

Understanding the Right to Education under the Hukou system in China: From a Human Rights  
Perspective

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**Abstract**

This paper critically examines the Chinese Hukou system's impact on children's right to education within the framework of international human rights law. Despite reforms, the Hukou system continues to create significant disparities in educational opportunities among children with different Hukou status, leading to widespread socio-economic inequalities. From a human rights perspective, this study explores how the right to education is violated through an analysis of the interconnectedness of education, housing, and family rights within the Hukou system, and proposes policy recommendations to enhance educational access for all children in China.

**Keywords**

Hukou, the Right to Education, school district housing, left-behind children

## 1. Introduction

### 1.1 What is the Hukou system?

On January 9, 1958, the Hukou system was introduced with the promulgation of the *People's Republic of China Hukou Registration Regulation*, the first household registration law in China. The purpose of Hukou system is to maintain social order, protect the rights and interests of citizens and contribute to the development of socialism.<sup>1</sup> Specifically, the Hukou system was introduced to solve the resource scarcity in cities caused by rapid urbanization under the *Provisional Regulations on Urban Household Registration*, which granted Chinese citizens the right to free migration.<sup>2</sup> Under the Hukou system, all individuals are generally categorized as rural citizens with agricultural Hukou and urban citizens with non-agricultural Hukou.<sup>3</sup> This division grants urban Hukou holders superior social benefits, including better healthcare, education, and employment opportunities, while rural residents, tied to agricultural production, receive fewer benefits. More importantly, the Hukou system created an urban-rural duality where the rural Hukou holders are institutionally excluded, especially in rural to urban migration.<sup>4</sup>

Despite reforms during China's economic liberalization in the late 20th century aimed at addressing labor demands and urban-rural inequality, the core structure of the Hukou system remains intact, which has continued to create disparities in access to social services.<sup>5</sup> Since 2014, the Chinese government has been removing the distinction between urban and rural Hukou

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<sup>1</sup> Standing Committee of the National People's Congress, "中华人民共和国户口登记条例, [Hukou Registration Regulation of the People's Republic of China]" (1958), <https://flk.npc.gov.cn/detail2.html?MmM5MDImZGQ2NzhiZjE3OTAxNjc4YmY4YTcyNTBiNzc>.

<sup>2</sup> Human Rights Committee, General Comment 27, "城市户口管理暂行条例, [Provisional Regulations on Urban Household Registration]" (1951), <https://law.pkulaw.com/bugui/e555eb72cb3b973abdfb.html>.

<sup>3</sup> Standing Committee of the National People's Congress, 中华人民共和国户口登记条例, [Hukou Registration Regulation of the People's Republic of China].

<sup>4</sup> Feiling Wang, "Organizing Through Division and Exclusion: China's Hukou System," 2005, 86, [https://web-p-ebsohost-com.uml.idm.oclc.org/ehost/ebookviewer/ebook/ZTAwMHhuYV9fMTM2MTQ0X19BTg2?sid=f466344a-dc80-4128-8488-cb7adca5cf8e@redis&vid=0&format=EB&lpid=lp\\_32&rid=0](https://web-p-ebsohost-com.uml.idm.oclc.org/ehost/ebookviewer/ebook/ZTAwMHhuYV9fMTM2MTQ0X19BTg2?sid=f466344a-dc80-4128-8488-cb7adca5cf8e@redis&vid=0&format=EB&lpid=lp_32&rid=0).

<sup>5</sup> Taidong Zhou, "中国户籍制度的演变逻辑：适应经济社会形势渐进放宽人口流动控制, [The Revolutionaries of China's Household Registration System: Adapting to the Economic and Social Situations and Gradually Loosening the Control on Population Movement]," July 23, 2020, <https://www.cikd.org/detail?docId=1564>.

holders and launching new policies to enhance education equity<sup>6</sup>; however, the legacy of the rural Hukou system continues to exert a profound influence on equity in opportunities.<sup>7&8</sup>

Children from rural areas still face significant disparities in access to educational resources compared to their urban counterparts. These disparities manifest in underfunded schools, inadequate facilities, and a shortage of qualified teachers in rural regions.<sup>9</sup> This ongoing inequality means that children from rural backgrounds are often unable to compete on an equal footing with urban students, particularly when it comes to accessing higher education and better job prospects.<sup>10</sup> The enduring impact of the Hukou system thus continues to impede the educational and socio-economic advancement of rural and migrant children, highlighting the need for more robust and comprehensive reforms to address these deep-seated inequities.

## 1.2 Education in China

China's education system is governed by a centralized framework established to ensure compulsory education for all children. The *Compulsory Education Law of the People's Republic of China*, enacted in 1986, mandates nine years of compulsory education, consisting of six years of primary education and three years of junior secondary education.<sup>11</sup> The central government emphasizes the importance of education, which is reflected in various national policies aimed at promoting equal access to education for every child, regardless of their socio-economic background.<sup>12</sup>

Despite the overarching goal of equal education, China's education system is marked by pronounced disparities in opportunities and resources. These disparities are largely influenced by

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<sup>6</sup> The Ministry of Public Security of the People's Republic of China, "国务院关于进一步推进户籍制度改革的意见, [Opinions of the State Council on Further Promoting Reform of the Household Registration System]" (2014), [https://www.gov.cn/zhengce/content/2014-07/30/content\\_8944.htm](https://www.gov.cn/zhengce/content/2014-07/30/content_8944.htm).

<sup>7</sup> Wang, "Organizing Through Division and Exclusion: China's Hukou System," 86.

<sup>8</sup> Qian Song and James P. Smith, "Hukou System, Mechanisms, and Health Stratification across the Life Course in Rural and Urban China," *Health & Place* 58 (July 1, 2019): 11, <https://doi.org/10.1016/j.healthplace.2019.102150>.

<sup>9</sup> Dandan Zhang, Xin Li, and Jinjun Xue, "Education Inequality between Rural and Urban Areas of the People's Republic of China, Migrants' Children Education, and Some Implications," *Asian Development Review* 32, no. 1 (March 2015): 216.

