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국제학석사학위논문

**A Study of Policies on Migrant Labor in China
since the Early 2000s**

중국 제4세대 지도부 등장 이후 농민공의 권익에 관한 법률 변화

2017년 2월

서울대학교 국제대학원
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임 효 진

**A Study of Policies on Migrant Labor in China
since the Early 2000s**

A thesis presented

By

Lim, Hyo-Jin

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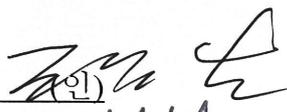
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Abstract

A Study of Policies on Migrant Labor in China since the Early 2000s

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China's industrialization has created a group of urban laborers who were born in rural places. The plight of migrant workers is a major issue in contemporary China. This group faces precarious circumstances, in part because migrants, or *nongmin'gong* as they are known in China, lack the rights of other urban residents. As the ranks of migrants swelled in the 1990s, most government responses were local. Following the start of the Hu Jintao administration in 2002, a set of national guidelines on migrants began to take shape.

This thesis documents the construction of a national regime for governing migrants in China's cities. The focus here is on the policies that have been adopted between 2002 and 2016. The policies cover both the economic and social rights of migrants. The thesis draws on both state and party documents. Material from central party and state organs is supplemented with a selection of local regulations.

While the impact of these policies on administration and on the lives of migrants is left to future research, the thesis demonstrates an effort by top party-state leaders to build a national system governing migrants.

Key Words: Chinese migrant workers, Hu Jintao, Labor law, Labor contract law, Labor Policy

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I. Introduction

Since 1978, China has gone through ‘open and reform’ period under the Deng’s leadership. Connected to numerous channels to be economically developed nation, China has faced several social issues such as huge gap of living standards between rural and urban, social crimes and migrant issue. This paper focuses on the issue of migrant workers since early 2000s. Before analyzing post-reform China’s policy change for chinese migrant workers, this paper would like to review some existing research and to propose a frame of for current study.

Therefore, this chapter firstly handles a concept of chinese migrant workers and a system of law for the workers. Secondly, prededing research and official materials would be briefly looked over, which have been announced in the past 20 years. Presenting a research question, this chapter would summarize this chapter by producing a research methodology and a structure of the thesis.

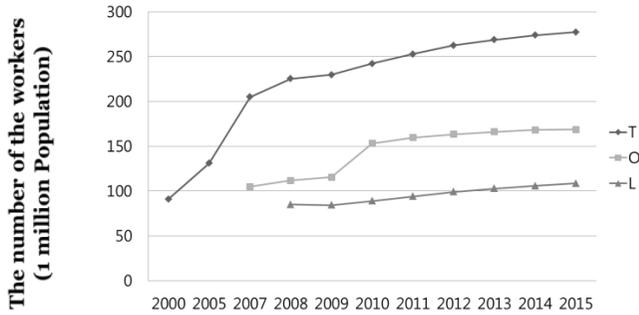
1. The Overview: Labor Law and Migrant Workers

In the second half of 2002, Hu Jintao(胡锦涛)'s period was basically started with new members of the 4th CPC Central Committee. Hu's period opened with a concept of "technocratic turnover" which is relevant to the policy changes for migrant workers. The concept is for the person who have life experiences and occupational backgrounds¹. The era of the 4th generation of Chinese leaders geared up writing more practical labor law and finally enacted new labor law called Labor Contract Law(劳动合同法), based on China's existing Labor law(劳动法). The law was officially announced in 2008 to secure every chinese worker's rights including *nongmingong* and to strengthen enterprise's social responsibility. The law is, however, a portion of numerous securing system for migrant worker's overall quality of life.

Illustrated by figure 1, the number of Chinese migrant workers has been increased from around 100 million to almost 300 million, which is more than 3 times increasing.

¹ Cheng Li. 'The Emergence of the Fifth Generation in the Provincial Leadership'. China Leadership Monitor. vol. 6. Spring 2003

Figure1. Migrant Workers Comparison(2002-2015)



T: Total number of Chinese migrant workers in China
 O: Outgoing Chinese migrant workers, L: Chinese migrant workers left in their hometown
 Data source from 2008-2015: National Bureau of Statistics of China
 Data source from 2000-2007: 中国农民工问题研究总报告(23/01/2007)
 Table and graph arranged by the author

Since late 1990s, Hu and his relations had tried to settle efficient and useful political foundation to develop their society circumstance. However, for instance, more than a half of rural households did not have tap water even in late 2006. This was not very long ago. Also, 87 percent did not have flush toilets and 60 percent were still using wood-burning stoves.² Actually, Chinese leaders was showing concern about the *nongmingong* issues only after the nation suffered from lack of workers. Since then, the 5th generation with Xi Jinping(习近平) has naturally continued to show their the willingness of solidifying the laws through many other related legislations and ordinances for their political interests.

