The Inheritance of Inequality: Hukou<.i> and Related Barriers to Compulsory Education for China's Migrant Children

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HUKOU AND RELATED BARRIERS TO COMPULSORY 
EDUCATION FOR CHINA’S MIGRANT CHILDREN

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Abstract: The hukou system in China uses residency permits to divide Chinese citizens into urban and rural dwellers. A person’s hukou status determines his or her access to state services. Under normal circumstances, a person with a rural hukou status is not eligible for state services in urban areas, and vice versa. Because hukou is primarily inherited from one’s parents at the time of birth, children born in urban areas to parents with rural hukou are similarly designated as rural hukou holders. As a result, children living in cities with rural hukou are ineligible for enrollment in urban public schools even if they were born within the district. This problem is exacerbated by the fact that a massive number of people are engaged in rural-urban migration in China each year. The central government has promulgated numerous laws and regulations in an attempt to grant these migrant children free access to urban public schools, but most local governments have been hesitant to implement the changes. Further, as a prerequisite to enrollment, urban public schools commonly require excessive amounts of documentation and charge expensive fees that make public education inaccessible to migrant families. This comment argues that to fix the current problems with hukou and educational access, the central government needs to clarify the responsibilities of local governments in administrating public education and should devote more funding to urban and rural schools. Both of these measures would encourage local officials to comply with existing education laws regarding migrant children. Additionally, the central government must encourage stricter enforcement of relevant laws in order to incentivize local compliance. Making these changes will have long-term political and economic benefits for China because educating this large group of children can soothe social tensions in cities, lessen income inequality, and facilitate China’s transition to a service-based economy.

I. INTRODUCTION

China’s rapid urbanization and robust economic growth have spurred a massive internal migration from rural villages to urban centers. Rural residents move to cities to take advantage of diverse employment opportunities, higher wages, and higher standards of living. However, rural migrants face a serious institutional barrier upon their arrival: the hukou system. The hukou system, sometimes referred to as “household registration,” separates Chinese citizens into urban and rural residents—a distinction that carries social, economic, and political implications.1

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China implemented its modern hukou system in the 1950s to carry out two main functions: controlling rural-urban migration and determining access to social services.\(^2\) It also serves an administrative purpose by providing the government with census-like information that can be used for various social and political objectives.\(^3\) The hukou system has undergone many reforms since its inception,\(^4\) but the system still serves these same basic purposes. The People’s Republic of China established the modern hukou system during a time when cooperative living was the norm and the state controlled all aspects of industry and commerce.\(^5\) At the height of central planning, the hukou system played an important and sensible role in controlling the population’s mobility.\(^6\) However, as a result of the more market-oriented policies China has embraced in the past several decades, the hukou system, which continues to control mobility and opportunity for urban and rural residents,\(^7\) is increasingly out of touch with the country’s current sociopolitical structure.

The hukou system has been accused of many things: creating a rural-urban apartheid, building cities with invisible walls, and discriminating against the same workers who made China’s economic boom possible.\(^8\) Many criticisms of the hukou system are based on its effects on access to social services, such as education. As a result of this relationship, the large populations of rural migrant children living in Chinese cities without urban hukou are effectively shut out of the public school system with few other viable options.\(^9\) This comment will examine the legal framework surrounding the education of rural hukou-holding children living in China’s cities (hereafter referred to as “migrant children”) and set forth suggestions for fixing the current inequity in compulsory education.

The hukou system is not applied evenhandedly across China. After years of reforms, local governments now exercise significant discretion over

\(^2\) Id. at 358.
\(^4\) Id., supra note 1, at 358-59.
\(^6\) Id.
\(^7\) Id.
hukou policy, leading certain cities to adopt differing standards to acquire urban hukou. It is important to keep this in mind because although this comment makes generalizations about hukou policy and its implications, policies across China differ, especially as they relate to education and treatment of migrant children.

Growing decentralization of school administration has compromised national legislative measures to improve educational access to migrant children. Although the central government revised the Compulsory Education Act in 2006 to ensure rural migrant children free access to compulsory education (encompassing six years of primary and three years of junior secondary education) in state schools, wide-scale demolition of private schools continues while migrant children are still turned away from the state school system in large numbers. It is in China’s economic and political interest to incorporate migrant children into the state’s compulsory education system, but the central government must overcome the barriers that decentralization presents in order to realize this goal.

Migrant workers already feel mistreated by the state, resulting in social unrest that can be witnessed across China. If the government continues to deny educational opportunities to migrant children, it is likely to fuel further social turmoil. Social unrest among migrant workers also exists because China is moving away from an economy based on low-cost manufacturing. This transition is partially due to skyrocketing manufacturing costs, which are fueled by labor shortages and demands for higher wages to offset rapid increases in food and property prices. This rise in manufacturing costs has already led some factories to relocate to lower-wage countries. The Chinese government itself accedes that the country is moving toward a service-based economy. Connecting the

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10 Id.
14 Id.
15 Li Mu, *China May Develop Service Economy in 5 Years*, PEOPLE’S DAILY ONLINE, Oct. 9, 2010, http://english.peopledaily.com.cn/90001/90776/90882/7161177.html (“China’s service sector accounted for a 42.6 percent share of China’s GDP in the first half of this year, representing a 1.3 percent increase. The growth is expected to continue, and it will surpass the industry sector share by 2015, the last year of China’s 12th Five-Year Plan.”).
concepts of education and economic transition, a recent World Bank report stated: “Producing services tends to require relatively less natural capital and more human capital than producing agricultural or industrial goods. As a result demand has grown for more educated workers, prompting countries to invest more in education—an overall benefit to their people.” China’s economy will benefit when it incorporates migrant children into the state school system. It will be able to compete internationally as a service-based economy, and it will allocate fewer resources to public security to handle social unrest stemming from the grievances of migrant workers.

Part II of this comment discusses three issues: 1) a brief overview of the *hukou* system in China, 2) the significance of hukou policy and rural-urban migration, and 3) the hardships migrant workers and their children face trying to access social services in the cities where they have moved. Part III examines the legal and social frameworks surrounding education in China and makes the case that the current legal and social frameworks do not adequately protect migrant children’s rights to attend urban public schools. Part IV argues that fully incorporating migrant children into the state school system will bring political and economic benefits to China. Finally, Part V details the steps that the central and local governments should take to ensure access to state schools for migrant children. These steps include introducing more detailed rules on enrollment of migrant children, stepping up enforcement of existing education laws, and boosting education spending in rural and urban areas.

