THE HYBRID HUKOU: A NEW PROPOSAL TO ENHANCE LABOR MOBILITY IN CHINA

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Abstract:

Since 1958, the Chinese household registration system, known in Chinese as the hukou system (户口), has limited the ability of Chinese citizens to move from one area of the country to another. Under the hukou system, Chinese citizens who move from rural areas to urban areas are prevented from accessing many benefits that are available to their urban-registered peers, including education for their children. This prevents people from relocating to areas where they would be the most economically productive, and in turn contributes to economic and social inequality. The hukou system is also inconsistent with the obligations set forth by international human rights treaties, which China has ratified or may ratify in the future. This article will suggest that a new category of hukou registration could be created to enable migration to urban areas, promoting a gradual transition to urban registration. This new category, which I call the 'hybrid hukou' registration, would increase China’s economic productivity, decrease inequality, and enhance human rights in China. The 'hybrid hukou' registration would also give Chinese cities time to adjust to the influx of newcomers, which would likely result from greater mobility.

I. INTRODUCTION

Philosophers have long considered restrictions on labor mobility to be both economically inefficient and socially unjust. In 1776, Adam Smith criticized the poor law, which was in effect in England at the time, because it restricted the ability of English laborers to move from one parish to another in search of work. In 1899, Vladimir Lenin, a man who disagreed with Adam Smith over many issues, criticized laws in Tsarist Russia that prevented Russian muzhiks (i.e., peasants) from migrating in an attempt to seek employment from “the employer who [gave] the greatest advantage.” These laws meant that muzhiks could be taken advantage of by employers who set up factories in rural areas to exploit cheap labor. It is, therefore, ironic that China, a country with a Constitution that extols the guidance of Marxism-Leninism and

3 Id.
whose leaders who approvingly cite Adam Smith’s moral philosophy, heavily restricts the mobility rights of its citizens.

Since 1958, the hukou dengji tiaoli (户口登记条例), China’s household registration regulation system, known as the hukou, has made it difficult for Chinese citizens to move from one area of China to another. Hukou registrations are enforced across China in different cities, towns, and rural areas. In order to access many social services, such as education, housing, and healthcare, a Chinese citizen must have a valid hukou registration for the area in which they live. The greatest divide created by the hukou system is between people with hukou registrations in urban areas, who can live in the city and access social services there, and those who have registrations in rural areas, who have the right to farm land but cannot access urban services. These restrictions on labor mobility exacerbate labor shortages in economically dynamic urban areas. The hukou also increases inequality across China, as the hukou registration makes it much more difficult for people with rural hukou registrations to enjoy the social and career opportunities created in cities. In practice, the hukou system also violates international human rights treaties, which China has ratified or may ratify in the future.

In the summer of 2014, The Chinese Government announced several reforms to the hukou system that will eliminate the distinction between urban and rural hukou holders in small cities. Unfortunately, it is unclear whether the reforms will lead to real improvements. This article will examine some of the proposed reforms and will explain why the consequences are likely to disappoint. It will then suggest new reforms, centered on the introduction of a new form of hukou registration called the hybrid hukou. Ultimately, if China wishes to close the gap between its urban and rural citizens, it must do so in a way that neither unfettered market forces nor heavy-handed government regulation dominates the process of human migration. Rather, China should introduce a

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3 Yilong Liu, Does Hukou Still Matter? The Household Registration System and its Impact on Social Stratification and Mobility in China, 29 SOCIAL SCIENCES IN CHINA 56, 57 (2008).
5 Liu, supra note 7, at 57.
system that gives migrants time to determine whether they wish to someday return to their rural homes or become fully urban.

This article will discuss some academic perspectives relating to the *hukou* system. It will then discuss the newly-announced reforms. It will proceed to explain why increasing labor mobility is necessary to improve China’s economic performance, reduce inequalities, and improve human rights. It will then look to other countries for examples of attempts to increase labor mobility, including the experience of England in the late 18th and early 19th centuries, as well as the experiences of modern developing countries. This examination will provide insight into a possible system China could chose to adopt.

