address gender-based violence

States not only have the negative obligations not to infringe on human rights, but also have positive obligations to ensure individuals not suffer from human right violations when they are at the hands of private actors.²⁵ The state has to take responsibility if the violence by private actors is due to its shortcomings, such as failing to take appropriate measures. This obligation ended the public and private dichotomy in human rights law, not leaving the family realm blank any more.²⁶ Violence in the family is not regarded

¹⁹ CEDAW Committee, General Recommendation No. 19, 1992, para1 and para6.

²⁰ CEDAW Committee, General Recommendation No. 19, 1992.

²¹ WHO, Child maltreatment, http://www.who.int/violence_injury_prevention/violence/child/Child_maltreatment_infographic_EN.pdf?ua=1, last visited at 2018/5/15.

²² UNICEF, A familiar face: violence in the lives of children and adolescents, 2017, p.8.

²³ Paulo Sérgio Pinheiro, World Report on Violence against Children, UN Independent Expert for the United Nations Secretary-General's Study on Violence against Children, 2006, p.51.

²⁴ CEDAW Committee, General Recommendation No. 31, 2014.

²⁵ Marie-Benedicte Dembour, Critiques, International Human Rights Law, edited by Daniel Moeckli, Sangeeta Shah & Sandesh Sivakumaran, Oxford University Press, 2014, pp101-102.

²⁶ Edwards, Alice, Violence against women under international human rights law, Cambridge, 2011, pp. 65-66.

as trivialization and international rules do not stop before these closed doors. The principle on the prohibition of gender-based violence in both public and private sphere has been evolved into customary international norm.²⁷

State parties of CEDAW are imposed on due diligence obligation to overcome gender-based violence.²⁸ CEDAW Committee interpreted the due diligence as including components of prevention, investigation, prosecution, punishment and reparation to victims and having laws, institutions and a system to address this issue, indicating that this obligation has the immediate nature and the failure of discharging it is regarded as the tacit permission or encouragement of gender-based violence by states.²⁹ The due diligence obligation lays down the principal guidance for states to address violence inflicted by private actors. Due diligence is a systematic and holistic concept, which corrects the previous dominant focus on prosecution and punishment and touches on the root causes of the problem.³⁰ Gender sensitive approach is required under this obligation when states combat VACIF. Discriminatory laws, social norms and attitudes which underpin such violence should be addressed. Each component of the due diligence obligation should be implemented with gender perspective.

2.4 The international obligations on addressing VACIF under UNCRC

The UNCRC is the first internationally binding treaty with almost universal ratification by states³¹ on recognizing, respecting and protecting children's rights. It protects children from all forms of violence in all settings including in the context of the family. UNCRC entitles children to the enjoyment of human rights as independent rights holders at international level and provides comprehensive rights for them. The groundbreaking nature of UNCRC lies in that it presents the child-specific version of human rights, including both the general human rights accommodated to the special

²⁷ CEDAW Committee, General Recommendation No. 35 on gender-based violence against women, 2017, para 2.

²⁸ CEDAW Committee, General Recommendation No. 19, 1992, para9.

²⁹ CEDAW Committee, General Recommendation No. 35, 2017, para 24 b).

³⁰ Julie Goldscheid & Debra J. Liebowitz, Due Diligence and Gender Violence: Parsing its Power and its Perils, Cornell International Law Journal Vol. 48, 2015, pp308.

³¹ See, https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-11&chapter=4&clang=en, last visited at 2018/5/23.

characteristics of children and the special protection based on their needs.³²

Article 19 of UNCRC is the most relevant provision on addressing all forms of violence against children when they are at the hands of caregivers including parents. It sets out the specific obligations of state parties to address violence against children.³³ UNCRC Committee has interpreted this article as states are imposed on the due diligence and obligations to prevent violence, protect child victims and witness, investigate and punish the perpetrators and provide access to redressing human rights violations. The right in this article is the civil right and the corresponding obligations on states are with immediate and unqualified nature, indicating states have no leeway not to fulfill it.

2.4.1 Forms of violence against children in the family

Article 19 of UNCRC protects children from all forms of violence, including “the physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation including sexual abuse”.³⁴ Different phrases may be used to refer to violence against children. For example, the WHO uses child maltreatment to refer to “all forms of physical and emotional ill-treatment, sexual abuse, neglect and exploitation that results in actual or potential harm to the child’s health, development or dignity.”³⁵ Although these terms are used differently, their implications are similar.

Violence against children should be defined from the child right’s perspective. All forms of violence violate the child’s human dignity and his/her rights to survival, health and development, however they are slight. Thus there is no room for any legalized violence against children. Some factors which should be taken into account for deciding the proportional response such as frequency, severity of harm or intent are not the

³² Ursula Kinkelly, *Protecting Children's Rights under the ECHR: The Role of Positive Obligations*, 61 N. Ir. Legal Q. 245 (2010), pp246.

³³ Article 19 of the UNCRC states as “1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

“2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.”

³⁴ Paragraph 1 of Article 19 of UNCRC.

³⁵ http://www.who.int/topics/child_abuse/en/, last visited at 2018/5/14.

prerequisites for defining violence.³⁶ However, the identification of common forms of violence in the family context is necessary for determining effective strategies and proportional response. Based on UNCRC Committee's general comments³⁷ and the global reports at UN level³⁸, the most common forms of violence against children in the family are identified as the following:

1) Corporal punishment and other cruel or degrading forms of punishment

Corporal punishment is conducted in the context of the discipline, defined by UNCRC Committee as "any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however slight".³⁹ UNCRC Committee underlines that corporal punishment is invariably degrading. Some forms of non-physical punishment are also cruel or degrading, such as belittling, humiliation, denigration or ridicule. The Committee distinguished the corporal punishment which is incompatible with UNCRC from the positive discipline for the healthy development of the child and parent's physical actions or interventions for the safety of the child.⁴⁰ The corporal punishment by parents is a highlighted issue prevalent almost in all societies. The most daunting concern of it is its widespread legality and social approval.⁴¹ The acceptance of such social practice makes it difficult to challenge this issue. Change of the perception and clear prohibition in the legislation is the first step for addressing it.

2) Physical violence

Although most of physical violence against children by parents are non-fatal, some may lead to the severe damage to children's health even to death. Parents may not intend to cause such serious harm in certain circumstances, but its adversely unexpected effect on the child is produced due to children's vulnerability. Physical violence is not only limited to the harm directly on the child's body, it could also include exploitation of children through deliberate infliction on them, such as children forced to beg on streets

³⁶ UNCRC Committee, General Comment No. 8(2006); General Comment No. 13(2011), para17.

³⁷ UNCRC Committee, General Comment No. 8(2006); General Comment No. 13(2011).

³⁸ World Report on Violence against Children, UN Independent Expert for the United Nations Secretary-General's Study on Violence against Children, 2006; UNICEF, A familiar face: violence in the lives of children and adolescents, 2017.

³⁹ UNCRC Committee, General Comment No. 8(2006), The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment, para.11.

⁴⁰ UNCRC Committee, General Comment No. 8(2006), para. 13-14.

⁴¹ UN: World Report on Violence against Children, 2006, p52.

and forced sterilization on disabled girls by parents.⁴²

3) Sexual violence

Sexual violence includes the inducement or coercion of a child to engage in any unlawful sexual activity, the use of child in commercial sexual exploitation, such as forcing the child into prostitution, the use of child to produce the pornographic materials.⁴³ Girls are more likely to expose to sexual violence than boys although cases involving boys may be hidden due to the traditional perception and lack of effective identification mechanism. Parents or other legal guardians at home often take the advantage of the child's subordinated position and dependent status to conduct sexual abuse. The occurrence of the sexual violence against children in the family and its different impact from other forms of violence are increasingly acknowledged in recent years.⁴⁴ Sexual violence results in the adverse impact on the health and development of children, both in short and long-term. In some circumstances, the trauma accompanies victims for a life time. Many sexual abuse cases in the family may never be revealed due to various reasons, including child's dependency on perpetrators, its insidious nature in the most private space, lack of awareness by children and caretakers.

4) Neglect

Due to children's dependency on parents or other legal guardians for survival and development, the failure of these responsible persons to meet their physical and psychological needs constitutes violence. Neglect includes different forms of behaviors, including physical, psychological, educational neglect and abandonment. For example, parents' failure to protect child from harm, lack of emotional support, not providing necessities for the life and development of the child, withholding medical care and not sending children to receive education.⁴⁵ Some children groups are particularly at risk of neglect in the family, such as girls, children out of wedlock and disabled children are more likely to be treated negligently.⁴⁶

⁴² UNCRC Committee: General Comment No. 13 (2011), para. 23.

⁴³ UNCRC Committee: General Comment No. 13 (2011), para. 25.

⁴⁴ UN General Assembly: Promotion and protection of the rights of children, 29 August, 2006, paragraph 44.

⁴⁵ UNCRC Committee: General Comment No. 13 (2011), para. 25.

⁴⁶ UN General Assembly: Promotion and protection of the rights of children, 29 August, 2006, paragraph 43.

5) Psychological violence

Psychological violence is the psychological mistreatment of children, including all forms of persistent harmful interaction with children, emotional indifference or denying emotional responsiveness, which often accompanies physical violence.⁴⁷ Witnessing domestic violence on a frequent basis adversely affects children's psychological well-being, development and social interaction.⁴⁸ The risk of the violence against children increases when there is domestic violence between parents or intimate partners. Psychological violence from the respected adults such as parents is especially detrimental to the development and well-being of the children. The negative impact of the physical violence has not been fully acknowledged in some societies.

The above list is not exhaustive. There are other forms of violence against children, for example, parents selling children for economic benefit, forcing children become child labor to support family, imposing the harmful practice such as female genital mutilation and child marriage on them.⁴⁹ In reality, the violence against children in the family is far more compounding.⁵⁰ Children may suffer multiple forms of violence at the same time, such as the psychological violence accompanying the physical violence while witnessing the domestic violence between parents in the family. Although the nature and the severity of violence are not requisite for the definition, they are important factors in determining how to prevent and respond in a proportional way.

2.4.2 A holistic approach to addressing VACIF

A holistic approach is required to address VACIF by UNCRC which should be integrated at various levels. This approaches requires taking into account the following requirements in the implementation the international obligations.

2.4.2.1 Integrating principles of UNCRC in the obligations on addressing VACIF

⁴⁷ UNCRCCCommittee: General Comment No. 13 (2011), para. 21; Who perpetrates violence against children? A systematic analysis of age- specific and sex-specific data,2017.

⁴⁸ L. A. McClosky, A. J. Figueredo and M. P. Koss, "The effect of systemic family violence on children's mental health", *Child Development*, vol. 66: (1995), pp. 239-1261; *Behind Closed Doors: The Impact of Domestic Violence on Children* (London: UNICEF and The Body Shop International Plc., 2006).

⁴⁹ UN General Assembly: Promotion and protection of the rights of children, 29 August, 2006, paragraph 46.

⁵⁰ UNICEF: *Hidden in plain sight, A statistical analysis of violence against children*, 2014.

UNCRC Committee has identified general principles which should be integrated into the obligations of state parties and implemented effectively. The principle of non-discrimination requires proactive efforts by states to address the root causes of the discrimination. Particular attention should be given to the vulnerable groups of children who are more likely to suffer violence in the family. These groups include but not limited to disabled children, migrant children and children living in low socio-economic environment.⁵¹ The rights of some groups which are inscribed into the international standards, such as the Convention on the Rights of Persons with Disabilities, should be fully respected and protected by state parties. States need to take adequate and appropriate measures to ensure the right of these vulnerable groups to freedom from violence on an equal basis with other children.

The best interests of the child should be the primary and paramount consideration when different interests need to be balanced for making decisions involving children.⁵² UNCRC Committee identified two strategies which best serve the best interests of the child regarding violence against children, a focus on the primary prevention and the establishment of a child-rights based, integrated child protection system.⁵³ In the circumstances where children may face the risk of violence from parents, there are various elements to be taken into account, among them include the preservation of the family and the protection of children from harm, which may conflict with each other. States have to weight against these elements on a case-by-case basis to reach a decision most consistent with the best interests of the child.⁵⁴

UNCRC Committee emphasizes the development is a holistic concept and should be interpreted broadly to embrace physical, mental, psychological and social development.⁵⁵ Since violence has the negative impact on the children's health and development⁵⁶, it directly jeopardizes children's right to life, survival and development,

⁵¹ UNCRC Committee: General Comment No. 13 (2011), The right of the child to freedom from all forms of violence, para. 72(g).

⁵² UNCRC Committee: General Comment No. 5 (2003), para. 12.

⁵³ UNCRC Committee: General Comment No. 13 (2011), para. 61.

⁵⁴ UNCRC Committee: General Comment No. 14 on the Right of the Child to have his or her best interests taken as the primary consideration (2013).

⁵⁵ UNCRC Committee: General Comment No. 13 (2011), para. 62.

⁵⁶ UNICEF, A familiar face: violence in the lives of children and adolescents, 2017, p.10.

no matter how slight it is. States have the obligation to promote the optimal development of the children to the greatest extent by ensuring them live in safe home.

The principle of the right to be heard is to promote the effective participation of children in all matters affecting them. Children should be provided with opportunities to express their views freely and their views should be given due weight. UNCRC Committee underlined that respecting and ensuring this right is a mandatory step in the whole child protection process, which has a preventative role against all forms of violence in the family and positively contributes to the recovery and reintegration of child victims.⁵⁷ Since many cases concerning children suffering violence in the family are unreported or unresponsive, the right to be heard has particular importance in this situation. Child-friendly procedures and professional service are extremely crucial for addressing violence against children in the family.

2.4.2.2 Fulfilling obligations under article 19 in the whole context of UNCRC

A comprehensive perspective is needed which fully takes into the account the whole context of UNCRC for states to implement their obligations under article 19. In addition to the principles, having regard to other relevant provisions is also necessary, such as article 5 on the rights and responsibilities of parents, article 9 on separation between children and parents, article 18 and article 24 on the responsibilities of parents and necessary assistance by state to parents for performing their responsibilities, article 23 on special protection to disabled children and article 39 on the treatment of child victims.

2.4.2.3 An integrated child protection system

A holistic approach requires an integrated, cohesive and inter-disciplinary system with the full range of measures cutting through full stages from prevention to judicial involvement listed in article 19.⁵⁸ Children and family are embedded in a wider societal system. A systems approach to child protection is essential.⁵⁹ All relevant subsystems

⁵⁷ UNCRC Committee: General Comment No. 13 (2011), para. 63.

⁵⁸ UNCRC Committee: General Comment No. 13 (2011), para. 39, 45.

⁵⁹ UNICEF, *Adapting a Systems Approach to Child Protection: Key Concepts and Considerations*, 2010, PP2-3.

interact and have the impact on the desired outcomes of the system on protecting children from violence in the family. In addition, UNCRC Committee proposed establishing a national coordinating framework on violence against children which covers all child rights-based measures and support a protective environment.⁶⁰

2.4.3 Core elements of national child protection systems on addressing VACIF

UNCRC Committee emphasized integrating essential elements which should be mainstreamed across all kinds of measures and stages of intervention in article 19 into domestic frameworks, including child rights approach, gender dimension, primary prevention, primary position of family in child caregiving and protection strategies; situations of the vulnerable groups; resource allocation, coordination mechanisms and accountability.⁶¹ Except the common elements important for addressing violence in all settings, the following elements identified are most relevant for addressing VACIF.

2.4.3.1 Child rights approach to protecting children from violence in the family

Child rights approach recognizes child as the independent rights-bearing individuals whose rights should be respected and protected by states and other individuals. Children are not the possession of parents and under their discretionary power. The child is entitled to non-negotiable right to protection from violence at the hands of parents.⁶² This approach is a shift away from the traditional child protection approach which perceives and treats child only as the victim or object in need of assistance. This approach requires supporting child him/herself and all relevant systems in which child is a part, including family, community and society, to address the violence⁶³ The supporting of the family in caring children is extremely important.

2.4.3.2 Prevention as the primary purpose in addressing VACIF

⁶⁰ UNCRC Committee, General Comment No. 13(2011), para.68.

⁶¹ UNCRC Committee: General Comment No. 13 (2011), para.72.

⁶² UNCRC Committee: General Comment No. 13 (2011), para. 3(a), 59, 72(a).

