

# People's Republic of China

## Internal migrants: Discrimination and abuse

### The human cost of an economic ‘miracle’

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## I. Introduction

Cha Guoqun left his village to work doing odd jobs in the city of Hangzhou, in eastern China. When a cut on his leg got infected in November 2006, and prevented him from working, he visited a state hospital. As Cha had no health insurance, the doctor gave him two options. Either pay 1000 yuan (US\$120) a day for treatment, the equivalent of his entire monthly income, or have his leg amputated. In this instance Cha got lucky. He received subsidized treatment from a Christian charity hospital, and was able to save his leg. As he said, “I was lucky this time, but on the whole, medical treatment is too expensive for people like me.”<sup>1</sup>

This case describes the plight of just one of the estimated 150-200 million rural-to-urban migrants who have moved to China’s cities in search of work and better lives in what has been called “the world’s largest ever peacetime migration”.<sup>2</sup> This report will call these people “internal migrants” and will document how they are treated as second class citizens within their own country. Also referred to as the “floating population”, the “mobile population”, “peasant-workers”, “migrant workers”, “rural migrants”, and “temporary

<sup>1</sup> “Health insurers flock to China,” *International Herald Tribune*, 28 March 2006.

<sup>2</sup> Max Tuñón, *Internal Labour Migration in China: Features and Responses*, ILO Office, Beijing, April 2006, p. 5.

migrants”, their number has risen rapidly from just two million in the 1980s<sup>3</sup> and is expected to grow even further, with some estimating 300 million by 2015. While they have served as the back-bone labourers fuelling China’s economic take-off, the majority of internal migrants never gain permanent residency in urban areas. Having built China’s modern, gleaming, metropolises the majority eventually return to the countryside, having served and then been sent away from urban centres of privilege.

Tens of millions of migrants are denied rights to adequate health care and housing, and are excluded from the wide array of state benefits available to permanent urban residents.<sup>4</sup> They experience discrimination in the workplace, and are routinely exposed to some of the most exploitative conditions of work. Internal migrants’ insecure legal status, social isolation, sense of cultural inferiority and relative lack of knowledge of their rights leaves them particularly vulnerable, enabling employers to deny their rights with impunity. The children of internal migrants do not have equal access to free, compulsory, education, and many of them have to be left behind in the countryside.

According to Wang Yuancheng, a member of China’s National People’s Congress (NPC), and one of the lucky internal migrants to become a successful businessman:

“(t)he lives of migrant workers are miserable. They have to live in makeshift shelters, eat the cheapest bean curd and cabbage. They have no insurance and their wages are often delayed. And most of all, they are discriminated against by urban people.”<sup>5</sup>

While internal migrants from rural areas are now able to work in the cities, unlike during the Maoist era when they were all but shut out, they are required to register as temporary residents there, a process which a majority find difficult or impossible to complete. Many migrant workers are thus not able to complete all the required documentation for being properly registered, with the result that from the perspective of state authorities they are in the cities illegally. This makes them vulnerable to exploitation by the police, landlords, employers, local officials, as well as permanent urban residents. “Undocumented” internal migrants in China continue to risk arrest and forcible removal back to their home-towns.

Thus, rather than rewarding, or at least respecting the rights of those individuals who have demonstrated the willingness to leave home—often leaving family and loved ones behind, to fill the gaps in the labour market wherever they might be, and to labour in the most difficult and gruelling conditions, a succession of Chinese administrations have maintained the administrative and regulatory system that underpins discrimination against them.

While the central government is taking more seriously the plight of internal migrant workers, and has passed regulatory measures seeking to improve their working and living

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<sup>3</sup> Huang Ping, and Pieke, F. (2003) *China Migration Country Study*, Regional Conference on Migration, Development and Pro-Poor Policies in Asia, held in Dhaka, Bangladesh, p. 6.

<sup>4</sup> "Institutionalized Exclusion: The Tenuous Legal Status of Internal Migrants in China's Major Cities," Human Rights in China report, 6 November 2002.

<sup>5</sup> “Migrant workers find a champion: NPC deputy fights for the rights of poor labourers toiling in the cities,” *South China Morning Post* (hereafter *SCMP*), 16 March 2006.

conditions, Amnesty International considers that change has been slow and implementation inadequate.

## **II. International legal standards and China's *hukou* system as a foundation of discrimination and violations of the right to equality**

The right to equality is a key human right. The Universal Declaration of Human Rights states that "All human beings are born free and equal in dignity and rights."<sup>6</sup>

The International Covenant on Economic, Social and Cultural Rights (ICESCR), to which China is a state party, provides that:

The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.<sup>7</sup>

In its General Comment on the nature of states parties obligations under the ICESCR, the Committee on Economic, Social and Cultural Rights emphasised that the obligation to ensure freedom from discrimination in the exercise of rights protected in the Covenant is an immediate obligation. The Committee stated that:

"...while the Covenant provides for progressive realization and acknowledges the constraints due to the limits of available resources, it also imposes various obligations which are of immediate effect. Of these, two are of particular importance in understanding the precise nature of States parties obligations. One of these... is the 'undertaking to guarantee' that relevant rights 'will be exercised without discrimination ..'."<sup>8</sup>

The right to equality does not, of course, mean that states must treat all persons in the same way at all times. It does, however mean that states can only treat persons differently, or allow differential treatment, where there are legitimate reasons for doing so (for instance making special provisions for children or persons with disabilities). However, "social origin" is explicitly listed as an unlawful basis of discrimination.

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<sup>6</sup> Universal Declaration of Human Rights, UNGA res. 217 A(III), adopted 10 December 1948, Article 1.

<sup>7</sup> International Covenant on Economic, Social and Cultural Rights, adopted by General Assembly resolution 2200A (XXI) of 16 December 1966, entered into force 3 January 1976, Art. 2(2).

<sup>8</sup> Committee on Economic, Social and Cultural Rights, General comment 3: The nature of States parties obligations (Art. 2, par.1), 14 December 1990, para. 1.

The ICESCR also provides, among other things, for the right of workers to strike, the right of workers to organize independent unions, the right of trade unions to operate freely, including their right to form national federations or confederations which have the right to form or join international trade union organizations. The Chinese government declared a reservation to Article 8(1)(a) of the ICESCR, which guarantees workers the right to form free trade unions, stating that any application of the article should be consistent with the Chinese Constitution, the Labour Law and Trade Union Law.<sup>9</sup> Despite these international obligations, the Chinese government maintains a system that has provided a regulatory and administrative foundation for discrimination against internal migrant workers on the basis of their distinct social origin, i.e., being permanent residents of rural areas. The *hukou* system took shape during the 1950s on the basis of a complex of regulations that sought to register and to tie all residents to specific localities, to strictly divide and differentiate the privileges of urban and rural society, to control and restrict migration between regions (particularly from the countryside to the cities), and to serve as the key basis of a nation-wide system of public security.

The International Covenant on Civil and Political Rights (ICCPR) is the major standard-setting treaty on freedom of movement and residence within states.<sup>10</sup> According to Article 12(1) “everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.” In its twenty-seventh General Comment, the Human Rights Committee issued an interpretation of this article that holds that, “in principle, citizens of a State are always lawfully within the territory of that State.” It further stated that “liberty of movement is an indispensable condition for the free development of a person. It interacts with several other rights enshrined in the Covenant...”<sup>11</sup> The Committee was further of the view that:

The right to move freely relates to the whole territory of a State, including all parts of federal States. According to article 12(1), persons are entitled to move from one place to another and to establish themselves in a place of their choice. The enjoyment of this right must not be made dependent on any particular purpose or reason for the person wanting to move or to stay in a place.<sup>12</sup>

Despite reforms of the *hukou* system since the 1990s which have facilitated the movement of rural residents to the cities – adapting both to the economic need for rural labourers to fuel China’s economic growth and to the inevitability of urbanization, it continues to place restrictions on freedom of movement and residence through the demands it makes, particularly, on those seeking to move from a rural to an urban location, effectively

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<sup>9</sup> The Trade Union Law prevents the establishment of independent trade unions, giving the All China Federation of Trade Unions (ACFTU) a legal monopoly on trade union organizing.

<sup>10</sup> International Covenant on Civil and Political Rights, adopted by General Assembly resolution 2200A (XXI) of 16 December 1966, entered into force 23 March 1976.

<sup>11</sup> CCPR General Comment 27, 2 November 1999, para . 4.

<sup>12</sup> CCPR General Comment 27, as in n. 9, para. 5.

making it extremely difficult for millions of internal migrants to be fully documented, and “legally” residing, in the cities.<sup>13</sup>

### ***Background to the hukou system***

The *hukou* system requires every resident of China to be registered with the local Public Security Bureau. Household registration booklets are kept by local security bureaux for all families (individuals living alone being counted as a household) which contain information including the names, dates of birth, occupations, marriage status, etc., on all members of the household. Chinese citizens have only one place of permanent *hukou* registration. According to the *Provisional Regulations on the Management of Temporary Residents in the Urban Areas*, issued in 1985, any person staying or living outside of their *hukou* zone for more than three days, including foreign nationals, must register with the local *hukou* authorities at the local police station and obtain a guest, or temporary, *hukou* registration. Individuals who fail to do so may be subject to fines and removal to their place of permanent registration. Landlords, hotels, and other households who host visitors are responsible for ensuring that their guests register with the local police although these regulations have been relaxed in some localities.

Any person staying in a locality outside their *hukou* zone for more than three months must, furthermore, apply for a Temporary Residential Permit (*zanzhuzheng*) which provides the legal basis for residence and the key basis of legal identity. In many localities this permit is necessary in order to work, to rent housing, to open a bank account, to enter public buildings (such as libraries), to receive registered mail, and for other personal identification purposes.<sup>14</sup>

Obtaining a temporary residential permit can be a time-consuming and costly process, although the fees and the documentation required ranges widely between localities. Until recently, fees for obtaining a temporary residential permit ranged from 200 to 500 yuan (US\$24-60) for a six-to-twelve month permit.<sup>15</sup> Some localities have recently lowered the fees and simplified the procedure. According to one informant, her permit cost between 100-150 yuan (US\$12-18) in 2001 in an area near Nonggang District, Guangdong Province, but now the cost is no more than 30-40 yuan (US\$3.60-5).<sup>16</sup> However, it continues to be difficult to obtain a residency permit in Beijing. According to an internal migrant worker in Beijing “police don’t give them out easily, you have to have “*guanxi*”,<sup>17</sup> meaning personal contacts.

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<sup>13</sup> For further discussion, see ZHU Lijiang, “The *hukou* System of the People’s Republic of China: A Critical Appraisal under International Standards of Internal Movement and Residence,” *Chinese Journal of International Law* (2003), pp. 519-565.

<sup>14</sup> Fei-Ling Wang, *Organizing through Division and Exclusion: China’s hukou System*, Stanford University Press, Stanford, CA, 2005, p. 74-5.

<sup>15</sup> *Organizing through Division and Exclusion*, p. 79.

<sup>16</sup> Amnesty International interview, internal migrant worker, 29 October 2006, Shenzhen, China.

<sup>17</sup> Amnesty International interview, internal migrant worker, 19 October 2006, Beijing, China.

Those seeking to obtain a temporary residential permit may, however, face additional costs. Reports in some localities point to the need for internal migrants to bribe local officials and police officers in order to obtain a temporary permit. The Chinese Central Television reported that local *hukou* police in the cities of Shenzhen and Dongguang, Guangdong Province, often charge applicants for temporary permits a fee of 155-215.5 yuan (US\$19-26), rather than the 5 yuan (US\$0.60) fee stipulated by law.<sup>18</sup> Individuals who cannot obtain a legitimate sponsor – either an employer or landlord, might have to pay even higher bribes, either to a “fake” sponsor or to the police, to obtain and to renew their temporary permits. The system also provides local police the opportunity to issue fines and citations to those without temporary permits. Anyone caught forging documents or counterfeiting *hukou* papers may be subject to even higher fines up to 1,000 yuan (US\$120) and to a prison sentence.

The documentation required for obtaining a temporary residency permit differs between localities, although either a labour contract or documentation from a local host or local landlord is generally required. The fact that many internal migrant workers do not have employment contracts, as discussed further below, increases their difficulty in obtaining such permits. Additional documentation that internal migrants may be required to submit includes a work permission authorization from their original locality, documentation proving they have not violated family-planning policies, that they have no criminal record, as well as proof of unmarried status, and a character reference from the police in the place of origin. Localities that seek to limit the influx of internal migrants will tend to have more stringent documentation requirements.

The validity of temporary residential permits varies between localities, generally between six to twelve months, and according to individual status. Permits must be renewed with proper documentation at the end of their validity, with a fee being charged for each renewal. Temporary *hukou* status does not automatically convert to permanent residential status no matter how long an individual lives in a locality. Holders of temporary residential permits are not considered local residents, but are considered only to have legal permission to temporarily reside in a locality outside their *hukou* zone.