II. VIEWS ON THE *HUKOU* SYSTEM

Many academics and journalists agree that the *hukou* system should be abolished or reformed. For example, Lu Yilong, a professor at Renmin University of China noted that, in spite of the many changes China has undergone over the past few decades, the *hukou* system still plays a role in the lives of Chinese people.\(^1\) By performing regression analysis on data from a 2003 survey, Professor Lu concluded that, even after controlling other variables, those born with urban *hukou* registration are more likely to enjoy higher incomes later in life.\(^2\) He also noted the benefits that labor mobility can bring, finding that a person who transfers his *hukou* registration from a rural to a non-rural area, or from one city to another city, increases his or her income by an average of 20.5%.\(^3\) Furthermore, Professor Lu found that those born with urban *hukou* registrations are more likely have higher-status occupations and to become members of the Communist Party of China, which he implied is an indicator of “social prestige.”\(^4\) Professor Lu recommended that, in order to build a “harmonious society,” the *hukou* system must be reformed so that citizens are allowed to “move freely and choose their place of residence.”\(^5\)

On the other hand, Professor Fei-Ling Wang, a professor at the Georgia Institute of Technology, argues that the *hukou* system “is alive and well, and performs important functions in China’s socio-political control, economic development, and social and spatial

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\(^1\) Liu, *supra* note 7, at 73.
\(^2\) *Id.* at 59-60, 68-70.
\(^3\) *Id.* at 65-66.
\(^4\) *Id.* at 63-64, 66-67.
\(^5\) *Id.* at 73.
stratification.” He claims that the *hukou* system is a good way to ensure that only people who are “powerful, rich, educated and talented” or who are considered to be “needed manual laborers” will be able to move to the cities. He also says that the *hukou* system is an important tool for controlling crime and preventing terrorism, as it facilitates police monitoring of harmful groups. He approvingly cites a Chinese official, who spoke of the need to reform the *hukou* system to make it a better tool for controlling the Chinese population and maintaining control over Chinese society.

### III. The *Hukou* Reforms of 2014

In the summer of 2014, the Chinese government announced new reforms to the *hukou* system. When one looks at these reforms, they appear to be sweeping. Media reports claim that China’s urban and rural residents would no longer be divided into two separate castes; instead, both would receive the same *hukou* documents. However, when examined in detail, it becomes clear that the media has overstated the effects of the reforms.

One reason why the reforms are insufficient is that they do not provide rural migrants with a good pathway to gaining citizenship in China’s dynamic “megacities,” such as Beijing, Shanghai, or Shenzhen. This barrier will prove problematic, as an econometric study has shown that Chinese migrants prefer to live in large cities. Furthermore, migration to medium-sized cities is limited to skilled migrants, even though skilled migrants are not the most likely to move to a city. Limiting migration to larger cities to skilled workers prevents unskilled workers from moving to larger cities, where they can develop their human capital. Unless China can find a way to open up its large and medium-sized cities, it will miss out on the benefits that greater mobility would bring.

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17 Id.
18 Id. at 129-130.
19 Id. at 130.
20 Branigan, supra note 10.
24 See Chunbing Xing & Junfu Zhang, supra note 22, at 28. The authors hypothesize that one reason why migrants may prefer to move to large cities is because large cities provide them with greater opportunities to develop their human capital.
China must also ensure that the new reforms do not lead to a flooding of the social services offered by cities. Migrants must be integrated into the cities and provided with social security in the event that they cannot find or maintain employment. This system must prevent an overwhelming number of migrants from becoming destitute. If the 2014 reforms allow free migration to smaller cities while still restricting migration to large cities, the transition from restricted to free mobility may be more painful than necessary. If rural migrants can freely move to small cities, they may overwhelm the social safety systems and infrastructure of those cities. On the other hand, without some legal migration from the countryside, China’s large cities will be able to delay the reform process that is necessary. China could better regulate migration through a “hybrid hukou” registration, which would allow rural migrants to move to cities and gain urban hukou status over time. With this system, cities would have time to develop the social services required by the migrant population. Migrants would also maintain some rights that enable them to return to their farms if they are unable to adjust to city life.

IV. THE ECONOMIC COSTS OF RESTRICTIONS TO LABOR MOBILITY

At an April 2013 economic conference, Chinese President Xi Jinping stated that the Chinese government will try to “sustain relatively high economic growth,” but that it will also focus more on “the quality and efficiency of economic development.”25 One way in which China could maintain rapid growth in a more efficient manner would be to make it easier for workers to migrate to locations where they could be most productive. Enhancing labor mobility by reforming the hukou system would be a good way to achieve this goal.

There are several ways in which increasing labor mobility increases the average productivity of a country’s workers and therefore the country’s rate of economic growth. The first way is related to the diminishing marginal product of labor. After a business with a fixed capital stock has a certain number of workers, each additional worker increases the total output of the business by a smaller amount than the previous worker. Therefore, allowing migrants to move to areas where they can work at businesses with an insufficient number of employees would help increase total output.

