

Chinese internal rural migrant children and their access to compulsory education

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**CHINESE INTERNAL RURAL MIGRANT CHILDREN AND
THEIR ACCESS TO COMPULSORY EDUCATION**

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Queen Mary, University of London

Submitted in partial fulfilment of the requirements of the Degree of Doctor of
Philosophy

Declaration

I declare that the work present in this thesis is my own. Any work from other authors is duly referenced and acknowledged.

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Date:

Abstract

CHINESE INTERNAL RURAL MIGRANT CHILDREN AND THEIR ACCESS TO COMPULSORY EDUCATION

During a period of unprecedented rapid urbanisation and social transformation in China, this thesis considers the children of internal rural migrants and their access to compulsory education in the regions where they settle.

There are currently 38 million such children. Institutional and systemic challenges often bar them from receiving an education of adequate quality, equal to that of their peers.

The thesis reviews the legal and regulatory framework covering childrens' right to education at both international and national domestic levels. It then describes the actual experience of internal migrant children attempting to access schools, and analyses the main factors barring them from the education they are entitled to. These barriers are categorised in a '4-A' conceptual framework – Availability, Accessibility, Acceptability, Adaptability. The research draws on a range of secondary data, supplemented by interviews conducted with personnel engaged in education in Beijing.

The main findings are that, though the legal framework of rights is generally sufficient, inadequate institutional and normative arrangements and lack of government accountability (at all levels) work together to hinder proper implementation of relevant laws and regulations. The problem is exacerbated by the institutional barrier of *hukou*-based enrolment and registration, and deepened even further by the current cadre and local governance arrangements, with the information asymmetry they engender.

The thesis concludes that, at central, provincial and municipal levels, adequate funding for the education of migrant children must be assured, especially in the dense receiving regions. A new enrolment system is required based on a child's current place of residence. Finally, a reform of the current civil service and cadre management systems is needed, with a move away from current growth-oriented development strategies that impose policy burdens and subordinate the children's good to the pursuit of economic targets.

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Dedication

This thesis is dedicated to all children, those living and those yet to be born.

The famous Chinese philosopher Lao Tzu said, 'A journey of a thousand miles begins with a single step.' This thesis, aimed at raising awareness of the need to protect marginalised children in China, is intended also as a 'single step' which will contribute to the eventual formulation of a regional convention on the rights of the child in Asia, a convention which as yet is still lacking.

CHAPTER 1: INTRODUCTION

1.1 Background to this research

Since the introduction of economic reform in China and its ‘opening-up’ to the world in 1978, the country has successfully transformed its economy from a planned system (established by the state after the model of the Soviet Union) to a thriving market economy. The nation’s ‘burgeoning economic success’ has raised the standard of living and has resulted in an ‘unprecedented surge of urbanisation’.¹ This has entailed what is thought to be the largest flow of migration from the countryside to the cities in all of world history.² Although many European, American and developing countries have experienced the urbanisation process,³ the massive internal migration in China has unique characteristics since it has been mainly caused by sudden institutional and structural changes following the market-oriented economic reforms in the country.⁴ In the central planning period, the state monopoly on agricultural products, the household registration system (the *hukou*) and the people’s commune system all prevented rural peasants from migrating to the cities.⁵ Since the economic reform in 1978, however, the integration of a rural labour force into non-agricultural activities has brought about the transfer of millions of rural workers to urban areas. The internal migration of workers has become, and will continue to be, a momentous driving force contributing

¹ ‘Preparing for Chinese Urbanisation’
<http://www.mckinsey.com/mgi/publications/china_urban_billion/> accessed 29 August 2012

² *Ibid.*

³ For example, in the two decades since 1978, about 174 million people (more than the total population of many large countries in 1998, such as Brazil with 166 million and Russian with 147 million) have moved from rural areas to cities, creating the largest flow of migration in world history. This historically unprecedented migration constitutes 75% of the total increase in urban population in that period. Kevin Honglin Zhang, Shunfeng Song, ‘Rural-urban Migration and Urbanisation in China: Evidence from Time-Series and Cross-Section Analyses’ (2003) 14 *China Economic Review* 386-400

⁴ Fang Cai and Dewen Wang, ‘Impacts of Internal Migration of Economic Growth and Urban Development in China’ Josh DeWind and Jennifer Holdaway (eds) *Migration and Development Within and Across Borders: Research and Policy Perspectives on Internal and International Migration* (IOM International Organization for Migration and The Social Science Research Council, 2008) 245-272

⁵ Fang Cai, ‘Approaching a Triumphant Span: How Far is China Towards its Lewisian Turning Point?’
<http://www.wider.unu.edu/publications/working-papers/research-papers/2008/en_GB/rp2008-09/>
accessed 30 December 2012

to China's fast economic growth and the acceleration of industrialisation, modernisation and urbanisation.⁶

The latest 2010 Sixth National Population Census of China,⁷ released in 2011 indicates that the urban population in the country has increased to 49.68 per cent of the total population, accounting for around 665.57 million citizens,⁸ compared to the 50.32 per cent who live on the land (674.15 million).⁹ In comparison with the 2000 Census, the number of urban residents has increased by 13.46 per cent (207.137 million people), while the number of rural residents has dropped by 133.237 million.¹⁰ The census figures also show that in the 31 provinces, autonomous regions and municipalities of China, 261.39 million internal migrants live (as of 2010) in places other than the townships or streets where they have their household registration (the *hukou*) and have been doing so for over six months.¹¹ Of this total, only 39.96 million have obtained a new official current residence corresponding to their present situation; the remaining migrants still registered in their places of origin number around 221.43 million persons.¹² Moreover, even though intra-provincial migration has been higher than migration to different provinces, the eastern coastal area – comprising the Pearl River Delta Economic Zone and the Yangtze River Delta Economic Zone (the key regions responsible for the country's imports, exports, manufacturing and modern services) – is still the most popular destination for internal migrants.¹³ The population of this

⁶ *Ibid.* Ma Jiatang, 'Press Release on Major Figures of the 2010 National Population Census' <http://www.stats.gov.cn/english/newsandcomingevents/t20110428_402722237.htm> accessed 13 December 2012; Dewen Wang, 'Rural-Urban Migration and Policy Responses in China: Challenges and Options' (ILO Asian Regional Programme on Governance of Labour Migration Working Paper No. 15, July 2008)

⁷ It was conducted by the National Bureau of Statistics of China with a zero hour on 1 November 2010. 'Communiqué of the National Bureau of Statistics of the People's Republic of China on Major Figures of the 2010 Population Census (No.1)' <http://www.stats.gov.cn/english/newsandcomingevents/t20110428_402722244.htm> accessed 13 December 2012

⁸ *Ibid.*

⁹ *Ibid.*

¹⁰ *Ibid.*

¹¹ *Ibid.*

¹² *Ibid.*

¹³ 'China's Mainland Population Grows to 1.3397 Billion in 2010: Census Data' <http://news.xinhuanet.com/english2010/china/2011-04/28/c_13849795.htm> accessed 22 January 2013; Cai and Wang (n 4) 253

eastern coastal region had already expanded enormously in the years up to 2010, and it is now equivalent to 37.98 per cent of the total permanent resident population of the other 31 provinces, autonomous regions and municipalities combined.¹⁴ For example, Guangdong province, in this eastern coastal region, has the greatest population density of all Chinese provinces,¹⁵ with a population reaching around 104 million.¹⁶ The central and western regions account for 26.76 per cent and 27.04 per cent of the Chinese population respectively, while the north-eastern region accounts for only 8.22 per cent.¹⁷ The speed of urbanisation will accelerate. Such tremendous ongoing urbanisation, closely associated with internal migration, seems likely to continue for the next ten years. Research conducted by Mckinsey on the development of urbanisation in China suggests that the Chinese urban population will expand from 572 million in 2005 to 926 million in 2025.¹⁸ The scale is immense: to put it into perspective, the projected increase of more than 350 million Chinese urban dwellers is larger than the entire population of the United States today.¹⁹ The population movement will promote the emergence of new cities. They will expand from 858 cities in 2005 to 939 by 2025, and 221 of them will have more than one million inhabitants.²⁰ Over the next twenty years, Beijing and Shanghai will gain populations of more than 20 million.²¹

In the course of the rapid internal migration, the number of internal migrant children has also increased greatly. This is because, since the 1990s, they have moved to the metropolitan regions with their families.²² Compared to the 11,260,000 migrant

¹⁴ Ma (n6)

¹⁵ Ma (n 6)

¹⁶ ‘Communiqué of the National Bureau of Statistics of the People’s Republic of China on Major Figures of the 2010 Population Census (No.2)’
<http://www.stats.gov.cn/english/newsandcomingevents/t20110429_402722516.htm> accessed 29 January 2013

¹⁷ Ma (n 6)

¹⁸ Mckinsey Report (n 1)

¹⁹ *Ibid.*

²⁰ *Ibid.*

²¹ *Ibid.*

²² ‘A Joint Project Update on Internal Migrant Children in China between the Institute of Population Research, University of Ren Ming and UNICEF 2011 (1) September’
<<http://rkxx.ruc.edu.cn/Html/kexueyanjiu/renkouyanjiu/48610797150.html>> accessed 13 June 2012;

children in China in 2005,²³ the number has increased to 38 million under the age of 18. Of these, according to the Sixth National Population Census conducted in 2011, 28 million retain their rural *hukou* and 10 million have an urban *hukou*.²⁴ The number of migrant children will continue to increase in the future.²⁵ Despite these numbers and despite living ‘under the same blue sky’,²⁶ these migrant children have experienced great difficulties in accessing social services in the cities where they have moved; they are ‘second class citizens’ compared with children born and brought up in the city regions. The difficulties are especially great when it comes to accessing compulsory education (the first stage of formal schooling) in the state schools of the receiving cities. In order to ensure accessibility of compulsory education for migrant children, Art. 12 was added as an amendment to the *Compulsory Education Law* in 2006 requiring local governments in the receiving cities to provide ‘equal conditions’ for migrant children in their access to compulsory education in local state schools. The national regulations for migrant children and their schooling have also changed substantially from administrative restriction to active encouragement.²⁷ In the period

Liang Zai and Chen Yiu Por, ‘The Educational Consequences of Migration for Children in China’ *Social Science Research* 36 (1) (2007) 285-247

²³ In the analysis of a sample census conducted on a 1% segment of the population in China in 2005, 12.45% of children between 0 and 14 years were migrants, which was about 11,260,000 migrant children in the whole country. Duan Chengrong and Yang Ke, ‘The New Development of Internal Migrant children in China – An Analysis Based on 1% National Population Sample Census’ (2008) 6 *Population Journal* 28

²⁴ ‘A Joint Project Update on Internal Migrant Children in China’ (n 22); Wu Ni, ‘Gaokao for Migrant Children: Releasing hukou in Medium and Small Cities’ <http://edu.china.com.cn/2012-02/16/content_24655805.htm>; Zhao Yu, ‘Family Social and Economic Statuses of Migrant Children and Educational Expectation’ <http://ciefr.pku.edu.cn/publishsinfo_1758.html> accessed 12 December 2012

²⁵ Wu Ni, ‘The Issue of Internal Migrant Children Taking Junior and Senior High School Examinations in Receiving Cities’ <http://www.qsttheory.cn/zxdk/2012/201204/201202/t20120213_138374.htm>; Yuanyuan Chen and Shuaizhang Feng, ‘Access to Public Schools and the Education of Migrant Children in China’ (The Institute for the Study of Labor, Discussion Paper NO. 6853, September 2012) <<http://ftp.iza.org/dp6853.pdf>> accessed 19 December 2012

²⁶ In 2003 when Premier Wen Jiabao visited Yu Quan Lu Elementary School for migrant children in Beijing, he wrote on the blackboard: ‘GROWING UP TOGETHER UNDER THE SAME BLUE SKY’. Huang Chuanhui, ‘Where is My Desk? A Research on Rural Migrants’ Children and Their Education’ (Ren Min Wen Xue Press 2006) 235; Zhang Tao, ‘The New Year Wish for Migrant Children from the Premier Wen Jiabao, The Key Coming Year for the Right of Migrant Children to Education’ <http://news.xinhuanet.com/edu/2004-11/17/content_2227120.htm> accessed 6 June 2011; Guangyu Tan, ‘Under the Same Blue Sky? Inequity in Migrant Children’s Education in China’ (2010) 12 (2) *Current Issues in Comparative Education* 32

²⁷ Jing Liu and W James Jacob, ‘From Access to Quality: Migrant Children’s Education in Urban China’ (2012) September *Educational Research for Policy and Practice*; See Chapter 2. Section 2.4 ‘A Review

from the 1980s to the 1990s the regulations were totally inadequate: they aimed at controlling freedom of movement and blocked the rural population from ‘floating’ to the cities. But since the beginning of the twenty-first century national regulations on internal migrant children have tried to promote fairness.

Nevertheless, in practice many migrant children are still excluded from the state education system. For example, because of their families’ high mobility, migrant children are often late entrants, and being over-age in elementary school is a common problem. In addition, transfers between schools hold back academic progress and also make it very difficult for schools to manage student records. When migrant children apply to state schools, their parents are required to submit a variety of different credentials, normally including a temporary residence permit, proof of the family’s present address, an employment permit, a guardianship certificate and a *hukou* certificate for the whole family, and they have to go through a complicated enrolment procedure with the local authorities. The practice of levying temporary schooling fees on these children in state schools is also a concern, although there is great variation in practice between the different regions. In the eastern coastal region, hard-pressed areas such as Dongguan, Shenzhen and Guangzhou cities (which receive a very large number of migrant children every year) levy fees in local state schools routinely because they have limited financial resources. Shanghai, by contrast, now manages to offer free compulsory education for all migrant children, sharing the costs between its local governments at city and district levels. Moreover, owing to poor linkage between compulsory education and senior high school education in the different provinces of China, migrant children are only allowed to take the high school entrance exam (*zhongkao* or *huikao*) and the national college entrance exam (*gaokao*) in the place where their *hukou* is located, no matter how long they have lived and studied in their receiving cities. Consequently, many students have to return to their home towns in order to attend senior high school and to take the exams there. This is not a workable system: since the curricula and pedagogical systems are different in the different provinces and the students must also adapt back to rural life, they often fail to perform well in the examinations. Thus many young people choose to enter employment rather than continue their studies in this way, or else they simply drop-out.

of National Policy Development for Improving Compulsory Education for Internal Rural Children in China’

Because of the harsh realities faced by migrant children, many choose to attend privately-run ‘migrant schools’, specifically designed for them, in the receiving regions. These schools have emerged as alternatives, and have mushroomed in numbers to accommodate the practical needs of both the children and their migrant parents. However, migrant schools are by no means a panacea. In many of them there are poor physical conditions, low academic standards and unprofessional teachers, all of which directly jeopardise the quality of education the children receive. In practice, there are a large number of unlicensed migrant schools that operate illegally without any official approval. This means that if migrant children attend these illegal migrant schools, they cannot obtain any official academic certificates accredited by the local department of education. Formal academic certificates are crucial for children to advance within the education system.

These are a number of major barriers and challenges presented by the current Chinese institutional and normative arrangements – barriers and challenges which tend to bar migrant children from receiving an education of adequate quality and which jeopardise law enforcement in practice. An inadequate national expenditure on education is one of the causes of the arbitrary, unreasonable fees charged in the real-world educational system, charges which migrant families cannot afford. State schools in the receiving regions, especially in the big cosmopolitan cities, naturally feel reluctant to enrol migrant children because of the low budgetary allocation in general and a system of decentralised financing in compulsory education (as part of larger fiscal decentralisation and reform), meaning that local governments at district and county levels are reluctant to incur the fiscal burden of extending education to outsiders. It could be argued that financial accountability for funding migrant children has not been properly clarified in the current regulatory framework.²⁸ Under the decentralised financing and administrative system of education, the central, provincial and municipal governments have let go of their responsibilities for migrant children, passing them down to the lowest levels of government without either defining their own financial responsibilities or taking an interest in how much financial support

²⁸ For example, Jie Dong; ‘An Analysis on the Policy Regarding the Operation of Funds for Compulsory Education for Rural Migrant Children’ <http://www.zhuanxing.cn/html/Education_Right/380.html>; Yuan Liansheng, ‘Public Expenditure on Education and Internal Migrant Children’ <http://www.zhuanxing.cn/html/Education_Right/387.html> accessed 12 March 2013

might be needed. The situation especially disadvantages migrant children. This can be seen in the densely urbanised receiving cities in the eastern coastal region. State schools in this hard-pressed area naturally feel reluctant to enrol an influx of migrants because of the limited places they have and because of the financial pressures their local governments are already under. So imposing the obligation to finance schooling upon the local authorities at county level without ensuring that they have the resources to do it forces them, in turn, to make migrant parents bear more indirect costs for their children's schooling. This problem has been exacerbated by the institutional barrier of *hukou*-based enrolment and registration: in practice local governments tend to distribute financial resources to fund compulsory education on the basis of the number of permanent residents rather than on actual numbers (including migrant children). Even though Art. 12 of the *2006 Compulsory Education Law* mandates that the receiving cities should provide compulsory education for migrant children, if there is no reform of the *hukou*-orientated enrolment and registration system and the corresponding financing and managerial mechanisms for compulsory education, there is no hope that the levies of fees and the demands for various credentials (before migrant children can even get access to education) will be stopped.

In terms of legal accountability, the Constitution and the *Legislation Law of China* license provinces, autonomous regions and municipalities to formulate their own concrete measures. Yet lacking any guidelines or supervision from the central government, local governments tend to make decisions based on pragmatism and on local perspectives and priorities. Naturally this leads to uneven implementation. Law enforcement may further be weakened by the inadequate policy coordination, ambiguity and conflicting interests amongst multiple national and local agencies on the horizontal plane. The educational supervisory institutions are dependent bodies coming under the local education administrative authority itself. So lack of effective democratic supervision and a decision-making mechanism at the local level makes it hard for local authorities to act purposively and guarantee the fulfilment of the public service requirements laid on them. Furthermore, the absence of a judicial relief mechanism specifically dealing with redress in the case of children's rights to education being denied is another concern.

At the political level, lack of political accountability and incentive, aggravated by issues regarding the current cadre system and local governance as well as

information asymmetry may also be factors working against enforcement of the provision for ensuring an adequate education for migrant children.

All in all, inadequate institutional and normative arrangements and undefined government accountabilities at the financial, legal and political levels work together to hinder the proper implementation of laws and regulations intended to ensure that migrant children receive the education to which they are entitled. In the receiving cities, these factors raise barriers to achieving the availability, accessibility, accessibility and adaptability of education these children need. This is why local enforcement is patchy and inconsistent, despite a relatively sound national regulatory environment.

1.2 Definitions and clarification

1.2.1 Internal migrant workers

Internal migrant workers in China are often called rural migrant workers (*nong ming gong*) or the ‘floating population’ (*liu dong ren kou*).²⁹ The term ‘rural migrant workers’ – the English translation of *nong min gong* – usually refers to people who hold an ‘agriculture household registration’ and a land contract in the rural areas but who migrate to towns or cities to find non-agricultural work. They rely on wages as their main income source.³⁰ However, the term ‘*nong min gong*’ has been criticised as discriminatory by scholars.³¹ The first two words, ‘*nong min*’ mean ‘rural peasants’, and ‘*gong*’ denotes ‘labourer’, so Tomasevski has condemned the usage because the migrant workers are seen as rural ‘labourers’ rather than as people.³² This opinion is supported by Han Jianling, a well known sociologist in China. She points out the ambiguity behind the usage of ‘rural migrant workers’:

²⁹ The term ‘migrant workers’ in this research refers only to *internal* migrant workers who migrate within China. The usage is different from ‘migrant worker’ in public international law, which refers to a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a state of which he or she is not a national, as enshrined in the *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*. UNGA Res 45/158 (18 December 1990)

³⁰ Zhihong Wang and Yun You, ‘A Theoretical Analysis of the Definition of Internal Migrant Workers’ in Centre for Migrant Workers, the State Council (ed) *The Issues of Migrant Workers in China* (China Labour and Social Security Publishing House 2009) 70-71; Na Lan, ‘Is There New Hope in Labourer Rights Protection for Chinese Migrant Workers?’ (2009) 10 (2) *Asian-Pacific Law & Policy Journal* 484

³¹ *Ibid.*, Wang and You 64

³² UNCHR ‘The Right to Education: Report Submitted by the Special Rapporteur, Katarina Tomasevski, Mission to China’ UN Doc. E/CN.4/2004/45/Add. 1, para. 5

When you reflect on the term ‘rural migrant workers’, it does not give you the real identity of these people. Whether they are rural peasants or workers is unclear. When the industrial system needs them, rural migrant workers are recruited just as workers; when it does not need them, especially in the recession, we just sent them back to their places of origin in rural areas as rural peasants. When the government designed the relevant regulations, they actually did not want to fully integrate rural migrant workers into the cities as permanent citizens. Yet in the midst of urbanisation, with the influx of migrants, including their children migrating into the cities, it has become an inevitable issue for the government to face, as these children have to attend local schools but the system did not really consider integrating rural migrant workers and their children into the cities. Thus both migrant workers and their children have been marginalised and deprived of equal access to education, social welfare and medical care (because of the restrictive *hukou* system and normative arrangement).³³

1.2.2. Internal rural migrant children

The definition of internal rural migrant children first appeared in the *Trial Measures on the Issue of School-age Children Amongst the Floating Population Accessing Education in Cities and Towns*, which were adopted by the National Commission of Education in 1996. ‘School age floating children’, as used in the document, referred to ‘children between the ages of six and fourteen (or seven and fifteen) who [had] the ability to study amongst those floating populations’.³⁴ The *Trial Measures* also defined the ‘floating population’ (migrant workers) as ‘people who obtain temporary residence permits and carry out business or other relevant activities at county and township levels’.³⁵ Definitions of ‘floating population’ and ‘school age floating children’ did not, at this stage, specifically state whether the migrants had come from rural regions to the cities.

In this study, the term ‘internal migrant children’ is applied to children whose *hukou* are not located at county government or a level above, but who have migrated and are legally living with their parents or legal guardians in a county, city or unit at a higher level, and who receive (or should receive) the nine years of compulsory

³³ Han Jialing, *The Current Situation of Internal Migrant Children and Their Compulsory Education* <http://www.zhuanxing.cn/html/Education_Right/709.html> accessed 30 August 2012

³⁴ Art. 3

³⁵ Art. 2 of the *Measures on School-age Migrant Children's Access to Education in Cities and Towns (Trial Version)*

education stipulated by law.³⁶ These children include: (1) ones born in rural areas (therefore having rural ‘*hukou*’ (IDs) and who have migrated with their parents to an urban area; and (2) children born in an urban area to migrant parents.³⁷

1.2.3 Rights to education and duties of providing it in international law and Chinese national legislation

When the last of the key research questions is discussed in Chapter 4, the ‘4-A’ Scheme is used as a conceptual framework to guide analysis and structure the argument. The ‘4-As’ are aspects of the right to education and are: Availability, Accessibility, Acceptability and Adaptability. The ‘4-A’ Scheme is a rights-based approach developed by the Special Rapporteur of the UN Commission on Human Rights on the Right to Education and refers back to relevant human rights instruments (as discussed in Chapter 2). It is a useful means of identifying the main barriers that hinder migrant children from receiving an education of adequate quality. So that the discussion on rights can be followed, a brief introductory discussion is needed on the distinction between rights (exercised by or in the state) as negative restraints or as positive duties and the basic implications of each kind.

Amidst the tensions of the Cold War, a distorted and ‘artificial distinction’³⁸ developed, dividing human rights into civil and political rights on the one hand, and economic, social and cultural rights on the other.³⁹ The former laid down negative duties of restraint on the part of the state – such as not interfering with freedom of speech. The latter (normally associated with equality in socio-economic rights) required positive duties from the state – for example, providing housing and education.⁴⁰ In other words, civil and political rights traditionally refer to ‘rights which

³⁶ Yuan Zhenguo and Tian Huisheng, *A research on the Issue of Internal Migrant Children’s Access to Education in China* (Education Science Publishing House 2010) 15

³⁷ *Ibid.*

³⁸ Geraldine Van Bueren, *Child Rights in Europe, Convergence and Divergence in Judicial Protection* (Council of Europe 2008) 152

³⁹ Katarina Tomasevski, *Human Rights Obligations: The 4-A Scheme* (Wolf Legal Publishers 2006) 10

⁴⁰ Sandra Fredman, *Human Rights Transformed: Positive Rights and Positive Duties* (Oxford University Press 2008) 66

protect individuals against intrusion by the state’; whereas socio-economic rights require the ‘protection by the State against want or need’.

Nevertheless, the two sets of rights are indivisible and have equal importance. As Fredman argues, without the provision of basic social and economic rights in the first place, civil and political rights cannot be fully attained.⁴¹ An example is freedom of speech and assembly, which would have little meaning to homeless people who are starving. Freedom of speech is linked to the provision of academic freedom, empowering individuals to express opinions freely, so that they are ‘free to pursue, develop and transmit knowledge and ideas through research, study, discussion, documentation, production, creation or writing’.⁴² Moreover, some fundamental rights, such as protection against torture or cruel, inhuman or degrading treatment or punishments, may be scarcely attainable without socio-economic rights in place.⁴³ Such arguments are supported by Sen, who points out that ‘political rights are not only pivotal in inducing political responses to economic needs, they are also central to the conceptualisation of economic needs themselves.’⁴⁴ Accordingly, the paradigm of the indivisibility of both sets of rights is enhanced by the Vienna Declaration and Programme of Action of 1993,⁴⁵ which states that all human rights are ‘indivisible and interdependent and interrelated’.⁴⁶ In its Preamble, the International Covenant on Civil and Political Rights also insists that ‘[t]he idea of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights.’ Nevertheless, these entitlements to human rights – to political and civil liberties and to economic and social security – have a quite close relationship with capabilities,⁴⁷ and the language of capabilities provides ‘important

⁴¹ *Ibid.*, 67

⁴² CESCR Committee ‘General Comment No. 13: The Right to Education (Art. 13 of the CESCR)’ UN Doc E/C.12/1999/10, para. 39

⁴³ Fredman (n 40) 67

⁴⁴ Amartya Sen ‘Freedoms and Needs’ *The New Public* (10 and 17 January 1994) 31, 32, cited in Fredman *ibid* 40

⁴⁵ (Adopted by the World Conference on Human Rights in Vienna on 25 June 1993)

⁴⁶ Para. 5

⁴⁷ Martha C. Nussbaum, ‘Capability as Fundamental Entitlements: Sen and Social Justice’ (2003) 9 (2-3) *Feminist Economics* 33-59

precision and supplementation to the language of rights'.⁴⁸ The notion of human rights, according to Nussbaum, is 'by no means a crystal clear idea' because it has been understood in many different ways: this is because people differ about 'whether rights belong only to individual persons, or also to groups'; whether rights are 'prepolitical or artefacts of laws and institutions'; or whether rights are to be considered 'side-constraints on goal-promotion action or rather as one part of the social goal that is being promoted'.⁴⁹ They also differ on how they see the relationship between rights and duties, and 'what rights are to be understood as rights *to*' do, have or be.⁵⁰ The capabilities approach, on the other hand, has the advantage of taking clear positions in these dispute issues, specifying what the motivating concerns are and what goal is sought (although the relationships between these two notions needs further scrutiny).⁵¹ It also makes clear that ensuring someone can enjoy a right requires more than the absence of negative state action.⁵² Indeed, a negative duty of restraint on the part of the state (particularly apparent in political and civil rights) seems insufficient when, for example, it comes to the protection of marginalised children. In practice the children need more than a negative holding back: they need to be supported positively. The state, as a primary provider, has an obligation to take active measures to *fulfil* (*facilitate*) and to *ensure* that the children can receive a free and compulsory education without discrimination.⁵³ It is also a requirement on it to 'fulfil (provide) the adaptability of education by designing and providing resources for curricula which reflect the contemporary needs of students in a changing world, and fulfil (provide) the availability of education by actively developing a system of schools, including building classrooms, delivering programmes, providing teaching materials, training teachers and paying them domestically competitive salaries'.⁵⁴ (The right to education

⁴⁸ *Ibid.*, 37

⁴⁹ *Ibid.*, 37

⁵⁰ *Ibid.*, 37

⁵¹ *Ibid.*, 37

⁵² Prohibition of interfering state action, for example, are the provision in the First Amendment of the US Constitution 'Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech [...]'. The Indian Constitution, by contrast, specifies rights affirmatively by stating that 'all citizen shall have the right to freedom of speech and expression; to assemble peaceable without arms [...]' (Art. 19).

⁵³ (n 42) para. 47

⁵⁴ *Ibid.*, para. 50

in international law spans both classical political and civil rights and economic, social and cultural rights, and is discussed below). Another advantage of referring to capabilities is that the concept focuses on ‘what people are actually able to do and to be ‘on the ground.’⁵⁵ Although Nussbaum uses it to address the pertinent issue of gender equality, capability may also be a useful concept in considering the provision of an adequate education for migrant children in China. Despite a broadly sound legal and regulatory framework for education in the country, sound and effective institutional and normative arrangements are lacking, and government accountabilities at financial, legal and political levels are insufficiently defined. This means that the local authorities and state schools do not have the incentives and capacities to implement national laws and regulations and make them work to all children’s benefit. There needs to be a positive resolve – followed by action - to uphold the right to education of every child, as enshrined in Art. 1 of the *2006 Compulsory Education Law*.

The quality of indivisibility embedded in political, civil and socio-economic rights is reflected in the right to education. This right has not only social and cultural rights components but is also of a civil nature.⁵⁶ For example, the provision of compulsory primary education is a social right, as it lays a positive obligation on a government to offer access to education free of charge and introduce scholarships:⁵⁷ the government has to take active measures. The liberty of parents to choose schools for their children and decide on the religious instruction offered, by contrast, manifests the civil nature of the right to education.⁵⁸ This is affirmed in the European Convention on Human Rights: ‘No person shall be denied the right to education ... The State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.’⁵⁹ The relationship between the protection of vulnerable children (girls, street children, children living in poverty and so forth) and their educational rights clearly has a civil rights perspective too. Article

⁵⁵ Nussbaum (n 47) 39

⁵⁶ Mieke Verheyde, *Article 28, The Right to Education, A Commentary on the United Nations Convention on the Rights of the Child* (Martinus Nijhoff Publishers 2006) 2; Fredman (n 40) 215

⁵⁷ Geraldine Van Bueren, *The international law on the rights of the child* (Martinus Nijhoff Publishers 1998) 381

⁵⁸ Art. 13 (3) of the ICCPR

⁵⁹ Art. 2 of the First Protocol of the ECHR

29 (2) of the CRC regarding individuals and bodies who establish educational institutions is an example of the civil rights category.⁶⁰ Art. 28 (2) relates to school discipline, and a child's human dignity is classified as a civil right.⁶¹ In addition, there should, for example, be freedom from censorship in textbooks, and trade union freedom for teachers; and as these are important in education, states should be provided with strategies for protecting these freedoms.⁶² These examples illustrate that the right to education embraces facets of social and economic rights as well as civil rights (when ensuring safeguards for freedom of choice). Furthermore the right to education is regarded as a 'multiplier' right,⁶³ meaning that it is a 'precondition for the exercise' of civil and political rights and of economic, social and cultural rights, including the freedoms of expression, assembly and association, the right to vote and to be elected, the right to work, and the right to take part in cultural life.⁶⁴ Without a certain minimum education, civil, political, economic and social rights cannot be properly exercised.⁶⁵ In this perspective, the right to education is 'both a human right itself and an indivisible means of realising other human rights'.⁶⁶

It is not only civil, political and socio-economic rights that interrelate and are indivisible. Duties (both positive and negative) are also associated one with another. Fredman argues that 'rights cannot be distinguished by the kind of duty to which they give rise'.⁶⁷ Instead, '[the way in] which a right is viewed determines which kind of duties are in focus.'⁶⁸ For example, for political and civil rights the normal requirement is non-intervention from the state (a negative duty) because these rights are viewed

⁶⁰ Verheyde (n 56) 2

⁶¹ *Ibid.*, 2

⁶² (n 42) para. 39

⁶³ Fredman (n 40) 216

⁶⁴ Manfred Nowak, 'The Right to Education' in Asbjorn Eide and Catarina Krause (eds), *Economic, Social and Cultural Rights* (Martinus Nijhoff Publishers 2009) 245

⁶⁵ *Ibid.*

⁶⁶ *Ibid.*, 234-235; Fredman (n 40) 216; Mustapha Mehedi, 'The Realisation of the Right to Education, including Education in Human Rights' UN Doc E/CN.4.Sub.2/1999/10, para. 4; CESCR Committee 'General Discussion: Right to Education (Art. 13 and 14 of the Covenant). The Right to Education as a human right: an Analysis of Key Aspects' UN Doc E/C.12/1998/16, para. 1

⁶⁷ Fredman (n 40) 67

⁶⁸ *Ibid.*, 67

from the perspective of the enjoyment of freedom. Yet the broader meaning of freedom also entails a positive duty. This can be illustrated by the right to life, since it requires a positive duty of the state to refrain from ‘deliberately taking life’.⁶⁹ A similar paradigm applies to socio-economic rights. The landmark case *Unni Krishnan J.P & Ors v State of Andhra Pradesh & Ors*⁷⁰ is a good example to illustrate how the right to education (at least primary education) can be seen as intrinsic to the right to life.⁷¹ As Schachter states, the right to education contributes in a significant way to promoting the essence of human rights – its basic value of a right to life with dignity.⁷² Indeed, education promotes the fulfilment of the right to an adequate standard of living; it can guarantee people access to the basic skills and knowledge needed for their later lives in society. Moreover, since ‘education can be a means to retain or eliminate inequality’,⁷³ it is vital for transmitting the core values of human worth from one generation to the next, and for raising awareness about social prejudice. Education that promotes the value of understanding and respect for difference in schools can help eliminate poverty, combat social exclusion and heal other social disharmonies.⁷⁴ This would enhance the value of right to life with dignity. Conversely, education that overlooks the marginalised can be a source of exclusion for many children and can hinder integration and social cohesion. The Indian courts have so far been the only ones to read the right to education directly into the right to life. Similarly, socio-economic rights also require negative duties of restraint from the state. The right to housing, a social right, embodies ‘a restraint on the state from unlawful evictions’, and goes along with the component of maintaining respect for home, family life and privacy as a civil and political right.⁷⁵ Furthermore, positive duties include the duty of the government to enact basic laws and regulations to ensure the protection of human

⁶⁹ *Ibid.*, 67

⁷⁰ *Unni Krishnan, J.P. & Ors v. State of Andhra Pradesh & Ors*, [1993] AIR 217, [1993] SCR (1) 594, [1993] SCC (1) 645, [1993] (1) 474, [1993] SCALE (1) 290

⁷¹ The Supreme Court of India, 1993, paras. 1, 7(e), 41 and 655 of the Judgment

⁷² Oscar Schachter, ‘Human Dignity as a Normative Concept’ (1983) 4 *The American Journal of International Law* 848-854

⁷³ Tomasevski (n 39) 141

⁷⁴ *Ibid.*, 147

⁷⁵ Committee on Economic, Social and Cultural Rights, ‘General Comment No. 4, Art. 11 (1): The Right to Adequate Housing’ UN Doc. E/1992/23, para. 9

rights at the domestic level: it needs to enact the law in the first place and create the right,⁷⁶ and this presumes the establishment of institutions, such as courts.

To uphold the right to education, the state has three different levels of obligation: the obligations ‘to respect, protect and fulfil’.⁷⁷ Again the dual aspects of the state’s role come into play: positive action and negative restraint. On the one hand, the government, as a primary provider, has a positive obligation to take active measures to *fulfil* its duties, making education available and accessible for all through various types of channel or institution,⁷⁸ and at the different levels: primary, secondary and higher.⁷⁹ Such a positive obligation reflects the social right component of the right to education.⁸⁰ On the other hand, international law requires governments to *respect the freedom of education*.⁸¹ The non-interference this implies includes the requirement that states respect the liberty of parents to choose religious and moral education in conformity with their own ‘religious and philosophical convictions’,⁸² and that they respect the freedom of non-state sectors to establish and direct all types of educational institutions.⁸³ These last may differ substantially from those provided by the state in their inspiration, content and methods.⁸⁴ Furthermore, governments should *respect academic freedom*.⁸⁵ As we have seen, there should be strategies for protecting these freedoms.⁸⁶

⁷⁶ Fredman (n 40) 69

⁷⁷ (n 42) para. 46

⁷⁸ *Ibid.*, para. 47

⁷⁹ *Ibid.*, para. 48

⁸⁰ Verheyde (n 56) 1. Some consider that the right to education is an example of the ‘cultural’ rights category. *E.g.* Nowak (n 64) 253

⁸¹ (n 42) para. 47

⁸² A similar provision is enshrined in Art. 18 (4) of the ICCPR and also related to the freedom to teach a religion or belief as stated in Art. 18 (1) of the ICCPR

⁸³ For example, Article 28 (2) of the CRC and Art. 13 (3), 13(4) of the CESCR. Verheyde (n 56) 2

⁸⁴ Mehedi (n 66) para. 73(a)

⁸⁵ (n 42) para. 38

⁸⁶ *Ibid.*, para. 39

China ratified the UN Convention on the Rights of the Child (CRC) in 1992, the international legal framework defining the right to education.⁸⁷ Even though the phrase ‘the right to education’ is employed ‘abundantly’ in the Constitution of China and its legislation, they define education as an individual duty,⁸⁸ adding a ‘right to receive education’.⁸⁹ Indeed, Art. 46 of the Constitution states that ‘citizens of China have the duty as well as the right to receive education’.⁹⁰ The duty means a duty to attend school for compulsory education, and is confirmed in the *2006 Compulsory Education Law*. Art. 11 states that when ‘any child has attained the age of 6, his/her parents or other statutory guardians shall have him/her enrolled in school to finish compulsory education’. Art. 13 requires that the administrative departments of education of the governments at county, township or town level should ‘organise and urge school-age children to go to school’. Art. 58, covering legal liability, stipulates that if ‘the parents or any other statutory guardian of school-age children or adolescents fail to send them to receive compulsory education according to this law without justifiable reasons, they shall be criticised by the people’s government at the township level or the administrative department of education of the people’s government at the county level of the locality and be ordered thereby to make a correction’. Thus these provisions of the Constitution and the *Compulsory Education Law* make education a duty (which means something you have to do). Yet what is the position if migrant children are unable to attend school because their parents cannot afford the fees or because they are barred by the sheer difficulty of gaining admission to a state school?

Furthermore, Chinese legislation recognises only some provisions – mainly the social component of the right to education but not the civil aspect, which puts restraint on the government from interfering with education, and in particular from obstructing the liberty of parents to choose religious instruction. This can be seen in Art. 2 of the

⁸⁷ (n 32) para.6

⁸⁸ Art. 46

⁸⁹ Tomasevski (n 32) para. 6; For example, Art. 1 of the 2006 Compulsory Education Law states that it is ‘for the purpose of guaranteeing the right to compulsory education of school-age children and adolescents, ensuring the implementation of the compulsory education policy and enhancing the quality of the whole nation ...’, and Art. 5 indicates that ‘the people’s governments at all levels and their relevant departments shall perform all functions as prescribed by this law and shall ensure the right to compulsory education of all school-age children and adolescents’

⁹⁰ Art. 46

Compulsory Education Law, which states that ‘compulsory education is education which is implemented uniformly by the State. It is a public welfare cause that shall be guaranteed by the State.’ This clearly reflects a recognition of the social right to education, but not of civil rights. Although parental freedom to choose education is part of the Convention on the Rights of the Child, this has not been recognised at the Chinese domestic regulatory level. Art. 8 of the *Education Law* notes that ‘the state shall separate education from religion. Any organisation or individual may not employ religion to obstruct activities of the state education system.’ Religious education is therefore still prohibited in China, both in public and private educational institutions.⁹¹ It is significant that China has not ratified the International Covenant on Civil and Political Rights.⁹² One of the reasons for non-ratification may relate to the right to vote stipulated in Art. 25 (b) of the Convention. In China genuine free elections do not take place at the township levels or above,⁹³ local government still remains in the hands of cadres supervised and selected by upper-level authorities. These officials are more responsive and accountable to their higher-tier superiors than to meeting the needs of the local people they should be serving.⁹⁴ In the localities, there is therefore a lack of genuine accountability to local people and a tendency to stray from good governance. Accountability for providing education to migrant children is thus avoided.

In this unsupported situation, parents of internal migrant children do not appear to have the liberty to choose educational institutions for their children. In most cases, they resort to privately-run ‘migrant schools’ because various barriers and limits prevent them from sending their children to state schools.

⁹¹ Tomasevski (n 32) ‘Summary’

⁹² UN Treaty Collection
<http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en>
accessed 21 December 2012

⁹³ Liu and Tao point out that the state may fear that uncontrolled elections might weaken its ability to enforce national regulations and might ‘even destroy the Party’s power base’. So the government has no strong desire to promote elections at local level. It has tried to restrain local cadres by promulgating numbers of regulations to regulate local authorities to be more accountable for the central government. Mingxing Liu and Ran Tao, ‘Local Governance, Policy Mandates and Fiscal Reform in China’ in *Paying for Progress in China: Public Finance, Human Welfare and Changing Patterns of Inequality*, Vivienne Shue and Christine Wong (eds.) (Routledge 2007) 166-189

⁹⁴ The issue regarding political accountability and local governance will be discussed in Chapter 4.

1.3 Research questions

Against this background, three questions are singled out for examination in this study:

- (1) What is the legal and regulatory framework upholding the right of children to education at international level and at the national domestic level in China?
- (2) What are the lived realities internal migrant children experience in accessing education (especially compulsory education) in the regions they have moved to?
- (3) What are the main barriers presented to them within the current institutional and normative systems in China – barriers and challenges that limit the availability, accessibility, acceptability, adaptability of compulsory education for them. We must also ask: how have these barriers come about?

1.4 Methodology

Both primary and secondary data were employed in this research to support and illustrate discussions on the three key research questions identified above. The thesis is based on careful analysis of documentary evidence, using both international and Chinese national documents and regulations. There is a critical review of a large selection of secondary literature.

1.4.1 The legal framework

Chapter 2 covers the first of the key questions: What is the legal and regulatory framework upholding the right of children to education at international level and at the national domestic level in China? For this, the following sources were used.

Primary data

At the level of international human rights law, the primary data included both international human rights treaties (formal legally binding multilateral treaties, validated through definitive signatures, ratification, acceptance or approval and accession by states) and soft law documents (including declarations, resolutions and

recommendations, which may not be legally binding documents but may have a political sense). Referral to primary data also included examination of the official United Nations treaty body documents, including General Comments, Concluding Observations/Comments and State Party Reports issued by the United Nations core international human rights treaty-based bodies, including the Human Rights Committee (CCPR), the Committee on Economic, Social and Cultural Rights (CESCR), the Committee on the Rights of the Child (CRC), and the Committee on the Elimination of Discrimination against Women (CEAW). At the regional level, regional human rights instruments and relevant guidelines and principles were also examined. At the domestic national level in China, national legislation and regulations were studied and used.

Cases referring to regional human rights instruments relating to the right to education in different jurisdictions were also consulted. They are referred to in the discussion in order to specify the scope and content of the right to education and to articulate government obligations at the national level. Cases in China also appear as primary data in this chapter.

Secondary data

Academic literature (books and journals), working conference papers, research papers, newspapers and theses are all drawn on to throw light on the question at issue.

1.4.2 The experience of migrant children

Chapter 3 covers the second research question: What are the lived realities of internal migrant children in accessing education (especially compulsory education) in the regions they have moved to?

Primary data

This chapter mainly draws on secondary data, but is supplemented with primary data gleaned in fieldwork and from interviews conducted by the author with officials and with non-official personnel in Beijing in 2011 to deepen the understanding of the data analysis.

The interviews were, of course, structured, but contained an open element as well, so that interviewees could say fully what was on their minds. The semi-structured interview has been approved in the social sciences as a ‘powerful method of producing knowledge of the human situation’, and has been recognised as an effective approach for building up in-depth, nuanced data both about the position of individuals in institutions and about wider contextual themes.⁹⁵ Most important, qualitative interviewing is particularly effective at uncovering an individual’s attitude and values, aspects that do not necessarily emerge in observation, surveys or formal questionnaires.⁹⁶ In this, if it is done well, a qualitative interview can achieve a depth and complexity not obtainable by other approaches.⁹⁷ In this research, the interviews enabled the gathering of detailed, in-depth information to illustrate how various people viewed the problems of migrant children and their schooling overall. The issues in privately run schools for migrant children and in state schools were both explored and concerns from officials and non-officials were heard. An important theme that emerged was the poor linkage between compulsory education and high school education.

Based on these reasons, thirteen interviewees were selected in Beijing. There were two groups involved. The first group consisted of experts, including officials from the Ministry of Education of China, the Beijing Municipal Commission of Education and the Development Research Centre of the State Council. These interviewees were able to give the official view on the right of internal migrant children to education. The second group consisted of non-officials, including people in NGOs working with migrant children, professors, and researchers from various universities as well as the Beijing Academy of Social Sciences; also interviewed were head teachers of both a state middle school and a privately run primary school for migrant children, a local NGO in Beijing and a lawyer working for a legal aid centre for migrant workers. The interviews with the second group were intended to shed light on how the migrants themselves saw their predicament.

⁹⁵ Steinar Kvale, *Doing Interviews* (Sage 2007); Steinar Kvale and Svend Brinkmann, *Interviews, Learning the Craft of Qualitative Research Interviewing* (Sage 2009)

⁹⁶ David Silverman, *Interpreting Qualitative Data* (Sage 2006) 114

⁹⁷ *Ibid.*, 114

The central government of China has promulgated several key national educational policies (as examined in Chapter 2). In practice, as of 2011, the local governments in twelve different provinces⁹⁸ and four municipalities⁹⁹ directly under the central government have formulated their own concrete policies according to ‘the Two Main Principles’. Each province has its own policy developments and each has met its own obstacles. It was hardly feasible to conduct research in twelve different provinces, owing to limited time and resources; so Beijing was selected for an empirical case study to show what the main concerns were of the officials and non-officials involved. The reason for choosing Beijing was not only that it ranks as the city receiving the largest migrant population from other provinces of China (97.05 per cent of migrant children coming from other provinces),¹⁰⁰ but also because it has a large number of internal migrant children (23.83 per cent)¹⁰¹ in proportion to the total population of Beijing-born children. Most importantly, as the capital city of China, Beijing provides a good opportunity for interviewing high level people who work in the Ministry of Education, the main governmental organ responsible for revising, regulating and monitoring educational legislation and policies at national level.

However, although interview data provide an in-depth knowledge of how migrant children fare in Beijing, trends there do not necessarily reflect developments in other cities. In addition, the focus of this research is on the international and Chinese national legal framework and the development and implementation of regulations governing education at national and local level. It was not thought appropriate to interview the migrant children themselves on this subject, although their own voice is, of course, important in other things. (Other scholars are collecting migrant children’s personal views for other fields of research.)

Secondary data

The secondary data drawn on includes academic literature, working and research

⁹⁸ Hai Nan, Liao Ning, Yu Nan, Fu Jian, Hu Bei, Shan Xi, Xi Zang, Guang Xi, Ji Lin, Zhe Jiang, Guang Dong Provinces.

⁹⁹ Beijing, Shang hai, Tian Jing and Chong Qing.

¹⁰⁰ Yuan Zhen Guo, *The Study of Domestic Migrant Children and Education in China* (Education Science Publishing House 2010) 30

¹⁰¹ *Ibid.*, 27

papers, news articles, and accounts of relevant work by NGOs, UN bodies and other international organisations.

1.4.3 Barriers hindering attainment of the '4-As'

Chapter 4 deals with the last research question: What are the main barriers hindering attainment of the availability, accessibility, acceptability and adaptability of education for migrant children (the 4-As); and why are these barriers there at all?

Both primary and secondary data were used in this chapter. In particular it is structured around the '4-A' Scheme (Availability, Accessibility, Acceptability and Adaptability of the right to education)¹⁰² which was developed by Katarina Tomasevski, the former Special Rapporteur of the UN Commission on Human Rights on the Right to Education. This scheme offers a conceptual framework to identify the main barriers migrant children face when they seek compulsory education and to articulate the corresponding state obligations the state has towards these children. The '4-A' scheme has been endorsed by the UN Committee on Economic, Social and Cultural Rights,¹⁰³ and 'has proved to constitute a simple and easy-to-use tool for translating the international legal framework of the right to education for professionals working in education or international cooperation'.¹⁰⁴ Although Chinese domestic law does not fully conform to all that is defined as the right to education in the international legal framework, most of the content of the '4-A' Scheme is still helpful as an analytical framework, and could be a potential approach of developing a more comprehensive framework on the content of the right of the child to education in its

¹⁰² Although this framework is not definitive, the '4-A' scheme is regarded as one of the 'best ways to access and act upon the situation, because it provides an analytical tool to enable people to translate the right to education from requirement into reality'.

¹⁰³ (n 42) para. 6; The '4-A' Scheme has also been widely cited by many other scholars, such as Fredman (n 40) 220; Fons Coomans, 'In Search of the Core Content of the Right to Education' in Audrey Chapman (eds), *Core Obligations: Building a Framework for Economic, Social and Cultural Rights* (Hart 2002) 222; Klaus Dieter Beiter, *The Protection of the Right to Education by International Law* (Martinus Nijhoff 2006) 476; Shulamit Almong & Lotem Perry-Hazan, 'Conceptualizing the Right of Children to Adaptable Education' (2012) 20 (4) *International Journal of Children's Rights* 486-500; Gauthier de Beco, 'Right to Education Indicator Based on the 4-A Framework, Concept Paper' <www.right-to-education.org/sites/r2e.gn.apc.../Concept%20Paper.pdf> accessed 19 February 2013; Sital Kalantry, Jocelyn E. Getgen and Steven Arrigg Koh, 'Enhancing Enforcement of Economic, Social and Cultural Rights Using Indicators: A Focus on the Right to Education in the ICESCR' (2010) 32 *Human Rights Quarterly* 253-310

¹⁰⁴ UNCHR 'Report Submitted by the Special Rapporteur on the Right to Education, Mr. Vernor Munoz Villalobos' (17 December 2004) UN Doc E/CN.4/2005/50, para. 2

domestic regulations or guidelines. The scheme also provides a clear structure for ‘tidying up’ the complex circumstances reflected in China’s institutional, educational and legal systems.

1.5 Literature review

The first report on the educational plight of migrant children was published in the *National Education Newspaper* in 1995. It was entitled ‘Where should internal migrant children attend schools? – A discussion on migrant children and their schooling’ and was written by a reporter called Li Jian Ping.¹⁰⁵ With the developments of the past ten years, an increasing number of studies on migrant children have been made and there is a growing body of academic literature.

First, because the deep-rooted *hukou*-based system for registration and enrolment is one of the most formidable barriers, research has been done on China’s dual rural-urban segmentation and the educational problems faced by migrant children. For example, Wang,¹⁰⁶ Zeng¹⁰⁷ and Hunnum and Wang¹⁰⁸ in separate pieces of research have shown that the *hukou* system, the dual education system, and the imbalanced development of education and disparities between urban and rural regions constitute one of the main institutional barriers limiting migrant children’s access to schools on an equal basis in the regions they move to. The *hukou* system also causes negative attitudes and discrimination and prevents migrants from accessing social benefits such as health care. This perspective overlaps with studies that look at equality in education for migrant children. Mok, Wong and Zhang paint a broad picture of how marketisation and privatisation of education have ‘intensified educational inequalities and widened regional disparities between the economically developed areas on the eastern coast and the less economically developed areas in the middle-north-western

¹⁰⁵ Tang Meijuan, ‘Research on internal migrant children to education within 10 years – review and reflection’ (2009) 8 *Education Research Monthly* 17

¹⁰⁶ Wang Ying, ‘A Research on Internal Migrant Children and the Issues around their Education in the Context of Dual Rural-Urban System’ (Central China Normal University, Dissertation 2007)

¹⁰⁷ Zeng Tianshang, Deng Youchao, Yang Runyong, Zuo Xiaomei, Chu Zhaohui and Li Xiejing, ‘Balanced Development of Compulsory Education: Cornerstone of Education Equity’ (2007) *Front Education China* 469-493

¹⁰⁸ Emily Hannum and Meiyan Wang, ‘Geography and Educational Inequality in China’ (2006) 17 *China Economic Review* 253-265

parts of the country'.¹⁰⁹ Their study is based on fieldwork observations, data analysis and findings from a household survey conducted in eight cities in China.¹¹⁰ Han specifically points out that the current *hukou* system and the national managerial system in compulsory education (a decentralised system managed by county level governments) are the main institutional and systemic problems causing inequality in compulsory education for migrant children.¹¹¹ Xiao and Chen also state that such inequality is evident in the whole process of pre-enrolment, school attendance and life outcomes.¹¹²

Some researchers analyse the problem entirely through a discussion of the decentralised educational financing system and the impact it has on migrant children. For example, Guo concludes that 'decentralised financing of compulsory education tied with the household system cannot respond to the needs of migrant children's education.' Financing education for migrant children is the 'critical missing dimension of current migrant child education policy in China'.¹¹³ Dong also argues that the essential cause of educational inequality is the decentralisation of power and the devolution of state finance to regional governments, who then make burdensome financial demands on migrant parents.¹¹⁴ Her argument is supported by other scholars. This absence of financial support from the central government is regarded as the weakest feature of the national compulsory education system.¹¹⁵ In Tomasevski's

¹⁰⁹ Ka Ho Mok, Yu Cheung Wong and Xiulan Zhang, 'When Marketisation and Privatisation Clash with Social Ideals: Educational Inequality in Urban China' (2009) 29 *International Journal of Educational Development* 505-512

¹¹⁰ *Ibid.*

¹¹¹ Han Jialing, 'Education for Migrant Children in China, Background Paper Prepared for the Education for All Global Monitoring Report 2010, Reaching the Marginalized', UNESCO 2010/ED/EFA/MRT/PI/42

¹¹² Xiao Huaping and Chen Jiaoyun, 'The Problem of Unequal Education through Migrant Children in Cities' <http://neibu.nies.net.cn/snxx/wenxian/snxx_20120510082933_14083.html> accessed 1 September 2012

¹¹³ Jing Guo, 'Financing of Education: A Missing Dimension of Migrant Child Education Policy in China' (Asia Social Protection in Comparative Perspective Conference, Singapore, June 7-9 2009)

¹¹⁴ Jie Dong, 'Neo-Liberalism and the Evolvement of China's Education Polices on Migrant Children's Schooling' (2010) (8) (1) *Journal for Critical Education Policy Studies* <<http://www.jceps.com/index.php?pageID=article&articleID=179>>; Wenbin Wang, 'Dropping Out of Floating Children in China: Explanation and Evidence' <www.wise.xmu.edu.cn/labor2011/papers/Wenbin%20Wang.pdf> accessed 11 August 2012

¹¹⁵ *Ibid.*, Jie Dong 'An Analysis on the Policy Regarding the Operation of Funds for Compulsory Education for Rural Migrant Children' <http://www.zhuanxing.cn/html/Education_Right/380.html>;

words the central government's decentralisation policy has 'imposed the obligation to finance schooling upon local authorities without ensuring that they have resources corresponding to their educational responsibilities'.¹¹⁶ Murphy backs this up and goes on to state the consequences: the 'ongoing exclusion [of migrant children] may be explained by the continuing reluctance of local officials to incur the fiscal burden of extending education to outsiders.'¹¹⁷

In addition, several empirical studies have been done from an ethnographic perspective. Basing her work on research on migrant schools in Beijing, Woronov examines how new hierarchies are produced 'through embodied spatial practices within city space', and examines 'how school texts, state ideology and children's appearances produce new kinds of marginalities'.¹¹⁸ A similar study has been carried out by Goodburn, who focuses on administrative and financial barriers as well as on the discrimination that prevents migrant children from accessing state schools in Beijing. She suggests possible reasons why migrant children are so treated.¹¹⁹

In addition, many scholars have examined the development of national policies concerned with compulsory education for migrant children and the main implications behind them.¹²⁰

Yuan Liansheng, 'Public Expenditure on Education and Internal Migrant Children' <http://www.zhuanxing.cn/html/Education_Right/387.html> accessed 16 August 2012

¹¹⁶ Tomasevski, 'The State of the Right to Education Worldwide, Free or Fees: 2006 Global Report' <http://www.katarinatomasevski.com/images/Global_Report.pdf> accessed 12 March 2013

¹¹⁷ Rachel Murphy and David Johnson, 'Education and Development in China – Institutions, Curriculum and Society' 29 (2009) *International Journal of Educational Development* 447-453

¹¹⁸ T. E. Woronov, 'In the Eye of the Chicken, Hierarchy and Marginality Among Beijing's Migrant Schoolchildren' (2004) (5) (3) *Ethnography* 289-313

¹¹⁹ Charlotte Goodburn, 'Learning from Migrant Education: A Case Study of the Schooling of Rural Migrant Children in Beijing' (2009) 29 *International Journal of Educational Development* 497

¹²⁰ Liu Chengbin and Wu Xinhui, 'The Development of National Policies on Migrant Children in China' (Masters dissertation, Chinese Academy of Social Sciences 2008); Yuan Zhenguo and Tian Huisheng, *A Research on the Issue of Internal Migrant Children's Access to Education in China* (Education Science Publishing House 2010) 167; Tian Huisheng and Wu Ni, *A Study on the Issue of Rural Migrant Children's Access to Education – An Analysis on the Current Situations, Problems and Recommendations Based on the Research Conducted in Twelve Cities* (Educational Science Publishing House 2010) 21-34; Jiang Taiyan, Liu Fang, Gu Yin and Wang Shen, *From Discrimination to Fairness – An Analysis of the Children of Chinese Rural Migrant Workers and Their Schooling* (Dong Bei University Press 2008) 236-239; Liu Chengbin and Wu Xinhui, *Left-behind and Migration – The Choice of Migrant Children and Their Education* (Shanghai Jiao Tong University Press 2008) 99-114

Also, since migrant children have been so discriminated against in the cities, there has been wide discussion on the effects this has on their psychological development; on their relationships with parents, schools, and local peers; and on how they manage (or do not manage) to adapt.¹²¹

As can be seen, the problems surrounding migrant children have been studied from various perspectives. However, the outcomes of policies cannot be understood without proper examination of the normative and institutional systems within which migrant children's education is being administered. This contextualisation enables an identification and classification of the barriers that jeopardise the proper implementation of policies as well as the formulation of reformative possibilities. What is needed is to pull the various issues (lived realities and barriers) together in a structured and systematic way to provide an overall picture, not only of what education provision is required, but what government obligations should be. This is why the present research adopts Katarina Tomasevski's '4-A' scheme as a conceptual framework. The various emphases of this scheme are particularly useful for honing in on the issues that matter most.

1.6 Structure of the thesis

This thesis is organised in five chapters, this Introduction being the first.

Chapter 2 sets out the legal position concerning the right of children to education at both international and domestic levels. The provisions in international human rights law are examined in detail, so that the standards laid down can be the yardstick for assessing the adequacy of the education migrant children can access and the barriers they face (Chapter 4). The chapter starts with an exposition of the international recognition of the right of the child to education, emphasising the core content of this right and the corresponding state obligations towards children, as set out in international legal instruments. The discussion is informed by the '4-A' Scheme, which has already been explained, and this is used to guide analysis. Under the different 'A's of the '4-A' Scheme, various international human rights treaties and

¹²¹ Daniel Fu Keung Wong, Yingli Chang, Xuesong He and Qiaobing Wu, 'The Protective Functions of Relationships, Social Support and Self-Esteem in the Life Satisfaction of Children of Migrant Workers in Shanghai, China' (2010) 56 (2) *International Journal of Social Psychiatry* 152

cases which refer to regional human rights conventions in different jurisdictions are discussed in order to specify the scope and content of the right to education in international law.

The chapter then introduces the Chinese education system in its social and political context and describes some recently promulgated national regulations on education, discussing their effects. It goes on to look at the general position of children's rights in the country, focusing on the status of education (especially compulsory education) in Chinese law. There is an absence of specific legislation to protect internal migrant children in China, and the legal provisions on their rights to education are reviewed. These provisions are found in two pieces of national Chinese legislation: the Constitution of China and the *Compulsory Education Law of China*. The chapter describes how the central government has recently promulgated a series of national policies designed to help internal migrant students receive compulsory education in the state schools of their receiving cities.

Chapter 3 offers an empirical account of the educational experiences of migrant children. Focusing particularly on compulsory education, it describes and analyses the entry system, fees and enrolment, and the transition from primary to secondary level and beyond. It reviews the differences between the private and state systems, cultural expectations and attitudes and the impact these have on pupils' experiences of the education system.

Chapter 4 identifies the main barriers and challenges embedded in the current legal, institutional and national education systems which prevent these children from receiving a compulsory education of adequate quality. It examines the reasons why many migrant children are frequently still barred from attending state schools in the receiving cities for their compulsory education. It asks why national laws and regulations are not being properly enforced.

Chapter 5 concludes the thesis with a discussion of the main findings. It offers ten practical recommendations on initiatives needed to improve migrant children's access to adequate education.

CHAPTER 2: THE RIGHT OF CHILDREN TO EDUCATION: THE INTERNATIONAL AND CHINESE NATIONAL LEGAL ARCHITECTURE

2.1 Outline of Chapter 2

Chapter 2 sets out the legal position concerning the right of children to education at both international and domestic levels. Provisions regarding the right to education in international human rights law are examined in detail, so that the standards established can be assessed in Chapter 4 which identifies and discusses the main barriers and challenges presented within the current institutional and normative systems preventing migrant children from receiving an education of adequate quality. It asks why national laws and regulations are not being properly enforced.

This chapter starts with a discussion of international recognition of the right of the child to education, with an emphasis on the core content of this right and the corresponding state obligations towards children in international legal instruments.¹ The discussion is informed by the ‘4-A’ Scheme developed by the former Special Rapporteur of the Commission on Human Rights on the Right to Education, Katarina Tomasevski. Under the different themes of the ‘4-A’ Scheme, various international human rights treaties at international level are discussed along with cases that refer to regional human rights conventions relating to the right to education in different jurisdictions. This is done in order to specify the scope and content of the right to education in international law. After establishing this, the chapter introduces the Chinese education system in its social and political context and addresses some recently promulgated national regulations on education in China, discussing their effects. It then looks at the general position of children’s rights in China, focusing on the position of education in Chinese law, and especially compulsory education. Due to the absence of specific legislation on the protection of domestic migrant children in China, the legal provisions on their rights to education are discussed. These provisions are found in two pieces of national Chinese legislation – *the Constitution of China* and

¹ Legal instruments in this research include both international human rights treaties (formal legally binding agreements between states and obligations through accession or ratification by states) and soft law documents (including declarations, resolutions, or recommendations, which may not be legally binding documents but may have a political sense).

the Compulsory Law of China. In addition, this chapter further examines how the central government has promulgated a series of national policies designed to help internal migrant students receive compulsory education in the state schools of their receiving cities. Following this examination of international and Chinese domestic law and regulations, conclusions are summarised.

Primary and secondary data, including Chinese national legislation, case law, national and local educational regulations, academic literature and working/research papers are all employed in this chapter to illuminate these issues.

2.2 Recognition of the protection of the right to education in international legal instruments

2.2.1 The genealogy of the right to education in international law

Definition and aims of the right of children to education

The right to education is recognised as a fundamental human right and has a solid basis in international law on human rights. At international level, the provision of the right to education is guaranteed in several international human rights instruments: the Universal Declaration of Human Rights (UDHR),² the International Covenant on Economic, Social and Cultural Rights (CESCR),³ the International Covenant on Civil and Political Rights (CCPR),⁴ the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW),⁵ the International Convention on the Elimination of All Forms of Racial Discrimination (CERD),⁶ the UNESCO Convention against Discrimination in Education (the UNESCO Convention)⁷ and more recently, the Convention on the Rights of the Child (CRC).⁸ China is a party to

² (Adopted 10 December 1948 UNGA Res 217A(III) (UDHR)

³ (Adopted 16 December 1966, came into force 1 January 1976) 993 UNTS 3 (CESCR)

⁴ (Adopted 16 December 1966, came into force 23 March 1976) 999 UNTS 171 (CCPR)

⁵ (Adopted 18 December 1979, came into force 3 September 1981) UN Doc. A/34/46 (CEDAW)

⁶ (Adopted 21 December 1965, came into force 4 January 1969) UNTS 195 (CERD)

⁷ (Adopted 14 December 1960, came into force 22 May 1962) UNTS 9 (the UNESCO Convention)

⁸ (Adopted 20 November 1989, came into force 2 September 1990) UN Doc. A/44/49 (CRC)

25 international human rights instruments, including six core international human rights treaties⁹ – CESC, CERD, CEDAW, CAT, CRC and CRPD.¹⁰ Apart from the ratification of these treaties, the government has also ratified 22 International Labour Organisation Conventions (ILO) as of 2011.¹¹ These form a background to our consideration of educational rights.

The right of children to education has also been incorporated into various regional human rights treaties in the European Union,¹² in Africa¹³ and in America.¹⁴ Asia, regrettably, remains the last continent with neither an enforceable regional human rights mechanism nor a children's rights mechanism.¹⁵ Nevertheless, some regional and sub-regional non-legal human rights documents, such as charters and declaration have been adopted in the region – for example, the Asian Human Rights Charter declared by the Asian Human Rights Commission (AHRC), an independent non-governmental Asian human rights body, was adopted in 1998 by South Korea. Although the Charter represents a significant step towards recognising the protection of regional human rights in Asia, it has been pointed out that it is not a 'workable document immediately agreeable to Asian states',¹⁶ and there is no corresponding

⁹ The Office of the United Nations Treaty Collection Database
<<http://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&lang=en>> accessed 11 January 2011

¹⁰ Convention on the Rights of Persons with Disabilities (CRPD)

¹¹ Ratifications by Country <<http://www.ilo.org/ilolex/english/newratframeE.htm> > accessed 11 January 2011

¹² Art.2 of *the First Protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms* (adopted 20 March 1952, ETS No.9); Art. 17 of *the European Social Charter* (adopted 3 May 1996, ETS No.163); Article 14 of *the EU Charter of Fundamental Rights of the European Union* (adopted 7 December 2000)

¹³ Art. 17(1) of *the African Charter on Human and Peoples' Rights* (adopted 26 June 1981, OAU Doc. CAB/LEG/67/3Rev.5; Art.11 (1) of *the Africa Charter on the Rights and Welfare of the Child* (adopted 11 July 1990, OAU Doc.CAB/LEG/24.9/49)

¹⁴ Art. XII. of *the American Declaration of the Rights and Duties of Man* (adopted 2 May 1948, OAS Resolution XXX); Art.13 of *the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Culture Rights – 'Protocol of San Salvador'* (adopted 17 November 1988, OAS Treaty Series No. 69)

¹⁵ Geraldine Van Bueren, *The international law on the rights of the child* (Martinus Nijhoff Publishers 1998) 22

¹⁶ Seth R. Harris, 'Asia Human Rights: Forming a Regional Covenant' (1999) APLPJ 4. Harris points out that the Charter is not a final product for the protection of human rights in Asia: 'because many Asian states are suspicious of any expansion of human rights beyond those traditionally recognised, the Charter will undoubtedly be unacceptable to them.' This point relates closely the debate on universal human rights and cultural relativism, but that is not the focus of this study.

reporting or petition mechanism nor a monitoring body to go with it. The two functions of the Charter are that firstly it re-emphasises the importance of the protection of basic human rights, including those of women, children and workers; secondly, it urges measures that can be used to ‘hasten recognition of rights for the Asian-Pacific region’.¹⁷ Aside from this charter, the Association of Southeast Asian Nations (ASEAN)¹⁸ has played an active role not only in accelerating ‘the economic growth, social progress and cultural development’ especially of the Southeast Asian region, but also in promoting ‘regional peace and stability through abiding respect for justice and rule of law’ and ‘adherence to the principles of the United Nations Charter’ among the various countries.¹⁹ The ASEAN Intergovernmental Commission on Human Rights (AICHR) functioning as a consultative body was formally established on 23 October 2009 by the Heads of the Member States of ASEAN.²⁰ One of the mandates of AICHR promotes and protects ‘human rights and fundamental freedoms within the ASEAN Community’²¹ and develops ‘an ASEAN Human Rights Declaration with a view to establishing a framework for human rights cooperation through various ASEAN conventions and other instruments dealing with human rights’.²² Regarding the protection of child rights in Asia, some declarations are recommended by ASEAN, such as the ASEAN Declaration against Trafficking in Persons Particularly Women and Children²³ and the Yangon 2000 Declaration on Preparing ASEAN Youth for the Challenge of Globalisation.²⁴ However, Asia remains

¹⁷ *Ibid.*, 3 and 4; Asian Human Rights Charter <http://material.ahrchk.net/charter/mainfile.php/eng_charter/> accessed 11 January 2013. However, there is no explicit provision on the right of the child to education in the Charter.

¹⁸ Brunei Darussalam, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, Philippine, Singapore, Thailand and Viet Nam are the current ten ASEAN member states. <<http://www.asean.org/asean/asean-member-states>> accessed 11 January 2013

¹⁹ ASEAN <<http://www.asean.org/asean/about-asean/overview>> accessed 11 January 2011

²⁰ ‘Cha-Am Hua Hin Declaration on the Intergovernmental Commission on Human Rights’ <<http://www.aseansec.org/documents/Declaration-AICHR.pdf>> accessed 11 January 2011

²¹ ASEAN Intergovernmental Commission on Human Rights (Terms of Reference) para. 4.1

²² *Ibid.*, para. 4.2

²³ (Adopted by the Heads of State/Government of ASEAN Member Countries on 29 November 2004 in Vientiane, Lao PDR)

²⁴ (Adopted by the Heads of State/Government of ASEAN Member Countries on 2 November 2000 in Yangon)

the last continent with neither an enforceable regional human rights convention nor a children's rights convention.

Although there is no absolute agreement on how to define the right to education, the *substance* of the right to education as a *fundamental* human right is relatively well defined in international human rights treaties: a universal free and compulsory primary education;²⁵ a universal availability and accessibility of secondary education,²⁶ and equitable access to higher education on the basis of capacity.²⁷ More importantly, the principle of non-discrimination at all levels of the educational system,²⁸ the improvement of quality education and the establishment of minimum standards of school facilities have also been recognised in international law as part of the substance of the right of children to education.

The aims of the right to education tend to vary at national level according to different political, historical, cultural or religious contexts.²⁹ However, international human rights law specifies four fundamental aims: (a) the full development of the individual's personality, talents, and abilities;³⁰ (b) the strengthening of respect for human rights and fundamental freedoms;³¹ (c) the empowering of all persons to participate effectively and responsibly in a free society;³² (d) the promotion of

²⁵ Art. 28 (1) (a) of the CRC; Art. 13. (2) (a) of the CESCR; Art. 4 (a) of the UNESCO Convention; Art. 26 (1) of the UDHR

²⁶ Art. 28 (1) (b) of the CRC; Art. 13 (2) (b) of the CESCR; Art. 4 (a) of the UNESCO Convention

²⁷ Art. 28 (1) (c) of the CRC; Art. 13 (2) (c) of the CESCR; Art. 4 (a) of the UNESCO Convention; Art. 26 (1) of the UDHR

²⁸ Art. 2 (1) of the CRC; Art. 2 (2) of the CESCR; Art. 2 (a)-(c) of the UNESCO Convention; Art. 10 of the CEDAW; Art. 2 of CERD; Art. 27 (1), 29 and 31 of ILO Convention Concerning Indigenous and Tribal Peoples (1989)

²⁹ Compared with human rights instruments concluded under the auspices of the United Nations and the Organisation of American States, most other regional instruments define the aims of education only vaguely.