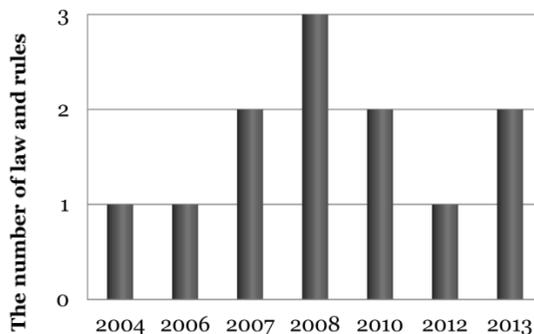
² Aris Chan(Geoffrey Crothall). ‘The Children of Migrant Workers in China. Paying the Price for Economic Development’. China Labor Bulletin. 2009.11

2. Literature Review: Background of Supplementing Law

In this section, existing study and government materials are examined. Especially, official announcement and laws included in other volume of law would be mainly handled.

Firstly, this research would represent the materials with two significant ways of approach: how labor law of the people's republic of China has constructed and how the laws has been revised through many supplementary revising process and rule making system, for Chinese migrant workers. By adding complementary regulations and laws directly into the forced codes, China has put labor law into shape. As figure2 explains, there are a number of supplementary rules and law directly written in the book of Labor law published in 2015.

Figure2. Added Rules and Law Written in Labor Law



Data source: 2016最新版《中华人民共和国劳动法》实用版
Table and graph arranged by the author

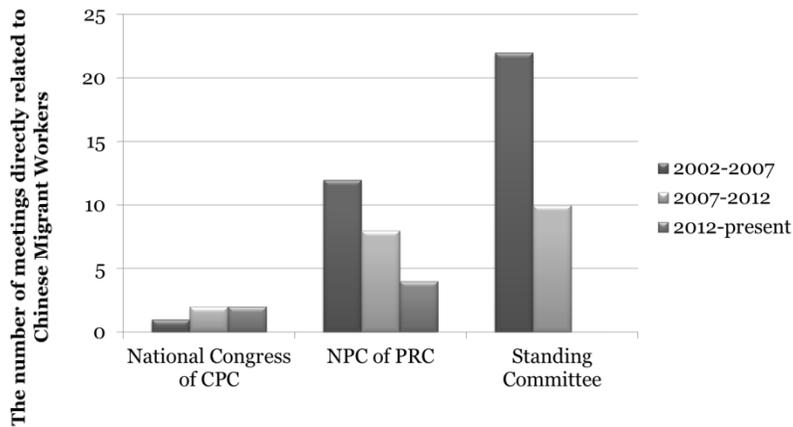
Since 2006 that the sixth plenum of the 16th CPC central committee held, the central government and its party members have tried hard to have a structure on labor law system. The 6th Plenum passed a resolution to commit the CPC to establish a ‘harmonious society’ by 2020³. Based on this commitment, there is a clear implication: if China would not solve problems caused by major issues occurred by social, economic and political interaction within the continent, the nation may have a hard time to achieve a harmonious society, as fast as they think⁴. It means that the Chinese government somewhat indicated its willingness to solve main problems so that the migrant-related discrimination caused by *hukou* system could be, and has been, reconsidered by leaders.

Secondly, it is important to figure out how leaders have been try to write and make official regulations for migrant workers. China, like other nations but not through exactly the same way, has its decision making process for legislative system. One of the most important materials, several contents from Chinese People's Political Consultative Conference(CPPCC), will be handled mainly in economic part.