The nature of diminishing returns to labor inputs is best illustrated with an example. Imagine a factory that possesses a machine that which produces gloves. To function, the machine must be operated by one worker at all times. Once the machine has produced gloves, a worker must pack the gloves into boxes by hand for shipping. If the firm has only one employee, he or she needs to both operate the machine and pack the gloves, and the time spent packing gloves would be valuable time during which the machine would be idle. But if an additional employee were added to the firm, one worker could work at the machine full-time while the other could pack the gloves. The machine would no longer need to be idle, so the total number of gloves that could be produced in a day would increase. Assuming the second worker can pack all of the gloves produced in one day without any trouble, the hiring of a third worker would not increase the production of gloves to the extent that the second worker did. Perhaps the third worker could operate the machine while the first worker takes breaks and also makes tea for the other two workers, so that the workers remain alert and make fewer mistakes. Nonetheless, the number of gloves saved due to this greater alertness will be fewer than the number of extra gloves produced by hiring a second worker to ensure that the machine is not idle. If there were a second glove factory in a faraway town that had a similar machine but only one worker, allowing the third employee to move to the faraway town and work for the second factory as a packer would increase the total number of gloves produced. The decrease in the number of gloves produced by the first factory from not having someone to make tea would be outweighed by the gain of the second factory from not having to leave its machine idle. A government that wishes to maximize the productivity of its citizens would therefore be wise to allow the third employee to move to the faraway town.

A second way in which labor mobility can increase productivity is by allowing workers to take advantage of economic opportunities that do not exist where they currently live. For example, such opportunities were created when China adopted an “uneven development policy” under Deng Xiaoping. Under this policy, China tried to develop its economy by encouraging exports. The natural places to build factories to produce exports were near China’s East Coast, and more specifically near Hong Kong, as it was a city that served as a transit route for products produced in Mainland China.26 China’s geography, combined with political decisions to develop Eastern China before the rest of the country, led to the creation of

26 YANG YAO, The Political Economy of Government Policies Toward Regional Inequality in China, in RESHAPING ECONOMIC GEOGRAPHY IN EAST ASIA 218, 224 (Yukon Huang & Alessandro Magnoli Bocchi eds., 2009).
opportunities in some parts of China that did not exist in other parts of the country. Workers who moved to coastal areas were therefore more productive than workers in other parts of the country. Policies that encourage (or at least do not discourage) the movement of workers to areas of economic opportunity, such as the ones created in Eastern China, therefore increase a country’s total production.

A final way in which enhancing labor mobility increases economic productivity is that it allows workers to travel in order to find the job at which they are best suited. Workers are more productive when they have been trained or when they have a passion for the job. Preventing migration decreases economic productivity because it prohibits people from relocating to find work or opportunities better suited to them, which might not exist in their current location.

The decrease in productivity caused by barriers to migration has real consequences for China. It has been estimated that eliminating China’s hukou system would increase aggregate consumption, which is one component of GDP, by an amount equivalent to 1.8% of GDP. Restrictions on labor migration causes the Chinese economy to fall short of its full potential because such restrictions would impede the free flow of labor from China’s rural areas to urban areas. All three examples of how prohibiting labor migration decreases economic output apply to China. In essence, barriers to migration created a surplus of workers in rural areas and a shortage of migrant workers in urban areas. Due to diminishing returns of labor, the additional output that could be created by these extra workers in rural areas is less than what these workers could produce in urban areas. Furthermore, the barriers created by the hukou system prevent Chinese workers who do not live near China’s East Coast from relocating to take advantage of the available economic opportunities. Finally, empirical evidence indicates that workers who are more educated would be more suited to urban factory work; however, if they have a rural hukou, they are unable to move to urban areas where their skills could be utilized.

An econometric study conducted in 1995 and 1996 examines the occupational choices of members of 1820 households in 18 rural counties of Sichuan province. The study demonstrates how the hukou

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system creates economically inefficient barriers to migration. The study looked at how people in these counties chose between three possible careers: remaining in one’s home county as a farm worker, remaining in one’s home county as a non-farm worker or migrating away from one’s home county to seek work elsewhere. The study found that migrant workers made more money than rural non-farm workers, and rural non-farm workers made more money than rural farm workers. Workers are generally paid more when they are more productive, so this disparity in earnings implies that migrant workers are more productive than rural non-farm workers and rural farm workers. In spite of the higher returns to migrant work, the study found that workers with more schooling generally preferred being a local non-farm laborer to becoming a migratory laborer, even though these workers should be able to obtain migrant work more easily. In essence, people with a better education do not move to areas of greater economic opportunity where their skills can be utilized. Part of the reason for this preference can be attributed to the hukou system. Like Lenin’s muzhik, rural Chinese people face barriers to migration that lead them to seek less remunerative work at home instead of seeking a higher salary in an urban area. For example, one barrier to becoming a migrant laborer is that it often means separation from one’s children because migrants cannot obtain subsidized schooling for their children without an urban registration. Even with their higher salaries, urban schooling is not affordable for many migrants, so they have to leave their children at home with their families to be educated. Barriers such as this one illustrate rural Chinese workers’ reluctance to migrate in order to find a job, even if that job will mean they are more productive and better compensated.