⁶³ UNCRC Committee: General Comment No. 13 (2011), para 59.

The core message of the first global study on violence against children is that “No violence against children is justifiable; all violence against children is preventable.”⁶⁴ UNCRC Committee maintained that the best interests of the child can be served through the prevention.⁶⁵ It emphasized with the strongest terms that the general and targeted prevention are of paramount importance in developing and implementing child protection systems.⁶⁶ The prevention is helpful for promoting and maintaining the family intact which is the best environment for the development of children. The primary goal of prevention requires states to shift the focus from the passive response system to the pro-active prevention. However, the emphasis on prevention does not mean state’s obligations on response could be lessened.⁶⁷ This primary purpose should be permeated in domestic frameworks and across all stages of actions.

2.4.3.3 The primary position of the family in childrearing

UNCRC has clearly defined the relationship between children, parents and the state. It emphasizes the primary responsibility of parents for the upbringing and development of the child. Living with parents in the family is normally in the child’s best interests. States are under obligations to make efforts for supporting parents on child-rearing through various measures. UNCRC requires state parties to provide assistance to parents, including material assistance and support programmes to ensure children’s living standards adequate for their physical, mental, spiritual, moral and social development.⁶⁸ These measures also include appropriate assistance to help parents perform their child-rearing responsibilities, development of institutions, facilities and care services from which working parents could benefit,⁶⁹ special assistance to disabled children and their parents to meet the needs of these children on special care and development.⁷⁰ State parties need to fully implement these obligations which contributes to preventing and reducing the violence in the family.

⁶⁴ UN: World Report on Violence against Children, 2006, Message from the NGO Advisory Panel.

⁶⁵ UNCRC Committee: General Comment No. 13 (2011), para. 3(9), para 61.

⁶⁶ UNCRC Committee: General Comment No. 13 (2011), para 46.

⁶⁷ UNCRC Committee: General Comment No. 13 (2011), para 46.

⁶⁸ Article 27 of UNCRC.

⁶⁹ Article 18 of UNCRC.

⁷⁰ Article 23 of UNCRC.

2.4.3.4 Least intrusive intervention in cases of VACIF

Overly intrusive interventions taken by state authorities for addressing violence the cases in the family often bring the irreversible harm to children and families. UNCRC Committee pointed out that responding to such cases simply through prosecuting parents is not in the best interests of the children in most cases, so great care is needed when making decisions to prosecute parents or take other more intrusive interventions.⁷¹ It emphasized that if it is possible, the least intrusive measures and restorative approach are more preferable than the formal intervention or judicial involvement primarily with the punitive purpose.⁷² However, the formal interventions and judicial procedures for punishing parents for doing significant harm to children should be put in place and work effectively when it is required by the circumstances of the case.⁷³ These formal interventions also need to prioritize the restoration of the family relationship by connecting parents with services and periodical assessment.

2.4.4 Components of national child protection systems

UNICEF puts forward adapting a systems approach to child protection, which begins with a normative framework and is with components including governance and management, human and financial resource input, the prevention and promotion system, data collection, quality standards and research, alongside with the actors working within the system, including children, families, communities, organizations and the government.⁷⁴ Among these components, legislation is the essential one which is predominant in many states.⁷⁵ The clear roles of relevant agencies, working mechanism including all stages of intervention and coordinated framework is often explicitly provided in the legislation.⁷⁶ The guarantee measures for enforcing these legislation including the budget and human resources also need to be provided and implemented effectively in practice. However, in order to target the root causes of the

⁷¹ UNCRC Committee, General Comment No. 8(2006), para.41.

⁷² UNCRC Committee: General Comment No. 13 (2011), para.56.

⁷³ UNCRC Committee, General Comment No. 8(2006), para.41.

⁷⁴ UNICEF: Adapting a Systems Approach to Child Protection: Key Concepts and Considerations, 2010.

⁷⁵ UN General Assembly: Promotion and protection of the rights of children, 29 August, 2006, para.85.

⁷⁶ UNCRC Committee, General Comment No. 13(2011), para.40.

issue, the legislative measure is not sufficient. All necessary measures including administrative, social and educational ones should work together.

The establishment of the government focal point at national and sub-national levels which has the capacity to coordinate child protection strategies, agencies and services is crucial for the administration of such systems. UNCRC Committee emphasized the inter-agency steering committee at national and local levels consisted by all relevant stakeholders with clear roles, responsibilities and relationship is essential for managing, monitoring and holding accountable for the implementing of child protection systems.⁷⁷

High-quality and accessible services including both the universal and targeted ones for children and families are indispensable in child protection systems, which need to be integrated into the prevention and response systems. The adequate facilities, allocation of the financial and human resource and regular training for the good functioning of these services are also required. The data collection system is necessary for monitoring the implementation and providing the baseline for improving the systems.

2.4.5 The specific obligations at each stage

Based on the characteristics of VACIF and the interpretation of UNCRC Committee⁷⁸, the obligations at each stage under article 19 of UNCRC are analyzed in this part.

1) Prevention

The proactive prevention of violence is the starting point of child protection systems.⁷⁹ State parties are under positive obligations to provide appropriate support and assistance to parents or primary caregivers regardless of whether or not VACIF takes place.⁸⁰ All forms of violence should be explicitly prohibited regardless of whether the violence is termed as discipline, or reasonable correction by parents.⁸¹ Legal

⁷⁷ UNCRC Committee, General Comment No. 13(2011), para.42.

⁷⁸ UNCRC Committee, General Comment No. 8(2006); General Comment No. 13(2011).

⁷⁹ UNCRC Committee: General Comment No. 13 (2011), para. 3(9), para 46.

⁸⁰ UNCRC Committee: General Comment No. 13 (2011), para.5.

⁸¹ UNCRC Committee, General Comment No. 8(2006), para. 34.

provisions in criminal or civil (family) codes that provide parents or legal guardians with the defense or justification for using violence as the means of discipline or “guidance” should be repealed immediately. Criminal law on punishing perpetrators of violence should apply equally to family members, granting equal protection to children as adults.⁸² The prohibition of violence also needs to be reflected in other laws such as civil or family laws which define responsibilities, rights and duties of parents. The parental responsibility on child rearing in a positive way needs to be emphasized.⁸³ Some forms of violence against children in the family has distinct gender dimension, the perspective of gender quality should be provided in the legislative framework.

Supporting parents to fulfill their obligations stipulated in UNCRC is the essential means to prevent VACIF. States are required to take comprehensive measures and establish various services to support parents and reduce the risks of generating violence. These measures include both the universal and targeted service. They could be provided clearly in the legislation or through social policies. The social programmes to promote the positive child-rearing through delivering integrated and targeted services to children and their parents should be established.⁸⁴ Prevention measure need to be provided to families directly, include but not limited to: support parents or other caretakers to understand and implement good child-rearing and positive discipline, enhance the capacity of the family to provide care to children in the safe environment; provide pre- and post-natal services, home visit programmes, early childhood development programmes; strengthening the link between the mental health services, substance abuse treatment and child protection services; establish family support centers for families in difficult circumstances and provide shelter, crisis intervention services to children and victims of domestic violence.⁸⁵ Both the non-governmental organizations and state actors can be involved in delivering these services under the responsibility of the government. These services and programmes should be accessible and could meet the needs of children and parents.

Attitudes and social practices which promote and condone VACIF need to be

⁸² UNCRC Committee, General Comment No. 8(2006), para. 34.

⁸³ UNCRC Committee, General Comment No. 8(2006), para. 39.

⁸⁴ UNCRC Committee: General Comment No. 13 (2011), para.41(h).

⁸⁵ UNCRC Committee: General Comment No. 13 (2011), para.47.

challenged. Children are regarded as the possession of parents and are under their disposal in certain regions. Parents often use the corporal punishment as the means of discipline or “education” which is accepted in the society. Educational measures need to raise the awareness on children’s rights and against family violence in the whole society. Accessible and accurate information on children’s rights, the harm of violence, responsibilities and rights of parents, knowledge on positive child-rearing need to be provided to relevant stakeholders. A child-friendly society contributes to ensuring children living in the family free from violence. Specific trainings are needed to conduct regularly to relevant professionals and organizations working with children. The dissemination of UNCRC and domestic legislation on prohibiting violence in the family to the public is also a means to raise the awareness.

2) Identification

UNCRC Committee interpreted the identification as identifying risk factors for particular individuals or groups of children and parents demonstrating signals of maltreatment.⁸⁶ The accurate and timely identification for providing targeted preventative service or triggering the appropriate intervention is important. Good parenting, the development of strong bond between children and parents and positive non-violent discipline are among protective measures; whereas, income equality, stereotyped-gender roles, domestic violence between parents, drug abuse by parents and mental health of parents or caregivers, low-economic social status are risk factors of unsafe family environment.⁸⁷ In addition, children’s individual characteristics such as age, gender, vulnerable situations such as children with disabilities and migrant children also need to be taken into consideration. The research revealed that children aged 0-14 years are more likely to be exposed to violence by parents.⁸⁸ The professionals working with children or having contact with children should be equipped with necessary knowledge to make such identification. The capacity of these professionals to recognize the emerging problems and act in time to address them before children enter into the crisis is extremely crucial. Children should also be provided with

⁸⁶ UNCRC Committee: General Comment No. 13 (2011), para.48.

⁸⁷ UN General Assembly: Promotion and protection of the rights of children, 2006, C. risk and protective factors.

⁸⁸ WHO, European report on preventing child maltreatment, 2013, p.2.

opportunities to signal the problems.⁸⁹

3) Reporting

UNCRC Committee recommended states to establish a safe, well-publicized, confidential, accessible and child-friendly reporting mechanism for children and others to report violence against children through the 24-hour toll-free hotlines and other communication technologies.⁹⁰ For preventing the adversarial relationship between the family and child protection authorities which deters the family from seeking support, the reporting mechanism should be help-oriented with offering public health or social support services rather than triggering punitive response.⁹¹ This mechanism provides information used in the following up stages and needs to be coupled with supporting service for children and families at risk. It serves the preventative purpose and ensures the early protection to children who face risk or actually suffer violence in the family. The professional quality of the persons who receive and deal with reports is essential for ensuring the operation of the mechanism play its expected roles.

Revealing the violence in the family context is the most challenging comparing with violence in other settings. Home is the most private place. Children are not aware of the violence or lack of capacity to report by themselves, or fear of reporting due to their dependency on adults. Other adults are not willing to report even they have the suspicion of child maltreatment within family. In order to address this challenge, many states have developed mandatory report systems for identifying the risks or actual occurrence of violence in the family. This system imposes certain categories of persons who have close contact with children at work such as teachers, doctors, child welfare officers the obligation to report when they have the reasonable suspicion of such risks or the knowledge of actual child maltreatment in the family. For encouraging them to report without concern, measures and processes to ensure the protection of these professionals who make the reports in good faith need to be put in place.⁹²

⁸⁹ UNCRC Committee: General Comment No. 13 (2011), para.48.

⁹⁰ UNCRC Committee: General Comment No. 13 (2011), para.49.

⁹¹ UN: World Report on Violence against Children, 2006, p85.

⁹² UNCRC Committee: General Comment No. 13 (2011), para.49.

4) Referral

After receiving the report, intersectional referral by responsible professionals is required when the concerned children are in need of protection or families need the support services. This process involves the multi-disciplinary assessment of the needs of children and families both in short-term and long-term and referring them to a range of services.⁹³ The effective inter-agency and multi-disciplinary collaboration is required during this process.

5) Investigation

The investigation of the instances of violence should be conducted by the qualified professionals who have received comprehensive trainings. The investigation procedures should help to identify the violence correctly and provide evidence for the administrative, civil, child protection and criminal proceedings. Child sensitive investigatory procedures and the primary consideration on the core position of family are required for avoiding the trauma brought to the children and families in this process.⁹⁴ The proportional investigation measures depending on the circumstances of the violence in the family need to be developed. When it is possible, the least intrusive measures are the primary option.

6) Intervention and treatment

If the violence is substantiated, the decision on how to respond is very difficult to make due to the competing demands between the provision of prompt protection to the concerned children and keeping the family intact.⁹⁵ The predictable influences of the potential intervention on the long-term wellbeing, health and development of children need to be assessed when making such decisions or before taking any action.⁹⁶ The best interests of the child based on the assessment is the primary guidance during this process. Meanwhile, the participation of the child should be respected and facilitated.

⁹³ UNCRC Committee: General Comment No. 13 (2011), para.50.

⁹⁴ UNCRC Committee: General Comment No. 13 (2011), para.51.

⁹⁵ UN: World Report on Violence against Children, 2006, p86.

⁹⁶ UNCRC Committee: General Comment No. 13 (2011), para.52.

Less intrusive intervention should be considered if it is not contradictory to the best interests of the child. Removing the child from family is the last resort.⁹⁷ Necessary dispute resolutions need to be available for response including family group conferencing and other similar practices.⁹⁸ Various and targeted supporting services for parents who lack the capacity or fail to cope with their responsibilities should be accessible and provided without delay.

The safety of the child should be the primary consideration at this stage. Emergent actions including removal of the child from the family and immediate safe placement should be taken to protect children who face significant risks or suffer severe violence in the hands of parents or primary caregivers. The right of the child who separate from parents to maintain contact with both or any party of parents stipulated in article 9 of UNCRC should be protected unless this is contradictory to their best interests. Under article 20 of UNCRC, children deprived of family environment are entitled to special protection and assistance by the government to ensure the suitable alternative care for them. The needs of the concerned children including their relationship with extended family members, continuity of education, community and personal backgrounds, children's views are factors which should be taken into account for such placement.

Article 39 of UNCRC requires state parties to take all appropriate measures to promote the recovery and integration of child victims of violence in an environment which helps to foster their health and dignity. Comprehensive services including medical, mental health, social and legal services and other necessary support as well as longer-term follow up services should be accessible to children victims.⁹⁹ These services should be delivered from the earliest stage for preventing or alleviating the trauma.

7) Follow-up

This stage is to evaluate the adequateness and appropriateness of the intervention and review the progress of the case periodically. This stage involves the participatory

⁹⁷ UN: World Report on Violence against Children, 2006, p87.

⁹⁸ UNCRC Committee: General Comment No. 13 (2011), para.52.

⁹⁹ UNCRC Committee: General Comment No. 13 (2011), para.52.

process involving children, parents and other relevant stakeholders.¹⁰⁰ At this stage, the responsible person of the concerned case is to ensure the continuity of intervention at different stages and the effective implementation of appropriate measures.

8) Judicial involvement

The judicial involvement may happen in different procedures, such as the mediated response to the instances in judicial setting, judicial orders, the criminal and administrative procedures.¹⁰¹ The primary purpose of the judicial involvement in cases of VACIF is preventative rather than punitive.¹⁰² This stage is to support and facilitate professionals dealing with cases and connect children and families with available and targeting services. The restorative approach is needed throughout this process, which is helpful to the restoration of family function and the rehabilitation of child victims.

The due process and treatment of child victims in a friendly way in the judicial process is especially important. Procedural safeguards need to provide to affected children and their parents. They have the right to be promptly and adequately informed of the judicial proceedings and their rights in these proceedings.¹⁰³ Opportunities need to be provided to them for participation. Facilitated measures are required to promote the effective participation of the concerned children. The principle of celerity should be applied in these judicial proceedings.¹⁰⁴ The lengthy proceedings or unduly delay has the negative impact on the recovery of children.

The justice process should be adapted to a child-friendly way and in a sensitive manner taking the individual personal situations in specific cases into consideration.¹⁰⁵ This requires to establish the specialized teams and qualified judicial staff in the justice system to handle such cases. For example, states establish specialized courts and specialized units within the police, prosecutor's office when appropriate, ensure these judicial staff receive specific trainings and be familiar with adapted proceedings in

¹⁰⁰ UNCRC Committee: General Comment No. 13 (2011), para.53.

¹⁰¹ UNCRC Committee: General Comment No. 13 (2011), para.55.

¹⁰² UNCRC Committee: General Comment No. 13 (2011), para.54(c).

¹⁰³ UNCRC Committee: General Comment No. 13 (2011), para.54(a).

¹⁰⁴ UNCRC Committee: General Comment No. 13 (2011), para.54(d).