³⁰ Art. 26 (2) of the UDHR; Art. 5 (1) (a) of the UNESCO Convention; Art. 13 (1) of the CESCR; Art. 29 (1) (a) of the CRC; guiding principle 1 of the ILO/UNESCO Recommendation concerning the status of teachers

³¹ Art. 55 of the UN Charter; Art. 26 (2) of the UDHR; Art. 5 (1) (a) of the UNESCO Convention; Art. 7 of the CERD; Art. 13 (1) of the CESCR; Art. 29 (1) (b) of the CRC

³¹ Art. 26 (2); principles 1 of the ILO/UNESCO Recommendation concerning the Status of Teachers

³² Art.13 (1) of the CESCR; principle 7 of the Declaration of the Rights of the Child; Art. 29 (1) (d) of the CRC

understanding, tolerance and friendship among all nations and racial, ethnic or religious groups.³³

Art. 29 (1) of the CRC has the most comprehensive coverage of the objectives of the right to education in international law.³⁴ The aims are: the holistic development of the full potential of the child (29(1) (a)), including development of respect for human rights (29 (1) (b)), an enhanced sense of identity and affiliation (29 (1) (c)), and his or her socialisation and interaction with others (29 (1) (d)) and with the environment (29 (1) (e)). It not only embodies the core value of the CRC, that is, the value of the human dignity innate in every child and his or her equal and inalienable rights, but also promotes the idea of seeking to evaluate the objectives of education from the child's perspective.³⁵ As the CRC Committee states, if the type of teaching is primarily focused on 'promoting competition and leading to an excessive burden of work on children', it may hamper the harmonious development of children to the fullest potential of their abilities and talents.³⁶ Therefore, all state parties to the CRC ensure that education should be 'child-friendly, inspiring and motivating [to] the individual child'; it should maximise the child's ability and opportunity to participate fully and responsibly in a free society.³⁷ As Hodgson notes, the exercise of the right to education is not intended merely to acquire information and knowledge but to achieve a variety of objectives which will benefit not only individuals but the communities they live in.³⁸ To summarise, the aims of education go far beyond a formal schooling in the broader understanding of international human rights law: they embrace the range of life experience and the learning processes which enable children, individually and collectively, to 'develop their personalities, talents and abilities' and to 'live a full and satisfying life within society'.³⁹

³³ Art. 26(2) of the UDHR; Art. 5(1) (a) of the UNESCO Convention; Art. 7 of the CERD; Art. 13(1) of the ICESCR and Art. 29 (1) (d) of the CRC

³⁴ Douglas Hodgson, *The Human Right to Education - Programme on International Rights of the Child* (Ashgate Publishing 1998)74

³⁵ Van Bueren (n 15) 253

³⁶ CRC Committee 'General Comment No. 1, Art. 29(1): The Aims of Education' (17 April 2001) UN Doc CRC/GC/2001/1, para. 12

³⁷ *Ibid.*

³⁸ Hodgson (n 34) 74

³⁹ (n 36) para. 2

An additional point about human rights education is that: as Seck states, ‘it is impossible to defend human rights if they are unknown, and they cannot be known unless they are taught’.⁴⁰ Human rights education,⁴¹ seen as a prerequisite for individuals in a society to demand and expect their rights and freedoms,⁴² is the transmission of values of citizenship, peace, reconciliation, and respect for others. It is also considered a ‘comprehensive, life-long process’ with the purpose of reflecting the basic values of human rights in the daily lives and experiences of children.⁴³ Hence information on the content of human rights treaties⁴⁴ and international humanitarian law⁴⁵ should be included in the curriculum, both to achieve this purpose and to encourage children in a respect for human rights and fundamental freedoms’.⁴⁶ More practically, it is important to apply human rights standards in practice so that children can grasp a better understanding of them through ‘observation’ rather than through ‘exhortation’⁴⁷ or indoctrination.⁴⁸

A human rights-based approach to education

A major division of opinions over implementing the right to education (and therefore about education itself) has emerged in the distinction between a ‘human rights-based’⁴⁹ understanding of the issues and an economic understanding (the latter being seen most

⁴⁰ Moustapha Seck, ‘A Plea for Human Rights Education in Africa’(1990) 11 HRLJ 283 and 295

⁴¹ Human rights education is enshrined in several international instruments. For example, UNCHR Res 53/128 (2000) UN Doc E/CN.4/2000/71, Preamble; the 1993 Vienna Declaration and Programme of Action. The World Conference on Human Rights (12 June 1993) UN Doc A/COF.157/23

⁴² Gudmundur Alfredsson, ‘The Right to Human Rights Education’ in Asbjorn Eide et al (eds), *Economic, Social and Cultural Rights* (2nd ed. Kluwer Law International 2001) 273

⁴³ (n 36) para. 15

⁴⁴ *Ibid.*, para. 15

⁴⁵ *Ibid.*, para. 16

⁴⁶ Alfredsson (n 42) 273

⁴⁷ UNCHR ‘Annual Report of the Special Rapporteur on the Right to Education’ (11 January 2001) UN Doc. E/CN.4/2001/52, para. 73

⁴⁸ (n 36) para. 15

⁴⁹ *A Human-rights Based Approach to Education for All* (UNICEF/UNESCO New York, Paris 2007) 10

significantly in the views and demands of the World Bank).⁵⁰ Recognising these two different approaches towards the provision of education is important, because each understanding reflects a great diversity of approaches and priorities. Furthermore, the ‘[World] Bank has become the major and single largest [*financial*] provider of loans for education’⁵¹ and has expressly encouraged the imposition of school fees to decrease fiscal deficits.⁵² As Tomasevski points out, a lending policy like this ‘do[es] not facilitate making primary education free of charge [which is not in line with the core content of the right to education guaranteed in international human rights law] because ‘loans have to be repaid while the ability of primary schools leavers to generate income is insufficient to facilitate such repayment’.⁵³ Tomasevski further argues that this ‘economic’ approach to education has ‘harmed’ the right to education and the rule of rights-based laws.⁵⁴ Johnson also has similar concerns. Referring to the influence of the World Bank, he complains how its officials continue to ensure that ‘any pursue of human rights in [their] work is, at best, secondary to [the] economic focus’.⁵⁵ This is ‘explicitly antagonistic’ to a rights-based approach, because the promotion of human rights is merely optional to the Bank, and is invoked only if it helps the Bank advance its economic objectives.⁵⁶

⁵⁰ The former Special Rapporteur on the Right to Education, Katarina Tomasevski, has been analysing the World Bank approach to education and has established an ongoing dialogue with the World Bank as the request of the Commission on Human Rights. There has been a great deal of correspondence on many issues where the Bank’s lending policies intersect with the right to education and affect human rights in the area. In her annual reports to the UNCHR, Tomasevski focuses her analysis mainly on the elimination of school fees in primary education as a first step: UNCHR ‘Preliminary Report of the Special Rapporteur on the Right to Education’ (13 January 1999) UN Doc E/CN.4/1999/49, paras. 13; UNCHR ‘Progress Report of the Special Rapporteur on the Right to Education’ (1 February 2000) UN Doc E/CN.4.2000/6, para. 23-29; (n 47) paras. 31- 41 and 81; UNCHR ‘Annual Report of the Special Rapporteur on the Right to Education’ (7 January 2002) E/CN.4/2002/60, paras. 14-16; UNCHR ‘Report of the Special Rapporteur, Katarina Tomasevski’ (21 January 2003) E/CN.4/2003/9, paras. 9 and 13; See also, Katarina Tomasevski, *Manual on Rights-Based Education, Collaborative Project between the UN Special Rapporteur on the Right to Education and UNESCO Asia and Pacific Regional Bureau for Education* (UNESCO 2004)

⁵¹ *Ibid.*, UN Doc E/CN.4.2000/6, para. 23

⁵² (n 47) para.35

⁵³ (n 50) UN Doc E/CN.4.2000/6, para. 26

⁵⁴ K. Tomasevski, ‘Not Education for All, Only for Those Who Can Pay: the World Bank’s Model for Financing Primary Education’ (2005) 1 LGD
< http://www2.warwick.ac.uk/fac/soc/law/elj/lgd/2005_1/tomasevski> accessed 19 February 2013

⁵⁵ Robert. Johnson, ‘The Child’s Rights to an Education: ‘Consensus—Minus—One?’ (2010) 18 IJCR 202

⁵⁶ *Ibid.*, 202

This economic understanding of education challenges the very assumption of human rights – that is, the equal worth of all people.⁵⁷ Tomasevski points out that some economists (referring again to those of the World Bank) define education as efficient production of ‘human capital’⁵⁸ and as a ‘commodity’,⁵⁹ they focus their analysis on the relationship between an ‘economic’ value of education and people’s incomes.⁶⁰ Clearly, such an understanding has very different implications for education than one where children are seen as the subjects of rights in international law. This contrast can be illustrated by the case of children who have physical and learning disabilities: the former may be excluded from schools because providing wheelchair access might be deemed too expensive; the latter may be excluded because meeting their special needs may be thought not to ‘yield a sufficient marginal returns on financial investment’.⁶¹ In the context of human rights, however, the law calls for the proper *inclusion of all* through the teaching and learning process. Education from this perspective is considered ‘an end in itself rather than a means for achieving other ends’.⁶²

Surely the imposing on the poor of school fees for primary education so as to decrease fiscal deficits is as excluding as the examples given of children with disabilities and would particularly hit families of domestic migrants. Tomasevski further points out that such a narrowly defined interpretation of education relies merely on a part of the objectives of education set out in international human rights law.⁶³ A ‘human rights-based’ approach to education addresses not only the elimination of disparity, poverty and injustice within the realisation of the right to education,⁶⁴ but

⁵⁷ *Ibid.*, for example, (n 50) UN Doc E/CN.4/1999/49, paras. 13; UN Doc E/CN.4.2000/6, para. 23-29

⁵⁸ Human capital is defined as the knowledge individuals acquire during their lives and use to produce goods services or ideas in market or non-market circumstances. See Organisation for Economic Co-operation and Development (OECD), ‘Measuring What People Know: Human Capital Accounting for the Knowledge Economy’ <<http://browse.oecdbookshop.org/oecd/pdfs/browseit/9196031E.PDF>> p. 22, accessed 24 November 2010

⁵⁹ (n 50) UN Doc E/CN.4/1999/49, para. 13

⁶⁰ (n 50) UN Doc E/CN.4/2000/6, para. 68

⁶¹ *Ibid.*, para. 13; Tomasevski (n 50) *Manual on Rights-Based Education* 50

⁶² (n 50) UN Doc E/CN.4/1999/49, para.13; CESCR Committee ‘General Comment No. 13: The Right to Education (Art. 13 of the CESCR)’ (8 December 1999) UN Doc E/C.12/1999/10, para.1

⁶³ (n 50) UN Doc E/CN.4/2000/6, para. 68

⁶⁴ *A Human-rights Based Approach to Education for All* (n 50) 15

embodies the wider objectives of education including enabling children to participate effectively in a free society⁶⁵ and enhancing children's cross-cultural understanding, tolerance and friendships.⁶⁶ Further, a 'rights-based' approach regards education not as a static commodity isolated from its greater context but as an on-going process, which holds its own 'inherent' human rights values.⁶⁷ This approach, requiring both the achievement of desirable outcomes and their acquisition through a process that reflects human rights values,⁶⁸ moves away from the economic emphasis of considering education as 'services delivery.'⁶⁹ This human rights understanding of education stresses that children, including marginalised ones, should be recognised as subjects in their own right rather than as 'passive beneficiaries' of services and 'transfers of commodities'.⁷⁰ It further implies the accountability of those responsible for provision in fulfilling, respecting and protecting the right of children to education.⁷¹ The economists' 'human capital' approach to education not only 'depletes' it of much of its purpose and substance,⁷² but may create obstacles to furthering the protection and promotion of education as a human right and as a public good.⁷³ Consequently, a 'human rights-based' approach to education should be advocated in the process of drafting, implementing and monitoring domestic and international laws and policies on education.

The UN CRC reporting system

A reporting mechanism was adopted by the CRC Committee in 1994, in accordance

⁶⁵ Art. 13(1) of CESC; Art. 29(1) (d) of the CRC; Art. 11(2) (d) of the African Charter on the Rights and Welfare of the Child

⁶⁶ Art. 29(1) (d) of the CRC; Art. 13(1) of the CESC

⁶⁷ *A Human-rights Based Approach to Education for All* (n 50) Foreword

⁶⁸ *Ibid.*, 14

⁶⁹ *Ibid.*

⁷⁰ *Ibid.*

⁷¹ (n 50) *A Human-rights Based Approach to Education for All* 14

⁷² (n 50) UN Doc E/CN.4/2000/6, para.66

⁷³ *Ibid.*, para. 67; (n 50) UN Doc E/CN.4/1999/49, paras. 13-14

with article 44 of the Convention.⁷⁴ Article 44 notes that ‘State parties undertake to submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made on the enjoyment of those rights’ (art 44 (1)). The initial report is due within two years of the State’s putting the Convention into force and every five years thereafter. The Committee requests that the reports shall contain legislative, judicial, administrative and other information, including statistical data, to give the Committee a good basis for its analysis.⁷⁵ Regarding the examination of State parties’ reports, discussion of a State party report with government representatives is prepared by a working group.⁷⁶ The main purpose of the working group is to identify the most important issues to be discussed with the government representatives in advance. The working groups normally meet after one session of the Committee to prepare for the next one. Committee members are invited to the pre-session meeting. These meetings are not open to the public, and any decisions taken by the working group are reported to the Committee at its next plenary session.⁷⁷ At each session, the Committee examines reports from around ten State parties, discusses issues with government delegations and issues its Concluding Observations. Regarding overdue reports, the Committee issues regular reminders to States, and records are kept on the submission of reports, and specifically on which ones are overdue.⁷⁸ ‘State parties shall make their reports widely available to the public in their own countries’ (art 44 (6)). In addition, alternative reports submitted by NGOs play an important role in monitoring the implementation of the CRC, as expressly indicated in article 45 (a). All alternative reports are available through the NGO Group for the CRC and are hosted on the CRIN website by session.⁷⁹

⁷⁴ ‘Overview of the Reporting Procedures’, UN Doc CRC/C/33, 24 October 1994; and see Chapter 5, section 5.4 ‘(11) Keep up reporting obligations to the UN CRC Committee and raise public awareness’

⁷⁵ *Ibid*, para.4

⁷⁶ *Ibid*, para. 7

⁷⁷ *Ibid*, para. 7

⁷⁸ *Ibid*, para. 30

⁷⁹CRIN

<<http://www.crin.org/resources/treaties/CRC.asp?catName=International+Treaties&flag=legal&ID=6>>
accessed 13 September 2013

2.2.2 Availability, Accessibility, Acceptability and Adaptability of the right to education in international law

The CESCR Committee⁸⁰ and scholars, including Tomasevski,⁸¹ Coomans,⁸² Mehedi,⁸³ and Alston⁸⁴ provide a concept they refer to as the ‘core content’ of the right of children to education in international law. The core content, in a universal realisation of rights, is considered to be ‘a floor or a bottom from which governments should endeavour to go up [...] trying to reach [a] high level of realisation’.⁸⁵ Because of its minimal requirements, the implementation of the core content of the right to education, as an economic and social right, is not restricted by ‘available resources’,⁸⁶ meaning that insufficient financial resources of state parties is no excuse.⁸⁷ As Alston explains, each right must ‘give rise to an absolute minimum entitlement, in the absence of which a State party is to be considered to be in violation of its obligation’.⁸⁸ If the core elements of the content have not been fulfilled because of a lack of resources, state parties have the burden of proving that this is due to reasons beyond their control and must also prove that they have unsuccessfully sought to obtain international support.⁸⁹

Coomans describes the core content of the right to education as having three minimum elements. The essential element is that every child should have access to a

⁸⁰ CESCR Committee ‘General Discussion: Right to Education (Art. 13 and 14 of the Covenant). The Right to Education as a human right: an Analysis of Key Aspects’ (29 September 1998) UN Doc E/C.12/1998/16, paras. 9-16

⁸¹ Katarina Tomasevski, *Education Denied* (Zed Books Ltd 2003) 51

⁸² Fons Coomans, ‘In Search of the Core Content of the Right to Education’ in Audrey Chapman (eds), *Core Obligations: Building a Framework for Economic, Social and Cultural Rights* (Oxford 2002) 225

⁸³ Mustapha Mehedi, ‘The Realisation of the Right to Education, including Education in Human Rights’ UN Doc E/CN.4.Sub.2/1999/10, 57- 58

⁸⁴ Philip Alston, ‘Out of the Abyss, the Challenge Confronting the New UN Committee on Economic, Social and Cultural Rights’ (1987) 9 HRQ 353

⁸⁵ (n 74) para.10

⁸⁶ Art. 2 (1) of CESCR; Art. 4 of the CRC

⁸⁷ (n 74) para. 10

⁸⁸ (n 78) Alston 353

⁸⁹ Manfred Nowak, ‘The Right to Education’ in Asbjorn Eide and Catarina Krause (eds), *Economic, Social and Cultural Rights* (Martinus Nijhoff 2009) 27

public school on a non-discriminatory basis.⁹⁰ The second element is a free and compulsory primary education;⁹¹ and the third one is freedom of parental choice on their children's schooling in conformity with their own religious and philosophical convictions.⁹² Verheyde maintains that Cooman's theory of a state obligation to make primary education free of charge and compulsory, established in the CESCRC, can also be transposed as the core minimum state obligation in Art. 28 (1) of the CRC.⁹³

Furthermore, Katarina Tomasevski, former Special Rapporteur of the Commission on Human Rights on the Right to Education, has established an analytical framework of four 'A's – namely availability, accessibility, acceptability and adaptability of the right to education.⁹⁴ The '4-A' scheme has been endorsed by the UN CESCRC Committee,⁹⁵ and 'has proved to constitute a simple and easy-to-use tool for translating the international legal framework of the right to education for professionals working in education or international cooperation'.⁹⁶ This scheme has also been widely cited by many scholars in the field of the right to education in international law, including Fredman,⁹⁷ Coomans,⁹⁸ Verheyde,⁹⁹ Beiter¹⁰⁰ and others.¹⁰¹

⁹⁰ (n 74) para. 11

⁹¹ *Ibid.*, para. 12

⁹² *Ibid.*, para. 13

⁹³ Mieke Verheyde, *Article 28, The Right to Education, A Commentary on the United Nations Convention on the Rights of the Child* (Martinus Nijhoff 2006) 54

⁹⁴ The following reports submitted by the former Special Rapporteur of the Commission on Human Rights to UNCHR on the '4-A Scheme' (n 50): UN Doc E/CN.4/1999/49 paras. 42-74; E/CN.4/2000/6, paras. 32-65; (n 47) paras.64-77; E/CN.4/2002/60, paras.22-45; E/CN.4/2003/9, paras.3; See also, K. Tomasevski, 'Human Rights Obligations: Making Education Available, Accessible, Acceptable and Adaptable'

<<http://www.right-to-education.org/sites/r2e.gn.apc.org/files/B6g%20Primer.pdf>> accessed 2 December 2010; Tomasevski, *Education Denied* (n 75) 51-65; Tomasevski, *Human Rights Obligations in Education: The 4-A Scheme* (Wolf Legal Publishers 2006)

⁹⁵ (n 62) CESCRC para 6

⁹⁶ UNHCR (n 50) UN Doc E/CN.4/2003/9, para. 3; UNCHR 'Report Submitted by the Special Rapporteur on the Right to Education, Mr. Vernor Munoz Villalobos' (17 December 2004) UN Doc E/CN.4/2005/50, para. 2

⁹⁷ Sandra Fredman, *Human Rights Transformed: Positive Rights and Positive Duties* (Oxford University Press 2008) 220

⁹⁸ Coomans (n 76) 222

⁹⁹ Verheyde (n 87) 15

This '4-A' scheme analyses the 'essential features'¹⁰² and the core content of the right to education in international law,¹⁰³ including how the right to education can be understood in international law and how human rights should be protected in education. Based on this, the scheme also defines the scope of obligations of the state party, that is, what a government should and should not do, in accordance with international law; and, in a case of poor performance, what amounts to its violation.¹⁰⁴ The '4-A' scheme is well recognised as a tool for analysing the core features of the right to education and the corresponding obligations of states. This chapter will therefore adopt the structure of the '4-A' scheme to analyse the scope and elements of the right to education in international law. (There are many different and equally important elements under each 'A'. This section only analyses some key ones due to the focus and word limits of this thesis).

The first 'A': availability of the right to education

The availability of the right to education has two main components. The first component is compulsory and free primary education as international law mandates.¹⁰⁵ Availability also refers to an adequate educational infrastructure, including 'functioning educational institutions, programmes and trained teachers' and teaching materials which should be available and in sufficient quantity.¹⁰⁶ The right to education, as a social and economic right, requires state parties to establish educational

¹⁰⁰ Klaus Dieter Beiter, *The Protection of the Right to Education by International Law* (Martinus Nijhoff, Leiden 2006) 476

¹⁰¹ For example, Gauthier de Beco, 'Right to Education Indicator Based on the 4-A Framework, Concept Paper' <www.right-to-education.org/sites/r2e.gn.apc.../Concept%20Paper.pdf> accessed 19 February 2013; Sital Kalantry, Jocelyn E. Getgen and Steven Arrigg Koh, 'Enhancing Enforcement of Economic, Social and Cultural Rights Using Indicators: A Focus on the Right to Education in the ICESCR' (2010) 32 *Human Rights Quarterly* 253-310; Shulamit Almong & Lotem Perry-Hazan, 'Conceptualizing the Right of Children to Adaptable Education' (2012) 20 (4) *International Journal of Children's Rights* 486-500

¹⁰² (n 50) UN Doc E/CN.4/2003/9, para. 50

¹⁰³ Tomasevski, 'Education Denied' (n 75) 51

¹⁰⁴ Tomasevski, *The 4-A Scheme* (88) Preface

¹⁰⁵ Art. 13 (2)(a) of the CESCR; Art. 28 (1)(a) of the CRC

¹⁰⁶ CESCR 'General Comment No. 13' (n 62) para. 6 (a)

institutions, and to use a ‘combination of these and other measures’ so as to ensure that education is available.¹⁰⁷

Availability – compulsory and free primary education

The first component of the availability of education is compulsory primary education.¹⁰⁸ Although the starting age of compulsory primary education varies, it normally starts from the age of 5 or 7 and lasts approximately six years, and will, in any case, be no fewer than four years.¹⁰⁹

The duration of primary compulsory education matters.¹¹⁰ Children who have an incomplete minimum education are vulnerable to exploitation, for example as child labourers¹¹¹ or, for girls in some countries, as brides in early arranged marriages. The negative consequences can violate children’s rights, including their educational rights. Therefore, the duration of compulsory schooling should be extended to at least the minimum age of employment so as to prevent such consequences. Regrettably, the CRC itself does not enshrine a minimum age for admission to employment.¹¹² However, there is an international obligation not to establish a minimum age for the completion of compulsory schooling and, in any case, it should not be under the age of 15.¹¹³ Further, the development of a country’s economy including the development of child labour, cannot be an excuse for interfering with the right to education as a fundamental right, enshrined not only in core international human rights instruments, but applied in litigation too. In *M.C.Mehta v State of Tamil Nadu and others Supreme Court of India*,¹¹⁴ the Supreme Court required the State to endeavour to provide a free

¹⁰⁷ (n 98) Tomasevski (n 98)

¹⁰⁸ Art. 13 (2) (a) of the CESCR; Art. 28 (1) (a); Art. 26(1) of the UDHR

¹⁰⁹ UNSECO *Statistical Yearbook* (1996) 3

¹¹⁰ UNCHR ‘The Right to Education Report Submitted by the Special Rapporteur Katarina Tomasevski’ (15 January 2004) UN Doc E/CN.4/2004/45, para. 14

¹¹¹ (n 50) UN Doc E/CN.4/2000/6, paras. 61-65; (n 47) para. 28

¹¹² CRC Committee ‘General Comment No.4, Adolescent health and development in the context of the Convention’ (1 July 2003) UN Doc CRC/GC/2004/4, para.18

¹¹³ Art. 2(3) of ILO-Convention No. 138: Convention Concerning Minimum Age for Admission to Employment (19 June 1976)

¹¹⁴ *M.C. Mehta v State of Tamil Nadu and others Supreme Court of India*, AIR [1997] SC 417; AIR [1991]SC 699

and compulsory education for children. The court emphasised that the Constitution (Art. 45) mandates a free and compulsory education for all children until they reach the age of 14.¹¹⁵ It further emphasises the indivisible interrelationship between child labour and the right to education, health and nutrition. The rationale behind this case is that child labours cannot be eliminated completely unless education is compulsory and free of charge.¹¹⁶ This is also a good investment for governments themselves, as they can ‘gain an educated labour force and electorate’.¹¹⁷

Aside from duration, the ‘compulsory’ nature of primary education has been confirmed in international law, which, for the protection of children, holds that they may claim certain rights that nobody, neither the state nor even the parents, may deny.¹¹⁸ This impacts on the duties both of the state and of parents towards children.¹¹⁹ Herring argues for compulsory primary education because ‘education is a crucial part of enabling a child to develop his or her own personality and become a productive member of society’.¹²⁰ As a consequence, compulsory education is ‘one of the few areas where [there] is statutory limitation on parents’ freedom to bring up their children in whatever way they like’:¹²¹ the right to compulsory education is so important that it trumps the claims of parents. Parents, however, have some choices over forms of education (for example over religious education).¹²²

The importance and compulsory nature of primary education can in practice be incorporated into the constitutional law of a country. Children’s constitutional right to education is illustrated in the landmark case *Unni Krishnan J.P & Ors v State of*

¹¹⁵ *Ibid.*, paras 2 and 31 (6) of the judgement

¹¹⁶ Tomasevski, ‘Unasked Questions about Economic, Social and Cultural Rights from the Experience of the Special Rapporteur on the Right to Education (1998-2004): A Response to Kenneth Roth, Leonard S. Rubenstein, and Mary Robinson’ (2005) 27 HRQ715

¹¹⁷ *Ibid.*, 715

¹¹⁸ (n 74) para. 59; CESCR ‘General Comment No. 11: Plans of Action for Primary Education (Art. 14)’ (10 May 1999) UN Doc E/C.12/1999/4, para. 6

¹¹⁹ Parental freedom to choose education for their children is dealt with later in this chapter.

¹²⁰ Jonathan Herring, *Family Law* (4th ed Person Education Ltd. 2009) 409

¹²¹ *Ibid.*

¹²² *Ibid.*

*Andhra Pradesh & Ors.*¹²³ The Supreme Court confirmed that the right to basic education is implied by the fundamental right to life and personal liberty, guaranteed (Art. 21), when read in conjunction with the directive principles on education (Art. 41):

Article 21 has been interpreted by this Court to include the right to life with human dignity and all that goes along with it. The right to education flows directly from right to life. In other words, right to education is concomitant to the fundamental right enshrined in Part III of the Constitution. The State is under a constitutional mandate to provide educational institutions at all levels for the benefits of citizens [...].¹²⁴

This case provides not only an example of how the right to life can be interpreted as explicitly including the right to education, but confirms the compulsory nature of primary education as a fundamental right of children. The principle that the right to education flows directly from the right to life established in *Unni Krishnan J.P.*, which has been reaffirmed in *M.C.Mehta v State of Tamil Nadu*.¹²⁵ As Schachter¹²⁶ states, the right to education contributes in a significant way to promoting the essence of human rights – its basic value of a right to life.¹²⁷

Availability – free primary education and public expenditure on education

There is now a consensus that primary schooling should be free of charge as international law requires.¹²⁸ In reality, even where no fee is charged, parents in some countries have to pay indirect costs. Such costs include expenses for textbooks and supplies, the cost of extra lessons, expenses for meals at school canteens, school transport, uniforms, other items of clothing and footwear, medical expenses and boarding fees.¹²⁹ Moreover, the requirement for free primary education in international law, as Tomasevski points out, does not imply that primary education should also be

¹²³ *Unni Krishnan, J.P. & Ors v. State of Andhra Pradesh & Ors*, [1993] AIR 217, [1993] SCR (1) 594, [1993] SCC (1) 645, [1993] (1) 474, [1993] SCALE (1) 290

¹²⁴ The Supreme Court of India, 1993, paras. 1, 7 (e), 41 and 655 of the judgement

¹²⁵ *M.C. Mehta v State of Tamil Nadu and others Supreme Court of India* (n 80) paras. 2 and 31 (6)

¹²⁶ Oscar Schachter 'Human Dignity as a Normative Concept' (1983) 77 AJIL 848

¹²⁷ (n 47) paras. 11-14

¹²⁸ Art. 13 (2) (a) of the CESC; Art. 28 (1) (a) of the CRC; Art. 26(1) of the UDHR; CESC (n 112) para. 7

¹²⁹ Coomans (n 76) 228; *ibid.*, para. 7

free of all charges for parents.¹³⁰ The rationale behind this is that parents have a ‘primary responsibility for the upbringing and development’ of their children, as affirmed in the CRC.¹³¹ The responsibilities of parents, therefore, include a financial duty to support their children’s primary education. The duty to contribute to the costs of primary education should be spread through general taxation in each country; and parents who are financially unable to afford to support their children’s education should be exempted from payment.¹³² In this respect, government revenue, especially taxation, should be considered the main source of funding for basic education, in order to prevent a potential ‘cost-sharing’ and to protect the children of vulnerable parents.¹³³

To achieve availability of education, sufficient public expenditure¹³⁴ on schooling is crucial.¹³⁵ The reasons for the great importance of public expenditure are, firstly that it has an important implication for society: education is not simply a question of ‘calculating the net contribution ... to economic advancement’ as discussed; it should be recognised that ‘the welfare of society as a whole is enhanced by investment in education’.¹³⁶ Therefore, public expenditure on education as a social investment should have first demand on budgetary allocations.¹³⁷ Secondly, public expenditure on education has an important implication for children, because school-age children are not financially independent; they depend on the completion of their education to become so.¹³⁸ A sufficient governmental allocation on education encourages school attendance and further reduces drop-out rates, and this protects

¹³⁰ (n 50) para. 39

¹³¹ Art. 18 of the CRC

¹³² (n 50) para. 35

¹³³ UN Economic Commission for Africa, ‘Consensus on Principles of Cost Sharing in Education and Health in Sub-Saharan Africa’ (A UNIECF newsletter on Evaluation, Policy and Planning, vol. 2. no. 2 1997) 3-6

¹³⁴ Public expenditure on education, according to UNESCO, consists of current and capital public expenditure on education, which includes government spending on educational institutions publicly and privately, educational administration and subsidies for private entities (which include subsidies for living costs and other private expenses). UNESCO ‘Total Public Expenditure on Education’ <http://www.uis.unesco.org/ev.php?ID=6247_201&ID2=DO_TOPIC> accessed 12 January 2013

¹³⁵ Tomasevski, *Education Denied* (n 75) 24 and 51; *The 4-A Scheme* (n 88) 18

¹³⁶ Fredman (n 91) 219

¹³⁷ *Ibid.*

¹³⁸ Tomasevski (n 129) 18

children from exploitation. When public funding is insufficient, schools may have to rely on supplementary private contributions from parents; and those who cannot afford them are most likely to be marginalised and excluded from schooling.¹³⁹ Financial barriers to education can include both direct and indirect costs (e.g. by requiring children to purchase educational materials).

Most importantly, education from the human rights perspective is ‘the crucial vehicle by which economically and socially marginalised children and adults can lift themselves out of poverty, and obtain the means to participate fully in their communities’.¹⁴⁰ It is an indispensable means of realising other human rights:¹⁴¹ the enjoyment of civil and political rights, such as the right to vote and freedom of expression, assembly and association, depend on a minimum level of education. There are similar implications for economic, social and cultural rights.¹⁴² Further, prioritising public spending on primary education for the purpose of helping parents who are unable to gain access to primary education for their children also reflects a government’s response to human rights obligations of providing a free and compulsory primary education as a public good.

Additionally, it is suggested by economists that primary education ‘ought to be a priority’ for public educational spending. This is especially so those countries which have ‘low net enrolment’.¹⁴³ Then there is ‘a strong rationale for the subsidisation of primary education’.¹⁴⁴ It is likely to be ‘more efficient and equitable’ than investment in secondary education, which, in turn, is likely to be more efficient than higher education.¹⁴⁵ Therefore, public spending on providing a truly free and compulsory primary education should be prioritised.

¹³⁹ *Ibid.*, 17

¹⁴⁰ CESCR (n 62) para. 1; Coomans (n 76) 219

¹⁴¹ Nowak (n 83) 245

¹⁴² *Ibid.*, 245

¹⁴³ Sanjay Pradhan, ‘Evaluation Public Spending: a Framework for Public Expenditure Reviews’ <<http://earthmind.net/slm/docs/wb-1996-evaluating-public-spending.pdf>> p.10, accessed 25 November 2010

¹⁴⁴ *Ibid.*, 10

¹⁴⁵ *Ibid.*

In reality, guaranteeing public spending on education constitutionally is a crucial step in advancing a ‘rights-based’ education.¹⁴⁶ In *Guingona, Jr. v. Carague*,¹⁴⁷ the Supreme Court of the Philippines had to decide whether debt servicing, exceeding three times the budgetary allocation for education, was unconstitutional. A group of senators in the Philippines had challenged the constitutionality of budgetary allocations of 86 billion pesos for debt-servicing which had exceeded those for education three times. Accordingly, the *1987 Constitution of the Philippines*¹⁴⁸ obligates the state not only to provide a ‘free public education in the elementary and high school levels’¹⁴⁹ but to ‘assign the highest budgetary priority to education’.¹⁵⁰ Consequently, the Court found that education should obtain the largest allocation of all government departments, even while debt-servicing was necessary for the creditworthiness of the country and, thus, the survival of its economy.¹⁵¹

The last issue regarding the availability of education is whether public funding should subsidise private schools. First of all, the meaning of ‘private’ schools varies. The term ‘private’ can be applied to formal and non-formal education, religious and secular schools, schools for children with special needs or minority and indigenous schools. UNESCO classifies schools by the criterion of school management: ‘government-aided schools are considered private if they are privately managed’.¹⁵² English courts, however, have classified schools into state and private by the criterion of the source of funding. If a school’s funding comes out of public revenue, it is classified as a state school regardless of how it is managed.¹⁵³ Furthermore, the issue

¹⁴⁶ Tomasevski, *The 4-A Scheme* (n 88) 147

¹⁴⁷ *Guingona, Jr. v. Carague* [1991] G.R. No. 94571

¹⁴⁸ The Constitution in effect was enacted in 1987 and its popularly known as the ‘1987 Constitution’

¹⁴⁹ Art. XIV, Section 2 (2) of the 1987 Philippine Constitution

¹⁵⁰ Art. XIV, Section 5 (5)

¹⁵¹ *Guingona, Jr. v. Carague* (n 48)

¹⁵² UNESCO ‘World Education Report 1998’ (Paris 1999) 118

¹⁵³ *National Union of Teachers v. Governing Body of St.Mary’s Church of England Aided School*, [1995] ICR 317, EAT [1997] IRLR 242 (CA); *R. v. Haberdashers’ Aske’s Hatcham Trust, ex parte T* [1995] ELR 350; EA 1996, ss 482 (1) (b), (3); 483

of the allocation of public funds to private schools varies in practice. In *André Simpson v the United Kingdom*,¹⁵⁴ the European Commission states:

There must be a wide measure of discretion left to the appropriate authorities as to how to make best use possible of the resources available to them in the interests of disabled children generally [...] it cannot be said that the first sentence of Art. 2 of Protocol No. 1 (P1-2) requires the placing of a dyslexic child in a private specialised school, with the fees paid by the state, when a place is available in an ordinary State school which has special teaching facilities for disabled children.¹⁵⁵

Consequently, the European Commission confirmed that it did not impose an absolute obligation on state parties to provide a financial subsidy for private schools.¹⁵⁶ The UN Human Rights Committee approached the issue from another perspective. In *Carl Henrik Blom v Sweden*,¹⁵⁷ the Committee noted that ‘the State party’s educational system provides for both private and public education. The State party cannot be deemed to act in a discriminatory fashion if it does not provide the same level of subsidy for the two types of establishments, when the private system is not subject to State supervision’.¹⁵⁸

Regarding the obligation to provide primary education, if state parties have not ensured compulsory and free primary education, they are required ‘within two years to work out and adopt a detailed plan of action for the progressive implementation’ of its provision.¹⁵⁹ Such an obligation on state parties, according to the CESCR Committee, does not escape the ‘unequivocal’ obligation to adopt a plan of action on the grounds that the necessary resources are not available, including inadequate financial resources.¹⁶⁰ Moreover, the plan of action must be aimed at securing the progressive implementation of the right to compulsory primary education, free of charge and be

¹⁵⁴ *André Simpson v the United Kingdom* (App no 14688/89) (1989) 64 DR

¹⁵⁵ *Ibid.*, ‘The Law’, part. 2

¹⁵⁶ Apart from *André Simpson v the United Kingdom*, also see *Verein Gemeinsam Lernen v Austria* (App no 23419/94) (1994)

¹⁵⁷ Human Rights Committee ‘Communication No 191/1985: Sweden’ (4 April 1988) UN Doc CCPR/C/32/D/191/1985

¹⁵⁸ *Ibid.*, para. 10.3

¹⁵⁹ Art. 14 of the CESCR

¹⁶⁰ CESCR ‘General Comment No. 11’ (n 112) para. 9

adopted ‘within a reasonable number of years’ under Art. 14 of the CESCR.¹⁶¹ In other words, the plan must specifically ‘set out a series of targeted implementation dates for each stage of the progressive implementation of the plan’.¹⁶² By contrast, the state parties’ obligation towards the principle of non-discrimination is required to be implemented fully and immediately.

The second ‘A’: accessibility of the right to education

The accessibility of education, according to the CESCR Committee, involves three overlapping dimensions.¹⁶³ The first dimension is the *economic* accessibility of education: education has to be affordable to all.¹⁶⁴ This implies a positive state obligation to make access to education free of charge or to introduce scholarships.¹⁶⁵ Although economic accessibility is subject to the differential meaning of Art. 13 (2) of CESCR regarding primary, secondary and higher education, it is regarded as one of the important prerequisites for free and compulsory primary education.¹⁶⁶

The second dimension of accessibility is *physical* accessibility.¹⁶⁷ It requires that schools should be built in a convenient geographic location (e.g. neighbouring schools) or that education should be available and accessible via modern technology (e.g. a distance learning programme).¹⁶⁸ The CRC Committee also recommends that state parties should ensure that children living in rural and remote areas have access to education.¹⁶⁹ Free transport and the construction of additional schools in isolated areas are specially required to facilitate such goals.¹⁷⁰

¹⁶¹ Art. 14 of the CESCR

¹⁶² (n 154) para. 10

¹⁶³ CESCR ‘General Comment No. 13’ (n 62) para. 6

¹⁶⁴ *Ibid.*, para. 6(b) (iii)

¹⁶⁵ *Ibid.*

¹⁶⁶ *Ibid.*

¹⁶⁷ *Ibid.*, para. 6 (b) (ii)

¹⁶⁸ *Ibid.*

¹⁶⁹ *E.g.* CRC Committee, Concluding Observations: Colombia UN Doc CRC/C/38,1995, para. 96; Georgia UN Doc CRC/C/97,2000, para.128; Mexico UN Doc CRC/C/90,1999, para.187

¹⁷⁰ *E.g.* CRC Committee, Concluding Observations: Mozambique UN Doc CRC/C/114, 2002, para. 306

In Brazil, free and compulsory education, including free transport for students if they cannot attend schools, has been recognised as a public right.¹⁷¹ In the English case *R. v Devon CC Ex p. George*,¹⁷² the House of Lords established the entitlement of providing free transportation to facilitate compulsory school attendance for students who live beyond walking distance to school:

A local education authority would be acting unreasonably if it decided that free transport was unnecessary for the purpose of promoting their attendance at school, because if it were not provided parents of these pupils would be under no legal obligation to secure their attendance.¹⁷³

In India, the state encourages the attendance of children by introducing the Mid-day Meal Scheme¹⁷⁴ with the intention of attracting children towards education. According to the order of the Supreme Court, the state governments/union territories should implement the Mid-day Meal Scheme by providing every government and government-assisted primary school with a prepared mid-day meal having ‘a minimum content of 300 calories and 8-12 of protein each day of school for a minimum of 200 days’.¹⁷⁵

The last dimension of accessibility of education is the principle of *non-discrimination and equal treatment*. This principle requires that education must be accessible to all children, ‘especially the most vulnerable groups, in law and in fact, without discrimination on any of the prohibited grounds’¹⁷⁶ Owing to the significance and importance of this principle,¹⁷⁷ the CRC not only makes all other aspects of the right to education dependent upon it, but extends the application of this principle further to ‘all persons of school age residing in the territory of a State party’, including

¹⁷¹ Tribunal of the State Minas Gerais (TMG) Apelação Cível No. 000.197.843-6/2000

¹⁷² *R. v Devon County Council Ex p. George* [1989] House of Lords AC 573; [1988] 3 WLR 1386

¹⁷³ *Ibid.*, 604B

¹⁷⁴ Right to food Campaign, *PUCL v Union of India and others*. This case also shows another benefit of the right to education: it can be a means of ensuring good nutrition.

¹⁷⁵ *Ibid.*, Supreme Court Order date 28 Nov 2001

¹⁷⁶ CESCR (n 62) para. 6 (b)(i)

¹⁷⁷ Art. 2 of the CRC; Art. 3 (e) of the UNESCO Convention; Art. 2 para. 2 of the CESCR; the CERD; the CEDAW

non-nationals, and irrespective of their legal status.¹⁷⁸ The principle of non-discrimination is equally applicable to Art. 2 (2) of the CDESCR, which is not subject to any limitation by progressive realisation or by availability of resources;¹⁷⁹ it applies fully and immediately to all aspects of education and encompasses all international prohibited grounds of discrimination.¹⁸⁰

The prohibition on discrimination in education enshrined in the *UNESCO Convention against Discrimination in Education* is the most specific convention on discrimination.¹⁸¹ The term ‘discrimination’ in education, according to the Convention, refers to:

Any distinction, exclusion limitation or preference which being based on race, colour, sex, language, religion, political or other opinion, national or social origin, economic condition or birth has the purpose or effect of nullifying or impairing equality of treatment in education.¹⁸²

In particular, the Convention aims to eradicate the practices of ‘depriving any person or group access to education’,¹⁸³ of ‘limiting any person or group to education of an inferior standard’¹⁸⁴, of ‘maintaining separate educational systems or institutions for any person or group’¹⁸⁵ and of ‘inflicting’ on any person or group conditions which are incompatible with human dignity.¹⁸⁶ State parties should also undertake immediate measures both to prevent discrimination arising and to eliminate discrimination which has already existed.¹⁸⁷ Such measures include: abrogating any statutory, administrative instructions or practice which involves discrimination;¹⁸⁸ ensuring there is no

¹⁷⁸ Verheyde (n 87) 39; Art. 2 of the CRC; Art. 3 (e) of the UNESCO Convention; CDESCR ‘General Comment No. 13’ (n 62) para. 34

¹⁷⁹ CDESCR (n 62) para. 31

¹⁸⁰ *Ibid.*, para. 31

¹⁸¹ Verheyde (n 87) 37

¹⁸² Art. 1 (1) of the UNESCO Convention

¹⁸³ *Ibid.*, Art. 1(a)

¹⁸⁴ *Ibid.*, Art. 1(b)

¹⁸⁵ *Ibid.*, Art. 1(c)

¹⁸⁶ *Ibid.*, Art. 1(d)

¹⁸⁷ *Ibid.*, Art. 3

¹⁸⁸ *Ibid.*, Art. 3 (a)

discrimination in the admission of pupils to educational institutions¹⁸⁹ and prohibiting differences of treatment between nationals by public authorities except on the basis of merit or need in the matter of school fees, scholarships or other forms of assistance to pupils.¹⁹⁰ Furthermore, the Convention emphasises the necessity of ensuring that educational standards and conditions relating to the quality of education provided in all public educational institutions are of the same level.¹⁹¹

In addition to the above general framework, international law has identified specific categories of children who are more likely to be the victims of educational discrimination and therefore require special policies. These groups (which are not exclusive) include: girls; children living in rural communities; children with disabilities; and indigenous and minority children. In *D.H and Others v Czech Republic*,¹⁹² the ECHR held that segregating Roma students into special schools was a form of unlawful discrimination, in breach of the provision of prohibiting discrimination (Art. 14 of the European Convention) in conjunction with Art. 2 the right to education in Protocol No.1.¹⁹³

Amongst special groups of children, girls can be disadvantaged in education and therefore deserve special protection in practice. Although the importance of protecting girls' education has been emphasised in international law, such as in the CEDAW and the CRC,¹⁹⁴ girls make up approximately 56 per cent of the 77 million children not in schools.¹⁹⁵ The Millennium Development Goals (MDG)¹⁹⁶ report 2010

¹⁸⁹ *Ibid.*, Art. 3(b)

¹⁹⁰ *Ibid.*, Art. 3(c)

¹⁹¹ *Ibid.*, Art. 4(b)

¹⁹² *D.H and Others v Czech Republic* (App no. 57325/00) ECHR 14 November 2007

¹⁹³ *Ibid.*, para. 210

¹⁹⁴ The CRC Committee has repeatedly emphasised the issue of girls' education in its concluding observations and during a day of general discussion. See CRC Committee 'Day of Discussion on the Girl Child' UN Doc CRC/C/38, paras. 289-290

¹⁹⁵ Carol Bellamy, 'The State of the World's Children 2004, Girls, Education and Development' (UNICEF) 31

¹⁹⁶ Alston points out that despite a series of earlier global commitments, for example, the Millennium Declaration and the World Summit for Children, the education MDGs primarily reflect the globe failure to meet earlier commitments. Philip Alston, 'Ships Passing in the Night: the Current State for the Human Rights and Development Debate Seen Through the Lens of the Millennium Development Goals' (2005) 27 HRQ 756

indicates that gender parity in primary and secondary education is still out of reach for many developing regions.¹⁹⁷ Completion rates also tend to be lower among girls/women than among boys/men.¹⁹⁸ Poverty has universally been confirmed as a key obstacle to the enjoyment of human rights, including the full realisation of girls' right to education, especially amongst those living in rural areas.¹⁹⁹ According to the MDG report, girls of primary school age from the poorest 60 per cent of households are three times more likely to be out of school than those from the wealthiest households.²⁰⁰ Consequently, their chances of attending secondary education are smaller, and older girls are more likely to be out of school.²⁰¹ Education helps people realise their human rights; it is also the most powerful way to 'lift' people out of poverty.²⁰² Without access to education, girls can hardly claim their rights and can never have the power to make their own choices.

However, despite the importance of education for girls, several obstacles impede their access to it. Early marriage and pregnancy are two of the reasons why girls drop out of schools.²⁰³ In the case of *Tatu Shabani*,²⁰⁴ an unattached girl was sentenced to six months in prison for not attending school because of her pregnancy. She was labelled a 'delinquent' because of her pregnancy as a primary school student: pregnancy ended both her education and her childhood. The CRC Committee therefore urges that state parties should 'review, and where necessary, reform legislation and practice to increase the minimum age for marriage with and without parental consent to 18 years, for both girls and boys'.²⁰⁵

¹⁹⁷ UN 'The Millennium Development Goals Report 2010'

<<http://www.un.org/millenniumgoals/pdf/MDG%20Report%202010%20En%20r15%20-low%20res%2020100615%20-.pdf>> 20, accessed 19 February 2013

¹⁹⁸ *Ibid.*, 21

¹⁹⁹ *Ibid.*

²⁰⁰ *Ibid.*

²⁰¹ *Ibid.*

²⁰² CESCR 'General Comment No. 13' (n 62) para. 1

²⁰³ Beiter (94) 488

²⁰⁴ Criminal case No. 322 of 2003 at the Primary Court in Morogoro Region, Tanzania

²⁰⁵ CRC Committee 'General Comments No. 4 Adolescent health and development in the context of the Convention on the Rights of the Child' (1 July 2003) UN Doc CRC/GC/2003/4, para.20

Cultural and social beliefs, along with traditional attitudes and practices also play their part in preventing girls from benefiting from schooling. In some developing regions, an economic and social rationale for investing in boys rather than girls is still practised.²⁰⁶ Poor families depend on the financial contribution of their family members, hence overcoming obstacles not only requires a flexible and adaptable educational programme for girls, especially for working children,²⁰⁷ but needs ‘a well-designed strategy for changing social norms through the mobilisation of teachers, parents, community leaders, and pupils themselves’.²⁰⁸

The CRC and the CEDAW provide several recommendations to state parties for promoting girls’ education and equal opportunities. These include: the elimination of any stereotyped concept of the roles of men and women;²⁰⁹ the revision of text books;²¹⁰ the adaptation of teaching methods;²¹¹ the reduction of any gap in education existing between boys/men and girls/women; and the reduction of female student drop-out rates.²¹²

Furthermore, a systematic approach with ‘a range of laws, policies and programmes’²¹³ should be adopted in order to tackle discrimination against girls and other marginalised children by state parties: they are encouraged to adopt specific legislation that prohibits discrimination in the fields of economic, social and cultural rights.²¹⁴ The aims of such laws, according to the CESCR Committee, should ‘eliminate formal and substantive discrimination, attribute obligations to public and private actors and cover the prohibited grounds discussed above’.²¹⁵ Other existing

²⁰⁶ Tomasevski (n 88) 27

²⁰⁷ *Ibid.*

²⁰⁸ (n 50) UN Doc E/cn.4/1999/49, para. 61

²⁰⁹ (n 188) para. 290; Art. 10 (c) of the CEDAW

²¹⁰ *Ibid.*, para. 288; Art. 10 (c) of the CEDAW

²¹¹ Art. 10 (c) of the CEDAW

²¹² *Ibid.*, para. 289; Art. 10 (f) of the CEDAW

²¹³ CESCR Committee ‘General Comment No. 20 Non-Discrimination in Economic, Social and Cultural Rights’ (2 July 2009) UN Doc E/C.12/GC/20, para. 39

²¹⁴ *Ibid.*, para. 37

²¹⁵ *Ibid.*

items of national legislation relating to the prohibition of discrimination should also be regularly reviewed or amended ‘in order to ensure that they do not discriminate or lead to [further] discrimination’ hindering the enjoyment of economic, social and cultural rights.²¹⁶

The third ‘A’: acceptability of the right to education

The third ‘A’ of the right to education is acceptability. This refers to ‘the form and substance of education, including curricula and teaching methods, which have to be acceptable to students and, in appropriate cases, parents’.²¹⁷ More specifically, ‘acceptability’ refers to the consideration of the use of language in education for indigenous and minority children, good quality of education, the minimum standards of health and safety, professional requirements for teachers, discipline in schools, the prohibition of corporal punishment and respect for parents²¹⁸ liberty to choose their children’s education in conformity with their religious, moral or philosophical convictions.²¹⁹

Acceptability – language

The first feature of acceptability of education refers to a right to be educated in one’s mother tongue, especially the right of indigenous, ethnic or linguistic minorities to use their own language, which has been affirmed in international law.²²⁰ For example, the CCPR specifies that members of minorities should not be denied the right to use their own language.²²¹ The CRC also highlights this issue.²²²

²¹⁶ *Ibid.*

²¹⁷ CESCR (n 62) para. 6(c)

²¹⁸ Art. 28 (2) of the CRC

²¹⁹ Tomasevski (n 88) 15

²²⁰ Art. 28 of ILO Convention No. 169; Art. 4 (3), Art. 4 (4) of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities; paras 25 and 26 of Section II B.2 of the Vienna Declaration and Programme of Action; the 1960 *UNESCO Convention against Discrimination in Education*; CRC ‘General Comment No. 11: Indigenous Children and their Rights under the Convention’ (12 February 2009) CRC/C/GC/11; CRC ‘Day of General Discussion on the Rights of Indigenous Children’ (2003)

²²¹ Art. 27 of the CCPR

²²² Art. 30 of the CRC

The issue of acceptability on the right to use one's own language is subject to litigation. In the *Belgian Linguistic case*,²²³ the European Court has affirmed the right of the State to determine the official language of the country which is the language of instruction in public schools and has denied that there is a right to education in a language of one's choice under Art. 2 of Protocol 1.²²⁴ This means that the state determines whether a specific language is to be used as a medium of instruction. Additionally, the Court decided that an individual cannot claim a right to state-funded education in the language of his or her choice. The Court rejected imposing a positive state obligation to meet such a claim.²²⁵ The UN Human Rights Committee in *Davidson and Mcllytyre v Canada*,²²⁶ which came to a similar conclusion to that drawn in the *Belgian Linguistic Case*, has held that 'a State may choose one or more official languages'; it may be allowed to decide in which languages classes are to be given.²²⁷ A similar conclusion has also been made in *J.G.A. Diergaardt et al. v. Namibia*,²²⁸ and other communications of the CCPR Committee.²²⁹

Acceptability – the minimum standards of educational institutions

The content of 'acceptability' also refers to the minimum standards of educational institutions, including safety, water, sanitation and qualification of teachers.²³⁰ In the *State of Maharashtra v Vikas Sahebrao Roundale and Others*,²³¹ the Supreme Court of India emphasised that 'the ill equipped and ill housed institutions with substandard

²²³ Case 'Relating to Certain Aspect of the Laws on the Use of Languages in Education in Belgium v Belgium' (App no 1474/62;1677/62; 1769/63;1999/63/2126/64) Series A no 5 (1979-80) 1 EHRR 241; Series A no 6 (1979-80) EHRR 252

²²⁴ *Ibid.*, 31

²²⁵ *Belgium v Belgium* (n 228) 31

²²⁶ The Human Rights Committee 'Communication No 359/1989: Canada' (5 May 1993) UN Doc CCPR/C/47/D/359/1989

²²⁷ *Ibid.*, para. 11.4

²²⁸ The Human Rights Committee 'Communication No 760/1997' (6 September 2000) UN Doc CCPR/C/69/D/760/1997

²²⁹ The Human Rights Committee *Dominique Guesdon v France*, 'Communication No 219/1986' (25 July 1990) UN Doc CCPR/C/39/D/219/1986 (1990); *Herve Barzhig v France* 'Communication No 327/1988' (1988) UN Doc CCPR/C/41/D/327/1988

²³⁰ Tomasevski, *The 4-A Scheme* (n 88) 73

²³¹ *State of Maharashtra v Vikas Sahebrao Roundale and Ors* [1992] AIR 1926

staff therein are counter productive and detrimental to inculcating [a] spirit of enquiry and excellence to the students'.²³² The entitlement to education of acceptable quality for poor students is demonstrated in *CFE v. State of New York*,²³³ a case which took thirteen years to determine 'what minimum quality criteria should be in place'.²³⁴ The final decision was affirmed by the New York State Court of Appeals in 2006: the Court emphasised that the state's constitution requires that every public school child in New York has a right to a 'sound basic education' and that the state has the responsibility to increase funding for New York City's public schools.²³⁵ Specifically, a sound basic education should include a sufficient number of qualified teachers, appropriate class size, adequate and accessible school buildings, sufficient and up-to-date books, libraries, suitable curricula, adequate resources for students with special needs and a safe orderly environment.²³⁶ Tomasevski comments that this case has not only demonstrated the need for 'persistence' in giving effect to education rights, having taken more than a decade, but has reflected the real challenge of achieving the human rights protection enshrined in the Constitution by the government itself.²³⁷

Acceptability – parental freedom of choice in education

International law protects the liberty of parents or legal guardians to choose 'religious and philosophical education' for their children in conformity with their own convictions.²³⁸ This reflects not only a civil rights component of the right to education, but anticipates a 'positive and tolerant attitude' from the state, trusting it will 'respect' such a choice.²³⁹ Nowak, Tomasevski and Coomans note that the rationale behind parental freedom of choice is that it promotes not only pluralism within education,²⁴⁰

²³² *Ibid.*, para. 12.4

²³³ *Campaign for Fiscal Equity, Inc. v State of New York* (2006 NY SlipOp 08630)

²³⁴ *Ibid.*

²³⁵ *Campaign for Fiscal Equity, Inc. v State of New York* (2006 NY SlipOp 08630)

²³⁶ *Ibid.*, Vii. Remedy and Order

²³⁷ Tomasevski (n 88) 79

²³⁸ Art. 26 (3) of the UDHR; Art. 13 (3) of the CESCR; Art. 5 (1)(b) of the UNESCO Convention against Discrimination on Education; Art. 18 (4) of the CCPR

²³⁹ Coomans (n 76) 221; Verheyde (n 87) 47

²⁴⁰ (n 47) para. 74

which limits the state's monopoly over schooling,²⁴¹ but reflects the freedom of religion and belief enshrined in international law.²⁴²

The obligation of states 'to respect the liberty of parents',²⁴³ according to the CESCR Committee, requires that public school instruction in subjects such as the general history of religions and ethics, should be provided in an 'unbiased and objective' way;²⁴⁴ moreover, 'public education that includes instruction in a particular religion or belief is inconsistent with Art. 13(3) of the CESCR ['the state should respect the liberty of parents to ensure the religious and moral education of their education in conformity with their own convictions'] unless provision is made for non-discriminatory exemptions or alternatives that would accommodate the wishes of parents'.²⁴⁵ This interpretation was affirmed in *Kjeldsen, Busk Madsen and Pedersen v. Denmark*.²⁴⁶ The State had introduced compulsory sex education for primary schools as part of the curriculum, passed by the Parliament. The applicants, parents of state primary school children, were not satisfied that the guidelines and safeguards protected their children sufficiently. However, the ECHR ruled:

Art. 2 of the Protocol (P1-2) does not prevent states from imparting through teaching or education information or knowledge of a directly or indirectly religious or philosophical kind [...]. In fact, it seems very difficult for many subjects taught at school not to have, to a greater or lesser extent, some philosophical complexion or implications.²⁴⁷

In the judgment, therefore, imparting sex education in itself was not a violation of Art. 2 of Protocol (P1-2).²⁴⁸ On the other hand, the Court also emphasised that 'the state must take care that information or knowledge included in this curriculum is conveyed in an objective, critical and pluralist manner. The state is forbidden to pursue an aim of

²⁴¹ Nowak (n 83) 263; Coomans (n 76) 221; Tomasevski (n 88) 29 and 31

²⁴² Art. 18 (4) of the CCPR; Art. 14 (2) of the CRC

²⁴³ Art. 13 (3) of CESCR

²⁴⁴ CESCR (n 62) para, 29

²⁴⁵ *Ibid.*, para. 29

²⁴⁶ *Kjeldsen, Busk Madsen and Pedersen v. Denmark* (App 5095/71;5920/72;5926/72) (1976) ECHR Series A no 23

²⁴⁷ *Ibid.*

²⁴⁸ *Ibid.*, paras. 49-55

indoctrination that might be considered as not respecting parents' religious and philosophical convictions'.²⁴⁹ In *Hartikainen v Finland*, the UN Human Rights Committee also confirmed the issue of educational pluralism and the liberty of parents to choose: it held that respecting parental religious and philosophical convictions required that states must ensure a pluralistic curriculum and abstain from indoctrinating students.²⁵⁰ Nevertheless, respect for the liberty of parents to choose education for their children does not directly imply that the state must provide financial support for them to do so. This view was found in *Adler v Ontario*:²⁵¹ the Supreme Court of Canada held that the exercise of parental choice in the education of their children does not lead to an entitlement to public funding.

The right to educational freedom has another element enshrined in it, for example in Art. 13 (3) of the CESCR, the liberty of parents and guardians to choose education for their children other than in public schools.²⁵² This provision should be read with its supplementary provision, Art. 13 (4), which affirms 'the liberty'²⁵³ of individuals and bodies to establish and direct [all types²⁵⁴ of] educational institutions'.²⁵⁵ On the one hand, state parties should 'ensure' that the exercise of Art. 13 (4) is in line with the principle of non-discrimination to prevent disparities of establishing schools for some groups in society but not others;²⁵⁶ on the other hand, institutions should ensure that the objectives of education conform to Art. 13 (1) of the CESCR, and meet certain minimum educational standards, including standards for 'admission, curricula and the recognition of certificates'.²⁵⁷

²⁴⁹ *Ibid.*, para. 53

²⁵⁰ Human Rights Committee 'Communication No 40/1978: Finland' (4 September 1981) UNYB CCPR/C/12/D/40/1978 (Jurisprudence), para. 10.4

²⁵¹ *Adler v Ontario* [1996] 3 SCR 609, [1996] 140 DLR (4th) 385

²⁵² CESCR (n 62) para. 29

²⁵³ The term 'liberty', according to the CESCR, should extend to legal persons and entities. *Ibid.*, para. 30

²⁵⁴ 'All types of educational institutions include 'nurseries, universities and institutions for adult education' *Ibid.*, para. 30

²⁵⁵ *Ibid.*

²⁵⁶ *Ibid.*

²⁵⁷ *Ibid.*, para. 29

The other side of the coin is a new emphasis on the fundamental principle of ‘the best interest of the child’,²⁵⁸ transforming the role of children from objects to subjects of rights. The right of children to education in conformity with their *own* religious and moral convictions should be taken into consideration. It cannot be assumed that a child will necessarily share their parents’ religious and moral convictions. This is implicitly enshrined in the UNESCO Convention against Discrimination in Education, which states that ‘no person [including children] should be compelled to receive religious instruction inconsistent with his or her convictions’.²⁵⁹ Although, ideally, children are deemed to be the holding subjects of rights, in practice they are rarely party to decision-making on the education they receive. The European Court has not yet ruled, if a conflict of choice arises between the religious and philosophical convictions of parents and differing ones of their children, whether the children’s view should be protected.²⁶⁰ The CRC Committee itself has not yet established a petitioning system to provide such a remedy mechanism for children.²⁶¹ As Verheyde points out, the CRC requires a balanced approach between the choice of parents and children and ‘prohibits an *a priori* exclusion’ of the views of children.²⁶² In a case of a conflict between parental choice and the best interests of the child, the latter should prevail.²⁶³

The fourth ‘A’: adaptability of the right to education

The last ‘A’ of the right to education is *adaptability* – education must be made adaptable at all levels. The CESCR Committee has pronounced as follows on the criterion for the adaptability of education:

²⁵⁸ Art. 3 of the CRC

²⁵⁹ Art. 5 (1)(b)

²⁶⁰ However, the English case *Regina (Shabina Begum) v Denbigh High School* [2006] UKHL 15 is an example of whether the child’s view should be protected if a conflict of choice arises between the religious conviction of parents and different ones of their children.

²⁶¹ The CRC Committee has started to prepare the proposal for a draft protocol to the CRC to provide a communications procedure under the Convention on the Rights of the Child. HRC, 13 October 2010, UN Doc A/HRC/WG.7/2/3; see also Chapter 2, section 2.2.1, ‘The UN CRC reporting system’; and see UN Doc CRC/C/33; UN Doc CRC/C/58/Rev.2 for more detailed guidelines related to the procedures, form and content of periodic reports to be submitted by the State Parties under article 44 of the CRC

²⁶² Verheyd (n 98) 49

²⁶³ Tomasevski, *The 4-A Scheme* (n 88) 29

Education has to be flexible so it can adapt to the needs of changing societies and communities and respond to the needs of students within their diverse social and cultural settings.²⁶⁴

In practice, education should be able to respond to a rapidly changing global reality and to the diverse needs of marginalised children, including minority and indigenous children, working children, children with disabilities, migrant children and refugee children.²⁶⁵ In order to accommodate their needs, the principle of the best interests of the child must be given prominence.²⁶⁶ As Tomasevski states, this principle highlights the need for the educational system to remain adaptable; moreover, domestic courts have uniformly held that schools ought to adapt to children, taking into account the principle of the best interests of children.²⁶⁷ This sub-section focuses on children with disabilities in the context of adaptability of education.

Children with disabilities

The requirement on schools to adapt for children with disabilities and children with learning difficulties has been subjected to a large amount of litigation. The underlying principle is that children with special needs should be educated in mainstream educational institutions,²⁶⁸ and this has also been endorsed by the UN Convention on the Rights of Persons with Disabilities.²⁶⁹ This imposes on schools and teachers a duty to adapt to children having ‘divergent abilities and needs’.²⁷⁰ The principle can more fundamentally be expressed in this way: ‘Education has to be adapted to each child rather than forcing children to adapt to whatever schooling has been designed for them’.²⁷¹ In the *Integrated Schooling Case*,²⁷² the German Federal Constitutional Court

²⁶⁴ CESCR (n 62) para. 6 (d)

²⁶⁵ Tomasevski (n 101) 12

²⁶⁶ C Raj Kumar, ‘International Human Rights Perspectives on the Fundamental Right to Education – Integration of Human Rights and Human Development in the Indian Constitution’ (2004) 12 Tul.J.Int’l & Comp. L.237

²⁶⁷ Tomasevski (n 101) 15 and 31

²⁶⁸ *Ibid.*, 32; Beiter (n 94) 507

²⁶⁹ (Adopted by the UN General Assembly on 13 December 2006 and came into force on 3 May 2008)

²⁷⁰ *Ibid.*, 32; Beiter (94) 507

²⁷¹ *Ibid.*, 31; Beiter (94)507

expressed the view that schools are expected to set up substantial measures to adapt to the special needs and abilities of disabled students.²⁷³ The Court stated its consideration of the requirements of a specific solution for the educational authorities:

The education should be integrated, providing special support for disabled pupils if required, so far as the organisational, personal and practical circumstances allow this. This reservation is included as an expression of the need for the State to consider all the needs of the community in carrying out its duties, including the financial and organisational factors.²⁷⁴

This case indicates that the extensive support needed by the applicant and the ability of the state to provide such support, including financial and organisational factors, within the framework of the resources were crucial to the decision.²⁷⁵

Although, in the great majority of cases, disabled children or children with special learning needs should be educated in mainstream schools, the decision also depends on the nature of the children's disabilities. In practice, for example, children with learning difficulties and disabilities (LDDs)²⁷⁶ can experience difficulties when attending mainstream schools.²⁷⁷ This is so especially in large schools with noisy classrooms and playgrounds. For a variety of reasons children with special needs may be subject to bullying and find it difficult to make friends.²⁷⁸ Mainstream schools may lack sufficiently trained specialist teachers. Children with behavioural, emotional and social difficulties also face a greater challenge in mainstream schools.²⁷⁹ As the Department for Education and Skills in England identifies, in a very small minority of cases, children may have a 'severe sensory or other impairment which, without

²⁷² Integrated Schooling Case, German Federal Constitutional Court (8 October 1997) *Entscheidungen des Bundesverfassungsgericht*, Vol. 96, 288-315

²⁷³ *Ibid.*, 306

²⁷⁴ *Ibid.*, 308

²⁷⁵ Beiter (n 94) 509

²⁷⁶ A learning disability is caused by the way the brain develops. It is not mental illness or dyslexia. Children with a learning disability find it harder than others to learn, understand and communicate. <<http://www.mencap.org.uk/landing.asp?id=1683>> accessed on 13 January 2011

²⁷⁷ Jane Fortin, *Children's Rights and the Developing Law* (Cambridge University Press, Cambridge 2009) 452

²⁷⁸ According to Mencap, eight out of ten young people with a learning disability have been bullied <<http://www.mencap.org.uk/news.asp?id=4324>> accessed 13 January 2011

²⁷⁹ Fortin (271) 454

immediate specialist intervention beyond the capacity of the school, will lead to increased learning difficulties, or children may have severe emotional or behavioural difficulties which require an urgent outside-school response' and such children should not be educated in mainstream schools.²⁸⁰ So in a situation where a child has very complex needs, the education providers should make a careful assessment and evaluation to decide whether he or she should be educated in a mainstream or a special school.

2.2.3 Conclusions on the right to education in international law

The right to education in international law is the only human right that spans classical political and civil rights, and economic, social and cultural rights.²⁸¹ The right to education has the nature of a collective right as well,²⁸² relating to the right to development and to international cooperation in the field of education.²⁸³ In order to achieve the full realisation of the right to education in the paradigm of international law, the dual obligations of state parties play a crucial part. On the one hand, government, as a primary provider, has a positive obligation to take active measures to *fulfil* and to *ensure* the enjoyment of a free and compulsory education on a basis of non-discrimination.²⁸⁴ Such a positive obligation reflects the 'social' right component of the right to education.²⁸⁵ On the other hand, international law requires governments to *accept* and to *respect the freedom of education*.²⁸⁶ The interpretation of non-interference includes the requirement that states respect the liberty of parents to choose religious and moral education in conformity with their own 'religious and

²⁸⁰ Department for Education and Skills, 'Special Educational Needs – Code for Practice' <http://www.teachernet.gov.uk/_doc/3724/SENCodeOfPractice.pdf> 80 accessed 13 January 2011

²⁸¹ Mehedi (n77) paras. 50-78; Geraldine Van Bueren, *Child Rights in Europe, Convergence and Divergence in Judicial Protection* (Council of Europe 2008) 152; Nowak (n 83) 252-255; Verheyde (n 87) 2

²⁸² Mehedi (n 77) para. 51

²⁸³ Art. 15, para. 4 of the CESCR; Art. 28 (3) of the CRC

²⁸⁴ CESCR (n 62) para. 47

²⁸⁵ Verheyde (n 87) 1. Some consider that the right to education is an example of the 'cultural' rights category. *E.g.* Nowak (n 83) 253

²⁸⁶ *Ibid.*, para. 47

philosophical convictions’,²⁸⁷ and that they respect the freedom of non-state sectors to establish and direct all types of educational institutions.²⁸⁸ These last may differ substantially from those provided by the state in their inspiration, content and methods.²⁸⁹ Furthermore, governments should *respect academic freedom*.²⁹⁰ There should, for example, be freedom from censorship in textbooks, and trade union freedom for teachers. As these are so important in education, states ought to be provided with strategies for protecting these freedoms.²⁹¹ The right to education therefore embraces social and economic rights as well as civil and political rights when ensuring safeguards for freedom of choice.

Nevertheless, in practice, realising the right to education can be challenging. According to UNICEF, approximately 67 million children continue to be denied a free primary education.²⁹² Millions of children are still exploited as child labourers so that their education is interfered with.²⁹³ At the time of the UNICEF survey, approximately 64 million women aged 20-24 had been married before the age of 18.²⁹⁴ These real life circumstances force international human rights bodies, human rights organisations and national courts to have to ‘clarify the nature and the scope of the right to education through the corresponding governmental obligations’.²⁹⁵

International human rights law, however, is not directly applicable in many countries, since it needs a further transposition from an international human rights paradigm into the domestic legal framework.²⁹⁶ Moreover, most international human rights treaties, especially the International Covenant on Economic, Social and Cultural

²⁸⁷ A similar provision is enshrined in Art. 18 (4) of the ICCPR and also related to the freedom to teach a religion or belief as stated in Art. 18 (1) of the ICCPR

²⁸⁸ For example, Article 28 (2) of the CRC and Art. 13 (3), 13 (4) of the CESCR. Verheyde (n 87) 2

²⁸⁹ Mehedi (n 77) para. 73(a)

²⁹⁰ CESCR (n 62) para. 38

²⁹¹ *Ibid.*, para. 39

²⁹² UNICEF <<http://www.childinfo.org/education.html>> accessed 19 February 2013

²⁹³ UNICEF <<http://www.childinfo.org/labour.html>> accessed 19 February 2013

²⁹⁴ *Ibid.*, <<http://www.childinfo.org/marriage.html>> accessed 19 February 2013

²⁹⁵ Tomasevski (n 88) 9

²⁹⁶ *Ibid.*, 10; Tomasevski, *Human Rights Obligations: The 4-A Scheme* (n 88) 130

Rights (CESCR), have not adopted communications/complaints procedural mechanisms at international level to remedy human rights violations,²⁹⁷ owing to a distorted and ‘artificial distinction’²⁹⁸ which, during the Cold War, divided human rights into civil and political rights, and economic, social and cultural rights.²⁹⁹ The lack of enforceability of ‘international jurisprudence has its resultant impact on national jurisprudence’.³⁰⁰ International law and its implementation, consequently, require domestic legal enforcement of a right as an ‘essential prerequisite’ for its being respected.³⁰¹ At domestic level, after the formal ratification of international human rights treaties, a strong governmental commitment is, legally and politically,³⁰² essential for the realisation and implementation of international human rights standards in practice, and this include the right of children to education. The next section will examine how the right to education, especially compulsory education, has been realised in the Chinese domestic social and legal infrastructure.

2.3 Recognition of the need to protect the right to education in national Chinese law

2.3.1 Introduction to the social and political context of education in China

China has approximately 134 million children under the age of 18.³⁰³ The levels of national education are: pre-school education, primary education, secondary education

²⁹⁷ (n47) paras.71-72; OHCHR, ‘Communications/Complaints Procedures’ <<http://www2.ohchr.org/english/bodies/complaints.htm>>accessed 19 February 2013

²⁹⁸ Van Bueren (n 275) 152

²⁹⁹ Tomasevski, *The 4-A Scheme* (n 88) 10

³⁰⁰ Van Bueren 1999 (15) 695

³⁰¹ (n 47) para. 71

³⁰² The core commitment of state: ensuring a free and compulsory education for all children; the priority for the right to education in fiscal allocations, which translates legal and political into fiscal commitment, and the agreement of making progressive realisation of the right to education, e.g. making post compulsory education free of charge. Domestic legal commitment including legal enforcement is also crucial in the implementation of international standards into domestic level. Tomasevski, *The 4-A Scheme* (n 88) 130

³⁰³ ‘Education Statistics’ <http://www.unicef.org/infobycountry/china_statistics.html#96> accessed 19 February 2013

(junior and senior secondary education) and higher education.³⁰⁴ Aside from state schools, China encourages non-state educational institutions, including private and vocational schools³⁰⁵ and schools run cooperatively with foreign agencies ('Chinese-foreign cooperation-funding schools').³⁰⁶

As the highest administrative organ of state, the State Council³⁰⁷ (the Central Peoples' Government of China) exercises a unified leadership over local state administrative organs, regulating specific divisions of power and functions in administrative organs at the central, provincial, autonomous regional and municipal levels.³⁰⁸ In other words, the upper administrative organs not only have power to 'conduct, direct, inspect or urge' the work of lower organs, but can 'annul wrong administrative decisions of lower administrative organs by administrative reconsideration'.³⁰⁹

The Ministry of Education (MOE),³¹⁰ as one of the 27 administration organs under the leadership of the State Council, is responsible for the macro-development of

³⁰⁴ Higher education has two forms: education for academic qualifications and for non-degree courses (diplomas). Students who want to obtain an academic qualification can choose four years' undergraduate study or a two year postgraduate programme; while the length of a diploma course is between two and three years.

³⁰⁵ Vocational education includes primary, secondary and higher levels of vocational education. The establishment of different levels of vocational schools is encouraged by the state. Enterprises, institutional organisations, social organisations, other social groups and citizens are encouraged to run vocational schools and training institutions. Art. 20 and 21 of *the Vocational Education Law of China of 1996* (adopted on 15 May 1996, came into force on 1 September 1996)

³⁰⁶ The central government does not allow foreign organisations or institutions to run wholly-owned schools in China. However, it allows cooperative schemes with Chinese educational institutions in running schools. Both state and private schools can cooperate with foreign institutions in running schools in China. Currently Chinese-foreign cooperatively-run institutions mainly focus on higher education. *The Regulation on Chinese-foreign Cooperation Running Schools* (adopted on 19 February 2003); See also, Meiqiong Qin, 'The Current Situation of Chinese-foreign cooperation in Operating Schools and its Countermeasures' (2007) 2 (3) *Frontiers of Education in China* 336-348

³⁰⁷ 1.1 'Administrative leadership system' under Sec V. The Central Administrative System of *The Constitution of China of 2004* (adopted on 12 April 1988, the first amendment on 29 March 1993, the second amendment on 15 March 1999, the third amendment on 14 March 2004)

³⁰⁸ *Ibid.*, Local people's governments at and above the county level, within the limits of their authority as prescribed by law, conduct administrative work concerning the economy, education, science, culture, public health, physical culture, urban and rural development, finance, civil affairs, public security, ethnic affairs, judicial administration, supervision and family planning in their respective administrative areas; issue decisions and orders; appoint or remove administrative functionaries, train and make evaluations of their performance and reward or punish them. *The Constitution of China* V The setup, functions and power of local government S.2.(1) Function and power of local government

³⁰⁹ *Ibid.*, 1 'Supervision from Above' under Sec. 3 The Administrative Supervision System

³¹⁰ 'The responsibility of the Ministry of Education of China'

national education regulations/policies. The National Education Inspection Office under the MOE has the duty of monitoring the implementation of national policies at local levels, including assessing the progress and quality of education and producing annual monitoring reports.³¹¹ Although the MOE is a national administrative body,³¹² educational policies and regulations that have been issued still have to be enforced, and this is implemented by the Departments (or Commissions) of Education at provincial, autonomous regional and municipal levels of the state.

Since China introduced a national policy of economic reform and opening-up in 1978, the country has experienced rapid economic development and ‘unprecedented urbanisation’.³¹³ Under this social, economic and political transformation, the national education system has required a corresponding reform in order to adapt to such large-scale economic-social change. Political commitment to the advancement of education has been emphasised at national level. For example, in the *Report on the Work of the Government 2012*,³¹⁴ the Premier of the State Council stated that the development of education ‘will be given ‘high priority’’,³¹⁵ and he required that government spending on education should reach 4 per cent of the nation’s GDP, the local authorities acting to ensure that the target was reached.³¹⁶ The focus of the educational reform he called for encompassed: strengthening the corps of teachers, energetically implementing an all-round education for children, and gradually resolving major problems in exams and

<http://www.moe.edu.cn/publicfiles/business/htmlfiles/moe/moe_2797/200907/49988.html> accessed 19 February

³¹¹ ‘Departments of the Ministry of Education’

<http://www.moe.edu.cn/publicfiles/business/htmlfiles/moe/moe_2156/200807/36533.html> accessed 19 February 2013

³¹² Administrative supervision bodies in the State Council exercise supervision over administrative organs and their staff through investigation. They have the power to investigate targets of supervision and provide suggestions or decisions according to the results of investigations. ‘Investigative supervision’

< <http://www.china.org.cn/english/MATERIAL/28847.htm> > accessed 6 December 2012

³¹³ Kevin Honglin Zhang, Shunfeng Song, ‘Rural-urban Migration and Urbanization in China: Evidence from Time-series and Cross-section Analyses’ (2003) 14 *China Economic Review* 386-400

³¹⁴ (Delivered by Premier Wen Jiabao at the Fifth Session of the Eleventh National People’s Congress on 5 March 2012)

< http://english.gov.cn/official/2012-03/15/content_2092737.htm > Accessed 19 February 2013

³¹⁵ *Ibid.*, II. Major Steps to Be Taken in Government Work in 2012, Sec. 5

³¹⁶ *Ibid.*

enrolment.³¹⁷ His speech also urged the promotion of a balanced development of compulsory education in the central and western rural, remote, ethnic areas, especially where the state was allocating resources.³¹⁸

The Outline of the National Medium and Long-Term Programme for Education Reform and Development (2010-2020), referred to as *The Outline*,³¹⁹ was adopted in 2010 by the State Council and is regarded as the blueprint transforming political commitment into practice.³²⁰ Mengyuan comments that the adoption of *The Outline* is a milestone in the history of education in China,³²¹ even though it is a non-legally binding national directive on education. The content of *The Outline* sets forth comprehensive guidelines at different levels of education from kindergarten to higher education, and from vocational to special education. The ‘strategic objectives’ of *The Outline* embrace: improving the quality of universal education (this includes enhancing the quality of compulsory education and achieving a gross high school enrolment of 90 per cent by 2020);³²² providing equality of education at all levels; and establishing an education system as a life-long process.³²³ Most importantly, *The Outline* stresses the establishment of a national education system based on ‘fairness’, especially aimed at reducing regional differences and ensuring that everyone has the opportunity to receive a good quality of education according to law: ‘no children should be left behind’ because of financial inability.³²⁴ *The Outline* also states that the issue of providing compulsory education of an equal standard for domestic migrant children should be resolved.³²⁵ Additionally, *The Outline* notes that the advancement of *the rule of law in*

³¹⁷ *Ibid.*

³¹⁸ *Ibid.*

³¹⁹ (Adopted by the State Council on 30 July 2010)

³²⁰ In *the Report on the Work of the Government 2010*, the Premier calls for the adoption and implementation of *The Outline of the National Medium and Long Term Programme for Education Reform and Development*.