Unfortunately, the labor mobility reforms announced in the summer of 2014 will not remove some of the barriers to labor mobility. One flaw inherent to the reforms is that rural migrants will still have difficulty migrating to cities with populations of over 5 million people. These barriers will prove problematic because worker productivity tends to be higher in China’s larger municipalities, including in megacities such as Beijing, Shanghai, and Tianjin, as well as in densely populated provinces such as

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29 Zhao, supra note 23.
30 Id. at 770.
31 Id. at 776-777.
32 Id. at 771.
33 Id. at 778.
The fact that densely populated areas are more economically dynamic is not surprising. Urban areas that benefited from China’s “open-door” policies are more likely to be more capital-intensive than the rural areas that have not benefited from such policies.

Another reason in favor of permitting migration to large cities is beneficial is that workers in such cities are more productive thanks to “scale economies.” Several explanations have been put forth as to the causes of “scale economies,” including the possibility for greater specialization in urban areas, the ability of different firms to share suppliers and facilities, and the possibility that people who are close to each other will learn better techniques from each other. An economic study by Chun-Chung Au and J. Vernon Henderson noted that, at least as of 1997, many of China’s cities could achieve greater scale economies with a higher population. By allowing greater migration to larger cities, China could further enhance labor productivity.

Another flaw associated with the 2014 reforms to labor mobility is that they restrict movement based on workers’ skills. As previously mentioned, rural residents with greater skills are not always inclined to move to urban areas. Even if the new reforms make it easier for highly-skilled workers to migrate to rural areas, they will still face disincentives, such as separation from their extended families. It thus implies that the less-skilled benefit the most from moving to urban areas. Rather than restricting this migration, the Chinese government should encourage less-skilled migrants to migrate to larger cities, allowing them to develop necessary skills. The ‘hybrid hukou’ registration proposed in this article would better achieve this aim than the 2014 reforms.

The hukou system is economically inefficient not only because it prevents migration, but also because it places unnecessary costs on rural laborers who do migrate. For example, migrants are discouraged from settling where they work, meaning that they incur transportation costs to travel to and from their home villages to visit...
their children and families. They are also required to obtain legal papers that are often expensive. Money spent on transportation and obtaining legal papers is money that cannot be put to more productive uses, such as educating children. The elimination of these costs would also allow migrant workers to spend more of their earnings on improving their quality of life. Narrowing the gap between the quality of life of rural migrants and their urban-registered peers could be one way of reducing China’s social and economic inequalities.

V. THE HUKOU SYSTEM AND INEQUALITY

In order to sustain China’s rapid progress, China’s leaders need to ensure not only that economic growth continues but also that the fruits of such growth are better shared among all of China’s citizens. One consequence of China’s rapid economic growth over the last 35 years is that the gap between the incomes of China’s wealthier and poorer citizens has grown considerably. This gap has become a cause for concern. Some Chinese politicians, such as former Premier Wen Jiabao, have recognized that inequality threatens social harmony and that China’s growing wealth needs to be distributed more fairly. Fortunately, the government could adopt policies that could decrease inequality and lead to a more harmonious society. Given that much of the inequality that exists in China today is due to differences in income between rural residents and urban residents, reforming the hukou system, which would make it easier for rural residents to move to urban areas, and consequently earn higher salaries, would be a good idea. Reforming the hukou system could also reduce the wealth gap between migrant workers in cities and city residents with urban hukou registrations. Finally, the benefits enjoyed by city-dwellers do not result from any special virtue on their part; they are simply the result of their place of birth. Therefore, hukou reform would also lead to greater social justice. In short, hukou reform would make China a more equal, just and harmonious society.

The hukou system creates inequality by dividing China’s population into three distinct classes: urban hukou registrants, rural hukou registrants living in rural areas, and rural hukou-registrants who live in urban areas. This division leads to inequality in two

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38 Id. at 777.
40 Fareed Zakaria, supra note 5; Michael Bristow, China ‘Must Reduce Rich-Poor Gap’ – Premier Wen, BBC News (Mar. 5, 2010), http://news.bbc.co.uk/2/hi/asia-pacific/8550930.stm.
separate ways. The first way in which the *hukou* system perpetuates the inequality between urban and rural residents in China is by preventing rural residents from moving to the cities, where they would be more likely to earn higher salaries. Because economic opportunities in China’s cities are better than economic opportunities in China’s rural areas, incomes in urban areas are considerably higher than incomes in rural areas. In 2009, the income ratio of China’s urban residents to China’s rural residents was 3.33 to 1, and this gap has been increasing. \(^{41}\) By reforming the *hukou* system so it enables Chinese citizens to freely move where they can obtain decent salaries, the Chinese government can help narrow the gap between China’s rich and poor.