<sup>10</sup> Qiang Fu and Qiang Ren, "Educational Inequality under China's Rural-Urban Divide: The Hukou system and Return to Education," *Environment and Planning A: Economy and Space* 42, no. 3 (March 1, 2010): 607, <https://doi.org/10.1068/a42101>.

<sup>11</sup> Ministry of Education of the People's Republic of China, "Compulsory Education Law of the People's Republic of China" (1986), art. 2, [http://en.moe.gov.cn/documents/laws\\_policies/201506/t20150626\\_191391.html](http://en.moe.gov.cn/documents/laws_policies/201506/t20150626_191391.html).

<sup>12</sup> Ministry of Education of the People's Republic of China, art. 4.

the Hukou system, which ties access to public services, including education, to one's registered place of residence. Moreover, the allocation of resources within cities also varies with prestigious schools in desirable districts attracting more funding and better teachers. This disparity dates back to the "key schools" and "non-key schools" policy established in the 1950s, which continues to influence the ranking and resource distribution among schools nowadays.<sup>13</sup> This situation is often perpetuated by the School District Housing system, where the nearby-admission policy assigns each child to schools based on their Hukou residence. It is a common practice for schools to charge a fee if a child wishes to attend a school they do not qualify for, reflecting the cost of better education. This fee served as an admission ticket to top schools, with higher fees indicating better quality,<sup>14</sup> therefore, families purchase property in areas known for their high-quality schools to secure better educational opportunities for their children.

The Gaokao, China's national college entrance examination, is another area where regional disparities are evident. The Gaokao is a high-stakes test that determines access to higher education, making it a critical milestone for Chinese students. Especially for rural students, Gaokao is the most important opportunity to acquire a permanent urban Hukou, which grants them better economic opportunity under the Chinese Hukou system.<sup>15</sup> However, the difficulty and competition levels of the Gaokao vary significantly across regions, influenced by local educational policies and resources. The regional quotas for university admissions also play a crucial role in this disparity. Top universities, often located in major cities, allocate a higher proportion of their slots to local students, disadvantaging those from less developed areas.<sup>16</sup>

Given the significant disparities and systemic challenges in education caused by the Hukou system, it is essential for this paper to address these educational inequities in China, especially considering the crucial role that education plays in Chinese society. Therefore, this paper begins with an introduction to the Hukou system and education system in China. It then examines how

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<sup>13</sup> Weihai Wang and Yuan Gu, "中国城乡居民的中学教育分流与职业地位获得, [Middle School Tracking and Occupational Status Attainment in China]," *Sociological Studies* 2012, no. 4 (n.d.): 49.

<sup>14</sup> Chen Lin, "The Impact of School District on Housing Prices: Based on an Evolutionary Game Model," in *Proceedings of the 2018 8th International Conference on Management, Education and Information (MEICI 2018)* (Proceedings of the 2018 8th International Conference on Management, Education and Information (MEICI 2018), Shenzang, China: Atlantis Press, 2018), 982, <https://doi.org/10.2991/meici-18.2018.197>.

<sup>15</sup> Amy Burkhoff, "'One Exam Determines One's Life': The 2014 Reforms to the Chinese National College Entrance Exam," n.d., 1477.

<sup>16</sup> Burkhoff, 1473.

the right to education is violated by the Hukou system and its implications for children and society. Focusing on two crucial phenomena of Hukou-based School District Housing and Left-behind Children, it explores the correlation of housing rights, movement rights and family rights with the right to education under the Hukou system. Finally, the paper evaluates policy reforms and provides recommendations for comprehensive solutions, calling for policy changes to uphold the right to education for all children in China.

## 2. Foundations and Framework

### 2.1 Literature review

The Hukou system has been extensively studied for its profound impacts on social services, including healthcare, education, housing, employment, economic performance and so on. This literature review synthesizes key findings from recent research, highlighting the multifaceted effects of the Hukou system on individuals and society.

Urban Hukou holders generally have access to better healthcare facilities, qualified medical professionals, and comprehensive health insurance plans. In contrast, rural Hukou holders often rely on underfunded and poorly equipped rural clinics, leading to significant health disparities. As a result, the Hukou system in China creates significant health disparities, with rural Hukou holders facing systemic disadvantages and poorer health outcomes compared to urban Hukou holders, largely due to differences in socioeconomic status, access to healthcare, and adverse early life experiences.<sup>17</sup> Education is another sector heavily influenced by the Hukou system. Urban residents generally have access to higher-quality schools, better-trained teachers, and more educational resources compared to their rural counterparts. Children with rural Hukou face numerous barriers when trying to access urban schools, including higher tuition fees, limited school capacity, and discriminatory policies.<sup>18</sup> Housing policies are also impacted by the Hukou system. Urban Hukou holders often benefit from government-subsidized housing and better living conditions, while rural migrants face significant challenges in accessing urban housing due to the Hukou system. The commercialization of the housing market makes new units unaffordable for low-paid migrants, and more affordable housing options require an urban Hukou that they do not have.<sup>19</sup> Employment opportunities are significantly influenced by Hukou status. Urban Hukou holders are more likely to secure stable, well-paying jobs due to their access to better education and social networks. Rural Hukou holders and migrant workers often find

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<sup>17</sup> Song and Smith, “*Hukou System, Mechanisms, and Health Stratification across the Life Course in Rural and Urban China*,” 11.

<sup>18</sup> Jessica L. Montgomery, “The Inheritance of Inequality: Hukou and Related Barriers to Compulsory Education for China’s Migrant Children,” *Pacific Rim Law & Policy Journal* 21, no. 3 (June 2012): 600.

<sup>19</sup> Yves Zenou, “Housing Policies in China: Issues and Options\*,” *Regional Science Policy & Practice* 4, no. 4 (November 1, 2012): 20, <https://doi.org/10.1111/j.1757-7802.2012.01083.x>.

themselves in low-paying, unstable jobs with little to no social security benefits.<sup>20</sup> Moreover, it is worth noting that the opportunities to acquire the Hukou in big cities is often considered an important employee benefit. For example, a study showed that migrants in Beijing will choose the opportunity to gain a local Hukou over higher income over five years.<sup>21</sup> Overall, the Hukou system reinforces socio-economic inequalities by restricting access to essential social services based on one's place of registration. The rural-urban income gap is largely due to the Hukou system, which denies rural residents access to urban life, education, and employment opportunities.<sup>22</sup> These disparities not only affect the quality of life for millions of Chinese citizens but also pose significant challenges to social cohesion and economic development in the country.