II. **HUKOU POLICY IS IMPORTANT BECAUSE OF THE LARGE NUMBER OF PEOPLE ENGAGED IN RURAL-URBAN MIGRATION AND BECAUSE IT DETERMINES ACCESS TO SOCIAL SERVICES**

This Part explains the significance of *hukou* policy in modern China as it relates to migrant children and argues that it is unreasonably difficult for migrant children to access state education in the cities where they live. Rural-urban migration is a common undertaking in modern China. The McKinsey Global Institute, which collects global demographic statistics, estimates that between 1990 and 2005, 103 million Chinese people migrated from rural to urban areas. In large eastern cities like Beijing and Shanghai, the migrant work force is estimated to make up over one quarter of the

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population. Some cities in the southern Pearl River Delta region, commonly known as “the world’s factory,” have even larger populations of migrant workers. In 2005, the mayor of Dongguan suggested that the city had close to 10 million migrant workers, in contrast to the 1.7 million local residents recorded by an earlier census. The National Statistics Bureau reported that at the end of 2009, China had a total of 229.8 million rural migrant workers. Additionally, recent reports from the National Bureau of Statistics show that urban dwellers account for 51.27% of China’s population, showing that this trend of urbanization is still increasing. Perhaps more important, today migrant workers stay for longer periods of time in the cities where they have moved. Also, 60% of migrant workers in China now move with their children. In Henan, China’s second-most populated province, the number of migrant children increased by roughly 25% each year from 2000 to 2006.

There are many reasons why migrant workers choose to move away from their hometowns, but some reasons are more pervasive than others. Many migrant workers associate their rural hometowns with poverty and backwardness, seeing cities as gateways to more modern and privileged lifestyles. Today’s migrant workers tend to be younger and better educated than those who stay behind in rural areas. The process of migrating from rural to urban centers in China is called *chuqu* (literally translated as “going out”). Many migrant workers decide to engage in *chuqu* because there are relatively few opportunities for young people in rural China. Often, migrant workers move to a location after hearing about job openings from friends, relatives, or fellow villagers. Today, migrant workers are typically found in several industries: manufacturing, food service, delivery service, housecleaning, childcare, garbage collection, personal hygiene, and

19 Id. at 20.
23 Id.
25 Chang, supra note 18, at 8-9.
26 Id.
27 Id. at 11.
28 Id.
29 Id. at 12.
prostitution. Though the cities provide many more opportunities for migrant workers, the work is often hard, the wages are frequently below minimum wage, and it is not uncommon for work shifts to push well beyond legal limits.

A. The Hukou System Creates Three Distinct Social Classes and Provides Unequal Access to Education

This Section briefly explains the structure and implications of hukou policy in China, focusing on its relation to educational access. Two components determine a person’s hukou classification: place of hukou registration (“hukou suozaidi”) and type of hukou registration (“hukou leibie”). The place of hukou registration controls a person’s rights to engage in certain economic activities in an area and is based on a person’s permanent place of residence (urban or rural). An individual’s type of hukou registration, however, does not depend on a person’s place of residence—instead it is inherited, typically from one’s parents. The type of hukou registration a person has, either agricultural or non-agricultural, determines one’s socioeconomic eligibility within the state. A person must seek government approval to change his or her hukou classification; however, strict government policies and quotas micromanage urban-rural migration and greatly complicate any change in status.

The hukou system essentially creates three tiers of society in Chinese cities. The first tier is comprised of those with full urban hukou. The second tier includes people who have managed to acquire urban residency by changing their place of hukou (hukou suozaidi), but still retain their rural hukou type (hukou leibie). This group is commonly referred to as having “mixed status.” The third tier is occupied by those with full rural hukou. This third group is often called China’s “floating population.”
The “floating population” is primarily comprised of uneducated low-income workers, but its broad definition may also encompass those with college degrees who have moved away from their home provinces in search of white-collar work. The mixed population still faces institutional hukou-based barriers, but generally has more advantages because of its local residency rights than those with full rural hukou. Scholars Donald Treiman and Zhuoni Zhang note that “[a]ccess to public schools, health care, and certain types of housing, jobs, and insurance are either restricted to local residents or are more limited and more expensive for those lacking local registration, which usually is impossible to obtain without obtaining an urban [hukou].” This comment will use the term “rural hukou” to describe those in the second and third tiers.

Under normal circumstances, children inherit their hukou classifications from their parents at their time of birth, and migrant parents are often living in cities without the proper urban hukou necessary for access to state services such as health care and education. Once born with rural hukou classification, these migrant children will similarly face problems accessing state services in urban areas. To frame the scale of this issue, it is estimated that approximately 19 million migrant children are currently living in China’s cities. A journalist reporting on migrant children noted:

Chinese children are entitled to a state education, but not all of them get one. And the tens of millions born to migrant workers . . . are among the most vulnerable, owing to a registration system that divides the country’s citizens into rural and urban dwellers, and dictates their rights accordingly.

Migrant children face difficulties accessing state education for several reasons. Urban public schools often receive no additional funding from the central government for these children, so many of them are turned away even if their parents can afford to pay the exorbitant “donations” some schools charge to admit migrant children who meet the designated criteria.

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42 TREIMAN & ZHANG, supra note 37, at 5.
43 Id. at 8.
45 Id.
46 Id.
47 Id.
Many migrant families turn to private schools to educate their children, but local governments consistently demolish these institutions in the name of urban development.\footnote{Id.}

\section*{B. Current Policy Makes it Difficult for Rural Migrant Workers and Their Children to Obtain Urban Hukou Status and to Access Social Services in Cities}

A person needs to seek government approval to change his or her place and type of hukou registration.\footnote{Chan & Zhang, supra note 3, at 823.} Hukou reforms over the past two decades have resulted in local governments asserting more control over hukou administration and management.\footnote{Chan, supra note 1, at 361.} Local governments now have a high degree of control over hukou criteria in their jurisdictions, both in terms of the type and number of people accepted.\footnote{Id.} As a result, local governments in urban areas tend to give preferential treatment to those applicants who can meet certain levels of wealth or education.\footnote{Id.} This makes sense on some level—with excess money to invest and marketable human capital, the educated rich would constitute valuable economic assets to any city. However, the educated rich do not tend to work in manufacturing, childcare, construction, sanitation, or food service, industries vital to the functioning of any modern Chinese city. Instead, these jobs fall to migrant workers.\footnote{Chang, supra note 18, at 8-9.}

The process of transferring one’s type of registration (hukou leibie) from agricultural to non-agricultural is referred to as nongzhuanfei and determines one’s entitlement status in a given locality.\footnote{Chan & Zhang, supra note 3, at 822-24.} Nongzhuanfei is simply unattainable for most migrant workers because they cannot live up to the various official and unofficial standards that local governments promulgate, including requirements that applicants pay fees, present a multitude of documents, and use guanxi (personal connections one can draw upon for favors), which many migrant workers do not have.\footnote{Amnesty International, Internal Migrants: Discrimination and Abuse. The Human Cost of an Economic ‘Miracle,’ § II, Mar. 1, 2007, http://www.amnesty.org/en/library/asset/ASA17/008/2007/en/c28868de-d3af-11dd-a329-2f46302a8cc6/asa170082007en.html.} While some migrant workers receive temporary residency, this classification typically does not in itself grant access to social services such as education.\footnote{Id. §VII.} According to a 2007 study by Amnesty International that examined...
eligibility standards in localities across China, “the vast majority of internal migrants are unable to obtain permanent urban hukou.”  