³ http://en.people.cn/200610/12/eng20061012_310923.html

⁴ Wing Thye Woo. “The Challenges of Governance Structure, Trade Disputes and Natural Environment to China’s Growth. *Comparative Economic Studies*”, 2007, 49, (572–602)

Figure 3. Comparison of Three Main Meetings(2002-Present)



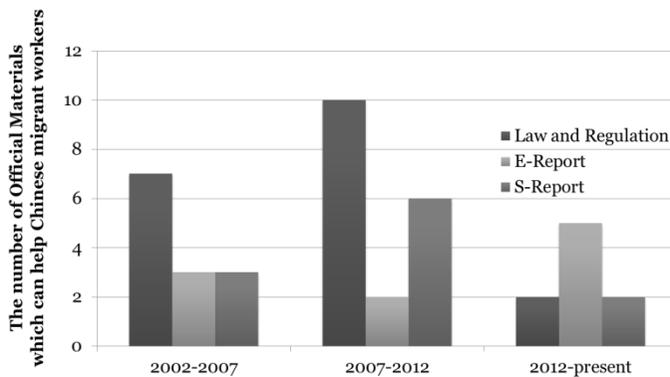
Data source from People's Daily Online(<http://cpc.people.com.cn/>)
Table and graph arranged by the author

It has several conferences and official meetings on a regular basis. Each ‘meetings’ has opened in different intervals respectively. Basically, there are three important process on deciding whether or not draft policy writings into real law mechanism. Figure3 demonstrates how many times official meetings have been mentioned about *nongmingong* issue. As Hu Jintao gets his own power in earnest, CCP was reconsidering about what is priorities for a real development and how to keep going on implicating their strategies based on specific plans.

One of the important plans is the eleventh five-year plan which is stressing the words: ‘putting people first(*yiren weiben*)’. It was proposed by previous leader system to promote sustainability in economic development, and to progress toward an ‘all-around well-off(*quanmian*

xiaokang)’ society⁵. Actually these phrases had never seen before because China’s priority since middle and late 1970s was in economically development.

Figure4. Official Announcement Comparison(2003-2015)



E-Report: Various Reports for Employment
 S-Report: Various Reports for Social Security system
 Data source from People's Daily Online (<http://cpc.people.com.cn/>)
 Table and graph arranged by the author

One more thing has to be investigated: how much economy-related reports and social security-related papers have been announced by leaders. Official laws and regulations have been made not only by central government but also by several local governments. As shown in figure.4, government-level laws and regulations are more than fifteen during Hu’s period. Even the 1st period of Xi, the leaders has already made two related regulations and, not suggested in the figure, had additionally revised those of existing criteria.

⁵ C. Cindy Fan. ‘China’s Eleventh Five-Year Plan (2006–2010): From “Getting Rich First” to Common Prosperity’’. Eurasian Geography and Economics, 2006, 47, No. 6, pp. 708–723.

Before the labor contract law was announced, most of migrant workers indicate their desire to be signing their own labor contracts with employers. But many construction or other industry's employers have refused to give opportunity to sign on its contract form with the workers, even with those who against their action are not hired.

Eventhough the workers get into a company, arrears tend to be concentrated in the construction industry, which is debt-heavy and dominated by migrant workers. So, migrants have suffered from overdue wage problems⁶. One important thing, after labor law was supplemented by labor contract law, is that migrant workers are legally and specifically protected by national system. This paper connect this reviews with further question on the *nongmingong* study.

3. Research Question

The purpose of this study is to find and to examine the main subject by solving the research question: How rules and roles for Chinese migrant workers have been changed by Chinese central government from 2002 to 2016 and what are the implications of the changes?

⁶ Erik Moberand. 'Beyond Household Registers and Floating Populations: Migration controls and their demise in China'. 2004

Even at the very starting point of Hu Jintao's 1st Period, CCP was not even sturdy in writing a new law and fixing their labor system only for Chinese migrant workers. They, however, realized the gravity of a situation caused by workers in urban life gradually decreasing. So they thought that it fundamentally could hurt Chinese market system.

In 2006, a number of relatively open-minded scholars submitted a proposal on further research focusing on the question for making "democratic socialism" and the calls for an accelerating political reforms. So they announced "Some Opinions of the State Council on Resolving the Problem of Migrant Workers" at the sixth plenum of the 16th CPC central committee held in 2006. In the material, Deng Xiaoping Theory(邓小平理论) and Three Represents(三个代表) are settled as the core concepts for this committee⁷. Based on these two ideas, rights and interests of Chinese migrant workers have to be secured, directly connected to *hukou* system.