³²¹ Mingyuan Gu, ‘A Blueprint for Educational Development in China: a Review of *The Outline of China’s National Plan for Medium and Long-Term Education Reform and Development (2010-2020)*’ (2010) 5 (3) *Front Education China* 291-309

³²² Chapter 2 ‘Strategic Aims’

³²³ *Ibid.*

³²⁴ *Ibid.*

³²⁵ *Ibid.*

education is crucial.³²⁶ Measures are suggested, such as the amendment of current laws on education to keep up with economic and social development, the strengthening of administrative regulations on education and appropriate design of local education legislation.³²⁷

The Outline, effecting (with other instruments) the transformation from a political commitment into a nationwide directive on education, will have a positive impact on the development and reform of education in China. The government has addressed several crucial issues of education in the state. Nevertheless, it is still too early to assess whether the strategic objectives set up in *The Outline* can be fully achieved by 2020. *The Outline*, as a macroscopic national educational guideline, needs to be formulated and integrated by local governments of provinces, autonomous regions and municipalities into their local legislation and administrative regulations according to the social and economic development in the different regions.³²⁸

Furthermore, the content of *The Outline* appears too general to implement, and needs to be further clarified and interpreted by the central government. After the adoption of *The Outline*, the next step for the government should be to work on a detailed guideline on how to implement *The Outline* at local levels. Such a guideline ought to identify key issues, including the indicators of successful results in education and a defined framework of governmental accountability between the state and local authorities at different administrative levels. The following are some relevant questions. How should the performance of local governments be measured? What issues are essential and how should they be dealt with? Which body is responsible for monitoring *The Outline*? In a case of poor performance by a local government, what are the remedies? If the general public (assuming civil society is included) can participate in the process of monitoring,³²⁹ how can this be meaningfully managed? These questions are as yet unanswered. Accountability seems a quite essential element in the provision of public services in China – and vital for ensuring that migrant children receive an adequate education. Without strong accountability demanded of the local authorities,

³²⁶ *Ibid.*, Part 4 ‘Guaranteeing Measures’, Chapter 20 ‘The Promotion of Education in Accordance with the Rule of Law’

³²⁷ *Ibid.*

³²⁸ ‘Implementation’

³²⁹ (n 320) *The Outline* mentions that monitoring from the public should be enhanced.

along with an adequate division of responsibilities and resources, enforcement of national policies becomes impracticable. (The issue about accountability in terms of education for migrant children is discussed in Chapter 4.)

Moreover, in order to achieve ‘the rule of law in education’, the political commitment should be translated into legal and fiscal commitments. The Constitution, for instance, lays down only a general framework of rights and duties.³³⁰ It is the responsibility of domestic courts closely and prudently to define the scope of education policy and its corresponding obligations towards the government, educational institutions, professional teachers or parents on a daily basis. It is equally important for people to enhance the awareness of using legal or non-legal remedies to protect their rights. This, however, depends on disseminating legal knowledge through education.³³¹ Further, a formal legal commitment to national budgetary allocations is crucial to give political commitment the fiscal backing it needs.

Kindergarten education

The purpose of kindergarten education is to promote an ‘all round’ development of children in the early stage of their development.³³² The age of admission is from three years old.³³³ Although kindergarten education is unenforceable and not compulsory in the state, *The Outline* proposes universalising it, extending it to one year before primary education in less economically developed regions and to three years before primary education in developed regions.³³⁴ The new policy on the standards for the establishment of kindergartens has undergone a review and amendment by the government.³³⁵ According to the current policy, it is a responsibility of local education administrative departments of the people’s governments to set up, operate, manage and

³³⁰ The concern of the application of the Constitution of China to litigation will be dealt with later in this chapter.

³³¹ (n 320)

³³² Art. 3 of *the Policy on the Management of Kindergartens* (adopted by the Ministry of Education on 11 September 1989)

³³³ *Ibid.*, Art. 2

³³⁴ Part 2, Chapter 3 ‘Pre-school education’, Section 5 ‘Popularising pre-school education’

³³⁵ *Ibid.*

monitor kindergartens.³³⁶ Bodies in the private sector, such as enterprises, institutional organisations, social organisations, rural residents' and villagers' committees, and citizens, are encouraged to run and sponsor their own kindergartens.³³⁷

Compulsory education

Compulsory education refers to the six years of primary education and the three years of junior secondary education recognised as a nine-year course of compulsory education in China.³³⁸ Children who have reached the age of six, and are no older than seven, should receive compulsory education.³³⁹

The Outline addresses the objectives of education: the development of children's personalities, talents and abilities, understanding of society, and ability to think independently; and it gives them the right to exercise and play in their spare time.³⁴⁰ An innovative proposal for the reduction of workload for students is put forward to apply throughout the whole nation.³⁴¹ *The Outline* also reaffirms that compulsory education should be free of charge, compulsory and universal.³⁴² In order to ensure access of domestic migrant children to compulsory education, receiving cities should provide opportunities for them on an equal basis.³⁴³ A similar suggestion is enshrined in the *Compulsory Education Law*:

For a school-age child whose parents are working or dwelling at a place other than their permanent residence, if he or she receives compulsory education at the place where his/her parents are working or dwelling, the local government shall provide him or her equal education conditions for receiving compulsory education.³⁴⁴

³³⁶ (n326) Art. 4 and 5

³³⁷ Art. 5

³³⁸ *The Compulsory Education Law of China* (adopted on 12 April 1986, amended on 29 June 2006, came into force on 1 September 2006) (the CEL); Art. 18 of *the Educational Law of China*

³³⁹ Art.11 of the CEL; CRC Committee 'Consideration of Reports Submitted by State Parties (China) under Art. 44 of the Convention' (15 July 2005) UN Doc CRC/C/83/Add.9, para. 25

³⁴⁰ Section 10 'Reduction of Workload for Students'

³⁴¹ *Ibid.*, Section 10 'Reduction of Workload for Students'

³⁴² Part Nine 'Promoting the Balanced Development at the Level of Compulsory Education'

³⁴³ *Ibid.*

³⁴⁴ Art. 12

Despite this legislation, various obstacles have in practice hindered the access of domestic migrant children to free compulsory education. (A detailed analysis of this issue will be given in Chapter 3, ‘Lived Experience of Internal Rural Migrant Children in Accessing Education in Receiving Cities’.)

Other forms of education

Non-state schools

There are three types of privately-run schools: the first type comprises private schools, which offer good quality education at high cost. This type is established and managed by people in the private sectors. The second type is *min ban* schools (community schools). The nature of *min ban* schools, according to *the Law on the Promotion of Non-Public Schools*,³⁴⁵ ‘belongs to public welfare’,³⁴⁶ but welfare having its own autonomy in running schools.³⁴⁷ Social organisations that possess the qualifications of a legal person³⁴⁸ or individuals who possess political rights and full capacity for civil conduct are encouraged to establish *min ban* schools in accordance with the *Educational Law*, the *Law on the Promotion of Non-public Schools* and relevant statutes and regulations.³⁴⁹ The *min ban* schools enjoy not only a preferential tax status granted by the state,³⁵⁰ but financial aid and the lease or transfer of idle state-owned assets in support of non-public schools.³⁵¹ Financial institutions are encouraged to support the development of private schools by providing credit and loans.³⁵² However, it is confusing that the same piece of legislation, the *Law on the Promotion of Non-Public Schools*, applies to both *min ban* schools and private schools in China. Private schools, however, do not come within the bracket of ‘public welfare’ enshrined in the

³⁴⁵ (Adopted on 28 December 2002)

³⁴⁶ *Ibid.*, Art. 2

³⁴⁷ *Ibid.*, Art. 5

³⁴⁸ *Ibid.*, Art. 9

³⁴⁹ *Ibid.*

³⁵⁰ Art. 46

³⁵¹ Art. 45

³⁵² Art. 48

Law on the Promotion of Non-Public Schools, as they are only for those who can afford the fees.

A third type of non-state school has emerged recently: there are privately-run schools, which specialise in receiving domestic migrant children. An examination of the current situation of privately-run schools for domestic migrant children will appear in Chapters 3, 4 and 5.

Faith Schools

The Chinese government promotes various forms of education. However, China does not have educational institutions legally established by religious bodies comparable to the faith schools in England. It is interesting, therefore, to contrast briefly the position of religious schools in England and China.

In England, faith schools (or religious schools) have particular religious characters or have formal links with religious organisations.³⁵³ They are normally established by religious bodies, such as the Church of England and the Roman Catholic Church, or have associations with other religions.³⁵⁴ These schools, which can be both voluntary aided³⁵⁵ and publicly funded by the local authority, are mostly run in the same way as other state schools in England, *i.e.*, the schools have to follow the same criteria as other maintained schools, although their faith status may be reflected in their religious education curriculum, admissions criteria and staffing policies.³⁵⁶

Although freedom of religious belief is stipulated in the *Constitution of China*,³⁵⁷ the separation of education institutions from religion is emphasised in several

³⁵³ 'Faith schools' < <http://www.teachernet.gov.uk/wholeschool/faithschools/>> accessed 15 June 2010

³⁵⁴ *Ibid.*

³⁵⁵ Voluntary-aided schools are schools funded by voluntary contributions. School buildings and land are normally owned by a charitable foundation, often a religious organisation. The government body contributes to building and maintenance costs. 'Types of school' <<https://www.gov.uk/types-of-school/overview>> Accessed 19 February 2013

³⁵⁶ For example, they must follow the National Curriculum and participate in National Curriculum tests and assessments and are inspected by Ofsted, which is the Office for Standards in Education, Children's Services and Skills in England. Ofsted regulates and inspects in an effort to promote excellence in the care of children and young people, and in education and skills for learners of all ages. 'About us' <<http://www.ofsted.gov.uk/Ofsted-home/About-us>> accessed 19 February 2013

³⁵⁷ Art. 36

Chinese statutes: Art 8 of the *Education Law of China* stipulates that ‘the State shall separate education from religion’,³⁵⁸ the *Promotion of Non-Public Schools of China* has a similar provision: non-state schools shall implement the separation of education from religion; no organisations or individuals may use religion to conduct activities designed to interfere with the education system of the state.³⁵⁹ The *Regulation on Chinese-Foreign Cooperation-Running Schools* ordains that foreign religious organisations, institutions, colleges, universities and religious workers are not allowed to engage in cooperative activities of running schools, nor may they offer religious education or conduct religious activities in China.³⁶⁰

Nevertheless, there is one exception: a special type of training college can be established in a province by the autonomous National Religious Bodies³⁶¹ for people who want to become professional clergy.³⁶²

2.3.2 The legal position of children in China

The legal definition of children

The legal definition of children is given in the *Law on the Protection of Minors* (referred to as *The Minors Law*),³⁶³ which states that ‘the term *minors* as used in the present law shall refer to citizens under the age of eighteen’.³⁶⁴ Similar statements regarding the definition of children and their capacity for civil and criminal conduct appear in various other laws. For example in civil and administrative proceedings, as the General Principles of the *Civil Law of China*³⁶⁵ emphasise, ‘a citizen aged eighteen or over shall be an adult. He shall have full capacity for civil conduct, may

³⁵⁸ Art. 8

³⁵⁹ Art. 4

³⁶⁰ Art.7

³⁶¹ The National Religious Bodies are the Buddhist Association, the Taoism Association, the Islamic Association, the Catholic Patriotic Association and the China Christian Council

³⁶² Art 8 of the *Regulation on Religious Affairs* (adopted on 7 June 2004); Art. 3 of *the Measures of Establishment of Religious Institutes* (adopted by the State Administration for Religious Affairs of China on 25 December 2006)

³⁶³ (Adopted on 4 September 1991 and was amended on 29 December 2006)

³⁶⁴ Art. 2

³⁶⁵ (Adopted on 1 January 1987)

independently engage in civil activities and shall be called a person with full capacity for civil conduct'.³⁶⁶ One exception is that a child aged sixteen, (not yet eighteen) who is able to earn his own livelihood enjoys individual rights in civil and administrative litigation and may, during proceedings, be directly consulted by the court without first obtaining parental consent.³⁶⁷ With respect to the age of criminal liability for a child, the *Criminal Law of China*³⁶⁸ stipulates that 'if a person who has reached the age of sixteen commits a crime, he shall bear criminal responsibility'.³⁶⁹ A child who, when aged between fourteen and sixteen, 'commits intentional homicide, intentionally hurts another person so as to cause serious injury or death, or commits rape, robbery, drug-trafficking, arson, explosion or poisoning, shall be held criminally liable'.³⁷⁰ A person 'aged between fourteen and eighteen who commits a crime shall be given a lighter or mitigated punishment'.³⁷¹ However, the death penalty shall not be imposed on persons who have not reached the age of eighteen at the time the crime was committed or on women who are pregnant at the time of trial.³⁷²

The legal position of children

In the western world, the rights of children, including their civil, political, social and cultural rights, have been discussed by many scholars. Holt, for example, proposes in his book *Escape from Childhood* that we free children from the burdens of a tradition they have laboured under for 300 years; legal writers support the view of children 'being wholly subservient and dependent ... being seen by older people as a mixture of expensive nuisance, slave and super-pet'.³⁷³ Holt further claims that 'it was a form of oppressive and unwarranted discrimination to exclude children from the adult

³⁶⁶ Art. 11

³⁶⁷ *Ibid.*

³⁶⁸ (Adopted on 1 July 1979 and was amended on 14 March 1997)

³⁶⁹ Art. 17

³⁷⁰ *Ibid.*

³⁷¹ *Ibid.*

³⁷² Art. 49

³⁷³ John C Holt, *Escape from Childhood* (Penguin Books Ltd 1982) 251

world'.³⁷⁴ His arguments have been expanded in Farson's book, *Birthrights: a Bill of Rights for Children*.³⁷⁵ Farson argues that the right to information and choice of education, the right to sexual freedom, economic and political rights, and even the right to determine their home environment should all be extended to children.³⁷⁶ He further claims that 'it cannot be wrong to give children more freedom'.³⁷⁷ Holt and Farson's views on children's rights are well known to child liberationists in western countries.³⁷⁸ Nevertheless, their arguments that children should enjoy total adult freedom and that the same laws should apply to both children and adults are 'extremely controversial' and are seen by some as 'unacceptable',³⁷⁹ appearing not only 'unrealistic but 'reckless' for modern society'.³⁸⁰ This is because the liberationists have failed 'to accord sufficient attention to the physical and mental differences between adulthood and childhood'; moreover, 'they appeared to ignore the evidence on developmental growth through childhood, which establishes clearly that children are different from adults in development, behaviour, knowledge, skills and in their dependence on adults, most often their parents'.³⁸¹ Consequently, too much freedom may put the relationship between parents and children in a range of dangers, 'including the potential damage to the family unit as a whole'.³⁸² This counter-view is reinforced by research showing that such liberationists' views were established on an unrealistic perception of children's capacities.³⁸³ Herring argues that 'children do not have the capacity to develop their own version of their good life, at least in the sense of defining long-term goals', because 'the way children live their childhoods affects the range of choices and options available later on in life'.³⁸⁴ He explains that allowing children to

³⁷⁴ Herring (n114) 383; Fortin (n 271) 4

³⁷⁵ Richard Farson, *Birthrights: a Bill of Rights for Children* (Penguin 1974) 56

³⁷⁶ *Ibid.*, 130

³⁷⁷ *Ibid.*

³⁷⁸ Herring (n 114) 383

³⁷⁹ *Ibid.*, 384

³⁸⁰ Fortin (n 271) 5

³⁸¹ *Ibid.*

³⁸² *Ibid.*

³⁸³ *Ibid.*; Herring (n114) 385

³⁸⁴ *Ibid.*

pursue their vision of a ‘good life’ and allowing them not to go to school may mean that ‘they will be prevented from pursuing what they regard as the good life once they reach majority because they will not have the education needed to pursue their goals’.³⁸⁵ Therefore, a balanced approach between children’s rights to autonomy and their protection should be considered: it may be ‘justifiable to infringe a child’s autonomy during minority in order to maximise their autonomy later on in life’.³⁸⁶ This can explain why children should not be treated as adults and why the state may be ‘entitled to restrict autonomy rights’ for the sake of the promotion of their welfare and ‘ultimately’ their autonomy.³⁸⁷

In China, the protection of children’s rights has been recognised. For example, in legal practice, the right of children to receive education is enshrined, amongst other rights, in several national statutes, including the *Constitution of China*, the *Law on Prevention of Juvenile Delinquency*,³⁸⁸ the *Compulsory Education Law*, the *Education Law*, the *Criminal Law of China*,³⁸⁹ the *Adoption Law of China*,³⁹⁰ and the *Regulations on the Education of the Disabled*. The *Constitution*³⁹¹, for instance, declares:

The state undertakes the development of socialist education and works to realise the scientific and cultural level of the whole nation; the state establishes and administers schools of various types, universalises compulsory primary education and promotes secondary, vocation and higher education as well as pre-school education;³⁹² citizens of China have the duty as well as the right to receive education.³⁹³

³⁸⁵ *Ibid.*

³⁸⁶ *Ibid.*

³⁸⁷ *Ibid.*

³⁸⁸ (Adopted on 28 June 1999)

³⁸⁹ (Adopted on 1 July 1979, revised on 14 March 1997)

³⁹⁰ (Adopted on 29 December 1991, amended on 4 November 1998)

³⁹¹ The provisions of education in the *Constitution of China* will be specifically discussed in Section 2.3.3 of this chapter

³⁹² Art. 19 of the *Constitution*

³⁹³ *Ibid.*, Art. 46

Regarding compulsory education in China, the *Compulsory Education Law*³⁹⁴ asserts that ‘the state adopts a system of nine year compulsory education’, which is ‘implemented uniformly by the state and shall be received by all school-age children and adolescents.’³⁹⁵ Compulsory education is considered ‘a public welfare’ that ‘shall be guaranteed by the state’.³⁹⁶ Another example – in legislation dealing with the problem of juvenile delinquency in China – is that ‘the policy of education, persuasion and redemption shall be implemented and the principle of giving priority to education and taking punishment as a subsidiary shall be followed in the imposition of criminal liabilities on the minors who commit crimes’.³⁹⁷

Compared with these piecemeal laws, the *Law on the Protection of Minors* (the *Minors Law*)³⁹⁸ as a piece of national legislation provides a systematic mechanism for the promotion and protection of children’s rights, including the right to education.³⁹⁹ The term ‘minor’ in this legislation refers to children under the age of eighteen⁴⁰⁰ in conformity with other statutes. The right of minors to ‘enjoy survival, development, protection, and participation’ as ‘general principles’ are highlighted in the *Minors Law*.⁴⁰¹ More specifically, in the interpretation of the survival and developmental rights of children, the *Minors Law* states that children shall enjoy ‘the right to receive education’:⁴⁰² the state, society, schools and families should ‘respect and guarantee’ this right of minors according to law, ‘regardless of their gender, ethnic status, race, family property status and religious belief’.⁴⁰³ This provision reflects a positive obligation of the state, as the main duty holder, together with other actors to fulfil their

³⁹⁴ The provisions of compulsory education in the *Compulsory Education Law of China* will be specifically discussed in Section 2.3.3 of this chapter

³⁹⁵ Art. 2 of the *Compulsory Education Law*

³⁹⁶ *Ibid.*

³⁹⁷ Art. 44 of the *Law on the Prevention of Juvenile Delinquency*

³⁹⁸ (Adopted on 4 September 1991, amended and promulgated on 29 December 2006)

³⁹⁹ Art. 1

⁴⁰⁰ Art. 2

⁴⁰¹ Art. 3

⁴⁰² Art. 3

⁴⁰³ Art. 4

obligations to ensure the exercise of the right to education on a non-discriminatory basis.

Another example of a positive obligation of the state to protect the right of children is that in Art. 6 of *the Minors Law*, which states that the protection of children is regarded as a ‘common responsibility of state, armed forces, political parties, social organisations, enterprises, public institutions, self-governing mass organisations at grass-[roots] levels in urban and rural areas, guardians of minors, and other adult citizens’.⁴⁰⁴ The *Minors Law* further requires that ‘the whole society should establish a good environment of respecting, protecting, educating and taking care of minors’.⁴⁰⁵ Educational institutions also have positive obligations to meet the objectives stated above: they should ‘respect’ the right of minors to receive education and particularly provide ‘patient’ help to those who have learning difficulties ‘without any discrimination’.⁴⁰⁶ Schools should not expel minors by violating any law or legal provision of the State.⁴⁰⁷ Further, teachers and administrative staff should *respect* the personality and dignity of minors, and may not commit corporal punishment directly or indirectly or ‘in disguised forms against minors or commit any other act that humiliates the personality and dignity of minors’.⁴⁰⁸

Society has its positive duty to protect minors as well. For example, it is prohibited to sell cigarettes or alcohol to persons who are under 18 in China;⁴⁰⁹ business operators have a responsibility either to post a sign saying they do not sell cigarettes or alcohol to minors or to require IDs from children.⁴¹⁰ Dancing clubs and internet cafes should not be established near primary, secondary and high schools; those under the age of 18 are also prohibited to enter such places in China.⁴¹¹ It is

⁴⁰⁴ Art. 6

⁴⁰⁵ Art. 27

⁴⁰⁶ *Ibid.*

⁴⁰⁷ Art. 18

⁴⁰⁸ Art. 21

⁴⁰⁹ Art. 37

⁴¹⁰ *Ibid.*

⁴¹¹ Art. 36

prohibited to sell, dismiss or lease network products, newspapers, books, audio and video products and electronic publications that are harmful to minors anywhere.⁴¹²

Furthermore, parents play a crucial role in protecting and in educating their children. They should not only fulfil their guardianship duties to foster their children in a harmonious family environment,⁴¹³ but should pay attention to the physiological and psychological development of their children.⁴¹⁴ It is the responsibility of parents to prevent children from taking up inappropriate habits, such as, ‘smoking, excessive drinking, living a vagrant life, being indulgent with the internet, gambling, taking drugs or prostitution’.⁴¹⁵ Aside from these responsibilities, parents ‘must ensure’ that children who have reached the age of compulsory education receive and complete this compulsory education.⁴¹⁶ This means that there is a legal duty on parents to ensure the attendance of their children at school. Furthermore, parents should be ‘equipped with family education knowledge, correctly perform guardianship duties, foster and educate minors’.⁴¹⁷ If a parent is ‘unable to perform his guardianship duties to a minor because of leaving his home town to work or due to other reasons, he shall entrust another adult with the capacity of guardianship to guard the minor on his behalf’.⁴¹⁸

In the *Minors Law*, there are only a few provisions relating to the right of children to participation. Art. 14 states that parents or other guardians should, ‘when making decision relevant to a minor’s rights and interests on the basis of the minors’ age and intellect development status, tell minors themselves, and listen [to] their opinions’.⁴¹⁹ Art. 39 protects the right of children to privacy. The right of a child to be heard is important. Under the *Minors Law*, a minor can bring proceedings. Art. 51 states that ‘where a minor brings a lawsuit to the people’s court ... when his lawful rights and interests are injured, the people’s court shall try the case timely according to

⁴¹² Art. 34

⁴¹³ Art. 10

⁴¹⁴ Art. 11

⁴¹⁵ Art. 11

⁴¹⁶ Art. 13

⁴¹⁷ Art. 12

⁴¹⁸ Art. 16

⁴¹⁹ Art. 14

law, and shall, by adapting to the minor's physiological and psychological features and the needs in his healthy growth, safeguard the minor's lawful rights and interests'.⁴²⁰ There are, however, very few cases of children bringing proceedings. In practice children are considered to be fledglings sheltering under adult protection – 'a group with no power to speak'.⁴²¹ It is usual for parents to make most decisions for them. Nonetheless, the issue of young people's capacity to make (medical) decisions has been litigated in other countries. The High Court of Australia ruled in *Marion's case* that 'a minor is capable of giving information consent when he or she achieves a sufficient understanding and intelligence to enable him or her to understand fully what [the nature and consequences of that treatment] is proposed'.⁴²² The English House of Lords in *Gillick v. West Norfolk*⁴²³ also ruled that a young girl was competent to consent to contraceptive advice and treatment if she had a sufficient understanding and intelligence to enable her to understand fully what was proposed.⁴²⁴ So far equivalent case law has not arisen in China.

On examining the main provisions in the *Minors Law*, the conclusion must be that the legislation itself focuses on protection, survival, and development rights rather than on the participation rights of children; it also imposes a positive obligation on the state, society, parents, educational institutions and the judicial system to ensure children have the enjoyment of rights. Furthermore, the *Minors Law* does not obtain any provision on the freedom of parents to choose education for their children in conformity with their own convictions, as enshrined in international law, owing to the questionable legitimacy of establishing religious educational institutions in China.

⁴²⁰ Art. 51

⁴²¹ Yijun Pi, 'Cultural Interpretation of Juvenile Rights' (2005) 8 *Shandong Social Science* 30

⁴²² *Department of Health and Community Services (NT) v JWB (Marion's case)* (1992) 175 CLR 218 at 237-238

⁴²³ *Gillick v. West Norfolk and Wisbech Area Health Authority* [1986] 1 AC 112, [1985] 3 All ER 402, [1985] 3 WLR 830, [1986] 1 FLR 224, [1986] Crim LR 113, 2 BMLR 11

⁴²⁴ *Ibid.*, [1986] 1 AC 112, 188-189 (Lord Scarman)

2.3.3 The legal position on the right of children to education in Chinese law

The Constitution of China

The Constitution⁴²⁵ underwent four amendments in 2004.⁴²⁶ In the fourth amendment, the provision that ‘the State respects and protects human rights’ was added.⁴²⁷ This is the first time since the adoption of the Constitution in 1982 that the notion of human rights has officially been transformed from a political meaning to a legal concept within it.⁴²⁸ This is not only a milestone in the development of human rights from a legal perspective, but is regarded as a fundamental basis for promoting children’s rights in China.

The Constitution, as the state’s fundamental law, explicitly enshrines the right to education in two articles.⁴²⁹ The first is in Art. 46, ensuring that ‘citizens of China have the duty as well as the right to receive education’; ‘the State promotes the all-round development of children and young people, morally, intellectually and physically’.⁴³⁰ However, this article does not clarify the division of duty between the state and parents: how far the state has a positive duty to provide education at different levels; how far parents also have a duty to ensure that their children receive education. This article seems to place a duty on the child to attend school rather than placing a legal obligation on the parents, although the *Minors Law* clearly places a duty on parents, as discussed. Tomasevski also points out that China’s law does not yet conform to the international legal framework defining the right to education.⁴³¹ Even

⁴²⁵ (Adopted on 12 April 1982)

⁴²⁶ (Amended on 14 March 2004, entailing a general provision of human rights (Art.33) among further economic reforms)

⁴²⁷ Art. 33 (3)

⁴²⁸ Qianfan Zhang, ‘From People’s Sovereignty to Human Rights: the Transformation of Chinese Constitution Jurisprudence’ (2005) 2 Journal of China University of Political Science and Law 3-9 <http://article.chinalawinfo.com/Article_Detail.asp?ArticleId=32489> accessed 19 February 2013

⁴²⁹ The liberty of parents to choose education for their children in accordance with their own religious and moral convictions has not yet been recognised.

⁴³⁰ Art. 46

⁴³¹ Tomasevski, ‘The Right to Education, Report Submitted by the Special Rapporteur: Mission to China’ (2003) UN Doc E/CN.4/2004/45/Add.1, para.6

though the term ‘the right to education’ is employed ‘abundantly’, she notes that ‘the *Constitution of China* and its legislation define education as an individual duty,⁴³² adding a ‘right to receive education’.⁴³³

In addition, Art. 19 of the Constitution declares that ‘the state establishes and administers schools of various types, universalises compulsory primary education and promotes secondary, vocational and higher education as well as preschool education ...’⁴³⁴ As Chunli points out, this article does not identify the obligation of the state, and this uncertainty may imply that the provision of education in the Constitution is considered a general principle rather than a legally enforceable right.⁴³⁵

Moreover, *free* compulsory education is not stipulated in the *Constitutional Law*, although it is enshrined in other legislation, such as the *Compulsory Education Law* (Art.2). Art. 28 of the CRC and Art. 13 (2)(a) of the CESCR state that ‘economic accessibility’ of education in international law is one of the crucial parts for the realisation of free compulsory education.⁴³⁶ The Constitution merely mentions that the state should make primary education compulsory and universal, without clarifying the key element, ‘*free of charge*’.

Regarding the aim of education, the Constitution states that ‘all-round moral, intellectual, and physical development of children and young people’ should be promoted.⁴³⁷ Realising this aim in practice can be challenging. Most schools still focus on examination-oriented education, which forces students to study round the clock. Consequently, the development of their bodies and minds is neglected. In *Zhang Liang and other students v Hong Xing middle school*,⁴³⁸ fourteen junior secondary students were expelled by the head of the school, owing to their poor academic performance which deflated the overall test scores and which would have had a negative impact on

⁴³² Art. 46

⁴³³ (n 425) para. 6

⁴³⁴ Art. 19

⁴³⁵ Chunli Xia, ‘Migrant Children and the Right to Compulsory Education in China’(2006) 2 Asia-Pacific Journal of Human Rights and the Law 50

⁴³⁶ CESCR (n 62) para. 6(b)

⁴³⁷ Art. 46

⁴³⁸ *Zhang Liang and other students v Hong Xing middle schools*
<http://edulawonline.com/articleshow.asp?d_id=395> accessed 8 December 2012

the overall high school enrolment rates. Parents of these students lodged a formal civil litigation to the basic people's court in that area. Although the act of expelling students violates the Constitution of China itself, due to the ineffectiveness of the Constitution (as will be discussed later) the local administrative department of education turned to education laws. They held that Hong Xing school infringed several education laws, including Art. 1 (the right to receive compulsory education), Art. 3 (the aims of education), Art. 59 (1) of the *Compulsory Education Law* (legal liability on forcing school-age children 'by menace or coax' to leave schools or quit education); Art 9 (non-discrimination) of the *Education Law*; Art.5 (respect the personality and dignity of minors) and Art. 18 (the right to education and non-discrimination) of *Protection of Minors*.⁴³⁹ The Court ordered the school to take the fourteen students back. The court also commented that 'the head of the school discriminated against students directly on the grounds of their academic performance, and that this reflects a reality that test results are still considered the dominant measure of evaluating students in the majority of schools'.⁴⁴⁰

A fundamental problem of the Constitution is that the provisions enshrined in it may not get translated into practice. Lin points out how differently the Constitutions of China and of the United States function. The Chinese Constitution is primarily considered a 'mission statement' serving as the political platform of the Communist Party and as guidelines for legislation rather than being a 'living constitution'.⁴⁴¹ The problem with it is that the provisions have not been turned into standards of conduct through judicial interpretation and application.⁴⁴² In other words, it cannot be applied directly to decide whether an individual has certain rights against the government, either by domestic courts or in actual disputes.⁴⁴³ Because of this, the value of the Constitution has been questioned.⁴⁴⁴ The American Constitution, by contrast, has been given judiciary instruments to impose its power over other branches of the

⁴³⁹ *Ibid.*

⁴⁴⁰ *Ibid.*

⁴⁴¹ Chris Lin 'A Quiet Revolution: an Overview of China's Judicial Reform' (2003)4 (2) APLPJ 270

⁴⁴² *Ibid.*, 278

⁴⁴³ *Ibid.*, 272

⁴⁴⁴ Zhiming Zhang, 'My View on the Judicialisation of the Constitution' <<http://www.gongfa.com/zhangzmxianfasifahua.htm>> Accessed 26 December 2012

government.⁴⁴⁵ The courts' interpretations have also made the American Constitution a living one 'with teeth, not just on paper'.⁴⁴⁶

Nevertheless, the situation regarding the ineffectiveness of the Chinese Constitution has changed since the Supreme Court of China itself recognised the plaintiff's basic right to education under Art. 46 of the Constitution in *Qi Yuling v Chen Xiaoqi*.⁴⁴⁷ In this case, Qi, the plaintiff, a senior secondary student, passed her exam for entering a vocational college. Her admission letter was sent to her senior secondary school. However, the defendant Chen, a previous classmate of the plaintiff, not only stole the plaintiff's admission letter from the school which they both attended, but attended the vocational college which the plaintiff was supposed to attend under *her* name. This fraud was accomplished because of assistance from the defendant's father. The defendant Chen therefore graduated under the plaintiff's name and got a well-paid job at the Bank of China. Eventually the truth was revealed. Hence Qi sued the imposter Chen, Chen's father, her previous senior secondary school, the vocational college and the local commission of education.⁴⁴⁸ She claimed infringements upon her right of personal name and on her right to education.⁴⁴⁹ In the first trial the court did not find that Qi's educational right had been infringed. In the Court of Appeal, however, the claim was supported; but due to the absence of provisions on the right to education in *The General Principles of the Civil Law of China*,⁴⁵⁰ the Court of Appeal applied for a 'judicial interpretation' from the Supreme Court of China to decide whether civil liabilities should be borne for the infringement upon a citizen's fundamental right to education. The Supreme Court affirmed that since the plaintiff's fundamental right to education was protected under Art. 46 of the Constitution,⁴⁵¹ it

⁴⁴⁵ *Ibid.*, 279

⁴⁴⁶ *Ibid.*

⁴⁴⁷ *Qi Yuling v. Chen Xiaoqi*, case of infringement of a citizen's fundamental rights of receiving education under the protection of the Constitution by means of infringing right of name, Judicial interpretation, the Supreme Court of China, no. 25 (2001) (*The Qi Yuling Case*).

⁴⁴⁸ *Ibid.*

⁴⁴⁹ *Ibid.*

⁴⁵⁰ (Adopted on 12 April 1986 and came into force on 1 January 1987)

⁴⁵¹ Art. 46: 'citizens of the Peoples' Republic of China have the duty as well as the right to receive education'

had been infringed by means of infringing the right to have a name.⁴⁵² Accordingly, both physical and emotional distress damages were granted by the Court of Appeal.

Some scholars, such as Ren and Hu, argue that the decision made by the Supreme Court in *the Qi Yuling case* should be seen as upholding the protection of the right to education rather than as a ‘judicial interpretation,’⁴⁵³ because the Supreme Court did not explain what Art. 46 of the Constitution meant in the judicial interpretation.⁴⁵⁴ Thus, *the Qi Yuling case*, as merely a normal civil dispute, should be resolved by applying Art. 81 of the *Education Law of China*, which states that ‘if anyone, in violation of the provisions of this Law, infringes upon the lawful rights and interests of teachers, educators or schools or any other institutions of education, thus causing losses or damage, he shall bear civil liabilities according to the law’.⁴⁵⁵ Nevertheless, the majority of jurists in China appear to welcome the decisions made by the Supreme Court in the *Qi Yuling Case*. Mo emphasises that the decision in the case is a ‘historical decision’,⁴⁵⁶ because it not only shows the application of the constitution, turning it into a living law rather than a ‘political platform’,⁴⁵⁷ but has a significant implication for the protection of the right to education through judicial application of the Constitution in China.⁴⁵⁸

Since *the Qi Yuling case* in 2001, however, no further court cases on practices which violate the Constitution have been litigated.⁴⁵⁹

⁴⁵² The Qi Yuling Case (n 441)

⁴⁵³ Jin Ren, ‘Several Issues Regarding the Application of Qi Yu Ling Case’ (2002) 1 Journal of China National School of Administration <<http://www.civillaw.com.cn/article/default.asp?id=10465>>; Jinhua Hu, ‘The Case of Qi Yuling and the Applicability of the Constitution’ (2001) Yuedan Review <<http://www.civillaw.com.cn/article/default.asp?id=10153>> accessed 28 January 2013

⁴⁵⁴ *Ibid.*

⁴⁵⁵ Art. 81

⁴⁵⁶ Jihong Mo, ‘The Constitution should enter the realm of court adjudication’ <http://www.legalinfo.gov.cn/gb/special/2002-11/01/content_4188.htm> accessed 28 May 2010

⁴⁵⁷ *Ibid.*

⁴⁵⁸ *Ibid.*

⁴⁵⁹ The judgement of this case has not been used in other cases in China, although it has widely been discussed in the mass media and in academia.

The Compulsory Education Law of China

The *2006 Compulsory Education Law of China* is a key piece of national legislation for the protection of domestic migrant children. This legislation is important for migrant children, because there was previously no specific legislation for them regarding their right to education.⁴⁶⁰

A system of nine-year compulsory education has been adopted.⁴⁶¹ The compulsory school age is from 6 to 15;⁴⁶² parents or legal guardians of a child ‘shall have him (her) enrolled in school to finish the compulsory education’,⁴⁶³ and this places a legal obligation on parents to ensure the attendance of their children. If there are special circumstances, such as illness, where children need to ‘postpone enrolment or suspend schooling’, their parents or guardians ‘shall file an application with the education administrative department of the local government for an approval’.⁴⁶⁴ Such provisions clearly reflect the compulsory nature of the education.⁴⁶⁵ In the case of *43 parents v the local authority in Sichuang Province*,⁴⁶⁶ the local authority tried to persuade parents to send their children to school at the beginning of a new term, but 43 parents refused to do so due to financial incapacity, their child’s unwillingness or other reasons.⁴⁶⁷ The local court commented on this case that the parents’ behaviour infringed the right of children to compulsory education in Art. 18 of *the Education Law of China* and Art. 2 (2) and Art. 58 of the *Compulsory Education Law of China*; ‘compulsory education’ is, after all, by nature compulsory.⁴⁶⁸ The court ruled that the

⁴⁶⁰ However, at both national and local level, there are plenty of regulations on the improvement of chances for domestic migrant children to receive compulsory education in China, which will be examined in detail in Chapter 2. section 2.4. This section mainly focuses on the legal provision of education.

⁴⁶¹ Art. 2

⁴⁶² Art. 11

⁴⁶³ Art. 11

⁴⁶⁴ Art. 11

⁴⁶⁵ *Interpretations on the Compulsory Education Law of China* (Beijing Law Press 2008) 2

⁴⁶⁶ Xu Wang Sheng, *Comments on Cases on Education Law* (University of International Business and Economics Press 2010) 56

⁴⁶⁷ *Ibid*

⁴⁶⁸ *Ibid.* 57

parents must send their children back to school within three days from when the judgment came into force.⁴⁶⁹

The *Compulsory Education Law* also states that ‘no tuition fees or miscellaneous fees may be charged in the implementation of compulsory education’,⁴⁷⁰ because compulsory education is legally regarded as ‘a public welfare’, which should be ‘guaranteed by the state’.⁴⁷¹ This article provides a financial guarantee from the state to ensure that at compulsory education level, both tuition and miscellaneous fees must not be charged.⁴⁷² In practice, ‘free’ compulsory education is not free of charge, and marginalised children including domestic migrant children could suffer very negative consequences, such as dropping out of schools and exploitation. Arguably, if the state makes education compulsory, and it is legally regarded as a ‘public welfare’, it should be totally free of charge. The word ‘welfare’ means ‘help given, especially by [a] state or organisation’ to people who need it, ‘especially because they do not have enough money’.⁴⁷³ Therefore, disadvantaged people like migrant children should be given financial help from the state in order to meet the legal requirement and acknowledge the welfare nature of compulsory education: it would be unreasonable for poor parents to pay for it.

Human Rights in China (HRIC) criticises the fact that parents in some regions of China are required to pay as many as 20 different types of fees, although many of these are technically illegal.⁴⁷⁴ The costs of compulsory education vary, ranging from 3,000 to 50,000 Yuan per year (equivalent to 300 to 4,680 GBP per year), and the costs of ‘hidden fees’ can be higher in state schools with good reputations.⁴⁷⁵ As

⁴⁶⁹ *Ibid.*

⁴⁷⁰ Art.2

⁴⁷¹ Art.2

⁴⁷² *Interpretations on the Compulsory Education Law of China* (n 459) 2

⁴⁷³ Cambridge Dictionary online < http://dictionary.cambridge.org/dictionary/british/welfare_1> accessed 14 January 2011

⁴⁷⁴ Human Rights in China, ‘Shutting Out the Poorest: Discrimination Against the Most Disadvantaged Migrant Children in City Schools’ <http://www.hrichina.org/public/contents/article?revision_id=48162&item_id=3447> 25, accessed 6 December 2012

⁴⁷⁵ *Ibid.*

Tomasevski notes, public education has private costs in China; direct charges are estimated around 200 billion Yuan (US\$ 24 billion).⁴⁷⁶

Furthermore, there is a burden on cities. Even though the operating funds for compulsory education should be guaranteed both by the State Council and the local people's governments at all levels,⁴⁷⁷ receiving cities have a legal obligation to provide compulsory education for internal migrant children:

The local governments at all levels shall ensure that the school-age children and adolescents are enrolled in the schools near the permanent residences; for a school-age child or adolescent whose parents are working or dwelling at a place other than their permanent residence, if he (she) receives compulsory education at the place where his (her) parents or other statutory guardians are working or dwelling, the local governments shall provide him (her) with equal conditions for receiving compulsory education. The concrete measures shall be formulated by the provinces, autonomous regions and municipalities directly under the Central government.⁴⁷⁸

Such an obligation may throw a heavy financial burden onto receiving cities. First, the local government allocates a budget for compulsory education each year on the basis of the number of school-age children and adolescents registered within its administrative area. Due to the mobility and uncertainty of the group of migrant workers, governments of receiving regions may not be able to take the children of migrant workers into account when making their budgets. Second, the central government shifts the main responsibility to local government for providing education for migrants' children to local government (in receiving regions), which may impose a heavy economic burden in the process of implementation. As a result, getting access to compulsory education becomes challenging for migrant families (as shown in Chapter 4 'Financial Accountability'). Hence some migrant children are forced to attend privately-run migrant schools, which are substantially cheaper than mainstream state schools but ill-equipped, and continuously face the risk of being shut down as illegal entities by the local education departments.⁴⁷⁹ For example, in August 2011, the Beijing Municipal Commission of Education shut down around 24 unlicensed migrant

⁴⁷⁶ (n 425) para. 17

⁴⁷⁷ Art.42 of the *Compulsory Education Law*

⁴⁷⁸ *Ibid.*, Art. 12

⁴⁷⁹ Julia Kwong, 'Educating Migrant Children: Negotiations Between the State and Civil Society' (2004) *The China Quarterly* 1082; Xia Chunli, 'Migrant Children and The Right to Compulsory Education in China' (2006) *7 Asia Pacific Journal on Human Rights and the Law* 31

schools.⁴⁸⁰ This action may jeopardise the chances of around 14,000 migrant students from attending school (see Chapter 3, ‘The recent practice of closing migrant schools in Beijing’).

2.3.4 Conclusions on the right to education in China

In summary, this section has explored the Chinese domestic social and legal infrastructure. *The Outline*, a blueprint for a national education policy, was examined, and the section provided a general picture of the legal position of children in Chinese domestic law. Further, the Constitution and the *Compulsory Education Law* were given some prominence in order to show how provisions for compulsory education are stipulated in theory and are practised. The section pointed out some challenges these laws face in their implementation: a significant example being the ineffectiveness of the Constitution. Another example is the *Compulsory Education Law*, which imposes on receiving cities a legal obligation to provide compulsory education for domestic migrant children, but throws a heavy burden on them in terms of both finance and human resources. This issue is examined in Chapter 4.

2.4 A review of national policy development for improving compulsory education for internal rural migrant children in China

2.4.1 Introduction

Now that the legal foundation for receiving education has been established at both international and domestic levels, this next section aims to examine the progress made in improving opportunities of compulsory education for internal migrant children in China. It looks at the policies promulgated by the State Council and the various national ministries there from the 1980s up to the earlier years of the twenty-first century.

There are three main reasons why it is important to analyse these national policies. First and foremost, due to the absence of specific legislation for the protection of internal migrant children, a close scrutiny needs to be made of national policies

⁴⁸⁰ ‘A Promise: No one should be left behind’ <<http://news.cntv.cn/china/20110819/114531.shtml>> accessed 2 Feb 2013

aimed at improving their chances of gaining proper compulsory education. As part of the wider discussion on China's national legal framework for education (covered in this chapter) and how it compares with the actual realities faced by these children in the cities they move to (covered in Chapter 3), such analysis makes it possible to identify and articulate the main barriers and challenges presented within the current legal, institutional and national education systems – barriers and challenges which hinder migrant children from receiving compulsory education of adequate quality (examined Chapter 4).

Secondly, this section illustrates a substantial development in the regulations that try to ensure that these migrant children gain access to the educational opportunities they deserve. The background to this is China's economic reform and its opening-up since 1978, which has brought about the ongoing process of urbanisation, and a social, political and economic transformation in the country. As a result, China has successfully transformed itself from a planned economy to a market economy, and from a country divided into segregated urban and rural areas, where free movement and free flow of resources was blocked, to a more open environment encouraging internal rural-urban migration.⁴⁸¹ Huge efforts have been made to cope with such a tremendous socio-economic transformation. These have included a gradual relaxation of restrictions on labour mobility, and an increasing recognition from the central government that adequate education must be provided to migrant children. As Han, Liu, Wu and other scholars point out, national regulations for migrant children and for their schooling have changed substantially from administrative restriction to active encouragement.⁴⁸² Between the 1980s and the 1990s the regulations were inadequate:

⁴⁸¹ Ran Tao, 'Hukou Reform and Social Security for Migrant Workers in China' in *Labour Migration and Social Development in Contemporary China*, edited by Rachel Murphy (Routledge 2010) 73

⁴⁸² Jialing Han, 'Education for Migrant Children in China'

<<http://www.unesco.org/new/en/education/themes/leading-the-international-agenda/efareport/regional-resources/east-asia-and-the-pacific/china/>> accessed 8 December 2012; Chengbin Liu and Xinhui Wu, 'The Development of National Policies on Migrant Children in China' (Masters dissertation, Chinese Academy of Social Sciences 2008); Zhenguo Yuan and Huisheng Tian, *A Research on the Issue of Internal Migrant Children's Access to Education in China* (Education Science Publishing House 2010) 167; Huisheng Tian and Ni Wu, *A Study on the Issue of Rural Migrant Children's Access to Education – An Analysis on the Current Situations, Problems and Recommendations Based on the Research Conducted in Twelve Cities* (Educational Science Publishing House 2010) 21-34; Taiyan Jiang, Fang Liu, Yin Gu and Shen Wang, *From Discrimination to Fairness – An Analysis of the Children of Chinese Rural Migrant Workers and Their Schooling* (Dong Bei University Press 2008) 236-239; Chengbin Liu and Xinhui Wu, *Left-behind and Migration – The Choice of Migrant Children and Their Education* (Shanghai Jiao Tong University Press 2008) 99-114. Such change at regulatory level is also reflected in national regulations on internal migrant workers. Chuanyi Cui and Xiaoli Cui, 'Changing the Policy

they were aimed at controlling the freedom of movement of migrant children and blocked the rural population from floating to the cities. However, since the beginning of the twenty-first century national regulations on internal migrant children have changed substantially. This section therefore discusses this policy change at a national regulatory level in the wider context of China's internal migration policy.

The third and last reason for examining national policy is because of the significance and effective role played by national regulations in the whole Chinese legal system. The state adopts a combination of unification and separation under a 'centralised, multi-rank, and multi-layered' legislative system.⁴⁸³ The term 'centralised' means that the National People's Congress (NPC), China's highest organ of state power,⁴⁸⁴ together with its Standing Committee possesses the greatest authority over legislation and has the power to examine laws made by other parts of the government.⁴⁸⁵ The Constitution and statutes enacted by the NPC and its Standing Committee are regarded as the primary legal source in the top hierarchy of the legal structure in China. In other words, administrative and local laws and regulations must not conflict with the Constitution and state statutes. A 'multi-ranked' system means that, aside from the central government, local People's Congresses and their Standing Committees (those of the provinces, cities, autonomous regions, provincial capitals, special economic zones and municipalities established by the State Council) also have power to make their own laws at local level.⁴⁸⁶ 'Multi-layered' means that, apart from

Paradigm on Chinese Migrant Workers, Towards Balanced Urban and Rural Development, People-Oriented, Equal Treatment and Consultative Management' in Errol Mendes and Sakanthula Srighanthan (eds), *Confronting Discrimination and Inequality in China, Chinese and Canadian Perspectives* (University of Ottawa Press 2009) 105; Huang Ping and Zhan Shaohua, 'Internal Migration in China: Linking it to Development' in *Migration, Development and Poverty Reduction in Asia* <http://www.iom.int/china_conf/> accessed 8 December 2012

⁴⁸³ Chenguang Wang, 'From Rule of Man to the Rule of Law' in *China's Journey Toward the Rule of Law, Legal Reform, 1978-2008* (eds) by Cai Dingjiang and Wang Chenguang (Brill 2010) 21; 'The Legislative System of China' <<http://www.china.org.cn/english/features/legislative/75857.htm>> accessed 19 April 2012

⁴⁸⁴ Art. 57 and 62 of the Constitution; Art. 7 of the *Legislation Law of China*. The NPC amends and supervises the enforcement of the Constitution, enacts and amends basic laws governing criminal offences, civil affairs, the state organs and other matters.

⁴⁸⁵ Art. 67 of the Constitution; Art. 7 of the *Legislation Law of China*. The Standing Committee of the NPC interprets the Constitution and laws and supervises their enforcement. It can enact and amend laws, with the exception of those that should be enacted by the NPC, and can partially supplement and amend even laws enacted by the NPC when that body is not in session.

⁴⁸⁶ Wang (n 3) 21

the Constitution and statutes enacted by the NPC and its Standing Committee, the State Council and all national ministries or commissions under the State Council possess the administrative and legislative power to enact administrative laws and regulations (such as orders, directives and measures) ranked as being in the lower hierarchy of legal sources.⁴⁸⁷ Nevertheless, even though administrative regulations are subordinate to those made by the NPC and its Standing Committee, the legislative function of the State Council in designing administrative regulations and rules is highly important, because there is an important link connecting the Constitution and statutes, on the one hand, and local regulations and laws on the other.⁴⁸⁸ Moreover, administrative regulations can direct and administer a wider range of social and civil affairs than those covered by the laws enacted by the NPC and its Standing Committee, with a range including the economy, urban and rural development, education, science, culture, public health, public security and judicial administration.⁴⁸⁹ Administrative laws and regulations therefore govern a much wider sphere.⁴⁹⁰ Furthermore, local governments in the provinces, cities, autonomous regions, provincial capitals, municipalities, and special economic zones have power to enact local administrative regulations.⁴⁹¹ Although they are subsidiary to the Constitution, to national laws and to administrative regulations, local regulations play an important and active role not only in the implementation of laws and regulations from these higher bodies, but in the development of localised policies in their areas. These policies are legislative adjustments to fit the local economy, local politics, the local legal system and the culture, customs and condition of people in a particular area. They resolve issues that are not stipulated in laws and regulations made at the central level or that are not appropriate for the central authorities to settle.⁴⁹² Currently there is no specific legislation promulgated at national level by the National People's Congress and its Standing Committee to help internal migrant children get access to quality compulsory education, and it seems unlikely that there will be any in the near future. A close

⁴⁸⁷ Art. 89 and 90 of *the Constitution*; Art. 56 and 57 of *the Legislation Law of China*

⁴⁸⁸ *The Legislative System of China* (n 3)

⁴⁸⁹ Art. 89 of *the Constitution*

⁴⁹⁰ *The Legislative System of China* (n 3)

⁴⁹¹ Art. 99 of *the Constitution*; Art. 63 of *the Legislation Law of China*

⁴⁹² *Ibid.*

examination of a series of national administrative regulations on the matter of internal migrant children promulgated by the State Council and relevant ministries (such as the Ministry of Education) is therefore required.

Additionally, Murphy concludes that ‘analysing the successes, failures and outstanding problems of the Chinese cases’ offers suggestions that may have wider relevance beyond China, as ‘socio-economic systems are interconnected and the outcomes of regional internal migration are of direct relevance globally.’⁴⁹³

2.4.2 Development of the key policy paradigm on migrant children and their access to compulsory education at national level: characteristics and indications

Liu,⁴⁹⁴ Wu and other scholars⁴⁹⁵ maintain that, at national level, the development of key educational policies designed to help internal migrant children receive compulsory education can be divided into three stages: restriction; recognition; and confirming and strengthening.

Stage One: the 1980s period of strict controls on freedom of movement and residence outside places of origin

Despite China's economic reform and its opening-up in 1978, its *hukou* system was maintained throughout the 1980s. This aimed at controlling movement and blocked the rural population ‘floating’ to cities. Reflecting the situation at that time, the terms ‘floating population’ and ‘blind movement’ (*Mangliu*) were used when referring to rural peasants who wanted to have employment outside their places of origin, and who might drift from one city to another looking for jobs, without specific destinations in mind.⁴⁹⁶ Having a ‘floating population’ was regarded as a potential threat to national social security,⁴⁹⁷ and free movement was consequently strictly controlled by the

⁴⁹³ Rachel Murphy, ‘Labour Migration and Social Development in China’ in *Labour Migration and Social Development in Contemporary China* (ed) by Rachel Murphy (Routledge 2009) 3

⁴⁹⁴ Liu and Wu (n 2)

⁴⁹⁵ Yuan and Tian (n 2) 167; Jiang, Liu, Gu and Wang (n 2) 236-239; Liu and Wu (n 2) 99-114

⁴⁹⁶ Cui and Cui (n 2) 104

⁴⁹⁷ *Ibid*, 105

administrative offices of migrant population affairs under the supervision and jurisdiction of public security departments. This happened at all local levels through rigid management methods which included all internal migrants having to apply for employment registration cards (work permits) and temporary residence permits.⁴⁹⁸

Against this social and historical background, the issue of internal migrant children was not of great concern, as the free flow of people was strictly controlled, and although there was a ‘floating population’ of workers, they rarely took their families with them when they migrated to their receiving cities. Accordingly, no national regulations on internal migrant children were promulgated during the 1980s. There were nevertheless two pieces of legislation, the *1986 Compulsory Education Law of China* (first passed in 1986 and revised in 2006)⁴⁹⁹ and the *Constitutional Law of China*, which did lay down some provisions for compulsory education. For example, the *Constitution*, as the state’s fundamental law, explicitly enshrined the right to education in two of its articles.⁵⁰⁰ The first is Art. 46, confirming that ‘citizens of China have the duty as well as the right to receive education’; ‘the State promotes the all-round development of children and young people, morally, intellectually and physically’.⁵⁰¹ The *1986 Compulsory Law* (which was revised in 2006) also stipulated that ‘all children who have reached age six shall be enrolled in schools and receive compulsory education regardless of sex, nationality or race. For children in areas where this is not possible, the initial time of schooling may be postponed to age seven’.⁵⁰² (There is an examination of these two pieces of legislation in an earlier section in this chapter.)

In the early 1990s, however, the idea of controlling the free movement of people, including migrant children, can be found in the *1992 Implementation*

⁴⁹⁸ Art. 4 of the *Provisional Regulations on the Cross-Provincial Movement and Employment of Rural Labour and Opinion to Strengthening the Administration on Migrant Population*, adopted by the Ministry of Public Security on 2 June 1995

⁴⁹⁹ (Adopted at the Fourth Session of the Sixth National People’s Congress on 12 April 1986 and amended on 29 June 2006)

⁵⁰⁰ The liberty of parents to choose education for their children in accordance with their own religious and moral convictions has not yet been recognised

⁵⁰¹ Art. 46

⁵⁰² Art. 5

Guidelines of the 1986 Compulsory Education Law.⁵⁰³ The *Guidelines* stated that if the school age child wanted to study and move out of his (her) permanent registration's jurisdiction, an application should be submitted to his (her) local authorities at township or county level; once the application was approved, he (she) should then submit another application to a state school in the destination city in order to be temporarily enrolled.⁵⁰⁴ The length of any temporary enrolment was subject to the decisions made by the local authorities in the exodus regions.⁵⁰⁵ Yuan concludes that internal migrant children had little chance of being enrolled in state schools outside their permanent areas of residence during the 1980s and early 1990s.⁵⁰⁶ Thus the majority of children stayed in their places of origin to study.

Stage Two: initial recognition of internal migrant children through the promulgation of two national regulations

During the 1990s, with increasing income disparities between urban and rural regions, pressure on employment in agricultural sectors and the reform of the *hukou* system, there was a correspondingly large scale internal migration.⁵⁰⁷ The previous paradigm of controlling internal migration consequently became ineffective. New national regulations tried to strengthen the management of internal labour migration, as a more appropriate strategy.

This policy change also affected migrant children. Initial regulation of internal migrant children and their access to education in destination cities was officially inaugurated through the promulgation of the *Trial Measures on the Issue of School-age Children Amongst Floating Population Accessing Education in Cities and Towns* (the *1996 Regulation*)⁵⁰⁸ by the National Commission of Education in 1996. Han,⁵⁰⁹ Tian⁵¹⁰

⁵⁰³ (Adopted on 29 February 1992 by the State Council. *The Implementation Guidelines of the 1986 Compulsory Education Law* was abolished by Order of the State Council (No. 516) Decisions of the State Council on the Abolishing Some Administrative Regulations on 15 January 2008. *The Guidelines* were replaced by the 2006 Compulsory Education Law on 29 June 2006)

⁵⁰⁴ *Ibid.*, Art. 14

⁵⁰⁵ *Ibid.*

⁵⁰⁶ Yuan and Tian (n 2) 168

⁵⁰⁷ Dwei Wang and Fang Cai, 'Migration and Poverty Alleviation' in *Labour Migration and Social Development in Contemporary China*, edited by Rachel Murphy (Routledge 2009) 28

⁵⁰⁸ (Adopted by the State Education Commission on 2 April 1996)

and Yuan⁵¹¹ note that the *1996 Regulation* was the first principal national regulation in China aimed at helping school age ‘floating children’ receive compulsory education.⁵¹² It was also the first change the State Commission of Education (now the Ministry of Education of China) made with the intention of resolving the educational problems migrant children then faced.⁵¹³

The *1996 Regulation* tackled several main issues: schooling, rules on establishment and management, finance and penalties. First, the ‘floating population’ (*liu dong ren kou*) was defined as ‘people who obtain temporary residence permits and carry out business or other relevant activities at county and township levels’.⁵¹⁴ ‘School age floating children’ referred to ‘children between the ages of six and fourteen (or seven and fifteen) who [had] the ability to study amongst those floating populations’.⁵¹⁵ Definitions of ‘floating population’ and ‘school age floating children’ did not at this stage specifically state whether the migrants had come from rural regions to cities. Secondly, the *Regulation* placed a duty on migrant parents or guardians to ensure the attendance of their children at school.⁵¹⁶ Parents would have to pay fines to the administrative departments of education in the receiving cities (in accordance with the local administrative regulations) if they failed to comply.⁵¹⁷ Such a provision clearly reflected the compulsory nature of education, as was consistent with the *1986 Compulsory Law*⁵¹⁸ and its revised version the *2006 Compulsory Law*.⁵¹⁹

⁵⁰⁹ Han (n 2)

⁵¹⁰ Tian and Wu (n2) 22

⁵¹¹ Yuan and Tian (n2) 168

⁵¹² Han (n 2); ‘People’s Republic of China: Internal Migrants: Discrimination and Abuse. The Human Cost of an Economic Miracle’ <<http://www.amnesty.org/en/library/asset/ASA17/008/2007/en/c0c38728-d3af-11dd-a329-2f46302a8cc6/asa170082007en.pdf>> accessed 2 July 2012

⁵¹³ Difficulties and Solutions for Regulation Regarding Standard on Establishment Requirements for Privately-run Migrant Children <http://www.nies.net.cn/cb/lw/201203/t20120327_303183.html> accessed 13 June 2012

⁵¹⁴ Art. 2 of the *Measures on School-age Migrant Children’s Access to Education in Cities and Towns (Trial Version)*

⁵¹⁵ Art. 3

⁵¹⁶ Art. 5

⁵¹⁷ Art. 23

⁵¹⁸ Art. 11

Furthermore, enterprises, the public sector, other social institutions and individual citizens were encouraged to set up privately-run schools specifically for migrant children in the receiving cities.⁵²⁰ As a consequence, after the promulgation of the *1996 Regulation*, migrant schools started to emerge as alternatives to mainstream ones and have rapidly expanded in numbers since.⁵²¹ These migrant schools, as Han points out, ‘made essential contributions to resolve the problem of migrant children attending schools at that time in receiving cities when sufficient public resources for education were lacking’.⁵²²

However, the *1996 Regulation* did not bestow on internal migrant children equal educational rights to receive compulsory education.⁵²³ This bias, already present in the regulation, may be one of the factors contributing to the deep-rooted discrimination against migrant children in practical arrangements. The first unequal provision of the *1996 Regulation* was the control on the free movement of children. It stipulated that ‘exodus regions must strictly control the free movement of school age children moving out of their *hukou* residence (permanent place of residence) unless they do not have guardianship there’.⁵²⁴ The real practical problem of implementing this provision was that the operating funds for compulsory education, closely bound to the *hukou* system, were implemented by the local administrative authorities within a top-down administration and distribution system from the central government.⁵²⁵ Local governments were obliged to administer the funds for educational provision to their own local students, registered as permanent residents of the district.⁵²⁶ Thus, theoretically, receiving cities did not have the responsibility of providing a public

⁵¹⁹ Art. 11 of the *2006 Compulsory Education Law of China*

⁵²⁰ Art. 11

⁵²¹ Tian and Wu (n 2) 23

⁵²² Han (n2)

⁵²³ Sheng ji, ‘A Study on Legal Protection to the Right of Migrant Children to Education’ (Masters Dissertation, University of Su Zhuo 2009) 9

⁵²⁴ Art. 6 of the *Measures on School-age Migrant Children's Access to Education in Cities and Towns (the Trial Version)*

⁵²⁵ Art. 8 and art. 12 of the *1986 Compulsory Education Law of China*. It was adopted at the Fourth Session of the Sixth National People’s Congress on April 12 1986. This legislation has been replaced by the new legislation—the *2006 Compulsory Education Law of China* at the 22nd Session of the Standing Committee of the Tenth National People’s Congress on June 29, 2006

⁵²⁶ Art. 42

education service to children without a local *hukou*. So, even though migrant children managed to leave their places of origin, they were hardly ever enrolled by state schools in the cities they came to.

Moreover, by the terms of the *1996 Regulation*, migrant children could only be enrolled as ‘temporary students’ (*jie du sheng*) with ‘temporary student profiles’ in state schools.⁵²⁷ This artificially set migrant children apart from the mainstream local students. Such segregation prevented migrant children from integrating into their new study environment with local peers. Because of this temporary student status, teachers were also liable to give the migrant children less attention than they gave other students.⁵²⁸

As an additional burden, the *1996 Regulation* allowed state schools to ‘levy a certain amount of fees’ from migrant children within limits set by the local authorities of the receiving cities.⁵²⁹ This may have set going the current practice of levying various indirect fees, for example ‘temporary schooling fees’, which can clearly be a great burden for migrant families, and may mean that the children have to drop out and enter the employment market early.⁵³⁰

Furthermore, although the *1996 Regulation* encouraged migrant children to attend other kinds of school, such as privately-run migrant schools, and to pursue informal education in the summer and winter holidays and in weekend classes, all the *Regulation* required was a grounding in just two subjects: Chinese and Mathematics. (This was part of a drive to eliminate illiteracy amongst migrant children at that time.)⁵³¹ The National Curriculum, however, required many more subjects at elementary and junior high school: Chinese, Mathematics, English, Arts, Physical Education, Science, History, Ethics and Society, Geography, History and Society, Physics, and Chemistry.⁵³² Clearly the concentration on just Chinese and Mathematics

⁵²⁷ Art. 8

⁵²⁸ Liu and Wu (n 2)

⁵²⁹ Art. 15

⁵³⁰ Nie Lele and Kong Yuanyuan, ‘The Development of Policies on Migrant Children’ 2009 (7) Chinese Science and Education Journal 4-14

⁵³¹ Art. 13

⁵³² The National Curriculum Subjects for Compulsory Education, issued by the Ministry of Education on 28 December 2011

to ‘eliminate illiteracy amongst migrant children’ greatly lowered the quality of compulsory education the children received and encouraged teachers to treat them differently.

After the adoption of the first national regulations on migrant children, the *1996 Regulation*, the central government initiated a market-oriented reform aimed at relaxing restrictions on labour mobility in China.⁵³³ For example, in 1997, the State Council initiated an experimental programme allowing rural migrants from designated small towns and cities to obtain local *hukou*. Migrants who had had a ‘stable job or source of income’ and a ‘stable place of residence’ for over two years could apply for a *hukou* permit in a small town or city.⁵³⁴ This also allowed people who came to join their parents, spouses or children in cities to obtain an urban *hukou*.⁵³⁵ Free education and other public benefits were also granted on an equal basis with local residents.⁵³⁶ Consequently, an increasing number of migrant workers started to bring their families to the cities.

A year later, the *Interim Measures for the Schooling of the School-age Migrant Child* (the *1998 Regulation*,⁵³⁷ replacing the *1996 Regulation*) came out with the aim of giving migrant children better chances in education.⁵³⁸ Compared with the *1996 Regulation*, the *1998 Regulation* did achieve some advances. To begin with, the definition of ‘floating children’ was modified to ‘floating children between six and fourteen (or seven and fifteen) who stay with their parents in receiving cities for more

<http://www.moe.edu.cn/publicfiles/business/htmlfiles/moe/moe_711/201201/129268.html> accessed 27 December 2012

⁵³³ ‘A General Report on the Issues of Migrant Workers in China’ in *A Research on the Issues of Migrant Workers in China*, Centre for Migrant Workers, the State Council (ed) (China Labour and Social Security Press 2009) 8

⁵³⁴ *The State Council's Measures on Approving the Public Security Bureau's Experimental Plan on Reforming the Management System for the Hukou in Small Towns and Cities and [the State Council's] Notice on Improving the Rural Residence Permits Management System*, issued 10 June 1997

⁵³⁵ *Ibid.*, Art. 5

⁵³⁶ *Ibid.*, Art. 3

⁵³⁷ (Adopted by the State Education Commission and the Ministry of Public Security on 2 March 1998)

⁵³⁸ After the adoption of the 1996 Regulation, six major cities, including Beijing, Tianjin, Shanghai, Hebei, Zhejiang, and Shenzhen, were selected as experiential samples to implement the regulation. After the initial testing period, the 1998 Regulation was adopted. Yiu Por Chen and Zai Liang, ‘Educational Attainment of Migrant Children’ in *Education and Reform in China, Asia's Transformations* edited by Emily Hannum and Albert Park (Routledge 2009) 119

than six months'.⁵³⁹ Next, the new *1998 Regulation* adopted a 'comprehensive approach providing room' for local governments in both exodus and receiving regions.⁵⁴⁰ It encouraged the attendance of these children full-time in mainstream state schools.⁵⁴¹ The *Regulation* recognised the existence and functions of privately-run migrant schools,⁵⁴² and it also established that local education authorities should not only provide financial support for the establishment of full-time migrant schools, but should 'relax the supervision of conditions of such schools accordingly'.⁵⁴³ 'Local authorities should allow the founders of migrant schools to rent safe and proper places to use as school buildings.'⁵⁴⁴ It also required that local authorities in receiving cities should make it their duty actively to supervise both state and migrant schools.⁵⁴⁵ Additionally the regulation made positive progress in providing a non-discriminatory environment in areas such as 'awards, performance appraisals, applications to join the Youth Pioneers and the Communist Youth League or participate in activities in or outside the schools'.⁵⁴⁶ 'Diplomas or graduation certificates' should also be granted in accordance with local regulations.⁵⁴⁷

Nevertheless, as Tian, Wu⁵⁴⁸ and others⁵⁴⁹ emphasise, the *1998 Regulation* did not make any significant breakthrough in resolving the main problems of migrant children. First, the *Regulation* continued to implement the old paradigm that controlled

⁵³⁹ Art. 2

⁵⁴⁰ Julia Kwong, 'Guest Editor's Introduction' in *Migrant Children's Education and Migrant Children's Schools* (2004) 37 (5) *Chinese Education and Society* 6

⁵⁴¹ Art. 7

⁵⁴² Art. 7

⁵⁴³ Art. 9

⁵⁴⁴ Art. 9

⁵⁴⁵ Art. 16

⁵⁴⁶ Art. 14

⁵⁴⁷ Art. 15

⁵⁴⁸ Tian and Wu (n 2) 27

⁵⁴⁹ Jiang Taiyang, Liu Fang, Gu Ying and Wang Kun, *From Discrimination to Equality – An Analysis of China's Rural Migrant Workers' Children and the Issue of Their School* (Dongbei University Press) 238; Chloe Froissart, 'The Hazards of the Right to Education, A Study of the Schooling of Migrant Workers' Children in Chengdu', *China Perspectives* 2003 (48) July-August <<http://chinaperspectives.revues.org/386>> accessed 7 June 2012; Kwong (n 60) 6

the free movement of migrant children between exodus regions to receiving cities.⁵⁵⁰ For example, Art. 3 of the *Regulation* emphasised that local authorities in places where migrant children and juveniles were registered as belonging should ‘strictly control their outflow’.⁵⁵¹ ‘When guardianship is available at the place of permanent residence registration, the child should receive his or her compulsory education there. When guardianship is unavailable at his or her place of permanent residence registration, he/she may receive compulsory education primarily in state schools in receiving cities’.⁵⁵² Nevertheless, the child should obtain an official document of approval from the local educational authorities at county or township level in the place of permanent residence,⁵⁵³ and, after being issued with such a document, the parents or guardian should then submit their applications to the local educational authorities in the receiving area to apply for a place in a local state school.⁵⁵⁴ The implicit message from the government in this procedure – as both Dong⁵⁵⁵ and Froissart⁵⁵⁶ note – was that migrant children should not attend compulsory schooling anywhere other than in the home town where their *hukou* was located. The control on the free movement of children affected by this regulation actually created a new problem of ‘left-behind’ children. Remaining in their home towns without the support and care of their parents, many of them experienced both psychological and academic difficulties.⁵⁵⁷ As Han points out, this problem lay hidden and, while it was as yet not too pressing, the government held back from any attempt to offer a holistic solution: it merely tackled each single issue as it arose, one at a time.⁵⁵⁸

⁵⁵⁰ Jing Guo, ‘Financing of Education: A Missing Dimension of Migrant Child Education Policy in China’ (Asia Social Protection in Comparative Perspective Conference, Singapore, 2009)

⁵⁵¹ Art. 3

⁵⁵² Art. 3; Art. 7

⁵⁵³ Art. 8

⁵⁵⁴ Art. 8

⁵⁵⁵ Jie Dong, ‘Neo-Liberalism and the Evolvement of China’s Education Policies on Migrant Children’s Schooling’ Vol 8 (2010) *The Journal for Critical Education Policy Studies* <<http://www.jceps.com/index.php?pageID=home&issueID=15>> accessed 27 December 2012

⁵⁵⁶ Froissart (n 69)

⁵⁵⁷ Han Jialing, ‘The Current Situation of Internal Migrant Children and Their Schooling’ <<http://www.jiaoyugongping.com/forum.php?mod=viewthread&tid=1248>> accessed 23 December 2012

⁵⁵⁸ *Ibid.*

Secondly, the *Regulation* did not treat migrant children and their peers already belonging to the cities equally. For example, the levy of ‘temporary schooling fees’ (*jie du fei*) suggested in the *1998 Regulation* has been a serious source of discrimination.⁵⁵⁹ The *Regulation* stated that full-time state elementary and secondary schools that enrolled migrant children were allowed to collect fees in accordance with the ‘*Provisional Regulations for Management of Fees Collected by Schools Offering Compulsory Education*’.⁵⁶⁰ These fees applied only to children who were not registered as local residents. One of the reasons why the levy of these fees was permitted was that local governments only had a legal obligation to fund compulsory education for their own local students – those registered as permanent residents in their jurisdictions.⁵⁶¹ Even today the right to levy temporary schooling fees provided in the *1998 Regulation* gives state schools an official excuse to charge a variety of different fees to balance their books in a way they can claim is legitimate.⁵⁶² Because of the levies of exorbitant fees (with other barriers)⁵⁶³ many migrant children are forced to attend privately-run migrant schools, which are substantially cheaper than mainstream state schools but ill-equipped. Further these schools continually face the risk of being shut down as illegal entities by the local education departments.⁵⁶⁴ Another example of how the *1998 Regulation* encourages inequality is its clause allowing ‘retired teachers’ to teach migrant children.⁵⁶⁵

Furthermore, the *1998 Regulation* has left the local governments in the provinces, autonomous regions and municipalities ‘a good deal of room to manoeuvre’⁵⁶⁶ within their own regulations.⁵⁶⁷ Such flexibility with little supervision

⁵⁵⁹ Art. 11

⁵⁶⁰ Art. 11

⁵⁶¹ Art. 8 of the *1986 Compulsory Education Law of China*; Art. 14 of the *Education Law of China*; Sheng Ji (n 43) 9

⁵⁶² Tian and Wu(n 2) 27

⁵⁶³ The main barriers and challenges that are embedded in the current legal, institutional and national education systems preventing these children from receiving a compulsory education of adequate quality are examined in Chapter 4.

⁵⁶⁴ For example, the local authority in Beijing that shut down unlicensed migrant schools in 2006 and 2011 respectively raised attention through the mass media and through NGOs. See ‘The Recent Practice of Closing Migrant Schools in Beijing’ in Chapter 3

⁵⁶⁵ Art. 10

⁵⁶⁶ Froissart (n 69) para.7

from the central government⁵⁶⁸ may have had a negative impact on the quality of education migrant children receive and may be placing them in a less favourable and unequal position. For example, when local authorities have supervised such migrant schools, they have been able to 'relax' the establishment standard expected, allowing for particular local circumstances.⁵⁶⁹ The original provision did not specify, however, what the establishment requirements for privately-run migrant schools were, to what extent standards could be 'relaxed' and what the 'circumstances' might be in which this was permissible.⁵⁷⁰ It also set up a double standard on establishment requirements, discriminating between state schools and migrant schools. In contrast, the *General Principles on the Establishment and Administration of State Primary Schools and Middle Schools in Beijing*⁵⁷¹ set out a comprehensive framework on how to establish and manage state schools. As well as spelling out the main principles, the *General Principle* went into detail on school facilities and size, teaching facilities and posts, academic and non-academic staff requirements and other matters. A state primary school should have basic facilities including teaching buildings, administrative offices, one or more libraries, recreational facilities, a sports centre, and an open or indoor playground more than 60 square metres in size.⁵⁷² The location of a new state elementary school was restricted: it should not be build close to 'open markets, pubs and clubs, mortuaries, hospitals treating infectious diseases, power stations, landfill, prisons, railways, motorways and trunk roads'.⁵⁷³ As for the required size of a state primary school, the total area of a school with 18 classrooms, for example, should be 14,500 acres given over for teaching facilities with 18,900 acres of free space surrounding the buildings.⁵⁷⁴ Primary schools should have 12, 18 or 24 classrooms,

⁵⁶⁷ Art. 18

⁵⁶⁸ Froissart (n 69) para. 7

⁵⁶⁹ Art. 9, Art. 18

⁵⁷⁰ Dong (n 75)

⁵⁷¹ (Adopted by the Beijing Municipal Commission of Education on 1 December 2005)

⁵⁷² For all primary schools that have less than 24 classrooms. *Ibid.*, Para. 'School Facilities'

⁵⁷³ *Ibid.*

⁵⁷⁴ *Ibid.*

and no classroom should contain more than 40 students.⁵⁷⁵ Depending on the number of classes, primary schools should also have essential extra teaching facilities such as a music room, an art studio, computer rooms, a multimedia teaching classroom, a canteen, facilities for the disabled, a library,⁵⁷⁶ a dance room/workout place, a calligraphy room, a laboratory, meeting rooms, a place for a counselling service and a First Aid room.⁵⁷⁷

Therefore, the vague requirement concerning establishment requirements for migrant schools stipulated in the *1998 Regulation* may have had a negative impact on the quality of education migrant children receive and may be placing them in a less favourable and unequal position. In practice, many migrant schools have been operating illegally since they emerged around 1993 because of serious hidden risks relating to power, fire, water and hygiene.⁵⁷⁸ If the national policy had not allowed local governments to ‘relax the establishment standards of migrant schools’ in the first place, this situation would not have occurred: the migrant schools could have been established in safe buildings, so that the opportunity for migrant children to receive education was assured.⁵⁷⁹

In summary, although two national regulations were enacted to improve opportunities for compulsory education for migrant children, some of the provisions were discriminatory and may have had a negative impact on policy development.

⁵⁷⁵ *The Guideline of the General Principles on the Establishment and Administration of State Primary Schools and Middle Schools in Beijing*, adopted by the Beijing Municipal Commission of Education on 29 December 2006

⁵⁷⁶ *Ibid.* Schools with more than 24 classrooms should have not less than 15,000 books, including magazines, academic books and copies; schools with more than 24 classrooms should have more than 25,000 books in the library.