¹⁰⁵ UNCRC Committee: General Comment No. 13 (2011), para.54(b).

children's cases.¹⁰⁶ Their knowledge on multi-disciplinary and inter-sectoral cooperation is also required. At this stage, appropriate protection measures and rehabilitation services need to be accessible for child victims. These measures include but not limited to: effective assistance to the affected children, respecting their privacy, ensuring their safety during this process and promoting the reparation to them.¹⁰⁷

Unlike other cases in which parents have the responsibility to represent and help children in judicial process, in the case of VACIF, there is conflict of interests between children and parents. The special assistance is required to represent and protect the concerned children in the judicial proceedings. For example, UNCRC Committee requires states to introduce legislation or regulations to ensure child victims have the access to confidential medical counselling and other necessary advices without parental consent, irrespective of their ages and maturity degree.¹⁰⁸ The systems on assigning qualified professionals to present child victims have been established in some states.

In cases of violence against children by parents or primary caregivers, long-term follow up aiming at promoting the restoration of the family is needed if this is required by the best interests of the affected child even after the final judicial decisions. Resources are required to invest at this stage, such as to make periodical review of the situations of the children and families, maintaining children's contact with their parents if this is not contradictory to their best interests, connecting parents with necessary services.

2.5 Conclusion

It is not until the adoption of UNCRC that the child as the individual human rights holder has been recognized and promoted. Article 19 of UNCRC is the most relevant provision on protecting children from all forms of violence in all settings including in the family context. The identified approaches and clarified obligations in this chapter are the principal guidance for state parties to realize the ultimate goal of protecting children from violence in the family.

¹⁰⁶ UNCRC Committee: General Comment No. 13 (2011), para.56.

¹⁰⁷ UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, part IV, V, VII, VIII.

¹⁰⁸ UNCRC Committee: General Comment No. 12 (2009), The right of the child to be heard, para.101.

3. Protecting children from violence in the family in China

This chapter firstly introduces the Chinese context of this issue, then it analyzes the legal framework and polices on addressing VIFAC and their impact in practice in China. Both the progress and the challenges are examined.

3.1 Context

According to Chinese official demographic survey in 2010, China had around 299 million of the population under 18 years-old, which took up about 22.5% of the whole population.¹⁰⁹ Due to this huge number, protecting all children from violence in China is both important and challenging. China has a long-standing cultural tradition of respecting parents' power on disciplining children while emphasizing the special protection to children by the adult society. The traditional culture requires children to respect their parents and regards violent discipline as an effective way. In addition, the disparities in the development of different regions are remarkable, which results in the emergence of large number of left-behind children in rural areas and lots of challenges in implementing child protection system in undeveloped regions.

"Left-behind children" is defined as referring to children under 16 years-old, whose parents are away as migrant labor or who have one parent away working as migrant labor and the other lacks capacity for guardianship.¹¹⁰ China has around 9 million left behind children, 67% of them live in the poor rural areas.¹¹¹ Lack of effective custody is the highlighted issue faced by this group. According to the data from the Ministry of Civil Affairs in 2016, more than 8 million left-behind were under the custody of

¹⁰⁹ The 2010 population census of the People's Republic of China, National Bureau of Statics of the People's Republic of China, <http://www.stats.gov.cn/tjsj/pcsj/rkpc/6rp/indexch.htm>, visited at 2018/3/5.

¹¹⁰ State Council Opinions on Efforts to Strengthen Care and Protection of Rural Left-Behind Children, 2016.

¹¹¹ This data is from the result of the survey on the situation of left-behind children by the Ministry of Civil Affairs issued by November 2016, <http://www.mca.gov.cn/article/zwgk/jd/201611/20161100002462.shtml>, visited at 2018/4/2.

grandparents and around 360,000 children lived by themselves without any custody.¹¹² A large number of left-behind children are being neglected by parents regardless of intentionally or not. These children's physical or/and psychological wellbeing have been damaged severely. The emerging of left-behind children in a large part attributes to the unbalanced development between rural and urban areas. The difficulty in access to public services in cities by migrant workers and their children always leaves parents no choice but to leave children behind. Left-behind children face more risks of neglect or violence from primary caregivers since many grandparents are unable to provide effective protection or take violence as a means of discipline as granted. For children who accompany their parents into cities called migrant children, they are also more likely to suffer violence by parents due to their parents' low economic-social status and difficulty in access to public services including housing, medical care and education.

The abandonment of disabled children by parents is also a concerning problem in China. Since it is difficult for most of parents to afford the medical treatment of the disabled children and it is the heavy burden of the family in caring of these children without enough support, the majority of children abandoned by biological parents are either physically or mentally disabled. The abandoned disabled children are always placed into the public institutions such as orphanages by local authorities and deprived of family environment. Although the act of abandoning children is the crime in the national criminal law, only relying on deterrence without touching upon the root causes could not prevent this phenomenon effectively.

Although vulnerable children groups face more risks, VACIF is prevalent both in rural and urban areas in China, regardless of the economic-social status of parents. Since there is no well-established system to reveal such violence nationwide, it is impossible to reveal the comprehensive picture at the current stage. But the data collected by media which only report the most extreme cases showed that from 2008 to 2014, 359 children had suffered violence to death and 338 were significantly harmed by parents or primary caregivers, among them 52% of victims were girls.¹¹³ Child sexual abuse is also a

¹¹² <http://news.cctv.com/2016/11/10/ARTI7724QHwMIys9qmKSSh71161110.shtml>, visited at 2018/3/5.

¹¹³ Beijing Children's Legal Aid and Research Center, Report on the analysis of the cases on domestic violence against children, 2014, <http://www.chinachild.org/b/rd/7041.html>, visited at 2018/3/5.

daunting problem in China. In 2017, the available data showed that on average there was 1 child sexual abuse case happened each day, around 15% of these were perpetrated by family members and more than 90% of child victims were girls.¹¹⁴

In China, the harm of violence against children has not been fully acknowledged. The public attention on VACIF often focused on the extreme cases in which children suffered serious harm or even death. The criminal punishment of such parents is the prioritized response required both by the law enforcement agencies and called by the society. The relatively slighter forms of violent discipline such as corporal punishment in the family is regarded as no harm and widely accepted in the whole society.¹¹⁵ Deciding when and how to intervene the family for the protection of children is not an easy task for all countries, due to the unique context in China, it is especially challenging. As a state party of UNCRC, China has strengthened its efforts to address VACIF in recent years. However, the domestic system targeted on combating VACIF is at the initial stage of the development.

3.2 Legal framework and policies on addressing VACIF

3.2.1 Overview

There are both general provisions in laws relevant to addressing VACIF and specialized regulation dedicated to protecting children from violence from parents or primary caregivers. A provision in Chinese Constitutional Law stipulates that the child is entitled to the protection by the state. This provision affirms that parents have the legal responsibility of childrearing and explicitly prohibits abusing children.¹¹⁶ A wide range of specific criminal offences in Chinese Criminal Law are applied to violence against children by parents or primary caregivers, including but not limited to rape, homicide, intentional infliction of body harm, unlawful detention and child molestation. There are two provisions in the Criminal Law intending to deter parents or primary caregivers

¹¹⁴ Report of the statistics on child sexual abuse cases in China in 2017, issued by the Foundation of Protection Girls, 2018.3.

¹¹⁵ Experts reporting the difficulty to implement the laws due to the large number of hidden cases, <http://news.sina.com.cn/o/2017-11-17/doc-ifynwnty4137495.shtml>, visited at 2018/3/9.

¹¹⁶ Article 49 of P.R.C. Constitutional Law.

from abusing or abandoning dependent family members including children. The sanctions for the offenses of abusing or abandonment are the possible imprisonment ranging from 2 to 7 years if the circumstances are heinous under this law.¹¹⁷

The Minor Protection law is the only national legislation specialized in minor protection, providing the outline of protection to children in four settings including in the family, school, society and judicial process. It stipulates duties and responsibility of parents on bringing up children with explicit prohibition of domestic violence and abandonment of children. Discrimination against girls is forbidden under this law. However, the provisions in this law are general and could not be effectively applicable in practice.

There are some other provisions relevant to protecting children from VACIF scattered in various legislation, such as in the Anti-domestic violence Law and the Civil Law. In addition, there are pieces of efforts targeting on protecting of vulnerable groups which are helpful to prevent VACIF. More importantly, a regulation was issued in 2014 which provides intervention procedures to protect children in great endangerment in the family. Most of the current regulations focus on the response to serious violence against children by parents or primary caregivers. Prevention is not put in the primary position on the agenda although some efforts help to prevent VACIF.

Since China has strengthened its efforts to addressing this issue in recent years, this part discusses the domestic framework in China in a chronological order to demonstrate the progress and challenges.

3.2.2 National Programme for Child Development (2011-2020)

The National Programme for Child Development issued by the Central Government is the guiding policy with specific targets and indicators for improving and monitoring the protection and development of children in China. The current programme (2011-2020) focuses on five areas, health, education, welfare, social environment and legal protection. It includes five principles for implementing the programme, which are: legal

¹¹⁷ Article 260, 261 of Criminal Law.

protection to children, prioritized protection which requires the consideration of children's interests in the decision making process and budget allocation; the best interests of the child; non-discrimination and the participation of children.¹¹⁸

Ensuring children live in the safe family and protecting them from child abuse or neglect are the specific indicators under the area of legal protection to children. The elimination of discrimination which is crucial for uprooting gender-based violence is also included as one of the targets. In addition, the comprehensive system provided in this document aims to respect, fulfill and protect children's rights, which serves both the prevention of violence and protection of children in endangerment. For example, in the health area, it requires to strengthen child health care; for education, it requires the development of early education, to promote balanced development between urban and rural areas; to provide parenting guidance to parents of children under 3-years-old; in social welfare area, it requires to improve the medical system for children and extend the coverage of child welfare to meet the needs of the left-behind and migrant children.

This Programme sets out the targets of improving both universal and targeted services to children and families. They are essentially helpful to prevent violence in the family, such as ensuring the basic living standards, easy access to public medical services and education, the establishment of facilities and services at local levels to support parents, targeted support to families facing risks. The Central Government is in charge of monitoring these indicators and evaluating whether these targets have been achieved.

3.2.3 Clarification on the application of the Criminal Law in child sexual abuse cases in 2013

Child sexual abuse is the serious crime under Chinese Criminal Law. The Criminal Law imposes three to ten years of imprisonment for the perpetrators of rape and a heavier punishment based on this sanction for the crime of raping an underage girl not yet 14 years-old, regardless of the perpetrators are family members or not.¹¹⁹ For child

¹¹⁸ National Programme for Child Development (2011-2020), http://www.gov.cn/gongbao/content/2011/content_1927200.htm, last visited at 2018/5/16.

¹¹⁹ Article 236 of Criminal Law.

molestation, the legal sanction under this law is under five-years imprisonment without distinction of whether the perpetrator is family member or not.¹²⁰ Since child sexual abuse conducted by persons familiar to children including family members and teachers is a concerning issue in China, an opinion on how to apply the Criminal Law in child sexual abuse cases was issued in 2013.

In order to deter such crimes and provide more effective protection to children, the Supreme People's Court, Supreme People's Procuratorate, Ministry of Public Security and Ministry of Justice jointly published the Opinion on Punishing Sexual Violations of Minors, which is legally binding for these issuing organs when they deal with child sexual abuse cases. This document requires imposing harsher punishment on perpetrators under the Criminal Law who have the duty to protect children and take advantage of this duty to conduct sexual abuse to children, such as parents. It also emphasizes providing effective procedural protection to child victims, such as protecting the victim's privacy, adapting the procedural measures to the needs of the children, reducing further harm during the judicial process and the coordination between the criminal procedure and administrative procedure.

3.2.4 The first regulation specialized in responding to VACIF in 2014

In 2014, the Supreme People's Court, Supreme People's Procuratorate, Ministry of Public Security, and Ministry of Civil Affairs issued the Joint Opinions on Dealing with Violation by Guardians against Child Rights (The Regulation), which is a binding document for the issuing organs when they deal with such cases in practice. This is the first official document which provides the intervention procedures on the protection of children in great endangerment in the family. It sets out both substantive and procedural rules applied in dealing with individual cases. The Regulation clarifies the roles of different organizations while emphasizes the inter-agency working mechanism for addressing violence in the family. It is a remarkable progress since it fills in the long-standing gap of being lack of clear instructions on legal response to VACIF in China.

¹²⁰ Article 237 of Criminal Law.

The Regulation addresses three broad categories of violations of children's rights by guardians (parents or primary caregivers), including incidents of sexual or other kinds of abuse, sale or abandonment of the child; using children to commit crimes, unlawful acts, or begging; failure to perform guardianship duties so as to seriously endanger a child's physical or psychological health.¹²¹ These categories are listed based on the common cases of guardians' violations of children's rights in China. It indicates that the most severe forms of VACIF is the priority to address currently in China. The response to the actual child abuse or neglect cases is the focus of this document.

The Regulation requires integrating the principle of the best interests of the child into the specific actions when dealing with individual cases. It sets out the universal duty to report child abuse or neglect cases while emphasizes such reporting duty on certain professionals who work with children. The involved organs dealing with such cases include police, prosecutor, court and the department of civil affairs. The components of the response system in this document include the reporting and identification, temporary placement and personal protection order in emergent situations in which children are removed by police from their parents' custody due to the severe injuries or significant safety risks in the family they suffer or face; the conference with relevant stakeholders leading by the department of civil affairs at local levels for the settlement of the case and follow-up monitoring; the substantive and procedures rules on the deprivation of parental right through judicial process in the circumstances that guardians conduct crimes to children or refuse to improved behaviors after receiving the admonishments for three times; the permanent placement of children in the cases in which parental right is deprived of by court. Meanwhile, the Regulation pays attention to the restoration of the family relationship, such as provision of counselling to parents, establishing the procedure for guardians to regain their parental right if their behaviors have been corrected or improved.

More importantly, the inter-agency cooperation and multi-disciplinary approach are reflected in this document. It requires the establishment of Children's Aid and

¹²¹ Article 1 of the Regulation.

Protection Center under local departments of civil affairs. The duties of these local governmental bodies include receiving the reports concerning child abuse or neglect, providing temporary shelter and care to children who are removed from family, arrangement of the permanent placement for the affected children if there is no other qualified individual as guardians, filing the application on the deprivation of parental right to the courts if others take no such actions. They are also expected to play key roles in coordinating relevant actors in responding to cases of child abuse and neglect. The Regulation also requires the establishment of networks in which the relevant stakeholders are involved in addressing this issue under Chinese social context, including schools, guardians, social workers, village/community committees of the residing area of the child, local government and law enforcement agencies.

The Regulation is a big step for developing child protection system which has long been needed in China, but some key challenges can't be addressed by it. It has lower legal status which is only binding to the issuing organs. The rules of this regulation primarily apply in the urgent situations where children have already significantly been harmed in the family. The treatment and rehabilitation of child victims are not fully taken into consideration in this document, although there are a few general provisions on the prevention of the second victimization and the participation of children. The comprehensive and integrated child protection system at the national level is still not established although this remarkable progress has been achieved.

3.2.5 The adoption of Anti-domestic violence law in 2015

The Anti-domestic violence law passed by the national legislature entered into force since March of 2016. It is a concise law with 38 articles, including prevention, response of domestic violence, personal security orders and legal responsibilities. This law is primarily protecting women from domestic violence, although there are a few special provisions on children scattered in different sections. These provisions are: prohibiting parents from using violence as the disciplinary measure¹²², imposing the obligation of the mandatory report on professionals working with children¹²³, providing emergency

¹²² Article 12 of anti-domestic violence law.

¹²³ Article 14 of anti-domestic violence law.

shelter when the removal of the child from the family is concerned¹²⁴, the deprivation of parental right in the cases of children being exposed to serious violence¹²⁵. An important highlight of this law is its creation of the mandatory reporting obligation in the national law. Under this law, professionals imposed the mandatory reporting obligation for the suspect child abuse or neglect cases include: schools, kindergartens, medical establishments, residents' committees, villagers' committees, social work service organizations, relief management organizations, welfare organizations or their employees. These organizations and individuals need to report to the police officers.¹²⁶

It is a big progress in China to combat domestic violence through the legislative measure, which lays down the legal basis for necessary intervention and protection of victims. However, children's needs are different from adults. This law does not fully reflect children's rights approach. In addition, the protection to children who witness domestic violence between parents or intimate partners is not covered by this law.