### **III. Employment discrimination against internal migrants and denial of just and favourable conditions of work**

China is a founding member of the International Labour Organization (ILO), and the International Labour Conference has recalled that:

“...all Members, even if they have not ratified the Conventions in question, have an obligation arising from the very fact of membership in the Organization to respect, to promote and to realize, in good faith and in accordance with the Constitution, the

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<sup>18</sup> *Organizing through Division and Exclusion*, p. 79

principles concerning the fundamental rights which are the subject of those Conventions, namely:

- (a) freedom of association and the effective recognition of the right to collective bargaining;
- (b) the elimination of all forms of forced or compulsory labour;
- (c) the effective abolition of child labour; and
- (d) the elimination of discrimination in respect of employment and occupation.”<sup>19</sup>

In addition, on ratifying the ILO Convention 111 Discrimination (Employment and Occupation), (ILO Discrimination Convention), in January 2006 China has undertaken to eliminate employment discrimination on the basis of, *inter alia*, social origin.<sup>20</sup> The Convention came into force in respect of China in January 2007 (one year after ratification).<sup>21</sup>

As a state party to the ICESCR, China also recognizes, according to Article 7 of the ICESCR:

“the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular;

- a) Remuneration which provides all workers, as a minimum, with: i) Fair wages and equal remuneration for work of equal value without distinction of any kind.....ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;
- b) Safe and healthy working conditions; and
- c) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.”

However, in practice Chinese workers are routinely denied many of these rights. Internal migrant workers, due to their insecure legal status, social isolation, their sense of cultural inferiority, and relative lack of knowledge concerning their rights, labour under some of the worst working conditions and experience some of the worst abuse in the work place. In factories with high concentrations of migrant workers one finds widespread denial of workers’ rights to a fair wage, to safe working conditions, to organize and join labour unions of their choice, to freedom of movement, as well as to state-mandated workers’ benefits. Amnesty International is concerned that although the central government has shown increased commitment to addressing discrimination against internal migrants and denial of their rights, enforcement of new regulations has not been effective at the local level.

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<sup>19</sup> ILO Declaration on Fundamental Principles and Rights at Work, 86th Session, Geneva, June 1998, Article 2.

<sup>20</sup> Ibid, Article 1(1)(a) and Article 2.

<sup>21</sup> Ibid, Article 8(3).

### *Denial of labour contracts*

Article 16 of China's 1994 Labour Law states that "labour contracts shall be concluded if labour relations are to be established," requiring employers to provide all employees with an individual labour contract (*laodong hetong*). Such a contract should provide the worker with proof of his or her employment, contracted wage, and entitlements to various rights and benefits outlined in the Labour Law. However, it has been widely recognized in China, including in the Chinese press, among academics and in government reports, that implementation and enforcement have been lax, and that migrant workers are more susceptible to being denied contracts. This stems from the fact that they tend to work in private enterprises, that they tend not to be knowledgeable about the law, and that their lack of proper *hukou* documentation makes it more difficult for them to demand a labour contract. According to a survey conducted by the State Council Research Center, 46% of internal migrants did not have labour contracts with their employers.<sup>22</sup> However, other evidence suggests the percentage is likely to be much higher. A survey conducted by the NPC in December 2005 found that less than 20 percent of small and medium-size enterprises use labour contracts.<sup>23</sup> According to an ILO report a random check on 134 companies by the Labour Department of Suizhou City in Hubei revealed that not a single one had issued any labour contracts.<sup>24</sup> Many migrant workers have not been informed that the law requires employers to provide them with a contract. Research by Jinan Daily found that 8 out of 10 internal migrant workers did not know what a labour contract was.<sup>25</sup> According to a survey conducted the city of Dongguan, in southern China, workers in only three of the 16 factories investigated reported that their employers had provided them with any form of labour contract.<sup>26</sup> According to one migrant worker, in a factory where she worked "(t)he workers weren't given any labour contracts in this factory. No one brought that up when we started working here."<sup>27</sup>

In light of lax enforcement of the current labour laws, Amnesty International welcomes the drafting of a new labour contract law to the extent that it would tighten enforcement and find mechanisms to improve protection of workers' rights.<sup>28</sup> However, the

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<sup>22</sup> "State Council Research Center Issues report: "China's Rural; Workers are Experiencing Three Big Changes" [Guowuyuan yanjiushi fa baogao: woguo nongmingong zheng fasheng san da bianhua], Xinhua, reprinted by the PRC Central Government (Online), 16 April 06, cited in Congressional-Executive Commission on China (hereafter CECC) Annual Report, p. 64.

<sup>23</sup> "China's Top Legislature Debates Contract Bill Protecting Worker's Rights," Xinhua (Online), 28 December 2005, cited in CECC Annual Report, p. 64.

<sup>24</sup> "Internal Labour Migration in China", p. 11.

<sup>25</sup> Ibid.

<sup>26</sup> "Falling Through the Floor: Migrant Women Workers' Quest for Decent Work in Dongguan, China," p. 9, *China Labour Bulletin*, September, 2006. Available at [http://www.china-labour.org.hk/fs/view/research-reports/Women\\_Workers\\_Report.pdf](http://www.china-labour.org.hk/fs/view/research-reports/Women_Workers_Report.pdf)

<sup>27</sup> "The "Nine Lives" of a Chinese Woman Migrant Worker: Ms. Zhang tells her story," *China Labour Bulletin*, 8 March 2006.

<sup>28</sup> For further discussion see [www.chinadaily.com.cn/china/2206-03/21/contect\\_548325.htm](http://www.chinadaily.com.cn/china/2206-03/21/contect_548325.htm) and [www.news.xinhuanet.com/English/2006-03/21/contect\\_4325166.htm](http://www.news.xinhuanet.com/English/2006-03/21/contect_4325166.htm)

limitations of legal remedies without effective enforcement mechanisms must be recognized, and that the most effective way to enforce laws that seek to protect workers' interests is to give workers the freedom to organize themselves, including the right to form and join trade unions of their choice.

### ***Forced overtime and holidays denied***

Article 44 of the 1994 Labour Law sets out that "workers shall work for no more than eight hours a day and no more than 44 hours a week on average", and Article 41 states that a legal maximum of 36 hours of overtime per month is allowed. The law also states that the working day can be extended by one hour, or under special circumstances by no more than three hours.

Despite this, forced overtime and denial of time off is commonplace in factories with high concentrations of internal migrant workers. In manufacturing factories in the Pearl River Delta in southern China, whose workforce is composed primarily of internal migrant labour, workers usually work between 12 and 14 hours a day, seven days a week, with only one day a month off. In the worst cases, workers were forced to work 16 hours overtime, effectively meaning 24-hour shifts.<sup>29</sup>

Ms. Zhang, a 21-year-old internal migrant worker who worked in nine different factories within the space of four years, recalls her experience in a garment factory in Shenzhen:

"We worked overtime every day and the earliest we would get off of work would be around 11 p.m. Sometimes we would work until two or three in the morning, and we would have to work the next day as usual. We started at 7:30 a.m. until 12 noon. They said that we had half an hour for lunch and a rest, but in fact as soon as we finished eating, we would go back to work. There was no rest break. The best day was Sunday when we only had to work overtime until 9:30. Really, we were exhausted. Some even fainted, because they were so tired."<sup>30</sup>

According to another internal migrant worker:

"We work 14 hour days. The working hours are from 7:30 to 11:30 am, 1:30 to 5:30 pm, and 6:30 to 10:30 pm. If we're rushing to fill an order, then we continue working right through until 12:30 am the next morning. We have a break for something to eat in the evening. These periods when we're rushing to finish an order and working lots of overtime can go on for 20 days or more at a stretch. If we're not rushing to complete an order, then we only work about four hours of overtime a day. You have to work overtime. If you don't, they'll fine you."<sup>31</sup>

Article 44 of the 1994 Labour Law also sets out clearly how overtime pay is to be calculated: on normal working days, overtime pay is to be paid at one and a half times the

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<sup>29</sup> "Falling Through the Floor," p. 9.

<sup>30</sup> "The "Nine Lives" of a Chinese Woman Migrant Worker".

<sup>31</sup> "Falling Through the Floor," p. 11.

regular hourly rate; on week-ends and other rest days, it is to be paid at twice the regular rate; and on public holidays it should be three times the regular rate.

Despite this, managers in factories with mainly an internal migrant workforce often calculate basic wages and overtime hours so as to deny workers their rightful wage. Under a system of “extended hours” (*tuoban*), for instance, workers work over-time, but are paid at piece rate, with the quotas set so high they are never actually able to earn overtime.<sup>32</sup> As a consequence of this workers are often denied their rightful wage and their overall wages remain low and oftentimes below the locally set minimum wage.

Internal migrant workers are also routinely denied holidays, days off and sick leave. Those who take unauthorized sick leave risk high fines which are deducted from their wages. According to Ms. Zhang’s account of conditions in one of the factories where she worked.

“... most people had a hard time getting even a day off. If you didn’t turn up for work, you’d get fined. And each fine was between 50 yuan (US\$6) and 100 yuan (US\$12). We didn’t get a day off on National Day or Labour Day. The best you could expect was that we wouldn’t have to work overtime on Mid-Autumn Festival. There was no trade union in this factory and we never heard anything about laws on labour protection and we never had any training in labour protection.”<sup>33</sup>

According to another worker:

“It wouldn’t be fair to say that you can’t ever get time off; but if you’re sick, the most you can expect is one day off. If you’re really tired and need a rest, the only thing to do is go absent without leave. But it’s not worth it unless you’ve just no choice, because then you’ll lose your full attendance bonus and overtime pay, and they’ll deduct four days wages as a fine.”<sup>34</sup>

### ***Fines and unpaid wages***

The ICESCR recognises the right of all workers to remuneration sufficient to secure an adequate standard of living for themselves and their family.<sup>35</sup> China has had a minimum wage system in place since 1994 which allows local governments to set minimum wages for their locality, based partly on the local cost of living. According to Article 12 of the Minimum Wage Regulations, the minimum wage is not to include any payments for overtime worked, bonuses, employer-provided social security premiums, or other benefits.<sup>36</sup>

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<sup>32</sup> Ibid.

<sup>33</sup> “The “Nine Lives” of a Chinese Woman Migrant Worker”.

<sup>34</sup> “Falling Through the Floor,” p. 11.

<sup>35</sup> Article 7(a)(ii), for clarification see UN Committee on Economic, Social and Cultural Rights, *General Comment 18 – The Right to Work*, UN Doc. E/C.12/GC/18, 6 February 2006, para. 44.

<sup>36</sup> *Zuidi Gongzi Guiding* (Minimum Wage Regulations), Ministry of Labour and Social Security, effective 1 March 2004. This regulation supercedes the Ministry of Labour’s “*Qiyè Zuidi Gongzi Guiding*,” (Minimum Wage Regulations for Enterprises) of November 1993.

Despite this, wages of internal migrant workers are effectively reduced by management through inadequate pay for compulsory overtime, fines, unpaid wages, and other methods.

In some factories workers are fined one yuan for every minute they are late to work, potentially representing a significant portion of their daily wage.<sup>37</sup> Ms. Zhang, as quoted above, recounted the experience of another worker, an older woman, in a garment factory where she had once worked.

“Once the section chief told her to re-do something and she refused...but if the section chief told you to do something, then you had better do it. So she was fined. After she was fined, she still wouldn’t do it and quarrelled with the section chief. So she was fined again! That month her fines totalled at least 600 yuan (US\$72.55).

Due in part to such harsh disciplinary regimes in migrant factories, internal migrant workers make on average very low wages. A survey conducted by the PRC Bureau of State Statistics in May 2005 found that the average monthly wage of internal migrant workers in the Pearl River Delta is only 600-700 yuan, including overtime pay and bonuses, when 800 yuan was barely sufficient to cover food, accommodation and transportation.<sup>38</sup> According to the bureau director, based on the local cost of living, “such an income is only enough to buy four bowls of fried bean-sauce noodles a day.”<sup>39</sup>

Employers also take advantage of internal migrants’ vulnerable status by withholding billions of yuan in unpaid wages. The Ministry of Construction announced that the total value of defaulted construction fees and non-payment of wages reached 186 billion yuan (US\$22.5 billion) at the end of 2003.<sup>40</sup> Employers often purposefully withhold wages right before the lunar new year, so as to ensure that workers return to their jobs. This means that every year millions of migrants are unable to even purchase train tickets home for the holidays.<sup>41</sup> The frustration and desperation on the part of migrants due to unpaid wages has resulted in frequent outbursts of violence, many of which have been reported in the Chinese media. In more extreme cases these have resulted in the death of migrants and sometimes those they have attacked. The case of a 27-year old internal migrant worker in Ningxia province who stabbed his supervisor and three of the supervisor’s relatives over his back-pay in July 2006, and was later executed for his crime, signalled how dire the situation has become, sparking sympathy within the Chinese public.<sup>42</sup> Another well-publicized case was that of Xiang

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<sup>37</sup> “The ‘Nine Lives’ of a Chinese Woman Migrant Worker”.