Again, children’s hukou designations do not stem from their city of birth, but rather from their parents’ statuses, which means that the children of migrant workers also lack access to crucial social services such as education. Numbers released in 2010 by the Beijing Bureau of Statistics revealed that 240,000 children between ages 6-14 were living in Beijing without permanent residency, almost a 20% increase from numbers collected in 2000. Despite the measures that have been taken to improve this population’s access to urban public schools, the problem continues to exist.

C. Children with Rural Hukou Registration Face Tremendous Challenges in Accessing State Education in the Cities Where They Live

Numerous laws and State Council directives (the State Council is an executive body of the government) command local governments to educate the migrant children living within their jurisdictions. However, these commands lack adequate funding, and local governments have interpreted them in ways that minimize their responsibility to educate migrant children. Many of these laws and directives broadly state that migrant children should not pay additional fees to attend urban public schools, but these statements have not prompted much on-the-ground improvement. Despite the fact that the Compulsory Education Law seems to guarantee free compulsory education to all school-age children in China, in 2004 tuition and miscellaneous fees made up 18.59% of total expenditures on education in the country. This burden tends to fall the hardest on migrant children. At one time, public schools in Shandong province charged students without

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57 Id.
58 Id.
61 Id. at 7.
65 Branigan, supra note 9.
local hukou registration 300 to 500 yuan (approximately $50-80 United States dollars “USD”) per semester in additional fees, not including fees charged to the entire student body.66 In 2011, the average monthly salary of a migrant worker was approximately 1,690 yuan (approximately $260 USD) per month,67 a 19% increase from numbers reported in 2009.68 While schools in some large cities like Beijing and Chongqing have scaled back the additional fees required to admit migrant children,69 financial requisites for admission still tend to be higher for migrant children.70

Because local governments typically do not receive additional funding from the central government to accommodate these children, they often lack the infrastructure and resources to educate all the school-age children living in their jurisdictions.71 In an attempt to make up for budget shortfalls, some administrators charge illicit “donations” to admit migrant children, which the typical migrant family cannot afford.72

Apart from up-front fees, other factors make public education inaccessible to many migrant families. Guanxi (personal connections) are often necessary for admittance, and many migrant workers lack the social networks and financial capacity to establish the guanxi needed to get their children enrolled.73 In addition, many urban public schools require parents to provide certain documents (typically known as the “five key government-issued documents” or the “five certificates”), including formal employment contracts (or employment certificates) and temporary residence permits, as a prerequisite to enrollment.74 This requirement does not take into account the practical realities of life as a migrant worker. Many migrant parents work in informal environments where labor contracts are not used.75 In 2004, only an estimated 21% of migrant workers had labor contracts with their employers.76 While new legislation in 2007 put more pressure on employers to use labor contracts, this remains a serious problem facing migrant workers.

66 CONGRESSIONAL-EXECUTIVE COMMISSION ON CHINA, supra note 60, at 8.
68 Id.
69 Id.
70 Id.
71 Id.
72 Id.
73 Id.
74 Id.; Branigan, supra note 9; See also HAN, supra note 62, at 6-7 (discussing the “five certificate system” and its administration).
75 Branigan, supra note 9; Mudie, supra note 11.
today.\textsuperscript{77} Also, studies indicate that approximately one-third of the migrant worker population is self-employed.\textsuperscript{78} Thus, an overwhelming majority of the migrant workforce lacks the necessary documentation to enroll their children in urban public schools.

D. Private Schools for Migrant Children Exist but Often Provide Sub-Par Education and Frequently Face Demolition by Local Governments

Private schools for migrant children have been established in many Chinese cities but continue to face significant problems.\textsuperscript{79} First, they must charge tuition in order to operate, and sometimes charge as much as state schools for enrollment.\textsuperscript{80} In early 2009, Tangsi Primary School, a migrant school in Shanghai, charged 550 yuan (approximately $95 USD) per semester for books and tuition.\textsuperscript{81} As previously stated, most migrant workers have limited finances and cannot afford to pay that high of tuition. Second, the state frequently demolishes these schools in the name of urban development, lack of accreditation, or health or safety violations.\textsuperscript{82} This interrupts the students’ educational trajectories and again sends them searching for alternative educational opportunities.\textsuperscript{83} Third, while some private migrant schools provide a quality education, many are low-quality institutions merely created to turn a profit off migrant workers with limited options and are staffed by inexperienced teachers.\textsuperscript{84}

Some migrant children have benefitted from private schools, such as in Shanghai where the government has increasingly supported these institutions with periodic appropriations and legal protections.\textsuperscript{85} However, the existence of private institutions does not and should not alleviate the government’s responsibility to provide free and accessible compulsory education to all Chinese children.

Despite the relative success of migrant schools in Shanghai, these successes are not shared across the country. Private schools for migrant

\textsuperscript{77} Id.; CHINA DAILY WEIBO BUZZ, supra note 59 (comments of Wangzhian, commentator for China Central Television).


\textsuperscript{79} Branigan, supra note 9.

\textsuperscript{80} Id.; See also CONGRESSIONAL-EXECUTIVE COMMISSION ON CHINA, supra note 60, at 8 (discussing school fees for migrant children).

\textsuperscript{81} Chen Weihua, Migrant Children Also Need Schools to Study, CHINA DAILY, Sept. 3, 2009, at 8.

\textsuperscript{82} Branigan, supra note 9; Mudie, supra note 11.

\textsuperscript{83} Branigan, supra note 9.

\textsuperscript{84} Id.

\textsuperscript{85} Weihua, supra note 81.
children often employ unlicensed teachers and are located in undesirable and potentially dangerous locations like factory buildings, old apartments, and warehouses. 86 Migrant schools across the country still face the threat of random and arbitrary demolitions. 87 While local governments frequently claim that demolitions will be accompanied by wider inclusion of migrant children in state schools, limited capacity, limited funding, and the inability of migrant parents to gather the “five certificates” necessary for enrollment prevent these promises from being fully realized. 88

III. THE CURRENT LEGAL FRAMEWORK SURROUNDING THE PROVISION OF STATE EDUCATION IN CHINA FAILS TO PROTECT THE INTERESTS OF MIGRANT CHILDREN

This Part discusses the current legal framework surrounding compulsory education in China and attempts to explain why it falls short of being effective. Several Chinese laws and regulations, on their face, seem to guarantee free compulsory education to all Chinese children. 89 Yet a close inspection of the legal framework shows a more complex picture. Five main sources of law affect compulsory education in China: the Constitution, the Education Law of the People’s Republic of China (“Education Law”), State Council directives, the Compulsory Education Act (“CEA”), and various local regulations. These sources of law will be discussed in turn. This Part also argues that integrating migrant children into the state school system will have several positive effects, many of which align with the country’s own stated policy goals.