Despite the wealth of quantitative research on the implications of the Hukou system, there is a critical gap in the literature regarding its analysis from a human rights perspective. The existing studies primarily focus on numerical data and social outcomes, neglecting the broader context of human rights violations. This study aims to fill this research gap by providing an analysis of the Hukou system's human rights implication using the International Covenant on Economic, Social and Cultural Rights (ICESCR)<sup>23</sup> and the Convention on the Rights of the Child (CRC)<sup>24</sup>, along with discussion on the correlation between the right to education and rights to housing, movement and family unity.

## 2.2 Thesis statement and research problem

Using international human rights frameworks, this paper examines how the Hukou system in China infringes upon children's right to education by perpetuating significant disparities in

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<sup>20</sup> Yu Guo and Liqiu Zhao, "The Impact of Chinese Hukou Reforms on Migrant Students' Cognitive and Non-Cognitive Outcomes," *Children and Youth Services Review* 101 (June 1, 2019): 709, <https://doi.org/10.1016/j.chidyouth.2019.04.017>.

<sup>21</sup> Samantha A Vortherms and Gordon G Liu, "Hukou as Benefits: Demand for Hukou and Wages in China," *Urban Studies* 59, no. 15 (November 1, 2022): 68, <https://doi.org/10.1177/00420980221074911>.

<sup>22</sup> Zhiqiang Liu, "Institution and Inequality: The Hukou System in China," *Journal of Comparative Economics* 33, no. 1 (March 1, 2005): 155, <https://doi.org/10.1016/j.jce.2004.11.001>.

<sup>23</sup> United Nations, "International Covenant on Economic, Social and Cultural Rights," OHCHR, accessed June 7, 2024, <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>.

<sup>24</sup> United Nations, "Convention on the Rights of the Child," OHCHR, accessed June 7, 2024, <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>.

access to educational resources and opportunities based on household registration status and proposes policy recommendations to address these inequities.

Despite national and international commitments to ensuring universal access to education,<sup>25</sup> the Hukou system creates significant barriers for children from rural or migrant backgrounds. These barriers manifest in limited access to quality schools, discriminatory policies, and socio-economic disadvantages that undermine the fundamental right to education. Therefore, this study investigates the systemic violation of the right to education for children under the Hukou system in China, exploring the extent of educational disparities, their socio-economic and psychological impacts, and the effectiveness of current policies in addressing these inequities, through the lens of international human rights law.

Education is paramount in Chinese society, deeply rooted in cultural, economic, and social frameworks. Historically, Confucian values underscored education's importance for moral development and governance. Today, this cultural emphasis intersects with modern socio-economic imperatives. Families invest heavily in education, driven by the belief that it ensures social mobility and better employment opportunities. The intense competition for university admission and the high stakes of the Gaokao reflects this societal pressure. Economically, education is critical for mobility and personal success in China. Rapid growth has heightened the need for education to secure better jobs and incomes. However, disparities exist and keep getting exacerbated by the Hukou system. Addressing these disparities requires comprehensive reforms to ensure all children, regardless of Hukou status, have access to quality education, fostering a more just society.

Therefore, the significance of this research lies in its potential to highlight a critical area of social injustice and human rights violations in contemporary China. Education is universally recognized as a cornerstone for individual and societal development. The inequities perpetuated by the Hukou system hinder personal advancement and contribute to broader socio-economic disparities. By examining these issues through the lens of international human rights

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<sup>25</sup> Ministry of Education of the People's Republic of China, Compulsory Education Law of the People's Republic of China, art. 2; State Council of the People's Republic of China, "National Plan for Medium and Long-Term Education Reform and Development (2010-2020)" (2010), 13, <https://ncee.org/wp-content/uploads/2016/12/Shan-non-AV-5-China-Education-Plan-2010-2020.pdf>.; United Nations, "Convention on the Rights of the Child," art. 28.

frameworks, this paper underscores the urgency of policy reforms and societal awareness needed to uphold the right to education for all children in China.

### 2.3 Methodology

The methodology will involve textual analysis of the implications of the Hukou system and legal analysis of Chinese laws and policies, assessed through the lens of international human rights treaties such as the ICESCR and CRC. Data from government reports, official statistics, and academic studies will further enrich this analysis, offering a comprehensive understanding of the educational disparities resulting from the Hukou system. Based on the discussions, policy recommendations will be developed to address educational disparities and reform the Hukou system. This methodology aims to provide a detailed understanding of how the Hukou system violates the right to education and to propose actionable reforms to ensure equitable access to education for all children in China.

### 3. School District Housing under the Hukou System

This chapter deals with the complicated relationship between housing and education within the framework of the Hukou system, specifically focusing on the concept of school district housing (Xue Qu Fang in Chinese). By examining the historical evolution, current practices, and implications of school district housing, this chapter aims to elaborate how these residential policies contribute to educational disparities among children in China. Through a critical analysis of the legal obligations under international human rights frameworks, specifically, the ICESCR and CRC, this chapter will provide a comprehensive understanding of the role and impacts of school district housing on the right to education under the Hukou system.

#### 3.1 The role of school district housing in education

School district housing, a policy mechanism deeply rooted within the Hukou system, plays a pivotal role in shaping educational access and quality in contemporary China. The “nearby enrollment” policy mandates that the nine-year compulsory education is provided based on the Hukou residence of students. Children who hold a Hukou for a specific area are entitled to free access to the corresponding primary and secondary schools.<sup>26</sup> Since the most common way to relocate from one region to another is by purchasing property in the desired region, competition for housing in these desirable districts has been incredibly intensified, driving up property prices and further entrenching socio-economic divides.<sup>27</sup> Overall, school districts are the result of the education policy of “key schools” and “nearby enrollment,” combined with a culture that highly values children’s education, which is highly influenced by local governments, real estate developers, and other stakeholders.<sup>28</sup>

In modern urban centers such as Beijing, the disparities in educational opportunities are particularly evident. A study shows that the eligibility to be enrolled in a municipal-level key primary school will increase the house prices by 4-8% in Beijing.<sup>29</sup> Current practices in Beijing exemplify the broader trends seen across urban China. In Hangzhou, the premium of price of

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<sup>26</sup> Lin, “The Impact of School District on Housing Prices,” 980.