<sup>38</sup> “Laodongli Dilian’ Zhi Wei – Zhongguo Laodongli Jiazhi yu Guoqiang Minfu” (Crisis of low-cost labour-power”. The value of labour-power in China and the [goal of] national strength and prosperity). *Zhongguo Jingji Zhoukan (China Economic Weekly)*, 30 May 2005; available at [www.nmpx.gov.cn/gongzuoyanjiu/t20050530\\_35419.htm](http://www.nmpx.gov.cn/gongzuoyanjiu/t20050530_35419.htm) Also quoted in “Falling Through the Floor: Migrant Women Workers’ Quest for Decent Work in Dongguan, China,” p. 11.

<sup>39</sup> *Ibid.*

<sup>40</sup> “Agency details China’s migrant workers pre-holiday wage problems,” *Xinhua*, Beijing, 10 February 2007.

<sup>41</sup> “Migrant workers unable to return home for the Chinese New Year,” *Apple Daily*, 23 January 2006.

<sup>42</sup> “Migrant workers need better protection,” *SCMP*, 7 September 2006.

Guanghai, who was beaten so severely during a dispute over back pay that his skull was left severely deformed. Mr. Xiang alleged that the beating was instigated by the contractor who owed him his wages.<sup>43</sup> Mr. Xiang's boss, furthermore, failed to adequately compensate him for his medical expenses, paying only for his initial visit to the hospital, but not for the additional 60,000 yuan (US\$7,255) he would need for a second operation to reconstruct his skull.

The crisis of migrants' unpaid wages has been recognized by the Chinese authorities. Central level officials have repeatedly urged local governments to ensure that internal migrant workers are paid on time. In 2003 Premier Wen Jiabao pledged that the problem of unpaid wages would be solved by the following year, and in October 2004 he publicly supported an internal migrant worker in his claim for his back wages. The central government continues to exhort local governments and factory management to stop the practice of withholding of workers' wages. Certain regulatory measures have been adopted to address the problem.<sup>44</sup> With pressure from the central government, the total value of unpaid wages owed to internal migrant workers has been lowered, with the total amount in the construction industry having been brought down to 10 billion yuan (US\$1.2 billion) by January 2006, an amount considered low compared to previous years.<sup>45</sup> However, Amnesty International remains concerned that migrant workers' lack of labour contracts, and the illegal status of many sub-contractors, means that the problem will persist. Sub-contractors are often reported to just disappear, leaving huge unpaid wage bills, leaving workers short of many months' wages.

Unpaid wages severely restrict internal migrants' freedom to change jobs, often forcing them to either put up with exploitative working conditions or to give up many months of wages in order to change jobs. A report by the All-China Lawyers Association in September 2005 concluded that to recover 1000 yuan (US\$120) it would cost migrant workers a minimum of 3000 yuan (US\$360), without counting daily expenses for food, travel expenses, and accommodation.<sup>46</sup> Furthermore, the report concludes that migrants have little chance of getting their wages even if they receive a favourable court judgment.<sup>47</sup>

### ***Financial penalties and obstruction of the right to leave employment***

Managers use a variety of tactics to effectively impede workers from being able to resign their post without financial penalties. One of the most effective tactics is the withholding of wages.

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<sup>43</sup> "Migrant worker sues after back-pay row ends in fractured skull," *SCMP*, 7 September 2006.

<sup>44</sup> Jilin Province has reportedly passed regulations that require construction companies that have defaulted on workers' pay to deposit up to 5 percent of a project's value, as a guarantee against further unpaid wages. The provincial authorities have also issued guidelines requiring employers who do not pay their migrant workers on time to pay 50 to 100 percent of the outstanding amount as compensation. "Migrant workers need better protection," *SCMP*, 7 September 2006.

<sup>45</sup> *Ibid.*

<sup>46</sup> See "High cost of wage recover deepens sense of futility in legal route, stirs up social unrest," *China Labour Bulletin*, 10 November 2005. See <http://www.clb.org.hk>.

<sup>47</sup> *Ibid.*

As internal migrants typically are owed 2-3 months back pay, in practice, this means that an internal migrant worker who quits his or her job loses a minimum of 2-3 months of wages. Because the vast majority of internal migrant workers do not have a labour contract, they do not have recourse to legal action to claim their unpaid wages. Furthermore, because migrants often take jobs far from home, live in factory dormitories, and have few social and other resources to support them locally, they typically would have great difficulty pursuing legal action to recover their wages, particularly as they would generally have quit or lost their job.

**Case of workers in Beijing migrant factory trying to recover their back wages**

The account of Ms. Zhang about internal migrant workers in a clothing factory in the outskirts of Beijing trying to get their back-pay sheds light on the difficulties they face.

“At that time, the factory was three months behind in paying wages. I had been there for just a month, so this didn’t really affect me. ....It was just at that time that the other workers were asking the boss for their back pay. They’d already talked to the boss many times but got nowhere. Then, they said that if they weren’t paid, they’d quit. The plant manager threw a fit and said he wasn’t going to pay anyone. The assistant plant manager was a woman and she was more polite. After she came in, she said that the plant manager had been kidnapped a few days ago and had spent a lot of money and had nothing in hand right now. If the staff didn’t have any money for meals, the factory could help out. Later, we were all given between 30 and 50 Yuan. She said that they had an order for some cotton garments that was quite urgent and if we could get this order out first, then she’d see if we could be paid right after that.

We worked on that order for two days and they still didn’t pay us....The boss later wrote us a note saying that he was having a financial crisis. He also said that he would pay us in the future within a specified period of time.

But we heard some news about the boss, the meaning of which was that we would have a hard time getting our wages. So we got the feeling that it was really hopeless to try to get our back pay from him. We tried again, asking the factory manager for our salary and he said that if we wanted to leave, we should leave now. He could say that because he knew that we hadn’t been paid in a long time and that we had no money to leave. We didn’t even have the bus fare to get to Beijing! In the end we decided that we would leave, even without our pay, and we’d decide what to do when we got to Beijing. Usually, the factory locked the main gate to the compound. If someone wanted to go out to make a telephone call or to buy something to eat they needed to get a permission slip from the boss. In the end, all of us united and left together.

We left in the evening. At that time there was only one guy watching the main gate. There was one guy who was working on our side of the plant and he’d stolen the key to the gate. After the gate was open, the guard couldn’t hold us back. And that was how we all got away. At that time, we were really pleased with ourselves. We thought we had won some kind of victory. In fact, there were those in our group who had lost

four months of wages. They all said I was lucky, because I had only lost one month's wage."<sup>48</sup>

In circumstances where workers are locked in their factories, and need a permission slip to leave the factory compound, simply being able to physically escape can thus be seen by workers as a victory, even if they have lost several months' wages.

Another strategy used by management to reduce wages and control workers is to require workers to pay a deposit when they first start work as a condition of getting the job, with the stipulation that workers must work a certain number of months before being able to resign and get their full deposit back. If not, their deposit may not be returned. In practice, however, workers who have worked the stipulated number of months often still do not get their deposits returned when they leave the factory.

These various tactics for cutting down on workers' compensation are a way for managers to deal with growing labour shortage without having to raise wages, an approach that has been particularly prevalent in southern China where labour shortages have been the most severe. They help explain why internal migrant workers wages have not risen significantly in response to labour shortages, as one would expect under normal market conditions.

### ***Housing***

Article 11(1) of the ICESCR provides that "The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate... housing". The UN Committee on Economic, Social and Cultural Rights has clarified that "adequate housing" includes legal security of tenure; availability of services, materials, facilities and infrastructure; affordability; habitability; accessibility; location and cultural adequacy.<sup>49</sup>

Housing conditions of migrants are poor to appalling. One 21-year-old man described his living conditions to a group of researchers as one in which more than 30 people slept in bunk beds in a single room in an unfinished underground storehouse without a window, showers or air ventilation. They were reportedly only allowed to take a shower or bath at a nearby building once per week.<sup>50</sup>

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<sup>48</sup> "The "Nine Lives" of a Chinese Woman Migrant Worker."

<sup>49</sup> UN Committee on Economic, Social and Cultural Rights, *General Comment No. 4 – the right to adequate housing*, 13/12/91, para . 8, Contained in UN Doc. E/1992/23.

<sup>50</sup> "Pay Attention to the Legal Rights of Peasant Workers," *People's Daily* (Overseas Edition) 1 September 2002, G.S. Shi., quoted in Xiaoming Li, Bonita Stanton, Xiaoyi Fang, and Danhua Lin, "Social Stigma and Mental Health among Rural-to-Urban Migrants in China: A Conceptual Framework and Future Research Needs," *World Health and Population*, June 2006, pp. 1-18.

Migrant workers not living in factory dormitories also tend to live in extremely crowded conditions, often with a large number of other individuals sharing a room. They tend to live in highly concentrated communities, often on the outskirts of cities where there is little or inadequate infrastructure. Nearly every major Chinese city features a migrant community, with many of the buildings they occupy subject to demolition orders by local authorities. In Beijing there are at least eight migrant communities in the four central districts of the city, each of which has at least 10,000 residents. The well-known “Zhejiang village” in Beijing, which was demolished in 1996 and re-built in 1998, had about 100,000 residents prior to its demolition.

Migrants are denied the housing benefits that many permanent urban residents get from either their work unit or the government. Temporary residents have been excluded from the generous housing subsidies that have been given to permanent urban residents to encourage them to buy housing – a key strategy in the government’s approach to housing privatization.

#### **IV. Shut out of health care**

Article 12 of the ICESCR provides that “The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.” According to the Article, states must take necessary steps to achieve the full realization of this right, including those necessary for “The improvement of all aspects of environmental and industrial hygiene”; “The prevention, treatment and control of epidemic, endemic, occupational and other diseases”; and “The creation of conditions which would assure to all medical service and medical attention in the event of sickness.”

Their status as outsiders in the cities has virtually shut internal migrants out of the health care system. They are typically not eligible for the new urban health insurance schemes being established in the cities, cannot afford the expensive new private insurance schemes burgeoning in China, and cannot pay out of pocket for health care that has sky-rocketed in cost in recent years.

The vast majority of internal migrants in China’s cities live without health insurance, rarely visit a doctor, and typically only go to the hospital in the most extreme cases of illness or injury. According to Su Zhi, a deputy director of the Ministry of Health’s supervision division, most internal migrant workers in cities and workers in rural enterprises are employed in dangerous jobs, but have no medical insurance and have little awareness of safety issues.<sup>51</sup> A study of internal migrants in Beijing and Nanjing concludes that:

“the high cost of health services and the lack of any health insurance resulted in under-utilization of healthcare services among migrants, which led to a series of

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<sup>51</sup> “Health of migrants goes under microscope,” *SCMP*, 26 April 2006.

ineffective health-seeking behaviours such as unsupervised self-treatment, going to unregulated clinics or “just holding on” without seeking any medical care.”<sup>52</sup>

In the words of one young woman in Beijing, “Honestly, people like us came to work in Beijing. We dare not go to the hospital, it is just too expensive...”.<sup>53</sup> The study finds that migrant communities in these cities never or rarely visit the hospital or other medical facilities, and delay seeking treatment for even serious diseases. By the time they do seek out formal care, they are typically seriously ill. Even in the case of serious illness or accident, news reports suggest that migrants may be denied treatment because of their lack of health insurance and inability to pay for service out of pocket. A study of internal migrants in Shanghai based on data from 1993-1996 found that only 6.7% of migrants, compared with 73.7% of permanent residents, were covered by an insurance scheme.<sup>54</sup> 93.3% of internal migrants surveyed had to pay for health care out of pocket, compared to 26.3% for permanent residents.<sup>55</sup> Not surprisingly, on nearly all health issues, internal migrants score worse than permanent residents. According to the Shanghai study, two thirds of all women who die due to complications in pregnancy (maternal mortality) are internal migrants, and the number of stillbirths among internal migrants is twice that of permanent residents.<sup>56</sup> A survey of women migrant workers conducted by the All-China Women’s Federation in November 2006 found that only 6.7% of the women migrants interviewed across a large number of areas of China had maternity insurance.<sup>57</sup>

Internal migrants also suffer from a lack of access to health related information, including information on sexual and reproductive health, making them at higher risk of infectious diseases. Young migrant workers have been found to be a group with one of the highest risks of infection of HIV/AIDS.<sup>58</sup> And because they work disproportionately in the most dangerous jobs and industries internal migrants are one of the most vulnerable groups in terms of the risk of occupational accidents.