3.2.6 Policies on prioritizing the protection of vulnerable children in 2016

3.2.6.1 Policy on the protection of rural left-behind children

In order to improve the protection of the rural left-behind children and address the root causes of the violence from parents or primary caregivers, in 2016 the Central Government issued the Opinions on Efforts to Strengthen Care and Protection of Rural Left-Behind Children. This policy document requires the involvement of various individuals and institutions to strengthen the efforts to protect these children, including parents, schools, governmental agencies, local villager (residents) committees and non-government service providers. It reiterates the legal obligations of parents on child-rearing. Supporting parents to fulfill their responsibility and providing service to meet the needs of these children through various measures are also underlined by it.

¹²⁴ Article 15 of anti-domestic violence law.

¹²⁵ Article 21 of anti-domestic violence law.

¹²⁶ Article 14 of anti-domestic violence law.

This document includes a section on responding to VACIF. It restates the working mechanism on response, covering emergent protection, children's guardianship assessment, providing targeted services and interventions to risky families. The root causes for children being left behind are trounced upon by calling for preventative measures, such as providing more support to families having migrant labor, ensuring their children have equal access to public services in cities as the locals, guiding and supporting migrants to return to their hometowns for entrepreneurship and employment where children can live with them. Accountability is also mentioned as the responsibilities of relevant organizations are described.

3.2.6.2 The protection of vulnerable groups of children to prevent VACIF through supporting families

In 2016, the Central Government issued another policy document which calls for prioritizing the protection of vulnerable children. The vulnerable children in this document refers to children who live in poor families, or face the risks or already the victims of child abuse and neglect in the family and disabled children. The document requires providing allowance and services to these children and their families to meet their various needs including satisfying the basic living standards, educational and medical needs. It reiterates the responsibility of parents on childrearing and the governmental responsibility to support these families. It also encourages the involvement of non-governmental organizations to deliver services to children and families in need. Ensuring the access to necessary services by disabled children and promoting their development are also highlighted.

In order to implement these measures, the policy requires the establishment of service networks which are accessible for children and families at local levels. It emphasizes the establishment of the position as full-time or part-time child protection directors in the communities where children live to monitor the situations of these vulnerable children. Coordination between different organizations is also mentioned.

3.2.7 New regulation of children’s guardianship in the revised Civil Law in 2017

The Chinese General Provisions of the Civil Law was revised and entered into force in 2017, which defines the children’s guardianship. Under this law, parents are the legal guardians. The legal obligations of parents are to provide for, support and protect their minor children.¹²⁷ If there is no parent or parents being without capacity to perform their duties or being deprived of parental right, the extended family numbers including grandparents or adult sisters, brothers are the prioritized candidates as the new guardians. If these individuals do not have the capacity to take this responsibility, children would be under the custody of the department of civil affairs at local level or the village/community committees in their residence.¹²⁸

The revised Civil Law added one article on the temporary custody for children. If the concerned child is under no custody during the process on assigning the new guardian or the judicial process on the deprivation of parental right, the department of civil affairs at local level or the village/community committees in their residence should take the temporary custody responsibility during this period.¹²⁹ Before the revision of the Civil Law, no governmental body or organization took the active role in taking such responsibility, resulting in the difficulty in responding to such cases and leaving the gap of protection to children during this period.

Another highlight of the revised law is the new provisions on the deprivation of parental right, which legislates the response system to serious cases of VACIF provided in the 2014 Regulation. According to this law, if guardians carry out acts that seriously harm the children’s physical or mental health, the parental right could be deprived by court. The circumstances in which parental right may be deprived of include: carrying out acts that seriously harm children’s physical and mental health; failure of performing guardianship duties in a relatively long-term, or being unable to perform guardianship

¹²⁷ Article 26, 34 of Civil Law (2017).

¹²⁸ Article 27, 31 and 32 of Civil Law (2017).

¹²⁹ Article 31 of Civil Law (2017).

duties and leaving children in a distressed condition; other conducts that seriously damages the well-being of children.¹³⁰

Under this law, the applicants for applying the deprivation of parental right to court is not limited to governmental bodies. The relevant individuals and organizations having such right to make the application include: other guardians (the other party of the parent or grandparent), the residents' committee or villagers' committee, schools, medical institutions, department of civil affairs and other organizations working with children. However, if no one promptly applies to the court, department of civil affairs at local level is under the obligation to make such application.¹³¹ The court will assign new guardian for the concerned child based on the his/her best interests when it decides to deprives perpetrator of the parental right.¹³² The provisions on children's guardianship also include the restoration of the family relationship between affected children and parents, providing that if parent's behaviors are improved, they have the opportunity to regain their parental right.¹³³

3.3 The implementation of laws and policies on addressing VACIF in practice

3.3.1 Overview

The effective data collection systems on the situation of VACIF either at national or local level have not been well developed in China, so it is difficult to evaluate the progress and the challenges in practice systematically. Most of discussion in this part is about the response to the actual cases of VACIF which is the focus in the current system. The universal preventative service system is developing in a gradual progress, which depends greatly on the financial and human resources at local level. Targeted services for children facing risks or harmed in the family are delivered in the areas with

¹³⁰ Article 36 of Civil Law.

¹³¹ Article 36 of Civil Law.

¹³² Article 36 of Civil Law.

¹³³ Article 37 of Civil Law.

appropriate resources. However, it is very difficult to integrate services into the intervention stages if there are not sufficient resources at local level.

There are lots of challenges in the implementation of the current regulations. Lack of effective cooperation is one of them. The case management process covering all possible intervention stages is difficult to achieve without clear coordination system provided in the national legislation. The protection of the rights of children victims and their needs are not given due weight. Some relevant provisions in the existing regulations are too general to be applicable, such as the provision on the mandatory report in the anti-domestic law. Without clear operational mechanism and guidance, these provisions hardly play the expected roles in practice.

3.3.2 The implementation of the National Programme for Child Development (2011-2020)

According to the monitoring report on the National Programme for Child Development (2011-2020) published in 2016, there is some progress both in the development of the universal and targeted service system in the past years. The health care system for children has been improved. There is remarkable progress in the coverage of children who have access to early education compared with the situation in 2010. The number of Children's Aid and Protection Center under local department of civil affairs has increased significantly in the past six years. There are more rehabilitation institutions provided for disabled children and the professional capacity for the treatment and the rehabilitation of these children has been enhanced.¹³⁴ However, the biggest challenge for the implementation of this Programme is the gap between the urban and rural areas, and the disparities in different regions with different levels of development.¹³⁵

¹³⁴ The statistical and monitoring report on the implementation of the National Programme for Child Development (2011-2020) in 2016.

¹³⁵ The statistical and monitoring report on the implementation of the National Programme for Child Development (2011-2020) in 2014, http://www.nwccw.gov.cn/2017-05/24/content_163725.htm, visited at 2018/4/4.

3.3.3 The implementation of the specialized Regulation

3.3.3.1 The progress

The specialized Regulation in 2014 has played important roles in protecting children in practice. The available data shows that within nearly three years after the Regulation was issued, there were 69 cases covering 24 provinces in which the guardian's right (most of them are parents) were deprived of by court, mostly due to three categories of behaviors: abandonment or refusal to fulfill the child-rearing responsibility at least in six months; child sexual abuse; physical abuse and violent discipline.¹³⁶ More than half of these cases were brought to court by extended family members. The extended family members were assigned as new guardians for most of these children whose guardians were deprived of parental right. A few of them were placed under the custody of department of civil affairs at local level.¹³⁷

This is the breakthrough in practice, since before the issuing of the Regulation, few parents were deprived of their right, even they conducted significant harm to children. The response stipulated in the Regulation provided effective protection to child victims of violence under the most emergent situations. The data indicated that except governmental authorities, individuals especially extended family numbers play important roles in protecting children. For instance, they applied cases to the court, provided temporary and permanent custody to children. The roles of governmental authorities are primarily to support these individuals, coordinate relevant stakeholders and file the cases to the court if no other individuals or organizations apply.

3.3.3.2 Challenges and drawbacks of the current response system

However, there are still lots of challenges in the response mechanism to such cases. In some areas the required protection to the concerned children could not be provided in

¹³⁶ There were 69 cases in which the guardian's right have been deprived before 2017.8, source from the Ministry of Civil Affairs, http://www.xinhuanet.com/2017-08/16/c_1121494026.htm, last visited at 2018/5/17.

¹³⁷ SPC, Model cases on the deprivation of the qualification of the guardians, <http://www.court.gov.cn/zixun-xiangqing-21481.html>, last visited at 2018/5/17.

time by local governmental authorities due to lack of capacity or short of human resources. For instance, the number of the Children's Aid and Protection Centers with an essential role in protecting children from VACIF is limited and they are not accessible in some places. The professionals handling these cases are lack of sufficient professional knowledge. The effective coordination system focusing on the inter-agency cooperation across all stages of intervention is still not established.

At the current stage, the focus of the response system is prosecuting and punishing the perpetrators who conducted serious violence to children. The treatment of child victims and their recovery have not been given due consideration in practice. The provision of targeted services to risky families is also concerning. Necessary services are not integrated into the intervention stages, although there are some organizations providing such services in only a few regions. This may result in the phenomenon in practice that parents are deprived of their parental right without receiving appropriate services in advance. The concerned children in the individual cases often have no access to the services they need due to lack of service providers, especially in poor regions. Also it is difficult to restore family relationship without follow-up services though the possibility to restore the qualification of guardians is provided in law.

There are also procedural drawbacks in the response system. The privacy of the children and family are not fully respected and protected in some cases, especially in the child sexual cases. Although it is required that the specialized unit to deal with this kind of cases, some children involved in the procedures still suffered from the second victimization due to the unprofessional ways taken by governmental authorities or judicial staff. In addition, there is no system existing at the national legislation on providing children the appropriate adult representative to protect their best interests in the judicial process in such cases where there is conflict of the legal interests between children and their guardians.¹³⁸ Consequently, the concerned children in the individual cases often have no opportunity to participate effectively in the judicial process. Their right to be heard and best interests may be prejudiced during the intervention stages.

¹³⁸ Qian Xiaofeng: The problems and solutions for the vulnerable children whose parents have been deprived of the qualification of guardians, *Journal of Research on the Prevention of Juvenile Delinquency*, 2016 No.5.

3.3.4 Inability of Anti-domestic violence Law to provide tailored protection to children in practice

Since child rights approach is not fully reflected in Anti-domestic violence law, the prevention and response mechanisms are not adapted to the needs of children. It is difficult to provide sufficient protection to children exposed to violence in the family through its implementation. Although it creates the mandatory report obligation which is a key measure for protecting children, this obligation has not been effectively implemented in practice due to lack of detailed guidance on how to implement it in practice.¹³⁹ The traditional perception on the relationship between children and parents are still dominant in the minds of public. This makes the implementation of the reporting obligation more challenging. It could be predicted that some children who face great risks or have been harmed significant by parents are hidden.

3.3.5 Supporting families to prevent VACIF in practice

3.3.5.1 The development of universal service

The importance of the prevention either as the primary purpose of national child protection system or as a specific stage has not been fully recognized in China. The universal services system for supporting parents on child-rearing is in the process of developing. Local governments have strengthened efforts to provide the supporting and protection service to children and parents which are accessible in the communities. For example, more local governments have engaged in establishing the public facilities in the communities to provide various services including early childhood education, parental education and guidance, which are the targets in the National Programme for Child Development (2011-2020).¹⁴⁰ However, the needs of children and parents are not satisfied in practice. For instance, there is few public child care facilities for children

¹³⁹ Survey Report on the Implementation of the Anti-Domestic Violence Law, Beijing Yuanzhong Gender Development Center, published at 2017.3.8,

http://www.360doc.com/content/17/0315/12/31530813_637045613.shtml, visited at 2018/3/9.

¹⁴⁰ Promoting the establishment of children's home in communities, China Women's News, <http://www.cdsfl.org.cn/show-12-11801-1.html>, 2017.9.11, visited at 2018/3/12.

under 3 years old whose parents are working.

3.3.5.2 Preventative measures for vulnerable children

Efforts are taken to prevent VACIF through delivering targeted services to families in need in practice. In China, poor families with children have the access to financial assistance provided by local governments if they don't satisfy a certain living standard. But the independent needs of children are not taken fully into account in this process. This situation is changing. According to the policy issued on protecting vulnerable groups of children in 2016, children's needs including living, educational and medical needs should be the primary consideration when providing support to families.

There is also progress on the protection and development of disabled children. Local governments are strengthening their efforts to support parents in taking care of disabled children, such as providing financial support and ensuring their access to the rehabilitation services. This is helpful to prevent parents from abandoning disabled children. However, due to the great gaps between developed and poor areas, to what extent the family could have access to necessary support and service is variable depending on the regions where they live.

3.3.5.3 The protection of left-behind children in practice

After the issuing of the policy on protecting the rural left-behind children, in 2016 the joint conference system involved with 27 ministries has been established under the State Council which is led by the Ministry of Civil Affairs.¹⁴¹ This joint conference is to coordinate and monitor the implementation of this policy document. Meanwhile, the departments of civil affairs from central to local levels strengthened their efforts to protect this group of children by inputting more financial and human resources to address this problem.

The protection of this group has been improved in practice. Most of the children who

¹⁴¹ http://www.gov.cn/zhengce/content/2016-04/05/content_5061324.htm, last visited at 2018/5/16.

live alone without guardians have been put under the custody of parents, extended family members or relatives.¹⁴² About 120 child protection directors with child protection duties have been assigned at local level, in the village/ urban communities where a huge number of left-behind children live. These directors are responsible for monitoring the situation of left-behind children such as whether they are under effective custody, connecting them and their families with services providers, identification of children in need of protection.¹⁴³ The over goal is to establish such position in each village in China. However, in the current stage, the number of child protection directors is still limited. Such position could not be set up in some areas due to the limited resources. In addition, due to lack of professional training and awareness on children's rights, some of these directors do not play their expected roles in practice.

Because of the large number of children and the difficulty in spreading services network to all the targeted groups in China, ensuring children living free from violence in the safe family environment is still an extremely challenging task. Without the integrated child protection system both on prevention and response, the risks faced by this group cannot be addressed in a holistic way.

3.4 Conclusion

There is remarkable progress in the improvement of child protection system in China since 2013. But this is still not enough. The current child protection system with focus on response is not established through the national legislative framework, resulting in the lack of holistic approach to addressing this issue. Within the current system, prioritizing punishing the perpetrators of violence is emphasized, mainly because the cases responded by the governmental authorities are the extreme serious ones in which children are significantly harmed by parents or other guardians. Universal supporting measures for parents on child-rearing are being promoted. But due to the disparities between different regions, it is not easy for families and children living in undeveloped areas to have access to high-quality universal and targeted services.

¹⁴² Response by the Ministry of Civil Affairs on the situation of the left-behind children, 2018.3.10, http://www.cnr.cn/sxpd/ws/20180310/t20180310_524160447.shtml, visited at 2018/3/12.

¹⁴³ The child welfare director pilot in the villages in 5 remote provinces in China, 2015.5.331, <http://politics.people.com.cn/n/2015/0531/c70731-27082184.html>, visited at 2018/3/12.

4. National implementation of article 19 of UNCRC by European states

The implementation of international obligations by states is crucial. All European states have ratified UNCRC, thus are under the obligations to protect children from violence at the hands of parents. This chapter discusses how article 19 of UNCRC are implemented by European states, from which China could draw on experience and learn lessons. The similarities in these states also indicate that although there are disparities in economic, social and cultural contexts, the approaches and measures essential for fulfilling international obligations are still feasible. Regional human rights system in Europe has also developed applicable binding principles and guidance to help member states fulfill their obligations under UNCRC on addressing VACIF, which can serve as the source of inspiration for the interpretation of UNCRC.

4.1 Context

The situations of VACIF in different regions within Europe are different. Although child maltreatment is a common problem throughout Europe, the rate is higher in the eastern part of the region.¹⁴⁴ The variations in the socio-economic and cultural backgrounds link to the different approaches to addressing VACIF by states. The context in which national implementation is conducted significantly affects whether and how international obligations are integrated into national legislation, policies and actions. There are great disparities in the national implementation of UNCRC among different states. For example, until 2017 there are 33 European states which have banned corporal punishment in home in legislation¹⁴⁵. Sweden is the first state which explicitly prohibited corporal punishment as early as 1979 while Slovenia banned corporal punishment in all settings in 2016.¹⁴⁶

¹⁴⁴ WHO: European report on preventing child maltreatment, 2013, p26.