<sup>27</sup> Lin, 980.

<sup>28</sup> Youhua Chen, Yini Shi, and Chunmei Ji, “学区房的形成机制及其社会后果研究, [Research on the Formation of School District Housing and Its Social Consequences],” *Academia Bimestris* 2017, no. 4 (2017): 125.

<sup>29</sup> Bin Huang et al., “Elite School Designation and Housing Prices-Quasi-Experimental Evidence from Beijing, China,” *Journal of Housing Economics* 50 (December 1, 2020): 12, <https://doi.org/10.1016/j.jhe.2020.101730>.

housing around key middle schools is 25.5%, and the premium of price of housing around key primary schools is 12.8%.<sup>30</sup> In non-first-tier cities, the influence of school districts on housing prices, while lower, remains significant. For example, in Chongqing, housing prices in districts with high-ranking schools are 8.3% higher than those in non-district areas.<sup>31</sup> This demonstrates that the impact of school district housing on property values is a widespread phenomenon across China, affecting both major metropolises and smaller cities. The competition for housing in these areas not only inflates property values but also deepens the socio-economic divide, making it increasingly difficult for lower-income families to afford homes in these districts. As a result, access to high-quality education becomes a privilege reserved for those who can afford the escalating housing costs.

### 3.2 The implications of school district housing

These educational disparities have far-reaching implications. In countries with low per capita incomes, the most prominent influence on academic performance is the quality of the schools and teachers that children are involved with, rather than family background.<sup>32</sup> A study in Pakistan also identified the most important factors that affect students' academic performance as the number and qualifications of teachers, reading and teaching materials in schools, school learning environment, inadequate classrooms, and school management.<sup>33</sup> Children in affluent districts benefit from superior educational resources, experienced teachers, and enriched learning environments, leading to higher academic achievement. Conversely, those in underfunded schools face larger class sizes, fewer extracurricular opportunities, and outdated materials, significantly hindering their academic progress. Therefore, the educational disparity caused by school district housing often results in gaps in foundational knowledge, lower test scores, and reduced prospects for higher education.

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<sup>30</sup> Fengfu Mao, Gangfei Luo, and Jiashun Fan, "The Effect of Elementary Education on the Price of Hangzhou School District Housing," *城市与环境研究* 2014(1), no. 2 (n.d.): 62.

<sup>31</sup> Xiaoxin Wang and Xiaofei He, "A Study on the Price Premium of Second-Hand School District Room – Taking Shapingba District of Chongqing as a Research Object," *Journal of Chongqing University of Technology (Social Science)* 31, no. 6 (2017): 48, <https://doi.org/10.3969/j>.

<sup>32</sup> Stephen P. Heyneman and William A. Loxley, "The Effect of Primary-School Quality on Academic Achievement Across Twenty-Nine High- and Low-Income Countries," *American Journal of Sociology* 88, no. 6 (1983): 1162.

<sup>33</sup> Najeeb Ullah and Dr Abdul Sattar Almani, "Factors Affecting Students' Academic Performance: A Case Study Of Secondary Schools Of Makran Division Balochistan, Pakistan" 19, no. 2 (2022): 2751.

Social development is also impacted by the segregation of students based on residential location. Research showed that extracurricular activities not only bring higher grades, but also improve behaviors and self-concept of students.<sup>34</sup> In well-resourced schools, children have access to diverse extracurricular activities that foster teamwork, leadership, and communication skills. However, in under-resourced schools, resources are often directed toward improving standardized test scores, limiting social activities that develop essential competencies and perpetuating social inequalities from an early age.

The passion for housing within reputable school districts is as an indication of Chinese parents' educational anxiety,<sup>35</sup> which subsequently transfers to the students. Since the more desirable school districts often require significant family investment, students in top-tier districts may be subject to intense academic pressure, leading to anxiety and burnout. Meanwhile, children in lower-tier districts may experience feelings of inadequacy and hopelessness due to the limitations of their educational environment that further affect their self-esteem and motivation.

The long-term consequences of these educational disparities extend into adulthood, influencing socio-economic mobility. Children who attend well-funded schools are more likely to pursue higher education and secure well-paying jobs, perpetuating a cycle of privilege. In contrast, those from under-resourced schools face limited career prospects, reinforcing cycles of poverty and restricting upward mobility. As a result, children from disadvantaged backgrounds are less likely to break the cycle of poverty and more likely to face continued socio-economic hardships. Ensuring equitable access to quality education for all children, regardless of their residential status, is essential for upholding the right to education and promoting social justice in China. In the following section, the school district housing policy will be critically analyzed using international human rights law framework to address the urgent need for reforms in the allocation of educational resources and housing policies.

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<sup>34</sup> Singh Annu and Mishra Sunita, "Extracurricular Activities and Student's Performance in Secondary School" 2, no. 6 (2014): 11.

<sup>35</sup> Gaoyu Chen et al., "Parents' Educational Anxiety Under the 'Double Reduction' Policy Based on the Family and Students' Personal Factors," *Psychology Research and Behavior Management* 15 (January 1, 2022): 2068, <https://doi.org/10.2147/PRBM.S370339>.