#### **Changes in China’s health care system since the 1980s**

Beginning in the 1980s government spending on health care fell dramatically, resulting in a sharp drop in the government’s share of the total health care budget. Between 1978 and 1999 the central government’s share of national health care spending dropped from 32% to 15% of

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<sup>52</sup> “Too costly to be ill,” p. 9.

<sup>53</sup> *Ibid.* p. 5.

<sup>54</sup> Zhan Shaokang, Sun Zhenwei, and Blas, E. (2002) “Economic Transition and Maternal Health Care for Internal Migrants in Shanghai, China”, *Health Policy and Planning*, Vol. 17 (Suppl): 47-55, see p. 51.

<sup>55</sup> *Ibid.*

<sup>56</sup> *Ibid.*, p. 50.

<sup>57</sup> “Half of women migrant workers are in irregular employment,” *China Youth Daily*, 22 November 2006.

<sup>58</sup> “HIV statistics in Shenzhen show migrants at high risk, expert says,” *SCMP*, 28 June 2006.

total spending.<sup>59</sup> At the same time the central government took other steps that led to the virtual collapse of the nation's rural health care system. The dismantling of the rural communes in the 1980s led to the complete collapse of the commune-based rural health care safety net, leaving no rural institutions through which to pool risks for health care expenses. According to one analysis, China's 900 million rural residents, mostly poor peasants, "became, in effect, uninsured overnight."<sup>60</sup> From 1977 to 2002, the number of doctors in rural areas decreased from 1.8 million to 800,000, and the number of rural healthcare workers declined from 3.4 million to 800,000.<sup>61</sup> While the central government has recently undertaken efforts to reconstruct rural healthcare on the basis of a rural cooperative health care scheme, access to healthcare in rural areas remains highly restricted, with peasants having virtually no health insurance coverage.<sup>62</sup>

While the urban health care system also declined, it did not experience as total a collapse as the rural system. Public investment in rural health care declined more sharply than spending on urban health care. As a consequence, a large proportion of current government spending is invested in urban health care as compared to rural health care. Currently, about 80% of the total health care budget is allocated to funding hospital-based medical facilities in urban areas, despite the fact that urban residents account for only 30% of China's total population.<sup>63</sup> The impact of this growing rural-urban disparity in health care spending is evident in health statistics. Residents of large cities in China live on average 12 years longer than rural residents, and in some rural areas the infant mortality rate is nine times higher than in the large cities.<sup>64</sup>

Internal migrants are disadvantaged with regard to health care at two levels. First, the health care available to them as permanent residents of rural areas is significantly inferior than what is available to most urban residents. Secondly, they are discriminated against as temporary residents of the cities where they live and work. Spending on urban health care, furthermore, has become increasingly skewed in favour of already privileged groups including civil servants and other government employees, and the wealthy and well-connected. The unemployed, low-income, and others in a position of vulnerability, including internal migrant workers, on the other hand, have been disenfranchised and virtually excluded from health care insurance. Due to their low salaries migrants typically cannot afford private health care insurance.

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<sup>59</sup> "Privatization and its Discontents – The Evolving Chinese Health Care System," *The New England Journal of Medicine*, Volume 353: 1165-1170, 15 September 2005. Number 11.

<sup>60</sup> "Privatization and its Discontents".

<sup>61</sup> CECC, Annual Report, 2006, p. 101.

<sup>62</sup> CECC, Annual Report, 2006, p. 101.

<sup>63</sup> "Too costly to be Ill," p. 3.

<sup>64</sup> CECC, Annual Report, 2006, p. 101.

## DISCRIMINATION IN ACCESS TO HEALTH CARE

### *Privatization and pricing out of poorer patients*

The drop in government spending on health care has in practical terms had the effect of privatizing health care facilities by forcing them to rely on the sale of services to fund their operations. The cut-back in state funding means that nominally public hospitals have had on average between only 10-20% of their costs covered by the state.<sup>65</sup> Hospitals which in the past were primarily supported through public funds now increasingly pay for their operations through user fees and other charges, the sale of elective, prescription drugs, and high-technology, elective procedures. In Shenyang in 1998, only 12% of the operational costs of municipal hospitals and 5% of those of district hospitals were covered by public investment. This trend has been associated with an increase in private financing direct from users as a proportion of total health care spending from 20% to 58% between 1978 to 2002.<sup>66</sup> According to China's vice-minister for health Huang Jiefu, in 2004 per capita government spending on health care was a mere US\$33.<sup>67</sup> China's health care has come to be increasingly dominated by a fee-for-service system in which individuals pay privately for services.

This decline in state spending and increased burden on individuals to pay their own health expenses has taken place alongside a rapid rise in the overall cost of health care. According to one estimate, in the five years up to 2003, the average cost of a hospital stay increased 67% to 4,123 yuan, representing half of the average per capita disposable income in urban areas during the same period.<sup>68</sup>

These trends have favoured civil servants and other government employees, who have retained generous health insurance policies, and the wealthy, who can afford to pay for private care, and most adversely impacted those living in poverty. The proportion of China's urban population with some form of health insurance fell significantly as a consequence of the reforms, from 52% in 1993 to 39% in 1998, while the proportion of the urban population with no insurance at all increased from 28% to 44% during the same period.<sup>69</sup> By 2006 only 130 out of 550 million urban residents were reported to have medical insurance, i.e. only 23%.<sup>70</sup> One estimates places the proportion of citizens nation-wide that have no insurance at 90% .

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<sup>65</sup> According to one estimate, in 2004 state-owned urban hospitals received only 10% of their operational funds from the state. See "China's health care: Where are the patients?", *The Economist*, 19 August 2004. According to another report in early 2006, 20% of such costs are being provided by the state. See "Health insurers flock to China," *International Herald Tribune*, 28 March 2006.

<sup>66</sup> "Privatization and its Discontents."

<sup>67</sup> "Health care reform in China discussed: Vice minister Huang details advances, problems, reforms," *Harvard University Gazette*, 15 September 2005.

<sup>68</sup> "Health insurers flock to China."

<sup>69</sup> Jane Duckett, "State, Collectivism and Worker Privilege: A Study of Urban Health Insurance Reform," *The China Quarterly*, 2004, pp. 159.

<sup>70</sup> "Medical System to Cover all Residents," *People's Daily*, 4 April 2006.

China's health care system can be criticized for its failure to make quality health care available and accessible to the entire population without discrimination, especially given the increasing resources available to China.<sup>71</sup> It is the most vulnerable groups, including internal migrant workers, who have been left with no health insurance coverage, and unable to cover the increasing cost of health care privately. According to a World Health Organization ranking in the year 2000, China was placed 144 (out of 191 countries), on criteria which included fairness of access to health care and government contributions to the cost. This was behind India, which had half of China's GDP per head, which was ranked 112, and behind some of Africa's poorest nations.<sup>72</sup> In this context Amnesty International believes that China is in breach of its obligations under Article 12 of the ICESCR to devote the "maximum of available resources" towards achieving progressively the full realization of the right to the highest attainable standard of health.

### ***Discrimination against migrants in the new urban health care schemes***

As non-permanent residents in China's cities, internal migrants have been shut out of the new urban health care insurance schemes being put into place in Chinese cities. In 1998 the government issued the National Programme which shifted the focus of urban health insurance to local governments, and away from the old work unit-based system of the Maoist era. In this new system, which began to be more widely implemented after 2001, city governments organize the risk-pooling of employer and employee contributions, and bear the financial risks that this entails.<sup>73</sup> Under this scheme city governments administer local health insurance funds (HIFs) comprised of contributions of 6-8 % of a enterprise's total wage bill and, for the first time, contributions by individual employees.<sup>74</sup> Mandated for inclusion in the program are "urban employees" (*chengzhen zhigong*) of state-owned, collective enterprises, government departments and other public institutions. However, employees of private sector enterprises, the self-employed, and other employed individuals can also be included as well, at the discretion of local governments. Potentially, then, this scheme can provide insurance for all individuals employed in urban areas.

Internal migrant workers, however, have been shut out of this new insurance scheme because of their rural *hukou*. According to the National Programme, and the design of plans in Shanghai and Tianjin, individuals with non-permanent urban *hukou* are excluded from eligibility.<sup>75</sup> A further problem is that these insurance schemes target only those with formal employment, whereas a large proportion of internal migrants work in informal sectors.

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<sup>71</sup> "Health insurers flock to China". According to an estimate by the Chinese Academy of Social Sciences, 65.7% of Chinese citizens have no health insurance. However, this percentage seems too low, as only 22% of urban residents have insurance, and rural residents are insured at a much lower rate than urban residents. "Shekeyuan lanpishu: 65.7% guoren wu yiliao baoxian," *Zhongxingshe*, 22 December 2005.

<sup>72</sup> "China's health care: Where are the patients?"

<sup>73</sup> Duckett, "State, Collectivism and Worker Privilege," p. 162.

<sup>74</sup> *Ibid*, pp. 159-160.

<sup>75</sup> *Ibid*.

Migrants, furthermore, often have short contracts, moving from one job to another frequently. And the evidence suggests that private enterprises seek to avoid signing their employees up for the programme, as they must pay into the health insurance fund for each employee. The government has not so far required privately owned enterprises to join the health insurance scheme. Because the vast majority of internal migrants work for private enterprises, they are most often not included in the health insurance scheme.

Without any type of subsidized health insurance, internal migrants are thus left to pay for their own health care costs. While private insurance has burgeoned in China, the cost of this tends to be far beyond what the average internal migrant worker can afford. With the cost of health care soaring, health care remains out of reach for the majority of low income internal migrants. This, together with other characteristics of their population profile, has made them one of the most vulnerable populations in China and one of the highest risk groups in relation to infectious diseases including HIV/AIDS, avian flu, and hepatitis.<sup>76</sup>

### ***Enterprise management as an obstacle to accessing health care***

Not only are internal migrant workers unable to obtain health insurance, and typically unable to pay the cost of healthcare, they are also frequently prevented from even accessing medical facilities by their workplace bosses. Long working hours, lack of sick leave, and harsh attitudes on the part of management inhibit internal migrant workers from asking for time off to visit the doctor or to take care of health problems. Many internal migrants refrain from mentioning that they are sick or have health concerns for fear of losing their jobs. The fact that internal migrants either have temporary *hukou* status, or are largely undocumented, make them particularly vulnerable to this obstructive behaviour on the part of their bosses.

According to a 26-year old male internal migrant worker:

“We don’t go to hospitals usually. No time. Once I was really sick, but the work schedule was very tight. I was very sick and almost in a coma, but I was only in the hospital for half a day and got one shot, and I had to return to work after that.”<sup>77</sup>

According to another young internal migrant male, aged 20:

“(m)y stomach and back were causing great pain; but my boss was very busy at that moment. I asked for a sick leave. He said, ‘you can’t. There are so many things for you to do’. I had no choice but had to hold on. When I really could not hold on, my boss said, ‘tell you the truth, you really should not stop, you should hold on by biting your lips.’”<sup>78</sup>

According to a 34 year-old man, “(s)ome of my co-workers have arthritis or something. But even if we are sick we don’t say it. If we say it, the boss will get rid of us.”<sup>79</sup>

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<sup>76</sup> “HIV statistics in Shenzhen show migrants at high risk, experts say,” *SCMP*, 28 June 2006.

<sup>77</sup> “Too costly to be ill,” p. 6.

<sup>78</sup> *Ibid.*

<sup>79</sup> *Ibid.*

Many internal migrants are not familiar with the hospitals in their neighbourhoods. According to a young woman aged 27, “I don’t know any hospital because I work from morning till night; and we can’t go out during work. At lunch time, they have the lunch boxes delivered to our work site.”<sup>80</sup>

As one 19 year-old woman described, “I usually just hold on. Usually after seven days, I will be fine again.” According to another young man aged 22, “I don’t take medicines, I just hold on. Because if you take medicines, you will feel very weak the next day and can’t work.”<sup>81</sup> In some cases internal migrants were even found to perform minor surgical procedures on themselves to avoid having to go to the hospital.

### ***Work-related injury insurance***

In April 2004 the State Council promulgated the “Regulations on Occupational Injury Insurance”, which created a mandatory system for occupational injury insurance by stipulating the mandatory participation of every type of enterprise in the system. All enterprises are expected to provide occupational injury insurance, and to collect occupational injury insurance premiums on behalf of their workers.<sup>82</sup> These, and subsequent, regulations reflect the authorities’ determination to increase the proportion of workers, particularly internal migrants, who are covered by occupational injury insurance. Vice Minister of Labour and Social Security Hu Xiaoyi announced that as of July 2006 a total of 90 million workers were participating in occupational injury insurance, of which 18.71 million were internal migrants, representing 15.6% of the estimated 120 million internal migrants in Chinese cities.<sup>83</sup> However, given Ministry of Health statistics released in January 2005 that there were over 16 million enterprises in China involved in toxic and harmful materials, with a workforce of over 200 million workers, Amnesty International considers these results inadequate, particularly as workplace health and safety conditions in China remain poor and internal migrants suffer disproportionately from occupational diseases and accidents.<sup>84</sup> Approximately 90% of workers suffering from workplace-related diseases are reportedly internal migrants;<sup>85</sup> around 80% of those who died in mining, construction and chemical factories are reportedly internal migrants.<sup>86</sup>

While the goal of including migrant workers in a work-related injury insurance scheme is laudable, it is still too easy for enterprises to refuse to participate in the insurance scheme, and local governments have insufficient means or determination to punish ones that

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<sup>80</sup> Ibid, p. 5-6.