¹⁴⁵ Progress towards prohibiting all corporal punishment in Europe and Central Asia, the Global Initiative to End All Corporal Punishment of Children, last updated September 2017.

¹⁴⁶ See <http://untribune.com/the-51-countries-that-have-banned-corporal-punishment/>, visited at 2018/3/14.

The integrated and multi-disciplinary approach is required by both Council of Europe and EU as the leading principle of developing national child protection systems. While several countries in Europe have strengthened their efforts to address this issue through this way, states in the eastern part of the Region are slow to provide such coordinated response.¹⁴⁷ Also, some states have integrated the prevention of VACIF into each stage of interventions, such purpose is not clear in other states.

4.2 Regional strategies and policies to promote national implementation of UNCRC

The regional institutions and system in Europe have played important roles in guiding and working with member states to fulfill their obligations under article 19 of UNCRC. To respect, protect and fulfill children's rights in Europe at the regional level is promoted by the Council of Europe and EU.

4.2.1 Realizing the potential of article 19 of UNCRC by ECtHR

Although there is no explicit provision on protecting children from violence in the text of the ECHR, great success has been achieved on protecting children from corporal punishment and general abuse or neglect in the family by the ECtHR primarily based on the interpretation of Article 2 (right to life), Article 3 (right not be subjected to torture or to inhuman or degrading treatment or punishment) and Article 8 (right to respect for private and family life) of ECHR.¹⁴⁸ The approach of the ECtHR is essential for its unique contribution in protecting children from violence by parents. The ECtHR tried to interpret these provisions from the perspective of UNCRC, especially directly referring to article 19 of CRC and the principle of the best interests of the child.¹⁴⁹ This

¹⁴⁷ WHO: European report on preventing child maltreatment, 2013, p1.

¹⁴⁸ Ursula Kilkelly, *The Child and The European Convention on Human Rights*, Ashgate/Dartmouth, 1999, p160.

¹⁴⁹ *The Best of Both Worlds for Children's Rights: Interpreting the European Convention on Human Rights in the Light of the UN Convention on the Rights of the Child*, *Human Rights Quarterly*, Vol. 23, No. 2 (May, 2001).

interpretative approach is greatly helpful for transforming provisions of UNCRC into applicable principles for states, thus having realized the potential of UNCRC at the regional level. The ECtHR emphasized that children are entitled to special protection from domestic violence due to their different position from adults.¹⁵⁰ It has created the applicable principles through its jurisprudence for states to ensure the domestic frameworks of member states being consistent with UNCRC. The following principles could be identified based on the analysis of its jurisprudence in this area.

1) Prohibition of corporal punishment by parents in domestic legislative frameworks

The judgement of the ECtHR in the case of *A v. UK* in 1998 is a milestone for prohibiting ill-treatment to children in the name of parental discipline. In this case, a nine-years old boy was caned by his stepfather at home on a number of occasions for he was a difficult boy to discipline. The stepfather was prosecuted for the assault producing actual body harm, but UK Court acquitted him because administering punishment by parents as a means of discipline was lawful under UK law.¹⁵¹ The ECtHR found there was a violation of article 3 of ECHR because the State failed to provide adequate protection to children in the law and the law should be amended.

This case has at least two legal implications for states. One is that effective deterrence to prevent parents from imposing inhuman or degrading treatment on children in the legislative framework should be put in place. The criminal protection is indispensable for severe corporal punishment by parents. Another implication is that although the parents' right in upbringing and educating children should be recognized and not interfered arbitrarily by the state, this paramount right is not absolute.

In this case, the severity of the harm brought by corporal punishment reached the minimum level of the threshold required by article 3 of ECHR. However, if the corporal punishment has not reached that level, it may also be under the examination of the ECtHR based on article 8. Banning corporal punishment in the family is necessary for

¹⁵⁰ CASE OF E. S. AND OTHERS v. SLOVAKIA (Application no. 8227/04), ECtHR, Judgement of 15 September 2009, §29.

¹⁵¹ Case of *A. v. THE UNITED KINGDOM* (100/1997/884/1096), ECtHR, Judgement of 23 September 1998.

the protection of physical integrity of the children under article 8, even the nature of the corporal punishment is not so severe.¹⁵²

2) State's positive obligations to prevent child abuse in the family

The ECtHR has imposed states the positive obligations to prevent child abuse by parents in its jurisprudence. It reiterated this principle in different cases, expressly pointing out that the state is under the positive obligation to “provide effective protection, in particular, of children and other vulnerable persons and include reasonable steps to prevent ill-treatment of which the authorities had or ought to have had knowledge”.¹⁵³ In the case of *E.S and Others v. Slovakia* in which the mother has removed three children from the apartment they lived together with her husband and children's father to protect them from physical and sexual abuse by the father, the ECtHR took a different approach towards children comparing with adults. Although it found no violation of ECHR for not issuing an interim measure by the local court to the mother since she had not made such claim, it underlined that the local court should issue the protection order for them by its own initiative for protecting them from abuse and the protection immediately, even though the children were not parties to the proceeding concerning protection measure.¹⁵⁴ It found a violation of article 3 of ECHR in the situation of the concerned children in this case.

Thus states are imposed positive obligations to prevent children from further abuse in the family through taking pro-active measures. This obligation is different from obligations towards other vulnerable groups, such as women suffer domestic violence. It requires proactive and preventative actions taken by state authorities.

3) Standards on responding to child abuse cases in the family

The ECtHR clarified detailed standards for national authorities on improving and

¹⁵² *Individuals v. Sweden*, No 8811/79, 13 of December 1982, § 113.

¹⁵³ Such as *Case of E. AND OTHERS v. THE UNITED KINGDOM* (Application no. 33218/96), ECtHR, Judgement of 26 November 2002, § 73; case of *Osman v. the United Kingdom*, judgment of 28 October 1998, Reports 1998-VIII, pp. 3159-60, § 116.

¹⁵⁴ *CASE OF E. S. AND OTHERS v. SLOVAKIA* (Application no. 8227/04), ECtHR, Judgement of 15 September 2009, §14, 15.

enforcing child protection systems. In the case of *E and Others v. UK*, the stepfather of four children had been convicted sexual abuse to them and sentenced to probation. During the probation period, he still lived with them and perpetrated sexual abuse to children. The applicants alleged that local authorities had failed to protect them from sexual abuse by the stepfather. After examining the response of local authorities, the ECtHR pointed out failures of domestic child protection system, such as failure to share significant information between involved agencies and stakeholders, failure to work in collaboration, lack of training to social workers on child sexual abuse and lack of attention to the significance of the control of the situation.¹⁵⁵ In another case, the ECtHR found the failure of the domestic system to protect children from serious and long-term neglect and abuse by parents when local authorities have or should have known these risks. It declared that the system without reasonable steps to protect children from ill-treatment by parents couldn't provide adequate protection.¹⁵⁶

4) Special knowledge required on handling child sexual abuse cases

The ECtHR recognized that the prolonged or severe sexual abuse suffered by children falls into article 3 of the ECHR.¹⁵⁷ It emphasized the unique negative impact on children in sexual abuse cases by parents. The ECtHR required that in order to provide effective protection, necessary knowledge and awareness on child sexual abuse should be provided to local authorities and social workers.¹⁵⁸ It pointed out the change of the focus in handling child sexual abuse cases from ensuring the perpetrators being punished to sufficient attention given to the needs of the child victims.¹⁵⁹ During the response process, sufficient care should be given to child victims especially to children who may suffer long-term negative impact. The ECtHR required that not only the effective protection and operational preventative measures in the domestic process should be ensured by the state, effective domestic remedies should also be provided to

¹⁵⁵ Case of *E. AND OTHERS v. THE UNITED KINGDOM* (Application no. 33218/96), ECtHR, Judgement of 26 November 2002, § 54.

¹⁵⁶ Case of *Z AND OTHERS v. THE UNITED KINGDOM* (Application no. 29392/95), ECtHR, Judgement of 10 May 2001, § 74.

¹⁵⁷ Research report: Child sexual abuse and child pornography in the Court's case-law, ECtHR, June 2011, p6.

¹⁵⁸ Case of *E. AND OTHERS v. THE UNITED KINGDOM* (Application no. 33218/96), ECtHR, Judgement of 26 November 2002, § 48.

¹⁵⁹ Such as the case of *E. AND OTHERS v. THE UNITED KINGDOM* (Application no. 33218/96), the case of *O'KEEFFE v. IRELAND* (Application no. 35810/09), ECtHR, Judgement of 28 January 2014.

child victims, including timely investigation on the instances and compensation of both pecuniary and non-pecuniary to child victims in these cases.¹⁶⁰

5) Standards on removing children from families

The ECtHR has established the process on assessing the proportionality of the action of removing children from parental care due to allegations on child abuse. While it recognized the domestic authorities have the margin of appreciation in assessing the necessity for removing children, it required the stricter scrutiny on keeping children in care after initial removal and further limitations on the parent's rights and legal safeguards.¹⁶¹ The ECtHR placed great emphasis on efforts facilitating family reunification subject to the best interests of the child, stating the state is under the positive duty to take the feasible measures to facilitate family reunification as soon as possible from the commencement of the care period.¹⁶² In the decision making process on keeping children in care out of family, the right of parents to be included in this process should be respected.¹⁶³

6) The balance of countervailing interests between reporting suspected child abuse and other interests with important social importance

The ECtHR had assessed on how to balance the protection of children at risk of harm and the interests of parents for preventing wrongly suspected of having abused their children. In the case of *Juppala v. Finland*, a doctor reported a suspected child abuse case to local child protection authority after the grandmother of a three-years old boy told him that the boy may be hit by his father. The father requested local police to investigate the grandmother for deformation and she was convicted. The grandmother alleged her right to freedom of expression was violated before the ECtHR. While the ECtHR recognized that each of these two countervailing interests, the need to safeguard children from abuse by their own parents and protect parents from unnecessary interference or the risk of unjustified arrest or prosecution, is with high social

¹⁶⁰ Case of *E. AND OTHERS v. THE UNITED KINGDOM* (Application no. 33218/96).

¹⁶¹ Research report: Child sexual abuse and child pornography in the Court's case-law, ECtHR, June 2011, p7.

¹⁶² The case of *K.A. v. Finland*, no. 27751/95, ECtHR, Judgement of 14 January 2003, § 138.

¹⁶³ Research report: Child sexual abuse and child pornography in the Court's case-law, ECtHR, June 2011, p8.

importance, it firmly stated that “The possibility to voice a suspicion of child abuse formed in good faith in the context of an appropriate reporting procedure should be available to any individual without the potential chilling effect of a criminal conviction”¹⁶⁴. In this circumstance, the interests of the child supersede other interests.

4.2.2 Approaches and strategies taken by regional institutions

4.2.2.1 The strategies and guidance for member states under the Council of Europe

Eliminating all forms of violence against children is among the key objectives in the Council of Europe’s policies and activities in the area of children’s rights which are anchored in UNCRC.¹⁶⁵ It is active in securing the protection of children against violence in the family. A life free from violence for all children is one of the five priority areas in its Strategy for the Rights of the Child (2016-2021).¹⁶⁶ The Council of Europe has the long-standing tradition to help member states to combat violence in the family. As early as 1985, it already adopted a resolution on violence in the family which aims to protect children and women affected by domestic violence.¹⁶⁷ In 2009 it issued the policy guidelines on integrated national strategies for the protection of children from violence, which help member states to develop and implement a holistic national framework to ensure the right of the children to live free from violence under article 19 of UNCRC.¹⁶⁸ It recommended a multi-faced, systematic and holistic framework at the domestic level with the emphasis on prevention measures. The cross-sectoral and multi-stakeholder’s cooperation and coordination, child-friendly services and mechanisms are also important parts of national strategies.

The Council of Europe has paid particular attention to corporal punishment which is the most spread form of violence against children¹⁶⁹. In 2004 it adopted a resolution on

¹⁶⁴ Case of JUPPALA v. FINLAND (Application no. 18620/03), ECtHR, Judgement of 2 December 2018, §42-43.

¹⁶⁵ Council of Europe, children’s rights, available at <https://www.coe.int/en/web/children/children-s-rights>.

¹⁶⁶ <https://www.coe.int/en/web/children/children-s-strategy>, children’s strategy, The five priority areas are: equal opportunities for all children; participation of all children; a life free from violence for all children; child-friendly justice for all children; rights of the child in the digital environment.

¹⁶⁷ Recommendation No. R (85)4 of the Committee of Ministers to Member States on violence in the family, (Adopted by the Committee of Ministers on 26 March 1985 at the 382nd meeting of the Ministers' Deputies).

¹⁶⁸ The Council of Europe Policy Guidelines on Integrated National Strategies for the Protection of Children from Violence, available at <https://rm.coe.int/168046d3a0>.

¹⁶⁹ <https://www.coe.int/en/web/children/corporal-punishment>, visited at 2018/3/14.

“Europe-wide ban on corporal punishment of children”, calling on the regional bodies of Europe in conjunction with member states, as a matter of urgency, to establish strategies for ending corporal punishment against children from the public institution to the family setting with an aim of enabling Europe a corporal punishment free zone for children as soon as possible.¹⁷⁰ It targeted addressing corporal punishment in the family through adopting policies to support positive parenting in member states.¹⁷¹ The Guidelines on child-friendly justice adopted by the Council of Europe in 2010 also contributed to the effective participation of child victims of violence in the judicial process. The guidelines emphasized the exceptional diligence of the judicial staff when handling cases of parent-child relationship.¹⁷² The child-friendly guidelines are referenced by the ECtHR in its jurisprudence to assess the treatment and protection of affected children in the domestic judicial procedures.

4.2.2.2 The strategies on addressing VACIF under the EU framework

The EU has made long-standing efforts to promote children’s rights and puts the rights of the child as a leading objective both internally and in its external relations with wider world through the adoption of the Lisbon Treaty in 2009.¹⁷³ The European Commission has identified essential principles of integrated child protection systems as guidance for member states. These include: recognition of child as the individual rights holder with non-negotiable right to protection; no discrimination; inclusion of preventative measures; supporting family in the role as the primary caregiver; social awareness and support to protect children from all forms of violence, support and protect children; having safe, well-publicized, confidential and accessible reporting mechanisms in place; competent professionals and national coordination framework.¹⁷⁴ These principles are consistent with the key approaches to addressing the violence against children emphasized by UNCRC Committee.

¹⁷⁰ Recommendation 1666 (2004), Europe-wide ban on corporal punishment of children.

¹⁷¹ Recommendation Rec (2006)19 of the Committee of Ministers to member states on policy to support positive parenting (Adopted by the Committee of Ministers on 13 December 2006 at the 983rd meeting of the Ministers’ Deputies).

¹⁷² Explanatory memorandum of Guidelines on child-friendly justice, p84.

¹⁷³ EU Framework of Law for Children’s Rights, European Parliament, 2012, available at <http://www.europarl.europa.eu/studies>, p19.

¹⁷⁴ 10 Principles for integrated child protection systems, available at https://ec.europa.eu/info/strategy/justice-and-fundamental-rights/rights-child/violence-against-children_en.

EU has also adopted guidelines on promoting and protecting children's rights in its external actions, expressing its commitment on supporting partner countries to fulfill their obligations under UNCRC with focus on combating all forms of violence against children in any setting.¹⁷⁵ It grants its member states to conduct projects on protecting children from violence in the family and gender violence.¹⁷⁶ These projects help to strengthen national systems on addressing VACIF and go towards better protection of child victims and witness of violence in close relationships.

4.3 National implementation of article 19 of UNCRC by European states

This part examines the national implementation of article 19 of UNCRC based on the research findings of the regional institutions. UNCRC serves as the benchmark to make the comparison and evaluation between different European states.

4.3.1 Overview of national child protection systems in EU member states

The European Union Agency for Fundamental Rights (FRA) has published the key findings of its mapping of child protection systems in 28 EU member states in 2015. It described how the national systems work and examined whether they are consistent with international standards. It set several key indicators to evaluate national systems, such as national legislative frameworks, national authorities responsible for child protection, procedures of intervention and the monitoring systems on the performance of such systems.¹⁷⁷ This mapping covers both the comprehensive approach which

¹⁷⁵ Guidelines on the Promotion and Protection of the Rights of the Child, available at https://eeas.europa.eu/headquarters/headquarters-homepage_en/22017/Guidelines%20on%20the%20Promotion%20and%20Protection%20of%20the%20Rights%20of%20the%20Child.