The second way in which the *hukou* system creates income inequality is by creating educational inequality. People without urban *hukou* registrations receive poorer education in both the countryside and the city, which arguably lowers their potential earnings relative to urban-registrants. The benefit-to-cost ratio of education in the countryside is less appealing, so rural parents have less incentive to keep their children in school. \(^{42}\) Another obstacle faced by Chinese students who live in cities without an urban *hukou* registration is that they must write their university entrance exams in the rural area where they are registered. Curriculum differences between regions make this requirement an especially heavy burden. \(^{43}\) The difference in educational opportunities between people with urban *hukou* registrations and people with rural registrations creates a disparity that persists, even if migrant workers eventually obtain urban registration. An econometric study has shown that urban residents who obtained an urban registration after the age of 15 had worse employment outcomes, fewer years of education, and fewer work related social benefits than those who obtained their registration before the age of 15. \(^{44}\)

The inequalities created by the *hukou* system are socially unjust because the *hukou* system provides different privileges and opportunities to different groups of people based solely on their place of birth. Such a system is repugnant to both Marxist-Leninist principles and to the idea of social justice put forth by John Rawls. Under Marxism-Leninism, a country such as China undergoing a

\(^{44}\) Liu, *supra* note 42, at 154-155.
socialist stage of development should allocate resources to each citizen according to his or her contribution, if not according to his or her need. The *hukou* system does not allocate greater privileges and opportunities to urban-registrants because they have contributed more to society, but because of where their ancestors lived at the time the *hukou* system was established. The injustice of the *hukou* system is also evident when a Rawlsian “veil of ignorance” test is applied. If a hypothetical person knew he or she was to join Chinese society but did not know whether he or she would be given an urban *hukou* registration or a rural *hukou* registration, he or she would most likely deem the *hukou* system to be unjust, given that the system could determine the outcome of his or her life based on circumstances over which he or she has no control.

While distinctions between people based on their parentage are *prima facie* unjust, they can still be justified in certain circumstances if they improve the general welfare of society. For example, citizens of a country could be encouraged to work harder and invest in capital goods (activities that, to quote Deng Xiaoping, develop the “productive forces of society”) if they knew that they could pass on some of the fruits of their work and investment to their children. Because working harder and investing in capital improves society as a whole, inequalities based on birth are not always unjust. This reasoning does not apply to the *hukou* system because the ancestors of urban *hukou* holders did not do anything to earn their superior status. Their superior wealth can be attributed to Deng Xiaoping’s policy of uneven economic development, whereby the cities came to lead China’s industrialization period. Regional inequality and barriers to migration can also be justified as part of China’s gradual economic reforms. The Chinese government’s desire to test new economic policies in coastal areas may have justified the maintenance of the *hukou* system in the past. However, any economic reform policy that rely on such a scheme should be temporary; the goal should be to “let some people get rich first,” not to let some preferred people get rich and maintain their privilege forever. The time has come for *hukou* system reform. Unfortunately, the reforms introduced in the summer of 2014 do not go far enough towards reducing inequality within China.

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While there is great inequality between rural areas and urban areas, there is also considerable inequality between larger Chinese cities and smaller Chinese cities.\[^{48}\] A World Bank study concluded that “the urban underclass is concentrated in second-tier cities (non-provincial capitals),” while the “[f]our largest mega provincial cities (Beijing, Shanghai, Chongqing and Tianjin) have the lowest urban disadvantaged rate.”\[^{49}\] By limiting migration opportunities for rural people so that they can only move to smaller cities, the Chinese government risks entrenching inter-city inequality, and could even increase the size of the urban underclass.

China’s recent reforms may also increase inequality because they limit migration opportunities to rural residents who are already advantaged.\[^{50}\] The income gap between better qualified and the less qualified people is likely to widen. China should rethink its reforms, and modify them so that lower-skilled rural residents have an opportunity to move to large cities, and earn higher wages and gain skills in the process. The hybrid hukou proposal would allow such migration, and would thus be better at reducing inequality than the 2014 reforms.

VI. HUMAN RIGHTS AND THE HUKOU SYSTEM

As China has become more integrated with the international community, it has begun to pay more attention to the issue of international human rights. Unfortunately, the hukou system infringes upon several rights, including the basic social and economic rights of freedom of internal movement and freedom from discrimination based on inherited status. Reforming the hukou system would help China improve its internal human rights situation and help China fulfill its obligations under the International Covenant on Civil and Political Rights (the “ICCPR”) and the International Covenant on Economic, Social and Cultural Rights (the “ICESCR”).