Also, a process of decentralization and the obscure role of trade unions have contributed to the experience of marginalization of rural migrant workers in urban cities in China⁸ which is also related to other subsidiary matters. Currently in China, there are meticulous and detailed plans for employment of urban-rural labor; unified market deployment of human resources in urban-rural area; various trials to promote stable and

⁷ <http://cmp.hku.hk/2007/09/19/622/>

⁸ Daniel Fu Keung Wong(2007). 'Rural migrant workers in urban China: living a marginalised life'. International Journal of Social Welfare. Volume 16, Issue 1. Pages 32-40

orderly transfer of rural labor; supporting programs for rural labor to transit their work nearby their residence; backing up policies for them to go back home and use their capability to start something new up.

This study is going to figure out whether following expectation is right or not by focusing on the research question. CCP has been trying to upgrade Chinese migrant workers' working condition by strengthening rights to be protected; increasing their wage; allowing workers' children go to school; assuring public health; solving the housing problem. These trials could be estimated to make migrant workers' life equal with urban residence.

These conditions also improve workers' working condition; let them working in safety; expand scale of various insurance for migrant workers such as occupational health and safety insurance, medical insurance, and endowment insurance. Especially, CCP suggested how do they solve the fundamental problem caused by endowment insurance relevant to migrant workers' job transition. CCP also considers rural itself. They hope to develop China's rural public works and wish to promote overall rural society development. This paper highlights the reasons that are considered to be important.

4. Research Methodology and Structure of the Thesis

This paper focuses on Chinese policy changes for rights and interests of Chinese migrant workers from 2002 to 2016. Therefore, this study chooses national congress of communist party of China, national people's congress and standing committee as three main meetings which have to be inspected. The first thing to be collected and analyzed is how many times the main three meetings handled Chinese migrant workers. Then, second thing to be shown is what changes has been occurred.

This paper would consider CCP Party Congress, National People's Congress, NPC's Standing committee, State council and other official materials as main materials, to analyze changes of rules and laws for migrant workers. Overall law system related to social security would be focusing on labor contract law(劳动合同法).

CCP member who paid more attention to *Nongmingong* is also shown to support this paper's argument. Additionally, a certain case study based on the author's field work would be briefly suggested later to explain Beijing's situation. Labor contract law actually includes various supplementary laws so that comments on the law should be indicated in each section.

The main stream of the research is like following. The Sixth Plenum of the 16th CPC Central Committee held in 2006 has a important

theme that it is mainly holding high the great banner of Deng Xiaoping Theory(邓小平理论). At the plenum, committee members officially mentioned about the rights and interests of Chinese migrant workers(农民工) directly connected to family registration(户口制度) issue and indirectly related to other subsidiary matters. Since 1978, improving working condition for every workers has become one of the main premises to keep up China's current growing face. It could be realized by raising their wage, providing better working condition and offering opportunity for compulsory education for their children.

Based on the stream of the research, this paper specifically analyzes main contexts of CCP Party Congress, National People's Congress, NPC's Standing committee, State council and other official materials. Especially this paper is mainly taking and considering as core materials from at the point of CCP's 15th Party Congress, 10th National people's congress, 10th NPC's standing Committee and State council's 2003 announcements. Basically, these materials are uploaded during 4th and 5th generation. Focusing on changing process or strengthening movement in law and policy for Chinese migrant workers since Hu Jintao era, this research adds what has mainly been changed until now and what parts of migrant workers' life has been mostly affected on.

With the 16th CPC Central Committee, this research also touched the Fourth Plenum of the 17th CPC Central Committee and the Third

Plenum of the 18th CPC Central Committee which are handling comprehensive *nongmingong* issues from Hu's era to Xi's era. By analyzing these official materials, this study keeps on comparing core issues since Hu's era for *nongmingong* such as vocational training, wage level, opportunity to take compulsory education and even reserve forces proposal only for them.

II. Comparison of Economic Rights given by the States

Economic rights, on Chinese migrant worker's life, started to be considered absentmindedly by not many people until late 1980. It was, however, nearly middle 1990 before the issue took into account as crucial issue⁹. For the migrant workers, there are three divisions clarifying how Chinese leaders consider workers' life by enacting laws: Promoting employment, aiding migrant workers directly with various methods and controlling wage issue to balance two economic actors. Especially to promote employment, Chinese government should support entrepreneurs so that this would indirectly increases the rate of hire more workers.

This chapter is supposed to explain how migrant workers' economical right has been affected by official regulations changes, one by one.