⁵⁷⁷ *Ibid.*

⁵⁷⁸ For example, in Beijing as of 2011, about 70% of migrant children attend state schools, yet around 100,000 children have only secured enrolment in one of the 114 unauthorised migrant schools which have considerable health and safety problems. See ‘A Dilemma for Most Migrant Children after the Completion of Junior High Schools’ <<http://www.edu.cn/html/e/jysd/ydgk/index.shtml>> accessed 25 December 2012

⁵⁷⁹ In Beijing many migrant schools were demolished by the local authorities because of such safety concerns in 2006, and again in 2011. The demolitions in 2011 affected some 14,000 migrant students, jeopardising their chances of attending school. Peter Ford, ‘Beijing School Closures Leave Thousands of Migrant Children Without Classrooms’ <<http://www.csmonitor.com/World/Asia-Pacific/2011/0826/Beijing-school-closures-leave-thousands-of-migrant-children-without-classrooms>> accessed 25 December 2012

Stage Three: the shift in regulations on internal migrant children in the new millennium

Departing from the style of regulations promulgated during the period of the 1980s and '90s, the central government has started to promote the interests and rights of children in general, including disabled children, girls, orphans, ethnic minority children in the central and western regions, juvenile offenders and internal migrant children. The emphasis on protecting this last group and treating them on an equal basis is quite specific.

The promulgation of the *National Programme of Action for the Development of the Child in China (2001-2010)*⁵⁸⁰ is another example illustrating the new policy development of the years since 2000. The *National Programme of Action* aimed to promote and protect the best interests of children in four areas – health, education, the environment and legal protection.⁵⁸¹ One of the key objectives in the area of education was to ensure that a ‘nine year compulsory education should be universally available in the whole country, and the right of every child to education should be guaranteed’.⁵⁸² The *National Programme* also stipulated that ‘the right of migrant children to receive a nine year compulsory education should be basically ensured’⁵⁸³ ‘through a proper adjustment of educational strategies made to meet their educational needs in the light of urbanisation in China’.⁵⁸⁴

In the same year (2001) the *State Council’s Decision on the Development and Reform of Basic Education (the 2001 Regulation)*⁵⁸⁵ was promulgated. It was based on the *1998 Regulation*, but very significantly it urged equal educational opportunities by stating that ‘much more attention should be paid to improving opportunities for migrant children to attend schools at compulsory education level’.⁵⁸⁶ Most importantly, the *Decision* established the ‘Two Main Principles’ specifically covering compulsory

⁵⁸⁰ (Adopted on 22 May 2001 by the State Council)

⁵⁸¹ *Ibid.*, ‘Preamble’

⁵⁸² *Ibid.*, Part Two ‘Children and Education: Objectives’

⁵⁸³ *Ibid.*

⁵⁸⁴ *Ibid.*, Part Two ‘Children and Education: Strategies’

⁵⁸⁵ (Adopted by the State Council on 29 May 2001) para. 12

⁵⁸⁶ *Ibid.*, para. 12

education for migrant children. They indicate that ‘it is the main responsibility of destination cities to provide full time compulsory education for migrant children in state schools in accordance with the law; and various forms of supplementary education should be adopted’.⁵⁸⁷ This was a notable advance on the *1998 Regulation*, which stipulated that migrant children should receive their education in their places of origin (*hukou* locality) and discouraged children relocating with their parents to the cities. Han notes that the adoption of the ‘Two Main Principles’ in this document started the establishment of systematic protection for internal migrant children, helping them gain access to compulsory education at national level.⁵⁸⁸ Furthermore, to eliminate regional educational disparities between rural communities and the cities and to promote educational equity, the ‘One-fee System’ (*yi fei zhi*)⁵⁸⁹ for compulsory education level was put in place. This initiative was initially implemented in selected poverty-stricken regions through the National Poverty Alleviation and Development Plan. Aimed at abolishing various direct and indirect fees charged in compulsory education, the ‘One-fee System’ required that local authorities at provincial level should determine the total costs of educational fees annually, and allow schools to charge a one-off payment for text books and other miscellaneous items just once each year.⁵⁹⁰ A fundamental problem with the *2001 Regulation*, however, was that it did not address the issue of charging ‘temporary schooling fees’.⁵⁹¹ The *Regulation* merely stated that receiving cities have the obligation to educate migrant children, but did not allocate appropriate funding from the central government.⁵⁹² This omission has exacerbated one of the main problems of access to education for migrant children and their parents. Without a feasible financial plan for promoting quality education – a crucial element for its provision – urban regional governments have been tempted to shift financial responsibilities to the migrant families themselves.

⁵⁸⁷ *Ibid.*, para. 12

⁵⁸⁸ Han (n 2)

⁵⁸⁹ (n 107). Para. 11

⁵⁹⁰ *Ibid.*, para. 11; ‘Why Should We Promote the One-fee System at National Compulsory Education Level?’ <http://www.gov.cn/banshi/2005-07/06/content_12484.htm> accessed 25 December 2012

⁵⁹¹ Dong (n 75)

⁵⁹² Wenbing Wang, Heng Yin, ‘Dropping out of Floating Children in China: Explanation and Evidence’ <<http://www.wise.xmu.edu.cn/labor2011/papers/Wenbin%20Wang.pdf>> accessed 25 December 2012

The year 2003 was crucial for the promotion of the right of migrant children to education, because a series of national regulations was promulgated by the State Council and/or the relevant national Ministries of the State Council aimed at improving the opportunities of attending state schools for these children, and they included the first comprehensive national policy on migrant children.

The first regulation relating to migrant children is the *State Council Forwarding the Notice on Providing Administrative Services to Internal Migrant Workers* (the *No. 1 Central Government Document*)⁵⁹³ One of the objectives of the *Notice* was to promote and protect the rights of migrant workers and their children on an equal basis, and to remove unreasonable administrative procedures and persisting restrictions that limited free movement from rural communities to urban regions. The aim was to establish an equitable employment system and uniform labour market for both urban and rural areas.⁵⁹⁴ In order to ensure the right of migrant children to compulsory education, the *Notice* reaffirmed the ‘Two Main Principles’ established in 2001.⁵⁹⁵ In addition, the term ‘floating children’ (*liu dong ren kou zi nv*) was replaced by the phrase ‘migrant children of rural labourers’ (*nong min gong zi nv*).⁵⁹⁶ Tian and Wu point out that this distinction made between the children of rural peasants and ‘floating children’ has considerable significance.⁵⁹⁷ The previous description ‘floating people and their children’ could not correctly describe the whole community of migrants any more. Since China’s economic reform and opening-up and the implementation of the National Programme on Poverty Reduction,⁵⁹⁸ many ‘high quality’ migrants have settled in the cities,⁵⁹⁹ and some have become richer than the urban locals.⁶⁰⁰ Their children consequently may not face the various barriers that make it difficult to get into state schools. Nevertheless, rural migrant workers still

⁵⁹³ (Adopted on 5 January 2003 by the General Office of the State Council)

⁵⁹⁴ *Ibid.*, para. 2

⁵⁹⁵ *Ibid.*, para. 6

⁵⁹⁶ Tian and Wu (n 2) 28

⁵⁹⁷ *Ibid.*

⁵⁹⁸ ‘The Development-oriented Poverty Reduction Program for Rural China’, White Paper 2001

⁵⁹⁹ ‘Institutionalized Exclusion: the Tenuous Legal Status of Internal Migrants in China’s Major Cities’ (A report by Human Rights in China 6 November 2002) ‘Introduction’

⁶⁰⁰ Tian and Wu (n 2) 28

remain in the ‘lowest’ social stratum, and still suffer the ‘perpetual discrimination’ that has gone on throughout Chinese history.⁶⁰¹ The legal rights of the majority of rural workers⁶⁰² are still not properly protected and these workers have often gone through great economic hardships. Thus they are regarded as a marginalised group deserving comprehensive protection from governments and society.⁶⁰³ In the light of this development, the earlier term ‘floating children’ was modified to ‘migrant children of rural labourers’.

Another key improvement in the *State Council’s Notice* is the requirement to promote equal treatment for migrant children during the enrolment process in state schools, and a prohibition on levying exorbitant fees.⁶⁰⁴ Thus, for the first time, the central government has started to promote equal protection and treatment for migrant children, whereas the previous policies of the 1990s seemed still to oppose the free movement of migrant children, and did not treat them equally. As Yuan and Tian note, the provision promoting equality is an ‘innovational breakthrough in the progress of policy development’.⁶⁰⁵ Moreover, the *Notice* required that local authorities in destination cities should provide ‘special funds’ to improve educational opportunities for migrant children and to help migrant schools get established and recruit teachers.⁶⁰⁶ It also prohibited the demolition of illegal private migrant schools without provisions being made for the migrant students to get an education elsewhere.⁶⁰⁷ The *Notice* therefore called for a relaxation of formal ‘approvals’ of such schools in practice, but without lowering minimum requirements on safety, sanitation, hygiene and other basic

⁶⁰¹ Gong Renren, *The Historical Causes of China’s Dual Social Structure* (Peking University Press 2009); Wenran Jiang, ‘Prosperity at the Expense of Equality’ in *Confronting Discrimination and Inequality in China, Chinese and Canada Perspectives* (University of Ottawa Press 2009) 25

⁶⁰² For example, according to the National Bureau of Statistics in 2006, more than half of the migrant employees had not been given labour contracts. Around 70 to 80 per cent of migrant workers have no social security insurance, and those who are given security have difficulties getting their benefits. The majority of rural migrant workers do not enjoy the rights of housing and medical care in the destination cities. Cui and Cui (n 2) 118-119

⁶⁰³ Gong (n 121) 39

⁶⁰⁴ (n113) para. 6

⁶⁰⁵ Yuan and Tian (n 2) 172

⁶⁰⁶ (n113) para. 6

⁶⁰⁷ *Ibid.*, para. 6

infrastructures.⁶⁰⁸ Additionally exodus regions were not to levy any fees if migrant children returned to study in their place of origin.⁶⁰⁹

Aside from the *State Council's Notice*, in order to deepen educational reform and respond to 'widely documented educational inequality' in rural regions,⁶¹⁰ the 'Two-exemptions and One-Subsidy' policy (*linag mian yi bu*) was promulgated in the *Decision of the State Council on Further Strengthening Rural Education* in 2003⁶¹¹ to address social concerns regarding educational inequality and disparities between rural and urban regions.⁶¹² This is as a national scholarship programme for rural students in primary and secondary state schools, and it waives payment for textbooks and other miscellaneous fees as well as subsidising the students' accommodation costs in all rural boarding schools (common in rural areas to consolidate educational resources) throughout China.⁶¹³ It aims at giving rural children equal opportunities to complete their compulsory education and to prevent them from having to drop out for financial reasons.⁶¹⁴ Essentially, this policy has become a linchpin of China's rural compulsory education assured funding mechanism.⁶¹⁵

The last regulation – promulgated in 2003 – is named the *General Office of the State Council Forwarding the Circular of the Opinion of the Ministry of Education and other Ministries on Further Improving the Education of Migrant Children*⁶¹⁶ (the

⁶⁰⁸ *Ibid.*, para. 6

⁶⁰⁹ *Ibid.*, para. 6

⁶¹⁰ Jingjing Lou and Heidi Ross, 'Guest Editor's Introduction' From Fee to Free: Achieving the Right to Education in China' (2008) 41 (1) Chinese Education and Society 5

⁶¹¹ Section 5.19 of the *Decision of the State Council on Further Strengthening Rural Education*, adopted on 17 September 2003 by the State Council; See also, 'Interpretation of the Two-waiver and One-subsidy Policy' <http://www.gov.cn/fwxx/wy/2006-09/04/content_376933.htm>; 'The Two-waiver and One-subsidy Policy' <<http://baike.baidu.com/view/183949.htm>>; Zhao Jing and Wenbin Hu, 'Country Profile Commissioned for the EFA Global Monitoring Report 2008, Education For All by 2015: Will We Make it?' <unesdoc.unesco.org/images/0015/001547/154743e.pdf> accessed 25 December 2012

⁶¹² Lou and Ross (n 130) 6

⁶¹³ Yuan and Tian (n 2) 188

⁶¹⁴ Section 5. 19 of the *Decision*

⁶¹⁵ Lou and Ross (n 130) 4; Zhang Ran, 'Preliminary Legal Exploration of the Two Exemptions and One Subsidy (TEOS) Program' (2008) 41 (1) Chinese Education and Society 18

⁶¹⁶ (Adopted by the Ministry of Education, State Commission Office for Public Sector Reform, the Ministry of Public Security, the National Development and Reform Commission, the Ministry of Finance, the Ministry of Human Resources and Social Security on 13 September 2003)

Circular Opinion). This is regarded as the first comprehensive national policy protecting the right of internal migrant children to receive compulsory education. Several key issues are dealt with and the *Circular Opinion* clarifies the specific duties of local authorities in destination and exodus regions for promoting equal treatment of migrant children. First, the ‘Two Main Principles’ are reaffirmed: receiving cities have an obligation to provide full-time compulsory education for migrant children in state schools.⁶¹⁷ A sound working mechanism should be set up to bring compulsory education for migrant students up to equal quality with the education of their peers.⁶¹⁸ To achieve this, the first step is to ensure the availability of compulsory education for migrant children by ‘tapping any potential in state schools to enrol migrant students – as many as possible’.⁶¹⁹ The *Circular Opinion* has removed the provision stipulated in the 1996 and 1998 Regulations that migrant children should be enrolled as ‘temporary students’. The second step to achieve equal quality is to ensure that compulsory education is economically affordable for all without discrimination.⁶²⁰ The *Circular Opinion* stipulated for the first time that a mechanism for allocating special funds, earmarked for the support of migrant children, should be guaranteed by the local finance directorates to subsidise state schools receiving them.⁶²¹ Grants and other subsidies, including the provision of free textbooks, should be established to help migrant children when they change schools.⁶²² It also urges urban regional governments to ‘support and supervise’ privately-run migrant schools, and to integrate the work of such schools into the *minban*⁶²³ education system.⁶²⁴

Additionally, there is an obligation to create a supportive social atmosphere for these migrant children. Government agencies, social organisations, enterprises,

⁶¹⁷ *Ibid.*, Section 2

⁶¹⁸ *Ibid.*, Section 2

⁶¹⁹ *Ibid.*, Section 4

⁶²⁰ Liu and Wu (n 2)

⁶²¹ (n 139) Section 5

⁶²² *Ibid.*, Section 6

⁶²³ Minban education basically refers to schools and colleges that are established by enterprises or individuals. See, Ka Ho Mok and Yat Wai Lo, ‘The Impact of Neo-Liberalism on China’s Higher Education’ (2007) 5(1) *The Journal for Critical Education Policy Studies* <<http://www.jceps.com/?pageID=article&articleID=93>> accessed 11 December 2012

⁶²⁴ *Ibid.*, Section 5

institutions and individuals should all be encouraged to give financial assistance and donations of goods to migrant students who have financial difficulties.⁶²⁵ The duties of local authorities/departments are also laid down:

Educational authorities in destination cities should integrate the issue of migrant children and their access to compulsory education into the frameworks of their local education development plans. Local authorities of Public Security should provide updated information on the current trend of internal migrant children to local educational authorities. Local Development and Reform Commissions should integrate the issue of migrant children and the construction of migrant schools into the urban and social development framework and urban infrastructure planning system respectively. Local Financial Authorities must arrange funds accordingly. Local Commission Offices for Public Sector Reform should arrange teachers according to the numbers of migrant children received each year. Local authorities on Human Resources and Social Security should supervise and prohibit using child labour according to the *Provisions on the Prohibition of Using Child Labour* (Order of the State Council No. 364).⁶²⁶ Local departments in charge of prices and education authorities should set up a standard measure on levying fees in state schools. Local communities and education authorities should ensure the attendance of school age migrant child in destination cities.⁶²⁷

A brief provision on the dimension of accessibility to education, the principle of non-discrimination and equal treatment, is emphasised in the *Circular Opinion*. The provisions on educational equality, together with the overall tone of fairness in the document, are regarded as amongst the most progressive developments made at regulatory level.⁶²⁸ For example, the *Circular Opinion* states that migrant students should be treated equally when they join the Communist Youth League and the Youth Pioneers or are involved in any promotions or compete for honours and awards in schools.⁶²⁹ The discriminatory provision of charging 'temporary schooling fees' stipulated in the *1996 and 1998 Regulations* has been removed. The *Opinion* stresses that migrant children should be treated on the same terms as local students when they

⁶²⁵ *Ibid.*, Section 5

⁶²⁶ (Adopted by the State Council on 18 September 2002, came into force on 1 December 2002) According to the Provisions, 'no government agencies, social organisations, enterprises and institutional entities, or civilian operated non-enterprise entities may employ minors under 16 years old. All entities and individuals are prohibited from introducing employment for minors under 16 years old. All minors under 16 years old are prohibited from starting individual businesses.' (Art. 2)

⁶²⁷ *Ibid.*, Section 3

⁶²⁸ Liu and Wu (n 2)

⁶²⁹ (n 147) Section 4

pay fees (*yi shi tong ren*).⁶³⁰ It also recommends that schools forge close communications with migrant parents to help migrant students adapt to new circumstances and overcome the psychological obstacles of fitting into new state schools.⁶³¹

The *Opinion* further clarifies the main duties of the local authorities in the exodus areas. They should cooperate with local authorities in the destination cities. They should not levy any fees if migrant children return to their place of origin to study.⁶³²

As regards the supervision of privately-run schools for migrant children, the regulation recognises that these schools ‘need special care, support and guidance’ from local educational authorities, especially in the processes of selecting school buildings, raising money, teacher training, and teaching and learning.⁶³³ Although official standards of a school’s premises can be adjusted in practice, requirements for water, sanitation, hygiene and safety conditions must not be ‘lowered’ and must be maintained at the required level.⁶³⁴ The policy encourages the regulation of migrant schools by stipulating that local authorities should issue permits to schools that meet establishment standards.⁶³⁵ Schools with relatively poor standards should be given another opportunity to improve the conditions within a fixed period. If they still cannot meet the requirements, they should be shut down and proper arrangements be made for the students to attend other schools.⁶³⁶

Since the promulgation of the first comprehensive policy on migrant children, the central government has adopted a number of other policies, with relevant

⁶³⁰ *Ibid.*, Section 6

⁶³¹ *Ibid.*, Section 6

⁶³¹ *Ibid.*, Section 4

⁶³¹ *Ibid.*, Section 5

⁶³¹ *Ibid.*, Section 4

⁶³² *Ibid.*, Section 7

⁶³³ *Ibid.*, Section 8

⁶³⁴ *Ibid.*, Section 8

⁶³⁵ *Ibid.*, Section 8

⁶³⁶ *Ibid.*, Section 8

supporting regulations, to prohibit collecting indirect fees from migrant children. For example, the *Circular of the Opinion of the Ministry of Finance on Regulating and Managing Collecting Fees and Increasing the Incomes of Rural Peasants*⁶³⁷ states that migrant children should be treated equally when they pay school fees.⁶³⁸ They should not pay more than local children. Specifically, solicitation of money from migrant parents as donation fees, temporary schooling fees and school selection fees must be abolished.⁶³⁹ Students who have financial hardships should be given subsidised support or a waiver of their educational expenses.⁶⁴⁰ All kinds of educational fees should further be standardised,⁶⁴¹ and the ‘One-fee System’ which was initially implemented in selected poverty-stricken rural areas should now be implemented throughout the whole country – in urban regions as well – to put a complete curb on arbitrary fees charged in compulsory education.⁶⁴²

Another example of prohibition on levying unregulated fees is found in *Some Opinions of the State Council on Resolving the Several Issues on Migrant Workers*.⁶⁴³ The policy stipulates that the access of migrant children to compulsory education should be guaranteed and be integrated into the local educational budget. Local public expenditure on education should be allocated according to actual numbers of migrant students in full-time state schools in receiving cities.⁶⁴⁴ State schools should treat migrant students on an equal basis and must not levy temporary schooling fees, or any other fees, from them.⁶⁴⁵ Another step forward, made by the central government in 2008, has been the abolition of miscellaneous and textbook fees for all urban students,

⁶³⁷ (Adopted by the Ministry of Finance on 16 March 2004)

⁶³⁸ *Ibid.*, Section 4 ‘Further Eliminating Unfair Charges from Rural Migrant Workers to Protect Their Legal Rights’

⁶³⁹ *Ibid.*, Section 4

⁶⁴⁰ *Ibid.*, Section 4

⁶⁴¹ Section 3 ‘Strategy on Standardizing Collection Fees from Migrant Children’, *the Ministry of Finance Forwarding the Notice on Strengthening Curbing Levying Arbitrary Educational Fees*, adopted on 25 March 2005 by the Ministry of Finance

⁶⁴² *Ibid.*, Section 2 ‘Improving the One-fee System’

⁶⁴³ (Adopted by the State Council on 31 January 2006)

⁶⁴⁴ *Ibid.*, Section 7 (21) ‘Providing Relevant Public Service for Migrant Workers’

⁶⁴⁵ *Ibid.*, Section 7 (21)

including migrant children,⁶⁴⁶ at compulsory education level.⁶⁴⁷ The relevant circular reaffirms the principle that temporary schooling fees should not be levied from migrant children. Appropriate central funds are now awarded to provinces that have made significant progress in solving the obstacles barring migrant children from getting full access to compulsory education.⁶⁴⁸ In another circular of 2008 the levy of miscellaneous fees and temporary schooling fees has once again been prohibited and a ban is made on charges for another hundred administrative items.⁶⁴⁹ At the end of 2010 the Ministry of Education further announced a cancellation of provisions for charging temporary schooling fees to elementary school students without local *hukou* certificate.⁶⁵⁰

Apart from these policies adopted by the State Council and relevant ministries of the State Council during the period 2000-2008, the ‘Two Main Principles’ have been finally reaffirmed in the revised *2006 Compulsory Education Law*.⁶⁵¹ These Principles are regarded as a ‘solid legal foundation for the protection of [access of] migrant children to compulsory education’ in China.⁶⁵² The ‘Two Main Principles’ state:

The local governments at all levels shall ensure that school-age children and adolescents are enrolled in schools near their permanent residences; for a school-age child or adolescent whose parents are working or dwelling at a place other than their permanent residence, if he (she) receives compulsory education at the place where his (her) parents or other statutory guardians are working or dwelling, the local governments shall provide him (her) with equal conditions for receiving compulsory

⁶⁴⁶ Section 2 of the *Circular of the State Council on the Abolition of Tuition and Miscellaneous Fees for Students at Compulsory Education Level in Urban Areas* (adopted on 12 August 2008 by the State Council)

⁶⁴⁷ *Ibid.*, Section 2

⁶⁴⁸ *Ibid.*, Section 2

⁶⁴⁹ *The Circular of the Ministry of Finance and the National Development and Reform Commission on the Notice of the Abolition of 100 Administrative Fees*, adopted on 13 November 2008 by the Ministry of Finance and the National Development and Reform Commission

⁶⁵⁰ Para 9 of the *Decision of the Ministry of Education on Amending and Abolishing Some Rules and Regulations 2010* (adopted on 13 December 2010 by the Ministry of Education)

⁶⁵¹ (Adopted at the Fourth Session of the Sixth National People’s Congress on April 12 1986, amended at the 22nd Session of the Standing Committee of the Tenth National People’s Congress on 29 June 2006)

⁶⁵² Tian and Wu (n 2) 32

education. Concrete measures shall be formulated by the provinces, autonomous regions and municipalities directly under the Central government.⁶⁵³

2.4.3 Summary of the development of the key policy paradigm on migrant children and their access to compulsory education at national level

China's national regulations for improving compulsory education for internal migrant children have changed substantially in recent times and have moved from being highly restrictive to expressing an attitude of acceptance, encouragement and facilitation. The regulations reflect the gradual positive progress made by the central government generally in the period from the 1980s up till now. As has been shown, the educational needs of migrant children were not being properly addressed even in the late 1990s when the *1996* and *1998 Regulations* came out. Since the turn of the millennium, however, the central government has paid increasing attention to the issues surrounding migrant children and their compulsory schooling in the cities that receive them. It has promulgated a series of national policies designed to give them access to state schools there, including the *State Council's Decision on the Development and Reform of Basic Education*, the *General Office of the State Council Forwarding the Circular of the Opinion of the Ministry of Education and other Ministries on Further Improving the Education of Migrant Children*, *Some Opinions of the State Council on Resolving the Several Issues on Migrant Workers* and the *Circular of the Ministry of Finance and the National Development and Reform Commission on the Notice of the Abolition of 100 Administrative Fees*. This section has examined these regulations, and it is fair to conclude that, at national regulatory level in China, there have been enormous improvements in opening up equal access and educational opportunities for migrant children who have arrived in the cities, and in protecting their general interests and welfare.

This is their due: migrant workers in their millions have contributed greatly to China's economic development; so their social and political rights should be ensured and protected by the state.⁶⁵⁴ Improved general life conditions for them in the cities where they have settled would provide their children with better lives. Since the new

⁶⁵³ Art. 12

⁶⁵⁴ Also, it is not the children's fault that their parents have migrated. They should not suffer because of the decisions of their parents.

Labour Contract Law of China was adopted in 2007,⁶⁵⁵ labour disputes through negotiations, collective bargaining, arbitration and litigation⁶⁵⁶ in areas that include wage compensation and working safety have intensified greatly in China.⁶⁵⁷ Cai and Wang note that the law has ‘indeed enlightened workers’ consciousness of interests and rights [and has] in fact urged various levels of government to promote [the rights of] both urban resident workers and migrant workers’.⁶⁵⁸ Accordingly more free and accessible legal aid and relevant legal services should be available and accessible to help them in labour dispute resolution, given the fact that lack of time and money and limited knowledge of relevant legal procedures are the main barriers to their accessing legal protection.⁶⁵⁹ A wider public participation through ‘increasing the proportion of community-level deputies to People’s Congress, particularly those elected from among workers, farmers and intellectuals’ (while reducing the proportion of deputies among leading party and government officials) has recently been addressed at the 18th meeting of the National Congress of the Communist Party of China. This was in late 2012, when the state wanted to achieve its commitment to promote people’s democracy as part of the national political reform.⁶⁶⁰

⁶⁵⁵ (Adopted by the Standing Committee of the National People’s Congress on 29 June 2007)

⁶⁵⁶ *Ibid.*, Art. 56

⁶⁵⁷ Cai and Wang note that the number of labour disputes in China has increased gradually, especially after the adoption of the *Labour Contract Law*. The number increase sharply in 2008 to 931,000, which was twice the number recorded in 2007 before falling slightly to 870,000 in 2009. Fang Cai and Meiyang Wang, ‘Labour Market Changes, Labour Disputes and Social Cohesion in China’ (OECD Development Centre Working Paper No. 307, 2012)

⁶⁵⁸ *Ibid.*

⁶⁵⁹ Na Lan, ‘Is There New Hope in Labour Rights Protection for Chinese Migrant Workers?’ (2009) 10 (2) *Asian-Pacific Law & Policy Journal* 483-516

⁶⁶⁰ ‘Full Text: Report of Hu Jintao to the 18th CPC National Congress’ <http://www.china.org.cn/china/18th_cpc_congress/2012-11/16/content_27137540_5.htm> accessed 18 February 2013. In January 2013, three migrant workers were invited as special members to speak up about their concerns at the Guangdong Provincial Committee of the Chinese People’s Political Consultative Conferences (CPPCC). This seems a positive sign, showing the willingness of the local authority to encourage wider public participation at the political level. This is the first time that the Guangdong Committee of the CPPCC has invited special members to participate at the annual session at the top provincial advisory level. Caixiong Zheng, ‘Migrant Workers to Advise Political Body’ <http://www.chinadaily.com.cn/china/2013-01/23/content_16167013.htm> accessed 18 January 2013

2.5 Conclusions to Chapter 2

To sum up, Chapter 2 set out the legal position relating to the right of children to education at both international and domestic levels. It looked at how the protection of the right to education is recognised in international human rights law, with a particular emphasis on the provisions of international treaty law and national case law. It examined the core content of the right to education in international law and the corresponding obligations of states through the analytical lens of the ‘4-A’ scheme, designed by the former Special Rapporteur of the Commission on Human Rights on the Right to Education, Katarina Tomasevski. After establishing this, the chapter moved on to examine the legal position of education in the context of the social, political and legal framework of China. It also showed the development of national policies adopted by the State Council and various ministries aimed at helping internal migrant children in China receive a fair compulsory education. Policy developments made from the 1980s to the first decade of the twenty-first century show that the central government has clearly made significant progress in improving the educational opportunities of migrant children and their access to the curriculum in state schools. Examination of the regulations from this time also reveals a dramatic change in the regulatory environment surrounding rural migrant families.

In practice, however, there are still many problems impeding the achievement of full equity for migrant children and limiting the educational opportunities open to them. Chapter 3, therefore, turns to examine what the realities are ‘on the ground’ for these children. They are still facing a number of problems. The main ones are: late entrance to schools; various indirect fees at enrolment and afterwards; obstacles dashing their hopes of continuing in their high school education and of going on to higher education courses; issues surrounding both privately-run migrant schools and state schools; discrimination in state schools; cultural expectations; and social attitudes towards internal migrant children and their parents.

CHAPTER 3: LIVED EXPERIENCE OF INTERNAL RURAL MIGRANT CHILDREN ACCESSING EDUCATION IN RECEIVING CITIES

3.1 Outline of Chapter 3

Chapter 2 set out the legal position concerning the right of children to education at both international and domestic levels. It also showed how the Chinese central government has promulgated a series of national policies designed to help migrant students receive compulsory education in the state schools of their receiving cities. In practice, however, many migrant students are still excluded from attending quality state schools. The present chapter offers an empirical account of the educational experiences of migrant children. Focusing particularly on compulsory education, it describes and analyses the entry system, fees and enrolment, and the transition from primary to secondary level and beyond. It reviews the differences between the private and state systems, cultural expectations and attitudes and the impact these have on pupils' experiences of the education system.

To illuminate these issues, the chapter makes use of academic literature, working and research papers, news articles, and relevant work by NGOs, UN bodies and other international organisations. It also draws on data gleaned in fieldwork from interviews conducted with both officials and non-official personnel in Beijing.

3.2 Lived experience of internal rural migrant children entering the educational system

3.2.1 Attendance and the entry system

One leading study has found that 4.35 per cent of migrant children between 6 and 14 years old were still not enrolled in compulsory education according to the latest census.¹ Moreover, not everyone manages the full nine years prescribed: drop-out rates

¹ Zhenguo Yuan and Huisheng Tian, *A research on the Issue of Internal Migrant Children's Access to Education in China* (Education Science Publishing House 2010) 39; Duan Chenrong, 'A Joint Project Update on Internal Migrant Children in China' (The Institute of Population Research, Renmin University and the UNICEF, September 2011) (1)
<<http://rkxx.ruc.edu.cn/Html/kexueyanjiu/renkouyanjiu/48610797150.html>> accessed 14 December 2012

– particularly for 14 year-old children – are relatively high for both migrant and non-migrant children, reaching 6.89 per cent and 5.39 per cent respectively.² The main reasons behind high drop-out rates are summarised here. Firstly, although children should receive free compulsory education in China, in practice both indirect and direct fees are still levied in state schools.³ This may make it difficult for marginalised children, including poor and migrant children and children living in remote communities, to complete their nine years' compulsory education and they may therefore drop out from their schools. Moreover, owing to the poor linkage between compulsory education and senior high school education in different provinces in China, migrant children are only allowed to take the high school entrance examination in the place where their *hukou* is located, no matter how long they have lived in their receiving cities.⁴ Consequently, many migrant children have to return to their home towns in order to attend senior high schools and to take the national university entrance exam. Some migrant children, however, may choose to enter employment rather than continue their studies in this way. Furthermore, owing to the highly competitive national university entrance exam in China, an increasing number of young people, including poor and migrant children and children coming from poor rural communities, believe that, even though they could eventually attend university, there is still not much hope of getting a well-paid job in the city. This is currently a common consideration amongst certain young people in China (especially those with poor family backgrounds).⁵ These factors help to explain why drop-out rates are relatively high, particularly for 14 year-old children, amongst both migrant and non-migrant children in China. A detailed discussion will be given in later sections.

The phenomenon of late entry of migrant children to elementary school is another concern.⁶ Many migrant children migrate with their families, and many have

² *Ibid.*, 39; Woo Jung Chang, *Migrant Children's Education in China* <<http://aladinrc.wrlc.org/handle/1961/4685?show=full>> accessed 10 December 2012; Han Shiqiang, *A Research on the Protection Mechanism for Internal Migrant Children* (Law Press 2012) 16-24

³ This issue will be discussed in next section 3.2.2 'Fees'

⁴ (n 1) Yuan and Tian 70. This issue will be discussed in Section 3.2.4

⁵ Xiong Bingqi, 'How to Understand the Phenomenon Education is Unless' <http://news.xinhuanet.com/comments/2008-03/07/content_7736638.htm> accessed 20 July 2012

⁶ Yuan and Tian (n 1) 125; Shaoqing Lu and Shouli Zhang, 'Urban/Rural Disparities and Migrant Children's Education, An Investigation into Schools for Children of Transient Workers in Beijing' (2004) 37(5) *Chinese Education and Society* 63

time out of school. Thus the problem of children being past the age for compulsory schooling is serious.⁷ In an interview, Wang Xingjuan, the Trustee of the Maple Women's Psychological Counselling Centre, emphasised that, whereas most children commenced elementary education at age 6, approximately 20 per cent of migrant children did not begin their first or second year of elementary education at that age. Wang further described how, although these migrant children are starting school over-age, because of insufficient nutrition, many children looked smaller and thinner than average urban children – some elementary school children looking 'like kindergarten kids'.⁸ Different physical appearance matters in practice, because it may cause difficulties in the progress of migrant children's adaptability in a new school environment, and they may be more vulnerable to being bullied or looked down on by local urban children.⁹

In addition to late entrance to compulsory education, the children face problems due to their families' mobility.¹⁰ The high mobility of rural migrant families is regarded as one of the major barriers to the continuity of learning for these children in the receiving cities.¹¹ Many rural migrant workers move from place to place in search of suitable jobs, and their length of stay in one city greatly depends on the local demand and supply of labourers, therefore there is no guarantee that a family can stay for any certain length of time at a given location. A report conducted by the National Institute for Education Research on migrant children's access to compulsory education in 2008 showed that only 36.1 per cent of migrant children stayed in the same school; the rest experienced various transfers:¹² 30.9 per cent of the children changed schools

⁷ *Ibid*, Lu and Zhang 63

⁸ Interview with Wang Xingjuan, the Trustee of the Maple Women's Psychological Counselling Centre (Beijing, China, 2 February 2011)

⁹ *Ibid*.

¹⁰ Yuan and Tian (n 1) 28-31; Chen Chen, *A Reflection on Educational Poverty - A Research on Migrant Children* (Intellectual Property Publishing House 2012) 122; Sheng ji, 'The Right of Internal Migrant Children to Education from a Legal Perspective' (Master's Dissertation, University of Su Zhuo 2009)16

¹¹ Guibao Chen, 'Access to Compulsory Education by Rural Migrants' Children in Urban China: A Case Study From Nine Cities' (2010) 1 (10) *International Educational Research* <interesjournals.org/ER/pdf/2010/November/Chen.pdf> accessed 1 June 2012; Yiu Por Chen and Zai Liang, 'Educational Attainment of Migrant Children' in *Education and Reform in China, Asia's Transformations* edited by Emily Hannum and Albert Park (Routledge 2007) 127

¹² This report selected 66 primary and middle schools in 9 cities (3 large-sized cities, 3 medium-sized cities and 3 small cities) in China in 2008 through 5,806 surveys on students and 5,806 surveys on

once; 14.8 per cent transferred twice and 7.5 per cent transferred three times or more.¹³ Another reason for frequent transfers of school is the demolition of illegal migrant schools by local authorities.¹⁴ It is claimed that local authorities have closed or demolished illegal privately-run migrant schools, which have been operating for many years without any official intervention, for the purpose of local property development.¹⁵ Such an action may jeopardise the chances of migrant children obtaining quality schooling¹⁶ because the local authorities often fail to come up with proper plans to relocate them in state schools, and parents still have to prepare all sorts of certificates as admission requirements.¹⁷ Furthermore, migrant children transfer schools from the place where they have lived to the place where their *hukou* is located before completing compulsory education in order to prepare their high school and/or the national college entrance exams.¹⁸

One of the consequences of the frequent change of schools is the ‘obviously negative impact on the establishment of stable interpersonal relationships with classmates in the school’.¹⁹ A positive peer relationship is one of the factors that has a ‘significant influence on the life satisfaction of migrant children’.²⁰ A high degree of

parents, together with interviews to ascertain the current problems migrant children faced to compulsory education. ‘A Report on Compulsory Education for Migrant Children’
<http://www.nies.net.cn/ky/zdzt/nmgzv/yjcg/201205/t20120530_304589.html> accessed 13 Dec-ember 2012

¹³ *Ibid.*

¹⁴ See later section 3.3.1

¹⁵ Chen (n 10) 124; Luisetta Mudie, ‘Anger Over Migrant School Closures’
<<http://www.rfa.org/english/news/china/closures-08182011110322.html>>; Sabrina Mao and Maxim Duncan, ‘Reuters: Closure of Migrant Children Schools in China Sparks Anguish’
<<http://www.clb.org.hk/en/node/101122>> accessed 20 December 2012

¹⁶ Peter Ford, ‘Beijing School Closures Leave Thousands of Migrant Children Without Classrooms’
<<http://www.csmonitor.com/World/Asia-Pacific/2011/0826/Beijing-school-closures-leave-thousands-of-migrant-children-without-classrooms>> accessed 10 December 2012

¹⁷ See later section 3.2.3. ‘Enrolment’

¹⁸ Chen (n 10) 124; A dilemma for migrant children either stay in the receiving city or return to the place where their *hukou* is located after the completion of their compulsory education is discussed in later section 3.2.4

¹⁹ Interview with Professor Li Xiuyun, Professor of Law, Beijing Normal University (Beijing, China 3 March 2011)

²⁰ Daniel Fu Keung Wong, Yingli Chang, Xuesong He and Qiaobing Wu, ‘The Protective Function of Relationships, Social Support and Self-Esteem in the Life Satisfaction of Children of Migrant Workers in Shanghai, China’ (2010) 56 *International Journal of Social Psychiatry* 143, 150 & 153; Chen (n 10) 111; Yuan and Tian (n 1) 209

mobility would tend to damage the development of such peer and student-teacher relationships for migrant children, and it may cause them to lack a sense of belonging and to feel increasing isolation.²¹ They may be ‘particularly susceptible to developing poor psychological health and low self-esteem’.²²

Mobility also affects the education performance of these children,²³ as the curriculum and pedagogical systems (including exam papers) are localised and vary between state schools in different regions. The children may therefore be faced with an entirely different syllabus when they transfer schools.²⁴ Thus migrant students cannot enjoy a stable academic background and make continuous progress in one consistent system of study.

Moreover, these transfers between schools, Yuan and Tian note, not only hold back the academic progress of migrant children routinely, but cause difficulties for schools in managing student records.²⁵ Han states that owing to these difficulties, most receiving schools do not have databases of registration or records for migrant children, making it very difficult to track students’ (dis)placements.²⁶

3.2.2 Fees

According to *the 2006 Compulsory Education Law of China*, a nine-year period of compulsory education shall be guaranteed by the state as ‘a public welfare’.²⁷ Officially, no tuition fees or miscellaneous fees may be charged in the implementation of compulsory education.²⁸ Nevertheless, Tomasevski emphasises that an open-ended definition of miscellaneous fees provides ample latitude for local governments and

²¹ Interview with Professor Li Xiuyun (n 19)

²² Wong, Chang, He and Wu (n 20) 145

²³ *Ibid.*, 153 Daniel indicates that low self-esteem is linked to poorer academic achievement, poor relationships and mental health, whereas a high level of self-esteem is related to higher academic success and better mental health.

²⁴ Chen (n 10) 124

²⁵ Yuan and Tian (n 1) 75

²⁶ Jialing Han, ‘Survey Report on the State of Compulsory Education Among Migrant Children in Beijing’ (2004) 37 (5) *Chinese Education and Society* 29

²⁷ Art. 2 of the 2006 *Compulsory Education Law of China*

²⁸ *Ibid.*, Art. 2

schools to charge various ‘indirect’²⁹ or ‘hidden’³⁰ fees to migrants. The main indirect fees schools charge include: temporary schooling fees (*jie du fei*);³¹ uniform fees (*xiao fu fei*);³² insurance (*bao xian*); excursion fees (*chun you fei*);³³ snack or lunch fees;³⁴ donation/assistance fees (*zan zhu fei*);³⁵ and school selection fees (*ze xiao fei*).³⁶

One of the main indirect charges specifically for migrant children is the levy of temporary schooling fees (*jie du fei*).³⁷ These are expected when children of exodus

²⁹ For example, Katarina Tomasevski, ‘The State of the Right to Education Worldwide, Free or Fee: 2006 Global Report’ <www.katarinatomasevski.com/images/Global_Report.pdf> accessed 16 March 2013; Katarina Tomasevski, ‘The Right to Education: Report Submitted by the Special Rapporteur, Mission to China’, UN Doc. E/CN.4/2004/45/Add.1, 17-18; Xia Chunli, ‘Migrant Children and The Right to Compulsory Education in China’ (2006) 2 *Asia-Pacific Journal on Human Rights and the Law* 37; Chen and Liang (n 11) 121; Guangyu Tan, ‘Under the Same Blue Sky? Inequity in Migrant Children’s Education in China’ (2010) 12 (2) *Current Issues in Comparative Education* 33; Jessica L. Montgomery, ‘The Inheritance of Inequality: Hukou and Related Barriers to Compulsory Education for China’s Migrant Children’ (2012) 21 *Pacific Rim Law & Policy Journal Association* 519-623

³⁰ UN Committee on the Rights of the Child, ‘Concluding Observations: China’ UN CRC/C/CHN/CO/2 para. 14; UN Committee on Economic, Social and Cultural Rights, ‘Concluding Observations: China’ UN Doc E/C.12/1/Add.107, para. 15

³¹ Fee for study in state schools when you are not a local resident. Yuan and Tian (n 1) 54

³² Lu Wang, ‘The Urban Chinese Educational System and the Marginality of Migrant Children’ in *Chinese Citizenship, Views from the Margins* (eds.) by Vanessa L. Fong and Rachel Murphy (Routledge 2006) 33. Wang pointed out in her interview that migrant children complained they had (compulsorily) to buy new sets of school uniform, even though the old ones were still in good condition.

³³ Yang Runyong, ‘An Analysis on the Issue of the Right of Migrant Children to Education and Recommendations’ (2009) 7 *Modern Education Forum* 70; Fang Wang, Peili Chen and Guixia Ma, ‘Report on the Right of Migrant Children to Compulsory Education’ (2004) 1 *Contemporary Youth Research* 23

³⁴ *Ibid.*, Wang, Chen and Ma 23; Wang (n 32) 33, Wang found out from her interview that migrant children had to pay 150 yuan (equivalent to £15) for lunch per month. Children who did not eat at school still had to pay 30 yuan (equivalent to £3) per month just to stay in the classroom during lunch hours.

³⁵ This occurs in the admission procedure for enrolling into a junior or a senior high school. If the academic performance of children does not meet admission requirements ‘donation fees’ have to be paid – secretly – to secure the enrolment. This happens especially in schools with good academic reputations. ‘China’s Householder Registration System: Sustained Reform Needed to Protect China’s Rural Migrants’ <<http://www.cecc.gov/pages/news/hukou.pdf>> 9 accessed 24 December 2012

³⁶ According to Art. 12 of the *Compulsory Education Law of China*, children of compulsory school age should attend state schools in their current neighbourhood without taking any exams. However, if they choose to attend another school with a good reputation outside the place where they live, their parents have to pay extra fees, the so-called ‘school selection fees’, to gain the place. This is common practice, even though charging school selection fees is prohibited by the government.

³⁷ Yuan and Tian (n1) 54; ‘The Definition of Temporary Schooling Fees’ <<http://baike.baidu.com/view/963250.htm>>; Aris Chan, ‘Paying the Price for Economic Development: The Children of Migrant Workers in China’ <http://www.clb.org.hk/en/files/share/File/research_reports/Children_of_Migrant_Workers.pdf> accessed 29 June 2012

communities have moved from their original place of origin to urban areas and have not obtained local *hukou* certificates in the new place of residence. Local receiving schools were allowed to collect these ‘temporary schooling fees’ within limits set by the local authorities.³⁸ Since 2008 the Ministry of Finance³⁹ and the Ministry of Education⁴⁰ have respectively prohibited state schools from charging temporary schooling fees. Nevertheless, it is still a common practice.⁴¹ Such charging of temporary schooling fees occurs mainly in state schools in the big cities.⁴² The amount of the charge varies in different provinces. Xu points out that a one-off payment of 8,000 RMB (equivalent to £800) in temporary schooling fees or ‘donation’ fees to state schools is a common practice in Beijing for covering these children’s expenses.⁴³ As rural peasants can barely afford such sums, collection of fees is one of the deterrents stopping migrant parents from sending their children to state schools.⁴⁴ It should, however, be pointed out that there are great variations in practice and much inconsistency regarding the issue of the levy of fees (and accessibility to quality education) in both state and migrant schools in different regions of China.⁴⁵ For instance, in coastal regional cities, such as Guangdong, Dongguan and Shenzhen,

³⁸ Art. 11 of the *Interim Measures for the Schooling of the School-age Migrant Child (the 1998 Regulation)*

³⁹ *The Circular of the Ministry of Finance and the National Development and Reform Commission on the Notice of the Abolition of 100 Administrative Fees*, adopted on 13 November 2008 by the Ministry of Finance and the National Development and Reform Commission

⁴⁰ Para. 9 of the *Decision of the Ministry of Education on Amending and Abolishing Some Rules and Regulations* (adopted by the Ministry of Education on 13 December 2012)

⁴¹ For example, Ruth Kirchner, ‘For Migrant Children, Beijing is a City of Broken Dreams’ <<http://www.dw.de/for-migrant-children-beijing-is-a-city-of-broken-dreams/a-16072563-1>> accessed 21 December 2012. The inadequate national expenditure on education and decentralisation and educational finance are one of the main causes of the arbitrary fees charged from migrant parents. These will be discussed in chapter 4, Section 4.2.5 ‘Financial issue: decentralisation of compulsory education and its impact on the availability and economic accessibility of education for migrant children in receiving cities’

⁴² Yuan and Tian (n 1) 55; see Chapter 4, Section 4.2.5 and Section 4.2.3 ‘Acceptability- the minimum standards of education institutions’ for the great deal of variation of both state and migrant schools in different cities

⁴³ Yongguang Xu, ‘The Third Approach for Proving Education for Migrant Children’ <http://www.nandufoundation.org/sys/html/lm_25/2012-07-26/135320.htm> accessed 19 December 2012

⁴⁴ *Ibid*; Kirchner (n 41)

⁴⁵ See Chapter 4, Section 4.2.3 ‘Acceptability - the minimum standards of educational institutions’ for a detailed discussion

where a massive number of migrants pour in every year, temporary schooling fees (or ‘donation’ fees) are comparably high and may reach between 30,000 and 100,000 RMB (equivalent to £3,000 to £10,000). As state schools cannot accommodate all these children, around 60 per cent of the migrant students attend migrant schools there.⁴⁶ In an interview, Wang Xingjuan, emphasised that migrant families tend to escape the One Child policy and may have two to four children, compared with urban families, who normally have only one child. Thus the levying of expensive ‘temporary student fees’ can be a far greater burden for migrant families and can put them under huge financial pressure.⁴⁷ They may not be able to afford continued education for their children, and the children may drop out and enter the employment market early.

3.2.3 Enrolment

Financial barriers to migrant children’s school access are important, but they are not the first problem the families meet. The first obstacle, when applying to state schools, is the requirement to submit all sorts of different credentials to local schools and to go through a complicated enrolment procedure.⁴⁸ Yuan points out that, although admission requirements (such as what credentials must be produced) vary in different provinces, a *hukou* certificate, temporary residence permit and national identification card (ID) must all be shown by migrant parents.⁴⁹ They are the standard documents widely known as the ‘three permits’. Yet, in practice, different regions require the

⁴⁶ Zili Yang, ‘Several Models of Resolving the Difficulties for Migrant Children to Access Education’ <http://www.zhuanxing.cn/html/Education_Right/716.html> accessed 24 December 2012

⁴⁷ Interview with Wang Xingjuan (n 8); Lu Shaoqing and Shouli Zhang, ‘Urban/Rural Disparity and Migrant Children’s Education: An investigation into Schools for Children of Transient Workers in Beijing’ (2004) 37 (5) *Chinese Education and Society* 56-83; Woo Jung Chang (n 2)

⁴⁸ For example, Bi Ying Hu and Judit Szente, ‘Education of Young Chinese Migrant Children: Challenges and Prospects’ (2010) 37 *Early Childhood Education Journal* 477-482; Fei Yan, ‘Education Problems with Urban Migratory Children’ (2005) 32 (3) *China Journal of Sociology and Social Welfare* 5; Huisheng Tian and Ni Wu, *Study on the Issue of Rural Migrant Children’s Access to Education – An Analysis on the Current Situations, Problems and Recommendations Based on the Research Conducted in Twelve Cities* (Educational Science Publishing House 2010) 69; Charlotte Goodburn, ‘Learning from Migrant Education: A Case Study of the Schooling of Rural Migrant Children in Beijing’ (2009) 29 *International Journal of Educational Development* 497; Montgomery (n 29) 600; Tania Branigan, ‘Millions of Chinese Rural Migrants Denied Education for Their Children’ <<http://www.guardian.co.uk/world/2010/mar/15/china-migrant-workers-children-education?INTCMP=SRCH>> accessed 12 December 2012

⁴⁹ Yuan and Tian (n 1) 63; *Ibid.*, Goodburn 497; Branigan; Montgomery 600

submission of various documents.⁵⁰ In Beijing, for instance, *five* credentials have to be submitted⁵¹ – a Beijing temporary residence permit,⁵² proof of the family’s present address in Beijing (such as a property ownership certificate or tenancy agreement), an employment permit for Beijing (such as an employment contract/agreement or business licence as an enterprise’s legal person), a guardianship certificate⁵³ and a *hukou* certificate for the whole family. In certain circumstances, as many as *seven* certificates are required in Beijing – for example, when migrant children have to apply to state schools because their own migrant schools have been abolished.⁵⁴ Other regions expect a national family planning certificate (also known as the ‘One Child’ policy certificate), a certificate of comprehensive insurance with current employers⁵⁵ and other certificates like the birth and health certificates of the child and the child’s previous enrolment records.⁵⁶

Getting these credentials together is time-consuming and they can be difficult to obtain.⁵⁷ According to research conducted by Yuan and Tian, 42.4 per cent of parents need more than 61 days to get all the certificates required; even those who do better necessarily experience delays: 17.3 per cent of parents need 16-30 days and 36.7

⁵⁰ Yuan and Tian (n 1) 63

⁵¹ *Opinions on the Implementation of the State Council’s Regulation on Further Improving Compulsory Education for Internal Rural Migrant Children in Beijing* (adopted on 15 August 2004 by the Beijing Municipal Commission of Education)

⁵² The local temporary residence permit is a registration system operating in 21 municipal cities in China to manage people who are over 16 years old who have no local *hukou* certificate but work or live in a receiving city for more than a month. Such people have to register with the local police within three days of arrival. A temporary residence permit is issued by the local police station. ‘The Definition of Temporary Residence Permit’ <<http://baike.baidu.com/view/27699.htm>> accessed 15 June 2011

⁵³ A certificate issued by the local authority at country and township levels in the place of origin of migrants to prove that no legal guardianship has been left in home towns.

⁵⁴ Five certificates plus temporary schooling certificate and a vaccination certificate. ‘Another Charity Migrant School is Closed in Beijing, Nandu Foundation Asks an Explanation from the Local Authority’ <<http://china.caixin.com/2012-07-23/100413867.html>> accessed 19 December 2012

⁵⁵ These two documents, together with the five documents mentioned above, are required when applying for a place in a state school in Shanghai.

⁵⁶ Yuan and Tian (n 1) 63, 65; ‘Shutting Out the Poorest: Discrimination Against the Most Disadvantaged Migrant Children in City Schools’ (Human Rights in China, 2002) <<http://www.hrchina.org/crf/article/4638>> assessed 21 December 2012

⁵⁷ Jie Dong, ‘Neo-Liberalism and the Evolvement of China’s Education Policies on Migrant Children’s Schooling’ (2010) 8 *The Journal for Critical Education Policy Studies* <<http://www.jceps.com/index.php?pageID=home&issueID=15>> accessed 9 June 2012

per cent need 15 days.⁵⁸ A migrant parent in Beijing, applying for a place in a state school in the Dong Sheng area of the Haidian district complained, moreover, that in order to get the ‘five’ credentials required, he actually needed to gather fifteen supporting documents with different official stamps on them – a process taking about three months.⁵⁹ Amongst the various credentials, the property ownership certificate, tenancy agreement, guardianship certificate and previous enrolment records of children are the most difficult to get hold of. The guardianship certificate and national family planning certificate are issued by the local authorities (*ji dao ban shi chu*) at village and township levels located in the migrant parents’ *hukou* regions;⁶⁰ so the parents have to return to their home towns in order to get them. Proof of a present address in the receiving cities is hardly possible to obtain for some migrants, as they live in illegal accommodation located in the urban fringe regions, and the local authorities normally refuse to issue them official documents to approve where they are living.⁶¹ In addition, it is very difficult for most rural migrant workers to obtain a work permit,⁶² as many of them have low-income occupations – they may, for example, be vegetable sellers, cleaners, street peddlers, rubbish collectors, construction workers or restaurant staff. All in all, getting five credentials can be extremely difficult for migrant parents and may be an unrealistic expectation. However, if they do not obtain these credentials, the local authority at the district level will not issue the ‘temporary schooling certificate’ (*jie du zheng ming*) which must be submitted as an essential document for getting a place in a state school.⁶³ As Cheng and Montgomery point out, such complex application requirements in the receiving regions raise a barrier to accessibility, and

⁵⁸ Yuan and Tian (n 1) 65

⁵⁹ Hu Xuebo, ‘Beijing Municipal Commission of Education: Non-Beijing Children Need Five Credentials to Apply for A Place in State Schools in Beijing’ <http://news.xinhuanet.com/edu/2012-06/09/c_112172861.htm> accessed 23 June 2012

⁶⁰ *Ibid.*

⁶¹ *Ibid.*

⁶² Han Jialing, ‘Education for Migrant Children in China, Background Paper Prepared for the Education for All Global Monitoring Report 2010, Reaching the Marginalized’, UNESCO 2010/ED/EFA/MRT/PI/42

⁶³ Section Four, ‘Enrolment Procedure on Compulsory Education for Rural Migrant Children in Beijing’, of the *Opinions on the Implementation of the State Council’s Regulation on Further Improving Compulsory Education for Internal Rural Migrant Children in Beijing* (adopted on 25 August 2004 by the Beijing Municipal Commission of Education)

may consequently exclude many migrant children from accessing proper compulsory education.⁶⁴

Quite apart from the demand for credentials, the application procedure in receiving cities is not ‘migrant children-friendly’. Taking Beijing as an example, *the Measures of the Beijing Municipality for the Implementation of the Compulsory Education Law of China* require:⁶⁵

Where a school-age child without a permanent registered residence needs to receive compulsory education in the city because his parents work or reside there [...], his parents or other statutory guardians shall go to the school designated by the administrative department for education in the district or county of the actual residence with the certificates of identity, residence or work of their own and that of the child or adolescent, [and they shall be] examined and verified by the sub-district office or the people’s government at the town or township level of the actual residence to contact for enrolment; where it is difficult for the school to receive the child or adolescent [...], they may file an application to the administrative department of education in the district or county of the actual residence for settlement.⁶⁶

As the provisions above indicate, migrant children normally attend state schools designated by the local education authorities. As a result, some designated schools are overcrowded with too many migrant students. This puts the schools under financial stress and puts pressure on their human resources.⁶⁷ The local authorities in popular receiving regions also worry about the influx of massive internal migration.⁶⁸ In order to ease such tensions, schools tend to use different methods to deter the entry of migrant children. The requirement for various certificates of identity is just one of them.⁶⁹

⁶⁴ Human Rights in China (n 56); Montgomery (n 29) 600

⁶⁵ (Adopted on 26 November 1993, and amended on 21 November 2008). See also, Implementation of the State Council’s *Opinion on Further Improving the Education of Rural Migrant Children in Beijing*

⁶⁶ *Ibid.*, Art. 12 of the *Measures of Beijing Municipality for Implementation of the Compulsory Education Law of China*

⁶⁷ Yuan and Tian (n 1) 127

⁶⁸ Xu (n 43)

⁶⁹ *Ibid.*; Yuan and Tian (n1) 127

3.2.4 The transition from primary to secondary level and beyond

In addition to the financial and administrative difficulties identified above, migrant students face an interruption between compulsory education and study at senior high school caused by institutional and structural arrangements, including the *hukou* system and the admission and recruitment system of the national college entrance exam.⁷⁰ These may dash migrant children's hopes of continuing education in their receiving cities. One of the admission criteria for take the national college entrance exam (*gaokao* – hereafter referred to as the NCEE) is that students must register and take it in the province where their *hukou* (*hukou suo zai di*) is located, even if this is not the place where they have actually studied.⁷¹ If students do not obtain the local *hukou*, regardless of how long they have studied in the place where they are living, they are not eligible for taking these exams. In Beijing, for example, although 25.73 per cent of

⁷⁰ Lack of accessibility to junior and senior high schools for migrant children in receiving regions (which will eventually lead to the issue whether they can take the high school and the national college entrance exams in the places where they have lived) has increasingly become voiced by the public (see cited articles below). The main focus of the present study is on compulsory education for migrant children. This section will only touch the surrounding debate, as it is very important to the future development for migrant young people. Yet the transition from compulsory education to secondary level and beyond is quite complex and cannot be understood without carefully examination of currently *hukou* system/reform, the social insurance system, current national recruitment and admission systems for higher education, resources allocation for education between internal migration and local residents, vocational schools, and so on. Han (n 62), Yuan and Tian (n1) 128; Ren Xinghui, 'What is Wrong with the Rejection of Taking Gaokao in the Place where the *hukou* is not located?' <http://www.zhuanxing.cn/html/Education_Right/852.html>; 'Migrant Students to be Fairly Treated When Taking College Entrance Exam' <http://news.xinhuanet.com/english/bilingual/2012-09/01/c_131821816.htm>; 'Opening Vocational Education for Migrant Students is an Method to Ease the *hukou* Barrier' <http://www.jyb.cn/basc/sd/201001/t20100120_336610_5.html> accessed 26 December 2012; T.E.Woronov, 'Learning to Serve: Urban Youth, Vocational Schools and New Class Formations in China' (2011) 6 *The China Journal* 77-99; Xiong Bingqi, 'Resolving the Problem of Taking the National Higher Education Exam in Different Areas Has Been Put into the Agenda' <<http://edu.people.com.cn/GB/116076/14090408.html>>; 'Resolving the Problem of Taking the National University Entrance Exam: Three Solutions' <http://nf.nfdaily.cn/nfdsb/content/2011-03/11/content_21068845.htm>; 'National People's Congress Representative: A Right to Take the National Higher Education Entrance Exam Should Be Entitled to Rural Migrant Children' <http://www.edu.cn/sheng_yin_12145/20120305/t20120305_747841.shtml> accessed 22 June 2012

⁷¹ According to the Ministry of Education of China, several requirements must be fulfilled in order to take the NECC: the students should have completed senior high school education or equivalent, be physically healthy, obey the Constitution of China, and obtain the local *hukou* where they will sit the exam. 'National College Exam for Normal Higher Education' <<http://baike.baidu.com/view/850723.htm>>; 'Research on China's National College Entrance Exam (the Gaokao)' <http://sydney.edu.au/ab/committees/admissions/2011/AEI_Gaokao_Report.pdf>; Cheng Yingqi, 'Migrant Children to Take Gao Kao' <http://www.chinadaily.com.cn/cndy/2012-09/07/content_15741234.htm> accessed 12 December 2012

'migrant' children were born in the city itself as of 2008,⁷² they cannot take the high school entrance exam where they have had their schooling, unless they have a *hukou*. (An exception is made if a parent has this certificate.)⁷³ In this way, the *hukou*-orientated exam and admission arrangements have themselves become an institutional and structural barrier to the educational chances of migrant students.⁷⁴ This problem has become a matter of great concern amongst officials⁷⁵ and scholars⁷⁶ in China – and, of course, amongst the migrant parents themselves.⁷⁷ The following subsections illustrate the difficulties and conflicts raised by the current *hukou*-orientated testing system.

The high school exam (Zhong kao)

The high school exam in China is managed, operated and supervised by the local educational authorities at the provincial level (*sheng ji jiao yu ting*) and their remit is to provide for residents in possession of a local *hukou*.⁷⁸ In practice, there is a great

⁷² 'A Report on Compulsory Education for Migrant Children' (n 12) National Institute for Education Research

⁷³ Huyun Yang, 'A Discussion is Undergoing by the Ministry of Education to Resolve the Problem of Taking National Higher Education Entrance Exam in Beijing and Shanghai' <<http://news.163.com/11/0307/03/6UGT566B00014AED.html>> accessed 20 June 2011

⁷⁴ Ni Wu and Fuyan Zhu, *A Policy Research on the Issue of Taking High School Exam for Migrant Children in Receiving Regions* (Educational Science Publishing House 2011)

⁷⁵ For example, this problem was one of the worrying issues raised and discussed by many representatives of the National People's Congress during the Fifth Session of the 11th National People's Congress (NPC) and the Chinese People's Political Consultative Conference (CPPCC) ('the Two Meetings') held in March 2012 in Beijing, China. Concerns were voiced by representatives from different provinces. 'Taking the National Higher Education Exam in Receiving Cities, Hot Topic at the Two Meetings, Pay Attention to National Educational Reform', Special Report from the Two Meetings of 2012 <<http://www.edu.cn/html/e/2012lianghui/ydgc.shtml>>; 'Topic of the Two Meetings: How to Resolve the Problem for Rural Migrant Children to Take Two Exams After the Completion of Their Compulsory Education in Receiving Cities' <http://www.edu.cn/re_dian_12144/20120305/t20120305_747880.shtml> accessed 22 June 2012

⁷⁶ Ni Wu, 'The Issue of Taking the High School and the National College Exams in Receiving Cities' <http://www.qstheory.cn/zxdk/2012/201204/201202/t20120213_138374.htm>; Wang Ming, *Focus on the Education for Migrant Populations' Children* (Higher Education Press 2012) 178; T.E.Woronov, 'In the Eye of Chicken: Hierarchy and Marginality Among Beijing's Migrant Schoolchildren' (2004) 5 (3) *Ethnography* 297

⁷⁷ For example, 'A Proposal from an Non Governmental Perspective Concerning How to Make the Opportunity Available for Migrant Children to Take the National Higher Education Exam in Receiving Cities' <<http://www.jiaoyugongping.com/forum.php?mod=viewthread&tid=342&extra=page%3D1>> accessed 23 June 2012

⁷⁸ Wu (n 76) 34

variation in how far some local authorities will bend the rules to allow migrant students to take high school exams in their adopted areas.⁷⁹ Only a small number of local authorities have moved on to this provision, allowing migrant students to take their high school exams in the cities they have moved to.⁸⁰ What do the migrant children do then? One option for these children wanting to attend senior high schools in receiving cities is for their parents to pay high temporary schooling fees.⁸¹ Owing to limited educational resources and high competition for places, especially in state schools with good reputations, there are very few places left for migrant children. In the city of Dong Guan, in Guang Dong Province, for instance, there are just three places available for non-local students in many of the state senior high schools.⁸² Aside from high fees and limited public resources, submission of correct credentials to the local authorities is normally required, including *hukou* certificates for the whole family, the parents' work permit and a guardianship certificate from the students' places of origin to prove that no legal guardianship remains there.⁸³ In these circumstances, the common choice for migrant children is to return to the place where their *hukou* is located and take the high school exam there.⁸⁴ But the curriculum, the pedagogical systems and written tests are different in the different provinces and adapting to a different academic system is not easy for students.⁸⁵ Thus migrant parents have to send their children back home after the completion of elementary education in their receiving cities so that they can adapt to the new study environment in advance.⁸⁶ The problem of different syllabuses and tests in different places clearly disadvantages migrant children, who have to start from scratch with various curricula and modules of

⁷⁹ Wu and Zhu (74) 34

⁸⁰ The latest figure indicates that as of December 2010 only 5 provinces (municipalities), 19 prefectural level cities and 4 districts and counties allowed migrant students to take the high school exam in their own regions. Wu and Zhu (n 74) 47

⁸¹ Yuan and Tian (n 1) 71

⁸² *Ibid.*, 71

⁸³ *Ibid.*, 71; Wu and Zhu (n 74) 47

⁸⁴ *Ibid.*, Wu and Zhu 47

⁸⁵ *Ibid.*, 139

⁸⁶ Mitch Moxley, 'Hard Time Expose Migrants' Worried About Children' <<http://www.china-labour.org.hk/en/node/100681>> accessed 17 December 2012; Ingrid Nielsen, Berenice Nyland and others, 'Determinants of School Attendance Among Migrant Children: Survey Evidence from China's Jiangsu Province' (2005) Working paper 65/05, Monash University 4

courses.⁸⁷ Consequently few continue with their studies at senior high school level.⁸⁸ Many children may spend a few years in their home town, and eventually move back to the city they used to live in. Many migrant students choose to attend vocational schools.⁸⁹ Others, just start to work directly (*da gong*) without pursuing further education, or they start to help out their parents at the age of fourteen or fifteen.⁹⁰ A survey conducted in the city of Gongguan, Guang Dong Province, the largest receiving province in China,⁹¹ indicates that, after the completion of junior high school education, 20 per cent of students choose to enter employment; 30 per cent apply for non-state vocational senior high schools; 40 per cent return to their place of origin to attend senior high schools; and a very small number of students continue their studies in local state senior high schools.⁹²

All these options could have a negative impact on the children. In his interview, Mr Zhang, Principal of Ming Yuan Migrant School, explained:

[M]any students [do] not want to return to their home town to continue their junior high school and take the high school exam, because they were born in the city; therefore they see themselves as urban kids. Lifestyle and academic environment in rural areas would be very difficult for them to adapt to. The curriculum is also different from province to province. Aside from these difficulties, if they returned to their home town, they would just become the new group of ‘left-behind’ children there, which would cause new problems. Currently many students are either not able to take the high school exam, which would advance them to the senior high schools, or cannot have a proper job. Thus many of them have just dropped out and stroll around and do nothing. They could easily become involved in criminal activities.⁹³

⁸⁷ Gao Dongli, ‘Migrant Children - Where is My High School?’ <<http://edu.sina.com.cn/zhongkao/2011-03-30/1209290635.shtml>> accessed 20 June 2011; Pan Fang, ‘A Survey on the Current Circumstances of Compulsory Education for Migrant Children – A Case Study of Changzhou’ (Master’s thesis, Department of Educational Administration, East China Normal University 2006)

⁸⁸ *Ibid.*, 37

⁸⁹ Xu Leiyong, ‘Most Migrant Children Don’t Attend High School: Survey’ <<http://english.cri.cn/6909/2009/12/28/1821s538299.htm>> accessed 15 June 2011

⁹⁰ Interview with Han Jialing, famous sociologist and scholar at the Beijing Academy of Social Sciences (Beijing, China, 7 March 2011)

⁹¹ Guang Dong Province ranks in the first place: it receives 14.6% migrant children, equivalent to 2,678,000 children, from other provinces in the country. Yuan and Tian (n 1) 25

⁹² *Ibid.*, 71

⁹³ Interview conducted on 2 March 2011 with Zhang Gezhen, Principal of Ming Yuan Migrant School in Beijing. A survey conducted in Shanghai indicates that, after completion of junior high schooling,

Another teacher from a migrant school in Beijing backs this up:

[M]any students in my class can easily lose their motivation to study, as they know that they cannot take the high school exam in Beijing because they have not got the Beijing *hukou*. The development of students at this stage is crucial. But, aside from a very few students in the class who are greatly motivated to continue their senior high school education (which might lead to the university in the future), the majority of students do not have much motivation to study and do not really know about their life goals. People discuss whether these kids can take the national college entrance exam in their receiving cities. Yet how can they even get that far if they are not allowed to take the high school exam in the first place? What is the future for these migrant students if they only obtain the junior high school certificate?⁹⁴

Having worked in his own migrant school for more than ten years, Principal Zhang said in his interview: ‘I really hope the government can provide some preferential policies, hope and care for these children, because they would never forget such kindness from the government in their whole lives.’⁹⁵

The national college entrance exam (Gaokao)

Even for those migrant students who succeed in taking the high school entrance exam in their receiving cities and continue their senior high school, there are barriers to advancing further. The next dilemma for them is whether they are eligible to take the national college entrance exam (NCEE) in their receiving city. In China, the NCEE (*Gaokao*) is undertaken at the completion of senior high school for admission to higher education. The majority of students and their parents take the NCEE very seriously. Yu compares it with the Chinese imperial exam (*keju*), which was the test used during the imperial era to select government officials and bureaucrats.⁹⁶ He points out that both exams are comparable, as they are ‘highly competitive in nature, maintained by the state system, used as a social ladder and have [or had] a profound effect on

around 30% of migrant children neither go to high school nor start to work: they hang around in the streets. Xu (n 43)

⁹⁴ Zhang Chunming, ‘Taking the High School Exam in Receiving Cities, When the Ideal Clashes the Reality’ <paper.jyb.cn/zgjyb/page/.../2012021503_pdf.pdf> accessed 29 December 2012

⁹⁵ Interview with Zhang Gezhen (n 93)

⁹⁶ Chinese Imperial Examination System, Confucianism and the Chinese Scholar System <<http://www.csupomona.edu/~plin/ls201/confucian3.html>>; Ke Ju Exam <<http://baike.baidu.com/view/175089.htm>> accessed 23 June 2012

society'.⁹⁷ Indeed, the NCEE is regarded as the primary opportunity for the rural poor to enlarge their opportunities and leave the poor rural communities.⁹⁸ Rural poor students use the exam to help them 'jump into the dragon gate' (which means getting into higher education to reach the upper social ladder).⁹⁹ A survey conducted amongst 1,728 migrant students in 40 elementary migrant schools shows that 53 per cent of migrant students wanted to pursue a doctoral degree in the future, and only 1.5 per cent wished to go back to their places of origin working as peasant farmers.¹⁰⁰ Parents also have their expectations: they hope for high academic achievement from their children. A survey has shown that 30.4 per cent of migrant parents want their children to obtain doctorates and 26 per cent hope their children will obtain bachelor degrees in the receiving cities.¹⁰¹ Such high expectations reflect an eager desire from the parents that their children will be able to 'walk out' (*zou chu qu*)¹⁰² from the rural areas by taking advantage of educational opportunities. These parents see education 'as the best possible means of social mobility',¹⁰³ helping their children escape the fate of peasant farmers, whose lot – 'eating bitterness' (*chi ku*) – is so hard.¹⁰⁴ Indeed the migrants have moved to the more economically developed regions with specific aspirations to improve their children's lives. Nevertheless, most migrant children are, in practice, unable to progress to the NCEE. They face several obstacles.

Firstly, as indicated earlier, students in China must take their national college exam in the place where their *hukou* is located. The Ministry of Education of China

⁹⁷ Yu Kai, *Diversification to a Degree: An Exploratory Study of Students' Experience at Four Higher Education Institutions in China* (Bern, Peter Lang, 2010)

⁹⁸ Wanhua Ma, 'Why the Rural Poor Get Fewer Opportunities to Leading Research Universities?' (2012) 13 *Asia Pacific Education Review* 263-271

⁹⁹ *Ibid.*

¹⁰⁰ 'Only 1.5% of Migrant Children in Beijing Wanted to Return to Hometowns Becoming as Peasants After the Completion of Middle Schools' <<http://www.nwccw.gov.cn/html/18/n-145118.html>> accessed 20 June 2012

¹⁰¹ *Ibid.*

¹⁰² Peggy A. Kong, 'To Walk Out: Rural Parents' Views on Education' (2010) 8 (2) *China: An International Journal* 361; Jin Chi and Nirmala Rao, 'Parental Beliefs about School Learning and Children's Educational Attainment: Evidence from Rural China' (2003) 31 (3) *Ethos* 330-356

¹⁰³ T.E.Woronov, 'Migrant Children and Migrant Schooling, Policies, Problems and Possibilities' in *Labour Migration and Social Development in Contemporary China* (ed) by Rachel Murphy (Routledge 2009) 108

¹⁰⁴ Kong (n 102) 362

employs a strict system of *hukou*-orientated quotas to allocate available spaces for the NCEE. Each year the Ministry decides the student quota in consultation with universities, while the universities' recruitment plans are developed with the provincial educational authorities and approved by the Ministry. Local authorities at provincial level are mainly responsible for the NCEE student applications, for holding the exam, and for developing recruitment plans based on provincial needs.¹⁰⁵ A complex matrix of provincial quotas, university quotas and subject quotas is negotiated between local educational authorities and the universities for each successive year. Based on this admission and exam system, all senior high school students must take the exam in the place where their *hukou* are located.¹⁰⁶ The quotas are biased in favour of residents with 'non-agricultural *hukou*' in the cities.¹⁰⁷ Such discrimination in the allocation of quotas further limits the educational opportunities available to 'agricultural *hukou*' holders – mainly rural migrant children. Thus the general rule is that migrant children have to return to their permanent residence to take the NCEE, regardless of what curriculum they have followed and how long they have studied in their receiving cities.

In addition to all this, as part of the national curriculum reform, each province can now design its own examination paper for the national college entrance exam (*fen sheng ming ti*) and can develop its own localised curriculum.¹⁰⁸ The rationale for this is to promote the notion of 'education for quality' (*su zhi jiao yu*) as an advance on the conventional paradigm of an exam-oriented educational system (*ying shi jiao yu*)¹⁰⁹ and (in a devolution of power from central government) to provide more administrative autonomy for local authorities at the provincial level, so that they can develop, manage and supervise pedagogical and exam systems according to their own regional characters.¹¹⁰ As of 2012, the Ministry of Education has permitted 16 of

¹⁰⁵ *Ibid.*

¹⁰⁶ Han (n 62)

¹⁰⁷ For example, the Ministry of Education allocated Beijing (with 10 million permanent residents) 25,000 university admission slots, whereas it allocated Shangdong Province (with around 100 million local residents) 80,000 slots..