As Adam Smith recognized, restrictions on ability to move freely in one’s country is a violation of natural justice.\[^{51}\] As with many of the other concepts of justice enumerated by Enlightenment philosophers, freedom of internal movement has become an international human rights norm. The right of citizens to move freely and choose their own residence was set down in Article 12.1 of the ICCPR.\[^{52}\] China has not yet ratified the ICCPR, so China is not

\[^{48}\] See Lall & Wang, supra note 35, at 3.
\[^{49}\] Id. at 5.
\[^{50}\] Panda, supra note 34.
\[^{51}\] SMITH, supra note 1, at 142.
bound by Article 12.1. Nonetheless, China has signed the ICCPR, which indicates China’s intent to become bound by the covenant. There is reason to believe that that the hukou system violates the provisions of the ICCPR, so China should enact gradual reforms to enhance labor mobility in preparation for its eventual ratification of the ICCPR.

The implementation of the ICCPR is monitored by the United Nations Human Rights Committee (the “HRC”). Nations that are parties to the ICCPR regularly submit reports on their implementation of the rights contained in the ICCPR. After examining the reports, the HRC recommends ways in which States can improve their human rights situations. China is not a signatory to the ICCPR, so the HRC has not commented on whether the hukou system violates Article 12 of the ICCPR. The HRC’s likely position can nonetheless be predicted based on comments regarding a similar system of mobility restrictions implemented in the Democratic People’s Republic of Korea (more commonly known as North Korea). In the HRC’s 2001 Concluding Observations on the human rights situation in North Korea, the HRC criticized North Korea’s system of movement restrictions.

According to North Korean law, North Korean citizens had the freedom to travel freely within the country and choose their place of residence. In order to exercise this freedom, they have to get permission from the State in the form of a “traveller’s certificate” if they wish to travel, or “removal registration” for a change of residence. In theory (although probably not in practice), this system was actually less restrictive than China’s hukou system. According to the North Korean government, there was “no restriction” on the issuance of traveller’s certificates and North Koreans were “free to choose their residence” in spite of the removal registration requirements. Nevertheless, the Human Rights Committee thought that there were “serious

55 Concluding observations of the Human Rights Committee: Democratic People’s Republic of Korea, art.19, U.N. Doc. CCPR/C/72/PK (Aug. 27, 2001), [hereinafter Concluding observations], http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%E2%80%90%CA%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%90%9
questions” about the compatibility of North Korea’s system of travel restrictions and recommended that it be eliminated.\(^{58}\) Given this criticism, it is likely that China’s \textit{hukou} system is also incompatible with the \textit{ICCPR}. In preparation for its eventual ratification of the \textit{ICCPR}, China should reform its \textit{hukou} system.

The \textit{hukou} system is also inconsistent with China’s obligations under the \textit{International Covenant on Economic, Social and Cultural Rights} (the “\textit{ICESCR}”), a treaty which China has ratified.\(^{59}\) Parties to the \textit{ICESCR} are obligated to provide their citizens with certain rights. Under Article 2.2 of the \textit{ICESCR}, these rights should be provided “without discrimination of any kind as to…social origin.”\(^{60}\) According to the Committee on Economic, Social and Political Rights, the UN body set up to monitor State compliance with the \textit{ICESCR}, “‘social origin’ refers to a person’s inherited social status.”\(^{61}\) Given that a Chinese citizen’s \textit{hukou} status at birth generally depends upon his or her parents’ \textit{hukou} statuses, it is clear that \textit{hukou} status would qualify as a component of “social status.” It follows that China has an obligation to provide \textit{hukou} registration in accordance with the rights guaranteed by the \textit{ICESCR}, which is on a non-discriminatory basis.

Unfortunately, the \textit{hukou} system creates several discriminatory barriers that prohibit rural-registered Chinese citizens from enjoying the rights guaranteed under the \textit{ICESCR}. Article 7 of the \textit{ICESCR} obliges States to guarantee that workers enjoy “just and favourable working conditions,” including “equal remuneration for work of equal value.”\(^{62}\) Given that workers in rural areas earn less than workers in urban areas, the barriers to migration created by the \textit{hukou} system lead directly to unequal remuneration based on social status.

The \textit{hukou} system also does not uphold the spirit of Articles 10 and 13 of the \textit{ICESCR}. Article 10 of the \textit{ICESCR} requires States to accord “[t]he widest possible protection and assistance to…the family.”\(^{63}\) Article 13.1 requires States to “recognize the right of everyone to education.”\(^{64}\) Article 13.2 requires States to recognize the right to free primary education and commit to the “progressive

\(^{58}\) Concluding observations, supra note 53, art. 19.
\(^{60}\) Id. art. 2.2.
\(^{62}\) \textit{ICESCR}, supra note 59, art. 7.
\(^{63}\) Id. art. 10.
\(^{64}\) Id. art. 13.1.
introduction of free education.” The Chinese government fulfills its obligation to educate Chinese children by obliging local Chinese governments to provide free education to children in their jurisdictions. Unfortunately, this obligation does not extend to the children of rural migrants who live in urban areas. As their children lack urban hukou registration, the families often have to send the children back to the villages, where they are able to receive a state-subsidized education. Otherwise the parents must pay for their education in urban schools. By requiring parents to choose between separation from their children and subsidized education, the Chinese State is not upholding its simultaneous obligation to support families while also providing their children with an education. The Chinese government should take steps to make it easier for migrant workers to educate their children in the cities where they live.