¹⁷⁶ Summary of EU-funded projects on rights of the child and violence against children 2013-2018.1.31, available at https://ec.europa.eu/info/strategy/justice-and-fundamental-rights/rights-child/violence-against-children_en.

¹⁷⁷ FRA: Mapping child protection systems in the EU, <http://fra.europa.eu/en/publication/2015/mapping-child-protection-systems-eu>, visited at 2018/3/15.

emphasizes creating the safe environment for children to grow up in the family and the specific aspects relevant to VACIF, such as legal obligations on reporting child abuse, neglect and violence and multidisciplinary assessment of child protection cases.

4.3.1.1 National legislative frameworks

National legislative framework is the essential component of the integrated national child protection system which is required by both UN and EU. Among the EU member states, 18 member states have a key legal instrument on child protection at the national level which covers the full intervention stages including identification, referral, assessment of child victims of violence and the treatment of children whose parental care is deprived.¹⁷⁸ While there is no national legislation with such specific provisions, the federal laws in some states such as Germany and Austria provide child protection responsibilities, general framework and key principles for developing the specific regulations at regional and local levels. In Denmark, there is a lack of a national policy, but the municipal authorities with child protection responsibilities develop policies locally.¹⁷⁹ There are multiple legislations and policies on specific violence such as sexual abuse or protecting vulnerable children in most of these states. The challenge is these fragmented legislations always can't work in a coordinated way in practice.¹⁸⁰

4.3.1.2 National authorities with coordinating roles and service providers

The cross-sectoral and multi-disciplinary coordination is needed to provide protection to children exposed to violence. The findings of the FAR's mapping showed that most EU member states have established a national unit with coordinating role. Primarily one ministry is assigned with such role while its subordinated administrative structures such as the specific departments take the daily working load. Among 13 states, a distinct authority is established to coordinate the implementation of relevant legislations and policies.¹⁸¹ It is the responsibility of the governments for preventing and addressing

¹⁷⁸ FRA: National legislative framework: <http://fra.europa.eu/en/publication/2015/mapping-child-protection-systems-eu/national-law>, visited at 2018/3/15.

¹⁷⁹ FRA: National Policy Framework (action plan or strategy), <http://fra.europa.eu/en/publication/2015/mapping-child-protection-systems-eu/national-policy>, visited at 2018/3/15.

¹⁸⁰ FRA: National Policy Framework (action plan or strategy).

¹⁸¹ FRA: Central authority with national coordinating role, <http://fra.europa.eu/en/publication/2015/mapping->

VACIF. But non-governmental organizations are involved in providing services under the subcontracts with national or local authorities. They are playing an increasingly important role in a majority of EU member states.¹⁸²

4.3.1.3 Intervention procedures for child protection cases

Reporting as the starting point of intervention is extremely crucial for targeted prevention and timely protection to children. It is very challenging to reveal cases of violence against children by parents or primary caregivers. In order to address this problem, a majority of EU member states have developed the mandatory report system in relevant legislations, imposing legal reporting obligations on professionals working with children, while a few states impose such obligation on civilians.¹⁸³ The comprehensive referral mechanisms with clear reporting procedures and responsibilities of the involved actors established in some member states promote the swift response and effective cooperation for addressing individual cases. On the contrary, lack of clearing reporting procedures lead to the under-reporting of cases and the delay to respond to the cases.¹⁸⁴

In order to ensure the best interests of the child and promote the effective participation of children at intervention stages, the multidisciplinary and participatory assessment is required. All EU member states have the provisions on the assessment of short and long-term needs of children in individual cases while the multidisciplinary assessment is provided in most of these states.¹⁸⁵ Although UNCRC Committee underlined that age is not the only factor to decide whether the voices of children should be heard¹⁸⁶, in the practice of EU member states, the participation of children under 12 years-old during the process often lies within the discretion of the respective authorities.¹⁸⁷

[child-protection-systems-eu/national-coordination](http://fra.europa.eu/en/publication/2015/mapping-child-protection-systems-eu/national-coordination), visited at 2018/3/15.

¹⁸² FRA: Service provider in the mapping, <http://fra.europa.eu/en/publication/2015/mapping-child-protection-systems-eu/service-providers>, visited at 2018/3/19.

¹⁸³ FRA: Provisions on professional's legal obligation to report cases of child abuse, neglect and violence, <http://fra.europa.eu/en/publication/2015/mapping-child-protection-systems-eu/reporting-1>, visited at 2018/3/16.

¹⁸⁴ FRA: Provisions on professional's legal obligation to report cases of child abuse, neglect and violence.

¹⁸⁵ FRA: Provisions requiring multidisciplinary assessment of child protection cases, <http://fra.europa.eu/en/publication/2015/mapping-child-protection-systems-eu/multidisc-assess>, visited at 2018/3/16.

¹⁸⁶ UNCRC Committee: General Comment No. 12 (2009), The right of the child to be heard.

¹⁸⁷ FRA: Provisions requiring multidisciplinary assessment of child protection cases.

The qualification of professionals on child protection is vital for ensuring the best interests of the child. There are qualification requirements in the legislative frameworks in most EU member states. Some states require these professionals to receive regular trainings.¹⁸⁸ Vetting procedure of the foster families and residential care personnel are required in some EU member states, such as checking whether they have criminal records, especially crimes of sexual abuse or sexual exploitation. Some states further require the mental health or psychological assessment reports.¹⁸⁹

4.3.1.4 Monitoring systems

Although all EU member states have developed provisions concerning the self-monitoring and services evaluation, the monitoring responsibility at the national level is always assigned to the ministry with primary child protection responsibility. Very few states have established external and independent monitoring systems.¹⁹⁰ If there is independent ombudsperson's office in the state, it monitors as the independent body.

4.3.2 Further comparison of national implementation in five European states

In 2012 the Netherlands Youth Institute in co-operation with 4 partner country organizations published a research report on “Combating child abuse and neglect in Germany, Hungary, Portugal, Sweden and The Netherlands”. Based on the examination of national reports, this research compared national child protection systems in these five states.¹⁹¹ After the publishing of the project findings, there is progress in the development of national systems in the Netherlands. In 2014 it has adopted a national

¹⁸⁸ FRA: Certification and accreditation procedures for professionals, <http://fra.europa.eu/en/publication/2015/mapping-child-protection-systems-eu/certification>, visited at 2018/3/16.

¹⁸⁹ FRA: Vetting of foster families and residential care personnel, <http://fra.europa.eu/en/publication/2015/mapping-child-protection-systems-eu/vetting-foster-families>, visited at 2018/3/16.

¹⁹⁰ FRA: Monitoring performance of national child protection system, <http://fra.europa.eu/en/publication/2015/mapping-child-protection-systems-eu/body-monitoring>, visited at 2018/3/19.

¹⁹¹ Prevent and Combat Child Abuse: What Works – An overview of regional approaches, exchange and research, <http://ec.europa.eu/justice/grants/results/daphne-toolkit/en/node/3044>, visited at 2018/3/19.

action plan for reporting code. The findings with the recent progress could be assessed against UNCRC to identify experiences and lessons. Due to different geographical locations and various levels of economic and social development, these states are the representative samples of different regions in Europe. The comparison between them provides an opportunity to investigate national implementation in a more detailed way.

4.3.2.1 The holistic or dualistic approach taken by national systems

The national systems on addressing VACIF could be mainly categorized by two groups, the dualistic systems with child protection orientation and the holistic systems with family orientation.¹⁹² The dualistic approach separates family support and the system on preventing and responding violence against children in the family, focuses on the intervention always evolved by judicial departments and makes the balance between the need to protect the children and parental right.¹⁹³ Whereas, the holistic systems emphasize the preventative work and early intervention through supporting parents, taking protecting children from abuse as one aspect of the system. Meanwhile the intervention is also included in the system as the legal basis for early intervention and response to the most serious cases.¹⁹⁴ The holistic approach to addressing VACIF and prevention as the primary purpose are required by UNCRC.

Among these five states, the systems in Sweden and Germany can be classified as holistic, the Netherlands can be regarded as dualistic system while the other two content elements of both approaches.¹⁹⁵ The patterns in the states with the same approach are not exactly the same. For instance, in Germany, the available supporting services are provided at different stages, from the prevention to intervention with the active involvement of private service providers, ranging from creating a child- and family-friendly environment, supporting parents in raising children and further protection of children from the endangerment. While in Sweden, there are family supporting services

¹⁹² Rachael Hetherington, Learning From Difference: Comparing Child Welfare Systems, June 2002, <http://scholars.wlu.ca/pcfip>, visited at 2018/3/19.

¹⁹³ Ilan Katz, Co-Operating and Communicating: A European Perspective on Integrating Services for Children, Child Abuse Review Vol: 429-439 (2006).

¹⁹⁴ Ilan Katz, Co-Operating and Communicating: A European Perspective on Integrating Services for Children.

¹⁹⁵ Netherlands Youth Institute: Combating child abuse and neglect in Germany, Hungary, Portugal, Sweden and The Netherlands, 2012, p11.

at four levels, from providing various support to all children and families to intensive specialized services.¹⁹⁶ Whatever patterns are followed based on the state's context, the holistic approach guides national systems to prioritize the prevention.

The implementation is also a key factor to decide whether the holistic approach could be realized on the ground. It is noteworthy that although the system in Hungary is intended to be a holistic one, the implementation of it is dominated by the intensive intervention and rescue operations with limited family support and early intervention due to limited number of professionals and financial resources.¹⁹⁷ Although the systems vary greatly among these states, they all decentralize child protection responsibilities and locate the services close to children and families.

4.3.2.2 Measures taken to address this issue

The comprehensive measures including legislation, administrative and educational measures are required by UNCRC to address VACIF. All five states have clearly prohibited corporal punishment in the home by law, integrate some serious kinds of child abuse or neglect into the criminal codes and have specific legislation concerning child abuse and neglect by parents. In Sweden, Germany and the Netherlands, the responsibility of parents and prevention of physical, psychological violence against children by parents are also codified into civil codes. In all these states, there is wide definition of child abuse and neglect in the national frameworks, leaving room for a holistic assessment on the situation of the child on a case-by-case basis.¹⁹⁸ All five states have the national strategies in place to address violence against children either in the form of actions plans or through frameworks of local governments.¹⁹⁹

Legislative measure is the essential measure but should not be the only one. It is aware that there is remarkable contrast in the attitudes towards corporal punishment and the different impact of legislation in Sweden and Hungary in practice. By combining the

¹⁹⁶ Netherlands Youth Institute: Combating child abuse and neglect in Germany, Hungary, Portugal, Sweden and The Netherlands, Chapter 2 The Child Welfare System.

¹⁹⁷ Combating child abuse and neglect in Germany, Hungary, Portugal, Sweden and The Netherlands, p6.

¹⁹⁸ Combating child abuse and neglect in Germany, Hungary, Portugal, Sweden and The Netherlands, p14.

¹⁹⁹ Combating child abuse and neglect in Germany, Hungary, Portugal, Sweden and The Netherlands: Chapter 3 The measurement and management of tackling child abuse and neglect.

legislation with the active lobbying and educational activities, there was considerable decrease in the number of children exposed to violence by parents in Sweden. Whereas, in Hungary, corporal punishment is still widely accepted due to lack of awareness raising and educational trainings.²⁰⁰

4.3.2.3 Detecting and responding to child abuse and neglect cases

The specific intervention stages from detecting to stopping child abuse and neglect cases are addressed in all these five states. Except the Netherlands where the mandatory reporting code is provided in the national action plan, the mandatory report obligation is established through the national legislation in the other four states. Portugal is the only state that imposes mandatory reporting obligation on everyone while the others impose such obligation on professionals working with children.²⁰¹

Upon receiving the report, immediate actions for children in the endangerment and the investigation of possible abuse by the police and prosecutors are required in these states. During this process, balancing the reporting, investigation of the possible abuse and intensive intervening obligations is difficult for most of these states.²⁰² Lack of cooperation is another concerning problem for some states although it is required in the legal frameworks. There is also good practice, such as the establishment of multi-disciplinary team with the involvement of different entities and sectors for dealing with the individual cases in Portugal.²⁰³

4.2.3.4 Services system

The high quality service system is a crucial component of national system which needs to be integrated into the full stages of intervention. Except Hungary, the other four states have developed governmental strategies in developing universal services to family, including childhood education and care; health care services for expecting mothers and

²⁰⁰ Combating child abuse and neglect in Germany, Hungary, Portugal, Sweden and The Netherlands, p13-15.

²⁰¹ Combating child abuse and neglect in Germany, Hungary, Portugal, Sweden and The Netherlands, p23-25.

²⁰² Combating child abuse and neglect in Germany, Hungary, Portugal, Sweden and The Netherlands, p27.

²⁰³ Combating child abuse and neglect in Germany, Hungary, Portugal, Sweden and The Netherlands, chapter 5: Detecting, reporting and stopping child abuse and neglect.

children and parenting support.²⁰⁴ In Sweden, targeted intervention is integrated into the universal service system which helps to identify families with more significant needs while avoiding any label on applicants seeking for help.²⁰⁵

In four states, targeted services are available either provided in the legislations or in national strategies for perpetrators of violence, families of the victims and child victims. In all states, some kinds of psychological services are available.²⁰⁶ One common challenge is that the specific treatment programmes for victims are still lack. In addition, the integration of services into the full stages requires effective coordination between various sectors and professionals. All these five states have included the requirements on the integration of services and coordination in legislations.²⁰⁷

In addition to the above aspects, data collection system in national systems is also essential for evaluating the prevalence of VACIF and the effectiveness of these systems in practice. The data collection system in these five states vary greatly. The lack of effective data in the Hungary shows that protecting children from violence has not been paid enough attention and the seriousness of the problem is ignored.²⁰⁸

4.3.3 Reforms of child protection systems in Romania and Bulgaria

Except the examination of national implementation on the static standing point, a dynamic perceptive could be introduced to map the progress of national systems in Romania and Bulgaria. These two countries faced similar challenges and adopted many similar steps to reform their national child protection systems. Although both states have ratified UNCRC, their domestic situations were far from being consistent with UN standards. There was no national legal framework related to child rights protection,

²⁰⁴ Combating child abuse and neglect in Germany, Hungary, Portugal, Sweden and The Netherlands, chapter 4: universal and preventative services.

²⁰⁵ Combating child abuse and neglect in Germany, Hungary, Portugal, Sweden and The Netherlands, chapter 4: universal and preventative services.

²⁰⁶ Combating child abuse and neglect in Germany, Hungary, Portugal, Sweden and The Netherlands, chapter 6: care services.

²⁰⁷ Combating child abuse and neglect in Germany, Hungary, Portugal, Sweden and The Netherlands, chapter 7: the integration of services.

²⁰⁸ Combating child abuse and neglect in Germany, Hungary, Portugal, Sweden and The Netherlands, p14.

the capacity to respond to VACIF was lack and high rate of children who were abandoned by parents due to disability had been living in public institutions.²⁰⁹

The important reform steps to respond to these challenges in these two countries include: adoption of new legal frameworks with coordinating structures; assignment of central bodies responsible for child protection to overcome the fragmented responsibilities divided in several ministries; developing prevention, support and community-based, family-based alternative care services while taking kinship as a main alternative care solution; setting quality standards for the services and individual case management; improvement of capacity for local child protection professionals and introduction of court decision to ensure children's separation with parents as the last resort and in their best interests.²¹⁰ All these reform steps are leading to integrated and comprehensive child protection systems and have produced positive impact in practice. Although there are still challenges, the experience and progress in these two countries is valuable for China which faced similar challenges as these two have faced.

4.4 Conclusion

The examination of the national implementation in European states has two implications for China. On the one hand, it provides an approach to improving national systems to be consistent with UNCRC. The common experience in these states indicates that regardless of different social contexts, upholding the essential approach and taking measures required by UNCRC are feasible and practical. On the other hand, it provides models and lessons on how to implement national child protection systems on the ground.

²⁰⁹ Andy Guth: Reform steps towards child protection Bulgaria-Romania: a comprehensive approach, 2014, available at <http://www.childpact.org/2014/04/10/reform-steps-towards-child-protection-in-bulgaria-and-romania-a-comparative-approach/>, last visited at 2018/5/23.