The Chinese Constitution addresses the provision of education, though it does so in vague terms. 90 Article 46 establishes that “[c]itizens of the People’s Republic of China have the duty as well as the right to receive education.” 91

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86 Id.
87 Id.
88 Chin, supra note 11.
91 Id.
The Education Law of the People’s Republic of China, adopted by the National People’s Congress (“NPC”) in 1985, gives a clearer picture of how the educational system is to be managed in practice.\(^9^2\) It provides that the State Council and local governments should guide and administer education with a suitable division of responsibilities.\(^9^3\) The result is that the State Council is responsible for the overall planning, coordination, and management of education while local administrative departments of education take responsibility for on-the-ground educational activities in their respective regions.\(^9^4\)

The Ministry of Education, a department within the State Council, is the highest administrative educational body in China and is responsible for guiding the compulsory education system.\(^9^5\) More specifically, the Ministry of Education manages educational funds and inspects and evaluates compulsory education programs.\(^9^6\) However, following the trend of decentralization embodied by the Education Law, local governments largely manage the administration of compulsory education.\(^9^7\) Decentralization of the administration and financing of education has increased extra-budgetary spending because it allows local governments to use non-traditional resources like student fees, though these gains have been largely confined to urban areas where there is more wealth.\(^9^8\) In line with this increase, government appropriations for compulsory education have also decreased significantly since the early 1990s, dropping over 20% between 1991 and 2004.\(^9^9\) Though decentralization may effectively boost education spending in certain pockets of the country, it has also allowed local governments to counteract the central government’s policy goals with few consequences. As discussed below, decentralization presents one of the most significant obstacles to an equitable application of education laws to migrant children because it gives local governments too much unchecked discretion.\(^1^0^0\)

While the Constitution and the Education Law make general statements about the administration and availability of education, State
Council directives, the CEA, and local regulations more specifically detail the rights of children and the responsibilities of administrators. These three sources of law are discussed in more detail below.

A. State Council Directives Issued Over the Past Decade Have Emphasized the Importance of Providing Education to Migrant Children

The State Council is the highest executive organ of state power in China and has the power to carry out the principles and policies of the Communist Party, effectuate laws and regulations adopted by the NPC, and handle issues such as finance and education.101 The State Council can issue directives that have compulsory effects similar to laws adopted by the NPC.102 The State Council and the ministries, commissions, and bureaus subordinate to it have the power to issue laws, regulations, and orders that are characterized as legislative in nature.103 Administrative agencies under the State Council, such as the Ministry of Education, are authorized to implement rules that are necessary for them to carry out their responsibilities in their designated areas.104

The State Council has issued three relevant directives in the past several years: the “Decision on Reforming and Developing Elementary Education” in 2001, “Ideas on How to Do Well with Migrant Children’s Compulsory Education Further” in 2002, and “Ideas on Resolving Issues of Migrant Workers” in 2006.105 These directives all share the same sentiment—that migrant children are entitled to nine years of compulsory education and that local governments need to take responsibility for educating the migrant children who live within their jurisdictions.106 The 2006 directive explicitly denounces the practice of charging additional enrollment fees for migrant students in public schools, but mentions no penalties for noncompliance.107

While these directives represent high aspirations, they were largely ineffective in granting migrant children access to urban public schools. Local governments often interpreted these vague directives in ways that

103 STANLEY B. LUBMAN, BIRD IN A CAGE: LEGAL REFORM IN CHINA AFTER MAO 141 (Stan. Univ. Press 1999).
104 Id. at 143.
105 HAN, supra note 62, at 9-10.
106 Id.
107 Id. at 10.
minimized their responsibility for educating migrant children or ignored them altogether.108 Further, the directives did not include funding, likely making the State Council’s goals impracticable.109

B. The Compulsory Education Act Provided Migrant Children More Protection on Paper, but Has Not Significantly Improved Access to State Schools

The Compulsory Education Act (“CEA”) was adopted in 1986 and established a compulsory education system composed of primary and junior secondary education.110 According to the CEA, all Chinese children of the requisite age are entitled to nine years of compulsory education.111 Article 2 of the CEA provides that “[n]o tuition or miscellaneous fees may be charged in the implementation of compulsory education” and that “[t]he State shall establish a guarantee mechanism for operating funds for compulsory education, in order to ensure implementation of the system of compulsory education.”112

The CEA was amended in 2006 to better address the needs of migrant children.113 Specifically, the amendment “stipulates that when both parents or legal guardians are migrant workers living and working with their children in locations other than where the family is registered, local governments where they live and work must provide for the child’s education.”114 Article 12 of the revised CEA reads,

For school-age children and juveniles [sic] whose parents are working or dwelling at a place other than their permanent residence, if he/she receives compulsory education at the places where his/her parents or other statutory guardians are working or dwelling, the local people’s governments shall provide him/her with equal conditions for receiving compulsory education.115

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108 CONGRESSIONAL-EXECUTIVE COMMISSION ON CHINA, supra note 60, at 7.
109 Id.
110 UNESCO-IBE, supra note 93, at 4.
111 Id.
112 Compulsory Education Law of the People’s Republic of China, supra note 63.
114 Id.
115 Compulsory Education Law of the People’s Republic of China, supra note 63.
Riding the trend of decentralization, Article 12 leaves implementation to local governments. The provision goes on to say that “[t]he concrete measures shall be formulated by provinces, autonomous regions, and municipalities directly under the Central Government.”

The language in amended Article 12 still permits local governments to attach conditions to enrollment in compulsory education institutions that many migrant workers cannot satisfy. For example, some local governments enforce rules to the effect that parents must establish local domicile before their child can be enrolled. Further, migrants are often still required to produce the “five certificates”: temporary residence permits, work permits, proof of residence, certificates from the migrant’s place of origin, and household registration booklets. This continues despite a Human Rights Watch report that stated up to 90% of families are unable to obtain all of the five certificates. Further, due to overcrowding, urban schools frequently deny migrant workers the opportunity to enroll regardless of whether they satisfied the “five certificate” criteria, and enrolling in other public schools generally means they will need to pay even higher out-of-district fees.