<sup>81</sup> Ibid, p. 6.

<sup>82</sup> For further discussion of the issue of occupational injury insurance see “Weakening of the government’s ability to govern hinders implementation of occupational injury insurance system,” *China Labour Bulletin*, 18 October 2006.

<sup>83</sup> Ibid.

<sup>84</sup> Ibid.

<sup>85</sup> *Internal Labour Migration in China*, p. 12.

<sup>86</sup> Ibid.

do. Many enterprises prefer not to participate in the insurance scheme and to settle serious cases out of court if they are pressured to do so. The consequence is that workers, particularly migrant workers, are not getting the compensation that they deserve. Migrant workers who have suffered serious injuries typically have to negotiate directly with management in order to have their medical costs covered, but typically have little leverage to do so. According to Li Tao, the director of the Culture and Communication Centre for Facilitators, a Beijing NGO fighting for migrant workers' rights, a survey in 2004 found that almost 70 per cent of interviewees were not compensated for workplace injuries.<sup>87</sup>

The experience of Ms. Zhang, quoted above, after a serious accident illustrates the vulnerability of internal migrant workers vis-à-vis management.

“On March 25, 2004, I was working the night shift and the shield fell off several times, so I stopped using it. At about 3 a.m. the accident happened. My hand was caught by the iron roller. Someone who was there at the time saw what happened and thought that the machine had jammed and turned off the machine. But my hand was still inside and I couldn't get it out. No one there knew what to do, but they called the electrician. The electrician was sleeping and didn't come for another six minutes. When the electrician released the pressure of the machine, then I got my hand out. The skin on my hand was already badly burnt by the time I got my hand out. The security man called for a factory car to take me to the hospital, but they couldn't find a driver. It was another half hour before they called a taxi and I went to the hospital by myself. Nobody went with me.

While I was in the hospital, the factory only gave us about 100 Yuan for food. We were afraid that we wouldn't have enough money, so we didn't eat the hospital meals. My cousin made something every day and brought it to the hospital for me to eat. I hadn't fully recovered yet, but the factory stopped paying the hospital bills and the hospital discontinued the injections.....About 10 days or so after I was released from hospital, the factory started to push me to come back to work.<sup>88</sup>

Ms. Zhang, however, was one of the luckier workers because she was contacted by a local workers' service centre who supported her efforts to receive compensation from her employer for her injury. Despite that, she did not receive all the wages and insurance money that she was owed, illustrating the continued vulnerability of internal migrant workers vis-à-vis their factory bosses.

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<sup>87</sup> “Health of migrants goes under microscope,” *SCMP*, 26 April 2006.

<sup>88</sup> “The ‘Nine Lives’ of a Chinese Woman Migrant”, p. 6.

## V. Denial of the right to education: discrimination against migrant children

“I feel very bad. We come from all parts of China and contribute to Beijing’s development. But we get no support from Beijing, or any support whatsoever. Ordinary state schools refuse to accept migrant children. So we teach ourselves, hoping children can study a little. Its hard for us. But we didn’t think it would be hard for our children as well.”<sup>89</sup>

These are the words of an internal migrant worker upon learning about the closure of his child’s school in Beijing in September 2006, a privately-run school set up especially for internal migrant children.

Millions of internal migrant children still struggle to get a decent education. Many of those who live with their parents in the city are effectively shut out of state schools, because their parents are not legally registered, or by the high school fees, or their failure to pass qualifying exams administered by schools. Private schools set up especially by internal migrants for their children, on the other hand, face sudden, possibly discriminatory, closure by local governments, and offer lower quality education than state schools. Because of these challenges, millions of migrants choose to leave their children behind in the countryside, sometimes even without adequate guardians, rather than bring them to the cities. As a consequence children of internal migrants as a group are denied the same educational opportunities as their peers in urban areas and are denied the right to education, which at least at the primary stage must be compulsory and available free to all.

The situation is a violation of China’s obligation (under both international and national law) to realise the right to education – particularly the right to free and compulsory education – for millions of children. While Chinese state authorities have demonstrated an awareness of the problem, and initiated reform measures to address it, progress has been slow. Discrimination against migrant families and their children is still widespread.

The issue grows more pressing as the number of migrant children living in cities continues to increase. A large proportion of the first generation of internal migrants were young and childless. However, the size of the internal migrant population and the proportion of them having children in the cities, or bringing their children with them to the city, continues to increase. Children thus constitute a growing proportion of this community. Estimates suggest that children now represent between 5% and 10% of the migrant population in the cities, although the figure could be higher because of undocumented internal migrants.<sup>90</sup>

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<sup>89</sup> “*Jingqiang dui minxiao, qian xuesheng shixue*” (1.000 students lose their school in forcible shut-down of migrant schools in Beijing), *Mingbao Tongxun*, 30 August 2006.

<sup>90</sup> According to a 1999 article, Beijing had 3.295 million migrants by that year, of which over 200,000 were aged 0-14 years, or 9.9 percent of the migrant population. See Duan Lihua and Zhou Min, “Study of the problems in compulsory education for children of the migrant population,” *Modern Education in Primary and Secondary Schools*, February 1999. Cited in *HRIC*, “Shutting out the Poorest: Discrimination against the Most Disadvantaged Migrant Children in City Schools,” p. 8, footnote 6.

With estimates of the size of the internal migrant population ranging between 150 and 200 million, this would represent between 7.5 and 20 million children.<sup>91</sup>

This section of the report examines discrimination against internal migrants in China's major cities in relation to their children's right to free and compulsory education without discrimination. It begins by looking at China's international and domestic legal obligations, the regulatory framework governing education in China, and the discrimination experienced by migrant children.

### ***The scope of the right to education***

The right to an education is guaranteed in a number of international instruments. Article 26(1) of the Universal Declaration of Human Rights (UDHR) provides that "(e)veryone has the right to education." The ICESCR guarantees the right to education, including free and compulsory primary education, secondary, higher and fundamental education. The UN Convention on the Rights of the Child provides that all children have a right to an education, clarifying that the child is the subject rather than a passive recipient of the right to education.<sup>92</sup>

Education is recognized as indispensable to the realization of other human rights, including political and civil rights as well as economic, social and cultural rights. In its General Comment 13 on the implementation of the ICESCR, the Committee on Economic, Social and Cultural Rights states that "(e)ducation is both a human right in itself and an indispensable means of realizing other rights." It further notes that education plays a vital role in "(s)afeguarding children from exploitative and hazardous labour and sexual exploitation."<sup>93</sup>

The UN Committee on Economic, Social and Cultural Rights has clarified, in General Comment number 13, that governments obligations' in relation to the right to education include ensuring the *availability*, *accessibility*, *acceptability*, and *adaptability* of education for all, reflecting changing needs, pressures, and social realities (this is known as the "4-A scheme").<sup>94</sup>

Chinese law also stipulates the right to education, including nine years of free, public, education without discrimination. According to Article 46 of the 1982 Constitution, "Citizens of the People's Republic of China have the duty as well as the right to receive education." Article 9 of the 1995 Education Law stipulates that "Citizens of the People's Republic of China have the right and the responsibility to receive education. All citizens have an equal right to education in accordance with the law, without regard to their nationality, ethnicity, gender, occupation, financial situation or religious beliefs." Parents and guardians of school-

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<sup>91</sup> "How is the actual living situation of rural migrants?"

<http://opinion.people.com.cn/GB/40604/315771.8.html>.

<sup>92</sup> For further discussion see the Preliminary report of the Special Rapporteur on the right to education, UN Doc. E/CN.4/1999/49 13 January 1999, p. 26.

<sup>93</sup> General Comment No. 13, "Implementation of the International Covenant on Economic, Social and Cultural Rights: The Right to Education," UN Doc. E/C.12/1999/10, 8 December 1999, para. 1.

<sup>94</sup> *Ibid.*

age children and young people are also given responsibility for ensuring that children complete the required number of years of compulsory education. Article 18 of the Education Law calls on local governments to take necessary measures to ensure education for all school-age children in their localities.

## **Availability**

### **Lack of education available for children of internal migrants**

In practice, during most of the 1980s and 1990s China's internal migrants were left largely to fend for themselves when it came to their children's education. Local authorities and state schools took virtually no responsibility for the education of internal migrant children. National laws regarding the state's commitment to provide free, compulsory, education to all children, such as the 1986 PRC Compulsory Education Law, were interpreted as giving local state authorities responsibility only for the education of children in their districts whose parents were permanent residents of the locality.<sup>95</sup> Children were expected to receive their education in their place of permanent *hukou*. The general expectation was that the children of internal migrants should remain in their home-towns to attend school, even as their parents left to work in the city.

Internal migrants have responded primarily in two ways to lack of access to educational opportunities for their children in the cities. First, many have left their children behind in their hometowns. According to a recent survey conducted by the China All-China Women's Federation in 12 provinces, 20 million children are currently estimated to have been left behind by parents working in the cities.<sup>96</sup> A study by Renmin University, Beijing, found that in 2005 23 million children in rural areas were not cared for by either parent.<sup>97</sup> The difficulty of securing health care and decent education for their children is reported to be among the key factors contributing to parental decisions to leave their children behind. The surveys found that 60% of rural women working in urban areas had left children in the care of relatives back in their home-towns, and that only 20% of internal migrant workers had brought their children with them to the cities.<sup>98</sup> The impact on family life is dramatic. About 80% of internal migrant women said they were only able to see their children once or twice a year, while 12.7 % reported only being able to see their children once every one or two years. The seriousness of the issue is evident in the impact on the "left-behind children", who have

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<sup>95</sup> Beijing, however, has been an exception to this general rule since 1970 in that children without *hukou* in Beijing were still allowed to enroll in municipal state schools as "temporary students" (*jiedusheng*) if they fell into a number of designated categories. These included children whose parents worked abroad and who had an official guardian in Beijing, children with a parent working in Beijing, or whose parents were formerly "sent down youth". See *Shutting out the Poorest*, p. 19.

<sup>96</sup> "Migrant workers leave millions of children behind," *SCMP*, 20 October 2006.

<sup>97</sup> *Ibid.*

<sup>98</sup> *Ibid.*

been found to have problems in their schooling, health, and psychological development due to lack of parental care.<sup>99</sup> The establishment by the central government of a working group on the question of children left behind composed of representatives of twelve ministries and commissions points to the fact that the authorities are at least cognizant of the seriousness of the problem. However, solutions proposed, such as setting up boarding schools for migrant children and video-conferencing facilities between children and parents, fall far short of ensuring internal migrants the right to family life.

Alternatively, internal migrants have responded by setting up their own privately-run, and privately-funded, schools especially for their own children. Such schools are often run by parents seeking to teach their own children and those of their neighbours, or by retired teachers from the rural areas.<sup>100</sup> The Xingzhi School, for instance, located in 1994 in an unused lot in Beijing, was set up by a former teacher from a rural area in Hebei Province after her friends and neighbours, also internal migrant workers like herself, urged her to provide classes for their children.<sup>101</sup> The number of such schools grew dramatically beginning in the late 1990s and into the new millenium. At the end of 1996 the Beijing districts of Fengtai and Haidian each had at least seven migrant schools with over 1000 students, while there were reported to be over two hundred such schools serving over 40,000 children by the end of 2000.<sup>102</sup>

Internal migrant schools have served the needs of a community of children effectively shut out of both the state school system and the private schools aimed primarily at the wealthy urban classes. They have generally offered more affordable schooling than state schools. Internal migrant schools in Beijing (among the most expensive nationwide) on average charge 300 yuan in tuition per semester and generally do not charge the wide range of miscellaneous fees that state schools do, discussed further below. They tend to be located in proximity to migrant communities, which are often concentrated in the outskirts of large cities. They are also reported to be more responsive to the needs of working migrants, for instance by taking children earlier in the morning and keeping them later in the evening to cater to the long working hours of their parents. While many of the small internal migrant schools can only afford to teach the core subjects – Chinese and mathematics, some of the larger ones are now able to offer a wider range of subjects, including English and computers. Perhaps as importantly, in their own schools internal migrant children are not subject to the intense hostility and prejudice they experience from fellow students, parents, school teachers and administrators in state schools.