²¹⁰ Andy Guth: Reform steps towards child protection Bulgaria-Romania: a comprehensive approach.

5. Examination of Chinese system under UNCRC and drawing on experience from European states

Based on the discussion of the above chapters, this chapter benchmarks Chinese system on addressing VACIF against the approach and legal requirements under UNCRC. The examination covers from the overall approach to the specific intervention stages. Meanwhile, the experience on the national implementation from European states which are consistent with UNCRC are also identified, thus providing models for building and reforming the current system in China.

5.1 Approach to addressing VACIF

Which approach is taken by the state to address the issue is the primary and the most important factor in deciding how the national system is developed and whether it is developing towards an integrated system.

5.1.1 Piecemeal approach v. holistic approach

Pieces of efforts have been made to improve the protection of children from VACIF in China, such as ending the impunity of parents as perpetrators, adopting the first regulation on handling serious cases of VACIF and the revision of the regulation on children's guardianship in Civil Law. These initiatives are crucial to fill in the long-standing gaps in this area in China. However, the systematical progress has not been achieved through these actions. The piecemeal approach still dominates the development of the current system. The fragmented situation only produces limited impact in practice. Due to lack of holistic approach, the existing scattered rules could not work in a cohesive and coordinated way, thus enable to form an integrated system covering prevention, prosecution and protection. This piecemeal approach hinders

China from implementing UNCRC through a comprehensive way essential for addressing VACIF. The prevention and reactive response to VACIF are isolated from each other. Although the principles of UNCRC have been reiterated in some regulations and policies, they are more like the declaration than the binding guiding principles, since they are not implemented effectively on the ground.

The holistic approach should be integrated through the building of national systems to their implementation in practice. The experience and lessons from the European states show that although there is an intention to take such an approach by the state to develop its national system, limited resource input in practice prevents this approach from being a principal guide for the implementation, such as the situation in Hungary.

5.1.2 Child protection approach v. child rights approach

To effectively implement UNCRC on protecting children from violence, it is required to shift the paradigm from the child protection approach to child rights approach. The perception on child as the objects or victims of violence is dominant in China when it combats violence against children. The specialized Regulation in 2014 takes a child protection approach. The emphasis on child protection in China is related to the initial stage of the development of national system, which puts protecting children from significant violence by parents or primary caregivers as the priority. This is necessary as the starting point of the national system considering Chinese context. However, the child protection approach could not touch upon root causes of violence against children. Without child rights approach children's rights could not be fully respected and fulfilled in the process of addressing VACIF. Child is still regarded as the object of the protection from adults and not individual rights holder who has the non-negotiable right to live from violence including at hands of parents or primary caregivers in Chinese society.

5.1.3 Reactive response v. proactive prevention

It has been internationally recognized that prevention of violence best serves the interests of the child and should be attached to the paramount importance within national frameworks. There is some progress in developing universal services and

providing tailored support to vulnerable children, which are helpful to prevent VACIF. But the focus in China is the reactive response oriented by rescue operations. This is largely because only the most notorious individual cases come into the attention of governmental authorities and the public.

Putting the prevention as the emphasis facilitates the shift from piecemeal approach to holistic approach and from the child protection approach to child rights approach. The experience of Sweden and Germany has demonstrated that incorporating the prevention into national systems significantly reduced the number of actual incidents of VACIF.

5.1.4 Lack of intervention v. least intrusive intervention

The child protection system in China aims to provide the appropriate interventions to families in which children suffer serious violence, which has long been lack. Many states took this as the starting point for developing their national systems. But adopting the least intrusive measures depending on the circumstance is the experience from the trajectory of developing such systems in others states, which is helpful to prevent the trauma brought by excessive intervention. In order to take the least intrusive intervention measures, ensuring the primary role of the family in child-rearing s through appropriate assistance by government and the creation of informal interventions for addressing this issue are crucial. Providing the timely intervention is the priority in China which is required by the safety of children. But meanwhile the efforts for supporting families with children need to be strengthened.

5.2 Scope of protection

Article 19 of UNCRC requires all forms of violence should be addressed and eliminated by states. The Chinese anti-domestic violence law defines domestic violence as an “infliction of physical, psychological or other harms among family members through the use of means such as beating, restraints, maiming, restriction on physical liberty, as well as recurrent verbal abuse or intimidation”.²¹¹ This definition obviously does not

²¹¹ Article 2 of Chinese Anti-domestic violence Law.

take into the special characteristics of violence against children in the family, such as neglect. The Regulation on handling cases of VACIF takes a similar approach as the European states to define the scope of violence against children from the rights perspective with a non-inclusive list. This is necessary for leaving the room to extend more forms of violence even though they are not currently included.

Although there is general prohibition of violence against children in current rules, some forms of violence have not been paid enough attention and no effective action is taken to address them, such as corporal punishment without visible bodily harm, psychological violence and the child witness of regular domestic violence. In practice, only certain forms of serious violence are addressed by the Regulation, such as severe physical abuse, corporal punishment producing visible harm, sexual abuse, abandonment and neglect of performing parents' duties. In China, both governmental authorities and the public are lack of the comprehensive knowledge and awareness on the harm of the violence against children, especially the slight form.

5.3 Measures taken to address VACIF in China

5.3.1 The current regulations on combating VACIF

A majority of states have taken legislative measure as the essential way to deal with this issue, such as most of the examined European states have legislations with clear rules in place covering full ranges from prevention to intervention. However, in China the piecemeal approach leads to scattered efforts to address this issue. The existing regulations especially the special Regulation in 2014 have not been widely implemented especially in rural areas, because human resources are insufficient or the relevant professionals are not equipped with necessary knowledge or skills to deal with such cases. In some remote rural areas, there is few facilities for placing children who are removed from families. The targeting services providers in these areas are also lack. Children living in rural areas have the difficulty in accessing to the universal services for preventing VACIF. When they face the actual harm from guardians, the limited resources pose the barriers to the effective implementation of the current regulations.

The big challenge on the legislative measure in China is that due to lack of legislation concentrating on protecting children against violence in the family at the national level, the current regulations on addressing this issue face legal hurdles and could not work effectively as expected. During the response process, which department should play the leading role is not clear. The coordination mechanism is not legitimated in the national law, which affects the implementation of current regulations.

5.3.2 Unclear administrative structure

Due to the lack of clear provisions on the administrative structure, there is no primary responsible governmental body at the central level with clear leading and coordinating role in protecting children from VACIF, although various ministries are involved in child protection. The assigned ministry dedicated to child protection in most of the European states is not clearly provided in China. However, the Ministry of Civil Affairs is playing increasingly important role to promote the protection of children from violence in the family and coordinate relevant stakeholders in practice. But even within the same Ministry, the roles concerning children are scattered in two different offices affiliated with separated departments.²¹² Although many ministries are involved in protecting children from violence in the family in various regulations, the government focal point to coordinate stakeholders, child protection strategies, policies and services either at the national or local level is still not established. This results in the lack of leading role in steering the development of national systems and lack of coordination, cooperation in the implementation of the existing regulations at local level.

5.3.3 Social and educational measures

5.3.3.1 Social measures in China

Some progress has been achieved in providing for basic and targeted services to children and families through social measures, which are helpful to prevent and reduce

²¹² <http://www.mca.gov.cn/article/jg/>, visited at 2018/4/9.

the risk of VACIF. The non-governmental organizations are encouraged to be involved in delivering such services. However, a child rights perspective is not integrated throughout the developing and implementing these social policies. For instance, in the Chinese poverty alleviation policy, the priority of promoting development of children especially children in the rural areas is not highlighted.²¹³ Lack of coordination between different social services is another problem. In practice, the insufficient cooperation results in the disconnections between different service providers.

There are also problems in the availability, accessibility and quality of the current social services. The service system which is an essential component for preventing VACIF, such as parental guidance and parental education, has not been fully developed in China. Services which need to be integrated in the process of intervention stages, such as the family counselling service, cannot be provided in most places in China. Since there are huge number of vulnerable children, it is not realistic to provide all these services by government. Under the responsibility of the government, the active involvement of non-governmental organizations as service providers is extremely vital. However, the number of such organizations is still very limited. In addition, children and their families living in rural areas always don't have access to services they need. The capacity of the service providers is also concerning.

5.3.3.2 Educational measures in China

Educational measures exert a crucial influence on the impact of legislations and administrative measures in practice, as demonstrated by the contrasting impact of the legislations prohibiting corporal punishment in Sweden and Hungary. The process of legislation itself is helpful to raise the awareness of the public. The process of the legislation on the Anti-domestic violence Law in China has initiated the discussion on this issue and raised the awareness in the whole society. Through the implementation of the specialized Regulation in 2014 and the policies on protecting the disadvantaged children, the awareness of parents on their responsibility of child-rearing and

²¹³ Luo Renfu, Wang Tianyi, Zhang Linxiu, Bai Yunli: From poverty reduction to poverty prevention- the perspective of intergenerational poverty transmission and early development of children, *Technology Promote Development*, 2017, 13 (6) :426-433.

prohibition of violence has been raised.

However, the harm of some forms of violence on children, such as corporal punishment, psychological violence, is far from being recognized in China. Systematic and regular training for professionals working with children is lack, which may negatively impact the implementation of the existing regulations. Due to lack of sufficient knowledge, the decisions of local authorities may conflict children's best interests.

There is a long way for changing the public perception on VACIF, which regards violence as an effective way for education. The knowledge on the positive discipline is not sufficiently provided to parents and the public. This negatively influenced the implementation of current rules, for instance, the ineffective implementation of the mandatory report obligation in the Anti-domestic violence Law.

5.4 The examination of components in Chinese child protection system

The current system in China has included the basic components of the child protection system, including the normative framework, the governance, intervention mechanism, although there are problems of these component. Some components, such as the data collection system and quality standards for the operations of the system, are not well developed. A systems approach is still lack in building and reforming child protection system. This is demonstrated by the fact that the building of the national child protection system does not have special regard to the relationships between the components in China. For instance, due to the low binding status of the normative framework, the operations under other components could not be managed to realize their full potentials. Thus, the current components don't work in a coordinated way, which is not likely to form a cohesive system.

5.5 The examination of specific intervention stages

5.5.1 Prevention

China has taken legislative measures to deter and prevent VACIF. It prohibits violence including corporal punishment against children in the family and includes several forms of violence which produce serious harm to children by family members into the criminal law. Without effective implementation, the prohibition of VACIF in the legislation could not play its roles. There is the progress in the implementation of these laws since the specialized Regulation has been issued in 2014. However, it is still a huge challenge in implementation.

The deterrence through legislation should be the last resort for addressing VACIF. Effective means to prevent is to ensure the best interests of the children while making the family intact. The comprehensive measures to touch upon the root causes of VACIF are not sufficient in China. For instance, there are lots of challenges in the current universal service system aiming to satisfy the needs of children and families. Some attitudes and social practice which are influenced by the harmful traditional culture are not challenged. The gender-based violence is common in some remote and undeveloped areas due to the long-standing gender preference.

5.5.2 Response

The research on risk factors and protective factors of VACIF in the specific Chinese context is lack. The professionals or other persons who have the responsibility towards children are not equipped with necessary awareness and knowledge to identify these risks, thus early intervention could not be provided in time. Reporting is the common challenge for most states while it is particularly challenging in Chinese context. Although there is provision on reporting mechanism under Anti-domestic violence Law, no detailed and clear guidance on the mandatory reporting mechanism is provided to the organizations and professionals with mandatory reporting obligation. Another problem is that the current reporting mechanism is not well-publicized, accessible and

child-friendly. The experience from the European states shows that clear reporting procedures are extremely important for the swift response.

The case management process is hard to achieve in handling individual cases. The main reason is that which department should take the clear responsibility covering all the possible intervention stages from reporting to referral is not clearly provided. In addition to this, like European states, lack of effective coordination and cooperation during the whole process of case handling is a concerning problem in practice. The multi-disciplinary team and working mechanisms to ensure the inter-agency and multi-disciplinary cooperation in some European states provide models in this aspect.

In China, most of the responded individual cases are cases in which children in great endangerment. The case handling process focuses on the criminal prosecution and punishment of the perpetrators. However, services are not integrated into this process, which is very likely to counter the best interests of the child and result in the irreversible trauma to children and families. Even though there is the provision on regaining the parental right in certain circumstances in the legislation, this could not be achieved without appropriate services to restore family relationship between children and parents.

Deciding when and how to intervene the family is difficult. The clear standards have not been developed in China. It is always in the discretionary power of the authorities to make such decisions. Since there is no comprehensive and professional assessment on the situations of children and families in most cases, it is difficult to ensure the decision being consistent with the child's best interests.

5.5.3 Protection and treatment of child victims of VACIF

The ECtHR has reiterated that the change of the focus in handling child abuse cases should be shifted from ensuring the perpetrators being punishment to sufficient attention given to the needs of the child victims. In China, although some principles and measures have been provided to protect child victims, in practice the response mechanism does not take fully into account their needs. Imposing the punishment on the perpetrators is regarded as the ending of such cases. Little attention and follow-up

measures have been taken to promote the rehabilitation of the concerned children and the restoration of the family relationship. These measures are particularly crucial considering that child victims in such cases always suffer from the trauma brought by the most intimate persons. The practical measures for facilitating the effective participation of children during such process are far from being sufficient in China. The rights of the children such as the privacy are not fully respected in practice when cases are dealt with by unprofessional authorities or judicial staff. In this aspect, the child-friendly justice guidelines promoted by the Council of Europe is a helpful reference for ensuring children's rights during the case handling process.

5.6 Conclusion

Through the examination of Chinese system, it could be seen that the approach to addressing VACIF is piecemeal. The holistic approach to overcoming the fragmented and isolated situation is lack. The needs of the children are not placed in the central position. Lack of the national legislation is the crucial hinder for developing effective national system and impacts the functions of other components of child protection system in a negative way.

6. Conclusion: towards an integrated system consistent with UNCRC in Chinese context

Although there was long-standing gap, combating VACIF has been put on the agenda as the priority in the area of children's rights by Chinese Government. It is crucial for China to adopt appropriate approach and build the system in a way consistent with UN standards to ensure more effective protection of children from violence in the family under Chinese context.

6.1 Mainstreaming child rights approach into domestic system

A paradigm is required to shift from regarding children as the protection targets or objects of benevolent activities to perceiving them as having the unnegotiable right to live from violence in the family in China. It is the responding legal obligations of the government to take appropriate measures to address all forms of violence, even the slightest form. This shift is the requisite for developing a more effective system. The child rights approach could make the system being oriented by children's rights. It promotes to form a cohesive system with its components working in a coordinated way. Child rights approach needs to be mainstreamed into the whole process of developing national system, covering all stages of interventions.

6.2 Adoption of a holistic approach to coordinating the fragmented initiatives

The dominant piecemeal approach in China needs to be shifted to a holistic approach.

The holistic approach combining both the prevention and response within one comprehensive framework will provide a clear guidance for improving the current system from the top to bottom level. It will help to change the isolated and fragmented situation, integrating the essential components into a cohesive and coordinated system.

The principles of UNCRC need to be integrated into building and implementing the system by adopting specific and facilitating measures. Article 19 of UNCRC is often taken as the international legal basis for building national system. But it is required to fulfill the obligations under this article in the whole context of UNCRC which is ignored in China, especially the effective implementation of relevant articles on preventing and responding to VACIF. The international obligations under other conventions of which China is a state party also need to be taken into account, for example, the obligation on combating gender-based violence in CEDAW and protection of disabled children under CRPD.

6.3 Integrating gender perspective into the implementation of article 19 of UNCRC

Gender perspective is required both for targeting the gender-based violence against girls in family and for creating the protective family environment free from violence. As the State Party of CEDAW, China is required to take the due diligence obligation to combat gender-based violence against children in the family. The gender-stereotype in China not only harms girls but also boys. For example, only female is regarded as the victim of rape. Thus there is big gap in revealing and responding to sexual abuse against boys. Such stereotypes and root causes of gender-based violence need to be addressed through taking effective measures, including providing equal legal protection for girls and boys and challenging the gender preference. The gender perspective needs to be integrated into the specific prevention and response mechanisms, having regard to different needs of girls and boys. In addition, it is lack of awareness on the shared responsibility of child-rearing between parents in China. Women always take this responsibility with little involvement of men. Measures need to be taken to promote the shared responsibility between women and men, which is helpful to create a positive

family environment.