### 3.3 School district housing and the right to education under the CRC and ICESCR

According to the ICESCR, which stipulated the right to education, education must be directed towards the full development of the human personality and the sense of its dignity and should strengthen respect for human rights and fundamental freedoms. It also emphasizes that education should enable all individuals to participate effectively in society.<sup>36</sup> The strict housing policy under the Hukou system fundamentally undermines these principles by creating significant educational disparities based on residential status. As discussed in the previous section, children from lower-income or rural families are often relegated to under-resourced schools, which limits their opportunities for comprehensive personal development. This segregation not only hinders their academic and social growth but also restricts their ability to participate fully and effectively in society. Therefore, by perpetuating inequality and restricting access to quality education, the housing policies violated the ICESCR by impeding the realization of an inclusive and equitable educational framework that fosters the full potential of every child.<sup>37</sup>

The CRC stipulates that all actions concerning children shall take into consideration of the best interest of the child,<sup>38</sup> which includes quality education free of charge.<sup>39</sup> Despite of the free 9-year compulsory education provided by the State,<sup>40</sup> the school district housing policy imposes a significant economic barrier for access of quality education, which excludes many children from families that cannot afford the high cost of housing in desirable school districts. Then, the best interest of the child shall assist children in overcoming the limitations of their vulnerabilities.<sup>41</sup> Instead of mitigating the vulnerability of lacking non-formal education due to economic disadvantage, the policy entrenches socio-economic disparities, making it even more difficult for children from low-income families to break the cycle of poverty. Thus, the school district housing policy has failed to serve the best interests of the child in terms of education

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<sup>36</sup> United Nations, “International Covenant on Economic, Social and Cultural Rights,” art. 13.

<sup>37</sup> United Nations, “International Covenant on Economic, Social and Cultural Rights,” art. 13.

<sup>38</sup> United Nations, “Convention on the Rights of the Child,” art. 3.

<sup>39</sup> Committee on the Rights of the Child, “General Comment No. 14 (2013) on the Right of the Child to Have His or Her Best Interests Taken as a Primary Consideration (Art. 3, Para. 1),” para. 79, accessed July 26, 2024, <https://www.refworld.org/legal/general/crc/2013/en/95780>.

<sup>40</sup> Ministry of Education of the People’s Republic of China, Compulsory Education Law of the People’s Republic of China, art. 2.

<sup>41</sup> Committee on the Rights of the Child, General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1), para. 79.

rights. In summary, the school district housing policy has decided that only a small portion of children have the privilege to access high quality education despite the provision of free compulsory education, therefore it has failed to promote the child's right to development to the maximum extent possible,<sup>42</sup> and cannot promote the development of the child's personality, talents and mental and physical abilities to their fullest potential.<sup>43</sup>

The right to education, like all human rights, imposes three types or levels of obligations on States parties, the obligations to respect, protect and fulfil.<sup>44</sup> By allowing residential location to determine educational access, the government indirectly supports a system that perpetuates inequality and violates the principle of non-discrimination enshrined in both the CRC<sup>45</sup> and ICESCR<sup>46</sup>, and therefore failed to respect the right to education of children under the Hukou system. In terms of the duty to protect, the state shall prevent third parties from interfering with the right to education. However, local governments are unwilling to give up the huge economic benefits generated by school district housing,<sup>47</sup> and therefore unwilling to regulate the housing markets to prevent the commodification of access to quality education, which disproportionately disadvantages lower-income families. While the full realization of the rights may be achieved progressively, steps towards that goal must be taken within a reasonably short time after the Covenant's entry into force for the States concerned.<sup>48</sup> This may involve allocating sufficient resources to schools in less affluent districts, ensuring that all schools are better equipped in terms of teachers, facilities, and educational programs. Additionally, the government should implement policies that facilitate equal access to education regardless of residential status, such as reforming the Hukou system to decouple educational opportunities from household registration.

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<sup>42</sup> United Nations, "Convention on the Rights of the Child," art. 5.

<sup>43</sup> United Nations, art. 29.

<sup>44</sup> Committee on Economic, Social and Cultural Rights, "General Comment No. 13: The Right to Education (Article 13) (1999)" (1999), para. 46, <https://www.ohchr.org/en/resources/educators/human-rights-education-training/d-general-comment-no-13-right-education-article-13-1999>.

<sup>45</sup> United Nations, "Convention on the Rights of the Child," art. 2.

<sup>46</sup> "International Covenant on Economic, Social and Cultural Rights," arts. 2, 10.

<sup>47</sup> Chen, Shi, and Ji, "学区房的形成机制及其社会后果研究, [Research on the Formation of School District Housing and Its Social Consequences]," 125.

<sup>48</sup> The Office of the High Commissioner for Human Rights, "General Comment No. 29, States of Emergency (Article 4): International Covenant on Civil and Political Rights," August 31, 2001, para. 2, <https://digitallibrary.un.org/record/451555>.

The progressive realization of the right to education should not be interpreted as depriving States parties' obligations of all meaningful content.<sup>49</sup> Therefore, a proportionality analysis under the international human rights framework will be conducted to assess whether the school district housing policy in China is a necessary and appropriate measure to achieve legitimate objectives, and whether it respects the principles of equality and non-discrimination as stipulated by CRC<sup>50</sup> and ICESCR<sup>51</sup>. The school district housing policy evolved from the “nearby enrollment” policy, which was implemented to manage internal migration, particularly the uncontrolled movement from less developed areas to regions with superior education resources, and ultimately promote educational equity by ensuring access to education for all children.<sup>52</sup> The policy contributes to achieving its aim by regulating urban migration and reallocating educational resources. However, it also creates significant disparities in educational opportunities, which is directly against its initial goal and problematic under international human rights standards. There are less restrictive measures available that can achieve similar goals with fewer adverse effects on educational equity. For example, policies that allocate school admissions based on merit or need rather than residential location can be implemented to reduce inequality, and more resources shall be invested in underfunded schools in less affluent areas to improve educational standards and reduce the necessity for families to relocate for better education.

In summary, the school district housing policy in China fails the proportionality test under the international human rights framework. While it achieves certain administrative objectives, it does so at a substantial cost to the right to education, violating principles of equality and non-discrimination enshrined in the ICESCR. The adverse impacts on educational equity and socio-economic mobility far outweigh the policy's benefits. To align with international human rights obligations, the Chinese government should consider implementing less restrictive measures that achieve urban management goals while ensuring equitable access to quality education for all

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<sup>49</sup> Committee on Economic, Social and Cultural Rights, General Comment No. 13: The right to education (article 13) (1999), para. 44.

<sup>50</sup> United Nations, “Convention on the Rights of the Child,” art. 2.