¹⁰⁸ Yi Lin, 'Turning Rurality into Modernity: Suzhi Education in a Suburban Public School of Migrant Children in Xiamen' (2011) 206 *The China Quarterly* 313-330

¹⁰⁹ Rachael Murphy, 'Turning Peasants into Modern Chinese Citizens: "Population Quality" Discourse, Demographic Transition and Primary Education' (2004) 177 *The China Quarterly* 1-20

¹¹⁰ 'Whether Each Province Should Design Their Own Exam Papers for the National College Entrance Exam'

China's 31 provinces, autonomous regions and municipalities to design their own localised exam papers for the national higher education entrance examination, while other regions use a unified national paper.¹¹¹ State schools in the rest of the provinces, and also schools that are privately run specifically for migrant children, normally employ uniform nationwide textbooks and exam papers for it.¹¹² The problem raised for migrant children by such regional variations in exam papers and text books is that they result in a lack of comparability between provinces¹¹³ and have created great difficulties for these children when they have to adapt localised pedagogical systems, curricula and written tests. When those actually born in urban areas still have to return to their rural places of origin to take a national university entrance exam they are not prepared for, they naturally tend to opt out. Chan points out that, after living in the city for many years, many migrant children become 'disillusioned rapidly' after they have returned home, because the sudden change in their lives causes 'enormous stress'.¹¹⁴

At the national regulatory level, however, the state has made some positive progress in improving migrant children's chances of taking the NCEE in their adopted cities.¹¹⁵ Such a national policy greatly depends on new policy promulgations at different local levels, according to their individual circumstances,¹¹⁶ as 'the population capacities and educational resources vary in different regions'.¹¹⁷ The central regulation suggests that provincial, autonomous regions, and municipal authorities

<http://www.china.com.cn/education/zhuanti/hfgk30/2007-05/29/content_8316780.htm> accessed 29 December 2012

¹¹¹ 'The Expert Mr. Dai Jiagan from The National Examination Centre of The Ministry of Education Discussed Several Key Issues regarding the National Higher Education Entrance Examinations in 2011' <http://news.xinhuanet.com/edu/2011-06/03/c_121494141_4.htm>; Cheng Yingqi, 'Education Reform Would Make Gaokao Only One Factor' accessed 13 December 2012;

¹¹² *Ibid*; Yuan and Tian (n 1) 127; Xia (n 29) 29, 40

¹¹³ Wang Houxiong, 'Access to Higher Education in China: Differences in Opportunity' (2011) 6 (2) *Front Education China* 227-247

¹¹⁴ Chan (n 37)

¹¹⁵ The General Office of the State Council forwarding the Notice of the *Working Opinions on Improving the Opportunities for the Accessibility of Education for Migrant Children after Their Completion of Compulsory Education in Receiving Regions* (adopted by the Ministry of Education, National Development and Reform Commission, The Ministry of Public Security, and the Ministry of Human Resources and Social Security on 30 August 2012)

¹¹⁶ *Ibid*. Para. 3

¹¹⁷ *Ibid*. Para. 2

should ‘in principle’ promulgate local regulations by 2012.¹¹⁸ Beijing, Shanghai and other popular receiving regions should initially assess current information on local migrants and then produce a working plan for how migrant children can take exams.¹¹⁹ During the process of policy re-promulgation at local level, new criteria will be set by local authorities, and these should increase the fairness of the NCEE system for migrant children.¹²⁰ As of December 2012, nine out of thirty provinces in China – including Hei Long Jiang and Anhui– have decided to allow rural migrant students to take the NCEE within their areas.¹²¹ But the popular receiving regions such as Beijing, Shanghai and Guangdong, have not yet approved or promulgated any local regulations.¹²² The main reason for postponing action, as Han Jialing has pointed out, is that the local authorities in regions with such large-scale influx often worry that, if they allow migrant students to continue their senior high school education and they make the national college exam available for all, this could ‘open the floodgates’, leading to unmanageable numbers of people migrating from rural areas to these cities.¹²³ In this scenario, the financial and educational resources of the cities would become insufficient for the local students. The objects of these worries are referred to as ‘the college exam migrants’ (*gao kao yi min*).¹²⁴ Han did, however, say that such a phenomenon would not happen automatically, since financial stability and accommodation are, for migrant parents, the essential factors determining whether they

¹¹⁸ *Ibid.* Para. 3

¹¹⁹ *Ibid.* Para. 3

¹²⁰ Criteria stipulate that migrant parents should have stable jobs, live in legal and stable sites with their children, and must have paid social security insurance in the place for a certain period of time. Cheng Yingqi, ‘Migrant Children to Sit Gaokao in Cities’ <http://www.chinadaily.com.cn/cndy/2012-09/07/content_15741234.htm> accessed 20 December 2012

¹²¹ ‘Nine Provinces Have Promulgated Localised Policies on Resolving the Issue of Taking the National College Entrance Exam in the Places Where They have Lived’ <http://www.qh.xinhuanet.com/2012-12/28/c_114186542.htm> accessed 28 December 2012

¹²² ‘Is it Impossible to Take the National College Entrance Exam for Migrant Children in Beijing, Shanghai and Guangdong?’ <<http://edu.people.com.cn/GB/n/2012/1228/c353389-20042321.html>> accessed 28 December 2012

¹²³ Interview with Han Jialing (n 90)

¹²⁴ *Ibid*; Zhang Chunming, ‘Taking the High School Exam and the National College Exams in Receiving Cities, How Difficult Is It to Achieve?’ <http://paper.jyb.cn/zgjyb/page/1/2012-02/24/03/2012022403_pdf.pdf> accessed 23 June 2012

have the ability to afford their children's education costs.¹²⁵ In a way not required for compulsory education, parents have to pay tuition fees, text book fees, uniform fees, boarding fees and 'after-school class' fees in high schools.¹²⁶ Not all migrant parents can afford such expenses. If they could, China would not have 50 million 'left-behind' children in the home towns. Han emphasised this in the interview.

Professor Xu, a representative of the National Peoples' Congress, also argues that children who were born in the city should be able to take national university entrance exams in their place of birth, regardless of where the *hukou* of their parents is.¹²⁷ However, it requires adjustment, and even a comprehensive reform, to resolve the problem of poor accessibility to senior high school for migrant children. Changes needed include: a reform of the current enrolment and admission system for the national college entrance exam; coordination of syllabuses at both levels of schools between the receiving and exodus regions; resources allocation for education between internal migrants and local residents; vocational schools; and an overhaul of the *hukou* system throughout the country.¹²⁸ Such changes cannot happen overnight – as reform of the *hukou* system alone would involve change for billions of people and (for example) a revision of the current national social security system.¹²⁹

All in all, a complex series of institutional and structural arrangements has created barriers not only hindering equal access to education for migrant children, but preventing them too from advancing themselves in future educational opportunities. When the educational expectations of migrant children clash with their reality, it may cause emotional difficulties and cloud their outlooks for the future.

¹²⁵ Another scholar, Zhou, also supports Han's opinion. Zhou Jia, *A Research on the Implementation of Educational Policies – Using the National Policy for Compulsory Education for Migrant Children as an Example* (Educational Science Publishing House 2007) 97

¹²⁶ It is very common for children to take 'after-school classes' in China. The cost of over 10,000 RMB per year (equivalent to £1,000) is unaffordable for many migrant parents.

¹²⁷ Yang (n 73)

¹²⁸ Zhang Chunming, 'Taking the High School Exam in Receiving Cities, When the Ideal Clashes with the Reality' <paper.jyb.cn/zgjyb/page/.../2012021503_pdf.pdf>; Wang Ming, 'Innovation of Regulations is the Key for Migrant Children to Take Exams in Receiving Regions' <http://www.jyb.cn/basc/xw/201202/t20120215_477732.html> accessed 29 December 2012

¹²⁹ Moxley (n 86)

3.3 Lived experience of schools for migrant children

3.3.1 The general situation of privately-run schools for migrant children

Advantages of migrant schools

Although the government has tried to integrate migrant children into the local state school system in receiving cities, in reality, as we have seen, many migrant children still face various barriers excluding them from attending state schools. Under such circumstances, privately-run schools have emerged as alternatives, and have greatly expanded in numbers. These schools, specifically established for children of migrant workers (*min gong zi di xue xiao*) are hereafter referred to as ‘migrant schools’. These ‘migrant schools’, as Han Xialing stated in his interview,¹³⁰ operate mainly at the level of pre-school and elementary education. Very few migrant schools extend their teaching to junior high school level.¹³¹ This speaker also noted that since the first migrant school was established in Beijing in 1993, around 300 schools sprang up in a decade. Because of the emergence and rapid expansion of migrant schools, the difficult problem of schooling children from low-income migrant families has been partially resolved. A survey conducted by the Beijing Municipal Office for Migrant Affairs shows that the dropout rates for migrant children in Beijing had, by 2010, fallen from 13.9 per cent to 2.8 per cent.¹³²

Apart from providing educational opportunities for migrant students, migrant schools try to accommodate the different needs of migrant families.¹³³ This is not offered by the mainstream state schools. The following are some examples to illustrate the advantages of migrant schools. First, working hours are flexible. As Woronov notes, some migrant schools can open as early as 5.45 a.m., whereas the mainstream state schools open at around 7.45 a.m.¹³⁴ The early times fit in with migrant parents’

¹³⁰ Interview with Han Jialing (n 90)

¹³¹ Han (n 26) 36

¹³² Tan (n 29) 34

¹³³ Julia Kwong, ‘Educating Migrant Children: Negotiations Between the State and Civil Society’ (2004) *The China Quarterly* 1085

¹³⁴ Woronov (n 103) 101

work hours.¹³⁵ These schools can also look after their students in the school after lessons, until their parents pick them up on the way home from work.¹³⁶ Some migrant schools provide transport between schools and the children's homes.¹³⁷ In addition to this flexibility, the easy physical accessibility of migrant schools has proved popular amongst migrant parents.¹³⁸ For instance, many schools in Beijing are located in the urban fringe regions where the majority of migrant families live, because of the cheap cost of accommodation; so, although facilities in migrant schools are not as good as those in state schools, these schools are normally close by for the children. Physical accessibility is important for the migrant parents, given their busy work schedules. In addition, migrant schools have an easy enrolment procedure. Yuan and Tian point out that, for 48.5 per cent of migrant parents, it only took a week to find a migrant school for their children,¹³⁹ whereas it took at least a month to apply for a place in a state school, because of the complicated enrolment procedure and the need to submit all kinds of different credentials.¹⁴⁰ Moreover, admission formalities in most migrant schools are easier, compared with those in state schools.

Another advantage of migrant schools is the affordable fees. The fees are lower than for state schools; about RMB 300 to 600 is charged per term (equivalent to £30-60) for tuition fees.¹⁴¹ By contrast, in state schools, although the levy of temporary schooling fees has been prohibited in recent years and tuition fees should not be charged for compulsory education, other hidden fees tend to be levied, such as sponsor fees, the cost of uniform, money for school activities, and fees for after-school classes. Thus the relatively low tuition fees in migrant schools attract most low-income migrant parents.¹⁴² Moreover, the methods for payment of fees in migrant schools are flexible.

¹³⁵ *Ibid.*, 101

¹³⁶ Chen and Liang (n 11) 126

¹³⁷ Kwong (n 133) 1085

¹³⁸ Shaoqing Lu and Shouli Zhang, 'Urban/Rural Disparities and Migrant Children's Education, An Investigation into Schools for Children of Transient Workers in Beijing' (2004) 37 (5) *Chinese Education and Society* 63

¹³⁹ Yuan and Tian (n 1) 66

¹⁴⁰ *Ibid.*, 67

¹⁴¹ Kwong (133) 1085

¹⁴² Han (n 26) 34

Fees can be paid monthly, in a recognition of the high mobility and uncertainty in the lives of many migrants.¹⁴³ Some migrant schools allow delayed payment¹⁴⁴ or even refund unused tuition fees when the family moves away.¹⁴⁵ None of these options is offered in the mainstream state schools.

In addition to appreciating these advantages, many migrant parents prefer migrant schools, because the children do not suffer the discrimination and intolerance often experienced in state schools.¹⁴⁶ Han relates that, although some migrant parents have enough money to send their children to a regular state school in Beijing, they sometimes choose a migrant school instead, for fear of their children being looked down on by the Beijing children.¹⁴⁷ Indeed, unlike the mainstream state schools where students are predominately from the same city with local *hukou* certificates, migrant schools receive children from all over the country, and the background of these students is quite diverse.¹⁴⁸ Thus there is no *hukou*-orientated discrimination in migrant schools, and they provide a place where migrant students can feel a sense of belonging. All in all, migrant schools not only serve as a functional alternative accommodating the different practical needs of migrant families, but address the ‘psychological disincentives to attend state schools caused by the institutional barrier [of] the *hukou* system in state schools’.¹⁴⁹

School conditions

Despite points in their favour, migrant schools are by no means a panacea. Unlike state schools, as Xia,¹⁵⁰ Han¹⁵¹ and Wang¹⁵² point out, many migrant schools are operated

¹⁴³ Chen and Liang (n 11) 125

¹⁴⁴ *Ibid*, 125

¹⁴⁵ Kwong (n 133) 1085

¹⁴⁶ Chen and Liang (n 11)125; Wang (n 32) 34; Chan (n 37) 39; Tan (n 29) 33

¹⁴⁷ Interview with Han Jialing (n 90); Woronov (n 103) 107

¹⁴⁸ Han (n 26) 45

¹⁴⁹ Chen and Liang (n 11) 125

¹⁵⁰ Xia (n 29) 39

¹⁵¹ Interview with Han Jialing (n 90)

¹⁵² Wang (n 32) 37

by migrants themselves. Thus they are plagued by inadequate funding: mainly they rely on tuition fees for their revenue. They are often characterised by poor school facilities, low educational standards, less qualified teachers, high rates of teacher turnover, a substandard curriculum, and pupils who come and go rapidly.¹⁵³ Some migrant schools do no more than rent a space for teaching in garages, public baths, old warehouses or the homes of migrant families: these count as ‘school buildings’.¹⁵⁴ Many classrooms are overcrowded. Lighting, ventilation and heating systems are poor; many schools cannot meet the standards required by the local authorities for fire exits, safe drinking water and sanitary and First Aid facilities.¹⁵⁵ Some schools do not even have washrooms, and students have to use public toilets outside.¹⁵⁶ So the majority of migrant schools operated by migrants themselves get by in tenuous circumstances.¹⁵⁷ Though there are some schools with better school facilities and conditions, these ones charge high fees and are operated by business people who have other enterprises and invest in their schools for profit.

Physical training and academic curriculum

Some migrant schools do not have adequate facilities for physical exercise, such as a good-sized playground and indoor and outdoor sports equipment.¹⁵⁸ Unlike the mainstream state schools, some migrant schools do not provide any formal or organised exercise at all during breaks between classes.¹⁵⁹ For instance, Han says that many schools use just a ‘dilapidated old table’ for ping-pong, and some do not have ping-pong bats – the children use a piece of wood or old exercise book instead.¹⁶⁰ The mainstream state schools offer not only PE classes and sports and other fitness

¹⁵³ Interview with Han Jialing (n 90); Xu (n 43)

¹⁵⁴ China Rural Labour Association, ‘Survey of Schools at the City’s Margins’, Newsletter of Assistance of Migrant Children’s Schools 3.

¹⁵⁵ Tan (n 29) 35

¹⁵⁶ Han (n 26) 39

¹⁵⁷ *Ibid.*

¹⁵⁸ Goodburn (n 48) 499; Han (n 26) 39

¹⁵⁹ Woronov (n 76) 300

¹⁶⁰ Han (n 26) 39

activities but also provide a compulsory annual health check, psychological counselling, and a vaccination programme for their students.¹⁶¹

As for the academic curriculum, migrant schools try to follow the courses of lessons designed for state schools at provincial or municipal levels. The subjects there include Chinese, English, Maths, Moral Education, Social Studies and Music.¹⁶² Due to the disruption of continuity in their students' education, many migrant schools choose to use textbooks imported from the children's home towns. This is because some migrant children have to return to the places where their *hukou* are located to continue their high school education (as discussed in earlier sections). To prepare them to fit in with the pedagogical systems in their native provinces, the teachers employ the books in use there, as adapting to different text books in different regions is not at all easy for migrant children.¹⁶³

Migrant students

Lack of uniformity in the students' ages is one of the salient features of migrant schools. Many migrant children migrate here and there with their families, and many have had periods out of school altogether. Thus the problem of children being over-age and making a late entry is a serious one, and age ranges are far less consistent than among students in state schools.¹⁶⁴ In an interview, Wang Xingjuan, the Trustee of the Maple Women's Psychological Counselling Centre, emphasised that, whereas most children commenced elementary education at age 6, approximately 20 per cent of migrant children of that age did not even begin their first or second year of elementary education.¹⁶⁵ Moreover, in a migrant school in Beijing, Woronov observed that students dressed quite differently from their peers in local state schools.¹⁶⁶ They did not have school uniforms and just 'came to the class in multiple layers of whatever

¹⁶¹ Goodburn (n 48) 500

¹⁶² Han (n 26) 40

¹⁶³ Woronov (n 103) 103

¹⁶⁴ Lu and Zhang (n 6) 63

¹⁶⁵ Interview with Wang Xingjuan (n 8)

¹⁶⁶ Woronov (n 103) 101; Woronov (n 76) 300

they owned'.¹⁶⁷ Their clothes and faces, as she describes them, were also 'uniformly dirty' due to lack of access to hot water.¹⁶⁸ In addition to these physical differences, the background of these students is strikingly diverse.¹⁶⁹ Han emphasised that, unlike local students who nearly all come from the same place, migrant students stem from all over the country, and the migrant schools thus have a mixture of students with very different backgrounds – from small towns, from rural regions and from cities. Some students have strong accents and, in the lower grades of the schools, the teachers partly focus on refining their local accents into standard *pu tong hua* (Mandarin).¹⁷⁰ Since they are from different regions in China, the children are also taught to adjust their customs and habits, so they can adapt to the new environment in cities.

Teachers

There are some significant general characteristics common in the teaching staffs of migrant schools. Firstly, the backgrounds of migrant teachers may vary considerably. Since many illegal migrant schools are set up and operated by migrant workers themselves, the operators may simply ask their relatives or friends from their places of origin (*jia xiang*) to join the school as teachers, ignoring recruitment standards.¹⁷¹ Sometimes schools hire retired teachers, rural teachers or substitute teachers.¹⁷² There are also a number of teachers from state schools who have crossed over to this sector due to the low salaries or delayed payments they get from the local authorities.¹⁷³ Secondly, the key consideration for most operators of the migrant schools is to make a profit.¹⁷⁴ Since this is their chief aim, the quality of teachers is only a secondary

¹⁶⁷ *Ibid.*, 101; 300

¹⁶⁸ *Ibid.*, 101; 300

¹⁶⁹ Interview with Han Jiaing (n 90)

¹⁷⁰ *Ibid.*

¹⁷¹ Chengbin Liu and Xinhui Wu, *Left-behind or Migration – Rural Migrant Children and Their Educational Choices* (Shang Hai Jiao Tong University Press 2008) 147

¹⁷² Han (n 26) 45

¹⁷³ *Ibid.*, 45

¹⁷⁴ Liu and Wu (n 171) 148

consideration. They are anyway paid poorly by their operators so as to reduce costs.¹⁷⁵ For example, it is a common practice to pay these teachers only about 800 RMB per month in wages (equivalent to around £80), and for just nine months with no payment during the summer and winter holidays.¹⁷⁶ A study made in 2012 also indicated that 76.8 per cent of migrant teachers were not covered by any social insurance system.¹⁷⁷ Consequently many teachers are not specifically trained and do not have proper teaching qualifications.¹⁷⁸ As Han points out, some teachers have only graduated from senior or technical secondary schools; some, even, have an education restricted to junior high school.¹⁷⁹ Occasionally there are teachers who have graduated from universities, but these are the least likely to stay.¹⁸⁰ High mobility among teachers is common in migrant schools.¹⁸¹ The operators treat teachers as ‘workers’ (*da gong zhe*) rather than as teachers.¹⁸² Thus migrant teachers come and go easily and may ‘jump ship’ as soon as they find a better paid job.¹⁸³

Mobility

A high degree of mobility is a prominent characteristic of migrant schools.¹⁸⁴ This is seen in buildings as well as the people passing through. Unregistered illegal migrant schools are subject to inspection and supervision by the local educational authorities and, since school conditions, safety, hygiene and water sanitation in them are often far below the minimum standards required, they are liable to face closure and even

¹⁷⁵ *Ibid*, 148

¹⁷⁶ Xu (n 43)

¹⁷⁷ ‘The 2012 Report on the Current Living Circumstances of Teachers in Migrant Schools in Beijing’ <http://www.nies.net.cn/ky/zdzt/nmgzv/mtbd/201209/t20120914_306261.html> accessed 16 October 2012

¹⁷⁸ Wang (n 32) 38; Erica Lim, ‘US-China Today: Neglect and Discrimination are Often the Fate of Migrant children’ <<http://www.clb.org.hk/en/node/100456>> accessed 22 December 2012

¹⁷⁹ Han (n 26) 42

¹⁸⁰ *Ibid*, 42

¹⁸¹ Li Wang (n 6) 38

¹⁸² Liu and Wu (n 171) 148

¹⁸³ Han (n 26) 43

¹⁸⁴ *Ibid*, 41

demolition. To avoid closure, these illegal migrant schools simply move from one place to another, sometimes to a location with a ‘more sympathetic jurisdiction’,¹⁸⁵ and, once there, they open again.¹⁸⁶ Many schools have moved building a number of times during their time of operation.¹⁸⁷ In Beijing, where the price of property has become incredibly dear, these migrant schools have had to move outside the Fourth Ring Road (*si huan wai*) and relocate themselves in the urban fringe regions. The migrant school Woronov observed had to relocate because the landlord refused to allow it to expand from the old site into adjoining buildings.¹⁸⁸

In addition to such moves of buildings, the children face problems due to the moves their own families make.¹⁸⁹ The high mobility of rural migrant families is regarded as one of the major barriers to any continuity of learning in these children’s education.¹⁹⁰ Most rural migrant workers are always moving from place to place in search of suitable jobs, and their length of stay in one city greatly depends on the local demand and supply of labourers. So there is no guarantee that a family can stay for any certain length of time at a given location. As a result, the children have no choice but to transfer from school to school in the city. A report conducted by the National Institute for Education Research on migrant children’s access to compulsory education in 2008 showed that only 36.1 per cent of migrant children stayed in the same school; the rest experienced various transfers:¹⁹¹ 30.9 per cent of the children changed schools once; 14.8 per cent transferred twice and 7.5 per cent transferred three times or more.¹⁹² Frequent transfers of school occur especially in the large cities.¹⁹³ Professor

¹⁸⁵ *Ibid.*, 41; Kwong (n 133) 1086

¹⁸⁶ Wang (n 32) 37

¹⁸⁷ Kwong (n 133) 1086

¹⁸⁸ Woronov (n 103) 104

¹⁸⁹ Ji (n 10) 16

¹⁹⁰ Chen and Liang (n 11) 127

¹⁹¹ This report selected 62 primary and middle schools in 9 cities (3 large-sized cities, 3 medium-sized cities and 3 small cities) in China in 2008 through 6,220 surveys on students and 6,220 surveys on parents, together with interviews, to ascertain the current problems migrant children faced in compulsory education. ‘A Report on Compulsory Education for Migrant Children’ <<http://www.cnier.ac.cn/snxx/baogao/>> accessed 6 June 2011

¹⁹² *Ibid.*

¹⁹³ *Ibid.*

Li, in her interview, emphasised that the mobility of these children ‘obviously had a negative impact on how they can establish stable interpersonal relationships with classmates in school’.¹⁹⁴ The migrant children may consequently feel a lack of sense of belonging – which is one of the key concerns psychologically.¹⁹⁵ This would also affect their educational performance. Moreover, these transfers between schools, Yuan and Tian note, not only hold back the academic progress of migrant children, but cause difficulties for schools in managing student records.¹⁹⁶ Han states that owing to these difficulties, most receiving schools do not have databases of registration or records for the migrant children, making it very difficult to track students’ (dis)placements.¹⁹⁷

Legal status of migrant schools

There are a large number of unlicensed migrant schools that have been operating illegally without any official operation approval (*ban xue xu ke*).¹⁹⁸ There are two main reasons why migrant schools may not be approved by the local educational authorities. The first reason is that the establishment requirements from these authorities, especially those stipulating facilities and conditions, are too high to be practicable for institutions with little money.¹⁹⁹ In Beijing there has been no attempt to set up specific standards for migrant schools that recognise this, so all migrant schools have to meet the same standards established for the state schools. According to *the General Principles on the Establishment and Administration of State Primary Schools and Middle Schools in Beijing*,²⁰⁰ a primary school in the city should have basic facilities including teaching buildings, administrative offices, one or more libraries, recreational

¹⁹⁴ Interview with Professor Li Xiuyun (n 19)

¹⁹⁵ *Ibid.*

¹⁹⁶ Yuan and Tian (n 1) 75

¹⁹⁷ Han (n 26) 29

¹⁹⁸ For example, Beijing has 268 privately-run migrant schools, but only 63 of them have officially been approved by the local authorities. The remaining 205 migrant schools are still operating in a manner that is officially illegal.

Tian and Wu (n 48) 192

¹⁹⁹ ‘Policy Difficulties of the Establishment Standards for Migrant Schools and Solutions’ <http://www.nies.net.cn/cb/lw/201203/t20120327_303183.html> accessed 20 June 2012

²⁰⁰ (Adopted by the Beijing Municipal Commission of Education on 1 December 2005, effective on 1 March 2006). The document spells out the requirements for school facilities and size, teaching facilities and posts, academic and non-academic staff qualifications and other matters.

facilities, a sports centre, and an open or indoor playground more than 60 square metres in size.²⁰¹ The location of a new elementary school should not be close to ‘open markets, pubs and clubs, mortuaries, hospitals treating infectious diseases, power stations, landfill and prisons, railways, motorways and trunk roads’.²⁰² As for the required size of a primary school, the total area of a school with 18 classrooms, for example, should be 14,500 acres given over for teaching facilities with 18,900 acres of free space surrounding the buildings.²⁰³ Primary schools should have 12, 18 or 24 classrooms, and no classroom should contain more than 40 students.²⁰⁴ Depending on the number of classes, primary schools should also have essential extra teaching facilities such as a music room, an art studio, computer rooms, a multimedia teaching classroom, a canteen, facilities for the disabled, a library,²⁰⁵ a dance room/workout place, a calligraphy room, a laboratory, meeting rooms, a place for a counselling service and a First Aid room.²⁰⁶

The requirements for school conditions and facilities in primary schools laid down by Shanghai also seem too high to be achieved.²⁰⁷ The National Institute of Education Sciences correctly points out that it is unrealistic to expect migrant schools to achieve the same standards as state schools, because, by comparison, they are quite poor.²⁰⁸ They also lack space: many migrant schools do not even have a proper

²⁰¹ *Ibid.*, para. ‘School Facilities’. For all primary schools that have less than 24 classrooms.

²⁰² *Ibid.*, para ‘Location of Schools, School Facilities’

²⁰³ *Ibid.*

²⁰⁴ *The Guideline of the General Principles on the Establishment and Administration of State Primary Schools and Middle Schools in Beijing*, adopted by the Beijing Municipal Commission of Education on 29 December 2006

²⁰⁵ *Ibid.* Schools with more than 24 classrooms should have not less than 15,000 books, including magazines, academic books and copies; schools with more than 24 classrooms should have more than 25,000 books in the library.

²⁰⁶ *Ibid.*

²⁰⁷ The Shanghai Municipal Education Commission has issued several local regulations to control migrant schools in the city, such as *Several Opinions regarding Strengthening the Regularization and Management of Migrant Schools for Migrant Children*, adopted on 27 Jan 2010; and *Several Opinions regarding Further Improving Migrant Children and Their Compulsory Education in the City*, adopted on 18 Jan 2008. Shanghai Municipal Education Commission
<http://www.shmec.gov.cn/web/xxgk/rows_list.php?node_code=40204> accessed 20 June 2012

²⁰⁸ ‘Policy Difficulties of the Establishment Standards for Migrant Schools and Solutions’
<http://www.nies.net.cn/cb/lw/201203/t20120327_303183.html> accessed 20 June 2012

playground. Even though some schools do have such space for the children, the size and quality are far behind the standards required by the local authorities.²⁰⁹

Another factor preventing migrant schools from obtaining official approval is the complexity involved in preparing the various credentials that need to be submitted for this. Tan²¹⁰ states that the whole business of preparing application documents and meeting the requirements for the establishment of a non-state school set up in *the Law on the Promotion of Non-Public Schools of China of 2003* cannot possibly be achieved by most funders of migrant schools, who are often migrant workers with no academic qualifications themselves. To illustrate the difficulty, here, in the provisions of the application procedure for establishing a non-state school in China, are details the applicants should submit:

(1) the sponsor, the aims of education, size of the student body, level of the school, forms of education, conditions for establishing and running the school, internal management system, raising of funds and their management and use;²¹¹ (2) names of sponsors and their address or their titles and addresses;²¹² (3) sources of the assets, amount of the funds and their valid certificates, in which the property rights are clearly stated;²¹³ and (4) where the assets of the school are donated, an agreement on the donations, in which the name of the donors, the amount of the assets donated, their use and management, and the relevant valid certificates are clearly stated.²¹⁴

To apply for official establishment of a non-state school, the sponsor must notify the following for scrutiny and approval by the local authorities:

(1) written approval for preparing to establish the school;²¹⁵ (2) a report on the preparation made for the establishment;²¹⁶ (3) articles of the association for the school and the name lists of the component members of the first executive council, board of directors or other decision-making bodies of the school;²¹⁷ (4) valid

²⁰⁹ *Ibid.*

²¹⁰ Tan (n 29) 35

²¹¹ (n 204) Art. 12 (1)

²¹² *Ibid.*, Art. 12 (2)

²¹³ *Ibid.*, Art. 12 (3)

²¹⁴ *Ibid.*, Art. 12 (4)

²¹⁵ *Ibid.*, Art. 14 (1)

²¹⁶ *Ibid.*, Art. 14 (2)

²¹⁷ *Ibid.*, Art. 14 (3)

certificates of the assets of the school;²¹⁸ and (5) qualification certificates of the principal, teachers, librarians, and accountants.²¹⁹

Within these requirements, the minimum initial capital investment,²²⁰ the school infrastructure (the contract for the rent of the land, school buildings and pedagogical material and equipment), the quality of teaching, administrative practice and financial management, conditions of sanitation and security, and quality of teachers are regarded as the key elements for being granted a licence to operate by the local authorities.²²¹ However, the problem is that these formal requirements are far too complicated and unrealistic for most funders.²²² So in practice they usually ignore the application procedures, and run the schools illegally.

A more serious concern is that if migrant children graduate from these illegal migrant schools, they do not have any official academic certificates accredited by the local department of education to prove they have completed their studies.²²³ Formal academic certificates are crucial for children to advance within the education system. Students of the migrant schools are left out.

The recent practice of closing migrant schools in Beijing

Beijing has 268 privately-run migrant schools, but only 63 of them have been approved by the local authority.²²⁴ The remaining 205 migrant schools are therefore illegal and prone to closure. In 2005 the Beijing Municipal Commission of Education issued the *Notice on Strengthening the Management of Non-Approved Migrant Schools Operating by Floating Population*.²²⁵ According to the *Notice*, the local authorities at

²¹⁸ *Ibid*, Art. 14 (4)

²¹⁹ *Ibid*, Art. 14 (5)

²²⁰ (n 208) For example, some funders of migrant schools stated that 1,000,000 RMB as the initial investment and 30 acres as the size of the campus were requirements too unrealistic to meet in practice.

²²¹ Chloe Froissart, 'The Hazards of the Right to Education, A Study of the Schooling of Migrant Worker Children in Chengdu', paras 23 and 27 (2003) 48 July-August China Perspectives <<http://chinaperspectives.revues.org/386>> accessed 7 June 2012

²²² 'Difficulties and Solutions for Enforcing Establishment Requirements of Non-State Schools' <http://www.nies.net.cn/cb/lw/201203/t20120327_303183.html> accessed 13 June 2012

²²³ Han (n 26) 44

²²⁴ Tian and Wu(n 48) 192

²²⁵ (Adopted by Beijing Municipal Commission of Education on 29 September 2005)

district level should issue an operation licence (*ban xue xu ke*) to those migrant schools that have already met the establishment requirements stipulated in the *Law on the Promotion of Non-State Schools of China* and *the Methods of the Implementation of the Law on the Promotion of Non-State Schools of China in Beijing*.²²⁶ Local authorities should also help migrant schools improve their current conditions so they can meet establishment requirements.²²⁷ However, schools where there were serious safety concerns and where very poor conditions were evident must be closed.²²⁸ After any such closure, migrant students should be reallocated to other schools to continue their studies.²²⁹

Against this background, about 30 unlicensed Beijing migrant schools were closed in 2006.²³⁰ The closures were ascribed to severe safety issues. Again, in August 2011, just a few weeks before the autumn semester began, the Beijing Municipal Commission of Education shut down a further 24 unlicensed migrant schools in Haidian, Chaoyang and Daxing districts.²³¹ These actions may jeopardise the chances of attending school for around 14,000 migrant students.²³² Similar closures occurred again around July 2012 in Beijing, and these jeopardise the futures of a further 3,000 or so students and their chances to study in the city.²³³

²²⁶ *Ibid*, Section 2

²²⁷ *Ibid*, Section 2

²²⁸ *Ibid*, Section 2

²²⁹ *Ibid*, Section 2

²³⁰ 'The Closure of About 30 Migrant Schools, Where Are These Migrant Students Going to School?' <http://news.xinhuanet.com/society/2006-08/08/content_4932299.htm>; Tammy Chia, 'Kyodo News: Schools for Migrant Children in Beijing Face Demolition' <<http://www.clb.org.hk/en/node/100667>> accessed 22 December 2012

²³¹ 'A Promise: No one should be left behind' <<http://news.cntv.cn/china/20110819/114531.shtml>>; 'Closure of Some Beijing Migrant Schools' <http://www.cmc-china.org/index.php?page=beijing-schools&hl=en_US>; 'Goodbye My Migrant School' <<http://v.ifeng.com/documentary/society/201108/133853e0-5d33-4ad1-8800-22375fdd891e.shtml>>; Josh Chin, 'Will School Closures Prompt Migrants to Flee?' <<http://blogs.wsj.com/chinarealtime/2011/08/19/will-school-closures-prompt-migrants-to-flee/>> accessed 17 December 2012

²³² Ford (n 16)

²³³ 'The Details of Enforceable Closure of Four Migrant Schools by the Local Authorities in Beijing' <<http://www.nandufoundation.org/html/2012-08/15459.html>>; 'The Long Uphill Struggle for Migrant Schools in Beijing Continues' <<http://www.clb.org.hk/en/node/110095>> accessed 22 December 2012

Although the educational authorities claimed that they would find enough places for all displaced migrant children, thousands of them may still have to return to their home towns or start work with their parents.²³⁴ This is due to several reasons, including the physical inaccessibility of new schools, the payment of high donation/assistance fees and the need to submit five to seven different certificates.²³⁵ For example, Mr He Zhongshan, a migrant parent, stated:

I felt very sad when I heard the school will be shut down because I have to send my children back to our home town in Henan. In order to be enrolled in a new state school, my child will need to submit all sorts of certificates to the school. Yet, it is very difficult for us to obtain them. How am I supposed to get all these credentials and pay RMB 30,000-RMB 50,000 [equivalent to £3,000 and £5,000] donation fees? Although I am merely a constructor, I have been contributing to the development of Beijing. However, my child, like other urban children, just needs an equal opportunity to complete his education. Why has this become so difficult? I feel mistreated by society.²³⁶

The *China Labour Bulletin* maintains that the government deliberately set the threshold for school placement qualification high so that the majority of migrant families in Beijing would not be able to meet the requirements.²³⁷

Furthermore, as some principals of ‘migrant schools’ point out, the local government authorities demolished their schools at very short notice. For example, when Dongba Experimental School – located in a community in Daxing District – was closed,²³⁸ the school was notified by the local authority only about two weeks before the new semester was due to begin. The notification stated that ‘the school had severe hidden dangers relating to power, fire and hygiene. Thus, the school must be shut down for the safety of students, teachers and the security and stability of the whole region.’²³⁹ The local government also stopped the supply of water and electricity. As a

²³⁴ *Ibid.*

²³⁵ *Ibid.*; Sabrian Mao and Maxim Duncan, ‘Closure of Migrant Children Schools in China Speaks Anguish’ <<http://www.reuters.com/article/2011/08/18/us-china-migrant-schools-idUSTRE77H10I20110818>>; ‘Nearly 30 Migrant Schools in Beijing Ordered to Close’ <<http://www.clb.org.hk/en/node/101120>> accessed 22 December 2012

²³⁶ *Ibid.*

²³⁷ *Ibid.*

²³⁸ ‘Goodbye My Migrant School’ (n 231)

²³⁹ *Ibid.*

result, the school was forced to close, leaving around 500 students with no school to attend (although the local government has since relocated 300 of them).²⁴⁰ As Yu points out, the closure of ‘migrant schools’ by the Beijing Municipal Commission of Education, carried out without completely ensuring alternative schooling for the migrant children, is a ‘blatant encroachment of citizens’ equal rights to education’.²⁴¹

One of the main reasons for the demolitions, according to the local authorities in Beijing, was the poor quality of education, poor hygiene and questionable safety conditions in most unlicensed ‘migrant schools’.²⁴² Nevertheless, school operators claim that, since their schools were established, safety and health standards have been regularly checked by the local authority every year. Hence, the accusation of having ‘severe hidden dangers’ sounds ‘absurd’.²⁴³ Crothall, the Director of Communication for the workers’ rights group on the *China Labour Bulletin*, suspects that the closure of ‘migrant schools’ could, in some cases, be ‘a cynical ploy by the local authorities at the district level to clear the land for property development, as the value of land in the outer suburbs of Beijing has continued to rise’.²⁴⁴ Land development, the so-called ‘land-source fiscal revenue’, has become one of the major resources of extra-tax revenue to ‘shore up local government budgets’.²⁴⁵ The city can earn a lot of money selling land for construction.²⁴⁶ Most migrant schools are built by renting the collective land owned by local authorities at village level.²⁴⁷ Once the value of the land becomes

²⁴⁰ *Ibid.*

²⁴¹ Yu Jianrong, ‘What is the Future of Migrant Children? Considerations after Closing Down 24 Migrant Schools in Beijing’ <<http://news.cntv.cn/20110822/101345.shtml>> accessed 16 February 2012

²⁴² ‘Goodbye My Migrant School’ (n 231)

²⁴³ ‘Opinions of Experts’ <http://www.nandufoundation.org/html/2012-08/15475.html#q_01> accessed 21 December 2012

²⁴⁴ ‘Closure of 24 Migrant Schools’ <<http://www.clb.org.hk/en/node/101122>> Accessed 17 February 2012; Ford (n 16); Kirchner (n 41)

²⁴⁵ ‘Land-sourced Fiscal Revenue’ <<http://baike.baidu.com/view/2104332.htm>>; Lu Ding and Huang Yanjie, ‘China’s “New Deal” Measures to Cope with Its Bubbling Housing Market’ <<http://www.eai.nus.edu.sg/BB544.pdf>> accessed 21 December 2012

²⁴⁶ Kirchner (n 41)

²⁴⁷ ‘Opinions of Experts’ (n 243)

more profitable than the migrant schools built on them, they are likely be demolished.²⁴⁸

Mr. Liu, a former principal of a migrant school, further claims:

I signed off on the closure of my school because I was told that kids would be attending a state school in the same district; yet, it was not true in practice. Instead, our students were reassigned to new, fee-paying, privately run migrant schools which have taken over former public school buildings, refurbished at the government's expense. If the government wanted to help migrant children, why didn't they give more support and resources to us, instead of to some new people?²⁴⁹

However, even if most of the 14,000 migrant children to whom the government has promised new schools are accommodated, the future of the remaining 100,000 children in Beijing's illegal 'migrant schools' is still an open question.

3.3.2 An example of a privately-run school for migrant children: fieldwork conducted at Ming Yuan Elementary School²⁵⁰

Like most migrant schools, Ming Yuan primary school is privately owned. It is run by the principal, Mr. Zhang, who came to Beijing in 1995 as a migrant worker himself. Ming Yuan elementary migrant school has four sites so far, located in different areas in Beijing, and a total (altogether) of around 3,000 migrant children on roll. The staffing mainly comes from retired teachers and students who have a degree from a teacher training college. The school is also one of the few migrant schools to have been officially inspected and approved by the Beijing Municipal Commission of Education. That was in 2003.

I visited the school in March 2011. The first, most striking impression came from its location and the run-down environment it is in. The school was difficult to find, located as it is among twisting and dirty alleys north of the Fifth Ring Road in the Hai Dian district in Beijing. A rusty metal entrance gate was locked from the inside with a padlock and chain. It opened onto a small, mud-cracked play area

²⁴⁸ *Ibid.*

²⁴⁹ 'No One Should Left Behind?' <<http://news.ifeng.com/mainland/special/bjdagongzidixuexiao/>> accessed 28 February 2012

²⁵⁰ This sub-section discusses several findings made through actual visits, on 2 March 2011, and in an interview conducted with Zhang Gezhen, Principal of Ming Yuan Migrant School in Beijing. Therefore references are not provided at each point.

approximately 300 square metres in size. It had two ping-pong tables and a few parking lots. Behind this was a plain three-storey brick building almost derelict in appearance save for a painted slogan quoting the former party leader Deng Xiaoping:²⁵¹ ‘the aim of education is towards modernisation, the world and the future’. To one side of the school building was a dirty semi-open toilet with no flush and only a brick partition to divide the sexes. The washing facilities had no private cubicles. On the other side was a heap of coal to fuel radiators providing heating for the students and teachers in winter. The interior of the building was very dingy. It contained some ten to fifteen classrooms, with crumbling walls, a few old desks, barely any books and no hint of decoration or display of children’s work. Some classrooms were so full of dirt, students could hardly see or breathe properly: plaster fell from the ceiling whenever someone moved upstairs. Lighting, ventilation and heating systems were in very poor condition. There were no fire exits. Drinking water was not available and there was no First Aid room. The school did not have a library. Such poor surroundings and such lack of basic facilities must have a negative impact on the physical, psychological and academic development of the migrant children who attend. By contrast, most state and private schools in the country have well-equipped school facilities, including a First Aid Room, a playground, a recreation centre, educational facilities, multimedia teaching and disabled access.

When interviewed, Principal Zhang described how the great influx of internal migrant children into the city, with no local *hukou*, had happened in just the last fifteen years. There are approximately twenty million migrant children in China, and most of the migrant families prefer to live in more economically developed cities. Most of the students in his schools greatly prefer living and studying in Beijing to life in the villages they came from. Even though conditions for living and studying are crowded and poor, it is still better being with parents in the cities than living under the ineffective watch of grandparents or their relatives and studying in rural schools with a relatively poor quality of education. With all the new arrivals, places in state elementary and junior high schools have become very tight. The emergence of migrant schools has gradually filled the gap in compulsory education for migrant children. By 2011 there were 268 migrant schools in Beijing in total: most had not been sanctioned

²⁵¹ Deng Xiaoping was the leader of the Community Party of China. He promoted the development of a market economy and presided over the opening up of China to the rest of the world.

by the local department of education, only 63 receiving an official approval. Just one of his own sites in Beijing was granted authorisation to operate legally.²⁵²

Principal Zhang pointed out some of his present concerns:

The first concern is the problem of operating funds for compulsory education. Since Ming Yuan School was established in 1995, scholars, the representatives of the National Peoples' Congress and the mass media have constantly appealed for a guaranteed mechanism to ensure operating funds for compulsory education. This has never been fully implemented by the local department of education. According to *the Constitution of China* and *the Compulsory Education Law of China*, compulsory education should be a duty of the state. For migrant children, when they migrate from one place to another, the public funds for compulsory education should be allotted accordingly. Nevertheless, most exodus communities are from less economically developed regions so that they have already faced obstacles in securing funds for themselves in the region. Hence it can be difficult to transfer the funds from exodus regions to urban cities as receiving regions which are more economically developed in practice. The local governments of receiving areas may consider that the main responsibility for them is to ensure the rights of local children to receive education; migrant children are really out of its jurisdiction. So the problem is that duties and responsibilities between exodus cities and receiving cities have not been clarified.

In addition to the challenge of securing funds for compulsory education, Principal Zhang gave an example from the city of Shanghai to illustrate current progress made by the Shanghai local authorities who are trying to improve the access opportunities of migrant children in the city. There are 248 migrant schools in Shanghai. In September 2008 the Shanghai government signed contracts with 55 migrant schools to 'purchase' education services from them. In other words, he explained, because of limited public education resources in state schools, migrant schools were 'paid' by the Shanghai government to provide education for local migrant children. As migrant parents have greatly contributed to the development of Shanghai, the city government has taken it as a duty to provide equal opportunities for migrant children in their access to education. Migrant children are granted 3,000 RMB (equivalent to £300) per academic year by the government of Shanghai and the rest of the children's expenses are subsidised by the local departments of education in different districts. Under this new mechanism, migrant children do not have to pay any 'indirect fees'; they are exempt from temporary schooling fees and other miscellaneous charges. The aim of the Shanghai

²⁵² The site I visited was not approved by the local department of education in Beijing. The school facilities are quite poor.

government is to sign similar contacts with the remaining migrant schools in the city by the end of 2011.

By contrast, the Principal emphasised, distribution of funds for compulsory education in Beijing is not at all ideal. The total investment from the Beijing government for each child at an elementary state school is around 11,000 RMB (equivalent to £1,100) per academic year, while migrant schools, including Ming Yuan migrant school, normally charge around 300 RMB (equivalent to £30) per academic term. Compared with the total investment made on urban children, the investment on each migrant child in Beijing would be less than 2,000 RMB (equivalent to £200) per year. Obviously the quality of education can only be poor in migrant schools and migrant children are marginalised, on the edge of the city. As a consequence, those who try to run migrant schools can only afford to rent small places with very poor facilities.

Another main concern of Principal Zhang is that migrant teachers do not have entitlement to welfare rights. Though around 10,000 teachers in the Beijing migrant schools devote themselves to teaching some 200,000 migrant children ‘under the same blue sky’ as the more privileged, their average wages are barely above the minimum wage, owing to the financial circumstances most of these schools are in. (This makes it difficult to hire and retain competent teachers.) But, in addition to receiving such low wages, the Principal points out, migrant teachers are unable to enjoy benefits offered to teachers in state schools, including the Five Social Insurance Schemes,²⁵³ training for further career development and, most importantly, professional evaluation.

Another problem that troubles Principal Zhang is the one already explained – that the majority of migrant children are unable to take the high school entrance exam in the city because they have not obtained a local *hukou*. Because of this, many children are sent back to their home towns to continue their education. Zhang emphasises that these children, who have lived in the city for so many years, then feel they are neither rural nor urban. It will be too late to give them more education once

²⁵³ The Social Security Scheme (also known as the Five Social Insurance Schemes) refers to old age insurance, medical insurance, unemployment insurance, work injury insurance and maternity insurance in China. Migrant workers and migrant teachers are not covered by the Five Social Insurance Schemes. ‘China’s Social Security and Its Policy’

< http://www.gov.cn/english/official/2005-07/28/content_18024.htm > accessed 25 December 2012

they have grown up as adults. Not educated properly and greatly reliant on the facilities of the city, they could become a serious social problem for the country.

In recent years, the leaders of China have emphasised the importance of improving opportunities for migrant children to access education. In 2003 Premier Wen Jiabao wrote his famous slogan ‘Growing up and progressing together under the same blue sky’ during his visit to a migrant school in Beijing. President Hu Jintao too visited a migrant school in the Haidian District in Beijing in 2010, stating that the Beijing government must improve and provide an equal educational opportunity to migrant children. But, despite such high expectations from the top leaders, implementation is, in practice, still unrealised. The issue of migrant children is still a very grave one from Principal Zhang’s perspective.

3.3.3 An example of a state school for migrant children: fieldwork conducted at Guang An Junior High School²⁵⁴

Education in China forms a part of the nation’s public welfare obligations,²⁵⁵ and the regional governments put a lot of resources into funding state schools. Although many privately-run schools for migrant children have emerged as alternatives, state schools have played a greater role in enrolling migrant children. According to a survey conducted by the National Bureau of Statistics, 71.92 per cent of migrant children are enrolled by state schools in receiving cities.²⁵⁶ The remaining children are either not in school at all, or receive unofficial schooling. Many state schools levy illegal temporary schooling fees or other ‘hidden’ fees. On the other hand, they do face financial and performance pressures when enrolling migrant children. Some state schools are reluctant to enrol these children because academically they tend to perform less well than local urban children, and cannot easily adapt to the urban school environment or comply with school discipline. This means they need more attention and care, which increases the burden on teachers and schools alike.

²⁵⁴ This sub-section discusses several findings made through actual visits, on 11 March 2011, and records an interview conducted with the Principal of Guang An Junior High School in Beijing. Therefore, again, references are not provided at each point.

²⁵⁵ Art. 2 of the 2006 *Compulsory Education Law of China*

²⁵⁶ ‘Special Survey by the National Bureau of Statistics of China’ <<http://www.stats.gov.cn/english/>> accessed 28 July 2012

Despite the difficulties state schools face, local governments in the receiving cities have implemented their own educational policies specifically aimed at improving the opportunities migrant children have for compulsory education. For example, Chaoyang District, Beijing, is known as the district receiving the largest population of migrant children in the whole city – 87,510 children or 64.44 per cent of the total.²⁵⁷ As of October 2010, 78.3 per cent of the migrant children there were attending state schools or private migrant schools formally approved by the Education Committee of Chaoyang District. There were, however, 21.7 per cent (18,994) migrant children in the district still studying in illegal private migrant schools.²⁵⁸

In order to provide a non-discriminatory and safe environment for the migrant children, the Education Committee of Chaoyang District has now transferred the remaining migrant children from illegal migrant schools to state schools and has shut down 17 illegal private migrant schools where there were serious health and safety concerns. This has all happened since 2010.²⁵⁹ Most importantly, the Committee has started to entrust experienced retired school teachers with the migrant children's education, letting them establish legal private migrant schools and act as principals. The Committee provides free school facilities, including school buildings and teaching equipment, as well as a specific financial budget covering outlays such as the cost of winter heating and a 50 per cent share of the costs of the teachers' insurance and other specifically educational funds. In September 2010, there were three new approved private migrant schools, receiving 3,249 migrant children.²⁶⁰ In addition to establishing new private migrant schools, the Committee has aimed at increasing opportunities for migrant children to access state schools within the district. The Committee not only requires that state schools should make more places available for migrant children, but has reduced the complexity of the enrolment process. In Beijing most state schools require five credentials when they enrol migrant children. Migrant children studying in Chaoyang District now only need to show two permits, a temporary residence permit

²⁵⁷ 'Report on How to Improve the Opportunity of Migrant Children to Receive Compulsory Education in Chaoyang District' <http://www.bjchyedu.cn/zwgk/mbjy/201010/t20101022_101126.html> accessed 6 August 2011

²⁵⁸ *Ibid.*

²⁵⁹ 'General Situation of Migrant Children to Access Schools between Academic year 2010-2011' <http://www.bjchyedu.cn/zwgk/mbjy/201010/t20101022_101136.html> accessed 19 July 2011

²⁶⁰ *Ibid.*

and a national identification card (ID).²⁶¹ To provide a more equal environment for migrant children, the total investment on migrant children in the district in 2009 was increased to 9.4 billion RMB (equivalent to £940 million).²⁶²

When I visited Guang An Junior High School in March 2011, I was impressed by the excellent school facilities. The school was easy to find, located in a quiet residential area in Xuan Wu District in Beijing. A first, most striking impression was made by a big modern electronic screen standing outside the school showing the time and the weather. The playground at Guang An school, paved with rubber tiles, is slightly smaller than the standard 400 square metres size. When I walked into the campus, a group of happy students were playing basketball. This immediately brought to mind a comparison with my previous visit to a private migrant school which had very poor school facilities and dingy school buildings. I could not help wondering why the destiny of these children is so different, though they are ‘under the same blue sky’.

In an interview, the Principal proudly stated that the school, which has been designated to receive migrant children in Xuan Wu District since 2001, has been appraised by the local education authority as the best state middle school in the district because of the good quality of its teaching. Due to its good reputation, an increasing number of migrant parents send their children to study at this school. The good school facilities include a First Aid Room, a playground, a recreation centre, a gym, multimedia teaching facilities, computer rooms, a canteen, a CCTV system and classrooms. The school has 98 per cent migrant children on its roll. Guang An School presents a really diverse learning environment, as it receives students from all over the country who speak around ten different local dialects. According to the school records, in one of the previous academic years there were migrant children from nineteen different provinces in China, and they included ten minorities. The real strength of the diverse environment in the school, the Principal proudly emphasised, is that students have fascinating opportunities to experience a diversity of cultures. ‘We help them understand that students with different family backgrounds, attitudes and experiences can bring fresh ideas and perceptions, which is the real value of diversity. On the other hand, the existence of different local dialects, different rates of academic progress, and

²⁶¹ *Ibid.*

²⁶² *Ibid.*

different life habits and culture make our teaching much harder. As some migrant children can only speak their local dialects, it is a real challenge to teach these children together.’ For example, he stated that between 30 per cent and 40 per cent of migrant students have never learnt English in primary school.²⁶³ ‘Thus it is hard for our teachers to teach the English class owing to the different levels the students are at. Moreover, some students can only speak their local dialects. So our teachers have not only to teach them how to speak Mandarin, but must help them catch up their knowledge in different classes at the same time. These differences amongst students make our teaching challenging.’

In addition, the Principal questioned the adaptability of migrant children in Beijing. As they have been living in the city for many years, the majority do not want to go back to their home towns after they have completed their studies because they cannot fit into rural communities any more. The school provides Careers Advice and advice on where to go for further academic and non-academic training, for instance in vocational schools.

When I walked around the school after the interview, there were a lot of migrant children playing games outside. To some extent this visit has given me some hope of changing the impression I gained during my visit to a local private migrant school a week earlier. But the shock of the experience does still haunt me.

3.4 Social exclusion and discrimination against migrant children

Premier Wen wrote his famous slogan in 2003: ‘Under the same blue sky, grow up and progress together’. Sadly the blue sky is almost the only thing migrant children share with urban children. When Professor Li was interviewed, he was quite clear that discrimination is the main obstacle experienced by migrant children in host cities:²⁶⁴

After moving with migrant parents from their rural communities or less economically developed regions to the cities, migrant children face a huge life change. Everything is different to them, including the behaviour of people, the local customs, the appearance of the city and the way people think and speak. In addition to these differences, the school curricula and level of studies are different from their rural schools. When they face such huge changes in their lives, the adaptability of

²⁶³ English is a compulsory class in primary school for all students nationally.

²⁶⁴ Interview with Professor Li Xiuyun (n 19)

migrant children varies. Some children take quite a long time to catch up with their studies and to get used to their new life. Others may not handle things very well. However, most children are likely to be discriminated against or looked down on by the city-dwellers like their urban classmates and the teachers in state schools. However, such challenges have changed gradually after the great efforts made by the central and local governments. It appears that the adaptability of migrant children in state schools has become better than those in migrant schools.

Wang also raised the issue of discrimination in her interview.²⁶⁵

Many migrant parents do not want to send their children into state schools, even if they have enough money to pay temporary schooling fees. The real concern is the discrimination and intolerance on the part of Beijing students and parents in state schools. Migrant children in migrant schools would not be discriminated against in this way and would feel less peer pressure. When migrant children transfer from schools in their home towns to a state elementary school in a city, they mostly have to sit the second or third grades again, even though they have already reached the fifth or sixth grades – all because of the different curricula they have studied and the poor quality education they received. But these migrant children have already grown taller than the urban children in the second or third grades. When those two groups of children study and play together, migrant children get bullied and are discriminated against, because of the different way they look. And many migrant children are not treated as integral members of the school. Some state schools simply segregate classes into ‘migrant children’ and ‘local children’ classes, and this damages their self-confidence and hinders their integration into urban school life. So even if migrant children can be admitted into state schools, there are still many obstacles they have to face.

In addition to such segregation, Aris points out that the relationships between migrant children and their teachers in state schools is problematic.²⁶⁶ Urban teachers and administrators are often concerned that the enrolment of migrant children will affect the overall academic performance of a school. A teacher in a state school states that migrant children are difficult to teach, because their parents do not pay much attention to their studies and do not have time to take care of them.²⁶⁷ Hence, migrant children do not develop proper routines and learning habits. Moreover, a piece of research conducted by Shanghai University of Finance and Economics points out that even though migrant children can be enrolled in local state schools, they are often put into a separate class for migrant children only.²⁶⁸ As a result, segregation between migrant

²⁶⁵ Interview with Wang Xingjuan (n 8)

²⁶⁶ Chan (n 37) 39; Goodburn (n 48) 498

²⁶⁷ Human Rights in China (n 56) 28

²⁶⁸ Shuaizhang Feng and Yuanyuan Chen, ‘Policy Suggestions for Internal Migrant Children and their Schooling’ <http://iar.shufe.edu.cn/structure/gdyjy/xsyj/yjbg_con_90672_1.htm> accessed 19 June 2012

children and local children within state schools has become another problem of concern.²⁶⁹ A study entitled *Social adaptability of migrant children to city life* by the Chinese Youth Research Centre shows that a higher percentage of migrant students agreed with the following statements than did local children: '(1) Teachers do not understand me; (2) Teachers seldom pay attention to me; (3) The Principal does not like me; and (4) I am not satisfied with teacher-student relationships.'²⁷⁰

Aside from the unsatisfactory relationship with urban teachers, migrant children, Woronov points out, are likely to be discriminated against by local parents.²⁷¹ She states that 'people in Beijing were unanimous in telling me that they did not want their children in the same classroom as migrant children', because they would 'inevitably' be a negative influence on a school's '*xiao feng*' (learning atmosphere) and would set a bad example to urban children in the school.²⁷² Indeed, children with a rural background are still regarded negatively by local residents and are described as 'impolite, retarded, self-abased, dirty, dark skinned and brutal' because of lack of family education and discipline, as a consequence of the low educational level of their rural parents.²⁷³ Moreover, local parents believe that migrant workers are not only 'low quality' (*suzhi*) themselves and have little interest in or respect for education, but are unable to raise their children properly.²⁷⁴ In practice, although 90 per cent of migrant children were attending state schools in Shanghai by 2010, many local parents decided to transfer their children to other schools simply so that their children would not attend the same school as the migrant children.²⁷⁵ Furthermore, migrant children in urban state schools often complain about being bullied by local urban children. As a result, many migrant children feel anxious. Some have developed psychological problems,

²⁶⁹ *Ibid*

²⁷⁰ The China Youth Research Centre, 'Research Project Shows that Migrant Children Have Both Positive and Negative Responses to School' (China Education Daily, 24 Jan 2007)

²⁷¹ Woronov (n 103) 109

²⁷² *Ibid*, 109

²⁷³ Yi Lin (n 108) 319

²⁷⁴ Woronov (n 103) 109; Woronov points out that the main reason for discrimination against migrants by local residents in Beijing is that rural farmers are thought to carry with them all the 'ideological baggage that has been thrust upon China's rural areas: they are understood to embody China's weakness, lack of modernity, and backwardness.' This is why they are being looked down on as a 'source of dirt, crime, and disorder'. Woronov (n 76) 294

²⁷⁵ Feng and Chen (n 268)

such as low self-esteem, depression and even tendencies to anti-social behaviour as a result of the change in their environment.²⁷⁶ Indeed, Wong, Chang and others correctly state that closeness and companionship with peers, enabling the sharing of joys and sadnesses, has great significance for the well-being of migrant children. If they cannot establish and maintain good peer relationships, they may become susceptible to ‘poor psychological health and low self-esteem’.²⁷⁷ A 14 year-old-boy who came to the city of Hangzhou when he was ten years old wrote:

I come from a rural community. I am now living in a city, but I am not living a city life. What am I – a half city-dweller and a half peasant? My parents are busy working and they do not pay much attention to me. Many times, I feel very lonely. Teachers only come to my home to tell my parents about my bad behaviour. This is no use. My parents have no time to care about me [...]. Most of the time, they stay in a dormitory. Otherwise, they come home late and go out early every day. I usually see them a few times in a week. When I do see them they merely nag me about my bad performance in school or lecture me about other things, like I was a three-year-old. When I feel lonely, I watch TV, or wander around the neighbourhood, or go to an internet café. I feel better when my parents are not at home. Local [urban] children are very lucky. They look down on us. It is difficult for us to make friends with them [...].²⁷⁸

Research conducted by the China Youth Research Centre on social adaptability of migrant children shows that they are also confused about their current social status:²⁷⁹ 90 per cent of migrant children in Beijing did not see themselves as Beijingers and 10 per cent felt that they neither belonged to the capital nor to their home towns.²⁸⁰ Sun points out that, even though many migrant children have lived in the city for a long time, they are still confused about where they come from.²⁸¹ For example, the majority of migrant children think of themselves as ‘rural people’; some do not know which they prefer, host city or home town.²⁸² Although many children

²⁷⁶ Interview with Wang Xingjuan (n 8); Human Rights in China (n 56) 29

²⁷⁷ Wong, Chang, He and Wu (n 20) 152

²⁷⁸ ‘Dandelion Wants home: a Story of a Migrant Child in Hangzhou’ <<http://qjwb.zjol.com.cn/>> accessed 20 August 2011

²⁷⁹ ‘Migrant Children Are Far From Homes, But Seven Out of Ten Are Happy with Life in Beijing’ <<http://edu.china.com/1055/20070130/13910997.html>> accessed 27 June 2011

²⁸⁰ *Ibid.*

²⁸¹ *Ibid.*

²⁸² *Ibid.*

enjoy life in Beijing, they often refer to themselves as ‘rural people’ in conversation.²⁸³ Wang points out that second-generation migrants to the cities are not willing to be as transient as their parents were, and would resist a future of moving from place to place, with little constancy in their lives.²⁸⁴ He finds that the migrant children he interviewed no longer fit in with their lives back in their villages: these children neither understand nor have any interest in farming; moreover, some of them even think of rural people as ‘*tuqi*’ (‘hick’) and ‘*zang*’ (dirty).²⁸⁵ However, migrant children do not fully fit in with urban society either, and they are discriminated against. As Wang emphasises, if these children were to grow up without a sense of belonging, the results would not only cause negative impacts on their psychological and personality development, but could also cause some serious social problems as a whole in the future.²⁸⁶ Professor Liang expressed similar concerns in his interview:²⁸⁷

The issue of urbanisation in China is not merely a process of making cities more modern and allowing more rural people to live in them. Rather, it should aim at integrating migrants and their children into the city. The basic elements for achieving this are: providing real equal opportunities to migrant children in accessing urban state schools and providing basic social welfare, such as healthcare and social participation. If migrant children just feel discriminated against and unwanted, what does this mean for the future in China? If society treats them unfairly, what can it expect in return from migrant children when they have grown up?

3.5 Conclusion to Chapter 3

This chapter set out to investigate the main difficulties and obstacles on the ground hindering internal rural migrant children’s access to education in the cities that receive them. The chapter has examined late entrance, financial obstacles, the administrative obstacles of school admission, the structural obstacles that cause a poor linkage between compulsory primary education and senior high school, the incompatible

²⁸³ *Ibid.*

²⁸⁴ Wang Chunguang, ‘A New Urban Generation in China’ <<http://news.sina.com.cn/c/sd/2011-02-23/154722002136.shtml>> accessed 28 June 2011

²⁸⁵ *Ibid.*

²⁸⁶ *Ibid.*

²⁸⁷ Interview with Professor Liang Genlin, School of Law, Peking University (Beijing, China, 20 March 2011)

curricula and textbooks used in different provinces and the ban on taking the national university entrance exam in receiving cities. The chapter has also described the main features of migrant schools. A Principal of a private migrant school in Beijing who was interviewed emphasised that, without sufficient financial and other relevant support from the government, the quality of education in migrant schools can only be second-rate, and migrant children are continually marginalised on the edge of the city. Nevertheless, some state schools in Beijing, such as Guang An Junior Middle School, provide a non-discriminatory and diverse learning environment for migrant children. Other barriers, such as social exclusion and discrimination, have been discussed in this chapter as well.

To sum up, the main obstacles discussed in the chapter all hinder migrant children's access to education and work together to create a situation that will be hard to remedy. Thus they emerge not only as separate issues, but as an interrelated web of problems. The next chapter analyses in more detail what seem to be the main barriers to accessing adequate education for migrant children.

CHAPTER 4: AVAILABILITY, ACCESSIBILITY, ACCEPTABILITY AND ADAPTABILITY OF EDUCATION FOR INTERNAL RURAL MIGRANT CHILDREN

4.1 Outline of Chapter 4

In Chapter 2 the legal framework regarding the right of children to education was examined at both international and Chinese domestic levels; and Chapter 3 addressed the actual realities faced by migrant children in the cities they have moved to. Although the current legal and regulatory framework for education in China is broadly sufficient to ensure reasonable compulsory schooling for children in their home districts, many of them are still excluded from receiving quality education on an equal basis in the cities they move to. The argument advanced in this thesis is that the Chinese national regulatory framework covering migrant children badly needs an effective national institutional and normative mechanism to ensure implementation of its measures. These need to be upheld by strong political will and there should be clearly defined government accountabilities at financial, legal and political levels. At present, no such mechanism exists and there is a huge variation in governance between regions. Divergent local enforcement tends to work against migrant children.

The aim of this present chapter is to identify the main barriers and challenges embedded in the current legal, institutional and national education systems which prevent these children from receiving a compulsory education of adequate quality. The chapter analyses why, still, many migrant children are barred from attending state schools for the compulsory schooling they should be entitled to in their receiving cities. In other words, it examines why national laws and regulations are not properly enforced.

In order to explore these barriers, this chapter uses the ‘4-A Scheme’¹ developed by Katarina Tomasevski, the former Special Rapporteur of the UN Commission on Human Rights on the Right to Education (as introduced in Chapter 2). It uses this scheme as a conceptual framework to guide analysis and as a way of

¹ The ‘4-A’ scheme is regarded as one of the ‘best ways to access and act upon the situation, because it provides an analytical tool to enable people to translate the right to education from requirement into reality’.

structuring the key questions. The 4 ‘A’s are: Availability, Accessibility, Acceptability and Adaptability and the focus is on how these apply in current educational provision for migrant children. Although Chinese domestic law does not fully conform to all that is defined in the international legal framework as the right to education, the ‘4-A’ Scheme is still an apposite guide for analysing the key content of the right to education and for suggesting the corresponding state obligations that could be adopted and modified in China. The scheme also provides a clear structure for ‘tidying up’ the complexities reflected in China’s institutional and normative systems.

Within the structure of the ‘4-A’ scheme, the main barriers faced by migrant children that are identified in this chapter include: insufficient public expenditure on education; poor physical accessibility; legal barriers (the *hukou*-orientated registration system) with associated inconsistencies between the law and regulations; institutional barriers and discrimination arising from the *hukou* system; limits on the capacities of state schools in the receiving cities; the frequent failure of local authorities to support special ‘migrant schools’; problems the migrant children themselves have in adapting to the urban environment; and problems associated with financial, legal and political accountabilities.² These factors all work against the proper implementation of laws and regulations intended to ensure that migrant children receive the education to which they are entitled. Despite a relatively sound national regulatory environment, local enforcement is inconsistent and patchy. Thus the problems faced by migrant children can be said, to some extent, to reflect a system responding to pressures in a piecemeal way.

To throw light on these issues, the following chapter makes use of academic literature, working and research papers, news articles, and relevant work by NGOs, UN bodies and other international organisations.

² Some of these barriers may overlap, and they are not discussed strictly according to the headings of the ‘4-A’ Scheme. For example, the issues relating to the availability and economic accessibility of education are examined in the section on accountability of government.

4.2 Main barriers to the attainment of Availability, Accessibility, Acceptability and Adaptability of education for internal rural migrant children in China

4.2.1 Availability of education for internal migrant children

The task of ensuring that education is available to all, in the context of the ‘4-A’ Scheme, has two key components. The first component is provision of a compulsory and free primary education, as international law mandates.³ In order to achieve this goal, ‘budgetary allocation at central and local levels should correspond to the guarantee of free and compulsory education for all children up to the minimum age for employment and progressive realisation of the right to education.’⁴ The second component is the maintenance of an adequate educational infrastructure, including ‘functioning educational institutions, programmes, trained teachers’ and teaching materials, which should be available and in sufficient quantity.⁵ The right to education requires state parties to establish educational institutions and to use a ‘combination of these and other measures’ to ensure that proper schooling is available.⁶ This section uses these established key standards and indicators to identify the main barriers limiting the availability of education for China’s internal migrant children. The discussions that follow in this chapter will also refer back to issues identified in Chapters 2 and 3, some of which will receive some emphasis.

Availability – free and compulsory education

The first component of availability of education is to have free compulsory primary education. Although the starting age of compulsory primary education varies in

³ Art. 13(2) (a) of the CESCR; Art. 28 (1) (a) of the CRC; Art. 26(1) of the UDHR

⁴ UNCHR ‘Annual Report of the Special Rapporteur on the Right to Education’ UN E/CN.4/2002/60, para.13; ‘Education and the 4 As, Availability’ (Right to Education Project, Promoting Mobilisation and Legal Accountability) <<http://www.right-to-education.org/node/227>>; Katarina Tomasevski, ‘Human Rights Obligations: Making Education Available, Accessible, Acceptable and Adaptable’ (Right to Education Primers No. 3, 2001) <<http://www.right-to-education.org/sites/r2e.gn.apc.org/files/B6g%20Primer.pdf>> accessed 2 January 2013

⁵ CESCR Committee ‘General Comment No. 13: The Right to Education’ UN E/C.12/1999/10, para. 6 (a)

⁶ Tomasevski ‘Primers No. 3’ (n 4)13

different countries, it normally begins between the ages of 5 or 7 and lasts approximately six years. It will, in any case, last no fewer than four years.⁷ In China, a system of nine-year compulsory education has been adopted.⁸ Children must be at school from age 6 to age 15;⁹ parents or legal guardians of a child ‘shall have him (her) enrolled in school to finish the compulsory education’,¹⁰ and there is a legal obligation on parents to ensure the attendance of their children. If there are special circumstances, such as illness, where children need to ‘postpone enrolment or suspend schooling’, their parents or guardians ‘shall file an application with the education administrative department of the local government for an approval’.¹¹ Such provisions clearly reflect the compulsory nature of Chinese education.¹²

The duration of compulsory education is important for the children’s lives, and it should be up to the minimum age of employment.¹³ Children who have not completed their minimum education are vulnerable to child exploitation – for example as child labourers¹⁴ or, for girls in some countries, as brides in early arranged marriages. Such negative consequences can violate children’s rights in general, including their educational rights. It is to prevent such violations that the duration of compulsory schooling should be extended to at least the minimum age of employment. The *2006 Compulsory Education Law of China* requires that for ‘any child who has attained the age of six, his/her parents or statutory guardians shall have him/her enrolled in school to finish compulsory education’.¹⁵ The 2006 *Law* forbids ‘any employing entity to employ any school-age children and adolescents who shall be

⁷ UNESCO Statistical Yearbook (1996) 3

⁸ Art. 2 of the *2006 Compulsory Education Law*; Art.18 of the *1995 Education Law*

⁹ *Ibid*, Art. 11. For children in areas where this is not possible, the initial start of schooling may be postponed to age 7. This usually applies to those who live in remote or minority areas.

¹⁰ *Ibid*, Art. 11

¹¹ *Ibid*, Art. 11

¹² Interpretations on the Compulsory Education Law of China (Beijing Law Press 2008) 2

¹³ UNCHR (n 4)13; (n 4) Primers No. 3, p. 12; UNCHR ‘The Right to Education Report Submitted by the Special Rapporteur Katarina Tomasevski’ UN Doc E/CN.4/2004/45, para. 14

¹⁴ UN Doc E/CN.4/2001/52, para. 28

¹⁵ Art. 11 of the *2006 Compulsory Education Law*; Art. 13 of the *Law on the Protection of Minors*

receiving compulsory education'.¹⁶ The national legislation explicitly emphasises that no children aged 6 to 15 may be employed during the process of their nine-year compulsory schooling. The legal requirement in Chinese law is in accordance with international human rights obligations, which establish a minimum age for the completion of compulsory schooling which should not be below 15.¹⁷ Nevertheless, in practice, some migrant children are still unable to complete their compulsory education. The latest national figures from the Sixth National Population Census of China of April 2011 showed that, nationally, 4.35 per cent of migrant children did not complete their nine-year compulsory education.¹⁸ Consequently there is a relatively high tendency for these children to drift into juvenile delinquency because of their low educational attainment, failure to find jobs and lack of supervision.¹⁹ The reason they do not complete their compulsory education has been explored in the previous chapter:²⁰ it is because the *hukou*-orientated exam and admission arrangement have become an institutional and structural barrier to their further educational chances. After the completion of six years of primary schooling there, many migrant students do not want to return to their home towns to continue in junior high school and take the high school exam. This is particularly the case with the many 'migrant children' who were actually born in the city even though their *hukou* are located in 'home towns' far away: it would be very difficult for them to adapt to the lifestyle and academic environment in rural areas. Moreover, the curriculum and the pedagogical systems are quite different in the different provinces, and adapting to a different academic system is a far from easy matter. As a result, at about the age of fifteen, before the completion of their compulsory education, some migrant children start to get casual work (*da gong*) or help their parents out. If these children are unable to complete their formal education, their future will presumably not be too bright. Having failed to obtain satisfactory

¹⁶ Art. 14

¹⁷ Art. 2 (3) of ILO-Convention No. 138: Convention Concerning Minimum Age for Admission to Employment (19 June 1976)

¹⁸ A joint Project Update on Internal Migrant Children in China between the Institute of Population Research, University of Ren Min and the UNICEF 2011 (1) September <<http://rkxx.ruc.edu.cn/Html/kexueyanjiu/renkouyanjiu/48610797150.html>> accessed 13 December 2012

¹⁹ See the discussion on the incidence of juvenile delinquency amongst migrant children in the Conclusion

²⁰ See Chapter 3, Section 3.2.4 'The transition from primary to secondary level and beyond'

academic certificates at higher education level, they are unlikely to get proper jobs in the cities. Yet getting these ‘proper’ urban jobs through contracts is, in most circumstances, the main means of participating in the urban social protection system, which is job-related. This means they will not be entitled to health care, a pension, insurance and education.²¹ Thus the migrant children who do not complete their compulsory education are likely to be permanently marginalised from mainstream urban society and will remain just as low on the social ladder as their rural parents.²²

Availability – free primary education and public expenditure on education

In order to make sure that free primary education is available, as required by international human rights instruments,²³ ‘budgetary allocation at central and local levels should correspond to the guarantee of free and compulsory education for all children up to the minimum age for employment and progressive realisation of the right to education’.²⁴ The minimum international recommendation for government budgetary allocation on education is 6 per cent of GDP²⁵ or 20 per cent of the national budget.²⁶ Sufficient budgetary allocation for education is one of the key indicators of

²¹ Dewen Wang, ‘The Design of a Social Security System for Rural Migrant Workers in China’ in *Migration and Social Protection in China, Series on Contemporary China Vol. 14* edited by Ingrid Nielsen and Russell Smyth (World Scientific Publishing Co. 2008) 51-65; Improving Social Protection System in China: Key Trends and Policies <www.oecd.org/dataoecd/21/23/45276885.pdf> accessed 16 November 2012

²² Li identifies in her research that there are ten different higher social groups or hierarchies in China according to the institutional, financial and technical resources/power distribution. Rural peasants and physical workers are ranked in the second lowest social hierarchy (just above unemployed people) amongst another eight levels of social groups. Chunling Li, ‘A Report on Social Stratification in Contemporary China’ <http://www.sociology.cass.cn/pws/lichunling/grwj_lichunling/P020041222488561878219.pdf>; Chunling Li, ‘A Report on Economy Stratification in Contemporary China’ <http://www.sociology.cass.cn/pws/lichunling/grwj_lichunling/P020041222481709847479.pdf> accessed 3 November 2012

²³ Art. 13 (2) (a) of the CESCR; Art. 28 (1) (a) of the CRC; Art. 26(1) of the UDHR; CESCR ‘General Comment No. 11: Plans of Action for Primary Education’ Plans of Action for Primary Education (Art. 14) UN Doc E/C.12/1999/4, para. 7; ‘Availability, Education and the 4-As’ <<http://www.right-to-education.org/node/227>> accessed 12 February 2013

²⁴ UNCHR (n 4) 13

²⁵ Katarina Tomasevski: ‘Mission to China’ UN Doc E/CN.4/2004/45/Add.1, para. 16

²⁶ These two recommendations were first suggested by *Learning: the treasure within*, Delors et al, Paris, UNESCO, 1996. They are now widely used as reference points for minimum levels of investment in education by governments.

the attainment of availability of education, as Tomasevski has noted.²⁷ It is essential that there should be a genuine practical translation of a state's domestic legal and political commitment to its fiscal commitment and allocation – the 'key institutional actor' demonstrating that it means to fulfil its international human rights obligations at national level,²⁸ and showing that the state has the real commitment and political will to ensure free compulsory education for children.²⁹ Without such fiscal commitments proving a state's political will, its ratification of international human rights treaties at national level can easily be voided.³⁰

As for China, despite its ratification of the CRC and the ICESCR in 1992³¹ and 2001³² respectively, neither its international human rights treaty obligations nor its national legal commitments ensuring free compulsory education, with sufficient national budgetary allocation to achieve it, has been translated into appropriate fiscal commitments.³³ Compulsory education, according to the *2006 Compulsory Education Law*, is a 'public welfare cause'³⁴ and the State Council has a legal obligation to formulate 'concrete measures' to guarantee and operate funds to achieve it.³⁵ Yet, since the law was amended in 2006, the central government has not promulgated any national measures laying down how the central government should operate funding to enforce this.³⁶ Although, in the past few years, the central government has made

²⁷ UNHCR (n 4) 13

²⁸ Katarina Tomasevski, *Human Rights Obligations in Education: The 4-A Scheme* (Wolf Legal Publisher 2006) 132

²⁹ *Ibid*, 132

³⁰ *Ibid*, 132

³¹ UN Convention on the Rights of the Child
<http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en>
accessed 9 August 2012

³² International Covenant on Economic, Social and Cultural Rights
<http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3&chapter=4&lang=en>
accessed 9 August 2012

³³ Tomasevski, 'The State of the Right to Education Worldwide, Free or Fee: 2006 Global Report' (Copenhagen 2006) 131

³⁴ Art. 2

³⁵ Art. 44

³⁶ Sheng Ji, 'A Study on Legal Protection to the Right of Migrant Children to Education' (Master's Dissertation, University of Suzhou 2009)

positive efforts to prohibit the charging of temporary schooling fees (*jie du fei*), donation fees and other expenses through the promulgation of a series of national policies at regulatory level,³⁷ the charging of exorbitant fees has still been practised widely (as shown in Chapter 3) and has been the subject of criticism from the public, the mass media, scholars³⁸ and international human rights organisations.³⁹ The inadequate national expenditure on education which limits the availability of education for migrant children in the receiving cities⁴⁰ is one of the causes of the arbitrary, unreasonable fees charged in the real-world educational system.⁴¹ A national commitment that the budgetary allocation for education should reach 4 per cent of GDP⁴² – the target the State Council set up in the *Outline of the Reform and*

³⁷ Such as the *Circular of the Ministry of Finance on Regulating Fee Collection and Increasing the Income of Peasants 2004*; the *Circular of the State Council on the Abolition of Tuition and Miscellaneous Fees for Students in Compulsory Education in Urban Areas 2008*; the *Notice of the Ministry of Finance and the National Department and Reform Commission Promulgating the 100 Administrative Fees to be Cancelled and Stopped from Collection 2008*; *Decision of the Ministry of Education on Amending and Abolishing Some Rules and Regulations*. See Chapter 2, Section 2.4.2 ‘Stage Three’

³⁸ For example, Andy Brock, ‘Moving Mountains Stone by Stone: Reforming Rural Education in China’ 29 (2009) *International Journal of Educational Development*; Ka Ho Mok, Yu Cheung Wong, Xiulan Zhang, ‘When Marketisation and Privatisation Clash with Socialist Ideals: Educational Inequality in Urban China’ (2009) 29 *International Journal of Education Development* 505-512

³⁹ For example, UN Committee on the Rights of the Child ‘Concluding Observation: China’ UN Doc CRC/C/CHN/CO/2, paras. 75, 77; UN Committee on Economic, Social and Cultural Rights, ‘Concluding Observations: China’ UN Doc E/C.12/1/Add.107, para. 66; Tomasevski (n 25) paras. 12, 13, 27; Aris Chan, ‘Paying the Price for Economic Development: The Children of Migrant Workers in China’ <http://www.clb.org.hk/en/files/share/File/research_reports/Children_of_Migrant_Workers.pdf> accessed 19 December 2012

⁴⁰ For example, Han Jialing, ‘Education of Internal Migrant Children and National Educational Reform in China’ (2007) 4 *Social Science of Beijing*; Kinglun Ngok, ‘Chinese Educational Policy in the Context of Decentralization and Marketization: Evolution and Implications’ (2007) 8 (1) *Asia Pacific Education Review* 149; Chunli Xia, ‘Migrant Children and The Right to Compulsory Education in China’ (2006) 2 *Asia-Pacific Journal on Human Rights and the Law* 57; Ka Ho Mok and Yat Wai Lo, ‘The Impact of Neo-Liberalism on China's Higher Education’ (2007) 5 (1) *Journal for Critical Education Policy Studies* <<http://www.jceps.com/index.php?pageID=article&articleID=93>>; ‘Shutting Out the Poorest: Discrimination Against the Most Disadvantaged Migrant Children in City Schools’ <<http://www.hrichina.org/crf/article/4638>> assessed 19 December 2012

⁴¹ For example, *ibid*, Ngok 149; *Ibid*, Xia 57; *Ibid*, Ka Ho Mok and Yat Wai Lo, Yan Li and Shuangming Li, *System Choice Theory on Compulsory Education* (Beijing Normal University Publishing Group 2009) 49; Liu Huilin, *China Rural Education Financial System* (Social Sciences Academic Press 2012) 51; Ka Ho Mok and Yu Cheung Wong, ‘Regional Disparities and Educational Inequalities: City Responses and Coping Strategies’ in *China's Changing Welfare Mix, Local Perspectives* (ed) by Beatriz Carrillo and Jane Duckett (Routledge 2011) 130

⁴² For example, the State Council in the *Outline of the National Medium and Long-Term Programme for Education Reform and Development (2010-2020)*, adopted in 2010 by the State Council, emphasises again that the goal of 4 per cent GDP should be met by 2012.