C. Local Governments Have Too Much Power to Interpret National Education Laws and to Issue Their Own Education Regulations

As a result of growing decentralization, local governments can use local regulations to defeat the purposes of laws and regulations from the central government. Local governments can formulate more specific regulations that build on laws handed down from higher levels of government. Chinese law scholars have gone so far as to call local regulations a weapon used to battle central government control. This disconnect between central government policies and local government

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116 Id. at art. 12.
117 Id.
119 Id.
121 Id.
122 LUBMAN, supra note 103, at 144.
123 Id.
124 Id.
practices contributes to the predicament migrant children in Chinese cities face today.

D. Discrimination Against Migrant Populations and Underfunding of Schools Perpetuates the Problems Migrant Children Have In Accessing Urban Public Schools

Discrimination and underfunding at the local level, among other things, could explain why these accessibility problems persist despite the central government’s numerous attempts to incorporate migrant children into the public school system. Migrant workers in Chinese cities are stigmatized, often portrayed by the media as “poor, dirty, ignorant and prone to violence.” Discrimination and underfunding at the local level, among other things, could explain why these accessibility problems persist despite the central government’s numerous attempts to incorporate migrant children into the public school system. Migrant workers in Chinese cities are stigmatized, often portrayed by the media as “poor, dirty, ignorant and prone to violence.” Migrant workers also face undue blame for rising crime rates in cities, with “migrant crime” even considered a distinct category of criminal activity. Furthermore, despite the fact that cheap migrant labor is in high demand in Chinese cities, urban residents often view migrant workers as an unwanted drain on public resources. Such discrimination against the migrant community may help explain why local governments resist incorporating migrant children into their school systems.

Discrimination is not the only reason local governments might want to limit access to local hukou holders. Overcrowding already plagues many urban public schools. If local school systems are operating at full capacity, there are few incentives for local government officials to open up schools to a flood of new children. The combination of underfunding in urban schools and discrimination against migrants explains why local governments hesitate to incorporate migrant children into their public schools.

E. Incorporating Migrant Children into the State School System Will Have Long Term Economic and Political Benefits for the Chinese Government

Incorporating migrant children into the state school system will help accomplish some of the goals laid out in China’s 12th five-year plan, a list of the government’s current economic and social policy initiatives. In this latest plan, the government declares its intention to boost service sector

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125 Li, Stanton, Fang, & Lin, supra note 78, at ¶25.
126 Id.
127 Id. at ¶26.
value-added output, foster indigenous innovation, increase social harmony, and improve public services for urban and rural residents.129

A significant number of migrant children live in China’s cities. A study done in Chengdu, the capital of Sichuan province, found that 36% of migrant workers living in the city moved with their children.130 Three broad categories of arguments—human rights, economics, and politics—illustrate why ignoring the educational needs of this population is both impractical and unwise.

F. Compulsory Education Is a Human Right that Both Urban and Rural Migrant Populations Should Be Able to Access

Article 26 of the Universal Declaration of Human Rights states that “[e]veryone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory.”131 Today the Universal Declaration of Human Rights, adopted by the United Nations General Assembly in 1948, is considered customary international law,132 meaning states comply with the norm because they believe it to have binding effects similar to any other law.133 Migrant children are no less Chinese than their urban counterparts, and they deserve the same educational rights that the law guarantees to all Chinese children. Education is a powerful tool. It gives children the means to improve their own lives and to make valuable contributions to China’s economy, culture, and society.134 Compulsory education should not be withheld from migrant children because of their parents’ inability to obtain urban hukou.

Some may argue that children should be left at home where their hukou enables them to receive an education. However, leaving children behind in rural villages is not always a viable option, particularly when there

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Migrant parents who bring children to cities often work ten or more hours a day, seven days a week, which leaves little free time to spend with their children.137 If these children cannot attend school and are too young to work, few opportunities exist for them to cultivate useful skills (intellectual, interpersonal, and otherwise) that will make them productive citizens. Furthermore, exclusion from state schools perpetuates perceptions of inequality and discrimination that migrant children already feel, eroding their self-confidence and making it harder for them to adapt to city life.138 Forcing migrant children to attend sub-par private institutions is not much better, as it still amounts to a type of socio-economic and cultural segregation139 that may further inflame cultural tensions between migrants and urban residents. Migrant workers contribute heavily to urban development,140 and their children ought to receive the educational benefits of city living.

G. China Will Experience Long-Term Economic Benefits as a Result of Incorporating Migrant Children into the State School System

Renowned economist Friederich Hayek, analysts at the World Bank, and countless other scholars have documented education’s positive effects on economic growth.141 Incorporating migrant children into urban public schools will benefit China’s economy in several ways. First, it will put more pressure on local governments to confront budgetary issues involved in the administration of compulsory education, which can cut down on waste. Second, small incentives like this will likely cause a modest uptick in rural-urban migration, a benefit to local economies, without opening the floodgates and overwhelming urban infrastructure. Upon moving to urban areas, rural residents typically do more economically productive work, make

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136 See supra Part II.
137 Id.
138 See, e.g., id.
139 Weihua, supra note 81.
140 CHANG, supra note 18, at 8-9.
more money, learn more skills, and purchase more goods than if they had remained at home. Simultaneously, their presence boosts the demand for urban infrastructure and housing, which can strengthen economic growth. Lastly, educating this large group of children will benefit China in its transition to a service-based economy.

Local governments tend to distribute resources to compulsory education based on the number of permanent residents residing within their jurisdictions as opposed to the actual number of school-age children living in the same area. This means that local governments do not need to take migrant children—even migrant children who have lived in the same cities since birth—into account when they disburse education funding. Examined in another light, if these migrant children actually live in cities but their hukous still reflect rural residence, the local governments in their home villages are likely to be working with inaccurate numbers as well. This creates a country-wide budgetary illusion—local governments in rural areas are budgeting for more children than actually attend their schools while local governments in urban areas are budgeting for far fewer children than are legally eligible to attend their schools. The central government ought to make changes to the compulsory education funding system in order to make it more responsive to changing internal migration patterns, even if this means reining in the decentralization of education funding that has been occurring since the 1980s. If local governments are forced to admit legally eligible children in their jurisdictions, it will put pressure on them to come to terms with this budgetary mess.

Incorporating the migrant student population into the state school system is in China’s economic self-interest and will yield short- and long-term benefits. First, doing so has the potential to increase migrant worker productivity. Migrant workers with young children may not have as much time to dedicate to employment. Compulsory education can provide dual functions of building intellectual capacity and serving as childcare for working parents. Parents who have children enrolled in school experience better worker productivity, less absenteeism, and more focus on work-related tasks. Increased efficiency with respect to time allocation will bolster short-term economic growth.