<sup>51</sup> “International Covenant on Economic, Social and Cultural Rights,” arts. 2, 10.

<sup>52</sup> Ministry of Education of the People's Republic of China, Compulsory Education Law of the People's Republic of China, art. 12; Ministry of Education of the People's Republic of China, “坚持就近入学原则，尊重儿童基本权利”, [Insisting on the Nearby Enrollment Principle and Respecting the Fundamental Rights of the Child], accessed July 24, 2024, [http://www.moe.gov.cn/jyb\\_xwfb/s5148/201112/t20111230\\_128834.html](http://www.moe.gov.cn/jyb_xwfb/s5148/201112/t20111230_128834.html).

children. This approach would better respect, protect, and fulfill the right to education, adhering to the principles of proportionality and non-discrimination.

## 4. Family Rights under the Hukou system and Children Left Behind

### 4.1 Restricted mobility right and Children Left Behind

As a household management policy or institution created to manage internal migration, the Hukou system imposes significant restrictions on the mobility rights of individuals as well as families. When parents move to first-tier cities in search of better employment opportunities, their children often face substantial barriers to accessing education in these urban centers. This is due to a range of policies that disadvantage the children of migrant workers. Local governments, who are responsible for providing compulsory education in that area,<sup>53</sup> usually demand local Hukou for enrollment in public schools, leaving migrant children with limited options such as attending costly private schools or under-resourced migrant schools. Additionally, even when migrant children can enroll in urban schools with policy reforms or beneficial programs, they may face discriminatory practices, especially the extraordinary fees, which prevents migrant children from attending public schools in urban areas.<sup>54</sup> With all the challenges, many parents choose to leave their children behind in their rural hometowns under the care of grandparents, leading to the separation of families. This issue is widely known as the Children Left Behind phenomenon (*Liu Shou Er Tong* in Chinese).

The extent of this Children Left Behind phenomenon is significant. The *Child Population in China 2020: Facts and Data*, published by the National Bureau of Statistics of China, defines left-behind children as children between the ages of 0 and 17 years old who have remained in their places of origin, while one or both of their parents have migrated out of their registered areas for half a year or more.<sup>55</sup> In 2020, there were 66.93 million left-behind children

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<sup>53</sup> Yafang Wang and Diqing Jiang, “Educational Inequality in Migrant Children in China: From Visible Exclusion to Invisible Discrimination,” in *Childhood, Youth and Migration: Connecting Global and Local Perspectives*, ed. Christine Hunner-Kreisel and Sabine Bohne (Cham: Springer International Publishing, 2016), 121, [https://doi.org/10.1007/978-3-319-31111-1\\_8](https://doi.org/10.1007/978-3-319-31111-1_8).

<sup>54</sup> Wang and Jiang, 124.

<sup>55</sup> the National Bureau of Statistics of China, “2020 年中国儿童人口状况事实与数据, [Child Population in China 2020: Facts and Data],” 1, accessed June 28, 2024, <https://www.unicef.cn/media/24496/file/2020%E5%B9%B4%E4%B8%AD%E5%9B%BD%E5%84%BF%E7%AB%A5%E4%BA%BA%E5%8F%A3%E7%8A%B6%E5%86%B5%E4%BA%8B%E5%AE%9E%E4%B8%8E%E6%95%B0%E6%8D%AE.pdf>.

nationwide, with considerable numbers in both rural and urban areas, accounting for about 22 percent of the total number of children.<sup>56</sup>

#### 4.2 Implications of parental separation on children

Separation from parents has profound psychological and emotional effects on left-behind children. A study in rural Central China reveals that left-behind children, compared to non-left-behind peers, suffer from lower life satisfaction, reduced self-esteem, and a higher risk of depression.<sup>57</sup> The lack of parental guidance and support can lead to increased vulnerability to school violence, whether as victims or perpetrators, due to the absence of a protective and nurturing environment.<sup>58</sup> Moreover, left-behind children are particularly vulnerable to crimes, especially sexual abuse, due to the absence of parental care and a well-developed legal guardianship system.<sup>59</sup> In the latest Universal Periodic Review, stakeholders also expressed concerns that the discriminatory hukou system forced many rural migrant parents to leave their children behind when seeking employment in cities, consequently leaving these children highly vulnerable to abuse without parent protection.<sup>60</sup>

A study revealed that, in comparison with non-left-behind children, left-behind children have lower social adaptability,<sup>61</sup> the ability to adjust their behaviors to cope with the rules and the values prevailing in a particular society,<sup>62</sup> which is important in their future career development

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<sup>56</sup> “The Status of China’s Migrant Children – China Development Brief,” accessed June 28, 2024, <https://chinadevelopmentbrief.org/reports/the-status-of-chinas-migrant-children/>.

<sup>57</sup> Xiaojun Sun et al., “Psychological Development and Educational Problems of Left-behind Children in Rural China,” *School Psychology International* 36, no. 3 (June 1, 2015): 240, <https://doi.org/10.1177/0143034314566669>.

<sup>58</sup> Yoichiro Otake, Xiaoqun Liu, and Xuerong Luo, “Involvement in Bullying Among Left-Behind Children in Provincial Chinese Cities: The Role of Perceived Emotional Support,” *Journal of Aggression, Maltreatment & Trauma* 28, no. 8 (September 14, 2019): 949, <https://doi.org/10.1080/10926771.2017.1410749>.

<sup>59</sup> Chao Wang, Jiayi Tang, and Tao Liu, “The Sexual Abuse and Neglect of ‘Left-behind’ Children in Rural China,” *Journal of Child Sexual Abuse* 29, no. 5 (July 3, 2020): 600, <https://doi.org/10.1080/10538712.2020.1733159>.

<sup>60</sup> United Nations Human Rights Council, “Summary of Stakeholders’ Submissions on China\* Report of the Office of the United Nations High Commissioner for Human Rights,” January 2024, para. 43.

<sup>61</sup> Junhua Zhang et al., “Social Adaptation of Chinese Left-behind Children: Systematic Review and Meta-Analysis,” *Children and Youth Services Review* 95 (December 1, 2018): 312, <https://doi.org/10.1016/j.childyouth.2018.11.012>.