Development in Education in 1993⁴³ – was finally achieved in early 2013.⁴⁴ Here are some official figures taken from the 1990s to 2010 to illustrate the insufficient public allocation made for education in China: in the 1990s the national budgetary allocation for education ‘hovered around 2 per cent of its GDP’;⁴⁵ in 2001 the figure increased to 3.19 per cent for the first time,⁴⁶ but in 2004 it declined again to 2.79 per cent;⁴⁷ in 2010 increased to 3.66 per cent of GDP,⁴⁸ and it only reached 4 per cent in January 2013.

Due to insufficient national budgetary allocation, parents bear more indirect costs for their children’s schooling, a situation that places migrant students in an even weaker position compared with non-migrant children. As Kong notes, although the unequal demands for payment of temporary schooling fees are apparently against social justice, it is still regarded as a reasonable to require migrant parents to ‘purchase’ education services for their children.⁴⁹ Simply abolishing various fees without increasing adequate financial support cannot take financial pressures away from migrant parents, but it would increase the levels of availability and of accessibility to education their children could have.⁵⁰ Moreover, insufficient public funding for state schools has placed some local authorities under an enormous financial burden. (The fundamental reason why local governments get insufficient funding from the central government will be examined in the next section in a

⁴³ It was adopted in 1993 by the State council, and was not attained until after 2012. Zhuo Dongtao, *Blue Book of Development and Reform, Report on China's Economic Development and Institutional Reform: China: 30 Years of Reform and Opening-up* (1978-2008) (China Social Sciences Academic Press 2008)

⁴⁴ ‘National Budgetary Allocation for Education Reached 4 Per Cent of Its GDP in the First Time’ <<http://learning.sohu.com/20130104/n362320912.shtml>> accessed 26 January 2013

⁴⁵ Tomasevski: *Mission to China* (n 25) 16

⁴⁶ ‘National Fiscal Educational Expenditure in the Past Years’ <<http://baike.baidu.com/view/3017776.htm>> accessed 19 December 2012

⁴⁷ *Ibid.*

⁴⁸ Statistical Bulletin on the 2010 National Expenditure on Education by the Ministry of Education, National Bureau of Statistics of China and Ministry of Finance <http://www.moe.gov.cn/publicfiles/business/htmlfiles/moe/s3040/201112/xxgk_128871.html> accessed 19 December 2012

⁴⁹ *Ibid.*

⁵⁰ Kong Defeng, ‘The Abolition of Temporary Student Fees by the Ministry of Education Would Make Migrant Children’s Access to Education Even Harder’ <<http://opinion.voc.com.cn/>> accessed 19 December 2012

discussion of decentralisation and education in China). This dearth of funding is especially notable in Guang Dong Province. As a wealthy coastal province, it is known as the province receiving the largest proportion – 14.6 per cent – of migrant children in the whole country.⁵¹ The Pearl River Delta (*Zhu San Jiao*) in Guang Dong Province, in particular, is one of the most densely urbanised regions⁵² and has received many migrants. Numbers have increased still more in very recent years.⁵³ State schools naturally feel reluctant to enrol migrant children because of the limited places they have anyway and the financial pressures they are under. When they do enrol them, they may charge prohibitive fees. For example, a state school in the Zhi Wan district of Guang Zhuo, a city in Guang Dong Province, has been charging migrant children 1,000 RMB (equivalent to £100) per academic year as temporary schooling fees. For six years' elementary education, that amounts to 6,000 RMB (equivalent to £600) per student.⁵⁴ Since the promulgation of the prohibition on charging temporary schooling fees, the principal there complains that the school is making less than 100,000 RMB a year in income (equivalent to £10,000) and no subsidy funds have been allocated by the local authorities. The school is therefore experiencing financial hardships.⁵⁵ As a consequence, it has no choice but to enrol fewer migrant children in the future.⁵⁶

Availability – an adequate educational infrastructure

Availability of education further implies a government obligation to ensure there are educational institutions and programmes in sufficient quantity, and with the necessary facilities, teaching materials and trained teachers to function appropriately in their

⁵¹ Zhenguo Yuan and Huisheng Tian, *A research on the Issue of Internal Migrant Children's Access to Education in China* (Education Science Publishing House 2010) 25

⁵² Zhang Xing Jie and Yang Zheng Xi, 'The Support of Migrant Children's Access to Education from NGOs – A Case Study in Heng Li Village Community Centre, the City of Dongwan, Guang Dong Province' (2010) 31 *Northwest Population* 37

⁵³ *Ibid.*, 37

⁵⁴ Lu Wenjie and Huang Xi, 'Head of the School Faces Financial Hardship after the Abolition of Temporary Student Fees' <<http://china.rednet.cn/c/2009/04/28/1751938.htm>> accessed 19 December 2012

⁵⁵ *Ibid.*

⁵⁶ *Ibid.*

contexts.⁵⁷ To make education available, governments should permit the establishment of new schools and provide the resources necessary to develop the physical infrastructures.⁵⁸ There is an obligation to provide sufficient numbers of schools to avoid excessive class sizes in which the quality of education markedly decreases.⁵⁹

In China both international and national standards of educational availability seem to be applied very unevenly: there is a great deal of variation between different cities and sometimes even within one city. The highly economically developed coastal receiving cities are sometimes referred to as ‘the world factory’ and they accommodate huge numbers of migrant workers.⁶⁰ The underlying issue there is not really about ensuring a sufficient number of schools, but is rather about how to cope efficiently with such an unpredictable flow of students. Because migrant parents and their children come and go so rapidly, it does not seem sensible to establish educational institutions for migrant children only. On average, the number of internal migrant children in Guangzhou, Guangdong Province has increased by about 10 per cent every year since the 1990s, as we have seen.⁶¹ The latest figure (2011) shows that the city had 170 million children to educate and 52 million of them were migrant children.⁶² In Shenzhen, another coastal city in South China, the migrant children actually outnumber the local children.⁶³ It is estimated by the local educational authority of Dongguan city that 71.4 per cent of their children (around 53 million) are migrants.⁶⁴ Under such circumstances, in these coastal cities, enforcement of ‘the Two Main Principles’, the series of national regulations from the State Council and relevant national ministries and Art. 12 of the *Compulsory Education Law* have all become

⁵⁷ (n 5) para. 6 (a); UNCHR ‘Preliminary Report of the Special Rapporteur on the Right to Education’ UN Doc E/CN.4/1999/49, paras, 51-55

⁵⁸ *Ibid*, ‘Preliminary Report’ 51

⁵⁹ *Ibid*.

⁶⁰ Jessica L. Montgomery, ‘The Inheritance of Inequality: China's Hukou Policy and Compulsory Education’ (2012) 21 *Pacific Rim Law & Policy Journal Association* 595

⁶¹ Weicheng Li, ‘A Reflection on the “Two Main Principles” for Internal Rural Migrant Children and Their Compulsory Education’ <www.cnier.ac.cn/snxx/wenxian/snxx_2012313084250_13698.html> accessed 7 October 2012

⁶² *Ibid*.

⁶³ *Ibid*.

⁶⁴ *Ibid*.

‘just paper work’.⁶⁵ Local state schools do not have the full capacity to accommodate all these incoming children. Around 73.5 per cent of these children attend migrant schools instead.⁶⁶ Dongguan city has adopted a points-based system to ‘eliminate’ the number of migrant students.⁶⁷ Key criteria the parents are expected to meet are: having a stable job; joining the works insurance system for at least three years; having stable and legal accommodation; having attained a certain educational level; being professionals; paying tax; and having adhered to the One Child policy.⁶⁸ This system applies not only to rural migrant workers, but also to highly skilled workers and those who have obtained college or vocational degrees/diplomas. It is estimated that only 17.5 per cent of children without local *hukou* are enrolled in the local state schools, though most of their parents are either highly skilled workers or have college degrees.⁶⁹ Rural migrant parents and their children are automatically excluded by the points-based system.⁷⁰ Such a system, as Chen comments, exacerbates the degree of social exclusion because it greatly depends on whether parents applying to schools for their children have formal contracts and have joined a social insurance system, both of which are simply unobtainable for many migrant workers.⁷¹

Yet establishing more schools for migrant children, as suggested in the international human rights instruments, does not appear to be a fundamental solution. Li points out the tremendous practical difficulties the local governments face:

Taking Guangzhou city as an example, based on the increasing number of migrant children coming in the city every year, if all of them went to state schools in the city, it means that 130,000 new places for enrolment, 6,000 new teachers, 175 new elementary and 22 junior secondary schools have to be created each year. In

⁶⁵ *Ibid.*

⁶⁶ Chen Chen, *A Reflection on Educational Poverty - A Research on Migrant Children* (Intellectual Property Publishing House 2012) 74

⁶⁷ *Ibid.*, 74; Dongguan Commission of Education <<http://www.dgjy.net/web/guest/home>> accessed 13 December 2012

⁶⁸ *Ibid.*, 74

⁶⁹ *Ibid.*, 74

⁷⁰ *Ibid.*, 74

⁷¹ *Ibid.*, 74 -75

addition, the investment of funding for supporting all these would be around 51 million RMB.⁷²

Li notes that this kind of research on what financial and human resources would be sufficient cannot keep up with the actual flow of migration and the incredible increase in migrant numbers.⁷³ Furthermore, Yang states that the receiving cities in coastal cities do not have the capacities to keep opening schools – they do not even have sufficient land:

If local state high schools opened completely to migrant children, it is estimated around 100,000 new places in every level of grade have to be created to enrol these children every year. Based on this estimation, it is hard to tell how many new schools really have to be established. Presuming new schools were established, what would the government do if another 100,000 places were needed next year? It is clearly not sensible to keep building schools for the enrolment of migrant children. The underlying concern of educating migrant children is really about available land that can be used for building schools, if it is the solution. Moreover, no one would really know what would happen in the future and what the proper solutions are. Thus it is very challenging for local authorities to cope with this constantly changing situation on the ground.⁷⁴

Cities like Beijing have different concerns from those of the coastal towns. As the last National Census indicates, the One Child policy has been effectively implemented in such cities for some twenty years, and the birth rate has steadily decreased.⁷⁵ In Beijing, fewer local children are enrolled in state schools now to the extent that some state schools even face closure because of the decline.⁷⁶ During the peak period of births, the Beijing state schools could cope with nearly 10 million elementary and junior secondary school students. Additionally, studying abroad has become popular, since many urban parents believe that obtaining an academic degree

⁷² Li (n 61)

⁷³ *Ibid.*

⁷⁴ Dongping Yang, 'The Development of National Education Policy for Internal Migrant Children' <http://www.zhuanxing.cn/html/Education_Right/706.html> accessed 21 January 2013

⁷⁵ 'Han Chinese Proportion in China's Population Drops: Census Data' <http://news.xinhuanet.com/english2010/china/2011-04/28/c_13849933.htm>; Jie Dong, 'Neo-Liberalism and the Evolvement of China's Education Polices on Migrant Children's Schooling' (2010) 8 (1) *Journal for Critical Education Policy Studies* (2010) (8) (1) <<http://www.jceps.com/index.php?pageID=article&articleID=179>> accessed 19 December 2012; Jialing Han, 'Education for Migrant Children in China, Background Paper Prepared for the Education for All Global Monitoring Report 2010, Reaching the Marginalized', UNESCO 2010/ED/EFA/MRT/PI/42

⁷⁶ *Ibid.*, Dong

from the West could provide a better future for their children.⁷⁷ So how come they cannot resolve the problem of enrolling all the migrant children now?⁷⁸ This time, the problem is not about insufficient schools or resources;⁷⁹ it is because educational resources are distributed unevenly. Schools in the city centre benefit at the expense of those in the surrounding fringe, while so-called ‘key schools’ get more resources than ‘non-key schools’, and there is disparity even between ‘key classes’ and ‘non-key classes’. Since the majority of migrants live in the urban fringe regions outside the fifth ring road (because of the cheap housing there), the public educational resources and quality of provision are relatively poor. The state schools here are established according to the numbers of local *hukou*-based registered residents (according to the *hukou*-oriented enrolment system)⁸⁰ and there are fewer of them. Although the law formally encourages a reduction in inter-school and intra-school disparities by forbidding streaming into key schools and key classes at compulsory school level,⁸¹ key schools continue to be built. Parents have a socio-cultural preference for these ‘brand-name’ schools.⁸² They have better infrastructures and stronger teaching teams than normal state schools and deliver higher quality education and services. Children in key schools enjoy better resourcing and consequently stand a better chance of being enrolled into the more prestigious universities when they come to future studies. To parents and students, whether they are named ‘key –schools’ or not does not matter much.⁸³ Students in those key schools are selected by their academic ability and, in practice, mostly only if they have a local *hukou* and if the family has financial ability and the right connections.⁸⁴ If local students fail to reach the grades expected of them by the key schools, their families may have to pay quite expensive school selection

⁷⁷ Xiang Biao and Wei Shen, ‘International Student Migration and Social Stratification in China’ (2009) 29 *International Journal of Educational Development* 513-522

⁷⁸ Liansheng Yuan, ‘The Issue of Financial Distribution in Compulsory Education’ <http://www.zhuanxing.cn/html/Education_Right/705.html> accessed 22 January 2013

⁷⁹ *Ibid.*

⁸⁰ Han (n 75)

⁸¹ Art. 22 of the 2006 Compulsory Education Law

⁸² Wing-Wah Law and Su-Yan Pan, ‘Legislation and Equality in Basic Education for All in China’ (2009) 40 (4) *Interchange* 337-372

⁸³ *Ibid.*, 360

⁸⁴ Ngok (n 40); Mok, Wong and Zhang (n 38); Mok and Wong (n 41) 126-151

fees (and, of course, have the right connections) to get them in.⁸⁵ Migrant children are marginalised and excluded from this resourcing because key schools in the cities do not enrol them.⁸⁶ migrant children can only attend the normal state schools or migrant schools, either registered or unregistered, in their localities. The fact that many children who emerge from the migrant schools can do little more than read and write has been examined in Chapter 3. Consequently they have a slim chance of competing in the later employment market with urban children who are systematically educated in Chinese, Maths, English, Computer Studies, Music and the Arts, and who also take after-school private tuition.⁸⁷ Since the majority of migrant school students do not leave with a proper academic preparation for university education or orientation towards it, they tend to enter the labour market straight after compulsory education, while their native urban counterparts have more options, including taking the National University Entrance Exam. In this respect, as Dong states, China's education system 'reproduces the social hierarchy in which the migrant children of the lowest urban social strata are located in these very strata once again'.⁸⁸ However, this is not to put blame on urban state schools for the exclusion of migrant children; rather to stress that 'both urban schools and migrant families are caught up in an education system that is rooted in and reproduces social inequality'.⁸⁹

4.2.2 Accessibility of education for internal migrant children

Accessibility of education, according to the CESCR Committee, involves three overlapping dimensions:⁹⁰ economic, physical and legal/administrative (normative).

⁸⁵ It is common for city children to take extra tuition and attend 'interest classes' after school to enrich their education. Mok and Wong (n 41) 134-135

⁸⁶ Wang points out that even in Wuhan, one of the first cities to receive migrant pupils into its local state schools, none of the key schools have opened their gates to migrant children. Zhichao Wang, 'Systematic Barriers to Schooling of Migrant Workers' Children and Policy Recommendations' (2009) 4 (2) *Frontier of Education in China* 298-311

⁸⁷ Dong (n 75) 149

⁸⁸ *Ibid*, 149

⁸⁹ *Ibid*, 149

⁹⁰ (n 5) para. 6

Economic accessibility

The first dimension is the economic accessibility of education: education must be affordable to all.⁹¹ This implies a positive state obligation to make access to education free of charge and to introduce scholarships.⁹² Although economic accessibility is subject to the differential meaning of Art. 13 (2) of CESCR regarding primary, secondary and higher education, it is regarded as one of the important prerequisites for free and compulsory primary education.⁹³ The issue of decentralising the financing and administration of education, which has raised formidable barriers to accessibility for migrant children will be examined in the later section 'Accountability of government'.

Physical accessibility

The second dimension of accessibility is physical accessibility.⁹⁴ This requires that schools should be built in convenient geographic locations (as with neighbourhood schools) or that education should be available and accessible through modern technology (e.g. via a distance learning programme).⁹⁵ The UN Committee on the Rights of the Child also recommends that state parties should make especially sure that children living in rural and remote areas have access to education.⁹⁶ Free transport and the construction of additional schools in isolated areas are needed to facilitate such goals.⁹⁷

In China, physical accessibility for both migrant children and non-migrant children has become a major concern, especially after a tragic illegal school bus accident that happened in late 2011.⁹⁸ Migrant children can be particularly vulnerable,

⁹¹ *Ibid.*, para. 6(b) (iii)

⁹² *Ibid.*

⁹³ *Ibid.*

⁹⁴ *Ibid.*, para. 6 (b) (ii)

⁹⁵ *Ibid.*

⁹⁶ E.g. CRC Committee, Concluding Observations: Colombia UN Doc CRC/C/38,1995, para.96; Georgia UN Doc CRC/C/97,2000, para.128; Mexico UN Doc CRC/C/90,1999, para.187

⁹⁷ E.g. CRC Committee, Concluding Observations: Mozambique UN Doc CRC/C/114, 2002, para. 306

⁹⁸ The shockingly tragic road accident happened in 2011 in a rural area, Gansu Province (one of the least economically developed provinces in China). An illegal school bus with a maximum seating capacity of 9 people had packed 64 kindergarten children in with teachers. It was crushed by a truck loaded with

because the majority use illegal school buses (*hei xiao che*) in order to get between home and school.⁹⁹ These vehicles barely meet national safety standards. Han points out that what most migrant schools do in practice is take a second-hand vehicle and renovate it as a school bus with all seats removed so the students can be packed in.¹⁰⁰ A small van can normally sardine 60-100 children in, and everyone has to pay for a place. Yet migrant parents seem happy with this arrangement, as the more students use the car, the less they have to pay in fares.¹⁰¹ Indeed, these illegal school vehicles actually accommodate the needs of migrant parents; and a piece of research conducted in 2011 showed that their use was popular amongst migrant children: 79 per cent of those attending migrant schools prefer to travel on them.¹⁰² Due to the nature of their work, the parents are unlikely to deliver their children to school and pick them up every day.¹⁰³ Many migrant children live at quite a distance from their schools, and public transport methods are difficult for children to manage by themselves without any supervision.¹⁰⁴ Moreover, some migrant schools are physically located in quite remote areas where no public transport is available and the children have to walk for some 30 minutes between the bus stop and the school. Since the accident in 2011, all illegal school buses have been prohibited. This measure, however, was made without putting any substitute transportation in its place and has merely put an extra burden on migrant children and their parents, also affecting their school attendance.¹⁰⁵ Two national regulations were promulgated in early 2012 to regulate the safety issues of school buses for all students from 3 years old to the end of the compulsory education

coal. As a result, 21 were killed (a teacher and the driver and 19 children) and 43 were injured. See 'A Report on the Safety of School Buses for Migrant Children and an Abstract of a Proposal Submitted to the "Two Meetings"'

<http://www.chinadevelopmentbrief.org.cn/ngo_talkview.php?id=3502> accessed 20 December 2012

⁹⁹ *Ibid.*

¹⁰⁰ Jialing Han, 'The Current Situation of Compulsory Education for Migrant Children' <http://www.zhuanxing.cn/html/Education_Right/709.html> accessed 20 December 2012

¹⁰¹ *Ibid.*

¹⁰² *Ibid.*

¹⁰³ 'A Research Report on the Safety Issues of School Bus' (n 98)

¹⁰⁴ *Ibid.*

¹⁰⁵ *Ibid.*

age,¹⁰⁶ but it is claimed that the standards set up in them are too unrealistic to be met in practice, especially for rural and migrant schools with poor funds and resources.¹⁰⁷ An absence of specific regulations on school bus travel for migrant children, with support and appropriate assistance from the government, may directly jeopardise their safety and attendance. The provision of a means of safe, free and appropriate transport facilities for migrant children should therefore be provided.

Elimination of legal and institutional barriers

Legal barriers

Aside from ensuring economic and physical accessibility, states are required to eliminate legal and administrative barriers to access.¹⁰⁸ This section therefore identifies some of these barriers and some inconsistencies between the law and regulations in the current Chinese legal and institutional systems.

The first and second paragraphs of Art. 12 of the *2006 Compulsory Education Law* play an essential role in legislation aiming to make quality schooling accessible for migrant children. Yet Art. 12 also has embedded within it the legal and institutional barriers that work against this aim. The deep-rooted institutional arrangement for *hukou*-orientated enrolment and registration stipulated in the first paragraph, the absence of a funding and management mechanism for educating migrant children, the ambiguity of the second paragraph, as well as the inconsistency between the law and regulations – all of these actually create barriers, limiting migrant children's access to compulsory education.¹⁰⁹ The first paragraph states that 'the local people's governments at all levels shall ensure that school-age children and adolescents are enrolled in the schools near the permanent residences of the [same] school-age

¹⁰⁶ 'The Safety Technique Specifications of Special School Buses and the Strength of Student Seat Systems and Their Anchorages of Special School Bus' are promulgated by the National Standardization Administration of China and the National General Administration of Quality Supervision, Inspection and Quarantine of China on 10 April 2012

¹⁰⁷ (n 98)

¹⁰⁸ Tomasevski, 'Primers No. 3' (n4) 12; 'Education and the 4-As' <<http://www.right-to-education.org/node/228>> accessed 20 December 2012

¹⁰⁹ Han (n 40) 98-102; Han (n 75); Xia (n 40) 30; Ji (n 36) 20

children and adolescents (*jiu jin ru xue*).¹¹⁰ This clause explicitly stipulates that all compulsory school-age children should attend state schools for compulsory education in their places of permanent registration, in other words where their *hukou* are located.¹¹¹ It adopts the same old principle laid down in Art. 9 of the *1986 Compulsory Education Law of China*.¹¹² In theory, when students leave their permanent residences, the local governments in the receiving cities have no legal obligation to provide them with compulsory education: legally all children should go to schools near their places of ‘permanent residence’. This *hukou*-based registration system causes the problem discussed in Chapter 3: the complex enrolment procedure with its requirement that parents submit all sorts of different credentials to the local authorities. Han points out that since the adoption of the *1986 Compulsory Education Law*, China's social, economic and political circumstances have changed tremendously.¹¹³ Yet the revised *Compulsory Education Law* has not moved with the changes:¹¹⁴ since an increasing number of migrant children need to attend city state schools, the institutional arrangement based on the *hukou* is no longer compatible with actual social development.¹¹⁵ Instead, it has created legal and institutional barriers excluding migrant children from access to mainstream state schools and jeopardising their equal educational opportunities.¹¹⁶ Even though the revised *Compulsory Education Law* has added a new clause requiring that local authorities in the receiving cities should provide migrant students with ‘equal conditions’ in compulsory education, it does not touch the fundamental problems: the *hukou*-orientated registration system and the question of who has the main obligation of provision. With this failure to clarify funding and management legally and formulate a specific mechanism for their implementation, migrant children have become the victims of hidden fee-levying, an

¹¹⁰ Art. 12

¹¹¹ *Law of the People's Republic of China on Compulsory Education: Annotation* (Law Press 2007) 8

¹¹² Art. 9, ‘Local people’s governments at various levels shall establish primary schools and junior middle schools at locations that children and adolescents can attend schools near their homes.’ (Adopted at the Fourth Session of the Sixth National People’s Congress, promulgated by Order No. 38 of the President of the People’s Republic of China on 12 April 1986 and amended on 29 June 2006)

¹¹³ Han (n 40) 100

¹¹⁴ *Ibid.*, 100

¹¹⁵ *Ibid.*, 100

¹¹⁶ Personal email communications with Han Jialing (July 2012)

obstructive credential-seeking bureaucracy and relegation to side-lined migrant schools of poor quality.

Furthermore, the ambiguity of the Art. 12 provisions provides a great deal of room for local governments to conduct their own practices without supervision, and this too may impede accessibility to education for migrant children and jeopardise law enforcement. Art. 12 indicates that ‘the local people’s government shall provide him/her [the migrant child] with equal conditions for receiving compulsory education. The concrete measures shall be formulated by the provinces, autonomous regions and municipalities.’ This licenses local governments to ‘formulate’ their own ‘concrete measures’ without guidelines or supervision from the central government.¹¹⁷ Xia criticises the clause for being too ‘abstract’ to be practically carried out by local governments.¹¹⁸ Points that need clarifying are: What does ‘equal conditions’ really mean? How are ‘equal conditions’ to be achieved? Does the provision mean that local governments in the receiving cities should provide equal opportunities for migrant children without any discrimination during the admission process? Are ‘equal conditions’ being observed if migrant children are discriminated against or segregated in a separate class after they are enrolled in city state schools?¹¹⁹ How can it be ensured that this legal requirement is enforced in practice? Is there any monitoring mechanism? In a case of poor performance by local authorities, what are the remedies? As of 2012 the central government has not promulgated any implementation guidelines on how the law should be put into practice.¹²⁰ It is left to the local authorities at district level in each receiving city to answer and respond to all these questions in the ways that suit them.

Aside from these legal and institutional barriers, there are inconsistencies between the law and existing regulations that need to be ironed out. For example, the *hukou*-orientated registration system stipulated in the first paragraph of Art. 12 of the *2006 Compulsory Education Law* is not in line with the second paragraph of Art. 12 or with the ‘Two Main Principles’ adopted in several key national regulations (which

¹¹⁷ Han (n 75)

¹¹⁸ Xia (n 40) 33

¹¹⁹ Li (n 61) In practice, as Li notes, even though state schools have to enrol migrant children, they are normally put in a separate class studying only with other migrant students.

¹²⁰ Yuan (n 78)

encourage state schools in receiving cities to take the main responsibility for providing compulsory education for migrant children).¹²¹ This creates a ‘grey area’ in which a variety of interpretations can be made at the lower local levels, jeopardising the principle of accessibility and ultimately weakening the creditability of the *Law* and its enforcement.¹²²

Institutional barriers – the problem of the *hukou* system

As Yang points out, the education system in China has never been inclusive, because of the household registration system (the *hukou* system) which has long raised institutional barriers to the achievement of equal accessibility of education without discrimination for disadvantaged children.¹²³ Under this institutional arrangement, urban residents enjoy a better quality of services and entitlements, including free access to the local mainstream state schools (without submitting special credentials or paying fees) or they have access to ‘key’ schools of superior quality. This arrangement is one of the main institutional barriers excluding rural migrant children from accessing urban public education. Children inherit their *hukou* classifications from their parents. Even though they may have lived in cities for a long time or were born in cities, they are designated as rural *hukou*-holders if their parents have rural *hukou*. With a rural *hukou*, these migrant children automatically have problems accessing state urban services.¹²⁴ As will be shown in a later section, these problems have been

¹²¹ See Chapter 2 ‘A Review of Policy Development for Improving Compulsory Education for Internal Migrant Children in China’ for more information.

¹²² Xia (n 40) 51

¹²³ Yang Rui, ‘Urban-rural Disparities in Educational Equality: China’s Pressing Challenge in the context of Economic Growth and Political Change’, in *International Handbook of Urban Education*, edited by William Pink and George Noblit (Springer 2007) 231-249; Tania Branigan, ‘Millions of Chinese Rural Migrants Denied Education for Their Children’ <<http://www.guardian.co.uk/world/2010/mar/15/china-migrant-workers-children-education>> accessed 17 February 2013

¹²⁴ Tao points out that an effective *hukou* reform needs to extend the *hukou*-related urban public services to rural migrants. At present, the privileges urban residents are entitled to include urban social assistance (‘the Minimum Livelihood Guarantee Scheme’), access to urban public schools and locally funded public housing schemes. It is a common misunderstanding, he states to believe that *hukou*-related benefits include forms of social insurance, such as pensions, medical insurance and unemployment insurance. These are actually job-related rather than *hukou*-related. Thus, granting rural migrants an urban *hukou* does not imply that local authorities need to be responsible for providing their social insurance. It is not an argument against their extending urban social assistance to rural migrants. Ran Tao, ‘Achieving real progress in China’s Hukou’ <www.easiaforum.org> accessed 18 February 2012

exacerbated by the decentralisation of the financial and administrative system for education: local governments (at the county level), for instance, tend to distribute financial resources to fund compulsory education on the basis of the number of permanent residents residing within their jurisdictions rather than on actual numbers (including the migrant children).

Because the *hukou* system is so important, the following paragraphs provide more information on its historical background and current development, explaining how it works and how it moulds the way in which migrant children may fail to get access to education in their receiving cities. The paragraphs also explain how the system impacts on social attitudes towards migrant children and rural migrants in general.

The hukou system: its past and current development

Historical development of the hukou system before 1949

A dual social structure appeared quite late in China, but the *hukou* registration system has long defined people's rural or city status. A household registration system came into being in China as early as the Xia Dynasty¹²⁵ – the first dynasty that emerged in China, 4,100 years ago.¹²⁶ From then on, until China's last feudal dynasty, the Qing Dynasty,¹²⁷ the household registration system remained one of the most important feudal social control systems for population statistics, taxation collection, conscription and other administrative purposes.¹²⁸ At the end of the Qing Dynasty, just before the promulgation of the *Household Registration Act of 1911*, the Minister of Interior Affairs submitted a document on the reform of the ancient household registration system to the Emperor. In it he said:

I think that the establishment of constitutionalism shall be based upon the household registration system, while the establishment of the household registration system

¹²⁵ The Xia Dynasty lasted from the 21st to the 16th Century BCE. See 'History of China' <http://english.gov.cn/2005-08/06/content_24233.htm> accessed 29 December 2012

¹²⁶ Song Changbin, *The History of China's Ancient Household Registration System* (Sanqin Press, 1991) 122

¹²⁷ The Qing Dynasty lasted from 1644 to 1911 in the modern era (n 125)

¹²⁸ Song (n 126) 134

shall be based upon the civil norms and customs. Since the conditions in China are absolutely different from those of all other countries, the legislations of other countries cannot be followed. The American and European countries are based upon individualism with the identity card as their sole certificate, while China has been exercising the clan or family system since ancient times. Therefore, China shall not follow the identity card system of the European and American countries.¹²⁹

This Act did not come into force, owing to the collapse of the Qing Dynasty. Nevertheless, as Wang emphasises, China's *hukou* registration system before 1949 did allow a certain degree of spatial and social mobility.¹³⁰ The historical urban-rural relationship in China was a 'dynamic two-way flow and the two groups complemented one another'.¹³¹ The rural population at that period could move relatively freely.¹³²

After the 1911 Revolution,¹³³ China was under the influence of Western law and recognised, under law, that the citizens of the new Republic of China had the right and the freedom to move about within its territory. Art. 6 (6) of the *Provisional Constitution of the Republic of China of 1912*, for instance, promulgated that 'citizens shall have the liberty of residence and removal'. Even though the *Householder Registration Law* enacted by the Kuomintang government in 1931 included detailed provisions on household registration, it did not restrict freedom of movement.¹³⁴ Therefore, a clearly defined dual social structure did not exist in China before 1949, in spite of the provisions on urban-rural disparity.

¹²⁹ *Ibid.*, 256

¹³⁰ Wang Weihai, *China's Householder Registration System: Historical and Political Analyses* (Shanghai Cultural Publishing House 2006) 258-260

¹³¹ *Ibid.*, 261

¹³² Gang Zhao and Zhongyi Chen, *A History of China's Economic System* (New Star Press 2006) 339, 363

¹³³ (n 125) The revolution led by Dr. Sun Yat-Sen overthrew the Qing Dynasty in 1911 and led to the founding of the Republic of China, thus putting an end to more than 2,000 years of feudal, monarchic rule in China. Regrettably, the fruits of the 1911 Revolution were usurped by the warlord Yuan Shikai with the backing of imperialism.

¹³⁴ Compiled by the Bureau of Household Administration, the Ministry of Public Security, *Household Administration Laws and Regulations from the End of the Qing Dynasty to the Republic of China* (Mass Publishing House 1996) 29-53. Although the Kuomintang government employed the *bao-jia* system to restrict people's freedom, it did not limit movement or designate anti CPC areas to restrict rural-urban population movement unless there was a specific reason.

Historical development of the hukou system, 1949-1978: the period of strict control on freedom of movement

When the People's Republic of China was established in 1949, Chinese peasants still enjoyed freedom of movement and residence in the country. The evidence can be found in Art. 5 of the *Common Programme of the Chinese Peoples' Political Consultative Conference of 1949*.¹³⁵ As the first provisional constitution of China, it promulgated that 'the people of the People's Republic of China have the freedom of thought, speech, press, assembly, association, communication, person, residence, movement, religion and demonstration'.¹³⁶ A similar provision was enshrined in the *First Constitution of China*:¹³⁷ 'the citizens of the People's Republic of China enjoy the freedom of movement and residence'.¹³⁸

The year 1953, however, was a turning-point in the history of China: the government decided to pursue heavy-industry-oriented development under a planned economy. In this year, the Central Committee of the Communist Party of China (CPC) and its government promulgated a series of key national policies and directives, all of which were important precursors to the subsequent dual social structure.¹³⁹ According to Zhao and Chen, the first national directive was enacted in 1953.¹⁴⁰ It came from the proposal made by Mao Zedong on the *General Line of the CPC for the Transition Period* regarding industrialisation and the transformation of private ownership to public ownership.¹⁴¹ Mao stated in the proposal that 'the General line of the CPC during the transition period is to complete the socialist transformation of agriculture',¹⁴²

¹³⁵ (Adopted on 29 September 1949 at the first meeting of the Chinese People's Political Consultative Conference). Wang and Cai also point out that during the early 1950s, mobility into and out of the cities was relatively unrestricted and, in fact, a large number of rural labourers moved into the cities at this time. Dewen Wang and Fang Cai, 'Migration and Poverty Alleviation in China' in *Labour Migration and Social Development in Contemporary China*, edited by Rachel Murphy (Routledge 2010) 17-46

¹³⁶ Art.5

¹³⁷ (Adopted on 20 September 1954 at the first meeting of the first National Peoples' Congress)

¹³⁸ Art. 90 (2) of *the Constitution*

¹³⁹ Zhao and Chen (n 132) 388

¹⁴⁰ *Ibid*, 388

¹⁴¹ *Ibid*, 388

¹⁴² Socialist transformation refers to the nationalisation of all major sectors including industry, commerce, finance, enterprise and agricultural collectivisation in the countryside.

handicraft and capitalist industry and commerce within ten to fifteen years, or over a longer period'.¹⁴³ The second important piece of national policy – the First Five-Year plan (1953-1957) – introduced the development of a planned economy in China. The final key measure, the *Resolution on Developing Agricultural Production Cooperation*,¹⁴⁴ which was adopted by the CPC Central Party Committee, expedited the process of agricultural collectivisation.¹⁴⁵ As Gong states, China's prioritising of heavy industry over agriculture, commerce and service, a planned economy and nationalised agricultural collectivisation, and also the establishment of dual institutions (the household registration system), all originated under the strong influence of the Soviet Union.¹⁴⁶ These strategies aimed at achieving rapid industrialisation by extracting agricultural surplus for capital accumulation in industries and for supporting urban-based subsidies.¹⁴⁷ The year 1953 was therefore the turning-point that marked the beginning of the formation of a dual social structure in China.¹⁴⁸

The country placed a high priority on heavy industry to speed up its industrialisation (again greatly influenced by the Soviet Model). In order to meet the huge capital requirements of developing industrialisation and upgrading agricultural technology, Mao demanded that sufficient funding 'must come from the agricultural sector'.¹⁴⁹ To make this possible, capital accumulation from the land was derived from agricultural collectivisation, a centralised procurement and distribution system, and a 'price scissors' which artificially kept the prices of agricultural products down. The main characteristic of China's nationalised collectivisation of agriculture is that it deprived peasants of all private land ownership without giving them compensation: their land simply became collectivised by the state.¹⁵⁰ Moreover, a system for

¹⁴³ CPC's Literature, issue 4 (2003) 20-24

¹⁴⁴ *Compilation of Important Documents on Agricultural Collectivisation* (Publishing House of the Central Communist Party School 1981) 215-227

¹⁴⁵ Zhao and Chen (n 132) 393

¹⁴⁶ Renren Gong, *The Historical Causes of China's Dual Social Structure* (Peking University Press 2009) 38

¹⁴⁷ *Ibid.*, 39

¹⁴⁸ *Ibid.*, 340

¹⁴⁹ Mao Zedong, *Selected Works of Mao Zedong*
<<http://cpc.people.com.cn/GB/69112/70190/70197/70350/index.html>> accessed 29 December 2011

¹⁵⁰ Wu Yu, *Historical Facts on China's Agricultural Collectivisation Movement* (SUP Press 1997) 857

centralised procurement and distribution was then established,¹⁵¹ providing greater efficiency. It accelerated food procurement, simplified procurement and distribution procedures, and introduced a more centralised system for procurement and sales.¹⁵² Basically the centralised procurement and distribution system in China, enabling the country to extract farmers' money for the development of industrialisation, led to urban-rural segregation.¹⁵³ The food market was closed after the introduction of centralised food procurement through the *Regulation on the Prohibition of Entry into the Free Market of State Centralised Purchased or Planned Purchased Agricultural Products and Other Goods*, issued by the State Council.¹⁵⁴ In this way, the system artificially eradicated the market economy, by imposing administrative measures, and isolated farmers from the free market. In addition, under the centralised food procurement system, the country fixed the prices and allocated purchase quotas among various regions according to a central plan.¹⁵⁵ So farmers grew grain as required by the official quota under the supervision of the people's communes in rural areas.¹⁵⁶ Farmers received work points for their work, redeemable partly in grain and partly in cash.¹⁵⁷ On the other hand, as the majority farmers were effectively excluded from urban sectors during the central planning period, China achieved almost full urban employment. The urban population, less than 20 per cent of the national total, was able to enjoy a wide range of welfare benefits from subsidised food, housing and health care, to pensions provided through state work units.¹⁵⁸ As Wu notes, such a planned

¹⁵¹ The State Council promulgated the *Regulations on Centralised Food Purchase and Distribution through Agricultural Production Cooperation* on 6 October 1956. It stipulated that 'the unit for centrally purchased and distributed quantities of the food production of agricultural cooperatives will generally be based on a single collectivisation'.

¹⁵² *Ibid.*, para. 8 of the *Regulations on Centralised Food Purchase and Distribution through Agricultural Production Cooperation*

¹⁵³ Yu (n 150) 860

¹⁵⁴ Zhu Rong, *Agriculture in Contemporary China* (Contemporary China Publishing House 1992) 119-120

¹⁵⁵ Belton Fleisher and Dennis Yang, 'China's Labour Market in Hope' in *Market Reforms in China* (Stanford University Press 2003) 45

¹⁵⁶ *Ibid.*, 45

¹⁵⁷ *Ibid.*, 46

¹⁵⁸ Ran Tao, 'Hukou Reform and Social Security for Migrant Workers in China' <<http://rdi.cass.cn/>> accessed 28 August 2012; Ran Tao, 'Hukou Reform and Social Security for Migrants' in *Labour Migration and Social Development in Contemporary China* (ed.) Rachel Murphy (Routledge 2010) 72-95

approach to the economy had a direct impact on the dual social system and deepened the urban-rural disparity: farmers had no freedom to choose their way of living and were deprived of the ability to move freely to the city.¹⁵⁹ Furthermore, the central government obtained the accumulation of capital it needed to achieve progress in industrialisation through the ‘price scissors’.¹⁶⁰ In other words, it used administrative orders to get agricultural products at very low prices from peasants. It also employed administrative measures to limit non-agricultural production artificially. The result of implementing such a ‘price scissors’ was obvious. According to the statistics, capital increased from RMB 3.6 billion in 1953 to RMB 5.13 billion in 1956 and further increased to 9.16 billion in 1958.¹⁶¹ The balance reached RMB 1,232,985 billion between 1978 and 1991.¹⁶²

However, as Dong notes, the forced creation of collectivised agriculture has caused a lasting negative impact on the relationship between urban and rural communities.¹⁶³ Gong further emphasises that the country showed very little respect for the independence and wishes of peasants,¹⁶⁴ as it had absolute power over their lives and the livelihoods of the villages which had been turned to collectivised land.¹⁶⁵ Under agricultural collectivisation, the peasants practically became ‘labour under surveillance’.¹⁶⁶ As a consequence, the majority of farmers had difficulty staying self-sufficient, they lost their economic leverage and suffered an overall reduced income once advanced agricultural collectivisation was established and the centralised procurement and distribution system running.¹⁶⁷ To make things even worse, a series

¹⁵⁹ *Ibid.*

¹⁶⁰ Chen Weihui, Feng Haifa and Shi Tongqing, *The Farmer and Industrialisation* (Labour Press 1998) 89

¹⁶¹ *Ibid.*, 99

¹⁶² *Ibid.*

¹⁶³ Dong Fureng, *The Economic History of the People’s Republic of China* (Economic and Science Press 1999) 256

¹⁶⁴ Gong (n 146) 45

¹⁶⁵ Mark Selden, ‘Household, Cooperative, and State in the Remaking of China’s Countryside’ in *Cooperative and Collective in China’s Rural Development* (ed.) by Vermeer, E.B (Armon 1998) 24

¹⁶⁶ *Ibid.*, 35

¹⁶⁷ Yu Depeng, *Urban and Rural Society: From Isolation to Openness, a Study on China’s Household Registration System and Relevant Law* (Shandong People’s Press 2002) 17

of natural disasters in 1956 caused many regions to suffer heavily from low agricultural output. Because of this, a large number of peasants left their home areas to seek a livelihood and job opportunities in the city.¹⁶⁸

Next, in order to maintain the artificial imbalance of the planned economy, the government had to create a system that blocked free movement and the free flow of resources, including labourers, between agriculture and industry and between rural areas and cities. To do so, the central government began to introduce specific measures and directives¹⁶⁹ preventing unregulated migration movement from rural communities to cities. For example, the *Instructions on Continuing to Persuade Farmers out of Unregulated Flows into the Cities of 1954*¹⁷⁰ stipulated that with ‘farmers who have migrated from rural areas to cities, civil affairs and labour authorities may join other departments in persuading them to return to the countryside, the travel expenses of which should, as a general rule, be borne by the farmers themselves’.¹⁷¹

After several national directives, the first legislation that limited the farmers’ freedom of movement and residence, the *Householder Registration Regulations of the People’s Republic of China of 1958*¹⁷² (hereafter the *1958 Regulations*), was promulgated. According to the *1958 Regulations*, the bureaucratic institution, the Public Security Bureau in cities and towns was to enforce the *hukou* system at all levels through the maintenance of household registration files.¹⁷³ Each household was issued a household booklet (*hukou bu*), which was used as personal identification.¹⁷⁴ In rural areas, household booklets was kept by rural collectives, and no booklet was issued to individual rural households; whereas, an individual booklet was issued to

¹⁶⁸ *Ibid.*, 18

¹⁶⁹ *The State Council Directives on Dissuading Peasants from Blind Influx into Cities of 1953, The Joint Directive to Control Blind Influx of Peasant into Cities of 1954, Pursuant to the State Council Instructions on Preventing the Unregulated Outflow of Rural Population* on 30 December 1956, *the State Council Supplementary Instructions* on 2 March 1957 and *the State Council Notice on Preventing the Unregulated Flow of Farmers into Cities* on 14 September 1957

¹⁷⁰ (Adopted by the Ministry of Labour on 2 March 1954)

¹⁷¹ *Compilation of Central Government Legal Instruments* (Legal Press 1954) 148

¹⁷² (Passed at the Ninety-first session of the First Standing Committee of the National People’s Congress on 9 January 1958)

¹⁷³ Art. 3 of the *1958 Regulations*

¹⁷⁴ *Ibid.*, Art. 4

every urban household in cities.¹⁷⁵ Art. 6 and 7 of the *1958 Regulations* legally compel every individual to become a part of the *hukou* system. Art. 6 specifically stipulates that ‘citizens should register as permanent residents in the place where they regularly reside. One citizen can only have permanent resident registration in one location’.¹⁷⁶ Within a month after the birth of an infant, the head of the household, relatives, parental guardians, or neighbours shall file the registration of the baby’s birth to the local authority which is responsible for registering permanent residency.¹⁷⁷ Moreover, the *1958 Regulations* set down an over-simplified protocol for the householder registration transfer process, which makes nearly all movement in and out of regions impossible.¹⁷⁸ For example, if a citizen wants to move out of his registration’s jurisdiction, ‘he or the head of the household shall file registration for moving out of the jurisdiction at the local authority responsible for household registration, in order to obtain a certificate for moving, and nullify his previous householder registration’.¹⁷⁹ If a citizen moves from a rural place to an urban area, he must go through emigration procedures by submitting an application to the Public Security Bureau in the city, including proof from the city’s Labour Department, proof of a school’s acceptance of enrolment, or proof of a migration permit from the local authority responsible for registering permanent residency in that city.¹⁸⁰ Art. 15 and Art. 16 of the *1958 Regulations* also highlight the pervasive social controls the *hukou* system established:

Art. 15

When a citizen temporarily resides outside the place of his permanent residence for over three days, the person or a head of the household of the place of temporary residence shall register for temporary residence within three days at the local authority, and before leaving he or she shall have it nullified. An individual temporarily residing at a hotel shall simultaneously register through the hotel for a traveller-registrations registry. A citizen who temporarily resides within a county or temporarily resides in a place outside the county but still within rural areas does not

¹⁷⁵ *Ibid.*, Art. 4

¹⁷⁶ *Ibid.*, Art. 6

¹⁷⁷ *Ibid.*, Art. 7

¹⁷⁸ Hayden Windrow and Anik Guha, ‘The Hukou System, Migrant Workers and State Power in the People’s Republic of China’ (2005) 3 *Northwestern University Journal of International Human Rights* 4

¹⁷⁹ *Ibid.*, Art. 10

¹⁸⁰ Art. 10 of the *1958 Regulations*

need to register for temporary residency, except when temporarily residing at a hotel, for registering through a hotel for a traveller-registration registry.¹⁸¹

Art. 16

A citizen who lives outside his or her permanent residency owing to personal reasons for more than three months can apply for an extension at the local authority; if he or she has neither personal reasons nor meets the conditions for internal migration, he or she must return to his/her place of permanent residency.¹⁸²

Even in cases of temporary location changes, individuals had to register their movement with the government authorities. Aside from rare employment opportunities, education or work transfers, it was virtually impossible to change residence. However, although the *1958 Regulations* provide an institutional reference to restrict migration, the *Regulations* themselves, as Lin points out, do not provide a strict differentiation between an urban and a rural *hukou*, or a stringent restriction on transfers and shifts of *hukou*.¹⁸³ Rather, the segregation of rural and urban householders was enacted by a series of policies and regulations implemented in stages. Long after the *1958 Regulations*, in 1964, the Ministry of Security started to draw a clear distinction between an ‘agricultural *hukou*’ and a ‘non-agricultural *hukou*’ in its demographic study.¹⁸⁴ This segregation can be found in the draft of the *Regulations of the Ministry of Public Security on Handling Hukou Transfer of 1964*¹⁸⁵ which sets forth very strict rules on the transfer of *hukou* from rural areas to cities and townships, and from townships to cities.¹⁸⁶ The official version of the *Householder Registration Regulations of the People’s Republic of China of 1958* was further endorsed by the State Council in 1977. The official Regulation insisted that control on the transfer of *hukou* from the countryside to urban areas was one of the key socialist policies of the country.¹⁸⁷ The ‘inside quota’ the Ministry of Public Security of China had for the

¹⁸¹ Art. 15 of the *1958 Regulations*

¹⁸² Art. 16 of the *1958 Regulations*

¹⁸³ Liu Yilong, *The Household Registration System - Control and Social Distinction* (The Commercial Press 2003) 124, 126

¹⁸⁴ Yao Xiulan, *Household Registration, Identity and Social Evolution: A Study on China’s Household Administration Laws* (The Legal Press 2004) 176

¹⁸⁵ (Adopted by the State Council in August 1964)

¹⁸⁶ Lan Mingchu and Tang Ping, *The Social Movement of Farmers in China* (Sichuan University Press 1994) 88

¹⁸⁷ (Endorsed by the State Council on 1 November 1977)

number of people transferring from rural to urban areas was that it could not exceed 1.5 per cent out of the total non-agricultural population in any one year.¹⁸⁸ By then, the dual *hukou* system that distinguishes between a city or township *hukou* and a rural *hukou*, and between a non-agricultural and an agricultural *hukou*, had firmly taken root in China.¹⁸⁹

To sum up, the general characteristics of the dual *hukou* system during the central planning period prior to the economic reform were: firstly, that the law restricted farmers' freedom of movement and residence in order to minimise rural migration;¹⁹⁰ secondly, resource mobility across regions was greatly restricted in conjunction with a set of institutional arrangements, especially the social security system, that promoted completely different treatment for rural farmers as against urban residents.¹⁹¹ Farmers with their agricultural *hukou* had their identities and social status basically fixed and were forced to work in agricultural sectors¹⁹² – the state providing access to farmland for farming and residential land (still the property of the collectives) for housing, also access to local health and schooling facilities. By contrast, the state provided non-agricultural *hukou* holders with a wide range of social welfare benefits, including food rations and grain subsidies, as well as guaranteed permanent jobs, housing, free public education, public health care, and insurance and pensions through work units.¹⁹³ Only urban residents were entitled to these last resources.¹⁹⁴ This arrangement was maintained so that the state could retain the loyalty of the industrial workers in the cities.¹⁹⁵ Both rural and urban residents were controlled; and it was impossible for rural people to move freely to the cities. Without having the coupons

¹⁸⁸ 'The Transition of National Household Registration System in China'
<<http://www.people.com.cn/GB/news/6056/20010930/573902.html>> accessed 29 December 2012

¹⁸⁹ Ban Maosheng and Zhu Chengsheng, 'Current Status of the Study and Actual Progress on Household Administration System Reform' (2000) 1 *Population and Economy* 47

¹⁹⁰ Tao (n 158) 86

¹⁹¹ *Ibid.*, 74

¹⁹² Wang and Cai (n 135) 24

¹⁹³ Tao (n 158) 74; Rachel Murphy, *How Migrant Labour is Changing Rural China* (Cambridge University Press 2002) 33

¹⁹⁴ *Ibid.*, Tao 74

¹⁹⁵ Wang Feiling, *Organising Through Division and Exclusion: China's Hukou System* (Stanford University Press 2005) 86

allocated by the state, for instance, they could not buy food of any kind at reasonable prices so it was extremely difficult to survive in the cities.¹⁹⁶ However, as Gong points out, unequal insurance systems as well as unequal grain and oil supply systems were present long before the household registration system came in.¹⁹⁷ Discrimination against Chinese farmers and unequal treatment therefore commenced even before the creation of the household registration system. Furthermore, as Gong¹⁹⁸ and other scholars explain, discrimination is implied in the terminology:¹⁹⁹ while peasants in Western countries, are regarded as having an occupation, farmers in China even today are ‘agricultural persons’ and are not defined by occupation but by their social identities.²⁰⁰ A person who has an agricultural *hukou* is automatically classified as being a farmer by identity and is assumed to have little education and a low social position even after having worked in the non-agricultural sector in a city for a long time. So the discrimination against farmers in China is *de facto* discrimination based on social identity rather than on occupation.²⁰¹ However, the fact is that 68 per cent of the total Chinese population is made up of rural farmers – this is some 870 million people.²⁰² Thus this direct discrimination is targeted at the majority population in China rather than a minority group as in most countries.²⁰³ On top of this, Chinese farmers have suffered from other forms of discrimination from policies and legal institutions. These include the following:

¹⁹⁶ Tao (n 158)

¹⁹⁷ Gong (n 146) 45. In 1953, the CPC Central Committee decided to adopt a centralised procurement and distribution system. The State Council issued the *Provisional Measures on Food Rationing in Cities and Townships* and the *Provisional Measures on Centralised Food Procurement and Distribution System in Rural Areas* on 5 and 25 August 1955, which stipulated that ‘a universal food rationing system shall be introduced among the non-agricultural population’; whereas, farmers ‘travelling to and from townships may carry food on their own’. See also, *State Regulation 1949-2001* (China Democratic and Legal Press 2001) 340-348

¹⁹⁸ Gong (n 146) 32

¹⁹⁹ ‘Social Class in Chinese Rural Areas under a Planned Economy and the *Hukou* System in China’ <http://www.chinareform.org.cn/society/huji/Practice/201007/t20100705_32254.htm> accessed 22 December 2012

²⁰⁰ Gong (n 146) 33

²⁰¹ *Ibid.*, 33; Concluding Observations (n 39) para. 15

²⁰² *Ibid.*, 33

²⁰³ *Ibid.*

- 1) farmers do not enjoy the same right to vote as urban residents;²⁰⁴
- 2) farmers do not enjoy the right to association;²⁰⁵
- 3) farmers are not entitled to the same labour rights as urban workers, enshrined in the *Labour Law*;
- 4) farmers are not entitled to the same social security rights;
- 5) farmers are not entitled to the same right to property and land use; and
- 6) farmers are not entitled to the same right of compensation for death in accidents as are urban citizens.²⁰⁶

All this is due to the *hukou* system.

Thus Chinese farmers are clearly victims of discrimination. The dual *hukou* system is a social institution built upon discrimination against the social identity of farmers.

The historical development of the hukou system after 1978: the period of gradual relaxation

Since China's economic reform and opening-up in 1978, the state has gradually relaxed the restriction on labour mobility.²⁰⁷ However, the rural regions were underdeveloped and poverty was widespread. A first target, therefore, was to improve and develop the rural community in China. In a series of market-oriented reforms,

²⁰⁴ When electing deputies to the National Peoples' Congress, one urban resident's vote is equivalent to four farmer's votes. See Art. 16 of the *Electoral Law of National Peoples' Congress and Local People's Congress of China* (adopted on 1 July 1979 and amended on 27 October 2004). It stipulates that the number of deputies to the National People's Congress to be elected by the provinces, autonomous regions, and municipalities directly under the central government shall be allocated by the Standing Committee of the National People's Congress in accordance with the principle that the number of people represented by each rural deputy is four times the number of people represented by each urban deputy.

²⁰⁵ Two-thirds of migrant workers have not joined labour unions, especially in private and foreign-invested enterprises and small and medium-sized enterprises in China. 'A General Report on the Issues of Migrant Workers in China' in *A Research on the Issues of Migrant Workers in China* (ed.) the State Council (China Labour and Social Security Press 2009) 28

²⁰⁶ According to Art. 29 of *Interpretation of the Supreme Court of Some Issues Concerning the Application of Law for the Trial of Cases on Compensation for Personal Injury*, which was adapted by the People's Supreme Court on 29th December 2003, damages for death should be calculated according to the per capita disposal income of urban residents or per capita net income of farmers in the previous year in the hearing court's locality multiplied by twenty. As there is a four- to six-fold difference between the incomes of urban and rural residences, the damages for death are also differentiated. *Gazette of the Supreme Court of China* 2 (2004) 3-7

²⁰⁷ Tao (n 158) 78

peasants were granted the right to use land and to do their own farm work.²⁰⁸ Peasants were also granted property rights and, if they were surplus labourers, the freedom to change their occupations, moving from rural to urban communities.²⁰⁹ At regulatory level, the policy restricting population movement from rural areas to cities and townships, and from townships to cities started to loosen after 1984.²¹⁰ The introduction of ‘self-supplied food grain’ in 1985 was a step towards modifying the rigid division between rural and urban areas.²¹¹ New regulations state that all peasants and their families who are self-sufficient financially and either run a business themselves or have worked for a long period of time in a township with a permanent residence may be granted a permanent township *hukou*.²¹² Motivated to reduce their poverty and accumulate personal wealth, Chinese peasants began to develop enterprises at the township level and the rural labour market began to develop rapidly.²¹³ According to the National Bureau of Statistics, by the late 1990s township and village enterprises employed 92.7 million rural workers, and the number reached 128.6 million by 1995.²¹⁴ The food rationing system was also gradually dismantled from the mid 1980s, and people could buy food at market prices.²¹⁵ This meant that rural migrants could survive in cities if they could find employment.²¹⁶ As a

²⁰⁸ ‘Development’ in Agriculture
<http://english.gov.cn/2006-02/08/content_182638.htm> accessed 3 January 2013

²⁰⁹ *Ibid.*

²¹⁰ ‘Economic System’ <http://english.gov.cn/2006-02/08/content_182584.htm> accessed 22 January 2013; Zhan Shaohua, ‘Rural Labour Migration in China: Challenges for Policies’ (UNESCO Policy Papers No. 10, 2005)

²¹¹ *Ibid.*, Zhan; Tao (n 158) 79

²¹² *The Notification on the Issue of Peasants Granting Permanent Residence in Towns* was issued by the State Council on 13 October 1984

²¹³ De Brauw, ‘The Sequencing of Reform Policies in China’s Agricultural Transition’ (2004) 30 *Economics of Transition* 427-465

²¹⁴ National Bureau of Statistics, *China Labour Statistical Yearbook* (China Statistical Press 2004) 89

²¹⁵ Xing Meng and Zhang Jie, ‘The Two-Tier Labour Market in China – Occupational Segregation and Wage Differentials between Urban Residents and Rural Migrants in Shanghai’ (2001) 29 (3) *Journal of Comparative Economics* 485-504

²¹⁶ *Ibid.*, 504

consequence, the flow of rural people to the cities began to increase.²¹⁷ By 1998, the total number of rural migrants who had moved to cities reached 25 million.²¹⁸

Rural-urban migration was encouraged as China's economic opening-up started to affect the urban sector. This began in the 1980s. During this period, the creation and development of special economic zones, the expansion of non-state sectors and the easing of urban employment policies created a great demand for internal migrants to do industrial work.²¹⁹ It was in May 1980 that the central government first decided to establish special economic zones,²²⁰ located in the southeast of China, as the first regions opening up to the world.²²¹ In 1984 fourteen coastal cities were further opened up for overseas investment.²²² As a result, many peasants chose to leave their rural villages and towns to find better employment opportunities and incomes in these more economically developed areas. But, as Cui and Cui make clear, these transplanted peasants continued 'to retain their rural household registration (farmer identity) while being employed in secondary or tertiary industries, receiving wages as their main source of income'.²²³

The most significant change in this respect was the introduction of two special types of residential registration systems – the 'temporary residence permit' and the blue-stamp *hukou*.²²⁴ In 1985 the Ministry of Public Security introduced 'temporary residence permits' (*zan zhu zheng*) which local police stations could issue to temporary rural migrants remaining in cities for more than three months, so as to monitor and

²¹⁷ *Ibid.*

²¹⁸ *Ibid.*

²¹⁹ *Ibid.*

²²⁰ The central government provides Special Economic Zones (SEZs) with special economic policies and flexible measures, such as special tax incentives for foreign investments, greater participation in international trade activities and so forth. 'Special Economic Zones of China' <http://en.wikipedia.org/wiki/Special_Economic_Zones_of_the_People%27s_Republic_of_China> accessed 2 January 2013

²²¹ They were Shenzhen, Zhuhai, Shantou (Guangdong Province) and Xiamen (Fujian Province). 'History' <http://english.gov.cn/2005-08/06/content_24233.htm> accessed 2 January 2013

²²² *Ibid.*

²²³ Cui Chuanyi and Cui Xiaoli, 'Changing the Policy Paradigm on Chinese Migrant Workers, Towards Balanced Urban and Rural Development, People-Oriented, Equal Treatment and Consultative Management' in Errol Mendes and Sakanthula Srighanthan (eds), *Confronting Discrimination and Inequality in China, Chinese and Canadian Perspectives* (University of Ottawa Press 2009) 100

²²⁴ Tao (n 158) 89

manage the floating populations in the cities.²²⁵ Another type of residential registration is the blue-stamp *hukou* (*lanyin hukou*).²²⁶ Unlike the regular *hukou*, they are not administrated by the central government, but are an arrangement the local governments administer.²²⁷ While ‘temporary resident permits’ are issued to anyone who has a legitimate job in the city, the blue-stamp *hukou* is issued to business investors.²²⁸ Since 1985, any job applicant must have a personal identification card and his local *hukou* permit or a temporary residence permit or a blue-stamp *hukou* in order to work in the city.²²⁹ In 1998 the Ministry of Public Security issued another new regulation that relaxed controls under the household registration system, allowing those who joined their parents, spouses and children in urban cities to obtain an urban *hukou*.²³⁰

Current Development of the hukou system

The gradual reform of the system can be characterised as a bottom-up process – that is, a relaxation of *hukou* control beginning with small towns and gradually extending to medium and large cities. After years of local experimentation, the Ministry of Public Security started *hukou* reform in 2001,²³¹ when an experimental reform of the residence registration system was made in around 20,000 small towns.²³² In most of these small towns, the minimum requirements for obtaining a local *hukou* were a ‘stable job or source of income’ and a ‘stable place of residence for over two years’.²³³ The progress of the *hukou* reforms varies in different provinces in China. Some

²²⁵ (*The Provisional Regulations on the Management of the Population Living Temporarily in Cities and Towns of 1985*, adopted on 13 July 1985)

²²⁶ Zhang liu, ‘Institution and Inequality: the hukou System in China’ (2005) 33 (1) *Journal of Comparative Economics* 133-157

²²⁷ *Ibid.*

²²⁸ *Ibid.* To gain a blue-stamp *hukou*, migrants have to pay the urban infrastructural construction fees, which vary from a few thousand *yuan* in small towns and cities to 50,000 *yuan* in more attractive cities.

²²⁹ *Ibid.*

²³⁰ *Several Issues regarding the Management of the Hukou System*, was adopted by the Ministry of Public Security on August 1998

²³¹ Zhan (n 210); Tao (n 158) 75

²³² *Ibid.* 75

²³³ *The State Council Notice on Approving the Public Security Bureau’s Opinions on Promoting Reform of the Management System for Residence Permits in Small Towns and Cities*, adopted on 30 March 2001

medium-sized cities also began to relax permanent migration restrictions. These included Wuhan (Hubei Province) and Jiaxing (Zhejiang Province). For example, in Jiaxiang, the local government adopted a new household registration policy in 2008.²³⁴ It abolished the distinction between ‘agricultural’ *hukou* and ‘non-agricultural’ *hukou*; instead, all local residents, including rural peasants, were granted one standard *hukou*. All rural peasants in the city were also covered by a reformed pension scheme, by health care and by a social insurance system.²³⁵

However, as Ran points out, bold *hukou* reforms have only been developed in small cities, where employment opportunities are limited.²³⁶ The results of these reforms are also limited, as local authorities usually target rural migrants from their own jurisdiction.²³⁷ Since China’s rural-urban migration patterns are mostly from one province to another, the *hukou* reforms need to assist cross-provincial migration and people coming from other jurisdictions. An example supporting this point is that a rural migrant from the inland province of Hunan who moves to work in a typical receiving city like Dongguan in Guangdong province still has extreme difficulty obtaining an urban *hukou*. The same is true in the very large cities like Beijing and Shanghai, though it is easier for professionals and intellectuals seeking to move there (these people can purchase a property and pay a relatively large fee for the use of the urban infrastructure and facilities).²³⁸

In 2009, even Shanghai started to loosen its control on the *hukou* system – the first major city in China to do so.²³⁹ In order to be qualified there, applicants must have a local residency certificate; they should have participated in the social security scheme for at least seven years; they must be taxpayers with a vocational qualification

²³⁴ ‘A new household registration system in Jiaxing, Zhejiang Province’ <http://news.xinhuanet.com/legal/2008-09/24/content_10102182.htm> accessed 2 January 2013

²³⁵ *Ibid.*

²³⁶ Tao (n 158) 87

²³⁷ Ran Tao, ‘Achieving Real Progress in China’s Hukou Reform’ <<http://www.eastasiaforum.org>> accessed 2 January 2013

²³⁸ Tao (n 158) 87

²³⁹ *The Provisional Regulations on Shanghai Hukou Application of Residence Card Holders*; ‘Shanghai May Further Relax its Hukou System’ <http://www.china.org.cn/china/2010-03/16/content_19616205.htm>; ‘The Majority of Migrant Workers Cannot Get a Local Hukou in Shanghai: Follow-Up on the New Hukou Reform in Shanghai’ <<http://www.chinanews.com.cn/gn/news/2009/03-16/1602458.shtml>> accessed 3 January 2013

at medium or higher level; they must show they have no criminal record and that they have not violated family planning policies.²⁴⁰ These are high requirements, however, and the majority of migrant workers cannot meet them. In 2009, only 3,000 migrant workers were eligible for a Shanghai *hukou*.²⁴¹ Most rural migrant workers are still excluded.

Even though the *hukou* system has aggravated urban-rural disparity and has functioned as an institutional barrier to migrant children seeking equal schooling, it can in some ways be regarded as an important governing instrument for maintaining social stability: it has ‘indeed lessened the pull force to urban centres and helped to avoid high unemployment and the spread of urban slums found in many other countries in South Asia and Latin America’.²⁴² It seems unlikely that the *hukou* system will be completely dismantled in the near future. Given the complexity of the system and its interconnection with other social and economic arrangements and structures, any thorough reform entails ‘breaking down China’s current dualistic structure, universalising state-provided social security and some other social services, such as affordable health care, that are currently enjoyed by about one third of the population’.²⁴³ Also, given that there is limited urban employment, a limited infrastructure capacity and still quite a large stock of surplus labour in China, wholesale reform at the national level does tend to be gradual and cautious. This is reflected in the latest national regulation, the *Notice of the General Office of the State Council on Actively and Steadily Promoting the Reform of the Household Registration System*.²⁴⁴ According to the *Notice*, in cities of county-level, people who have stable jobs and residences may apply for permanent residence permits, along with their spouses, unmarried children, and parents. In medium-sized cities, people who have had stable jobs for three years with a stable residence, and who have paid social security insurance for at least one year, can apply for permits. With this reform, many millions

²⁴⁰ *Ibid.*

²⁴¹ *Ibid.*

²⁴² Tao (n 158) 86

²⁴³ Kam Wingchan, ‘The Household Registration System and Migrant Labor in China: Notes on a Debate’ (2010) 36 (2) *Population and Development Review* 357-364

²⁴⁴ (Adopted by the State Council on 26 February 2011). A similar provision is also addressed in the Report on the Work of the Government (2012) <http://english.gov.cn/official/2012-03/15/content_2092737_10.htm> accessed 10 February 2013

of migrants may be formally accepted as urban residents (although the authorities are keen to control the populations of major cities such as Beijing, which now has more than 19 million inhabitants).²⁴⁵ This reform may pave the way to create more accessible educational opportunities for migrant children in the receiving cities.

4.2.3 Acceptability of education for internal migrant children

Acceptability refers to ‘the form and substance of education, including curricula and teaching methods, which have to be acceptable to students and, in appropriate cases, parents’.²⁴⁶ More specifically, it refers to comprehensible use of language in teaching for indigenous and minority children, a good quality of education, minimum standards of health and safety, professionally qualified teachers, good school discipline, the prohibition of corporal punishment and respect for parents’ liberty²⁴⁷ to choose their children’s education in conformity with their religious, moral or philosophical convictions.²⁴⁸

Acceptability – language

‘Acceptable’ education includes the children’s right to be educated in their mother tongue. In particular, children from indigenous, ethnic, and linguistic minorities have the right to use their own language, and this has been affirmed in international law.²⁴⁹ The use of children’s mother tongues in schools encourages a sense of community and furthers social development, both of which help overcome exclusion and

²⁴⁵ ‘The Number of Permanent Residents in Beijing Has Exceeded the Target of Controlling Population, Local Public Capacity Has Reached its Limits’
<http://news.xinhuanet.com/politics/2011-02/21/c_121102030.htm> accessed 18 February 2013

²⁴⁶ (n 5) para. 6(c)

²⁴⁷ Art. 28 (2) of the CRC

²⁴⁸ Tomasevski ‘Primers No. 3’ (n 4) 15

²⁴⁹ Art. 28 of ILO Convention No. 169; Art. 4(3), Art. 4(4) of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities; paras 25 and 26 of Section II B.2 of the Vienna Declaration and Programme of Action; the 1960 UNESCO Convention against Discrimination in Education; CRC ‘General Comment No. 11: Indigenous Children and their Rights under the Convention’ CRC/C/GC/11; CRC ‘Day of General Discussion on the Rights of Indigenous Children’(2003)

marginalisation.²⁵⁰ The CCPR specifically states that members of minorities should not be denied the right to use their own language.²⁵¹ The CRC highlights this issue as well.²⁵² The language of instruction is a frequent bone of contention because it can preclude children from attending schools. Tomasevski points out that the issue of language has always created a great deal of controversy in education and that this is not likely to diminish.²⁵³ Controversies span ‘decision-making on the official language(s) of instruction for state schools, the teaching of, as well as teaching in, minority and indigenous languages (as well as the recognition thereof), and the teaching of (as well as in) foreign languages’.²⁵⁴

In China, apart from the standard spoken and written Chinese language, Mandarin (*pu tong hua*, ‘a common speech with pronunciation based on the Beijing dialect’),²⁵⁵ there are seven major dialects, including *Gan* (Xiangxinese), *Kejia* (Hakka), *Min* (with Hokkien and Taiwanese variants), *Wu* (including Shanghainese), *Xiang* and *Yue* (Cantonese),²⁵⁶ and, in addition, different minority languages.²⁵⁷ In addition to the categorisation used by linguists, people customarily distinguish language varieties of particular regions, such as *Henan* dialect (a dialect of Henan Province) and *Dongbei* dialect (the dialect of the north-east region).²⁵⁸ Such linguistic and cultural diversity can also be found in the speech of migrant students. The fieldwork conducted in a junior high school for migrant children described earlier revealed a really diverse learning environment: the school had received students from all over the country, and they spoke at least ten different local dialects. According to

²⁵⁰ United Nations Educational, Scientific and Cultural Organization, EFA Global Monitoring Report 2006: Literacy for Life (UNESCO, Paris 2005) 216

²⁵¹ Art. 27 of the CCPR

²⁵² Art. 30 of the CRC

²⁵³ Tomasevski ‘Primers No. 3’ (n 4) 30

²⁵⁴ *Ibid*, 30

²⁵⁵ Art. 2 of the *Law of People’s Republic of China the Standards Spoken and Written Chinese Language*, adopted on 31 October 2000 by the National People’s Congress of China

²⁵⁶ Jie Dong and Jan Blommaert, ‘Space, Scale and Accents: Constructing Migrant Identity in Beijing’ (Working Paper in Urban Language & Literacies, Institute of Education, University of London 2007)

²⁵⁷ China has 56 officially categorised ethnic groups, so linguistic diversity is the norm in China, rather than uniformity.

²⁵⁸ Dong and Blommaert (256)

the school records, in one of the previous academic years there had been migrant children from nineteen different provinces of China, and they included children from ten minorities.²⁵⁹ Although there is a real strength in such a diverse environment – students have fascinating opportunities to experience a diversity of cultures – the existence of different local dialects creates a real challenge to those trying to teach these children together, as some students can only speak their local dialects or minority languages.²⁶⁰ Thus, the teachers particularly focus on refining the children’s local accents into standard Mandarin (*pu tong hua*) so they can adapt to the new environment of the city.²⁶¹ Although the promotion of freedom to use ethnic and minority languages is protected by the law,²⁶² an actual emphasis on learning and speaking standard Mandarin (*pu tong hua*), especially on public occasions, reinforces the dominance of the Han culture over ethnic minority cultures. Migrant children have to adapt to the new academic environment and city life by using local textbooks and learning the Mandarin spoken in the receiving cities. However, the protection and enhancement of linguistic diversity seems important for migrant children since language is part and parcel of their cultural identities. In this regard, these children face a cultural clash between the adoption of the standard official language (in order to blend into the receiving cities) and clinging to their own dialects and minority languages. This, however, has not been recognised at regulatory level.