1. National Policy Making for Promoting Employment

Controlling employment could be considered of macroeconomic policies due to Chinese governments' strategy. CCP has intended to

⁹ 이민자. 'Conflict of Migrant Workers and Hukou System in China'. 한국정치학회보 제 32집 제1호 1998.6, 243-263

achieve not only economic development but also socially upgrade by manipulating unemployment rate and numbers of jobs with ‘Chinese characteristics strategy’¹⁰. In China, it could be controlled by using one of enormous working units, migrant workers. Therefore, it may imply that the governments shall make and revise some laws and regulations. This section would focus on small and middle business support and system for a loan and tax.

Before going deep into this section, this paper has to suggest what was changed in the field of Chinese small and medium-sized enterprises briefly since the reform started. There had been increasing in the number of the companies until early 1990s. And then most of state-owned enterprises had reformed due to national finance during next 10 years. Since Hu’s period decided, the leaders has arranged the small and medium-sized enterprises promotion law¹¹. Actually, the second period is crucial point for Chinese migrant workers. As hiring migrant workers, enterprises save money so that this totally changed the structure of laborers¹².

Starting the 1st period of Hu, this chapter cover overall policy provided for migrant workers. In 2003, a regulation for bidding construction projects was revised, which was firstly announced in 1992.

¹⁰ http://news.xinhuanet.com/zhengfu/2004-04/26/content_1440838.htm

¹¹ Jia chen. ‘Development of Chinese small and medium-sized enterprises. Journal of Small Business and Enterprise Development’. Vol. 13 No. 2, 2006. pp. 140-147.

¹² Russell smyth, Zhai qingguo, ‘Wang jing. Labor market reform in china’s state-owned enterprises: a case study of post-deng fushun in liaoning province’. New zealand journal of asian studies 3, 2 (december, 2001): 42-72.

Because construction field is main sector hiring migrant workers, it has more than important. Especially the article 12.2 of the regulation shows a consideration for the workers of state development planning commission and ministry of construction and other related departments¹³. At the first place, there was no mention about the workers. The revised one, however, added provision² mentioning *nongmingong*¹⁴. This is the first time that the governments support enterprises nonfinancial, but more fundamental controlling for them by easing a complicated procedure.

Noticeable law secured during Hu's period is a law on promotion of employment announced in 2008. To surely write the law, the leaders had firstly been carving out new spaces on supporting employers. There are a specific regulation to support this phrase. In 2007, a provision on the administration of qualifications of enterprises in construction industry was set and it was also useful to migrant workers. It mentions, in article 2.7, *nongmingong* directly. The article says that if a company which is acquired construction qualification overdues *nongmingong*'s wage in less than 1 year, they would not be ratified to upgrade their qualification. Later, however, in 2015, changed the words as 'workers'. This meant that migrant workers has gradually been considered as general workers.

Therefore, the Chinese leaders felt that a better indication is needed so that the main law for promoting employment is announced in

¹³ 'The Administrative Measures for the Bidding and Submission of Tendering for Construction Projects'. Revised in 2012

¹⁴ Ibid. Article 12.

2008¹⁵. This law is officially admitting Chinese migrant labor's economic participation in other province. In the law, Chapter II and Chapter VIII would be analyzed through this section. In the second chapter of the law, there are two basic articles related to political supporting, which weigh the life of the workers. In article 12, Chinese government gets business associations to broaden market which could help more workers to be hired¹⁶. Even though the provision is not directly write the word 'Chinese migrant worker', it is possible to connect the article with article 15. Article 15 allows company uses continuously migrant workers.

Article 15 The State ... increases the input of funds and improves employment environment in order to increase employment. People's governments at or above the county level shall, ..., appropriate from their budgets special funds for employment promotion.

In the past, local workers thought that they lost their own job due to migrant workers, despite the main reason of losing job is reforming state-owned enterprise by the leaders. Courtesy of this, enterprises could receive funds from the governments and has afforded to hire labors who are somewhat expensive than migrant workers. Chapter VIII is talking about a responsibility that legally allows any workers, even migrant workers, which gets them to sue the employer or company to the people's

¹⁵ 'Employment Promotion Law of the People's Republic of China'. 2008

¹⁶ Ibid. Article 12

court when they feel discriminated¹⁷.