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142 Page, Davis, & Areddy, supra note 21.
143 Id.
144 Froissart, supra note 130, at ¶7.
Second, educating migrant children will build up China’s human capital in the long term. Educated workers provide tangible assets in a service-based economy. China’s recent minimum wage increases, some as high as 23%, suggest the country is slowly moving away from low-cost manufacturing, with foreign companies more frequently seeking out lower cost countries such as Cambodia, Bangladesh, and Vietnam. Studies have found that worker productivity is largely dependent on length and quality of education. Also, educationally acquired cognitive skills are essential for trainability and consequent skill achievements at work. Individual cognitive skills have significant effects on individual earnings and countrywide economic growth. China should adopt more inclusive educational policies, keeping in mind that education encourages metacognitive skills like problem solving and analysis, which are highly transferrable and likely to be valuable in all stages of economic development. Reforming the educational system will prepare Chinese citizens to enter the international service-based economy on equal footing with other countries.

Third, providing compulsory education to migrant children will help ensure that the migrant workers who are essential to urban economies will stay and spend their money in the city instead of sending wages back to their home provinces. Additionally, despite continued rural-urban migration, some cities are reporting labor shortages. Some migrant workers, in the face of rising inflation and institutional barriers such as hukou, are finding the costs of city living too high. In response there were country-wide minimum wage increases effective January 1, 2012 which indicate that China does not want migrant workers to return to their rural hometowns from urban industrial hubs. Large Chinese cities such as Beijing heavily value rural-urban migration because their economies depend on the continued availability of migrant labor. After all, migrant workers tend to perform menial but necessary jobs that city residents do not see as

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147 See FASIH, supra note 134, at 17-8.
148 Id.
149 Id.
150 Dreyer & Kouzmin, supra note 141, at 7.
151 Simpson, supra note 146.
152 Id.
153 Id.
154 Chin, supra note 11.
desirable.\textsuperscript{155} Loosening \textit{hukou} and “five certificate” based restrictions on the education of migrant children could become a small incentive that tips the balance in favor of city living once again, and may help ease the labor shortages some Chinese cities are beginning to report.\textsuperscript{156} Duan Chengrong, director of the Research Center for Population and Development at Renmin University, claims the \textit{hukou} system has not stopped rural-urban migration; it has just meddled with urban labor markets.\textsuperscript{157} For urban areas to benefit from rural-urban migration, migration policies should be responsive to the needs of urban employers and not a culmination of arbitrary wealth and education requirements. However, it should be noted that any loosening of \textit{hukou} restrictions should be accompanied by proper funding and planning so that urban infrastructure will be able to accommodate the growing population.

Fourth, incorporating migrant children into the state school system can reduce economic inequality, which many experts consider “a major stumbling block for domestic consumption to really take off in the long run.”\textsuperscript{158} Domestic consumption made up 51.6\% of China’s growth in 2011, but its percentage of gross domestic product (GDP) pales in comparison to other developed economies.\textsuperscript{159} The recent economic slowdown in China, largely thought to be caused by weak export markets, is forcing the government to look to domestic consumption to take up the slack.\textsuperscript{160} By educating the large group of migrant children living in China’s cities, the government will be tackling economic inequality and paving the way for domestic consumption to grow in the long term.\textsuperscript{161}

Finally, incorporating migrant children into the state educational system would serve China’s goal of fostering more indigenous innovation. As China’s economy develops and labor costs continue to rise, low-cost manufacturing will drag down the country’s GDP. This is because much of the technology manufactured in China was innovated and patented outside of the country, meaning Chinese manufacturers must pay royalties which

\textsuperscript{155} Id.
\textsuperscript{156} Simpson, supra note 146.
\textsuperscript{159} Id.
\textsuperscript{160} Id.
\textsuperscript{161} Id.
diminish their overall profits to foreign patent holders.\textsuperscript{162} Rising labor and commodities prices will also continue to shrink Chinese manufacturers’ profits.\textsuperscript{163} If the government prioritizes educating as many Chinese children as possible, it will effectively support the homegrown innovation that China desires.

\textbf{H. Incorporating Migrant Children into State Schools Will Have Political Benefits for the Chinese Communist Party by Soothing Social Tensions and Tackling Growing Income Inequality}

The Chinese government seeks to sustain the current trend of robust economic growth while maintaining domestic social stability.\textsuperscript{164} These goals are related, as domestic social stability creates a favorable environment for continued economic growth.\textsuperscript{165}

Education plays an important role in maintaining social stability because of its ability to teach not only traditional subjects like math and science, but also an increased tolerance for other cultures and alternative methods of dispute resolution.\textsuperscript{166} Education also has the potential to create a common value system shared across the populace. Studies conducted in China have shown that poverty is related to under-development of educational infrastructure.\textsuperscript{167} Poorer areas with sub-par schools are more likely to experience rapid population growth, strained economic development, and ethnic tensions.\textsuperscript{168} Educating a person not only creates a foundation for advanced economic utility, but also encourages rational behavior and tolerance while discouraging fanaticism.\textsuperscript{169} Education inculcates students with valuable market-applicable skills as well as skills that can be used to navigate the world around them in a tactful, non-confrontational manner.

\begin{itemize}
\item \textsuperscript{163} Id.
\item \textsuperscript{165} Id. at 7.
\item \textsuperscript{166} Id. at 15.
\item \textsuperscript{167} YONGGEN, supra note 164, at 7-8, 15.
\item \textsuperscript{168} Id.
\item \textsuperscript{169} Id.
\end{itemize}
Equal income distribution contributes to a country’s economic well-being. Scholars have observed that “[e]ven when there are tradeoffs between growth and equality in the short run, much . . . new research argues that attention to inequality can bring significant long-run benefits for overall economic growth.” Furthermore, recent case studies have shown that the presence of political, social, and economic inequality increases the likelihood of social unrest. In his 1999 speech to the World Bank, former United Nations Secretary General Kofi Annan warned of the dangers of horizontal inequality, a situation where “power and resources are unequally distributed between groups that are also differentiated in other ways—for instance by race, religion or language.” Horizontal inequality, measured by distribution of assets and education, is a significant cause of social unrest. Because migrant workers tend to be culturally distinct from other urban residents, this theory dictates that China is at risk of social unrest stemming from horizontal inequality. Opening up state schools to migrant children is one method by which the government can tackle growing inequality and dampen social unrest in China.

Many migrant workers already feel that the state mistreats them. They report police discrimination, bureaucratic manipulation, and widespread corruption. For this population, a denial of access to social services where they live and work does not merely deprive them constitutional rights— it is often a matter of personal dignity. Furthermore, migrant workers feel the sting of income inequality. Today many migrant workers, instead of living in quaint rural villages with a small spectrum of socioeconomic status, live in cities amongst China’s emerging

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171 Id.
173 Id.
174 Id. at 206.
175 Li, Stanton, Fang, & Lin, *supra* note 78, at ¶ 25.
178 Id.
middle and upper classes. 180 People assess their own well-being by comparing themselves with others, making relative measures of wealth and privilege just as important as absolute measures. 181 Although migrant workers tend to earn more money in cities than in their rural hometowns, living in cities lined with luxury boutiques and car dealerships surely sharpens their grievances.