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<sup>99</sup> Ibid.

<sup>100</sup> “Schools for migrant children closed: Principals fear up to 15,000 pupils at 30 Beijing schools will have to drop out and return to their villages,” *SCMP*, 13 July 2006.

<sup>101</sup> Ibid.

<sup>102</sup> “Shutting out the Poorest: Discrimination against the Most Disadvantaged Migrant Children,” p. 12.

### ***The tenuous existence of internal migrant schools***

Internal migrant schools have not, however, offered an adequate solution to the problem of educating internal migrant children and do not absolve the Chinese authorities of their legal obligations to provide access to free, compulsory, primary education to all children without discrimination.

Internal migrant schools are generally poorly resourced, some woefully so. Many have struggled to get their operations going in the face of hostility from local school and municipal authorities, or at best experienced neglect. Many continue to face the risk of sudden, forcible, closure by local authorities. Local authorities have typically resisted licensing even better qualified migrant schools, including those set up in the last couple of years by non-migrant professionals for more profit-making motives.<sup>103</sup> Local authorities have tended to maintain unrealistic standards to which migrant schools must live up to, making the prospect of getting an official license unlikely for the vast majority of them. Beijing municipality, for instance, maintains a set of standards that even many state schools cannot satisfy, including having a campus that is at least 15,000 sq. meters large and having various kinds of running tracks and other sports facilities.<sup>104</sup> These high standards give local governments legal grounds upon which to shut migrant schools down. And the absence of any government policy or programs to help migrant schools improve their conditions so as to be able to be licensed, puts them in a continuously precarious legal status. To date, there appear to be no reports of an internal migrant school having been officially licensed. Their illegal and insecure existence has the additional deleterious effect of dissuading potential private actors from investing more heavily in the future of these schools.

While there has been a growing acceptance of internal migrant schools on the part of central and local authorities, they operate at the whim of the authorities. They have been tolerated in order to address a social issue that local governments have not handled. But, as the case study of school closures in Beijing highlights, internal migrant schools continue to be vulnerable to sudden, arbitrary, closures, often with little or no advance warning if their presence is for one reason or another not welcome by local authorities. Schools are generally shut down on the grounds of unsafe conditions, or below standard teaching staff or resources, or the fact of operating without an official license. While some of these reasons may be genuine and legitimate, Amnesty International is concerned that at times they are used merely as a pretext for closure.

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<sup>103</sup> “The Hazards of the Right to an Education”, p. 6.

<sup>104</sup> “Hu Xingdou, Li Fangping: Open Letter Regarding Carefully Handling the Problem of the Education of Migrant Children,” (In Chinese) DWNEWS.com, 17 September 2006.

### **School closures in Beijing**

In August 2006 local authorities initiated a sweep of internal migrant schools in Haidian district, Beijing, on the grounds that these schools were not licensed, operated dangerously, and violated health and safety regulations, in what appeared to be a concerted “clean-up campaign”.

Many schools were forcibly shut down against the resistance of parents, students, teachers and school administrators. On 30 August, 2006 ten Public Security Bureau and government officials entered the Eternal Hope School for migrant children in Beijing’s Shijingshan District, and ordered classes that were in progress to stop. They proceeded to put up notices proclaiming that the school had been shut down – justified on the grounds that the school was in violation of codes and not up to the standards – and locked the school gates. School authorities had only been notified of the impending shut-down by the local authorities 12 days before. The local Haidian district authorities reportedly determined that only one school serving around 2,000 migrant children was to be allowed to operate in the district, despite there having been six schools in operation in the district serving 6,700 migrant children, forcing close to 5,000 children to find alternative schooling arrangements on very short notice.<sup>105</sup>

Haidian district educational authorities’ gave assurances that students in schools being shut down would be reassigned to state schools. The sudden closures nevertheless created hardships and uncertainty for thousands of families. Many parents did not want their children to be transferred to a state school, for reasons including the high fees and the hostile atmosphere. Mr. Zhao, the father of two daughters attending Eternal Hope School that was shut down, complained that even if his children were reassigned to a state school, he would not be able to afford the fees. At the Eternal Hope School he only had to pay a 300 yuan fee for the whole year. Another parent, Ms. Zhang, expressed anger at the local authorities, saying their methods of dealing with the situation were “unreasonable and violent”. In her view, “the students, teachers, and resources of this school are good. Why did they need to go and shut this school down?”<sup>106</sup> At the time that classes were to begin in the fall, the reassignments to state schools had not yet been made.<sup>107</sup> Furthermore, it appears that in practice not all children were reassigned in a timely fashion, with some being forced to return to their home-towns.

The operation of hundreds and thousands of unlicensed schools set up for internal migrant children represents a failure on the part of the state to ensure migrant children equality in the exercise of their right to free, compulsory, primary education. However, the government must take care to only shut down these schools for genuine health and safety

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<sup>105</sup> “*Jingqiang dui minxiao, qian xuesheng shixue*” (1000 students lose their school in forcible shut-down of migrant schools in Beijing), *Mingbao Tongxun*, 30 August 2006.

<sup>106</sup> *Ibid.*

<sup>107</sup> *Ibid.*

concerns. Internal migrants should have the right to set up and operate schools for their own children, particularly as they continue to be excluded through a variety of means from state schools and internal migrant children still experience serious prejudice and hostility as students there. Moreover, as discussed further below, state schools in practice charge a wide range of unlawful miscellaneous fees, making them unaffordable for most internal migrants. Migrant schools, however, do not offer the same quality of education as state schools on average. They are typically very poorly resourced, with less qualified teachers and outdated teaching materials, and often do operate in run-down, and indeed in some cases, unsafe, facilities.

### *Official efforts to address the education of internal migrant children*

The first steps on the part of the Chinese central authorities to address the issue of the schooling of the children of internal migrants came in 1996 with the adoption by the State Education Commission of the “Trial Measures for the Schooling of Children and Youth among the Floating Population in Cities and Towns” (hereafter Trial Measures). This was the first regulation to refer to the role of local governments in the areas where migrants live and work – receiving governments –in providing for the education of migrant children in their jurisdictions, stating that local government “should create the conditions and the opportunity for school-aged migrant children to receive compulsory education”. After two years of experimentation based on the Trial Measures, the “Provisional Measures for the Schooling of Migrant Children and Young People” were promulgated in 1998 by the State Education Commission and the Ministry of Public Security (thereafter “the Provisional Measures”). The Provisional Measures represented progress in specifying that educational departments of receiving local governments should take specific responsibility for “managing the provision of free, compulsory, education to migrant children.”<sup>108</sup>

Subsequent central government regulations have similarly sought to push local governments to assume greater responsibility for the education of internal migrant children under their jurisdiction. In 2001 a State Council resolution on education required “every region to come to grips with the problems of education among the floating population [internal migrants], making it a prime responsibility of the governments in regions with a floating population to guarantee the educational rights of the children concerned”<sup>109</sup> In September 2003 the Education Ministry issued an “Opinion on further improving the work of migrant children education”, transmitted as a communiqué from the State Council.<sup>110</sup> This

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<sup>108</sup> “Provisional Measures Regarding the Schooling of Migrant Children and Youth.” Located at <http://www.law-lib.com>

<sup>109</sup> “Implementation of the International Covenant on Economic, Social and Cultural Rights.” Initial report submitted by State parties under articles 16 and 17 of the Covenant. E/1990/5/Add.59, 4 March 2004, p. 72.

<sup>110</sup> This is entitled “Opinion on Improving Work regarding Compulsory Free Education for the Children of Rural Residents entering Cities for Employment.” See “How is the actual living situation of rural migrants?”. See <http://www.law-lib.com> and <http://opinion.people.com.cn/GB/40604/315771.8.html>.

document represented progress with respect to the financing of education for internal migrant children in its call on municipal governments to incorporate the costs of compulsory free education for internal migrant children into their financial planning, and specifically calling on municipal government education departments to integrate the work of internal migrant children education into their overall work and to supervise the work of primary and secondary state schools in this respect.

The 2003 “Opinion” further called on municipal finance departments to budget extra funds for state schools that have large proportions of internal migrant children, representing progress in comparison to the earlier of allocating municipal education budgets solely on the basis of the permanent population. With regard to financial issues, the Opinion further calls on local governments to strive to reduce the educational fees for migrant children are required to pay to attend state schools, with the goal that migrant children pay the same, or no more, than “local” urban children. It also specifies that municipal education departments should ensure that state schools do not charge migrant families miscellaneous fees for their children’s admission.<sup>111</sup> The revised PRC Compulsory Education Law issued in 2006 similarly reiterates that governments of receiving areas are responsible for creating the conditions for internal migrant children to receive free, compulsory, education.<sup>112</sup>

These steps represent progress from the earlier situation in which the educational needs of internal migrant children were not addressed at all, or local governments were in practice held responsible only for their permanent residents.<sup>113</sup>

However, as elaborated below, this regulatory framework, and its implementation, have not provided children of internal migrants with equal access to educational opportunities, and not fulfilled the government’s commitment to provide free, compulsory, education to all children without discrimination. National and local regulations still discriminate against internal migrant children, and positive aspects of the regulations are not effectively implemented in practice.

## **Accessibility**

### **Right to free and compulsory education**

The obligation to ensure at the very least that primary education is free of charge and compulsory is provided explicitly in both the ICESCR and the Convention on the Rights of

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<sup>111</sup> “Opinion on Improving Work regarding Compulsory Free Education for the Children of Rural Residents entering Cities for Employment.”

<sup>112</sup> “PRC Compulsory Education Law (revised 2006),” located at <http://www.law-lib.com>

<sup>113</sup> HRIC “Shutting Out the Poorest”.

the Child (CRC).<sup>114</sup> Article 13 of the ICESCR provides that "(P)primary education shall be compulsory and free for all". The meaning of "free" education should be interpreted broadly to require the immediate removal of direct fees and the progressive removal of all indirect charges which represent a barrier to accessing and staying in education at least until the minimum age of employment. As the UN CESCR has clarified:

"Free of charge. The nature of this requirement is unequivocal. The right is expressly formulated so as to ensure the availability of primary education without charge to the child, parents or guardians. Fees imposed by the Government, the local authorities or the school, and other direct costs, constitute disincentives to the enjoyment of the right and may jeopardize its realization. They are also often highly regressive in effect. Their elimination is a matter which must be addressed by the required plan of action. Indirect costs, such as compulsory levies on parents (sometimes portrayed as being voluntary, when in fact they are not), or the obligation to wear a relatively expensive school uniform, can also fall into the same category. Other indirect costs may be permissible, subject to the Committee's examination on a case-by-case basis."<sup>115</sup>

The duty to realize the right to free and compulsory primary education is an obligation of immediate effect,<sup>116</sup> and requires those countries which have not yet secured compulsory primary education, free of charge, to work out and adopt a detailed plan of action to do so, within a reasonable number of years.<sup>117</sup> Under both the ICESCR and the CRC, states parties undertake to guarantee that the right to education (as all other human rights enunciated in the respective treaties) without discrimination.<sup>118</sup>

The Chinese government has also committed itself, through a variety of domestic laws and regulations, including the 1986 and 2006 versions of the Compulsory Education Law, to provide nine years of free, compulsory, education, to all Chinese children without discrimination, financed from the state budget. Article 10 of the 1986 Compulsory Education Law specifies that "(t)he state shall not charge tuition fees for students attending compulsory education. The State shall establish a system of stipends to help poor students pursue their studies."

### *Charges for "free" compulsory education*

Despite these international and domestic legal obligations, state schools in China providing "free", compulsory, education routinely charge students a wide range of miscellaneous fees,

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<sup>114</sup> UN Convention on the Rights of the Child, adopted by UN General Assembly resolution 44/25 of 20 November 1989, entered into force 2 September 1990.

<sup>115</sup> UN Committee on Economic, Social and Cultural Rights, General Comment 11 (1999), Plans of action for primary education (art.14), para. 7.

<sup>116</sup> As clarified by the UN Committee on Economic, Social and Cultural Rights (CESCR), "The obligation to provide primary education for all is an immediate duty of all States parties.", General Comment No. 13, The right to education, UN Doc. E/C.12/1999/10, para. 51.

<sup>117</sup> ICESCR, Article 14.

<sup>118</sup> ICESCR, Article 2(2); CRC, Article 2.

including fees for meals, school uniforms, “special” classes including English and computer science, transport, playground supervision, etc. In practice, charges of 700 yuan (US\$85) per year appear quite normal.<sup>119</sup> However, the cost of these fees range widely between regions and schools, and are hard to track in practice. As the former UN Special Rapporteur on the right to education has noted:

“there is no authoritative information on the variety of fees that are charged. Ranging from exam-paper fees to reading room permit charges, from desk fees to homework collection fees.”<sup>120</sup>

The prohibition against the charging of “tuition fees” by state schools in the 1986 Compulsory Education Law, may be interpreted as allowing other types of fees. In fact, the 1995 Education law defined obligations of schools to include “collecting fees according to the relevant regulations of the states” and “openly revealing the items of fees charged”. Article 2 of the 2006 Compulsory Education Law prohibits the charging of *both* tuition and “miscellaneous fees”.