Acceptability – the minimum standards of educational institutions, local capacities of state schools and political will

Acceptability of education also requires the government to establish minimum standards for educational institutions, covering safety, a proper water supply, sanitation and professionally qualified teachers.²⁶³ This entails defining what the quality standards are, bestowing permits or licences on individual educational

²⁵⁹ An interview conducted with the Principal of Guang An Junior High School on 1 March 2011 in Beijing. See Chapter 3 ‘An example of a state school for migrant children: fieldwork conducted at Guang An Junior High School’

²⁶⁰ *Ibid.*

²⁶¹ *Ibid.*

²⁶² Art. 8 of the *Law of the Standards Spoken and Written Chinese Language*; Art. 12 of the *Education Law of China*

²⁶³ Tomasevski (n 28) 73; ‘Primers No. 3’ (n 4) 13

institutions, and arranging permanent monitoring to ensure that the required standards are enforced in practice.²⁶⁴

Although the migrant schools in receiving cities accommodate the different practical needs of migrant parents, the legal status of many of these schools has not been approved by the local authorities: their administration and management, school premises, health and safety standards, curriculum, syllabuses and teacher professionalism do not meet official standards. Instead of regulating and supervising such schools, some local governments have either demolished them completely²⁶⁵ or have ignored their existence, letting them operate unsupervised because they still answer their practical functions. The practice of managing and supervising migrant schools varies greatly in different regions. In general, provision of fair and equal compulsory education in the localities depends a great deal on the political will of the particular local government involved. As the following sections show, the local authorities in Shanghai, Tianjing and Fujian are in the vanguard in providing free compulsory education for migrant children.²⁶⁶ Not only are these cities financial strong, but they are willing to improve the educational opportunities for migrant students and bear the extra costs.²⁶⁷

Shanghai has made some impressive progress since 2008.²⁶⁸ In what is called the Shanghai Model, it has become the first city in the whole country where local governments at both district and municipal level share the responsibility of financing all migrant schools in the city.²⁶⁹ The governments have integrated the funding for

²⁶⁴ Tomasevski (n 4) 73

²⁶⁵ See 'The recent practice of closing migrant schools in Beijing' in Chapter 3

²⁶⁶ Zili Yang, 'Several Models of Resolving the Difficulties for Migrant Children to Access Education' <http://www.zhuanxing.cn/html/Education_Right/716.html> accessed 20 January 2013

²⁶⁷ *Ibid.*

²⁶⁸ *Ibid.*; Liansheng Yuan, 'An Analysis on the Funding Mechanism for Compulsory Education for Internal Rural Migrant Children' (2010) 2 *Journal of the Chinese Society of Education* 1-5; 'Migrant Children to Get Free Education in Shanghai' <http://www.chinadaily.com.cn/china/2010-02/24/content_9498516.htm> accessed 23 January 2013. See an interview conducted with Principal Zhang Gezhen, 'An example of a privately-run school for migrant children' in Chapter 3. He also discussed the Shanghai model in the interview.

²⁶⁹ Fan Yuanwei and Zhong Changhong, 'In Beijing and Shanghai, New Advances Have Been Made Concerning Policies Aiming to Facilitate the Admission of the Children of Migrant Workers to Local Public Schools' in *Annual Report on China's Education, Blue Book of Education* (ed.) Yang Dongping (Social Science Academic Press 2011) 137

migrant schools into their public expenditure, investing 0.5 million RMB (roughly equivalent to £50,000) in every migrant school in the city.²⁷⁰ The funding has been specifically used to cover tuition fees and other miscellaneous fees and to regulate and improve the infrastructures and school conditions of all the migrant schools.²⁷¹ As a result, free compulsory education for all migrant children has been achieved.²⁷² All 158 migrant schools in Shanghai have met local requirements (including standards of teaching) and are now granted *minban* status. No unregistered or illegal migrant school exists in the city any longer.²⁷³ Aside from seeing to public funding from the governments, the Shanghai Municipal Commission of Education is also responsible for the financial management of all migrant schools. All the once privately-run migrant schools have therefore become government-*minban* migrant schools because they are publicly funded. Moreover, migrant children are not only the beneficiaries: general conditions for migrant teachers have also been greatly improved. Their annual salaries have increased greatly and they are entitled to social insurance.²⁷⁴ They receive regular professional training to improve their teaching quality as well.²⁷⁵ Thus the Shanghai Model shows that a government's political will and fiscal commitment can effect real practical changes and make availability of education for migrant children a reality, with the attainment of high quality and safety standards too.²⁷⁶ Yet it is claimed that not every migrant child in the city can gain access to migrant schools now, since most schools have nearly exhausted the places left for new students.²⁷⁷ Tianjin, Fujian and Dalian are also in the front line in terms of providing free compulsory education for migrant children. For example, the commitment of the municipal government to fiscal equalisation is an important element of Dalian's success in serving poor and migrant students in terms of basic schooling.²⁷⁸ Jiangsu and Zhejiang provinces have adopted

²⁷⁰ Yang (n 266)

²⁷¹ Yuan (n 268)

²⁷² *Ibid.*

²⁷³ *Ibid.*

²⁷⁴ *Ibid.*

²⁷⁵ *Ibid.*

²⁷⁶ *Ibid.*

²⁷⁷ Yang (n 266)

²⁷⁸ Hana Bixi, 'China: Urban Services and Governance' (UNICEF China 2009) 34

school vouchers to distribute scholarships to their poor students in the regions.²⁷⁹ Not only are these cities financially strong, but the local governments are willing to take on the educational expenses.²⁸⁰

Ignoring the Shanghai Model where local governments at both district and municipal level subsidise privately-run migrant schools, the local governments of Guangzhou city do not provide any financial support to such schools at all.²⁸¹ As one of the most densely urbanised regions in China, Guangzhou has received about 0.4 million migrant children every year since 2008.²⁸² Of these, 70 per cent attend migrant schools and only 30 per cent are enrolled in state schools, because public resources there are generally insufficient to accommodate them.²⁸³ In this aspect, ‘the Two Principles’ have not been properly implemented in the city. Yet the Pearl River Delta (including Guangzhou)²⁸⁴ has become one of the leading economic regions in China since the ‘opening-up’ and the economic reforms of the late 1970s, and the majority of migrant schools in the region have been developed well, gaining official approval. The quality of education is good. The admission requirement for the migrant schools is low, and only requires a record to be made of the *hukou* of a child as the registration procedure.²⁸⁵ Thus the strength of the Guangzhou model is that accessibility to migrant schools is easy. Nevertheless, high fees are levied in most migrant schools in the region.²⁸⁶

The local government in Beijing, by contrast, has done little either to regulate or to support its migrant schools. It has not authorised any permits or licences to migrant schools since 2006 and, as recounted in Chapter 3, it closed down several of

²⁷⁹ *Ibid.*, 34

²⁸⁰ Yang (n 266) In Tianjian, however, there are no migrant schools left.

²⁸¹ *Ibid.*

²⁸² Yuan (n 268)

²⁸³ *Ibid.*

²⁸⁴ Major cities are Guangzhou, Shenzhen, Zhuhai, Foshan, Jiangmen, Dongguan, Zhongshan, Huizhou and Zhaoqing. ‘An Overview of the Greater Pearl River Delta’ <http://www.info.gov.hk/info/gprd/pdf/F_GPRD_Overview.pdf> accessed 22 December 2012

²⁸⁵ Yang (n 266)

²⁸⁶ *Ibid.* The levy of fees in migrant schools is around 4,000 RMB (equivalent to £ 400) annually. This can be unaffordable for some poor migrant families.

them in 2006 and again in 2011. Without any support from the government, many illegal migrant schools in Beijing still have to persist in fairly poor conditions and can only offer second-rate teaching quality.²⁸⁷ Teachers' salaries are also low with no entitlements to compensation or benefits. Even though the government has tried to learn from the Shanghai Model by opening new migrant schools operated by itself after the closure of schools in 2011, the infrastructures and conditions in these migrant schools remain much the same²⁸⁸ because of a fear of massive influxes of immigrants.

The difficulties in resolving the problem of migrant schools seem challenging due to the great variation of development in the different regions. Clearly not all state schools, even in the wealthy coastal cities, have the capacity to absorb massive numbers of migrant children every year, nor are local governments like Beijing willing to cater for their education. It also appears that decisions on whether migrant schools get financially supported by local governments or not depend very greatly on the commitment and political will of each particular local government.²⁸⁹ Although the governments do not have an absolute obligation to provide a financial subsidy for private schools, it can be argued that it is still essential for them to set up minimum standards and flexible criteria for such schools according to the circumstances. Whether such a commitment can be achieved within a reasonable period of time is another matter. An American test case, *CFE v. State of New York*,²⁹⁰ took thirteen years to determine 'what minimum quality criteria should be in place' as an acceptable educational entitlement for poor students,²⁹¹ and could indicate that even with persistence, there is a real challenge involved in achieving human rights protection from the government itself.²⁹²

²⁸⁷ Yang (n 266)

²⁸⁸ *Ibid.*

²⁸⁹ Yang Xiaowei, *Focus and Analysis - Comments on Major Educational Issues in Contemporary China* (Hubei Education Press 2011) 20

²⁹⁰ *Campaign for Fiscal Equity, Inc. v State of New York* (2006 NY SlipOp 08630); Sandra Fredman, *Human Rights Transformed, Positive Rights and Positive Duties* (Oxford University Press 2008) 219

²⁹¹ Details of this case are examined in 'Acceptability – the Minimum Standards for Educational Institutions' in Chapter 2

²⁹² Tomasevski (n 28) 79

Furthermore, the differences in practical enforcement in different receiving cities shows that ‘The Two Main Principles’ stated in relevant national regulations and the *Law* (local governments in receiving cities should have the main responsibility for providing compulsory education for migrant children, mainly in state schools) have insufficient clarity. As the case of Guangzhou shows, public resources in a city may not be enough to allow absorption of all migrant children into state schools, and ‘local government in receiving cities’ could refer to a provincial, municipal, district or county government, without it being clear who has the main responsibility for bearing the expense of providing equal conditions for migrant children.

Acceptability – parental freedom of choice in education

International law protects the liberty of parents or legal guardians to choose ‘religious and philosophical education’ for their children in conformity with their own convictions.²⁹³ This reflects not only a civil rights component of the right to education, but anticipates a ‘positive and tolerant attitude’ from the state, trusting it will ‘respect’ such a choice.²⁹⁴ Nowak, Tomasevski and Coomans note that the rationale behind parental freedom of choice is that it promotes not only pluralism within education,²⁹⁵ which limits the state’s monopoly over schooling,²⁹⁶ but reflects the freedom of religion and belief enshrined in international law.²⁹⁷

However, the paradigm of parents’ liberty to choose educational institutions laid down in international human rights instruments does not seem to be reflected in the actual circumstances of migrant parents and their children in China. In most cases, migrant parents choose privately-run migrant schools because the various barriers and

²⁹³ Art. 26 (3) of the UDHR; Art. 13 (3) of the CESC; Art. 5(1) (b) of the UNESCO Convention against Discrimination on Education; Art. 18 (4) of the CCPR

²⁹⁴ Fons Coomans, ‘In Search of the Core Content of the Right to Education’ in *Core Obligations: Building a Framework for Economic, Social and Cultural Rights*, edited by Audrey Chapman (Hart Publishing 2002) 221; Mieke Verheyde, *Article 28, The Right to Education, A Commentary on the United Nations Convention on the Rights of the Child* (Martinus Nijhoff Publishers 2006) 47

²⁹⁵ UNCHR (n 51) UN Doc E/CN.4/2001/52, para. 74

²⁹⁶ Manfred Nowak, ‘The Right to Education’ in *Economic, Social and Cultural Rights*, edited by Asbjorn Eide and Catarina Krause (Martinus Nijhoff Publishers 2009) 263; Coomans (n 294) 221; Tomasevski (n 28) 29, 31

²⁹⁷ Art. 18 (4) of the CCPR; Art. 14 (2) of the CRC

limits prevent them from sending their children to state schools. Hence both the Availability and Accessibility criteria are not met.

4.2.4 Adaptability of education for internal migrant children

Adaptability of education refers to the requirement that education should be able to respond to a rapidly changing global reality and tailor itself to new needs. It should also be responsive to the diverse needs of marginalised children, such as minority and indigenous children, working children, children with disabilities, migrant children and young refugees.²⁹⁸ In order to accommodate their needs and respond to diverse social and cultural settings within changing societies and communities, education has to be flexible.²⁹⁹

So far as it covers migrant children, the current regulatory framework merely focuses on the accessibility of compulsory education. It states that, for their compulsory schooling, all migrant children should attend the state schools provided by the local authorities in the receiving cities. The key question as to how these city schools manage to accommodate their needs after they have been enrolled is not properly addressed. Issues include allowing for very different rates of academic progress; and understanding and adjusting to different life habits, social backgrounds, cultures and dialects. Specific strategies for guaranteeing the quality of education migrant children get and for helping them adapt to schools in urban settings are still absent from the regulations. Some key issues that need further consideration are detailed below.

The first issue concerns the readiness of the mainstream city state schools to receive migrant children. Are they capable of meeting the specific demands of these children – or even willing to do so? In terms of the academic achievement they can manage, migrant children have problems of adapting, due to the very different curricula and pedagogical systems they have experienced in their exodus areas. This clearly disadvantages them and limits their future educational opportunities.

²⁹⁸ Tomasevski 'Primers No. 3' (n 4) 12

²⁹⁹ (n 5) para. 6 (d)

Equally daunting for them is the fact that China's public educational system is still test-oriented, and this makes no allowance for their circumstances.³⁰⁰ At the same time, both the reputations of state schools and teacher remuneration are influenced by the test scores achieved by a school's students and the admission rates gained in the national university entrance exam (*gao kao*). Since the *gao kao* is the only exam thought to 'matter' because it can determine a person's entire future, students, parents, teachers, school principals and local educational authorities all feel the need to get good scores and may even be driven by this consideration above all others. Under pressure to achieve results, teachers therefore face a dilemma of how to balance the different demands on them. They may not be able to give migrant children all the attention they need to catch up with local syllabuses and modules of courses.

Besides, teachers do not receive specific training on how to help migrant children catch up and fit in with their new school environment.

Yet another important consideration for the state schools is the provision of adequate facilities for migrant children from linguistic and cultural minorities. As shown in the previous section, a balance in the usage of the national language and of the minority languages the children have as their mother tongues is quite crucial, especially in the earliest years of their education.³⁰¹ Their mother tongues are part and parcel of the children's cultural identities. Moreover, bilingual and/or multilingual education is a means of promoting social equality and a key component that should be present in linguistically diverse societies. Yet the reality is that the mainstream state schools in receiving cities like Beijing, Shanghai and Guangzhou teach Mandarin only. Learning to speak fluent Mandarin is regarded as one of the 'passports' for migrant children to fit into the cities. The question this raises is: will the children lose their own cultural identities in the process?

Adaptability also implies that there should be a proper linkage between compulsory education, high school education and higher education in an organic and

³⁰⁰ Jing Liu, 'Lights and Shadow of Public Education for Migrant Children in Urban China' in *Living on the Boundaries: Urban Marginality in National and International Contexts. Advances in Education in Diverse Communities: Research, Policy and Praxis*, edited by Carol Camp Yeakey (Emerald Group Publishing Limited 2012) 79-115

³⁰¹ More information is available at the UNESCO International Mother Language Day site, 'Languages and Multilingualism' <<http://www.unesco.org/en/languages-and-multilingualism/21-february-international-mother-language-day/>> accessed 9 February 2013

integrated system. Current national regulations and the law only address the provision of compulsory education for migrant children without considering what prospects there may be for these children afterwards. Concerns about their lack of access to senior high school and their not being able to take the national higher education exam in their receiving cities have increasingly been voiced by the public.³⁰² Owing to the difficulties inherent in the current exam and admission system examined in Chapter 3, alternative types of education, such as vocational and informal education, are particularly needed. These could equip migrant children with the practical knowledge and special skills they require for the employment market. This issue is closely related to the need to eliminate child labour³⁰³ amongst migrant children and improve their chances of getting good employment, given the fact that their education is often interrupted after the compulsory stage and that there is a high drop-out rate.

Apart from the importance of seeing to the migrant children's academic adaptability and development,³⁰⁴ a fundamental issue to be considered is the purpose of education in its broader perspective. The children need to adapt to the city milieu, and a major task is to provide them with a friendly and relatively safe, assisted environment so that they can do this easily without suffering discrimination from their local peers, teachers, state schools and surrounding society.

Since 'education can be a means to retain or eliminate inequality',³⁰⁵ this is vital for transmitting core values of human worth from one generation to the next, and for raising awareness about social prejudice. Education that promotes the value of understanding and respect for difference in schools can help eliminate poverty, combat social exclusion and heal other social disharmonies.³⁰⁶ Conversely, education that

³⁰² See Chapter 3, Section 3.2.4 'The transition from primary to secondary level and beyond'

³⁰³ The national legislation explicitly states that no children of 6 to 15 may be employed during the process of their nine-year compulsory schooling (Art. 11 and Art. 14 of the 2006 Compulsory Education Law). Yet, in practice with many dropping out of compulsory schooling, specific measures are needed in state schools to prevent child labour.

³⁰⁴ The psychological problems experienced by migrant children are not the focus of this study. For details, see, among others: Xinyin Chen, Li Wang and Zhengyan Wang, 'Shyness-Sensitivity and Social, School, and Psychological Adjustment in Rural Migrant and Urban Children in China' (2009) 80 (5) *Child Development* 1499-1513; Yang Liu, Xiaoyu Fang, Rong Cai, Yang Wu and Yaofang Zhang, 'The Urban Adaptation and Adaptation Process of Urban Migrant Children: A Qualitative Study' (2009) 4 (3) *Frontier of Education in China* 365-389

³⁰⁵ Tomasevski (n 28) 141

³⁰⁶ Tomasevski 'Primers No. 3' (n 4) 147; Coomans (n 294) 220

overlooks the marginalized can be a source of exclusion for many children and can hinder integration and social cohesion. Outcomes all depend on whether the processes of teaching and learning promote the value of equal access. provide students with opportunities to participate as active citizens, and foster the values of tolerance and respect for diversity. In order to achieve these aims, education should be directed to ‘the development of the child’s personality, talents and mental and physical abilities to their fullest potential’, and to ‘the preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin’.³⁰⁷ These aims reflect a rights-based approach to education,³⁰⁸ one which seeks to maximise the potential of the child and which emphasises that children should be recognized as possessing equal rights rather being seen as passive beneficiaries of services and transfers of commodities.³⁰⁹

The aims of education stipulated in the core international human rights treaties – dissemination of diversity and tolerance – are especially important for combating social exclusion and preventing discrimination against migrant children in China. These values of diversity and tolerance should therefore be promoted through educational curricula in mainstream state schools. They are needed to protect and assimilate all vulnerable people in society, not only migrants. According to the *2006 Compulsory Education Law*, the objectives of compulsory education in China include the desideratum that ‘quality education shall be carried out [to] enable children and adolescents to achieve all-round development – morally, intellectually and physically – so as to lay the foundation for cultivating well-educated and self-disciplined builders of socialism with high ideals and moral integrity’³¹⁰; and there should be a ‘focus on the cultivation of the student’s independent thinking ability, creativity and practical

³⁰⁷ Art. 29 (1) (a)(d) of the CRC; similar provisions are promulgated in Art. 13 (1) of the *ICESCR* and Art. 5 (1) of the *Convention against Discrimination in Education*

³⁰⁸ See Chapter 2, Section 2.2.1 ‘A Human Rights-based Approach to Education’

³⁰⁹ This contrasts with the ‘human –capital’ approach to education, the effects of which are evident in the obstacles faced by children who have physical and learning disabilities. These children may be excluded, since meeting their special needs may be thought not to yield a sufficient marginal return on financial investment. ‘A Human-rights Based Approach to Education for All, A Framework for the Realisation of Children’s Rights to Education and Rights within Education’ (UNICEF/UNESCO 2007)

³¹⁰ Art. 3 of the *2006 Compulsory Education Law*

ability so as to promote all-round development of students'.³¹¹ The values of diversity and tolerance have a significant role in this 'all round development' and aspiration for building socialism. Tomasevski emphasises that 'education is embedded in existing values but also helps create new values and attitudes'.³¹² Therefore, if the value of respecting different backgrounds and cherishing diversity were systematically taught in schools, it would not only raise awareness amongst children but would gradually begin to eliminate the deep-rooted social attitudes and discrimination against migrants as a whole. This is what contemporary society in China needs at this stage of its social development.

As is argued throughout this thesis, however, the provisions regarding the right to education enshrined in the CRC and the Chinese national regulatory framework for migrant children greatly depend upon an effective national institutional and normative mechanism to ensure they are implemented and upheld by strong political will and clearly defined government accountabilities at financial, legal and political levels.

4.2.5 Accountability of government

After an examination of availability, accessibility, acceptability and adaptability (the '4-A' Scheme) as it affects migrant children, the next step this chapter must take is to explain why many migrant children are often still barred from attending state schools for their compulsory schooling in their receiving cities. In other words, it needs to be explained in more detail why national laws and regulations are not properly enforced. This entails investigation into the measurement of government accountability. Accountability lies at the heart of the challenge of managing good public services delivery, including the delivery of public education.³¹³ Prescribing accountabilities and appraising the ongoing effectiveness of authorities or governmental institutions are ways of ensuring that 'actions and decisions taken by public officials are subject to oversight' and reach 'their full potential' in the provision of appropriate services. They

³¹¹ *Ibid*, Art. 34

³¹² Tomasevski 'Primers No. 3' (n 4) 147

³¹³ '*World Development Report: Making Services Work for Poor People*' <http://www-wds.worldbank.org/servlet/WDSContentServer/WDSP/IB/2003/10/07/000090341_20031007150121/Rendered/PDF/268950PAPER0WDR02004.pdf> accessed 20 February 2013

help ‘guarantee that government initiatives meet their stated objectives and respond to the needs of the community they are meant to be benefiting’.³¹⁴ Accountability in the area of education is ‘one of the most important characteristic indicators of the right to education’, because it evaluates whether the government has established appropriate accountability mechanisms, and also helps concerned people question governments regarding their obligations.³¹⁵ In the case of migrant children, we need to look at what central and local governments are required to do at the financial, legal and political levels, and assess their actual willingness and capability.

This chapter suggests reasons why local governments fail to be accountable.³¹⁶ The main questions raised are: Which level of local authority should be financially responsible for providing compulsory education for migrant children? Who should be legally accountable? Which body is responsible for monitoring enforcement? Why is political accountability important for enforcement of legal measures intended to secure an adequate education for migrant children? Are there any ways (formal or informal) in which groups or individuals can challenge a lack of provision? What remedies are there for migrant children in a case of poor performance by the local authority? The following sections examine government accountabilities at the financial, legal and political levels.

Financial issues: decentralisation of compulsory education and its impact on the availability and economic accessibility of education for migrant children in receiving cities

A key question to be answered is: who has the main financial obligation for providing internal migrant children with free compulsory education in the receiving cities? There is no straightforward answer. In theory, since compulsory education is a ‘public good’,³¹⁷ it should mainly be the duty of the state to provide it and to enforce it

³¹⁴ Rick Stapenhurst and Mitchell O’Brien, ‘Accountability in Governance’ <<http://siteresources.worldbank.org/PUBLICSECTORANDGOVERNANCE/Resources/AccountabilityGovernance.pdf>> accessed 20 February 2013

³¹⁵ Gauthier de Beco, ‘Right to Education Indicator Based on the 4-A Framework’ <<http://www.right-to-education.org/sites/r2e.gn.apc.org/files/Concept%20Paper.pdf>> accessed 23 January 2013

³¹⁶ Tomasevski (n 28) 132

³¹⁷ Lv Liyan, *Theory of Principal-Agent in Education - an Investigation about Rural Education* (Northeast Normal University Press 1998) 34

properly with a feasible financial mechanism and sufficient human resources.³¹⁸ This perspective is reflected in the *2006 Compulsory Education Law*. Art. 2 states emphatically: ‘compulsory education is education which is implemented uniformly by the state and shall be received by all school-age children and adolescents. No tuition or miscellaneous fee may be charged in the implementation of compulsory education.’ (Art.2). Most significantly, the nature of compulsory education, as described, is a ‘public welfare cause (*gong yi shi ye*) that shall be guaranteed by the State’ (Art. 2). Thus the law mandates the State to establish a specific funding mechanism for compulsory education (Art. 2). In practice, this is not how the system is working. On the one hand, the provisions explicitly point out that the state should take the main responsibility for ensuring free compulsory education; on the other, in the provision of operating funds for it (Art. 44), the state has not promulgated any national measures at all guaranteeing appropriate practical funding. In practice, the county authorities are the main financial providers for administrating and implementing compulsory education (Art. 7). Although the law requires local authorities in the receiving cities to provide ‘equal conditions’ for migrant children, the financial support needed from the central government to guarantee its observance is, as Dong points out, totally lacking.³¹⁹ This absence of financial support from the central/provincial governments is regarded as the weakest feature of the national compulsory education financial system for improving compulsory education for migrant children.³²⁰ The problem is fundamentally related to the system of decentralisation of educational finance and administration in China, which, in Tomasevski’s words has ‘imposed the obligation to finance schooling upon local authorities without ensuring that they have resources

³¹⁸ Han Jialing, ‘Survey Report on the State of Compulsory Education Among Migrant Children in Beijing’ (2004) 37 (5) *Chinese Education and Society* 53; Cuangyu Tan, ‘Under the Same Blue Sky? Inequity in Migrant Children's Education in China’ (2010) 12 (2) *Comparative Education* 37; Xiang Beili and Tina King, ‘A Study of Compulsory Educational Policies and Values Orientation about Children’s Rights to Education: 1985-2007’ <http://www.ioe.ac.uk/about/documents/About_Overview/Beili_X_King_T.pdf> accessed 19 December 2012

³¹⁹ Dong (n 75); Wenbin Wang, ‘Dropping Out of Floating Children in China: Explanation and Evidence’ <www.wise.xmu.edu.cn/labor2011/papers/Wenbin%20Wang.pdf> accessed 19 December 2012

³²⁰ *Ibid*, Jie Dong; ‘An Analysis on the Policy Regarding the Operation of Funds for Compulsory Education for Rural Migrant Children’ <http://www.zhuanxing.cn/html/Education_Right/380.html>; Liansheng Yuan, ‘Public Expenditure on Education and Internal Migrant Children’ <http://www.zhuanxing.cn/html/Education_Right/387.html> accessed 24 December 2012

corresponding to their educational responsibilities'.³²¹ Murphy backs this up and goes on to state the consequences: the 'ongoing exclusion (for migrant children) may be explained by the continuing reluctance of local officials to incur the fiscal burden of extending education to outsiders.'³²² Naturally some local authorities feel reluctant to take on more burdens, without any real incentive. Thus the decentralisation of education relieves the central government of the financial burden of providing free public education for all children, yet comes at a significant cost to local governments in the receiving cities, to state schools and to migrant families.³²³ This is why migrant students are charged various indirect fees: they are covering the funding gap of the local receiving authorities for operation costs and, in some cases, for profit. The policy of decentralised finance and administration in compulsory education has thus widened regional disparities in accessibility and quality of schooling, and it is all due to a mismatch between the required financial responsibility and the actual local financial capacity at county level.³²⁴ The poor rural communities are in a very weak position, and the lack of good educational provision in these areas is one of the things that has induced migration to the cities: parents hope their children will receive better quality education there. The 'Two Main Principles' do not make governmental responsibilities for finances at all clear.

The following paragraphs provide a brief historical background explaining the decentralisation of education and illustrating how decentralised financing and administration has potential impacts on the availability and accessibility of compulsory education for migrant children in the cities.

Background to the decentralisation of China's national education policy

After the Chinese Communist Party took political power in 1949, the state adopted a centralised fiscal system, practising 'complete collection and complete distribution'

³²¹ Tomasevski (n 33) 131

³²² Rachel Murphy and David Johnson, 'Education and Development in China – Institutions, Curriculum and Society' (2009) 29 *International Journal of Educational Development* 447-453

³²³ Tomasevski, 'Globalizing What: Education as a Human Rights or a Traded Service?' *Indiana Journal of Global Legal Studies* 12 (2005) 1-78

³²⁴ Emily C. Hannum and Albert Park, 'Educating China's Rural Children in the 21st Century' (2002) 3 (2) *Harvard China Review* 8-14

(*tong shou tong zhi*) in which revenue from all lower levels of government were collected and submitted to the central government and expenditures by lower levels of governments were supported by central funding.³²⁵ As part of the whole planned economy, education was controlled by the state in a highly centralised system.³²⁶ The central government was therefore almost entirely responsible for establishing national educational institutions, formulating educational regulations, allocating educational resources, exercising administrative control, recruiting teaching staff and deciding on curricula and textbooks.³²⁷ Education, being part of the superstructure of society, played a decisive role in the political and ideological development of the Chinese people and their new society.³²⁸ The ideological aim of education during Mao's leadership was to instil 'political consciousness [and] ideological devotion to communism' as a tool of 'political indoctrination and maintaining political loyalty'.³²⁹ As Liu points out, soon after the Communist Party took power in 1949, the state also took the initiative to learn from the educational experience of the Soviet Union.³³⁰ For

³²⁵ Mun C. Tsang, 'Intergovernmental Grants and the Financing of Compulsory Education in China' <http://www.tc.columbia.edu/centers/coce/pdf_files/a1.pdf> accessed 29 December 2012; Mun C. Tsang, 'Education and National Development in China since 1949: Oscillating Policies and Enduring Dilemmas' (Center on Chinese Educational Publication, Teacher College, Columbia University 2001); Rachel Murphy, 'Citizenship Education in Rural China, The Dispositional and Technical Training of Cadres and Farmers' in *Chinese Citizenship, Views from the Margins* (eds.) Vanessa L. Fong and Rachel Murphy (Routledge 2006) 9-27; Chen Xiaoyu, *A Policy Research on Educational Finance in China* (Peking University Press 2012) 140

³²⁶ Li points out that educational finance in China between 1949 and 1978 was mainly under the control of the central government (*zheng fu bao ban*), although it went through the process of centralisation, decentralisation and recentralisation and about ten years of the Culture Revolution. Li Xiaoyan, *Compulsory Education, Theory and Practice* (Huazhong Normal University 2010) 143-144; Ngok (n 40) 143; Murphy and Johnson (n 322) 447-453; Suzanne Pepper, *Radicalism and Education Reform in Twentieth Century China* (Cambridge University Press 1992)

³²⁷ *Ibid.*

³²⁸ *Ibid.* An emphasis on political and ideological education, and central government control over education, with an insistence that education must serve the proletariat class were especially promoted during the Great Leap Forward between 1958 and 1961.

³²⁹ Yuzhuo Cai, 'Chinese Higher Education Reforms and Tendencies, Implications for Norwegian Higher Education in Cooperation with China' (Norwegian Centre for International Cooperation in Education 2011) 21; Mun C. Tsang, 'Education and National Development in China Since 1949: Oscillating Policies and Enduring Dilemmas' <<http://tc.columbia.edu/faculty/tsang/Files/7.pdf>> accessed 29 December 2012; Wei X, 'Reform and Development of China's Higher Education System in the Past Decade' (Paper Presented at the International Conference on Academic Reform in the World: Situation and Perspective in the Massification Stage of Higher Education, 6-7 February 1997, Hiroshima, Japan) cited in Ka-Ho Mok, 'Policy of Decentralization and Changing Governance of Higher Education in Post-Mao China' *Public Administration and Development* 2002 (22) 261-273; Ngok (n 40) 143

³³⁰ Li Li Xu, 'The Influence of the Soviet Educational Model on the Education of P. R China' 2001 (2) *Asia Pacific Education Review* 106-113

example, China established its first model ‘red’ university, Renmin University, for ‘training workers and peasants to be administrative cadres in politics, economics, law and diplomacy in order to meet the needs of the socialist construction of new China’.³³¹ The main model set up by the ‘red’ universities was then to be copied by other educational institutions. Named to emphasise the nature of its teaching, Renmin University was the most famous ‘red’ university in the 1950s, focusing on ‘ordinary working-class’ people.³³² In all such institutions it was required that the textbooks used must be a uniform set imported from the Soviet Union.³³³ Masses of Russian curriculum schemes, course modules, syllabuses, and batches of academic literature were translated into Chinese.³³⁴ Russian professors and experts were also hired to teach and train Chinese university students.³³⁵

However, despite the state monopoly on the provision of educational resources and the financing and governance of education, the distribution of resources was uneven nationally, and priority was given to the development of urban education and also to higher education.³³⁶ The provision of educational resources and services in rural communities depended heavily on the economic success of the rural collectives, the people’s communes.³³⁷ As a result, rural education was often held back by financial difficulties. Typical problems included unpaid teacher salaries, lack of instruction on how to use teaching materials and poor school infrastructures.³³⁸ Even in the cities, disparities occurred because more educational resources were given to the so-called ‘key schools’ (*zhongdian*) than to the ‘non-key schools’ (*fei zhong dian*).³³⁹ Urban

³³¹ *Ibid*, 107

³³² *Ibid*, 107

³³³ *Ibid*, 107

³³⁴ *Ibid*, 107

³³⁵ *Ibid*, 107

³³⁶ Ngok (n 40) 143

³³⁷ *Ibid*, 143

³³⁸ ‘Strategic Goals for Chinese Education in the 21st Century’ (The World Bank Report No. 18969-CHA, 1999)

³³⁹ Ngok (n 40) 143; Murphy and Johnson (n 322) 448

children enjoyed not only a better quality education but ‘home environments more conducive to academic attainment’.³⁴⁰

This bias in public policy towards the cities seriously exacerbated the disparities between urban and rural society and between primary education and higher education, and its negative effects can be seen even today.³⁴¹

After Deng Xiaoping launched a new style of leadership in the Chinese Communist Party (CCP), the promotion of modernisation and economic development became the top priority policy goal of the central government, and the late 1970s saw the initiation of market-oriented economic reform and the ‘opening-up’ of China. Since then, China has gradually transformed itself from a planned economy to a ‘more dynamic market-oriented model’.³⁴² The new socio-economic and political paradigm encouraged change, and the national fiscal and taxation systems were reformed in accordance with accelerated economic development. The main objective of the reform was to reduce the financial burden on the central government, and to encourage economic development at local level by providing more autonomy and freedom.³⁴³ The government was ‘acknowledging that over-centralisation and stringent rules would kill the initiatives and enthusiasm of local educational institutions’.³⁴⁴ Thus a transitional system reform of fiscal all-round responsibility was introduced from the early 1980s under the banner of decentralisation of power. After the adoption of a decentralised public finance system, the practice of ‘eating from separate pots’ (*fen zao chi fan*) was introduced in 1982.³⁴⁵ This meant that every local government became responsible for

³⁴⁰ *Ibid*, Murphy and Johnson 448; Emily Hannum, Jennifer Adams, ‘Beyond Cost: Rural Perspective on Barriers to Education’, Gansu Survey of Children and Families <http://repository.upenn.edu/cgi/viewcontent.cgi?article=1006&context=gansu_papers> accessed 13 December 2012; Emily Hannum, Jere Behrman, Meiyang Wang and Jihong Liu, ‘Education in the Reform Era’ in *China’s Great Economic Transformation* (eds.) Loren Brandt and Thomas G. Rawski (Cambridge University Press 2008) 215-250

³⁴¹ Murphy and Johnson (n 322) 448; Teng Magaret Fu, ‘Unequal Primary Education Opportunities in Rural and Urban China’, <www.Chinaperstives.revew.org/500> accessed 22 December 2012

³⁴² Ka Ho Mok, ‘Bringing the State Back In: Restoring the Role of the State in Chinese Higher Education’ (2012) 47 (2) *European Journal of Education* 228-241

³⁴³ Zhang Jian, *Government and Market in China: A Local Perspective* (Nova Science Publishers 2004)

³⁴⁴ Mok and Lo (n 40)

³⁴⁵ Bill K.P. Chou, *Government and Policy-Making Reform in China, The Implications of Governing Capacity, Comparative Development and Policy in Asia* (Routledge 2009) 42; Li Huiling, *China Rural Education Financial System* (Social Sciences Academic Press 2012) 96; Tsgang (n 325) Tsgang points out that the ‘eating from separate pots’ has three elements: ‘(1) defining the tax base and financial

providing its own financial resources locally.³⁴⁶ As Cook puts it, Chinese citizens could no longer enjoy the ‘iron rice bowl’.³⁴⁷ A multi-level public finance system, with layers at central, provincial, county and township levels, emerged in 1982.³⁴⁸ In 1988, a fiscal contract system reform was carried out in an all-round way, which made local governments independent interest bodies and formed the decentralised fiscal system.

As part of this larger development, the national education system was reformed too, having its finance and managerial structure decentralised. The same thing happened in the management of public and social services.³⁴⁹ The decentralisation in education, with its emphasis on rearranging the financing of basic education in China, was promulgated in the *1985 Decision of the Central Committee of the Communist Party of China on the Reform of the Educational Structure* (hereafter ‘the 1985 Decision’).³⁵⁰ ‘In tandem with broader shifts towards fiscal decentralisation’, the *1985 Decision* brought in the essential principles of decentralisation in education administration and financing and promoted diversification in the mobilisation of educational resources.³⁵¹ Educational decentralisation was based on the idea of ‘local

responsibilities for each level of government, (2) providing decision making power and autonomy to each level of government, and (3) specifying intergovernmental fiscal relationship in fixed amount of subsidy or surplus in a five-year period’. Mun. C. Tsgang, ‘The Financial Reform of Basic Education in China’ (1996) 15 (4) *Economics of Education Review* 423-444

³⁴⁶ Emily Hannum and Albert Park, ‘Educating China’s Rural Children in the 21st Century’ (2002) 3 (2) *Harvard China Review* 8-14; Emily Hannum and Meiyang Wang, ‘Geography and Educational Inequality in China’ (2006) 17 *China Economic Review* 253-265

³⁴⁷ Sarah Cook, ‘From Rice Bowl to Safety Net: Insecurity and Social Protection during China’s Transition’ (2002) 20 (5) *Development of Policy Review* 617

³⁴⁸ Tsgang (n 325); Liu Mingxing and Tao Ran, ‘Local Governance, Policy Mandates and Fiscal Reform in China’ in *Paying For Progress in China, Public Finance, Human Welfare and Changing Patterns of Inequality* (eds.) by Vivienne Shue and Christine Wong (Routledge 2007) 168

³⁴⁹ *Ibid.*

³⁵⁰ (Promulgated by the Party’s Central Committee at the National Education Conference on 25 May 1985. It is effective at present); Emily Hannum, Meiyang Wang and Jennifer Adams, ‘Rural-Urban Disparities in Access to Primary and Secondary Education under Market Reforms’ in *One Country, Two Societies*, Martin King Whyte (ed.) Harvard Contemporary Chinese Series No. 16 (Harvard University Press 2010) 127; Emily C. Hannum and Jennifer Adams, ‘Beyond Cost: Rural Perspectives on Barriers to Education’ in *Creating Wealth and Poverty in Postsocialist China*, edited by Deborah S. Davis and Wang Feng (Stanford University Press 2009) 156-172; John N. Hawkins, ‘Centralisation, Decentralisation, Recentralization: Educational Reform in China’ (2000) 38 *Journal of Educational Administration* 422-455; Liu Huilin (n 41) 95

³⁵¹ Murphy and Johnson (n 322) 448; Cheng Kaiming, ‘Education, Decentralisation, and Regional Disparities in China’ in *Social Change and Educational Development: Mainland China, Taiwan, and Hong Kong*, Gerard A. Postiglione and Wing On Lee (eds.) (University of Hong Kong 1995); Tsgang (n 325); Ka Ho Mok, Y Cheung Wong and Xulan Zhang, ‘When Marketization and Privatisation Clash

responsibility and administration by different levels'; and according to this, the lower echelons of government were to become responsible for the provision of elementary and secondary education (compulsory education) with the various levels of local authorities administering different aspects and different tiers of education (*di fang fu ze, fen ji guan li*).³⁵² Specifically for the local authorities in the cities, the district (*qu*) and counties authorities were to be responsible for the financial provision of compulsory education; whereas rural local authorities at the township/town level (*xiang/zhen*) were to be mainly responsible for the financing of compulsory education in their own rural or county communities.³⁵³ Provincial governments took on the provision for higher education.³⁵⁴ So all responsibilities and power relating to the formulation and enforcement of concrete educational policies, as well as the regulation and supervision of local state schools, have effectively been devolved to local governments, while the central government only attends to its overall role of planning, coordination, management and monitoring education at macro level.³⁵⁵ Furthermore, a system of resource diversification has been established. There are two stages to it. The first one aims to broaden the basis for government education revenue and to intensify non-government resource mobilisation in providing funds for state schools. This stage involves the collection of education surcharges in urban regions and education levies in rural areas.³⁵⁶ The second stage aims to raise a social contribution towards the funding of education and involves the collection of school fees and school-generated funds.³⁵⁷ This mobilisation of additional resources for compulsory education through a system of decentralisation and diversification was all incorporated in the *1985 Decision*. The *1985 Decision* marked the beginning of a process of educational reform

with Socialist Ideas: Educational Inequality in Urban China' (2009) 29 *International Journal of Educational Development* 505-512; John N. Hawkins 422-455

³⁵² Part. 2 of the *1985 Decision*;

³⁵³ *Ibid.*, 'Section Two and Three' of the *1985 Decision*; Zhao Litao, 'Between Local Community and Central State: Financing Basic Education in China' (EAI Working Paper, No.148, 27 March 2009)

³⁵⁴ Hannum and Adams (n 350) 4

³⁵⁵ 'Section Two' of the *1985 Decision*

³⁵⁶ *Ibid.*, 'Section Two'

³⁵⁷ *Ibid.*, 'Section Two'

which has gradually aligned the educational system with China's newly emerging market economy.³⁵⁸

The full paradigm of decentralisation in compulsory education administration and financing was officially confirmed one year later in the *1986 Compulsory Education Law*.³⁵⁹ This stipulated that 'under the leadership of the State Council, local authorities shall assume responsibility for compulsory education and it shall be administered at different levels' (in other words, there was to be local responsibility and administration by levels of authorities).³⁶⁰ Township (*xiang*) and district (*qu*) governments had main responsible for the financing of compulsory education in rural communities and cities respectively.³⁶¹ The chief function of the department under the State Council was to 'decide on the teaching methods, the courses and their content and the selection of textbooks for compulsory education' in accordance with 'the needs of socialist modernisation and with the physical and mental development of children'.³⁶² Most importantly, 'the State Council and the local governments at various levels should be responsible for raising funds for operating expenses and capital construction investment needed for the implementation of compulsory education, and the funds must be fully guaranteed'.³⁶³ Art. 12 of the law states that 'the decentralised distribution system for financing compulsory education was made law with the stipulation that the local people's government at various levels shall levy a surtax for education, which shall be used mainly for compulsory education. The state shall subsidise those areas that are unable to introduce compulsory education because of financial difficulties'.³⁶⁴ This made the spheres of authority and managerial responsibilities somewhat clearer: it was the local governments who were mainly

³⁵⁸ Ka Ho Mok and Yu Cheung Wong (n 41) 127

³⁵⁹ (adopted on 12 April 1986 at the Fourth Session of the Sixth National People's Congress. It was amended at the 22nd Session of the Standing Committee of the Tenth National People's Congress on 29 June 2006); Li and Li (n 41) 49; Liu Huilin (n 41); Li Xiaoyan (n 321) 61, 145

³⁶⁰ Art. 8

³⁶¹ Art. 5 of the *Implementation Guidelines of the 1986 Compulsory Education Law*, adopted on 29 February 1992 by the State Council

³⁶² Art. 8

³⁶³ Art. 12

³⁶⁴ Art. 12

responsible for raising expenditure for compulsory education. Educational expenditure was mainly to be covered by township fiscal revenues.³⁶⁵

As a consequence, some of the main principles of the education system in China have been changed – and all to fit in with economic and market-orientated development. As Deng Xiaoping emphasised: ‘education must meet the needs of China’s modernisation, of the world, and of the future.’³⁶⁶ In a shift away from the ideology of education in Mao’s era, the central government no longer monopolises the control of education. It now claims that the former over-centralised financing system weakened the initiatives and enthusiasm of local governments and educational institutions. Education in China is not now part of a political agenda in the way it once was, but is an essential and necessary tool contributing to China’s industrialisation and economic modernisation.³⁶⁷ Education has begun to play a much greater role in developing economic competitiveness within the market system. Education and the development of the nation’s economy have become inseparable and education has had to change in order to meet the challenges in the process of China’s new modernisation and economic burgeoning. Thus, since the economic reform following 1978, education has become ‘an organic component and key container of plans for social and economic development’ in China.³⁶⁸ Most importantly, a conception of educational decentralisation has been developed. The central government has decentralised control of education to local governments at different levels. Thus local authorities have the primary responsibility for financing, administrating, supplying and regulating the educational policies in their areas.

Nevertheless, as Ngok and Rachel point out, the impact of decentralised management and finance on the education system has been double-edged.³⁶⁹ The positive side is that it has been a great incentive to local governments (at different

³⁶⁵ Li Xiaoyan (n 321) 146

³⁶⁶ Kinglun Ngok, ‘Globalization and Higher Education Reform in China’ in *Globalization: Educational Research, Change and Reform* edited by Nicholas Sun-Keung Pang (Chinese University Press, Hong Kong 2006) 73-99

³⁶⁷ See the later discussion in this section on ‘Section Two’ of *The Decision of the Central Committee of the Communist Party of China on the Reform of the Educational Structure*

³⁶⁸ Ngok (n 40) 146

³⁶⁹ *Ibid*, 146; Murphy and Johnson (n 322) 449

levels) to develop education and has offered ‘possibilities for harnessing local resources’.³⁷⁰ In early 1994, the central government reformed the national tax system. As well as introducing a new tax structure, the reform also defined the tax revenues and responsibilities of the central and local governments at lower levels.³⁷¹ The reform of the taxation mechanism weakened local government revenues but strengthened the state’s. As a result local governments at township and county district levels had to ‘eat in separate kitchens’.³⁷² In other words, lower level governments (those at township and village levels) were no longer able to turn to the county authorities for financial help to cover emergency expenditure.³⁷³ Since the nine-year compulsory education programme depended heavily on the township governments’ fiscal resources,³⁷⁴ only those towns with a strong ‘industrial and commercial tax base benefited from the increased latitude afforded by the reform and were able to retain more revenue for investment in public goods’.³⁷⁵ For less economically developed regions, however, revenues received at township level were insufficient; so the areas had difficulty ‘paying teachers’ salaries and school operation costs’.³⁷⁶ This was especially the case in impoverished rural communities like Gansu province, one of the least economically developed provinces in all China.³⁷⁷ Fiscal decentralisation of compulsory education, therefore, laid extra burdens on poor townships, resulting in the levy of school fees (which had a great impact on poorer families, girls, and children with low grades), inadequate school facilities, and delayed payment of teachers’ salaries.³⁷⁸ All of these

³⁷⁰ *Ibid*, 146; Murphy and Johnson (n 322) 449

³⁷¹ Mun C. Tsang, ‘Financial Reform of Basic Education in China’, *Economics of Education Review* (1996) (15) (4) 42-444

³⁷² Mingxing Liu, Rachel Murphy, Ran Tao and Xuehui An, ‘Education Management and Performance after Rural Education Finance Reform: Evidence from Western China’ (2009) 29 *International Journal of Education Development* 463-473

³⁷³ *Ibid*, 465

³⁷⁴ Rachel Murphy, ‘Paying for Education in Rural China’ in *Paying for Progress in China: Public Finance, Human Welfare and Changing Patterns of Inequality* (eds.) Vivienne Shue and Christine Wong (Routledge 2006) 69-96

³⁷⁵ Liu, Murphy, Tao and An (n 372) 465

³⁷⁶ *Ibid*, 465

³⁷⁷ *Ibid*, 465

³⁷⁸ Hannum and Adams (n 350)

were common.³⁷⁹ Because of this, some of the poorer local authorities requested a re-centralisation of fiscal power.³⁸⁰ The central government responded to their concerns with a series of equity-oriented policies promulgated throughout the period. For example, the *1995 Education Law of China*³⁸¹ affirms the government's commitment to extend equality of educational opportunities to all its citizens, regardless of 'nationality, race, sex, occupation, property condition or religious belief'.³⁸² It specifies that the state should 'help all ethnic minority regions, remote areas, and poverty-stricken areas' in their educational development.³⁸³ Most importantly, in order to relieve local governments at township level from their financial burdens, the *1995 Law* shifted the responsibility for funding compulsory education up to the county government (*xian*). The law stipulates that 'the departments in charge of educational administration under the local People's government at and above the 'county' level shall be responsible for the educational works within the jurisdiction of the respective administrative region.'³⁸⁴ This decision was reflected in the *State Council's Decision on the Development and Reform of Basic Education in 2001*³⁸⁵ and the revised *2006 Compulsory Education Law*:

Compulsory education shall be under the leadership of the State Council, be carried out under the overall planning by the provinces, autonomous regions, municipalities directly under the central government, and be mainly administrated by the people's governments at the county level (*yi xian wei zhu*). The education administration departments of the people's governments at the county level or above shall be responsible for the implementation of the compulsory education policy. Other relevant departments of the people's governments at the county level or above shall, within the scope of their respective function, be responsible for the implementation of the compulsory education policy.³⁸⁶

³⁷⁹ Liu, Murphy, Tao and An (n 372) 465; Murphy (n 374) 69; Mun C. Tsang, 'Intergovernmental Grants and The Financing of Compulsory Education in China' (Teachers College Columbia University 2001) 4

³⁸⁰ *Ibid*, 465; Ngok (n 40) 146; Hannum and Adams (n 350)

³⁸¹ (Adopted on 18 March 1995)

³⁸² Art. 9

³⁸³ Art. 10

³⁸⁴ Art. 15

³⁸⁵ Para. 7 of the *State Council's Decision on the Development and Reform of Basic Education*, adopted by the State Council on 29 May 2001; Liu, Murphy, Tao and An (n 372) 463

³⁸⁶ Art. 7

Who should be financially accountable?

At this point, we may refer back to the question: who has the main obligation to provide free compulsory education to internal migrant children in the receiving cities? In practice, it is the local authorities at district and county level.³⁸⁷ The five hierarchic levels of administration in China are shown, as represented by Yuan, in Chart 1, together with their financial responsibilities. The levels are: the central government (*zhongyang*); the provincial level governments for autonomous regions and municipalities directly under the central government (*sheng, zizhiqu, zhi xian shi*); the municipalities under the provinces (*sheng xia shi*); the rural county (*xian*) and urban district/county (*qu/xian*) governments; and the township or village governments (*xiang zhen*).³⁸⁸ Under the decentralised financing system for compulsory education, the central government contributes around 10 per cent to compulsory education and the provincial authorities around 20 per cent. The remaining 70 per cent comes from the local governments in the cities at district and county levels.³⁸⁹ Yuan states that, both in the legislative arrangement and in practical reality, this throws a heavy and nearly solo financial burden onto the district and county governments, and they do not get sufficient financial help from the higher governments at municipal, provincial and central levels.³⁹⁰ The rapid increase in numbers of migrant children has created an extra challenge for local capacities, especially in the densely settled receiving cities, which are then charged with providing compulsory education for both migrant and local children. The priority task for the local authorities there is to increase efficiency and enlarge the capacity of the local state schools to take on additional pupils.³⁹¹

³⁸⁷ Yang (n 74)

³⁸⁸ Yuan (n 78) 'The Issue of Fiscal Distribution and Compulsory Education'; 'Provinces, Autonomous Regions, Municipalities' <http://news.xinhuanet.com/english/2003-02-19/content_815536.htm> accessed 30 December 2012

³⁸⁹ *Ibid.*, Yuan; Du Yuhong and Sun Zhijun, 'Research on Compulsory Education Financing in China' (Beijing Normal University Press 2009) 20; Lv Liyan, *Theory of Principal-Agent in Education - an Investigation about Rural Education* (Northeast Normal University Press 1998) 34; Li and Li (n 41) 49

³⁹⁰ *Ibid.*, Yuan

³⁹¹ Apart from the consideration of the capacity of state schools, providing an adequate education for migrant children in both local migrant and state schools also depends a great deal on the political will of the particular local government they fall under, as discussed in the previous section.

Guang Dong Province, for instance, one of the most densely urbanised regions,³⁹² has received a vast number of migrants, with numbers continuing to increase in very recent years:³⁹³ we have already described how Guangzhou city in Guangdong Province has had a 10 per cent increase in migrant children every year since the 1990s. State schools in such hard-pressed areas naturally feel reluctant to enrol this influx because of the limited local capacity and because of the financial pressures their local governments are under. Fengtai district in Beijing, another example, receives a large number of internal migrant children every year, but already struggles to provide adequate educational facilities for its own local children.³⁹⁴ Even though, officially, migrant parents contribute to the revenues, the local governments could reasonably argue that serving the migrant children would violate the budget allocation regulations³⁹⁵ in which allocation for education is strictly based on a count of the number of permanent residents only – that is the school-age children and adolescents registered within its administrative area under the decentralised education system. According to the system, the funding of compulsory education for the migrants is still located in their *hukou* places (their exodus areas). This explains why the receiving cities feel reluctant to enrol migrant children. Furthermore, it is far from easy to transfer funding from the exodus areas to the receiving cities, due to the perpetual mobility of the migrant workers and the resultant uncertainty of their numbers and whereabouts and the difficulties involved in tracking institutional arrangements. The more migrant pupils there are in a receiving city, the greater the financial burden it bears at the lower level. So extending education to these children causes an extra fiscal problem for local authorities in the receiving regions; and certain hard-pressed regions find it especially difficult to cope.

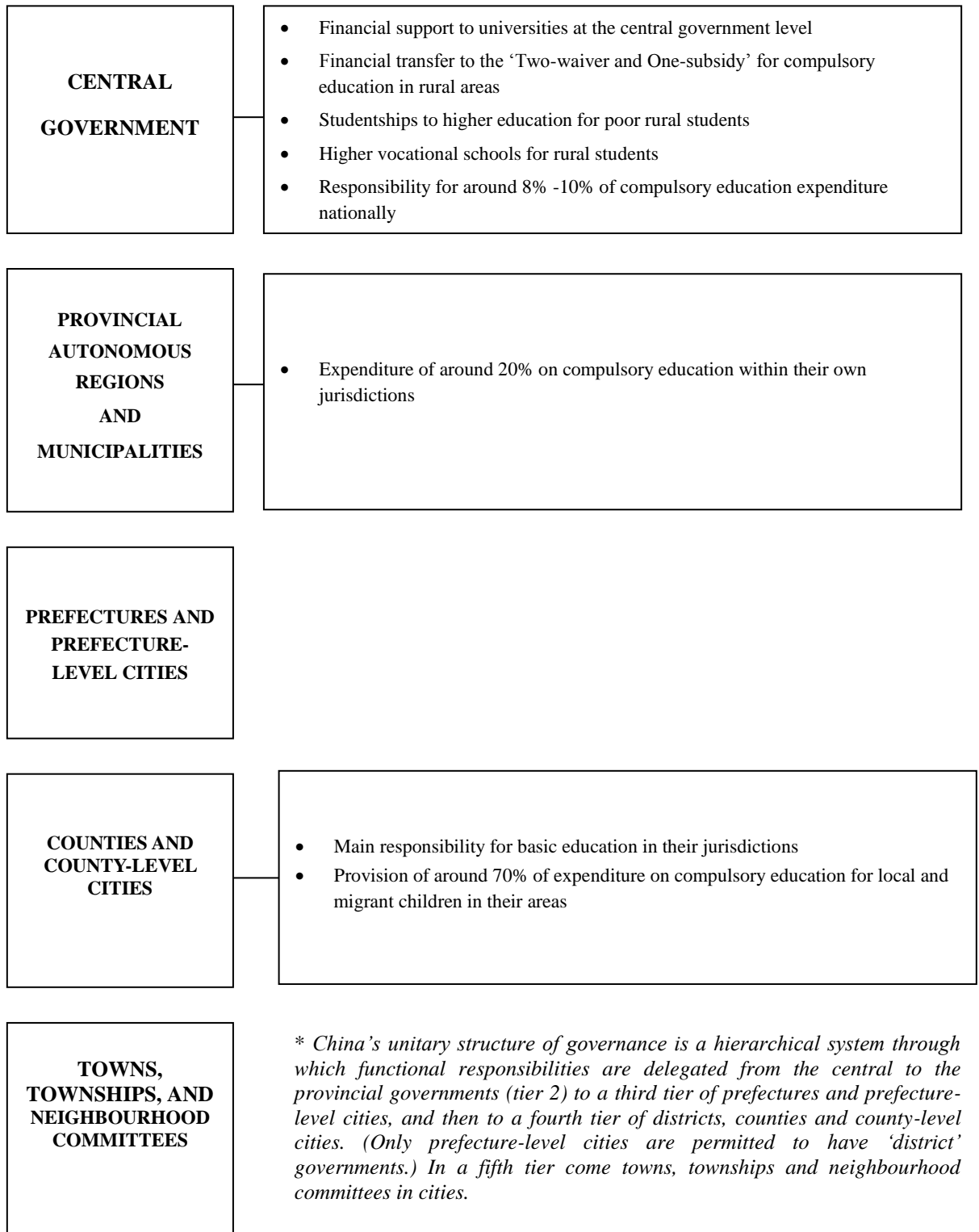
³⁹² Zhang Xing Jie and Yang Zheng Xi, 'The Support of Migrant Children's Access to Education from NGOs – A Case Study in Heng Li Village Community Centre, the City of Dongwan, Guang Dong Province' (2010) 31 Northwest Population 37

³⁹³ In 2009 Guangdong Province received nearly one third of all migrant children in China. This number is six times higher than the number of migrant children arriving in Beijing. This means that every two elementary students are migrant students. Zhao Yinping, 'Why Education Policy for Migrant Children Can Not be Enforced Properly' <http://news.xinhuanet.com/politics/2009-12/19/content_12670346_1.htm> accessed 25 August 2012

³⁹⁴ Charlotte Goodburn, 'Learning from Migrant Education: A Case Study of the Schooling of Rural Migrant Children in Beijing' (2009) 29 International Journal of Educational Development 503

³⁹⁵ Xiang Biao, 'How Far are the Left-Behind Left Behind? A Preliminary Study in Rural China' (Oxford University Centre on Migration, Policy and Society, Working Paper No. 12, 2005) 7

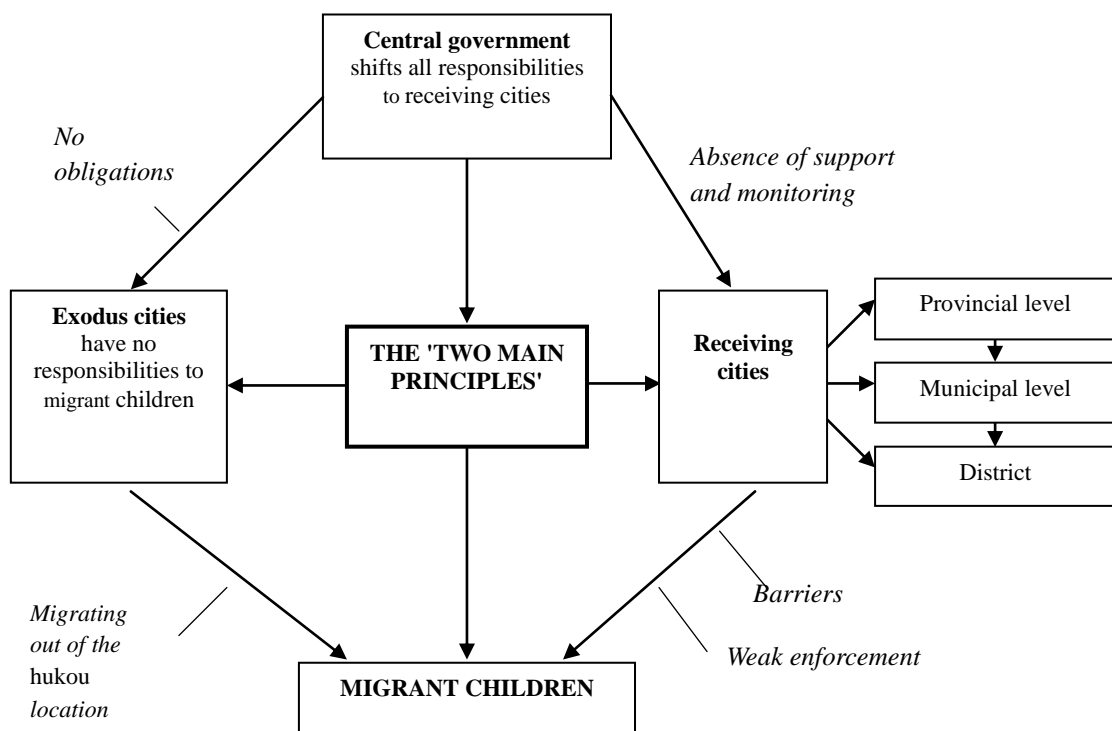
*Chart 1: Administrative hierarchy and public expenditure on compulsory education at different levels of government**



Furthermore, as the chart indicates, the division of financial responsibilities between the central government, the receiving cities and local governments at various levels remains incompletely clarified. This causes inconsistent enforcement in different receiving cities. Additionally it is left unclear what responsibility the exodus regions may have, and there is no coordination between these regions and the receiving ones.

From all this, it could be strongly argued that financial accountability for funding migrant children has not been properly clarified in the current regulatory framework. Under the decentralised financing and administrative system of education, the central, provincial and municipal governments have let go of their responsibilities for migrant children, passing them down to the lowest levels of government without either defining their own financial responsibilities or taking an interest in how much financial

Chart 2: Allocation of responsibilities at different levels of government in enforcement of the 'Two Main Principles'



support might be needed. This seems highly unreasonable.³⁹⁶ It is a basic reason why migrant children face the problems that have been discussed, such as levies for indirect fees and the requirement to provide a range of credentials. It lies behind the difficulties in getting access to good quality compulsory education and the resultant attendance of many migrant children at ill-equipped privately-run migrant schools, continually faced with the risk of being shut down.³⁹⁷ All in all, as Han notes, unless there is a reform of the decentralised funding system, with its base on the *hukou*, the education system itself will continue to be unavailable and inaccessible for migrant children.³⁹⁸

Legal accountability and supervision mechanism

One of the objectives of legislation is to define who is entitled to what, who is obliged to do what, and what measures can be taken in cases of non-compliance. With regard to compulsory education for migrant children, it is a ‘public welfare cause that shall be guaranteed by the State’ (Art. 2). But although the *2006 Compulsory Law* entitles migrant children to free compulsory education provided by the local authorities with ‘equal conditions’ (Art. 12), the central government simply lets ‘provinces, autonomous regions and municipalities’ ‘formulate (their own) concrete measures’³⁹⁹ without specifying its own obligations. A similar provision to the *2006 Compulsory Law*, similarly vague, can also be found in Art. 18 of the *1998 Interim Measures for the Schooling of the School-age Migrant Child*.⁴⁰⁰ These ambiguous provisions give local authorities ‘a large amount of freedom’ in interpreting the state’s guidelines’.⁴⁰¹ In other words, the law and regulations license provinces, autonomous regions and municipalities to formulate their own concrete measures without issuing either practical guidelines or supervision. Lacking any lead from the central government,

³⁹⁶ Goodburn (n 394) 503

³⁹⁷ Julia Kwong, ‘Educating Migrant Children: Negotiations Between the State and Civil Society’ (2004) *The China Quarterly* 1082; Xia (n 40) 31

³⁹⁸ Han (n 40) 98-102

³⁹⁹ Art. 12

⁴⁰⁰ Examined in Chapter 2, Section ‘A Review of National Policy Development for Improving Compulsory Education for Internal Rural Migrant Children in China’

⁴⁰¹ Goodburn (n 394) 503; Chloe Froissart, ‘The Hazards of the Right to Education, A Study of the Schooling of Migrant Workers in Chengdu’ 2003 (48) *China Perspectives* <<http://chinaperspectives.revues.org/386>> accessed 13 February 2013

local governments tend to make decisions based on pragmatism and on local perspectives and priorities. Naturally this leads to uneven implementation.⁴⁰²

One of the possible reasons for this patchy local enforcement is linked to the local legislative mechanism under China's decentralisation scheme which has increased both local economic, political and legislative power. The local legislative power, as an important component of China's national legislative system, plays a quite significant role in promoting regional economic and social developments and maintaining local stability.⁴⁰³ Yet this, in turn, has tended to lead to an increasing abuse of local authority, and also given local authorities the latitude to opt for different interpretations of the national law. This can jeopardise legal enforcement at the local level, as evidenced by the continued exclusion of migrant children. Since the 'opening-up' and economic reforms introduced in 1978, the Chinese legislative system has gone through correspondingly profound changes. The legislative body has developed from a singular to a more 'pluralistic and multi-tiered' system in order to meet the demands entailed in establishing a democratic legal system for the new era.⁴⁰⁴ A combination of unification and separation under a 'centralised, multi-rank, and multi-layered' legislative system was accordingly introduced under the *1982 Constitution Law of China*.⁴⁰⁵ Even though, at central level, the National People's Congress (the NPC) is 'the highest organ of state power'⁴⁰⁶ and possesses the greatest authority over legislation, with the power to examine laws promulgated by other parts of the government,⁴⁰⁷ the main legislative body is in general pluralistic.⁴⁰⁸ Apart from the

⁴⁰² *Ibid.*, Goodburn 503; Amanda Seel, 'Country Profile Prepared for the Education for All Global Monitoring Report 2008 Education for All by 2015: Will We Make it? China, Vietnam, Cambodia, Philippines and Indonesia' (2008/ED/EFA/MRT/PI/66)

⁴⁰³ Jiang Li, 'A Reflection on the Local Regulations after the Establishment of the Socialist System of Laws with Chinese Characteristics' <<http://rdcwh.qingdao.gov.cn/n8146584/n8152636/n8153755/18131161.html>> accessed 13 February 2013

⁴⁰⁴ Dingjian Cai, 'Social Transformation and the Development of Constitutionalism', in *China's Journey Toward the Rule of Law, Legal Reform 1978-2008* (ed.) Dingjian Cai and Chenguang Wang (Brill 2010) 65

⁴⁰⁵ *Ibid.*, Wang Chenguang, 'From Rule of Man to the Rule of Law' in *China's Journal Toward the Rule of Law, Legal Reform, 1978-2008* 21; The Legislative System of China <<http://www.china.org.cn/english/features/legislative/75857.htm>> accessed 19 January 2013

⁴⁰⁶ Art. 57 of *the Constitution*

⁴⁰⁷ *Ibid.*, Art. 58 and 62

Constitution and the statutes enacted by the NPC, the local people's congresses and their standing committees in the provinces and in the larger cities have also expanded their legislative power and become legislative bodies. Thus the multiple layers of legislative authorities include: (1) the Constitution enacted by the National People's Congress (NPC); (2) statutes enacted by the NPC⁴⁰⁹ and its Standing Committee; (3) 'administrative measures, administrative rules and regulations and decisions and orders' issued and enacted by the State Council;⁴¹⁰ (4) 'local regulations' adopted by the people's congresses or their standing committees in the provinces, autonomous regions or municipalities under the central government,⁴¹¹ or in the special economic zones;⁴¹² (5) 'autonomy regulations and specific regulations adopted by a 'people's congress of national autonomous areas'⁴¹³ and (6) 'rules' adopted by the 'ministries and commission of the State Council, the People's Bank of China, the State Audit Administration, and other organs endowed with administrative functions directly under the State Council',⁴¹⁴ as well as by local governments of the 'provinces, autonomous regions, municipalities directly under the central government and the comparatively larger cities'⁴¹⁵ This list indicates that many other bodies have considerable powers to make local laws and administrative regulations and rules. The promulgation of the *2000 Legislation Law of China*⁴¹⁶ gave local people's congresses and their standing committees further legislative opportunities and authority to 'exercise self-legislation'⁴¹⁷ to fit local conditions. Art. 63 of the law states:

the people's congresses or their standing committees of the provinces, autonomous regions and municipalities directly under the Central Government may, in light of

⁴⁰⁸ Cai (n 404) 66

⁴⁰⁹ *Ibid.*, Art. 67

⁴¹⁰ *Ibid.*, Art. 89

⁴¹¹ *Ibid.*, Art. 100

⁴¹² Art. 65 of the *Legislation Law of China*

⁴¹³ Art. 116 of the *Constitution*

⁴¹⁴ Art. 71 of the *Legislation Law of China*

⁴¹⁵ *Ibid.*, Art. 73

⁴¹⁶ (Adopted by the People's Congress on 15 March 2000)

⁴¹⁷ Cai (n 404) 67

the specific conditions and actual needs of their respective administrative areas, formulate local regulations, provided that such regulations do not contradict the Constitution, the laws and the administrative regulations. The people's congresses or their standing committees of the comparatively larger cities may, in light of the specific local conditions and actual needs, formulate local regulations, provided that they do not contradict the Constitution, the laws, the administrative regulations and the local regulations of their respective provinces or autonomous regions, and they shall submit the regulations to the standing committees of the people's congresses of the provinces or autonomous regions for approval before implementation [...].

In this way local sovereignty and autonomy have been expanded through the law, allowing local governments to promulgate the more localised legislation and regulations, and encouraging the 'adoption of reform' while opening up 'policy and social and economic development'.⁴¹⁸ The latest available figures indicate that some 239 national laws, 690 administrative regulations and 8,600 local regulations have been promulgated.⁴¹⁹ All this means that the central government no longer has the degree of power it once had to impose laws on the people's governments at lower levels. Instead of imposing its decisions on the localities, it makes general enabling regulations and the local authorities at different levels formulate their own local regulations 'in light of the specific conditions and actual needs of their respective administrative areas'. These are then acceptable, so long as they reflect the general spirit of the central government's decree.⁴²⁰ The concept of rules suitable for individual local conditions is implied in the wider paradigm of decentralization in China. Decentralisation has increased the economic and political power of local authorities, but is seriously weakening the control the state has over them. In areas like education, decentralisation has greatly 'undermined the central government's ability to guarantee compliance with its policies and laws in matters beyond its administrative and managerial reach'.⁴²¹ Flexibility under this legislative decentralisation provides room for local authorities not only to interpret national regulations but to 'put different weights on different parts' and to choose 'the most appropriate strategy' for their

⁴¹⁸ *Ibid.*, 68

⁴¹⁹ Li Zhaoxing, 'Establishment of the Legal System Does not Depend on the Numbers of Laws' <http://news.xinhuanet.com/legal/2011-03/04/c_121150317.htm> accessed 26 January 2013

⁴²⁰ Art. 63 of the *Legislation Law*

⁴²¹ Brian Holland, 'Migrant Children, Compulsory Education and the Rule of Law in China' 14 (2008) *Buffalo Human Rights Law Review* 212

‘preferences, orientation and actual economic, social and political circumstances’.⁴²² Local levels can also ‘pick on one suggestion over another, or ... do nothing as they see fit’.⁴²³ Dong explains that the fundamental problem of enforcement is ‘how and to what degree the regional government converts national policies into realities (at local levels). The real problem [lies] in the way power and responsibilities are being devolved to regional governments, and regional governments, by definition, [represent] and [protect] the interests of their regional communities.’⁴²⁴ The continued violation of migrant children’s rights to education reflects this problem at the micro level. Furthermore, policy coordination amongst national and local agencies has been noticeably weak.⁴²⁵ At the national level, there are about ten national ministries and departments that share common interests in policy-making in the area of migrant children and their schooling. These include the Ministry of Education, the State Commission Office for Public Sector Reform, the Ministry of Security, the National Development and Reform Commissions, the Ministry of Finance, the Ministry of Human Resources and Social Security, and government price departments. Any of these bodies may issue national administrative regulations (circulars, notices and opinions) on the same issue. The lower-tier local authorities therefore find themselves confused about tasks and objectives, and there is no proper supervision to help them.⁴²⁶ Additionally, there is a lack of effective coordination and communication amongst the local departments themselves, where officials have poorly defined responsibilities and accountabilities; and this may further jeopardise enforcement of national regulations.⁴²⁷

⁴²² Kwong (n 397) 1080

⁴²³ *Ibid.*, 1080

⁴²⁴ Dong (n 75); Albert H.Y. Chen, ‘Legal Thoughts and Legal Development in the People’s Republic of China’ in *Legal Reforms in China and Vietnam, A Comparison of Asian Communist Regimes*, edited by John Gillespie and Albert. H.Y. Chen (Routledge 2010) 65

⁴²⁵ Yuan and Tian (n 51) 205-206; Brixi (n 278) 37-38

⁴²⁶ *Ibid.*, Brixi 38

⁴²⁷ *Ibid.*, Yuan and Tian 206

Moreover, no sound monitoring mechanism for the law has as yet been fully established.⁴²⁸ Monitoring and supervision should be a part of the law. Yet the absence of key monitoring legislation in the current legal framework, such as an administrative coercion law and an administrative inspection law, only contributes to the weakness of attempts to impose the law. In addition, the lack of unification and coordination amongst a jumble of regulations, rules, laws and normative documents is a matter of serious concern.⁴²⁹ As the earlier discussion addressed, under the ‘sheer complexity’ of current national legislative system,⁴³⁰ a number of entities are empowered to promulgate their own pronouncements. Administrative regulations formulated by local governments have a great variation in the scopes, standards, administrative procedures and legal liability they contain.⁴³¹ The central government’s ability and inclination to monitor its various agents under this circumstance has been weakened, and has not been enforced uniformly across sectors.⁴³² Definition of the accountability of governments also varies greatly amongst different regions.⁴³³ For instance, the same offence or misconduct may be punishable in one city but not in another.⁴³⁴ Furthermore, the granting of political and legislative power to local governments without any independent monitoring mechanism being established naturally leads to abuse of power at local levels.⁴³⁵ In the field of education, the law establishes no more than a superficial system of monitoring by stating that ‘an educational supervisory institution of the people’s government shall supervise compliance with the laws and regulations in the compulsory education work, the educational and teaching quality as well as status of balanced development of compulsory education, and shall issue

⁴²⁸ Wang (n 405) 19 & 22 & 44; Zhu Weijiu, ‘Towards Governance by Rule of Law’ in *China’s Journey Toward the Rule of Law, Legal Reform 1978-2008* (eds.) Cai Dingjian and Wang Chenguang (Brill 2010) 140; Holland (n 416) 237

⁴²⁹ *Ibid.*, Zhu Weijiu 140; Wei Qing, ‘Legislative Perfection of Administrative Accountability System’, *Energy Procedia* 5 (2011) 1138-1142

⁴³⁰ Holland (n 421) 237

⁴³¹ Qing (n 429) 1140

⁴³² Murray Scott Tanner and Eric Green, ‘Principles and Secret Agents: Central Versus Local Control Over Policing and Obstacles to “Rule of Law” in China’ (2007) 191 *The China Quarterly* 644-670

⁴³³ Qing (n 429) 1140

⁴³⁴ *Ibid.*

⁴³⁵ Holland (n 421) 237; Tanner and Green (n 432) 644

supervisory reports to the general public.’⁴³⁶ The problem with this clause on monitoring has been pointed out by Yang: it is that the provision is merely a general principle which cannot really be put into practice.⁴³⁷ With the current supervisory system, the ‘education supervisory institution’ turns out to be a dependent subordinate body coming under the local education administrative authority itself.⁴³⁸ The local People’s Government Inspection Offices, as they are called, together with their personnel and funding are all under the control of the local educational authorities they are supposed to monitor.⁴³⁹ In the wider scheme, Inspection Offices in the lower tier are subject to supervision and evaluation from upper tier offices in a ‘top down’ system. The local initiative is driven by the need to reach certain targets set by the upper level, tempting the Inspection Offices to provide ‘a rather rosy picture of progress on the ground’ rather than tackle the local goals of planning educational improvement.⁴⁴⁰ Lack of effective democratic supervision and decision-making mechanisms at the local level makes it hard for local authorities to act purposively and guarantee the fulfilment of the public service requirements laid on them.⁴⁴¹ Furthermore, the only regulation on supervision, the *Interim Measures for Supervision of Education* in 1991,⁴⁴² are arguably too outdated to be put into effect now – and this includes supervision of the treatment of migrant children. Key issues that remain unaddressed are: how to establish a transparent procedure for admission and enrolment; how (and through what procedure) to monitor and measure the outcome of compulsory education for migrant children in both state and migrant schools; who should be responsible for updated data collection (disaggregated by sex, age and urban/rural regions, and including literacy attainments, dropout rates and compulsory schooling

⁴³⁶ Art. 8 of the 2006 *Compulsory Education Law*

⁴³⁷ Yang Chengming, ‘The Five Perspectives on the New Compulsory Education Law’ (2007) 1 *Law Science Magazine* 90-93

⁴³⁸ Yanrong Liu, ‘A Report on the Enforcement of Educational Finance for Compulsory Education’ in *Policy for Compulsory Education in China, A Report on Enforcement by Local Authorities* (eds.) Lanchun Zhang, Yanrong Liu, Chaohui Fo, Hong Zhang and Yi Jiang (Zhejiang University Press 2011) 79-88

⁴³⁹ *Ibid.*, 86

⁴⁴⁰ Seel (n 402)

⁴⁴¹ Liu (n 438) 86

⁴⁴² (adopted on 26 April 1991 by the former State Commission on Education, now the Ministry of Education)

participation in gross and net enrolment ratios); how to establish an effective and holistic data collection system for migrant children, taking into account their mobility; and how the local authorities should control the minimum educational standards in migrant schools?