VII. LEARNING THE LESSONS OF HISTORY: WHY REFORMS SHOULD BE UNDERTAKEN CAUTIOUSLY

As this article has demonstrated, there are many good reasons for China to undertake reform of the hukou system. However, the total abolition of all restrictions on labor mobility might actually end up worsening the situation of migrant workers. If too many migrant workers move to urban areas at once, they may flood urban infrastructure, which would likely cause a breakdown of social services in Chinese cities. Also, if migrants are forced to give up their right to farm rural land, they might end up worse off if they move to the city and cannot find suitable employment. If this occurs, free migration might even exacerbate inequality. Free migration would help China meet its human rights obligations. China should therefore use the time before its eventual ratification of the ICCPR, as well as the exception in human rights treaties that allows it to meet its obligations to the extent that its developmental progress allows.

China should gradually increase labor mobility until it can meet international standards.

Fortunately, China can learn from the experience of other countries in order to avoid the problems associated with migration during a period of industrialization. China should consider the example of England, which removed its restrictions on labor mobility as it industrialized during the late eighteenth and early nineteenth centuries. It should also examine the situation in modern developing

65 Id. art. 13.2.
67 See e.g., ICESCR, supra note 59, art. 2.3.
countries such as India and Brazil, which have allowed migration from rural areas to urban areas and have allowed slums to develop in their major cities.

There are many parallels between England during the late eighteenth and early nineteenth centuries and present-day China with regard to the issue of migration. Like China today, England was undergoing rapid industrialization. One consequence of this industrialization was a scarcity of workers in some urban areas. England also had a surplus of labor in the countryside, created in part by the enclosure movement, which deprived small farmers of their gardens and common fields. Initially, the ability of workers to move from rural areas to work in urban factories was limited by the poor law illustrated and decried by Adam Smith.

In 1795, the English authorities introduced limited reforms that loosened the restrictions created by the poor laws. As a consequence, many people moved to English cities to take advantage of new working opportunities. The result of this vast migration was poverty. Over the long term, England was growing economically and was on its way to becoming the first fully-industrialized nation. Unfortunately, the growth was unsteady, and England experienced downturns that put factory employees out of work. Unable to return to their farms, these workers came to constitute what Friedrich Engels would describe as “an unemployed reserve army of workers” who only had employment during “brief periods of highest prosperity.” Unfortunately, many newly-industrializing countries did not learn from England’s experience, and allowed their own pool of both unemployed and underemployed citizens to develop.

The failure of many developing countries to manage immigration from the countryside to the cities is evident from the slums that have developed in countries such as India and Brazil. The rapid movement of people from rural areas in developing countries has led to the creation of areas where the poor live with inadequate physical infrastructure, limited social services and few economic

68 The description of rural to urban migration in this article is based on the coverage of that subject in Karl Polanyi, The Great Transformation: The Political and Economic Origins of Our Time (10th printing 1970).


70 Id. at 156.

71 Id. at 150, 156. A parallel can be drawn between the enclosure movement in England and the deprivation of Chinese farmers of their land to make way for new developments. For a description of the enclosure movement in England, see Polanyi, supra note 68, at 34-35

72 Id. at 88

73 Id. at 88.

74 Id. at 89-91.

75 Id. at 91-93.

76 Invisible and Heavy Shackles, The Economist (May 8, 2010), at 26.
opportunities. These slums have been described as “poverty traps” because poor health, low levels of education and reluctance of public and private authorities to invest in slums make it very hard for people living in slums to better their conditions. It has been theorized that slums form when authorities are unable to develop infrastructure, housing and services for new immigrants. If possible, developing countries should try to prevent the development of slums.

For all of its flaws, the hukou system has mitigated some of the problems that have accompanied urbanization in other developing countries. Rural migrants maintain the right to return to their villages and farm a plot of land if their jobs are eliminated as a result of an economic downturn. This migration back to the land occurred during the 2008-2009 global recession. The hukou system acts as a “social safety net of last resort” and prevents the creation of a large group of unemployed urban workers. Urban authorities can also use the hukou system to prevent the creation of a permanent underclass of slum-dwelling migrants. China should reform its hukou system, but it should do so cautiously so as to avoid the problems other developing countries have experienced.