In addition to the school fees charged to all students, internal migrants have had to pay additional fees and financial duties that local children with permanent urban *hukou* have not had to pay. The 1998 Provisional Measures for the Schooling of Migrant Children provided for the imposition on migrant families by local authorities (education authorities and state schools) of a “temporary schooling fee” that locally registered children have not had to pay. Temporary schooling fees have been set locally by municipal governments with approval coming from provincial governments.<sup>121</sup> The justification of this fee has been that because internal migrants are not part of the permanent local population, local governments do not have a budget for their schooling. The “temporary schooling fee” has thus been viewed as compensation to the local government for the cost of their schooling. This view prevailed despite the fact that internal migrant workers pay taxes at the same rate as the local population. Thus, due to their distinct social origin internal migrant families have experienced discrimination in relation to financial charges, a clear violation not only of the state’s promise of free education, but also the commitment to provide such education without discrimination.

For internal migrants families, these various fees make attendance at state schools prohibitive. School fees have a disproportionate impact on migrant workers, whose incomes are on average lower than other urban residents. In Chengdu the temporary schooling fee was in the range of 400 yuan (US\$48) per semester for primary school and 1,000 yuan (US\$120) per semester for secondary school in 2002.<sup>122</sup> For an internal migrant family the combined financial charges, including the temporary schooling fee and other direct or indirect fees, are a major factor restricting access to supposedly “free” education.

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<sup>119</sup> “Open Letter Regarding Carefully Handling the Problem of the Education of Migrant Children.”

<sup>120</sup> Katarina Tomaševski, *The State of the Right to Education Worldwide: free or for fee?*, p. 129, available at <http://www.katarinatomsevski.com>

<sup>121</sup> Municipal bureau of price, finance, and education were made jointly responsible for setting the benchmark for this fee, with approval from the provincial government being required. See “The Hazards of the Right to an Education”, p. 3.

<sup>122</sup> “The Hazards of the Right to an Education”, p. 5.

Analysts have speculated that the financial fees internal migrants are made to pay represent not only a money-making opportunity for local authorities but have also been part of a conscious strategy on their part to limit the influx of internal migrants.<sup>123</sup>

The central government has issued numerous regulations in recent years prohibiting local and school authorities from charging “miscellaneous” fees for public education. It has also issued regulations prohibiting local and school authorities from charging internal migrant families fees that are not imposed on permanent urban residents, including temporary schooling fees. The 2003 State Council “Opinion” instructed local governments to reduce the educational fees for internal migrant children and to not charge internal migrant children higher fees than those paid by urban children. As with many other regulations, however, these have not been effectively implemented. Internal migrants continue to routinely be charged fees by state schools across China that urban children do not have to pay, directly discriminating against migrant children, and also to charge all students a wide range of miscellaneous fees, violating the right to free and compulsory education as recognized by international human rights law. Amnesty International calls on the Chinese government to implement its obligations under Article 14 of the ICESCR to realize the right to free and compulsory education and to immediately eradicate all fees and other charges that restrict access to education.

### ***Bureaucratic barriers to access to education***

Despite central government regulations calling on local governments to provide for the free, compulsory, education of “all children” in their localities, local authorities have continued to interpret this as extending only to the children of fully documented and legally registered internal migrants – thereby directly discriminating against children of internal migrants based on their *hukou* status. Numerous local governments have established admission criteria that close access to state schools to undocumented internal migrants, making the enjoyment of their right to free, compulsory, education by internal migrant children subject to the *hukou* status of their parents. Many localities continue to require migrants to obtain a “temporary permit for schooling” to gain admission into a state school. To obtain this permit, migrants typically have to present “five documents”, including the family’s *hukou* booklet, the parents’ temporary residence permit, work permit, certificate of residence, and a “Certificate Testifying to the Absence of Suitable Guardian” in the place of their permanent *hukou* registration.<sup>124</sup>

Following the issuance of the Education Commission’s 2003 “Opinion on further improving the work of migrant children education”, most municipalities issued their own regulations which set out the conditions that internal migrants must meet in order for their children to be eligible to apply to attend a local state school. Shanghai’s “Opinion on Doing Well the Work of Free, Compulsory, Education for Migrant Children” (2004) requires internal migrants to have a range of documentation issued by the local government of their

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<sup>123</sup> “The Hazards of the Right to an Education”, p. 4.

<sup>124</sup> “Open Letter Regarding Carefully Handling the Problem of the Education of Migrant Children.”

place of origin including certification that they came to the city only for work, as well as documentation from “relevant” (not specified) departments and units in the Shanghai municipal government certifying that the internal migrant is in the city for work, and a certificate demonstrating that s/he has a legal, fixed, place of abode in the city and has been living there for a “certain” amount of time (not specified).<sup>125</sup> Only internal migrants satisfying these requirements can apply to the educational bureau for admission into the state school system.

The legal and documentary requirements that migrants must satisfy are not only onerous, they are also vaguely defined and fundamentally at the discretion of local government and local neighbourhood committees, the lowest level of municipal administrative hierarchies. According to most local municipal regulations, neighbourhood committees are responsible for processing and delivering internal migrants’ applications for “permission for temporary schooling”. The regulations make no provision for what an internal migrant family should do if their application is turned down by the local committees, in other words, to whom they may appeal this decision. Shutting the children of internal migrants out of the state school system could be one way that local governments seek to limit the flow of migrants to their jurisdictions.

The difficulty of completing the paper-work helps explain the low percentages of children that satisfy the requirements. According to one estimate, 90% of internal migrants in Beijing do not have proper documentation necessary for their children to attend a state school.<sup>126</sup> Only 12.5% of migrant children in Beijing aged 6-14 attended state schools in 2002.<sup>127</sup> This means that even if an internal migrant child is given a place in a state school without the proper documentation, due perhaps to lack of demand from residents with urban *hukou*, s/he may be at risk of losing that place if demand grows from local residents.

The legal framework and practice discriminate against children of internal migrants in other ways. The 1998 Provisional Measures specify that local school authorities need only consider school applications from internal migrant children once all local children have obtained their place, a policy and practice adopted by various municipalities.<sup>128</sup> Many schools still administer a “qualification test” which many internal migrant children are reported to fail due to their weaker educational training.<sup>129</sup> Beijing authorities further limit admission of internal migrant children to state schools by legally requiring all children who can be “supervised”, i.e., for whom there is a guardian in their place of origin, to attend school in

<sup>125</sup> “Opinion on effectively implementing the work regarding the free, compulsory, education of children of migrant workers,” jointly issued by the Shanghai Municipal Education Commission and seven other municipal Shanghai bureau. Available at [http://www.law-lib.com/law/law\\_view.asp?id=116068](http://www.law-lib.com/law/law_view.asp?id=116068).

<sup>126</sup> “Open Letter Regarding Carefully Handling the Problem of the Education of Migrant Children”.

<sup>127</sup> “Pay Attention to the Legal Rights of Peasant Workers,” *People’s Daily* (Overseas Edition) 1 September 2002, G.S. Shi., quoted in Xiaoming Li, Bonita Stanton, Xiaoyi Fang, and Danhua Lin, “Social Stigma and Mental Health among Rural-to-Urban Migrants in China: A Conceptual Framework and Future Research Needs,” *World Health and Population*, June 2006, pp. 1-18.

<sup>128</sup> For further discussion see *HRIC*, “Shutting out the Poorest”, p. 20.

<sup>129</sup> “1000 students lose their school in forcible shut-down of migrant schools in Beijing”.

their home-town. Local neighbourhood committees in Beijing, with assistance from the Public Security Bureau, are responsible for investigating whether or not there are the “conditions for children to be supervised” in their home-towns, and if so these children are to be sent back to their home-towns to attend school. The regulations do not set any standards as to who or what would constitute acceptable “supervision” for children whose parents are living and working in the city, who has the authority to make the judgement as to suitable guardians, and no reference is made to an appeal process for parents who might object to the decision to have their children sent back, giving migrant parents no voice in the process. These regulations thus give local-level semi-official organizations the power to decide whether an aged grand-parent or distant uncle could be suitable guardians, thus subjecting migrant families to the arbitrariness of their staff.

Regrettably, after such a long trial period, the 1998 Provisional Measures have not yet been turned into a permanent law that would hold local governments clearly responsible for the free, compulsory, schooling of *all* children, regardless of the *hukou* status of their parents. As promulgated, they remain only provisional measures and no nation-wide, permanent, legal framework governs the education of migrant children.<sup>130</sup>

The impact of discrimination on migrants and their children is powerful and far-reaching. In the words of Wang Yuancheng, the NPC member:

“Migrant children’s parents are humiliated, and they are again discriminated against, so their hearts will be hurt and they will hate society when they grow up, posing a risk to society.”<sup>131</sup>

## Acceptability

Chinese laws underscore the state’s obligation to protect the rights of all children attending school. Article 29 of the 1995 Education Law requires state schools to protect the lawful rights of all children attending school, and Article 36 provides that all children have equal rights with respect to school enrolment and continued enrolment in school.

Despite this, local government and school authorities have not made adequate efforts to make the learning environment for internal migrant children free of hostility, prejudice, and discrimination, and to protect their rights in school. They have also not adequately addressed the specific needs of internal migrant children and their families in terms of learning and social integration. State schools are described by internal migrant parents as hostile environments, where teachers, other students, and school administrators mistreat internal migrant children, making them feel inferior and socially rejected. Despite the inferior

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<sup>130</sup> The fact that a distinct regulatory framework to govern, or protect, internal migrant children’s rights is needed is itself problematic, as the Chinese Constitution and numerous other laws promise access to free, compulsory, education for all Chinese children without discrimination.

<sup>131</sup> “Migrant workers find a champion”.

education generally offered by specialized internal migrant schools, some parents choose these schools for their children because of the hostile environment that their children face in the state schools.

Ms. Zhang, an internal migrant in Beijing, explained that she had taken her son out of a state school because of the tremendous discrimination he had experienced there and the negative impact it had on him.<sup>132</sup> She said that in the state school “they all discriminated against our child, so he developed a rebellious attitude.”<sup>133</sup> She consequently transferred him to the Eternal Hope School for internal migrants in Beijing, although this was subsequently shut down in the campaign to close migrant schools in Beijing in 2006. According to reports, “urban” parents often prevent their children from making friends with the children of internal migrants.<sup>134</sup> According to the director of the Shanghai branch of a major international NGO the prejudice and hostility on the part of urban parents, school teachers, and administrators towards internal migrant children often had the desired effect of driving migrant families away from state schools.<sup>135</sup>

## VI. Reform of the *hukou* system

China’s *hukou* system has undergone significant change in response to the market reforms of the post-Mao era – the opening of markets in food, consumer goods, and housing which made it easier for people to live outside the structure of state-controlled resources. During this period, the Chinese government has neither been able, nor wished, to completely block the flow of labour from the countryside to the cities. There has also been agreement among broad sectors of the government, intellectual and professional circles, as expressed in the media and specialized reports, of the need to adapt the *hukou* system to changing circumstances, although there has also been concerted resistance from certain actors, most notably the public security establishment.

The first general plan for *hukou* reform was introduced in 1993. It called for the gradual abolition of the distinction between urban and rural *hukou* and its gradual replacement with three types of household registration – permanent *hukou*, temporary *hukou*, and guest *hukou*. It had two key features. First, a call for easing migration flows to small cities and towns, and second, the decentralization of the authority for setting “standards for entry” – i.e. the requirements for gaining permanent *hukou* in a locality, to local authorities. Central authorities set out general standards that included two primary criteria – “stable” employment and income, and a housing criteria that involved “stable” residence for a certain period of time.

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<sup>132</sup> “1000 students lose their school in forcible shut-down of migrant schools in Beijing”.

<sup>133</sup> Ibid.

<sup>134</sup> “Why don’t urban parents want their children to play with the children of migrants?”, 12 January 2006, *Renminwang*, see <http://edu.people.com.cn/BIG5/8216/37769/37812/4022222.html>.

<sup>135</sup> Amnesty International interview, London, 10 May 2006.