Furthermore, the absence of a judicial relief mechanism specifically dealing with redress in the case of children's rights to education being denied is another concern. The legal entitlement of 'the right to compulsory education of school-age children and adolescents' in Art. 1 of the *2006 Compulsory Education Law* has far less bite without such a mechanism. At present, there are two administrative remedies for non-compliance by the authorities: they can be either through a student petition/complaint system or through an educational administrative review.⁴⁴³ The general principle of the student petition system is enshrined in two pieces of legislation. According to Art. 44 (4) of the *Education Law*, 'education receivers shall enjoy the following rights and interests according to the law', including being able to 'bring a complaint to the relevant department in case of refusal to accept a disciplinary action of the school; and bringing a complaint or a suit according to the law if the right of personal safety or property has been infringed upon by the school or teacher'. The *Law on the Promotion of Non-public Schools of China* also states that 'where a non-public school infringes upon the lawful rights and interests of educatees, the educatees and their relatives shall have the right to make petition to the administrative department of education and any relevant departments, and the said department shall handle it without delay' (Art. 42). Student complains should be submitted in a written manner to the relevant educational administrative authorities.⁴⁴⁴ Yet despite these legal provisions laying down the general principle of the complaint system, the state has not formulated a concrete legal procedure, covering such matters as the scope of accepting applications, jurisdiction, time periods, service and withdrawal, penalties and enforcement.⁴⁴⁵ This means, in practice, that the interests and rights of students, including migrant pupils, are hardly protected.

⁴⁴³ Shaofeng Chen, *On the Disputes over the Right to Education and the Related Legal Remedy* (Educational Science Publishing House 2010) 69-99

⁴⁴⁴ *Ibid.*, 70

⁴⁴⁵ *Ibid.*, 91

The second remedy is attainable through an educational administrative review system, promulgated in the *2006 Compulsory Education Law* (Art. 51-60). Those who can be legally liable include the related department of the State Council, local authorities at or above the county level, the mainstream state schools, organisations and individuals.⁴⁴⁶ Administrative corrections and sanctions are the main penalties. For example, the legal accountability of ‘any of the relevant departments of the State Council or any of the local people’s governments at all levels’ is laid upon their guarantee of operating funds enshrined in Chapter VI of the law’ (Art. 51). Where they fail to enforce these provisions, the State Council or the superior local people’s governments shall order it to make corrections within a time limit. If the circumstances are serious, an administrative sanction shall be given to the person directly in charge and the other persons directly responsible (Art. 51). The liability of local authorities extends to cases ‘where any of the local people’s governments at the county level or above fails to formulate and adjust plans on the setup of schools [...]’ or ‘to arrange the compulsory education operating funds in a balanced manner’; and if there is such a failure, ‘the people’s government at the upper level shall order it make corrections. If the circumstances are serious, an administrative sanction shall be given to the directly liable person-in-charge and other directly liable persons’. Moreover, if state schools refuse to ‘admit [children to] the classes corresponding to the levels of the disabled school-age children and adolescents who are capable of receiving regular schooling’, or expel ‘students in violation of the provisions in this law’, or ‘divide classes into key and non-key ones’, or use ‘textbooks which have not been examined and for which no approval has been obtained’, these ‘schools shall be ordered to make rectification within a time limit by the administrative department for education of the people’s government at the county level’ (Art. 57). If state schools collect illegal fees from students in violation of state regulations, ‘they shall be ordered by the administrative department for education of the people’s government at the county level to return such fees, and the person directly in charge shall be punished according to law (Art. 56)’. Currently parents or groups of individuals cannot litigate against the authorities or educational bodies when they fail to act legally or breach their duty of protecting educational rights. This is mainly because the scope of accepting cases concerning the right to education has not been legally recognised in either the Administrative

⁴⁴⁶ Art. 51-60

Procedure Law of China⁴⁴⁷ or the Civil Procedure Law of China.⁴⁴⁸ Thus it is essential to improve the current student petition system through a more practical and detailed legal procedure and to develop a special system for dispute litigation and resolution covering the field of education.

Political accountability and governance

The problems faced by migrant children can be said to reflect in microcosm a system responding to pressures in a piecemeal way. In order to provide an adequate and sound public compulsory education for migrant children, an effective normative and institutional mechanism is needed that sets out their needs and ensures that the implementation of measures is upheld by strong political commitments with clearly defined governmental accountabilities at financial, legal and political levels.

Lack of political accountability, aggravated by issues relating to the current cadre system and local governance,⁴⁴⁹ may be one of the main factors currently working against enforcement of the provisions for ensuring an adequate education for migrant children.

‘Under a still-centralised political system with extensive expenditure decentralisation but with little revenue decentralisation’,⁴⁵⁰ local authorities have tended to be more responsive to their higher-tier government policy than they are local needs. Government at local level remains in the hands of cadres supervised and selected by upper-level authorities. These officials are more responsive and accountable to their higher-tier superiors than to meeting the needs of their own local people. Their tendency to lack genuine commitment to local people (including ‘outsider’ migrant children) is to the detriment of good local governance and causes

⁴⁴⁷ (Adopted on 4 April 1989 by the National People’s Congress)

⁴⁴⁸ (Adopted on 9 April 1991 by the National People’s Congress and revised on 28 October 2007 by the National People’s Standing Committee); Chen (n 443) 76-80

⁴⁴⁹ Mingxing Liu and Ran Tao, ‘Local Governance, Policy Mandates and Fiscal Reform in China’ in *Paying for Progress in China: Public Finance, Human Welfare and Changing Patterns of Inequality*, Vivienne Shue and Christine Wong (eds.) (Routledge 2007) 166-189

⁴⁵⁰ *Ibid.*, as Liu and Tao point out, local officials complain that the higher-tier authorities (especially the central government) monopolise fiscal resources. Especially in less developed regions the central government has failed to provide fiscal transfers commensurate with ever-increasing local expenditure needs, therefore creating local fiscal insolvency leading to chronic under-provision of public services at local level.

selective policy enforcement.⁴⁵¹ They avoid taking responsibility for providing public education for migrant children. These problems are exacerbated by the lack of genuine free elections at the township levels or above. Although the country began to experiment with village elections in the mid 1980s and formally promulgated the *1998 Organic Law of the Villagers' Committees of China*,⁴⁵² the scope of the elections is still limited, and implementation seems to be hindered by government or party interference operating under the current authoritarian institutional environment.⁴⁵³ For example, the Village Committees still work under the leadership of a party committee, a feature reflecting the one-party system in the country. Research also indicates that local people tend not to trust the elections: they doubt that their wishes will be respected because of interference by upper-tier governments, especially by the township and county authorities, who are not elected, but are appointed by their higher-tier superiors.⁴⁵⁴ It does not look as if elections at township level or above will come about in the near future, given the nature of the current political system.

Furthermore, local accountability for providing education for migrant children seems to be influenced by biased performance targets. The authorities are appraised and evaluated by development demands and indicators imposed from above through a set of specific quotas.⁴⁵⁵ The performance indicators are 'characterised by a quite great

⁴⁵¹ The topic of cadre management and local governance in China is not the main focus of this study, yet it is touched on here because of its relevance to law enforcement on the ground in relation to migrant children. For more detailed research on cadre management and rural village elections in China, see: Kevin J. O'Brien and Liangjiang Li, 'Accommodating "Democracy" in a One-Party State: Introducing Village Elections in China' (2000) 162 *The China Quarterly* 465-489; Jean C. Oi and Scott Rozelle, 'Elections and Powers: The Locus of Decision-Making in Chinese Villages' (2000) 162 *The China Quarterly* 513-539; Robert A. Pastor and Qingshan Tan, 'The Meaning of China's Village Elections' (2000) 162 *The China Quarterly* 490-512

⁴⁵² (adopted on 4 November 1998 and amended at the 17th Meeting of the Standing Committee of the 11th National People's Congress of China on 28 October 2010). The initial aim of the village election was to put village cadres under the supervision of the local villagers, and to serve as a key function to stabilising the party's rule over the countryside. Shuna Wang and Yang Yao, 'Grassroots Democracy and Local Governance: Evidence from Rural China' (2007) 35 (10) *World Development* 1635-1649

⁴⁵³ Liangjiang Li, 'The Politics of Introducing Direct Township Elections in China' (2002) *The China Quarterly* 704-723; Melanie Manion, 'Chinese Decriminalization in Perspective: Electorates and Selectorates at the Township Level' (2000) *The Chinese Quarterly* 764-782

⁴⁵⁴ Wang and Yao (n 452) 1637; Wang and Yao point that that their analysis does not find strong evidence that the competitiveness of election improves either the accountability of the village committee or the village's relationship with upper-level authorities.

⁴⁵⁵ Tao and Liu (n 449). Another reason why policy targets are set up from above is that there is no genuine election mechanism to reveal local voters' preferences and no chance for the public to monitor local authorities. Thus the higher-tier authorities have to monitor the performance of local leaders by stipulating policy targets and evaluating cadre performance based on how well these targets are met.

emphasis on economic growth, and to a lesser extent social development and party building'.⁴⁵⁶ Although President Hu Jintao, tried to develop new ways offering an opportunity to correct the performance-appraisal system (and especially focusing on a green GDP), it was not successful due to 'opposition from the development-oriented local leaders and central bureaucrats'.⁴⁵⁷ Even though the delivery and development of basic public education is one of the indicators that have to be demonstrated to the upper-tier officials, the provision of both compulsory and post-compulsory education for migrant children is not part of the current evaluation process. So the outcome of providing an adequate education is not related to their indicators and political promotion, and therefore they lack the incentive to enforce it.

Finally there is the issue of access to information. Government political accountability places an obligation upon 'the government, its agencies and public officials to provide information about their decisions and actions and to justify them to the public and those ... tasked with providing oversight'.⁴⁵⁸ The public should be given open access to public information about government agencies, such as internal performance reviews and the reasons as to why the authorities make the decisions they do.⁴⁵⁹ In practice, despite the introduction of a series of national regulations and laws, information asymmetry is still a major problem in China and the whole area needs to be improved. An example of poor dissemination of information is the finding of a recent research survey indicating that around 50 per cent of migrant parents do not know the 'Two-exemption and One-Subsidy' policy, a national scholarship scheme for rural students.⁴⁶⁰ If rural parents knew of this policy, some of them might well choose to stay in their place of origin and benefit from it. More generally, citizens have limited information and few options for holding service providers or local authorities directly

⁴⁵⁶ Bill K.P. Chou, 'Civil Service Reform' in *Government and Policy-Making Reform in China, The Implications of Governing Capacity, Comparative Development and Policy in Asia* (Routledge, 2009) 80-105. Chou points out that economic construction as one of the main performance indicators for evaluating the county and city mayors in Liaoning Province is accorded 60 points; whereas social development and party building are only accorded 20 each.

⁴⁵⁷ *Ibid.*, 97

⁴⁵⁸ Staphenurst and O'Brien (n 314)

⁴⁵⁹ *Ibid.*

⁴⁶⁰ Yuan and Tian (n 51) 204

accountable in cases of failure to deliver.⁴⁶¹ There are few sound institutional mechanisms to safeguard their interests. All too often, citizens ‘lack a sense of empowerment relative to service providers’.

4.3 Conclusions to Chapter 4

This chapter has detailed the main barriers and challenges presented to migrant children within the current legal, institutional and national education systems – barriers and challenges that limit the availability, accessibility, acceptability and adaptability of education for them. The ‘4-A’ scheme, which specifies the content of the right to education and corresponding state obligations towards children in international law, has provided a theoretical framework for identifying what the main barriers are that hinder migrant children who are seeking compulsory education. As is argued throughout this thesis, the national regulatory framework for migrant children greatly depends upon an effective national institutional and normative mechanism to ensure that laws are implemented and upheld by strong political will and clearly defined government accountabilities at financial, legal and political levels. In general, political accountability is implemented through ‘regular, free and fair elections’, and also linked to the division of power across national, state and local levels.⁴⁶² These are accompanied by a balance of executive, legislative and judiciary powers to prevent abuses.⁴⁶³ Lack of transparency in policy-making, flaws in legislative and judicial institutions, and the weakness of political systems and local governance are the main obstacles to achieving effective accountability.

In the next chapter, the main findings of this thesis are summarized, and some suggestions for remedying the barriers identified above are discussed. This discussion will form the conclusion to this study.

⁴⁶¹ Brixi (n 278) 41

⁴⁶² ‘Decentralisation and Political Accountability’ <www.odi.org.uk/keysheets> accessed 16 February 2013

⁴⁶³ *Ibid.*

CHAPTER 5: CONCLUSION

5.1 *Priorities in a time of change*

Since the government introduced the policy of reform and ‘opening-up’ to the world in 1978, China has transformed its economy from a planned system (established by the state after the model of the Soviet Union) to a thriving market economy. The market economy has catapulted the Chinese from a subsistence lifestyle, merely meeting people’s basic living needs, to a complete ‘*xiaokang* society’ – a ‘society of modest means’.¹ China has also become a major centre for global investment and labour-intensive manufacturing industries, and has created its own economic miracle of sustained and rapid economic growth.

Nevertheless, the changes have not been without problems. The rapid economic development and unprecedented urbanisation experienced by China in recent years has triggered internal migration on a huge scale and this has given rise to a number of social-economic, legal and political challenges. These challenges include the problem of ensuring that internal rural migrant children can access proper education – especially basic compulsory education – on an equal basis in the receiving cities. The problems and concerns surrounding education for these children are not merely educational ones: the children and their families meet a number of deeper complex obstacles embedded in the institutional and normative systems currently prevalent in China. The ‘small’ problem of making education accessible to them is magnified by challenges from different aspects of the institutional arrangements, some of which are intended to help. There are challenges from the national education system and its fiscal management under the paradigm of decentralisation, from the retention of the *hukou*-based registration and enrolment system, from the lack of capacity in state schools, from weak political will, from inequitable funding and from lack of financial, legal and

¹ The term ‘*xiaokang*’ society literally means ‘moderately well-off’, a status less affluent than ‘well off’, but better than ‘freedom from want’. The concept of ‘*xiaokang*’ society, initially proposed by the Chinese leader Deng Xiaoping in 1984, was meant to describe the progress from modernisation in China and to set up a target per capita gross domestic product (GDP) of US \$800 – to be attained by the end of the twentieth century. Although China has reached the economic goal, the real challenge it now faces in its pursuit of an overall ‘*xiaokang*’ society is the promotion of social equality. The meaning of ‘*xiaokang*’ denotes not only material comfort, but harmonious development in all aspects. See ‘Blueprint for an Overall Xiaokang Society in China’

<<http://www.china.org.cn/english/China/50224.htm>> accessed 29 December 2012

political accountabilities. Thus the problems faced by migrant children can be said to reflect in microcosm a system that is struggling to maintain control and stability at a time of radical change and is responding to pressures in a piecemeal way. At both central and local levels the Chinese government faces tremendous challenges. The state has realised the importance of promoting fairness in education, including equal access to schooling for migrant children,² and has been adjusting its national regulatory framework and encouraging local authorities to promote both equality and quality in public schooling. Nevertheless, in the context of rapidly accelerating urbanisation and social transformation, it is far from easy to deliver efficient public services, including public education, or to be rapidly responsive to the actual circumstances and needs of migrant children and be flexible enough to accommodate their high mobility.

From a broader perspective, the essential point of tension is how to strike a balance between economic growth and equitable social development. Since the beginning of the twenty-first century, the Communist Party of China (CPC) and the State Council have started to prioritise certain social development areas, including developing the rural regions and promoting poverty reduction in the central and western regions.³ As of 2012, governments at all levels have increased spending on science, technology, education, culture, health and sports programmes with a total budget reaching 2.82 trillion Yuan for ‘developing social services and promoting balanced economic and social development’ at the national level.⁴ Over 30 million rural boarding school students have been exempted from accommodation expenses, and 12.28 million of them, from rural families in the central and western regions have been receiving living allowances.⁵ The focus is on sustainability and the environment, and there is emphasis too on education and on strengthening democracy and the

² ‘Full Text of Hu Jintao’s Report at 18th Party Congress’, VII. ‘Strengthening Social Development by Improving the People’s Wellbeing and Making Innovations in Management’ <http://news.xinhuanet.com/english/special/18cpcnc/2012-11/17/c_131981259_8.htm> accessed 20 February 2013

³ See, for example, *The White Paper 2001, the Development-oriented Poverty Reduction Program for Rural China (2001)* <http://english.gov.cn/official/2005-07/27/content_17712.htm> accessed 12 January 2013

⁴ ‘Report on the Work of the Government (2012)’ <http://english.gov.cn/official/2012-03/15/content_2092737_3.htm> accessed 20 February 2013

⁵ *Ibid.*

Chinese legal system.⁶ In 2001, as part of its overall strategy to encourage industrialisation and urbanisation, the Central Committee of the Communist Party of China announced, at the Conference on Economic Affairs, that the migration of rural labourers to the cities in search of employment met the needs of urban-rural and economic development and the requirements of the market economy. National policies, they said, should no longer be restrictive and discriminatory, but should be adapted to accommodate this phenomenon.⁷ As a result, national policies on rural labourers have changed substantially, shifting from control and restriction to active encouragement of migration and attempts to create a favourable employment environment for internal rural migrant workers.⁸ In its Tenth Five-Year Plan for National Economic and Social Development (2001-2005)⁹ the central government decided to increase the degree of urbanisation, to transfer ‘surplus’ rural peasants to urban areas (establishing a mechanism for an orderly flow), to reform the *hukou* system,¹⁰ and to remove unreasonable restrictions on internal migration.¹¹ In 2002, the principle of ‘fair treatment, reasonable guidance, sound management and better service’ was established to eliminate unreasonable institutions and policies impeding the process of urbanisation and to provide guidance on how to achieve rational and orderly internal

⁶ For example, ‘Reports on the Work of the Government’ and ‘Work Report of the NPC Standing Committee (between 2000 and 2012)’ <<http://english.gov.cn/official/workreports.htm>> accessed 12 January 2013

⁷ Chuanyi Cui and Xiaoli Cui, ‘Changing the Policy Paradigm on Chinese Migrant Workers, Towards Balanced Urban and Rural Development, People-Oriented, Equal Treatment and Consultative Management’ in Errol Mendes and Sakanthula Srighanthan (eds), *Confronting Discrimination and Inequality in China, Chinese and Canadian Perspectives* (University of Ottawa Press 2009) 109-113

⁸ Huang Ping and Zhan Shaohua, ‘Internal Migration in China: Linking it to Development’ in *Migration, Development and Poverty Reduction in Asia* (collected research papers from the Regional Conference on Migration on Development in Asia held between 14 and 16 March 2005 in Lanzhou, China by IOM International Organization for Migration) <http://www.iom.int/china_conf/> accessed 8 December 2012; Rachel Murphy, ‘Labour Migration and Social Development in China’ in *Labour Migration and Social Development in Contemporary China* (ed.) Rachel Murphy (Routledge 2009) 6; Cui and Cui (n 7) 111

⁹ (Delivered at the Fourth Session of the Ninth National People’s Congress on 5 March 2001 by Premier of the State Council Zhu Rongji) <<http://www.china.org.cn/english/8722.htm>> accessed 15 January 2013

¹⁰ The central government started to reform the *hukou* system in about 20,000 small towns in 2001. The minimum requirements for obtaining a local urban *hukou* in small towns for rural labourers were: having had a stable job or source of income and a stable place of residence for over two years. *The State Council Notice on Approving the Ministry of Public Security’s Opinions on Promoting Reform of the Management System for Residence Permits in Small Towns and Cities*, adopted on 30 March 2001

¹¹ Part II ‘The Objectives and Guiding Principles of the Tenth Five-Year Plan’

migration.¹² In 2003 a new paradigm, ‘the Scientific Strategy of Development’ (*ke xue fa zhan guan*), was adopted.¹³ It called for ‘comprehensive, coordinated, sustainable development and a people-centred approach to development’.¹⁴ This policy, as Fewsmith observes, ‘aims to correct the presumed overemphasis on the pursuit of increases in gross domestic product, which encourages the generation of false figures and dubious construction projects along with neglect for the social needs and welfare of those left behind in the poor regions in China’.¹⁵ In the same year the issue of equal treatment of migrant workers¹⁶ was brought up in the *State Council Forwarding the Notice on Providing Administrative Services to Internal Migrant Workers* (the No. 1 Central Government Document).¹⁷ This stressed that unfair restrictions on rural labourers seeking work in urban areas should be abolished, that their occupational health and safety environment should be improved and that their children should receive education of the same quality as that enjoyed by their city-born peers. Most importantly, in 2004, China expressly stated in its Constitution that ‘the State respects and safeguards human rights’.¹⁸ In the same year the state alleviated or waived agricultural taxes in some provinces and in 2006 it abolished agricultural taxes nationally.¹⁹ In 2005, a fund guarantee mechanism for rural compulsory education was established, in which expenditure on rural education (including teacher’s salaries, non-

¹² *Advice on Affairs Related to the Agricultural and Rural Community* (the No. 2 Central Government Document) issued by the State Council in January 2002

¹³ (Amended and adopted at the Seventeenth National Congress of the Communist Party of China on 21 October 2003); ‘The Scientific Outlook on Development’ <<http://baike.baidu.com/view/15952.htm>>; ‘The Scientific Outlook on Development’ <http://news.xinhuanet.com/ziliao/2005-03/16/content_2704537.htm> accessed 13 January 2012

¹⁴ Full Text of the Constitution of the Communist Party of China <http://news.xinhuanet.com/english/2007-10/25/content_6944738.htm>; ‘The Scientific Outlook on Development’ <http://news.xinhuanet.com/ziliao/2005-03/16/content_2704537.htm> accessed 11 January 2013

¹⁵ Joseph Fewsmith, ‘Promoting the Scientific Development Concept’, No.11 *China Leadership Monitor* 2004

¹⁶ The issue regarding migrant children in this document will be discussed later.

¹⁷ (Adopted on 5 January 2003 by the General Office of the State Council)

¹⁸ Art. 33 of the Constitution

¹⁹ ‘China Abolishes Agricultural Tax Three Years Ahead of Schedule’ <<http://www.china.org.cn/english/features/poverty/156685.htm>> accessed 2 January 2013; John James Kennedy, ‘From the Tax-for-Free Reform to the Abolition of Agricultural Taxes: the Impact on Township Governments in North-west China’ (2007) 189 *The China Quarterly* 43

personnel expenditure, capital expenditure and student assistance) would be shared between the central government and the local authorities.²⁰ In 2006, a new paradigm for the educational system was introduced by the Hu-Wen leadership. This moved away from the market-driven approach to a more welfare-based conception. Rural students were exempted from paying fees for compulsory education in western China; and this exemption was extended to central and eastern regions in 2007 and to all urban areas in 2008.²¹ In 2009 the Central Treasury allocated 58.7 billion RMB as a special fund for the promotion of compulsory education in rural areas.²² The state exempted 130 million rural students from a whole range of fees and from textbook charges for compulsory education, and promised living expense subsidies to 11 million boarders from poor rural families in central and western China at the rate of 500 yuan per year for each elementary school student and 750 yuan per year for each junior high school student.²³ In 2012, the importance of providing education for migrant children and integrating rural migrant workers into urban public services was articulated in the *2012 Government Work Report*.²⁴ The central regulation aimed at improving equal access to post-compulsory education for migrant children in receiving cities suggests that the problem should be tackled at local levels from 2012.²⁵

²⁰ Asian Development Bank, People's Republic of China: 'Support for Reforms in Compulsory Education Financing' <<http://www.adb.org/projects/documents/support-reforms-compulsory-education-financing>> accessed 20 January 2013

²¹ *Ibid.*

²² White Paper, 'Progress in China's Human Rights in 2009' (issued by the Information Office of the State Council in 2009) <http://english.gov.cn/official/2010-09/26/content_1709982.htm> accessed 20 January 2013

²³ *Ibid.*

²⁴ Part 4 'Accelerating the Transformation of the Pattern of Economic Development' of the 2012 Work Report (delivered at the Fifth Session of the Eleventh National People's Congress on 5 March 2012 by Premier of the State Council Wen Jiabao) <http://www.gov.cn/english/official/2012-03/15/content_2092737_10.htm> accessed 20 January 2013

²⁵ The General Office of the State Council forwarding the *Notice of the Working Opinions on Improving the Opportunities for the Accessibility of Education for Migrant Children after Their Completion of Compulsory Education in Receiving Regions* (adopted by the Ministry of Education, National Development and Reform Commission, The Ministry of Public Security, and the Ministry of Human Resources and Social Security on 30 August 2012)

5.2 Main findings

This review of recent reforms suggests that the Chinese government is gradually making positive progress towards improving the social welfare of marginalised people like migrant workers and their children and furthering their chances of development. Despite this, problems remain. Although the current legal and regulatory framework for education in China is broadly sufficient to ensure reasonable compulsory schooling for children in their home districts, there has been a failure to provide for a great many children from migrant families. Many of them are still excluded from receiving quality education on an equal basis in the cities they move to. It seems that the existing institutional arrangements and administrative structures have not created a sound basis for appropriate incentives and capacities amongst local authorities and state schools to implement national regulations and laws and make them work in practice. This thesis argues that the Chinese national regulatory framework (and its international human rights treaty obligations) for migrant children depend very strongly on there being an effective national institutional and normative mechanism to ensure they are implemented and upheld by strong political will and clearly defined government accountabilities at financial, legal and political levels. Inadequate institutional and normative arrangements may be holding back local enforcement of measures to improve these children's educational opportunities. There is a huge variation in governance between regions and this divergent local enforcement can also work against migrant children.

The aim of this section is to draw together the key findings examined in the main chapters and to bring out the most important factors still denying migrant children fair educational opportunities. Significant factors include: whether state schools in the receiving cities have the capacity to absorb more pupils; lack of financial, legal and political accountabilities; and retention of the *hukou*-based registration and enrolment system. The implications of these are all summarised below.

5.2.1 The capacities of state schools: educational inequality through unbalanced resource distribution and lack of political will

As explained in Chapter 4, the south coastal receiving cities like Guangzhou, Dongguan and Shenzhen in Guangdong province have to cope with a massive influx of

internal migration. The priority task for the local authorities there is to increase efficiency and enlarge the capacity of the local state schools to take on additional pupils. The latest census in China reveals that Guangdong province now has the largest population of all the provinces in the country.²⁶ It is still the most popular destination for continuing internal migration.

In Beijing and Shanghai, two other cities that immigrants choose to move to, there are rather different concerns. The major concerns here are not so much to do with the issue of school capacities, but centre around educational inequality. The reason for this is that the birth rate in China has steadily decreased due to effective enforcement of the One Child policy.²⁷ Thus, with a dwindling local intake, state schools in these regions should have sufficient spaces for migrant children. Additionally, studying abroad has become popular, since many urban parents believe that obtaining an academic degree from the West could provide a better future for their children. It is estimated that more than 1.2 million Chinese students have left to study abroad since 1978 – making China the largest source country of international students in the world.²⁸ In particular, the exodus of students under 18 – the so-called ‘little overseas students’ (*xiao liu xue sheng*) – has become a nationwide phenomenon.²⁹ In its 2012 Annual Census, the Independent Schools Council of Britain found that students from mainland China and Hong Kong made up 37 per cent of non-British pupils enrolled in the UK’s independent schools (compared to only 34.3 per cent from Europe).³⁰ All this means that local state schools in a city like Beijing should have sufficient educational resources and sufficient capacity to enrol migrant pupils.

Migrant pupils nevertheless get a raw deal. Educational inequality arises from unfair resource distribution. Schools in the city centre benefit at the expense of those in

²⁶ ‘Press Release on Major Figure of the 2010 National Population Census’ <http://www.stats.gov.cn/english/newsandcomingevents/t20110428_402722237.htm> accessed 29 January 2013

²⁷ ‘China’s Mainland Population Grows to 1.3397 Billion in 2010: Census Data’ <http://news.xinhuanet.com/english2010/china/2011-04/28/c_13849795.htm> accessed 22 January 2013

²⁸ Xiang Biao and Wei Shen, ‘International Student Migration and Social Stratification in China’ (2009) 29 *International Journal of Educational Development* 513-522

²⁹ *Ibid*, 519

³⁰ Independent Schools Council Annual Census 2012 <http://www.isc.co.uk/Resources/Independent%20Schools%20Council/Research%20Archive/Annual%20Census/2012/ISC_Census_2012_Final.pdf> accessed 26 January 2013

the surrounding fringe, while so-called ‘key schools’ get more resources than ‘non-key schools’, and there is disparity even between ‘key classes’ and ‘non-key classes’. Registered urban residents, and particular higher income groups have better opportunities to access key schools in cities than do ‘outsiders’.³¹ As shown in Chapter 4, the monopolisation of high quality public educational resources by the schools and classes for existing urban residents turns the prospects of fair education for migrant children into a pipe dream. Although the law formally encourages a reduction in inter-school and intra-school disparities by forbidding streaming into key schools and key classes at compulsory school level,³² key schools continue to be built and to function. They have better infrastructures and stronger teaching teams than normal state schools and deliver higher quality education and services. Children in key schools enjoy better resourcing and consequently stand a better chance of being enrolled into the more prestigious universities when they come to future studies. Migrant children are marginalised and excluded from this resourcing because key schools in the cities do not enrol them: migrant children can only attend the normal state schools in their localities.

Chapter 4 also showed that the local authorities’ commitment to provide for migrant children fairly and equally depends a great deal on the political will of the particular local government they fall under. In practice, the local authorities in Shanghai, Tianjing, Dalian and Fujian, for example, are in the vanguard in providing free compulsory education for migrant children.³³ Not only are these cities financial strong, but they are willing to improve the educational opportunities for migrant students and bear the extra costs.³⁴

5.2.2 The accountability issue

The availability, acceptability, accessibility and adaptability of education cannot be understood properly without identifying in what ways governments at both central and

³¹ Hana Brix, ‘China: Urban Services and Governance’ (UNICEF China 2009) 25

³² Art. 22 of the 2006 *Compulsory Education Law*

³³ Zili Yang, ‘Several Models of Resolving the Difficulties for Migrant Children to Access Education’ <http://www.zhuanxing.cn/html/Education_Right/716.html> accessed 20 January 2013; Brix (n 31)

³⁴ *Ibid.*, Yang

local levels are accountable. At present there is an absence of clear financial, legal and political accountabilities, and no independent supervision mechanisms to press them home. This may be one of the main reasons why the law regarding the provision of compulsory education for migrant children is not being properly enforced.

Inequitable funding

Despite positive efforts made by the central government at the national regulatory level, there is weak local enforcement of reforms in the education system on behalf of migrant children. In many places the practice of levying illegal fees continues; all sorts of credentials are demanded; and there are high drop-out rates. This situation may partly be explained by local reluctance to take financial responsibility, given the constraints and unreasonable pressures currently imposed on the county and district authorities.

As explained in chapter 4, the financial and administrative mechanism for education in China has been decentralised at the county level, as was legally affirmed in the *1995 Education Law*³⁵ and the *2006 Compulsory Education Law*.³⁶ The county and district authorities now face the quite heavy financial obligation of providing compulsory schooling for migrant students without being allocated sufficient funds to achieve this. Under the urban and rural segmented household registration system, the funding allocated is based on the number of school-aged children permanently registered within their own *hukou* administrative areas. Even when migrant children leave their places of origin, the funding for them is still located in the places where they have their *hukou*. It is far from easy to transfer funding from the exodus regions to the receiving cities, due to the perpetual mobility of the migrant population, uncertainty as to their numbers and whereabouts, and the difficulties involved in tracking institutional arrangements. The more migrant pupils there are in a receiving city, the greater the financial burden it bears. So extending education to these children causes an extra fiscal problem for local authorities in the receiving regions; and certain hard-pressed regions find it especially difficult to cope. Naturally some of them feel reluctant to take on more burdens without any real incentive. Moreover, in its legal

³⁵ Art. 14

³⁶ Art. 7

provisions, the *2006 Compulsory Education Law* concerning migrant children and their compulsory education (Art. 12) does not articulate which level of local authority should be responsible for funding these children under the five-tier administrative system of government. In practice, it is assumed that the responsibility should be passed on to the county/district authorities in the receiving cities, since they are the main providers of local public services and goods.

The decentralised education mechanism has deepened regional and rural-urban disparities, and has also intensified the gap between the rich and the poor.³⁷ Since the mid 1980s, when decentralisation began, new resources have been mobilised to support education in general, but regional disparities in school funding have been much exacerbated. The poor rural communities are in a very weak position and it is a great strain for them to provide high quality public education: they lag considerably behind their urban counterparts. Indeed, paradoxically, the lack of good educational provision in rural areas is one of the things that has induced migration to the cities: parents hope their children will find higher quality education there.

In order to improve the problematic financial situation at local level, authorities at the higher county levels – especially the municipal, provincial and central ones – should take their share in covering the cost of providing compulsory education for migrant children. Since they accept that, by its nature, compulsory education is ‘a cross-regional/provincial quasi public good’,³⁸ it seems quite unreasonable to leave

³⁷ See Chapter 4 for a detailed discussion on this issue. See also, for example, Emily Hannum and Meiyang Wang, ‘Geography and Educational Inequality in China’ 17 (2006) *China Economic Review* 253-265; Emily Hannum and Albert Park, ‘Educating China’s Rural Children in the 21st Century’ (2002) 3 (2) *Harvard China Review* 8-14; Gerard A. Postiglione, ‘Schooling and Inequality in China’ in *Education and Social Change in China: Inequality in a Market Economy*, (ed) Gerard A. Postiglione (M.E. Sharpe 2006) 3-24; Emily C. Hannum and Jennifer Adams, ‘Beyond Cost: Rural Perspectives on Barriers to Education’ in *Creating Wealth and Poverty in Postsocialist China* (eds) Deborah S. Davis and Wang Feng (Stanford University Press 2009) 156-172; John. B. Knight and Lina Song, *The Rural-Urban Divide: Economic Disparities and Interactions in China* (Oxford University Press 1999)

³⁸ The term ‘cross-regional’ is used because, although some internal migrants move within their own province (intra-provincial migration), the majority cross provincial borders (inter-provincial migration), as the latest census shows. They move from western and central regions to the east, from the interior to coastal cities and from rural to urban areas. There is much variation in the migrants’ places of origin and their destinations. Some migrant pupils merely attend compulsory education in the receiving cities and then return to their places of origin to continue their high school education. So the county government should not be the sole obligator in this regard. See Yuan Liansheng, ‘When Public Fiscal for Education Can Shine the Light on Migrant Children’

<http://www.qstheory.cn/kj/jy/201106/t20110601_84452.htm>; Highlights of China’s Sixth National Census Results <<http://english.people.com.cn/90001/90776/90882/7367610.html>> accessed 22 January 2013

sole obligation to the localities. Without the establishment of a sound and effective financial mechanism in which central, provincial and municipal authorities all take responsibility, there can be little hope of achieving high quality education for migrant children.

Legal accountability and the supervision mechanism

In a country as large as China, a fully centralised system would be impossible, and currently there is a policy of decentralisation.³⁹ Legislative power is therefore devolved to the People's Congresses or their standing committees in the provinces, autonomous regions and municipalities. Enforcement of national legislation and national regulations depends on the actions and promulgations made at the local levels in accordance with the 'spirit' of central directives. Because of uneven socio-economic development in the localities, riders like 'in light of the specific conditions and actual needs of their respective administrative areas' are often appended to national laws and regulations. However, such flexibility leaves room for startlingly different interpretations at local levels, and this may be made worse by ambiguous provisions in the laws themselves. The failure of central government to provide practical guidance may further weaken local compliance with what has been decreed. Art. 12, para. 2 of the *2006 Compulsory Education Law* is the only legal foundation requiring the provision of compulsory education for migrant pupils. It states that 'the local people's government shall provide him/her [migrant children] with equal conditions for receiving compulsory education'. The ambiguity of this paragraph leaves room for local authorities to pursue their own policies.

Points that need further clarifying include the following:

- Which level of local government should be responsible for providing compulsory education for migrant children in their receiving cities – district, municipal or provincial?
- Who should be financially and legally accountable?
- What does 'equal conditions' actually mean?
- How are these 'equal conditions' to be achieved in practice?

³⁹ Art. 63-Art.70 of the *Legislation Law of China*; Art.100 of the Constitution

- Does the provision mean that equal conditions should obtain during the admission process, or after a child's admission to a school or, both?
- Are the local curricula and text books to be non-biased and objective, recognising rural peasants and marginalised/disadvantaged people?
- Is provision for migrant children with disabilities required?
- How can Art.12, para. 2 be practically enforced?
- What are the criteria/indicators to show that the legal requirement is being met?

Further pertinent questions at local level include these:

- Are the local state schools able to adapt to meet the specific needs of migrant pupils?
- In existing privately-run schools for migrant children, what are the minimum establishment requirements (numbers of text books, methods of instruction, Health & Safety standards in the teaching blocks and in surrounding areas, teaching quality, curricula, etc.)?
- What central guidelines are there for the regulation, management and supervision of these schools by local authorities?
- What monitoring system is there?
- In a case of poor performance by local governments and state schools, what are the remedies for migrant children and their parents?

These essential considerations are at present left to local authorities to answer and respond to in ways that suit local conditions and circumstances. UNESCO correctly points out that, once made, such policies in China are, in reality, 'open to varying interpretations; and provinces (especially those remote from Beijing), lacking practical guidance from the central government, tend to make decisions based on pragmatism and local perspectives and priorities, leading to uneven impact'.⁴⁰

The monitoring and supervision of compulsory education is addressed in Art. 8 of the *2006 Compulsory Education Law*. After stating that 'under the leadership of the State Council, local authorities shall assume responsibilities for compulsory education

⁴⁰ Amanda Seel, 'Country Profile Prepared for the Education for All Global Monitoring Report 2008 Education for All by 2015: Will We Make it? China, Vietnam, Cambodia, Philippines and Indonesia' (2008/ED/EFA/MRT/PI/66)

and it shall be administrated at different levels, mainly at county level’, this article stipulates that ‘an education supervisory institution of the People's Government shall supervise the compliance with the laws and regulations in the compulsory education work, the educational and teaching quality as well as the status of balanced development of compulsory education, and shall issue supervisory reports to the general public’.⁴¹ The problem with the current supervisory system, however, is that the ‘education supervisory institution’, turns out to be a dependent subordinate body coming under the local education administrative authority itself.⁴² The local People’s Government Inspection Offices, as they are called, together with their personnel and funding are all under the control of the local educational authorities they are supposed to monitor.⁴³

In the wider scheme, Inspection Offices in the lower tier are subject to supervision and evaluation from upper tier offices in a ‘top down’ system. The local initiative is driven by the need to reach certain targets set by the upper level, tempting the Inspection Offices to provide ‘a rather rosy picture of progress on the ground’ rather than tackle the local goals of planning educational improvement.⁴⁴ Lack of effective democratic supervision and decision-making mechanisms at the local level makes it hard for local authorities to act purposively and guarantee the fulfilment of the public service requirements laid on them.⁴⁵

There are also problems in obtaining reliable and accurate data from local authorities, who tend not to make information available to the public in a timely manner.⁴⁶

⁴¹ Art. 8 of the 2006 *Compulsory Education Law*

⁴² Yarong Liu, ‘A Report on the Enforcement of Educational Finance for Compulsory Education’ in *Policy for Compulsory Education in China, A Report on Enforcement by Local Authorities* (ed) Lanchun Zhang, Yanrong Liu, Chaohui Fo, Hong Zhang and Yi Jiang (Zhejiang University Press 2011) 79-88

⁴³ *Ibid.*, 86

⁴⁴ Seel (n 40)

⁴⁵ Liu (n 42) 86

⁴⁶ Seel (n 40); The UN Committee on the Rights of the Child, ‘Concluding Observations: China’ UN CRC/C/CHN/CO/2, 24 November 2005, para. 23

Political accountability and governance

The cadre management system

The problems are exacerbated by the cadre management system, with officials appointed from above, in a tight system of hierarchical personnel control. The current cadre management system is regarded as the institutional root cause of selective policy enforcement.⁴⁷ It results in a lack of genuine accountability to local people, and a tendency to stray from good governance. Accountability for providing education for migrant children is thus avoided.

China is highly unusual in the extent of its reliance on a regional decentralised system to deal with the practical application of both economic and political aims. The multiple functions of county authorities take on great importance under this system of decentralisation and the market economy that goes with it. The county authorities act not only as special agents amongst the upper-tier governments (mainly central and provincial authorities) but also represent and protect their own local interests, promoting priority projects for their local communities. County authorities have traditionally been the main providers for local public services and goods, including basic education, health care and infrastructure building. Yet, as a single-party state, China is not politically decentralised. Control of local officials and personnel, who are selected and appointed by the higher-tier authorities has remained in full force, and there is continued political centralisation.⁴⁸ Under this political system, regional officials at all levels are more responsive and accountable to their high-tier superiors than to meeting the needs of their own local people. Local authorities have no institutionalised rights to participate in central decision-making procedures either, nor are there any genuine free elections at township levels or above. Officially, village elections were legally instituted in the *1998 Organic Law of the Villagers' Committees of China*⁴⁹ and this at first brought hope that change could be initiated at other local

⁴⁷ The topic of cadre management and governance in China is not the focus of this study, but it is touched on here because of its relevance to law enforcement on the ground. Kevin J. O'Brien and Liangjiang Li, 'Accommodating "Democracy" in a One-Party State: Introducing Village Elections in China' (2000) 162 June *The China Quarterly* 465-489

⁴⁸ Liu Huilin, *China Rural Education Financial System* (Social Sciences Academic Press 2012) 277

⁴⁹ (Adopted on 4 November 1998 and amended at the 17th Meeting of the Standing Committee of the 11th National People's Congress of China on 28 October 2010)

levels. But the scope of these elections is still very limited, and implementation seems often to be hindered by government or party interference.⁵⁰ ‘Voting with hands’ still seems an unrealistic possibility in China, since free elections do not take place at township level or above.⁵¹ Given the nature of the current political system, it would not appear that such elections will come about in the near future. Management will therefore remain in the hands of cadres supervised by upper-level authorities, lacking incentives to serve local people, and not accountable to them.

Development demands

Furthermore, due to the particular growth-driven economic development strategy adopted in China, the performance of officials at all administrative levels is evaluated by development demands or indicators imposed from above which are largely economic in nature. The indicators are normally to do with how far local economic targets have been met – targets such as the amount of revenue collected and the locality’s revenue contribution to the higher tier of government; the amount of foreign investment attraction; and annual growth as measured in local GDP.⁵² For officials, achieving these targets established by higher-tier authorities is necessary for their future political promotion.

Although the delivery and development of public services, including compulsory education, is one of the indicators that have to be demonstrated to the upper-tier officials, the provision of both compulsory and post-compulsory education for migrant children is not part of the evaluation process. This fact may also be the hidden reason why the local authorities in receiving cities have such little incentive to integrate migrant children into the local state education system. Whether the outcome of educating them is achievable or not is not related to their targets and indicators (and political promotion).

⁵⁰ For more detailed research on cadre management, see: Liangjiang Li, ‘The Politics of Introducing Direct Township Elections in China’ (2002) *The China Quarterly* 704-723; Melanie Manion, ‘Chinese Decriminalization in Perspective: Electorates and Selectorates at the Township Level’ (2000) *The Chinese Quarterly* 764-782

⁵¹ Mingxing Liu and Ran Tao, ‘Local Governance, Policy Mandates and Fiscal Reform in China’ in *Paying for Progress in China: Public Finance, Human Welfare and Changing Patterns of Inequality*, Vivienne Shue and Christine Wong (ed) (Routledge 2007) 166-189

⁵² *Ibid.*

Information asymmetry is an additional issue of concern. Limited access to relevant information regarding local public services, including education and that the institutional mechanisms to safeguard children's interests, has not been sufficiently developed. For example, local migrant parents lack information about school enrolment policies, school enrolment procedures, fees and national educational policies in general.

A new outlook?

Since Xi has become the new leader in China, hopes for more political openness have been raised. There seems to be a willingness to make local cadres more accountable to their local constituents.⁵³ In the latest Central Committee of the Communist Party of China (CPC) 18th Party Congress meeting, held in late 2012 in Beijing, it was stated that strengthening social development is an important guarantee for maintaining social harmony and stability.⁵⁴ Education, as the 'cornerstone of national renewal and social progress', was given high priority,⁵⁵ and a specific resolve was made that the state should ensure that children of migrant workers in cities have equal access to education.⁵⁶ Moreover, the idea of 'safeguarding social fairness and justice' was emphasised.⁵⁷ Hu Jintao's report states that the state should 'step up efforts to develop institutions that are vital to ensuring social fairness and justice', and that it should 'establish in due course a system for guaranteeing fairness in society featuring, among other things, equal rights, equal opportunities and fair rules for all'.⁵⁸

It seems that the state is attempting to strike a balance between economic efficiency and social equality. Yet it still needs to make more far-reaching political

⁵³ 'Full Text of Hu Jintao's Report at the 18th Party Congress', Part XII 'Making Party Building More Scientific in All Respects'
<http://news.xinhuanet.com/english/special/18cpcnc/2012-11/17/c_131981259_13.htm> accessed 5 February 2013

⁵⁴ *Ibid.*, Part VII. 'Strengthening Social Development by Improving the People's Wellbeing and Making Innovations in Management'
<http://news.xinhuanet.com/english/special/18cpcnc/2012-11/17/c_131981259_8.htm> accessed 31 January 2013

⁵⁵ *Ibid.*

⁵⁶ *Ibid.*

⁵⁷ *Ibid.*, Part II 'Achieving New Victory for Socialism with Chinese Characteristics'

⁵⁸ *Ibid.*

reforms in the long term, including the introduction of free, competitive elections, the cadre management system and wider political participation.

5.2.3 The *hukou*-based enrolment and registration system

As emphasised in chapter 4, the *hukou*-orientated enrolment and registration system has created deep-rooted institutional barriers preventing migrant children from gaining full access to compulsory education in their receiving cities. Despite their entitlement to compulsory education promulgated in Art. 12, para. 2 of the 2006 *Compulsory Education Law*, the requirement that all students should attend state schools for compulsory education ‘near their permanent residences’ (Art. 12, para.1) has inevitably posed entry barriers for these pupils who have moved away to the cities.⁵⁹ It is the fact that the enrolment system is based on the household registration system that causes discriminatory treatment. Although this is a way of keeping local school-aged children from selecting schools outside their local jurisdiction, it is counterproductive when it comes to migrant pupils who have settled elsewhere. It excludes them from enjoying educational resources equal to those of their urban peers in the cities where they now reside.

5.3 Conclusion

Limits on the capacities of state schools, problems associated with financial, legal and political accountabilities and a *hukou*-orientated registration system all work against the proper implementation of laws and regulations intended to ensure that migrant children receive the education to which they are entitled. In the receiving cities, these factors raise barriers to achieving the availability, accessibility, acceptability and adaptability of education these children need. This is why, despite a relatively sound national legal and regulatory environment, local enforcement is inconsistent and patchy. Because of this uneven enforcement, the present research has presented different examples of practice – in Beijing, in Shanghai and in Guangdong – to illustrate differing local approaches.

⁵⁹ Art. 12 of the 2006 *Compulsory Education Law*

5.4 Implications

In this section some suggestions are made for tackling the problems internal migrant children face in gaining access to the education they deserve. The suggestions should be understood within a framework of improving the five ‘As’: Availability, Accessibility, Acceptability, Adaptability and also Accountability. Overall, there needs to be a strong long-term political commitment, putting social development at the centre of the government’s political strategies. A ‘go-it-alone’ approach will not solve the problems migrant children currently face and there is a real risk that a whole future generation of Chinese children will grow up to be second-class citizens.

(1) Financial commitment

Financial responsibilities for funding migrant children and their compulsory schooling in the receiving cities should be clearly defined at all governmental levels – central, provincial, municipal, district and county. Since, with decentralisation, financing and the provision of compulsory education have been passed down to the county and district authorities, the incentive to fund education for migrant children has been considerably weakened. Authorities at the higher county levels – especially the municipal, provincial and central ones – should take their share in covering the costs. More specifically, where there is migration between provinces, the state should shoulder its responsibility for funding the migrant children, and arrange for costs to be shared between provincial, municipal and lower authorities.⁶⁰ Central government needs to establish a special transfer payment fund system to those provinces that receive large influxes of migrants. This would to ease the financial burden borne by the lower-level authorities. Where there is intra-provincial migration, provincial governments should retain the main financial responsibility,⁶¹ As, for example, when children migrate from Guangdong to Dongguan within Guangdong province. For those migrating only within the confines of a city, the municipal and district or county authorities should share their mutual obligations.⁶²

⁶⁰ Yuan Liansheng, ‘The Issue of Financial Distribution in Compulsory Education’ <http://www.zhuanxing.cn/html/Education_Right/705.html> accessed 22 January 2013

⁶¹ *Ibid.*

⁶² *Ibid.*

Crucially, in order to solve the problem of inadequate educational funding, the allocation mechanism must be made more transparent at each level.⁶³ Additionally the government should continue to implement current national educational policies aimed at reducing the disparity between rural and urban areas, especially in socio-economic development and welfare provisions, and it should reduce the negative impact of the *hukou* system on disadvantaged migrant children.

(2) Legal commitment

China has undergone a dramatic social, political and economic transformation, and its legal framework is consequently having to resolve a range of problems which all press for attention at the same time. Currently Chinese judicial procedure is struggling to keep up with fast-changing socio-economic circumstances and to manage to cope with the complexity of the educational system. The state ought to provide a systematic legal mechanism to help migrant children get access to quality education on a fair and non-discriminatory basis. What is needed is not merely activity, but a pragmatic solidarity with a fair legal commitment,⁶⁴ because migrant populations and migrant children ‘hunger and thirst for a just system that rightfully responds to their contributions and values the dignity of their lives’.⁶⁵ Such a fair legal commitment should be transformed into specific national legislation for protecting migrant children. This should not only recognise that they are a group who need a real legal commitment as the first step in helping them complete their compulsory education, but also identify a clear duty on each agent – that is, the state, the local governments, the parents and both state schools and the dedicated schools for migrant children run privately. A specialised court for education law is needed to resolve administrative, civil and other cases arising from the infringement of children’s rights to education.⁶⁶ Aside from judicial enforcement mechanisms, a systemic approach with a range of policies and programmes should be

⁶³ Chang Hongxiao, ‘Can a New Education Law Save China?’
<<http://english.caijing.com.cn/2004-10-18/100043139.html>> accessed 28 January 2013

⁶⁴ Jonathan Hursh, ‘China’s Moving Population’
<http://www.mrn-china.org/site/index.php?option=com_content&view=article&id=337%3Aachinas-moving-population&catid=77%3Anews-articles&Itemid=94&lang=en> accessed 13 December 2012

⁶⁵ *Ibid.*

⁶⁶ Zhang Yiqing, ‘Constitutional Protection and Judicial Relief for the Right to Education of Chinese Citizens’ (2011) Study on the Worldwide Constitutional Law III
<http://article.chinalawinfo.com/Article_Detail.asp?ArticleID=64707> accessed 12 March 2013

designed and adopted to tackle discrimination by the state against domestic migrants and their children.

(3) Political commitment

The current civil service and cadre management system should be reformed. This was affirmed at the latest meeting of the National Congress of the Communist Party of China. There it was urged that the country should ‘fully and strictly implement the principle of selecting officials in a democratic, open, competitive and merits-based way’, make ‘management more democratic’, ‘improve the way of selecting officials through competition’, and ‘increase public trust in the selection and appointment of officials.’⁶⁷ But the personnel management system needs also to be enhanced by a move away from the current growth-oriented development strategy that imposes policy burdens and various mandates for development from the central government. Performance in public service delivery, including basic education, is determined not only by the financial system but just as much by the associated structure of incentives at all levels of local governments. Rather than solely targeting local economic growth, the central and local authorities should redirect their focus to providing and improving public goods and services that can promote economic growth in the long term.⁶⁸ Since the outcome of providing an adequate education for migrant children is not related to current indicators and the political promotion of local officials (so that they lack the incentive to promote it), a more balanced set of performance indicators promoting equity and quality in public services delivery, including compulsory education for marginalised migrant children, should be introduced as a sound foundation to strengthen political accountability at the sub-national level. As Tao correctly points out, ‘only when unreasonable policy burdens are downgraded and cadre evaluation criteria are reoriented to providing public goods that are more closely related to local needs can the conditions for downsizing excessive local bureaucracies be created and the role of healthy regional competition be strengthened to contain local misbehaviour’.⁶⁹

⁶⁷ ‘Full Text of Hu Jintao’s Report at the 18th Party Congress’, XII. ‘Making Party Building More Scientific in All Respects’ (n 2)

⁶⁸ Tao and Liu (n 51)

⁶⁹ *Ibid.*

As for migrant workers, they have contributed in their millions to China's economic development; so their social and political rights, including their rights to vote in cities, should be ensured and protected. Urban social assistance, urban housing subsidies through locally funded public housing schemes, and 'the Minimum Livelihood Guarantee Scheme' (all currently only available to urban permanent residents) should be equally extended to cover rural migrants.⁷⁰ The role of trade unions should also be enhanced to help them with various work-related matters, including information dissemination to raise their consciousness of labour rights. Wider public participation should be extended to migrant workers when the local governments select deputies so that they can raise their own voices. This last proposal was recently raised at the meeting of the National Congress of the CPC, which resolved that it should increase the 'proportion of community-level deputies to People's Congress, particularly those elected from among workers, farmers and intellectuals', while reducing the proportion of deputies among leading party and government officials. This resolution was in late 2012, when the state wanted to achieve its commitment to promote people's democracy as part of the programme of national political reform.⁷¹ Furthermore, given current concerns about information asymmetry, governments at both national and local levels should promote transparency and actively disseminate information to raise public awareness on matters such as government regulations, public resources allocation for education, standards, administrative procedures and fees. All in all, the state should continue to strengthen its transparency, participation and accountability to foster good governance at both national and local levels.

⁷⁰ Urban permanent residents are still entitled to some urban welfare, a privilege only available to them. One of the privileges is social assistance, the so-called Minimum Livelihood Guarantee Scheme or *di bao*, and there is also an urban housing subsidy through locally funded public housing schemes. Ran Tao, 'Hukou Reform and Social Security for Migrant Workers in China' in 'Labour Migration and Social Development in China' in *Labour Migration and Social Development in Contemporary China*, edited by Rachel Murphy (Routledge 2009) 73; Zhigang Xu and Ran Tao, 'Urbanization, Rural Land System and Social Security in China' (2004) 12 *China & World Economy* 16

⁷¹ 'Full Text: Report of Hu Jintao to the 18th CPC National Congress' (n 2). In January 2013, three migrant workers were invited as special members to speak up about their concerns at the Guangdong Provincial Committee of the Chinese People's Political Consultative Conferences (CPPCC). This seems a positive sign, showing the willingness of the local authority to encourage wider public participation at the political level. This is the first time that the Guangdong Committee of the CPPCC has invited special members to participate at the annual session at the top provincial advisory level. Caixiong Zheng, 'Migrant Workers to Advise Political Body' <http://www.chinadaily.com.cn/china/2013-01/23/content_16167013.htm> accessed 18 January 2013

(4) Reform the hukou-orientated enrolment system

Since an increasing number of migrant children need to attend city state schools, the institutional arrangements based on the *hukou* are no longer compatible with actual social development. The relevant levels of local governments should adopt an enrolment system based on where the migrant children actually live, instead of continuing with the outdated *hukou*-based registration system. This means integrating the enrolment of migrant children into the established enrolment system for city-born children. Local governments should include consideration of migrant children in their overall education planning, and in their evaluation and monitoring systems.

(5) Establish a special funding mechanism for privately-run migrant schools in accordance with the minimum standards set up by the local authorities

Since the coastal receiving cities face tremendous practical difficulties as increasing numbers of migrants pour in every year, they do not have the capacity to enrol all migrant children in their local state schools, and this must be recognised. Even if new schools were established, the coastal cities would still not be able to meet the demand from the influx of these children in the short term. In the absence of official provision, migrant schools do accommodate the different needs of incoming migrant parents, their children and the city authorities. Hence local governments should put a real investment into migrant schools and establish minimum standards to help them.

(6) Promote a variety of educational opportunities for migrant children

It is estimated that, with the development of urbanisation, the Chinese urban population will expand from 572 million in 2005 to 926 million in 2025.⁷² Since public resources for state schools cannot accommodate the increasing numbers of migrant children and reform of the institutional and systematic barriers cannot be achieved at once, various forms of alternative educational opportunities, such as information training courses provided by non-profit organisations in community centres and vocational education, should be provided collaboratively by the government, non-

⁷²‘Preparing for Chinese Urbanisation’

<http://www.mckinsey.com/mgi/publications/china_urban_billion/> accessed 28 January 2013

profit-making organisations (including donors outside China)⁷³ and the private sector.⁷⁴ Such a collaboration, across different spheres of interest, is crucial for backing strong and large-scale programmes.⁷⁵ In practice, the community centres established by NGOs have already met with approval as an efficient supplementary approach for offering services to migrant children and their parents. For example, Compassion for Migrant Children (an NGO) has established model Migrant Community Learning Centres, which ‘as a framework, provide the stability within which migrant families can build the intangible aspects that make a community thrive and mature’.⁷⁶ Three pillar programmes, Life-Vocational Skills, an After-School Programme and Teacher Training, are provided in these centres.⁷⁷ There, over time, migrant children can grow in their understanding of healthy interpersonal relationships, teamwork and the values of honesty, respect and love. Compassion for Migrant Children believes that ‘its efforts of valuing each member of the Chinese Society may play a small role in encouraging the state to place greater value on its citizens’ and ‘there is room for a brighter future around the corner.’⁷⁸ Furthermore, extracurricular activities can also improve the adaptability of migrant children to the city environment.⁷⁹ Local authorities should build more public facilities, such as recreation centres, parks, and public sport facilities, near migrant neighbourhoods. This would create more interaction time for migrant children and their parents and communities.

⁷³ For example, Compassion for Migrant Children, an NGO specifically helping migrant children through their after-school educational training, their life-vocational skills training, health awareness and personal development in six community centers which serve over 2,800 migrant children and their families. <http://www.cmc-china.org/index.php?page=donor&hl=en_US> accessed 27 January 2013

⁷⁴ Yang Xiaowei, ‘It is Not Only an Educational But a Social Issue – Migrant Children and The Issue Concerning Their Education and Policy Mechanism in the Ongoing Process of Urbanisation’ in *Focus and Analysis - Comments on Major Educational Issues in Contemporary China* (Hubei Education Press 2011) 23

⁷⁵ Qiaobing Wu, Bill Tsang and Holly Ming, ‘Social Capital, Family Support, Resilience and Educational Outcomes of Chinese Migrant Children’ (2012) *British Journal of Social Work* 1-21;

⁷⁶ (n 73) ‘Community Center Approach’

⁷⁷ *Ibid.*

⁷⁸ *Ibid.*

⁷⁹ Yang Liu, Xiaoyu Fang, Rong Cai, Yang Wu and Yaofang Zhang, ‘The Urban Adaptation and Adaptation Process of Urban Migrant Children: A Qualitative Study’ (2009) 4 (3) *Frontier of Education in China* 365-389

(7) Promote values of diversity, tolerance and friendship

Since ‘education can be a means to retain or eliminate inequality’,⁸⁰ promotion of the values of diversity, tolerance and friendship is vital for raising awareness of social prejudice and tackling discrimination. The values should be promoted through educational curricula in schools. They are especially needed to protect and assimilate vulnerable people in society, such as rural migrant workers and their children and people from ethnic minorities.

One of the aims of education emphasised in the UN Convention of the Rights of the Child is the ‘preparation of the child for responsible life in a free society in the spirit of understanding, peace, tolerance, equality of sexes and friendship ...’.⁸¹ Ultimately education is not merely about the acquisition of information and knowledge but should ‘empower the child by developing ... his or her human dignity, self-esteem and self confidence’.⁸² Thus ‘education in this context goes far beyond formal schooling to embrace the broad range of life experience and learning processes which enable children to develop their personalities, talents and ability and to live a full and satisfying life within society.’⁸³ It could reasonably be argued that the current aim of education stipulated in the *1995 Educational Law* is too superficial and should be revised – as soon as possible. The government should adjust its educational expectations, moving away from ‘education among education receivers in patriotism, collectivism and socialism as well as in ideals, ethics, discipline, legality, national defence and ethnic unity’⁸⁴ and directing the focus towards the promotion of diversity, tolerance and friendship. With these values instilled in them, young people can start to understand that rural migrant children and migrant workers are not ill-mannered, poorly educated, low quality (*di shu zhi*) ‘rural peasants’ or ‘labourers’ or ‘rural migrant workers’, but are worthwhile individuals with similar aspirations to others in

⁸⁰ Katarina Tomasevski, *Human Rights Obligations in Education: The 4-A Scheme* (Wolf Legal Publisher 2006) 141

⁸¹ Art. 26 (2) of the UDHR; Art. 5(1) (a) of the UNESCO Convention; Art. 7 of the CERD; Art. 13(1) of the ICESCR and Art. 29 (1) (d) of the CRC

⁸² CRC Committee ‘General Comment No. 1, Art. 29(1): The Aims of Education’ UN Doc CRC/GC/2001/1, para. 2

⁸³ *Ibid.*, para. 2

⁸⁴ Art. 6 of the *Education Law of China*

the city, though their lives have been caught in the complex institutional arrangements and systemic barriers of modern China. Imparting these values to children is especially important in the country's present stage of development.

(8) Adapt schooling to the needs of migrant children

Migrant children have needs that challenge the current teaching system in state schools. Education providers, including schools and teachers, should be more responsive to the needs of migrant children, especially after they have been enrolled. Their backgrounds are diverse and, because they have moved around, they may have had various study experiences in different schools. This creates many practical problems for teachers: how can they carry on the children's education at the right level? In addition, what kind of education should the state schools actually provide for them? The law requires the receiving regions to provide 'equal conditions' for migrant children, but since their lives and academic backgrounds have been so disrupted, what the government should really do is hear what the children themselves have to say about their needs. In order to meet the best needs of migrant children in receiving cities, a child-centred approach would be more effective than a programme imposed from the official point of view. Furthermore, qualified teachers are especially important to help meet the special challenges of educating migrant children in state schools. The provision of more adequate preparation and appropriate training for teachers, education administrators and principals seems essential.

(9) Offer and develop home support to migrant children

Owing to their long working hours and poor educational background, most migrant parents are not able to put much emphasis on meaningful communication and seeing to the personal development of their children. Having such little emotional support from their parents makes the lives of migrant children – often subject to discrimination and social exclusion in their host cities – even harder. A survey conducted on 625 migrant children in ten schools in Shanghai showed that a good parent-child relationship, with 'parent-child tender loving exchange and companionship' and 'genuine harmonious

displays of love, respect and understanding’,⁸⁵ significantly influenced the well-being of migrant children and how they felt about themselves.⁸⁶ Given their marginal status in urban cities, a close parent-child relationship is particularly important to migrant children because these children face migration-related adjustment on top of the normal strains of development. They require full support from their parents to help them resolve the various difficulties and stresses they are under.⁸⁷ So parental support is necessary to ‘sustain resilience and minimise vulnerability’.⁸⁸ This opinion is backed up by the research conducted by Wu, Tsang and Ming who have drawn upon a sample of 806 migrant children in Beijing, and show that positive family support has ‘a significant direct effect’ on children’s academic attainment, and also reduces drop-out rates.⁸⁹ Migrant children who receive more family support ‘may be pressed to put more effort into their studies and encouraged to stay at schools in order not to disappoint their parents and fall short of familial expectations’.⁹⁰ In an interview, Wang, Trustee of the Maple Women’s Psychological Counselling Centre in Beijing, emphasised how important home support is for migrant children in practice. The issue is neglected by the public and the government, but her organisation has helped migrant families in Beijing carry out home education on a daily basis.⁹¹

Wang explained that migrant workers rarely spend time with their children and do not know how to raise them properly. Most migrant parents regard the provision of material necessities for their children as the most important thing for their development. However, she emphasised that if migrant children fail to make good academic progress, their parents do not talk things over with them; rather, they think the proper approach is to give them a beating. Research conducted by Wang’s organisation found that in

⁸⁵ Daniel Fu Keung Wong, Yingli Chang, Xuesong He and Qiaobing Wu, ‘The Protective Function of Relationships, Social Support and Self-Esteem in the Life Satisfaction of Children of Migrant Workers in Shanghai, China’ (2010) 56 *International Journal of Social Psychiatry* 152

⁸⁶ *Ibid.*, 152

⁸⁷ *Ibid.*, 152

⁸⁸ *Ibid.*, 152

⁸⁹ Wu, Tsang and Ming (n 75)1-21

⁹⁰ *Ibid.*

⁹¹ Interview with Wang Xingjuan, the Trustee of the Maple Women’s Psychological Counselling Centre (Beijing, China, 2 February 2011). This section is mainly based on an interview conducted with Wang. Hence, references are not provided separately.

Guang Dong Province, 90 per cent of parents, including migrant parents, employ corporal punishment to discipline their children. In addition to their using corporal punishment, Wang pointed out, migrant parents often fail to realise their own major responsibilities for parenting their children: they rely on schools to do it. Home support, Wang stressed, cannot be replaced by formal schooling, because they are two different but complementary approaches – both important to the migrant children. Home support and the fundamental care and teaching given by parents are crucial to the development of children’s personalities and psychological status.

Owing to the absence of home support in most migrant families, some migrant children turn to juvenile delinquency. Research has been done on the incidence of juvenile delinquency amongst migrant children, in particular by the Centre for Juvenile Legal Aid and Research, District Court of Feng Tai with the Feng Tai Communist Youth League. This research concentrates on the Chang Yang, Hai Dian and Feng Tai Districts on the rural-urban fringe of Beijing, 60 per cent of whose population is composed of migrant workers.⁹² In these three districts, an equivalent 60 per cent of the total number of juvenile court cases concerned migrant children.⁹³ In Shanghai there is concern about a delinquency problem too: according to the Educational Committee of Shanghai, 80 per cent of the total number of juvenile court cases, over a period, were hearings on migrant children, especially those who had just finished their junior high school education.⁹⁴ These children, whose plight is described as one of ‘three lacks’ (lack of education, lack of jobs, and lack of being supervised), have become threats to security and social stability.⁹⁵ Similarly, between 2006 and 2008, the High Court of Beijing conducted research in these three districts on juvenile delinquency amongst the second generation of migrants. This showed that the total number of juvenile delinquency cases involving migrant children had gradually increased each year since 2006. This piece of research also reviewed a randomly

⁹² Zhang Xuemei, ‘A Research on the Issue of Juvenile Delinquents and Victims of Crimes on Migrant Children in Beijing’ (Centre for Juvenile Legal Aids and Research, District Court of Feng Tai and Feng Tai Communist Youth League 2010)

⁹³ *Ibid.*

⁹⁴ Feng Shuaizhang and Chen Yuanyuan, ‘Policy Suggestions for Internal Migrant Children and their Schooling’ <http://iar.shufe.edu.cn/structure/gdyjy/xsyj/yjbg_con_90672_1.htm> accessed 28 January 2013

⁹⁵ *Ibid.*

selected sample of one hundred migrant children to show the different types of crime committed. The most common offences by migrant delinquents were: pillage (30 per cent), intentional injury (28 per cent), robbery (17 per cent), rape (9 per cent), provocation (6 per cent), and destroying public power systems (3 per cent).⁹⁶ Analysis of the sample of 100 migrant children also included a breakdown by age: there were only six migrant delinquents between the ages of 14 and 16 and the remaining 94 children were all between 16 and 18, the average age for high school education in China. However, only 16 of the 100 children attended junior or senior or vocational high schools: 25 children were not in education or work; 51 children worked as migrant workers in Beijing, and 8 children worked with their parents selling fruit and clothes.⁹⁷ As Zhang points out, these figures reveal that the school attendance rate for migrant delinquents is low. It is less than 30 per cent, and the drop-out rate is obviously high, at more than 30 per cent of those who begin studies.⁹⁸ Therefore, without effective care and support from parents, schools and the government, the second generation of migrants is not only more sensitive to discrimination and inequality, but more liable to turn to juvenile delinquency.

Wang stated in the interview that, through reflection on these juvenile crimes, she has learnt from her experience of helping migrant children to believe that the communication of love, as well as education in love, is a crucial part of children's lives and should be taught in childhood by parents. As a citizen, she said, it is very important to learn how to love society, the lives of others and yourself. These things are very much related to the development of one's personality, and they should be taught by parents. Helping migrant parents improve the quality of home support for their children is therefore very important to the development of the second generation of migrants in China.

In order to promote her ideas, Wang's organisation has introduced a programme of home support in the country at large – 'A 3 x Ten Minutes Home Education Programme for Migrant Parents'.⁹⁹ The content of the programme includes

⁹⁶ *Ibid.*

⁹⁷ *Ibid.*

⁹⁸ *Ibid.*

⁹⁹ The Maple Women's Psychological Counselling Centre, 'A 3 x Ten Minutes Home Education Programme for Migrant Parents' <<http://www.maple.org.cn>> accessed 28 January 2013

‘the communication of love’ as the first ten minutes. It introduces the importance of the expression of love and the communication of love, teaching migrant children how to love people, love others and love society. This helps them set themselves appropriate goals in their lives. The second ten minutes is ‘education in being a good person’. The aim is to help children become good citizens, obeying the laws of the country. This deals with educating and fostering the will or character of migrant children and their interpersonal skills. The third ten minutes is ‘learning knowledge’, and aims at enhancing children’s ability to grasp survival and developmental skills, taking advantage of their self-potential. They should also achieve a level of cooperation and sharing with other individuals and with society. The further aim of ‘learning knowledge’ is not merely to help migrant children manage their homework, but to acquire a right attitude to learning and motivation towards their studies. ‘A 3 x Ten Minutes Home Support Programme for Migrant Parents’ was submitted in a formal proposal to the Fourth Session of the Eleventh National Peoples’ Congress in March 2011 for consideration as a nationwide programme. This is a programme that urgently needs to be implemented.

(10) Make use of school vouchers

School vouchers are a form of ‘token money’ in the field of education and were originally introduced by Milton Friedman, an American economist.¹⁰⁰ In his estimate, state schools normally operate under the direction of a school board that appoints a ‘superintendent who administers the schools within a particular territorial domain’. Friedman argued that a monolithic system like this resulted in less competition in education and therefore provided unsatisfactory and inefficient teaching. To change the situation, he advocated the introduction of school vouchers that would enable parents to choose a school for their children. The state’s contribution would be embodied in the voucher, normally covering the full tuition fees. The rationale behind this system is that government empowers individuals to send children to the school of their choice without financial impediment. Therefore, according to Friedman, school vouchers enhance equal opportunities of enrolment for students, broaden the freedom of parents,

¹⁰⁰ Milton Friedman, ‘The Role of Government in Education’ in *Economics and the Public Interest*, edited by Robert. A. Solo (Rutgers University Press 1955); Friedman, *Milton Friedman on Economics: Selected Papers* (University of Chicago Press 2008)

weaken the monopoly of state schools and improve the quality of education. Although this approach has remained controversial (mainly because it is thought that government has an obligation to provide public education rather than subsidise the private sector), it does alter established practice and might provide all children with greater accessibility to education.

School vouchers have been tested in Changxing county, Zhejiang province in China.¹⁰¹ There they did create more competition in the local educational system. The approach might perhaps be feasible for migrant children. They could be issued with vouchers that could be used at either state schools or migrant schools. Funding from the government would then be transferred to the schools. Additionally the vouchers could also extend scholarships to poor migrant children for other forms of financial support.

(11) Keep up reporting obligations to the UN CRC Committee and raise public awareness

Although there is no petitioning system under the UN CRC Committee, as discussed, its reporting system has played an important role in monitoring and implementing the Convention. NGOs are also invited to submit their own reports supplementing those from the State parties to give a different perspective to the Committee.¹⁰²

Since the ratification of the UN CRC in 1991 by the Standing Committee of the Seventh National People's Congress of China, the Chinese government has submitted its State reports, written by the Central Government, to the CRC Committee to show what domestic progress has been made in implementing the Convention at national level. Three periodic reports were submitted to the Committee in 1995,¹⁰³ in 2004,¹⁰⁴ and in 2012¹⁰⁵ respectively. Although the current legal and regulatory framework for education in China is broadly sufficient to ensure reasonable compulsory education for

¹⁰¹ Liu Xiaoman, 'A Research Report on the School Vouchers in Changxing, Zhejiang Province' 2005 (3) (1) Economics of Educational Research <<http://www.gse.pku.edu.cn/BeidaEER/pdf/050107.pdf>> accessed 28 January 2013

¹⁰² See Chapter 2, section 2.2.1 'The UN CRC Reporting System'

¹⁰³ CRC/C/11/Add.7 (21 August 1995) the initial report

¹⁰⁴ CRC/C/83/Add.9 (15 July 2005) secondary periodic report

¹⁰⁵ CRC/C/CHN/3-4 (6 June 2012) third and fourth periodic reports

migrant children, the possible relationship between the UN CRC reporting system and the revised domestic laws, including the 2006 Compulsory Education Law of China, should be considered.

In terms of fulfilling China's international reporting obligation to the CRC Committee in particular, its periodic report should provide detailed information on the steps taken and practical implementation made in enacting and revising national domestic laws and regulations (policies, programmes and action plans) on the protection of the interests of all children, including the two main revised pieces of legislation, the 2006 Compulsory Education Law and the 2006 Law on the Protection of Minors.¹⁰⁶ Specifically, in accordance with article 12 of the Compulsory Education Law regarding migrant children, the government should provide in its periodic report to the Committee 'detailed information on the measures taken by mainland China to ensure [that] children of rural migrant workers have free and equal access to health care and education, including in the public school system'.¹⁰⁷ 'The number of privately run schools for migrant children across the country, their registration status and their conditions' should also be specified.¹⁰⁸ Furthermore, the periodic report should indicate the recent progress made on reforming the *hukou* registration system in the country, and whether it has 'ensure[d] that all children, including girls and children with disabilities, (and migrant children) are registered at birth and have access to social services, including education'.¹⁰⁹ If not, the report should state what measures should be taken in order to ameliorate problems caused by the *hukou* system, so as to achieve equal accessibility to education without discrimination against disadvantaged children.

At the national level, though the national legal framework on children is generally sufficient, public awareness should be raised and advocacy campaigns be run to disseminate China's international activities and to show its treaty obligation towards the UN CRC Committee. For example, the government should make its periodic reports and Concluding Observations easily available and accessible for the public online. These documents are not available on the Ministry of Education and Ministry

¹⁰⁶ CRC/C/CHN/Q/3-4 (10 May 2013), List of issues in relation to the combined third and fourth periodic reports of China, para. 2, 3

¹⁰⁷ Ibid, para. 13

¹⁰⁸ Ibid, para. 13

¹⁰⁹ Ibid, para. 14

of Foreign Affairs' websites.¹¹⁰ HRIC urges 'the Committee to encourage the State party to exploit online dissemination as an effective means of increasing public awareness of advocacy campaigns and the Convention and (its) associate Protocols',¹¹¹ since it can provide an 'effective way to disseminate information' amongst around 500 million Chinese online users.¹¹²

¹¹⁰ Alternative report issued by HRIC, Suggested questions and issues to be raised with the Chinese government in advance of the review of its third report on the implementation of the Convention on the Rights of the Child, submitted to the Committee on the Rights of the Child for its pre-sessional working group, November 2012.

CRIN<http://www.crin.org/docs/China_Human%20Rights%20in%20China_CRC%20Report.pdf > accessed 13 September 2013

The text of the UN Convention on the Rights of the Child, however, is available in both English and Chinese on the State Council Working Committee on Women and Children's website. <<http://www.nwccw.gov.cn/?action-viewnews-itemid-140623>> accessed 13 September 2013

¹¹¹ Ibid, CRIN, para. 21

¹¹² Ibid, para. 20

APPENDIX 1

*Fieldwork pictures of Ming Yuan Migrant School in Beijing,
taken on 2 March 2011*



Picture 1: A basin in the school



Picture 2: A classroom



Picture 3: Heating



Picture 4: A corridor



Picture 5: The playground



Picture 6: Outside the school



Picture 7: The girls' toilets



The school gate

APPENDIX 2

*Fieldwork pictures of Guan An Junior State High School in Beijing,
taken on 11 March 2011*



Picture 9: A corridor



Picture 10: The playground in its setting



Picture 11: Outside the school



Picture 12: Another outside view



Picture 13: A sports area

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