<sup>62</sup> Zhang et al., 309.

and interpersonal relationships. Additionally, the stigma associated with being left behind can lead to social isolation and exclusion from peer groups, further impacting their social integration and development. The long-term consequences for family dynamics are also concerning. Left-behind children may struggle to develop healthy relationships with their parents upon reunion, resulting in ongoing familial tensions. This disconnection can perpetuate generational trauma, affecting not only their relationships with their parents but also their future interactions with their own children.

In summary, the Hukou system's restrictions on mobility not only disrupt family unity but also contribute to significant educational, social and emotional disadvantages for children left behind. Addressing these issues requires a re-evaluation of existing policies to ensure the protection of family rights and the provision of equitable educational opportunities for all children.

#### 4.3 The Right to Movement, the Right to Family and the Right to Education

Everyone shall have the right to liberty of movement and freedom to choose his residence.<sup>63</sup> The right to movement is subject to limitations under certain circumstances,<sup>64</sup> therefore, a proportionality test will be conducted to analyze if the restrictions imposed on the right to movement under the Hukou system is necessary and proportionate, which serves as a foundation for further analysis on correlation among the right to movement and the right to family and the right to education.

Rapid urbanization can strain infrastructure, public services, and the environment. Thus, controlling population distribution can be seen as a legitimate public policy goal. Despite the legitimate goal and necessity, the proportionality of the restrictions imposed on the right to movement under the Hukou system is questionable. The restrictions imposed by the Hukou system result in significant harm, including family separation, unequal access to education, and socio-economic stratification. These negative impacts are profound and long-lasting, affecting millions of individuals. The benefits of controlling urbanization and managing resources, while

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<sup>63</sup> United Nations, "International Covenant on Civil and Political Rights," OHCHR, art. 12, accessed July 2, 2024, <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>.

<sup>64</sup> United Nations, "Human Rights Committee, General Comment 27, Freedom of Movement (Art.12)," United Nations, para. 11, accessed July 2, 2024, <http://hrlibrary.umn.edu/gencomm/hrcom27.htm>.

important, do not sufficiently outweigh these harms. The severe infringement on fundamental rights cannot be justified when less restrictive and equally effective alternatives exist.

China has initiated several policies to ease the restrictions, particularly in smaller cities and towns. For instance, China's State Council issued the *Opinions on Further Promoting the Reform of the Household Registration System* in 2014, which aimed to completely open smaller cities and ease restrictions in third- and fourth-tier cities.<sup>65</sup> These policies have relaxed the Hukou constraints to some extent, making it easier for migrants to settle in less populous areas. However, this reform still insists on controlling the population size of megacities with strict settlement measures.<sup>66</sup> With its limited scope and incomplete implementation, this reform failed address the core issue of inequality in access to resources and services between urban and rural areas, continuing to perpetuate socio-economic disparities. In summary, these policies are consistent with all other rights recognized in the Covenant,<sup>67</sup> and failed to conform to the principle of proportionality as they are not the least intrusive instrument amongst those which might achieve the desired result.<sup>68</sup>

Separation from parents should be considered a last resort due to its profound impact on the child.<sup>69</sup> While the State has not directly caused the separation of left-behind children from their parents, the hukou system imposes significant barriers. These barriers, whether related to parental migration or access to public education for migrant children, combined with the need for internal migration due to uneven economic development across provinces, have inevitably led to family separation. Consequently, the hukou system fails to prioritize the preservation of the family environment, a critical element in considering the best interests of the child.<sup>70</sup> As discussed in the previous section, left-behind children are more likely to experience mental health issues and are more vulnerable to abuse and exploitation, including sexual abuse. These vulnerabilities adversely affect their academic performance, interpersonal relationships, social

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<sup>65</sup> The State Council of China, "Opinions on Further Promoting the Reform of the Household Registration System, 国务院关于进一步推进户籍制度改革的意见," arts. 4, 5, accessed July 2, 2024, [https://www.gov.cn/zhengce/content/2014-07/30/content\\_8944.htm](https://www.gov.cn/zhengce/content/2014-07/30/content_8944.htm).

<sup>66</sup> The State Council of China, art. 6.

<sup>67</sup> United Nations, "Human Rights Committee, General Comment 27, Freedom of Movement (Art.12)," para. 11.

<sup>68</sup> United Nations, para. 14.

<sup>69</sup> Committee on the Rights of the Child, General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1), para. 61.

<sup>70</sup> Committee on the Rights of the Child, para. 60.

development, and the realization of their full potential. Therefore, the compromised right to family, resulting from restricted freedom of movement under the Hukou system, indicates that the state has failed to take all appropriate legislative, administrative, social, and educational measures to protect children from all forms of physical or mental violence, injury, abuse, neglect, negligent treatment, maltreatment, or exploitation, as stipulated in Article 19 of the CRC.<sup>71</sup> This failure underscores the interconnectedness of the right to movement, the right to family, and the right to education, highlighting the broader implications of violating these interrelated rights.

The *W.M.C. v. Denmark*<sup>72</sup> case underscores the discriminatory nature of the Hukou system, which disproportionately affects children born to unmarried parents or those born abroad. This mirrors the challenges faced by rural and migrant children in China, who are often denied access to quality education and healthcare in urban schools due to their hukou status. The Committee on Economic, Social and Cultural Rights has urged China to intensify its efforts to eliminate the hukou system and guarantee that all rural-to-urban migrants receive the same social services as urban residents.<sup>73</sup> The Committee on the Rights of the Child also expressed concern that the Hukou system disproportionately affects the children of migrant workers due to its biased restrictions on birth registration.<sup>74</sup> Consequently, whether traveling with their parents as migrants or staying behind as left-behind children, the rights of these children are consistently violated under the Hukou system.

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<sup>71</sup> United Nations, “Convention on the Rights of the Child,” art. 19.

<sup>72</sup> Leiden Children’s Rights Observatory, Communication 31/2017 *W.M.C. v. Denmark*, accessed July 26, 2024.