However, localities could tailor their own criteria according to local conditions and needs.<sup>136</sup> Subsequent *hukou* reforms have been based on the key features of the 1993 general plan, with the *Suggestions on Promoting Reforms of the Management of the hukou System in Small Cities and Towns*, issued by Ministry of Public Security and approved by the State Council on 30 March 2001 being the guiding regulation. This proposed reform would do away with strict migration quotas set by central government in small cities and towns, although these would be left in place for medium and large cities.<sup>137</sup>

This new approach has enabled local governments to use the lure of permanent *hukou* as a means to attract investment and rich, skilled, and educated individuals, an approach dubbed by some “using *hukou* in exchange for talent and investment”.<sup>138</sup> Most localities have interpreted central government guidelines stringently, excluding the vast majority of internal migrants who tend to be poor and not highly skilled. Ningbo City, Zhejiang Province, required applicants to have a five-year contract of employment or a certain level of investment, and to have either owned a self-built housing unit for a minimum of five years or have purchased a hundred square meter commercial housing unit with a minimum price of 250,000 yuan (US\$30,229).<sup>139</sup> Due to the stringent standards, only an estimated 30,000 migrants were expected, according to local officials, to qualify for permanent *hukou* in the city, representing less than 2% of the total internal migrant population in Ningbo, despite the latter constituting one-third of the city’s total population.<sup>140</sup> In Shijiazhuang, Hebei Province, similarly stringent criteria resulted in only 11,000 out of a total internal migrant population of 300,000 being expected to qualify for permanent urban *hukou* after reforms were initiated in 2001.<sup>141</sup>

However, the most stringent standards operate in the large east-coastal cities of China. In Guangzhou City migrants must have lived in a fixed place within the city proper (not the outskirts) for a minimum of five years, have a stable source of income, and have participated in the city’s social security program in order to be able to apply for permanent residence in the city, effectively ruling out the vast majority of internal migrant workers who are highly mobile and unlikely to have lived in the same place in the city for five years.<sup>142</sup> In Beijing, according to criteria set out in October 2001, for a set of three permanent urban *hukou* (self, spouse, and one child) in one of the eight central districts of Beijing, one must be an entrepreneur who has paid local taxes in an amount over 800,000 yuan (US\$96,735) a year for a minimum of three years (or a total three year tax payment that exceeds 1 million yuan (US\$120,918), and have hired at least 100 local workers (or at least 90% of the employees must have local *hukou*). Outside the central districts, the investment and employee

<sup>136</sup> *Organizing through Division and Exclusion: China’s hukou System*, p. 187.

<sup>137</sup> Small cities and towns are defined as county-level cities, county seats, and established towns. See *Organizing Through Division and Exclusion*, p. 188.

<sup>138</sup> *Ibid.*, p. 189.

<sup>139</sup> *Ibid.*, p. 192.

<sup>140</sup> “China’s Household Registration (*hukou*) System: Discrimination and Reform,” Statement of Feiling Wang at hearing organized by the CECC, Friday, 2 September 2005.

<sup>141</sup> *Ibid.*

<sup>142</sup> *Organizing through Division and Exclusion*, p. 191.

requirements are lower.<sup>143</sup> Alternatively, a person who has purchased a housing unit of at least 100 square meters and costing at least 500,000 yuan (US\$60,459) may apply for a single permanent Beijing *hukou*.<sup>144</sup> However, even these standards are restricted according to quotas.<sup>145</sup> Needless to say, only the wealthiest can take advantage of such offers. As the vast majority of China's internal migrants work in these large coastal cities, these reforms have not opened up permanent residence to large numbers of internal migrants. Local authorities, furthermore, can always backtrack on progressive reforms they may have made. In July 2003 local authorities in Shenyang had abolished the need for migrants to have temporary residence permits, requiring them only to sign in with local public security officials upon their entry to the city. However, in December 2005 they decided to reinstate the need for permits.<sup>146</sup> In December 2005 the Party Central Committee and the State Council issued a joint opinion that made *hukou* reform part of the CCP's "new socialist countryside" campaign on rural reform and a policy goal for 2006.

Given the continued presence of large populations of internal migrants who are not integrated into urban society, central and local authorities have demonstrated increased commitment to improving their lives and working conditions. The joint opinion emphasizes the need to protect the "...legitimate rights and interests of farmers who seek work."<sup>147</sup> In March 2005, the local Beijing People's Congress passed legislation easing restrictions on internal migrants with regard to the renting of housing, and *hukou* management, doing away, for instance, with earlier legislation that restricted the right of internal migrants to rent housing.<sup>148</sup> In late 2005 the Ministry of Labour and Social Services (MoLSS) issued a migrants rights handbook, that among other things, stated that MoLSS officials will not require internal migrant to obtain a work registration card from their place of origin prior to seeking jobs in urban areas, thereby simplifying the process of legally obtaining work in the cities.<sup>149</sup>

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<sup>143</sup> Ibid, p. 189.

<sup>144</sup> Since only local *hukou* holders qualify for mortgage loans, such purchases must necessarily be made with cash.

<sup>145</sup> *Organizing through Division and Exclusion*, p. 189.

<sup>146</sup> CEEC, 2006 Annual Report, p. 109 and 112.

<sup>147</sup> Ibid, p. 110.

<sup>148</sup> "Beijing feizhi wailai renyuan guanli tiaoli," [Beijing abolishes regulations governing outsiders], [www.thebeijingnews.com](http://www.thebeijingnews.com), 26 March 2005.

<sup>149</sup> Ministry of Labour and Social Security (Online), Migrants' Rights Handbook (2005 edition) *Nongmingong weiquan shouce* (2005), Migrant workers need not obtain work registration card," [*Nongmingong waichu wugong wuxu ban jiuye zhengke le*], Xinhua (Online), 26 September 2005. Also cited in CEEC, 2006 Annual Report, footnote 25, p. 254.

## VII. Conclusion: the *hukou* system and continued violations of international standards

However welcome these partial reforms may be, the *hukou* system continues to provide the basis for legal categories based on social origin which facilitate and fuel discrimination.

*Hukou* designation remains a hereditary status inherited at birth from one's parents. Even under the reformed *hukou* system, a Chinese child born in Beijing of Chinese parents who are originally from a rural village will inherit the *hukou* registration category of the parents' home-town. This will prevent him or her from being able to obtain permanent Beijing residency, and condition the child's chance of enjoying free, compulsory, education, the right to health care, and protection in the workplace if he or she should remain in Beijing long enough to start work. While the system has abolished the terminology of "rural" versus "urban" *hukou* categories, the designation of being a "temporary" versus a "permanent" resident in a city serves to condition the enjoyment of a wide range of rights as effectively as the old designations. And, according to current eligibility standards in most localities, the vast majority of internal migrants are unable to obtain permanent urban *hukou*.

As already noted, by ratifying the ICESCR China has undertaken "to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind," including on the basis of "social origin, property, birth or other status."<sup>150</sup>

Amnesty International is concerned that the *hukou* system, even following the flexibility and relaxations introduced in the past two decades, constitutes, entails or facilitates discrimination based on social origin in violation of this provision, in respecting, protecting and fulfilling the following rights, provided in the ICESCR:

- Right to education (Art. 13 of the ICESCR)
- Right to the enjoyment of the highest attainable standard of physical and mental health.(Art. 12);
- Right to an adequate standard of living, including adequate housing, (Art. 11(1));
- Right to the enjoyment of just and favourable conditions of work (Art. 7);
- Right to the widest possible protection and assistance to the family (Art. 10(1)).

Of particular concern to the organization is the violation of the rights of children to education and to enjoy an adequate standard of living, including health care and housing, without discrimination, also protected by the Convention on the Rights of the Child to which China is also a party.

However, while this report has examined the impact of discrimination in the areas of health, education, and employment, there is a wide array of other ways that the system

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<sup>150</sup> ICCPR Art. 2(2).

facilitates discrimination against internal migrants. For instance, internal migrants are discriminated against in systems of local representation to local people's congress – legislative bodies that are intended to represent the local population. Not a single member of the 1,000-strong Shanghai local people's congress (LPC) represents the 4 million internal migrants estimated to be living in Shanghai.<sup>151</sup> And until very recently, internal migrants were not allowed to even attend sessions of the local LPC as observers.<sup>152</sup> Nationwide, representation in local people's congress bodies generally favours urban *hukou* holders, with a single rural local people's congress representative representing on average four times as many citizens as a representative of an urban constituency.<sup>153</sup> Students from the provinces who attend university in Beijing are still required to return to their place of origin after graduation, not being allowed to apply for a change of *hukou*.<sup>154</sup> In 2003 the Supreme People's Court issued a judicial interpretation regarding compensation for deaths in personal injury cases that mandates a lower rate of compensation for deceased rural *hukou* holders, even if they have been an urban resident for many years.<sup>155</sup> A series of cases exposed in the Chinese media highlighted that families of deceased migrants with rural *hukou* holders killed in traffic accidents received substantially less in compensation than that received by families of individuals who held urban *hukou* and were killed in the same or similar accidents.<sup>156</sup> The father of one deceased migrant student said:

“My daughter had lived in the city for 10 years. She didn't pay less for her school fees because she had [a] rural *hukou*. Why was her life worth less than half of that of her classmates?”<sup>157</sup>

As a leading Chinese *hukou* expert declared, “the *hukou* system has not been abolished but only enhanced and improved with scientific means.”<sup>158</sup>

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<sup>151</sup> CEEC, 2006 Annual Report, p. 112.

<sup>152</sup> Ibid.

<sup>153</sup> Ibid.

<sup>154</sup> “Beijing jinnian qunli zhaosheng yuanbuzu, waidi gaozhisheng buzhuang *hukou*,” [Insufficient students qualifying to attend higher education in Beijing this year, Students from the provinces not allowed to change their *hukou*.], [www.china.com.cn](http://www.china.com.cn), 10 February 2003.

<sup>155</sup> The Court ruled that compensation for death would be 20 times the average annual disposable income of urban residents or the average net income of rural residents in the jurisdiction where the case is heard. From the official National People's Congress website, see <http://www.npc.gov.cn/zgrdw/english/news/newsDetail.jsp?id=220105&articleId=347991>.

<sup>156</sup> CEEC, 2006 Annual Report, p. 110.

<sup>157</sup> “Facts and Figures: Widening Gap Between China's Urban, Rural Areas,” People's Daily (Online), 3 March 2006. Quoted in CEEC, 2006 Annual Report, p. 110.

<sup>158</sup> Wang Tiayuan's interview with *People's Net News*, 1 October 2001. Cited in, “China's Household Registration (*hukou*) System: Discrimination and Reform,” Statement of Feiling Wang at hearing organized by the CECC, Friday, 2 September 2005.

## VIII. Recommendations

Amnesty International calls on the Chinese government to take immediate effective action to eliminate all forms of discrimination against internal migrants which are prohibited under international law, including:

- reform the *hukou* system to remove administrative categories based on social origin that can be used as a basis for discrimination in the exercise of human rights;
- remove eligibility barriers to accessing urban health care schemes that discriminate against internal migrants, including on the basis of their *hukou* status;
- formulate health care, work-place injury, and other types of health insurance schemes without discrimination on the basis of place of *hukou* registration;
- eliminate all direct and indirect school charges and fees that are levied exclusively on and discriminate against internal migrant families on the basis of their *hukou* status;
- remove all administrative barriers to access to compulsory education based on the *hukou* status of a child's parents.

Amnesty International also calls on the Chinese government to address other human rights concerns that have a disproportionate impact on internal migrants, including:

- Upholding the right to free and compulsory education for all children, including through:
  - the elimination of all direct and indirect school charges and miscellaneous fees, including, but not limited to, those levied exclusively on families without permanent urban *hukou*;
  - the elimination of qualifying exams as a condition for the enjoyment of free, compulsory, education.
- Ending discriminatory closures of private schools such as those dedicated to children of internal migrants, including through:
  - ensuring that closures are only carried out on genuine health, safety or other objective and reasonable grounds;
  - ensuring that all children affected by school closures have access to adequate alternative education which is free at least at the compulsory level. The identification of alternative education should be on the basis of consultation with the students and their parents.

Amnesty International further calls on the Chinese government to respect human rights at work, as provided in international law and standards, including through:

- strengthening enforcement mechanisms and raising punitive measures against companies that fail to provide all workers, including internal migrants, with valid and enforceable labour contracts;
- respecting the right to form and join a trade union of one's choice as provided in international treaties binding on China, including through withdrawing its declaration on Article 8(1)(a) of the ICESCR that provides for this right;
- continuing to increase resources to legal aid centres that support internal migrants to seek redress for violations of their rights in the workplace

Such measures would be expected to strengthen workers' ability to protect their rights to just and favourable conditions of work, including the rights to:

- a fair wage and a decent living for themselves and their families
- safe and healthy working conditions
- rest, leisure, and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays

Amnesty International also calls on the government of China to comply with its obligation under Article 2(1) of the ICESCR to devote the maximum of available resources to achieving progressively the full realization of economic, social and cultural rights, without discrimination. To this end China should devote a level of resources to the realization of at the very least minimum essential levels of these rights which is commensurate with China's increasing economic development and prosperity.