Perhaps more troubling for the Chinese government, this generation of migrant workers is more inclined to engage in collective action to demand their rights. 182 Police mistreatment of a migrant worker in the summer of 2011 caused large-scale riots in which angry mobs of migrant workers vandalized and torched traditional symbols of authority, such as government offices and police vehicles. 183 During these riots a prominent government think-tank warned that if the huge population of migrant workers living in China’s cities was not treated more fairly, this population would create serious threat to domestic stability.184

Migrant workers resent being looked down upon in the places where they work and live. Some migrant workers have even reported an eagerness to find excuses to retaliate against the government. 185 One area in which migrant discontent is visible is in education. Because many migrant parents cannot enroll their children in their cities’ public schools, they sometimes turn to inferior private schools. 186 When these private schools are demolished—typically in the name of urban renewal or various code violations—many migrant parents see it as yet another form of discrimination. 187 Many of these closures have been met with protests. 188 Some cities, such as Shanghai, attempt to alleviate tension by pairing these demolitions with openings in state schools for displaced children. 189 However, for parents unable to gather the “five certificates” these openings may not actually mean their children can enroll in local public schools. Therefore these efforts do not succeed in appeasing all parents of ousted children.

181 Oswald, supra note 172, at 201.
182 Pomfret & Buckley, supra note 177.
184 Pomfret & Buckley, supra note 177.
185 Id.
186 Branigan, supra note 9.
187 Chin, supra note 11.
188 Mudie, supra note 11; Chin, supra note 11.
189 Chin, supra note 11.
Incorporating migrant children into the state school system would have several positive political effects on Chinese cities. In the short term, migrant parents would have less reason to protest and disrupt social stability. Migrant children would also be given something productive to do during the day while their parents work. In the long term, integration with local children, as opposed to segregation into sub-par private institutions, would build a sense of community that could eventually translate into less discrimination against the migrant population as a whole. Chinese education scholars have noted that “[i]f educational credentials increasingly matter in the labor market and real opportunities for education are distributed equitably across social groups, this rising role of human capital in the labor market can be equalizing.” Educating migrant children will mean they have a better opportunity to join and contribute to China’s growing middle class instead of perpetuating the income inequality in China’s cities that is surely a recipe for domestic instability.

IV. THE CENTRAL GOVERNMENT SHOULD PASS NEW EDUCATION LEGISLATION, BOOST FUNDING, AND IMPROVE ENFORCEMENT

The central government must address several problems to make the wide-scale incorporation of migrant children into state schools a reality. First, the statutes and directives on the subject are drawn too broadly to be effective. Second, urban schools already suffer from overcrowding and must somehow confront the addition of hundreds of migrant children. Finally, there are too few enforcement mechanisms to incentivize local governments to comply with existing laws and regulations. Barring any significant changes to China’s socio-political structure, this Part suggests potential solutions that the central government could execute within the existing framework.

A. The Central Government Should Further Amend the CEA to Prevent Local Governments from Requiring Unreasonable Documentation or Charging Extra Fees for Enrolling Migrant Children

In line with the purposes of the 2006 amendments to the Compulsory Education Act, Article 46 of the Chinese Constitution, and State Council directives over the past two decades, migrant children should not face unreasonable barriers to compulsory education. Migrant children should not have to pay extra fees, nor should their parents need to present an unrealistic documentation.
array of documentation, for their children to receive public compulsory education. Further amendments to the CEA should emphasize these policies in specific and binding language that should then be used in enforcement proceedings against noncompliant school districts. Because local governments treat laws and regulations passed down by higher levels of government as a floor and not a ceiling, amendments must clearly and comprehensively protect migrant children’s right to education in order to be effective. The amended CEA should also require the Ministry of Education to approve any student fees established by local school districts. This would decrease the chances of local districts charging fees that theoretically would apply to the entire student body, but realistically only apply to migrant children, such as fees for not presenting the full “five certificates.” Violations should result in stiff financial penalties. Legislation should also establish a specialized reporting system to allow migrant families to anonymously report non-compliant school districts to the Ministry of Education in an efficient manner. Ideally this would result in targeted investigations into the practices of reported school districts while lowering the risk of retaliation against those who report violations.

Practical concerns indicate that China should maintain some form of documentary requirement, because allowing migrant children into state schools with no documentation at all could result in an administrative nightmare. For example, parents passing through an urban center might enroll children in schools just to pull them out several weeks later, creating a disruptive learning environment. Additionally, children might be able to attend schools in areas where their families do not actually live or work. However, the “five certificate” requirement unduly burdens migrant workers because it does not take into account the fact that many do not have formal housing or employment contracts and find it hard to establish even temporary residency because of the complicated and demanding government procedures involved. Again, reports estimate that 90% of migrant parents cannot acquire all of the “five certificates.” Parents should be able to prove, by whatever reasonable means possible, that they actually live in the district in which they plan to enroll their children. Alternatives to the “five certificate system” include solutions such as presenting records of social security insurance payments, tax receipts, bills, or bank account statements.

191 Lubman, supra note 103, at 144.
192 Chan & Zhang, supra note 3, at 823, 827-29; Branigan, supra note 9.
Further, presenting formal housing contracts alone should sufficiently prove actual residence, but should not be the only acceptable means of proving actual residence. In order to facilitate the transition to a new system in which parents can choose their own means of proving actual residence, the State Council should issue a detailed directive—or the Ministry of Education should enact a detailed regulation—clarifying the types of documentary evidence that constitute definitive proof of residency.

B. The Central Government and Local Governments Should Allocate More Funding to Education

Securing more funding for education will not only effectively ensure future economic growth; it will also be politically popular because it aligns with China’s Confucian roots. In the seventh book of the Analects, Confucius is quoted as saying, “I never refuse to teach anyone, not even those so lowly they come offering nothing more but a few strips of dried meat.” Though interpretations of this statement differ, modern scholars see this statement as an expression of support for fairness and nondiscrimination in education. Indeed, through most of its long history China has held scholars in high esteem. The current government also seems to embrace Confucian ideals, as evidenced by the establishment of a global network of Confucius Institutes, tasked with promoting Mandarin dialects, Chinese culture, and Confucianism around the world.

Boosting education funding will also be politically popular because it will provide benefits to the population as a whole. A 2010 survey conducted by the All-China Women’s Federation found that the rising cost of education was the number one source of familial conflict among those surveyed. The central government could simultaneously alleviate countrywide familial

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196 Brindley, supra note 195, at 49.


stress and improve migrant children’s access to public schools by increasing appropriations to lessen students’ tuition and miscellaneous fees.