<sup>73</sup> United Nations Human Rights Council, “Compilation on China: Report of the Office of the United Nations High Commissioner for Human Rights,” August 27, 2018, para. 42, <https://documents.un.org/doc/undoc/gen/g18/259/12/pdf/g1825912.pdf?token=RNat02hgOJf7FbrRVe&fe=true>.

<sup>74</sup> United Nations Human Rights Council, para. 36.

## 5. Discussion and Conclusion

### 5.1 Interconnectedness of education with housing, mobility, and family rights under the Hukou system

The interconnectedness of education with housing, mobility, and family rights is profoundly significant in the Chinese context, particularly under the Hukou system. This system, originally intended to control internal migration and manage resource allocation, has inadvertently entrenched socio-economic disparities, especially in education. The location-based allocation of educational resources under the school district housing policy creates enormous contrasts in the quality of education accessible to children from different socio-economic backgrounds.

Moreover, the restrictions on mobility imposed by the Hukou system affect family dynamics significantly. Many parents migrate to urban centers for better employment opportunities, often leaving their children behind in rural areas, leading to the phenomenon of left-behind children. These children suffer from emotional and psychological distress due to prolonged separation from their parents, which adversely impacts their educational outcomes and long-term individual development. The intertwined nature of housing policies, mobility restrictions, family unity and the right to education underscores the need for comprehensive reforms to address these interconnected issues holistically.

By linking education accessibility directly and indirectly with housing status, rural to urban movement, and family unity, the Hukou system fundamentally infringes upon the right to education, perpetuating inequality and undermining social justice.

### 5.2 Evaluation of policy reforms aimed at improving education access

China has implemented several policy reforms to mitigate the adverse impacts of the Hukou system on education. Initiatives suggested in the 2014 Hukou reform, such as cancelling Hukou restrictions in smaller cities and towns and easing restrictions for big cities have shown some positive outcomes.<sup>75</sup> Additionally, State Council documents from 2001, 2003, and 2014 have

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<sup>75</sup> The State Council of China, “Opinions on Further Promoting the Reform of the Household Registration System, 国务院关于进一步推进户籍制度改革的意见.”

mandated local governments to enroll children of rural migrants in public schools, integrating them with urban Hukou students.<sup>76</sup>

Despite these efforts, significant challenges remain. For instance, reforms aimed at reducing extra fees for migrant children and integrating them into urban public schools have progressed very slowly at the local level. When sponsorship fees are partially or fully forbidden, the migrant children are usually refused by local public schools as it becomes non-profitable.<sup>77</sup>

While property prices in China have recently experienced a decline,<sup>78</sup> the school district housing policy continues to perpetuate inequalities. Even with falling prices, quality education often remains a privilege for those who can afford to live in desirable school districts. Policy reforms have yet to fully address the root causes of educational inequities, such as the commodification of educational access through housing markets and the persistent socio-economic disadvantages faced by rural and migrant children.

In the latest Universal Periodic Review, China failed to address the Hukou system, despite concerns raised by the UN and other stakeholders about its discriminatory effects on vulnerable groups such as rural migrants<sup>79</sup> and children<sup>80</sup>. This omission highlights a significant oversight by the Chinese government regarding the substantial negative impacts of the Hukou system and underscores the urgent need for comprehensive reform.

### 5.3 Recommendations to enhance the right to education for all children

To genuinely improve education access and quality for all children, it is crucial to implement more robust measures. Firstly, the Chinese government should consider abolishing or significantly reforming the Hukou system to eliminate the barriers it creates. This has been

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<sup>76</sup> Ming Tian et al., “Hukou Reform and the ‘Luohu’ of Rural Migrants in Urban China,” *Sustainability* 14, no. 23 (January 2022): 7, <https://doi.org/10.3390/su142315683>.

<sup>77</sup> Riming Nie, “The Future of Cities | Incentivizing the Government to Increase Investment in Education for Migrant Children,” accessed July 3, 2024, <https://www.chinathinktanks.org.cn/content/detail/id/jbd6nj19>.

<sup>78</sup> Liangping Gao and Ryan Woo, “China’s Property Market Slide Worsens despite Government Support,” *Reuters*, January 17, 2024, sec. China, <https://www.reuters.com/world/china/chinas-dec-new-home-prices-fall-fastest-pace-since-feb-2015-2024-01-17/>.

<sup>79</sup> United Nations Human Rights Council, “Compilation of Information Prepared by the Office of the United Nations High Commissioner for Human Rights: China,” n.d., para. 58.

<sup>80</sup> United Nations Human Rights Council, “Summary of Stakeholders’ Submissions on China\* Report of the Office of the United Nations High Commissioner for Human Rights,” para. 43.

repeatedly suggested by the Committee on Economic, Social and Cultural Rights.<sup>81</sup> This reform should include policies that allow for greater mobility and access to public services, including education, for all citizens, regardless of their place of origin.

Secondly, there should be a substantial increase in investment in rural education. Most importantly, rural schools shall have access to the same level of resources and qualified teachers as urban schools. Specifically, implementing policies that incentivize highly qualified teachers to work in rural areas can help bridge the gap in educational quality.

Thirdly, policies must be enacted to decouple educational opportunities from residential status. This can be achieved by adopting a more merit-based or needs-based system for school admissions rather than basing it on property ownership or allowing access to public education by renting instead of owning property. Additionally, enhancing support for left-behind children through community programs, psychological services, and better legal guardianship frameworks can mitigate the negative impacts of existing parental separation.

Lastly, continuous monitoring and evaluation of these reforms are crucial to ensure their effectiveness. Engaging with international human rights frameworks can provide an effective foundation for these reforms, ensuring that they align with global standards of educational equity and human rights. By adopting these comprehensive solutions, China can make significant strides toward upholding the right to education for all children, fostering a more equitable and just society.

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<sup>81</sup> Committee on Economic, Social and Cultural Rights, “Concluding Observations on the Third Periodic Report of China, Including Hong Kong, China, and Macao, China\*,” March 22, 2023, para. 38, <https://documents.un.org/doc/undoc/gen/g23/048/63/pdf/g2304863.pdf?token=0m7W9bxMpDHunXgFYU&fe=true>

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