VIII. SUGGESTION FOR REFORM: THE HYBRID HUKOU

The need to prevent the development of slums rules out the complete elimination of the hukou system for the foreseeable future. Full labor mobility must be delayed until China’s cities have the capacity to absorb large numbers of migrants. Instead of getting rid of the hukou system, Chinese authorities should introduce a new category of hukou registration: the hybrid hukou registration.

Many of the problems relating to the hukou system derive from the fact that Chinese citizens can either have a rural hukou registration or an urban hukou registration. Cities are reluctant to register newcomers because they bear a lot of responsibility for someone with an urban hukou registration, but very little responsibility to someone with a rural hukou registration. Migrants lucky enough to have the choice of where to register must decide whether they wish to be fully rural, in which case they have few

78 Id. at 191-198, 200.
81 Id.
rights in the cities in which they work, or fully urban, in which case they lose their right to farm a plot of land. This difficult choice may be why, according to a 2011 survey conducted by the National Population and Family Planning Commission, only 26% of rural migrants would accept urban hukou status if it was offered to them.\footnote{82} Both of these problems could be solved by the introduction of a hybrid hukou registration that combined some of the benefits of having an urban hukou registration with the rights of having a rural hukou registration.

A hybrid hukou registration could be identical to a rural hukou registration except that it would carry the right to exchange rural registration for urban registration after its holder has spent several years living and working in a city. This system would have several benefits. City authorities would know in advance, approximately, how many new urban residents their social systems would have to provide for and would have time to build new schools, sanitation systems and houses. After living in the city, rural migrants would be able to make an informed decision as to whether they wished to become permanent urban residents or retain their rural registration so that they could return to the country after making money in the city. Workers whose jobs disappear in harsh economic times would still have a chance to return to their farms and avoid joining Engels’s “reserve army of the unemployed.” Employers could lay off their least experienced employees during a downturn without those employees becoming a drain on city services or from becoming residents of slums completely removed from city services. Finally, the hybrid hukou system would also be beneficial for temporary migrant workers. They would be able to move to urban areas to work temporarily without having to give up their right to return to their home village to farm.

While the hybrid hukou registration would solve some of the problems faced by migrants and cities, it would leave other problems unresolved. A large class of people, those waiting for their hybrid registrations to become urban registrations, would still be left without social services. Such circumstances could be avoided by refining the proposed hybrid hukou registration.

A better hybrid hukou registration would gradually provide migrants with greater social benefits as they live and work in cities for extended periods of time. This would allow cities to gradually adapt to the influx of migrants, rather than having to provide migrants with full benefits all at once. For every year that rural

migrants live in a city, the city could provide them with increased housing and health subsidies until, after a certain length of time, their benefits would equal that of urban residents and they could exchange their hybrid hukou registration for an urban hukou registration. Cities could provide the children of migrants with schooling after their parents have lived and worked in the city for a set number of years, so that the children who remain with migrants’ extended families back in rural areas could eventually join their parents in the city. At the end of hybrid hukou period, migrants could decide whether to register as urban residents or whether to revert back to their rural registrations.

The refined hybrid hukou system would bring many benefits to China. It would enhance China’s economic performance because workers would be able to move to where they were most likely to find the most productive and remunerative work. They could move to the city with confidence, knowing that they would retain the right to return to their village if they did not succeed in the city. By allowing rural Chinese people to become urban residents, with all of the rights and opportunities such a transition would entail, the hybrid hukou system would help to lessen inequality and to achieve social justice. If greater numbers of children were able to join their parents in the city, it would also reduce educational inequality and help China uphold its obligations under the ICESCR. Finally, the hybrid hukou system could be a stepping-stone to the introduction of full labor mobility, helping China prepare for its eventual ratification of the ICCPR.

IX. CONCLUSION

China will face two major challenges in the future. First, it will need to find ways to maintain its high growth rate and avoid the “middle income trap,” a period of stagnation that follows fast growth in many emerging economies. Second, it will need to find ways to decrease the great income inequality that currently separates China’s rich and poor. Reforming the hukou system to make it easier for Chinese rural residents to move to better paying jobs in China’s cities would help it meet both of these challenges. However, like many of China’s economic reforms over the last three decades, reforms to the hukou system should be undertaken cautiously to ensure that China’s cities have time to adjust to the influx of new migrants. The adoption of a third category of hukou registration, the hybrid registration, would allow new migrants to gradually adapt to

urban life and would give cities time to provide them with social services. The hybrid registration would also prevent the development of slums that has occurred in many other developing countries where rapid migration from the countryside to the city has flooded city services and left many newcomers in substandard living conditions. The hybrid hukou registration would allow China to continue its economic rise and to better uphold its founding principle of equality.