China spends significantly less on education than most other middle-income countries. China spent 2.1% of its gross domestic product (“GDP”) on education in 2011. In contrast, the United States spent 5.7% of its GDP on education in 2011. Even compared to the world’s other three major emergent (“BRIC”) countries, China’s education spending is on the low side of the spectrum. In 2011 India spent 4.1%, Russia spent 3.1%, and Brazil spent 4.3% of its GDP on education. China should allocate more funding to education not only to uphold the constitutional rights of migrant children, but also because it is a sound economic investment with the potential to bring greater social stability to urban areas.

Precedent exists for central and local government collaboration on educational initiatives. In 2005, the central government and several provincial governments cooperated on a project called “two frees, one subsidy” where they jointly invested 7.2 billion yuan (approximately $1.14 billion USD) to improve access to compulsory education in impoverished rural areas. The subsidies helped cover the cost of attendance fees and textbooks, among other things, for poor rural families. Collaborations of this sort will benefit central and local governments because they will both enjoy the economic payoffs of such educational investments.

In China, investments in education produce dramatic returns, especially in urban areas. Chengdu, the bustling capital of Sichuan Province, has invested significant funds recruiting quality teachers and building new schools in the villages and towns surrounding the city. Chengdu’s mayor, Ge Hongling, claims this effort has narrowed the urban-rural income gap, encouraged overall economic growth, and curbed some of the problems associated with mass urban-rural migration.

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199 THE ECONOMIST, POCKET WORLD IN FIGURES 132-33 (2011 ed.). The Economist’s calculations are used within the text because they provide calculations for all examined countries using the same methodology; however, calculations of education spending as a percentage of GDP do differ between sources; See also Tom Orlik, Still No Healthy Budget Allocations in China, WALL ST. J., Mar. 7, 2011, http://www.marketwatch.com/story/still-no-healthy-budget-allocations-in-china-2011-03-07 (for slightly different formulations of this statistic); NATIONAL BUREAU OF STATISTICS OF CHINA, CHINA STATISTICAL YEARBOOK 2011, at 767-78, No.30 (China Statistics Press 2011) (for raw numbers).

200 THE ECONOMIST, supra note 199, at 236-37.
201 Id. at 158-59.
202 Id. at 204-05.
203 Id. at 122-23.
204 HANNUM, BEHRMAN, WANG, & LIU, supra note 64, at 30.
205 Id.
206 Id. at 31.
207 Webster & Burke, supra note 180.
208 Id.
Successful compliance with compulsory education laws will require investment in three key arenas: urban schools, rural schools, and wider enforcement of education laws and prosecution of violators. First, urban schools must be physically able to accommodate incoming migrant children. This means more classrooms, more educational materials, and more teachers. Creating more space reduces incentives for school administrators to sell off open slots to the highest bidder. Second, rural schools need better funding so that migrant parents feel more comfortable leaving children in their hometowns to be educated. This will not only benefit rural villages by creating more jobs and building more human capital, but will also ease the pressure on urban schools. Finally, the central government must allocate funds for on-the-ground, periodic enforcement of compulsory education laws.

C. The Central Government and Local Governments Need to Increase Enforcement of Relevant Laws on Educating Migrant Children

Although the amendments to the Compulsory Education Act and the relevant State Council directives spell out a clear purpose—to fully incorporate migrant children into the state school system—local governments have found numerous ways around these measures. As the ancient Chinese proverb goes, “the mountains are high and the Emperor is far away.” Increased enforcement of compulsory education laws, coupled with meaningful punishment of violators, will make the costs of non-compliance higher for local governments that were not previously incentivized to incorporate migrant children into the public school system.

The Standing Committee of the NPC has the constitutional right to interpret China’s Constitution and statutes. It may also “annul those local regulations or decisions of the organs of state power of provinces, autonomous regions and municipalities directly under the Central Government that contravene the Constitution, the statutes or the administrative rules and regulations.” The Standing Committee should use its constitutional powers to annul local regulations that interfere with the goal of full integration and make serious efforts to ensure that such annulments are heeded in practice, perhaps with the Ministry of Education’s assistance. Without real enforcement or stiff penalties for non-compliance,

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209 See supra notes 125-128 and accompanying text.
211 XIANFA art. 67 (1982) (China).
212 Id.
local governments could simply find ways around any new legislation enacted to protect the educational rights of migrant children in their jurisdictions.

V. CONCLUSION

There is no doubt that China knows how to educate children. In 2009 China participated alongside sixty-five other counties in the Programme for International Student Assessment ("PISA"), a test that evaluates worldwide educational systems by testing random samples of fifteen-year-old students. In this round of testing, Shanghai had the highest average test scores, beating out countries like the United States, Japan, and Germany. If the political willpower existed, China could use widespread education as a tool to seamlessly transition from a country of manufacturers to a country of innovators.

Moreover, the effective denial of compulsory education to the children of migrant workers living in China's cities is an unwise policy choice for Chinese leaders. Incorporating migrant children into state schools will help to soothe tensions between migrant workers and local residents by building a sense of community and correcting the wide income distribution between the two groups. This comment noted that Chinese cities heavily depend on migrant labor. If the administrative barriers to life in the city remain overly burdensome, migrant workers that otherwise add value to urban economies may choose to stay home, exacerbating labor shortages that Chinese cities have begun reporting.

The central government is taking some positive steps to address the social problems caused by the hukou system. A recent State Council circular introduced a new policy whereby acquisition of urban hukou in small and medium sized cities would be easier for applicants with stable jobs and residences, provided they have paid social security insurance for at least one year. Under this policy, migrant parents could also apply for urban hukou on behalf of their unmarried children. If this policy is earnestly

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213 PISA 2009 Countries/Economies, OECD, http://www.pisa.oecd.org/document/29/0,3746,en_32252351_32235731_46513821_1_1_1_1,00.html (last visited Apr. 6, 2012); See also What Pisa Is, OECD, http://www.pisa.oecd.org/pages/0,3417,en_32252351_32235907_1_1_1_1_1,00.html (last visited Apr. 6, 2012).


215 Simpson, supra note 146.

216 Id.


218 Id.
implemented at the local government level, it could pave the way to more inclusive urban public schools. However, this new policy does not address the problems faced by migrant families living in major cities like Shanghai and Beijing.

China wishes to continue its robust economic growth while maintaining domestic social stability.\textsuperscript{219} As the country departs from the low-cost manufacturing model, the government needs to invest in the creation of more human capital in order to compete with other service-based economies on the global stage.\textsuperscript{220} Educating the tens of thousands of migrant children with no current access to the state school system\textsuperscript{221} is not only a means to this end, it is a moral imperative.

\begin{itemize}
\item \textsuperscript{219} \textit{Key Targets of China’s 12th Five-Year Plan, supra note 129.}
\item \textsuperscript{220} \textit{SOUBBOTINA, supra note 16.}
\item \textsuperscript{221} \textit{Weihua, supra note 81.}
\end{itemize}