6.4 Adopting national legislation to legitimate the current mechanisms while strengthening comprehensive measures

Since lack of national legislation is the biggest challenge in China, the measures taken to address this issue need to start with improving its legal framework. A national legislation needs to be adopted for developing an integrated national child protection system to legitimate and streamline the current mechanisms on addressing this issue. This national legislation needs to clearly define the scope of formal intervention, provide the administrative structure and governance of the system, legitimate the working mechanisms for handling individual cases. The necessary financial and human resources should be provided in it to ensure its implementation in practice.

The administrative structure and management of child protection both at the national and local level need to be clarified through the national legislation. The national authorities with the responsibility of steering the development of national system and the coordination power should be assigned. The establishment of the independent child protection department with such powers and responsibilities within the Ministry of Civil Affairs could be an option. In the operation of the system, the establishment of the focal point with involvement of all stakeholders is crucial, since without the effective inter-agency and multidisciplinary cooperation, it is impossible to address the issue effectively. The clear responsibilities of the local authorities with the coordination roles and the duties of other relevant stakeholders also need to be clearly defined to ensure the effective implementation of legislations and policies. Meanwhile, the systematic data collection system on VACIF should be established for providing baseline information and evaluating the impact of legislations and policies.

For social measure, the independent needs of children should be paid sufficient attention when developing and implementing social policies. Meanwhile, educational measures need to be taken for ensuring the effective implementation of legislations and policies, such as regular trainings for all professionals working with children, raising the

awareness of parents on their responsibility in child-rearing, disseminating the knowledge on the harm of VACIF to parents and public. It is also important to involve children in the process of taking these measures.

6.5 Prioritizing the prevention through developing universal services and strengthening special protection to disadvantaged groups

It is difficult to balance children's rights and parents' rights in the operation of child protection systems for most states. This dilemma is particularly highlighted in China due to the lack of experience on responding to such cases. In this circumstance, the prevention of VACIF through preventative measures is extremely important. Although the prevention requires resources input, it greatly reduces the cost of reactive response and offers the return in the long-term meanwhile best serves the interests of the child.²¹⁴ Because of the huge number of children and limited financial resources in China, it is difficult to provide various universal services all at once. But it is possible to provide the basic universal services which have been delivered in most European states regardless of their eco-social development. Among them are: childhood education and care; health care services for expecting mothers and children, parenting support. To ensure that children and families living in rural areas have the equal access to these services is important considering the big gaps between urban and rural areas. Fragmented efforts have been made in China to prioritize the protection of vulnerable groups of children. It is crucial to take a systems approach to coordinating these initiatives and orientating them to the needs of children and families.

6.6 Improving the intervention stages

6.6.1 Strengthening efforts to satisfy the needs of child victims

Ending the impunity of perpetrators of violence against children through the effective

²¹⁴ UNCRC Committee: General Comment No. 13 (2011), para. 46.

implementation of legislations still needs to be reinforced in China. Meanwhile, the rights and needs of the children affected by the VACIF should be paid more attention. This requires to ensure the operation of the intervention being consistent with children's rights and to adopt facilitating measures to promote the concerned children's participation and rehabilitation during this process. One of the crucial measure is to introduce the child needs assessment by the professionals as the necessary procedure in the intervention stages. There are other measures need to be taken to satisfy children's needs, for instance, developing rehabilitation services available to children, establishing the mechanism on the independent representative to children during the process of handling such cases, setting up multi-disciplinary and inter-agency cooperative team for responding and improving the capacity of relevant professionals.

6.6.2 Improving the identification and reporting mechanisms

The identification and early intervention are given due weight in China. Identification is the essential stage for proving early intervention, which is greatly helpful to prevent the intensive intervention. The risk and protective factors in Chinese context are not clear. It is vital to conduct more research in this aspect and improve the capacity of relevant professionals in identifying these factors as early as possible.

The difficulty in revealing the cases of VACIF in China is linked to the shortcomings of the current reporting mechanism. Clear guidance on the reporting procedures and detailed referral mechanism need to be provided. The reporting system needs to be improved to meet the criterion as being well-publicized, confidential and assessable. Considering the specific circumstances of VACIF and the extremely helpless situation of children when the perpetrators are the most intimate family members, it is particularly crucial to ensure that the reporting system is safe and friendly to children.

6.6.3 Integrating the services into the response mechanism

Punishing parents without the delivery of appropriate services is not uncommon in China. To correct this situation, the services need to be integrated into intervention mechanism. Developing various targeted services for children and families is requisite

for this integration. The understanding in China that punishing the perpetrators of VACIF is the ultimate goal of addressing VACIF needs to be changed. To ensure that children live in the safe family with parents through developing services both for perpetrators and child victims should be the guiding principle for response.

6.6.4 Application of case management process for effective coordination

In China, lack of the continuity between different intervention stages and ineffective cooperation always leads to the delay of response and the gap in protecting children. In order to overcome this challenge, the case management process led by the responsible governmental authorities could be a helpful way. The case management process covering all the possible intervention stages could promote the continuity between different stages. In practice, various individuals and organizations involve in addressing cases of VACIF. In this process, the responsibility of local governmental authorities to support these individuals or organizations and manage the cases needs to be reinforced.

6.6.5 Developing quality standards as guidance for interventions

A balance has to be made between upholding the family's primary role in the child-rearing and the appropriate intervention by the governmental authorities in Chinese context. Considering most local authorities handling cases of VACIF are lack of experience, specific standards which would be helpful to prevent arbitrary decisions are important. Based on the domestic framework and practice in China, the Central Government could develop specific standards to help local authorities to address this issue. These standards could provide clear guidance and applicable principles on when and how to intervene the family in practice.

6.7 Encouraging the involvement of non-governmental organizations in combating VACIF

Under Chinese context, it is not realistic to provide all the services by government. Promoting the active involvement of non-governments in this area is required. These organizations could play the multiple roles. They could directly deliver various services to children and families, conduct awareness raising activities and trainings to stakeholders and the public. Since there is no children's ombudsperson system in China, such organizations having direct contact with children could play the role as children's ombudsperson and to ensure that their rights are respected, protected and promoted in the process of preventing and addressing VACIF. However, the responsibility of the government for setting up quality standards and monitoring should be put in place.

6.8 Conclusion

What approach to take for building the national child protection system is the crucial factor in deciding to what extent the system is effective in protecting children from violence in the family. The current approach in China hinders the further development of the system and results in limited impact. New approach consistent with UN standards need to be taken to improve the current mechanisms. This is not only from the international obligations of China under UNCRC, but is also required by the urgency to provide more effective protection to the huge number of children in China.

Bibliography

Books

Marie-Benedicte Dembour, *Critiques*, International Human Rights Law, edited by Daniel Moeckli, Sangeeta Shah & Sandesh Sivakumaran, Oxford University Press, 2014

Edwards, Alice, *Violence against women under international human rights law*, Cambridge, 2011

Ursula Kilkelly, *The Child and The European Convention on Human Rights*, Ashgate/Dartmouth, 1999

Bernadette Rainey, Elizabeth Wicks and Clare Ovey, *The European Convention on Human Rights*, Oxford University Press, 2017 (7th edition)

UNICEF: *Hidden in plain sight*, A statistical analysis of violence against children, 2014

Brian Corby, *Child Abuse: Towards a Knowledge Base*, Open University Press, 2006 (3rd edition)

Geraldine Van Bueren, *Child rights in Europe*, Council of Europe Publishing, 2007

Beth M. Schwartz-Kenney, Michelle McCauley, Michelle A. Epstein, *Child Abuse: A Global View*, Greenwood Press, 2001

Reports

Paulo Sérgio Pinheiro, *World Report on Violence against Children*, UN Independent Expert for the United Nations Secretary-General's Study on Violence against Children, 2006

UNICEF, *A familiar face: violence in the lives of children and adolescents*, 2017

UNICEF, *Violence against Children in East Asia and the Pacific: A Regional Review and Synthesis of Findings*, 2014

WHO, *European report on preventing child maltreatment*, 2013

Krug, E G, et al , editors, *World Report on Violence and Health*, World Health Organization, Geneva, 2002

Foundation of Protection of Girls, *Report of the statistics on child sexual abuse cases in China in 2017*, published in 2018

Amber Peterman, Karen Devries, Claudia Cappa, Who perpetrates violence against children? A systematic analysis of age-specific and sex-specific data, 2017

Beijing Children's Legal Aid and Research Center, Report on the analysis of the cases on domestic violence against children, 2014

Beijing Yuanzhong Gender Development Center, Survey Report on the Implementation of the Anti-Domestic Violence Law, 2017

Global Initiative to End All Corporal Punishment of Children, Progress towards prohibiting all corporal punishment in Europe and Central Asia, 2017

Council of Europe, Strategy for the Rights of the Child (2016-2021)

Netherlands Youth Institute: Combating child abuse and neglect in Germany, Hungary, Portugal, Sweden and The Netherlands, 2012

Jodi Mak, Majone Steketee, Verwey-Jonker: Prevent and Combat Child Abuse: What Works – An overview of regional approaches, exchange and research, 2012

Fundamental Rights Agency: Mapping child protection systems in the EU, 2015

European Court of Human Rights: Research Report: Child sexual abuse and child pornography in the Court's case-law, 2011

European Court of Human Rights: Research report: Child sexual abuse and child pornography in the Court's case-law, 2011

World Health Organization, Global Estimates of Health Consequences Due to Violence against Children. (Background Paper to the UN Secretary-General's Study on Violence against Children in 2006, Geneva)

Articles

Julie Goldscheid & Debra J. Liebowitz, Due Diligence and Gender Violence: Parsing its Power and its Perils, Cornell International Law Journal Vol. 48, 2015

Ursula Kinkelly, Protecting Children's Rights under the ECHR: The Role of Positive Obligations, 61 N. Ir. Legal Q. 245 (2010)

Ursula Kinkelly, The Best of Both Worlds for Children's Rights: Interpreting the European Convention on Human Rights in the Light of the UN Convention on the Rights of the Child, Human Rights Quarterly, Vol. 23, No. 2, 2001

L. A. McClosky, A. J. Figueredo and M. P. Koss, "The effect of systemic family violence on children's mental health", Child Development, vol. 66: (1995)

UNICEF and The Body Shop International Plc., Behind Closed Doors: The Impact of

Domestic Violence on Children, 2006

UNICEF: Adapting a Systems Approach to Child Protection: Key Concepts and Considerations, 2010

Qian Xiaofeng: The problems and solutions for the vulnerable children whose parents have been deprived of the qualification of guardians, Journal of Research on the Prevention of Juvenile Delinquency, No.5, 2006

Ilan Katz, Co-Operating and Communicating: A European Perspective on Integrating Services for Children, Child Abuse Review Vol: 429-439,2006

Luo Renfu, Wang Tianyi, Zhang Linxiu, Bai Yunli: From poverty reduction to poverty prevention- the perspective of intergenerational poverty transmission and early development of children, Technology Promote Development, 13 (6) :426-433, 2017

General comments, resolutions, guidelines and concluding observations

Committee on the Rights of the Child, General comment No. 13 (2011), The right of the child to freedom from all forms of violence

Committee on the Rights of the Child, General comment No. 8 (2006), The Right of the Child to Protection from Corporal Punishment and Other Cruel or Degrading Forms of Punishment

Committee on the Rights of the Child: General Comment No. 14 (2013), The Right of the Child to have his or her best interests taken as the primary consideration

Committee on the Rights of the Child: General Comment No. 12 (2009), The right of the child to be heard

Committee on the Rights of the Child: General Comment No. 5 (2003), General measures of implementation of the Convention on the Rights of the Child

UN General Assembly: Promotion and protection of the rights of children, 29 August, 2006

The Human Rights Committee: General comment No. 20: Article 7 (Prohibition of torture, or other cruel, inhuman or degrading treatment or punishment), Forty fourth session (1992).

CEDAW Committee, General Recommendation No. 19, 1992

CEDAW Committee, General Recommendation No. 31, 2014

CEDAW Committee, General Recommendation No. 35 on gender-based violence against women, 2017

UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, 2005

Recommendation of the Committee of Ministers to Member States on violence in the family, 1985

The Council of Europe Policy Guidelines on Integrated National Strategies for the Protection of Children from Violence, 2009

Recommendation 1666 (2004), Europe-wide ban on corporal punishment of children

Recommendation of the Committee of Ministers to member states on policy to support positive parenting (2006)

EU Guidelines on the Promotion and Protection of the Rights of the Child, 2017

The Guidelines of Council of Europe on child-friendly justice and explanatory memorandum of Guidelines on child-friendly justice, 2007

UNCRC Committee, 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

UNCRC Committee, Concluding observations: China (including Hong Kong and Macau Special Administrative Regions), CRC/C/CHN/CO/2 24 November 2005

Table of cases

CASE OF E. S. and Others v. Slovakia (Application no. 8227/04), ECtHR, Judgement of 15 September 2009

Case of A. v. THE UNITED KINGDOM (100/1997/884/1096), ECtHR, Judgement of 23 September 1998

Individuals v. Sweden, No 8811/79, 13 of December 1982

Case of E. and others v. THE UNITED KINGDOM (Application no. 33218/96), ECtHR, Judgement of 26 November 2002

Case of Osman v. the United Kingdom, judgment of 28 October 1998, Reports 1998-VIII, pp. 3159-60

Case of Z and others v. THE UNITED KINGDOM (Application no. 29392/95), ECtHR, Judgement of 10 May 2001

Case of O'KEEFFE v. IRELAND (Application no. 35810/09), ECtHR, Judgement of 28 January 2014

Case of K.A. v. Finland, no. 27751/95, ECtHR, Judgement of 14 January 2003

Case of JUPPALA v. FINLAND (Application no. 18620/03), ECtHR, Judgement of 2 December 2018

Online resource

The 2010 population census of the People's Republic of China, National Bureau of Statistics of the People's Republic of China, <http://www.stats.gov.cn/tjsj/pcsj/rkpc/6rp/indexch.htm>

The data on the rural left-behind children in China, the Ministry of Civil Affairs issued by November 2016, available at <http://www.mca.gov.cn/article/zwgk/jd/201611/20161100002462.shtml>

Experts reporting the difficulty to implement the laws due to the large number of hidden cases, <http://news.sina.com.cn/o/2017-11-17/doc-ifynwnty4137495.shtml>

The statistical and monitoring report on the implementation of the National Programme for Child Development (2011-2020) in 2014, http://www.nwccw.gov.cn/2017-05/24/content_163725.htm

There are 69 cases in which the guardian's right has been deprived, in China until 2017 August of 2017, source from the Ministry of Civil Affairs, http://www.xinhuanet.com/2017-08/16/c_1121494026.htm

SPC, Model cases on the deprivation of the qualification of the guardians, <http://www.court.gov.cn/zixun-xiangqing-21481.html>

Promoting the establishment of children's home in communities, China Women's News, 2017.9.11, <http://www.cdsfl.org.cn/show-12-11801-1.html>

Response by the Ministry of Civil Affairs on the situation of the left-behind children, 2018.3.10, http://www.cnr.cn/sxpd/ws/20180310/t20180310_524160447.shtml

The child welfare director pilot in the villages in 5 remote provinces in China, 2015.5.331, <http://politics.people.com.cn/n/2015/0531/c70731-27082184.html>

Council of Europe, children's rights, available at <https://www.coe.int/en/web/children/children-s-rights>

Corporal punishment in Europe, <https://www.coe.int/en/web/children/corporal-punishment>

EU Framework of Law for Children's Rights, European Parliament, 2012, available at <http://www.europarl.europa.eu/studies>

10 Principles for integrated child protection systems, available at

https://ec.europa.eu/info/strategy/justice-and-fundamental-rights/rights-child/violence-against-children_en.

Summary of EU-funded projects on rights of the child and violence against children 2013-2018.1.31, available at https://ec.europa.eu/info/strategy/justice-and-fundamental-rights/rights-child/violence-against-children_en

Rachael Hetherington, Learning from Difference: Comparing Child Welfare Systems, June 2002, <http://scholars.wlu.ca/pcfp>

Andy Guth: Reform steps towards child protection Bulgaria-Romania: a comprehensive approach, 2014, available at <http://www.childpact.org/2014/04/10/reform-steps-towards-child-protection-in-bulgaria-and-romania-a-comparative-approach/>.