In addition, the central and local governments have had a will to get a company to take preferential tax policies, which makes additional job places and also financially supports the unemployed person in finding jobs¹⁸. The words of ‘unemployed’ person also include migrant workers so that this provision cheers them up to return to hometown and open up new business based on their learned skills. Plus, this law settled some contents to promote employment and to suggest additional channels for financially support small and medium-sized companies. That has been achieved by giving some enterprises increased support in loans and providing, within a given period of time, small loans, etc. to support persons who start undertakings independently¹⁹. This could eventually lead to main point on improving nongmingong’s economic actions itself which means that they could be main actors not only in the urban area but also in their hometown for the next 10 years or more.

Labor contract law which was announced in 2008 is, as said in previous part, the most important and comprehensive law to be connected to migrant workers. Becoming legitimate individuals, migrant workers could little by little be considered as inevitable, but useful, economic agents who make the biggest profit for company. From a position of enterprises, it is valuable in many ways, basically two things could be

¹⁷ Ibid. Article 62

¹⁸ Ibid. Article 18

¹⁹ Ibid. Article 19

regarded. One thing is that company can get a considerable amount of profit by using 'well-known' type of *nongmingong*. In 2014, Zhou Jianmin, a member of Chinese peasants' and workers' democratic party, said that our nation China has to secure scientific characteristics; to cultivate cooperation and systemicity on political decision making process for *nongmingong*. There are more efforts to elaborate *nongmingong* policy with other party's movements mainly by not only Zhou but also by Zhang Laibin(张来斌), Wang Yongqing(王永庆)²⁰.

The other thing is that, as time goes by, newly appeared type of the workers such as skilled engineers or well-educated one is valuable for company than anticipated. Undergoing these kinds of process, Ju Xiaolin(巨晓林) is recently elected as deputy president of all-China federation of trade unions on a national conference of the union's executive members²¹. Chinese leaders put weight the process of him that he devoted himself to China's railway development across the country and participated in the construction of 10 major electrified railways²². Through this case, this paper keeps stressing how important the change and alteration of every single announcement by accumulating policy changing.

²⁰ 中国政协网. 全国政协十二届常委会第六次会议举行大会发言. www.cppcc.gov.cn 2014-06-25

²¹ http://www.chinadaily.com.cn/china/2016-01/18/content_23128280.htm

²² http://www.chinadaily.com.cn/china/2012strides/2012-08/17/content_15801345.htm

2. National Policy Making on Supporting Start-up

In the previous section, this study touched policy changes focusing on mostly supporting economic actors, especially aiding companies financially. Of course there are not less policies considering migrant workers, the first part almost take indirect ways to support the workers as main points. Therefore, this section is going to handle the issue based on the supporting action of Chinese government for start-up migrant workers and finding working place. This is definitely straight method influencing the workers' laboring conditions to be improved.

In March 2004, Zhong Jiaming(钟家明) said in the 10th national people's congress that Chinese government have to perfectly solve the three problems and one of them is related to employment issue both *xiangang* workers and migrant workers²³. In the congress, Xiong Shengwen(熊盛文) also stressed that central government have to prepare additional law to keep migrant worker's economical activity safe as soon as possible. And there were many other leaders like Li Baoyuan(李宝元), Liu Huailian(刘怀廉) who spoke about the *nongmingong*'s employment and start up issue. In August 2006, Lai Aiguang(赖爱光) who is the member of overseas Chinese affairs committee described his opinion that

²³ 中国人大网. 全国人大代表谈就业和社会保障问题 - 全国人大代表审议政府工作报告、计划报告和预算报告发言摘登. 2004/03/08

China have to increase the number of employment and added that put a slight upon *nongmingong* is very serious problem for China.

A global financial crisis is one of the reasons that made migrant workers go back to their hometown and start up their own business based on their acquired skills. Central government realized that China has entered into a development stage where industrial development promotes agricultural development and urban development brings along rural development²⁴. They also consider their own Chinese characteristics for demolishing the old dualistic structure of urban areas and rural areas and forming an integrated structure for the economic and social development of urban and rural areas. Therefore one key thing to make unify both urban and rural is utilizing returning migrant workers. In 2007, one law for promoting employment²⁵ was written. In the Chapter II of the law, two main articles have to be analyzed: Article 20 and Article 23.

Article 20 The State applies an employment policy whereby to make overall plans for both urban and rural areas, ... Local people's governments at or above the county level shall give guidance to the surplus agricultural workers in going to the urban areas for employment in an orderly manner.

As predicted by the first part of this article, Chinese leaders still had some plans to cheer rural workers up moving their residences to each urban. Also, later part of the law there is suggesting no-discrimination

²⁴ <http://english.agri.gov.cn/aboutmoa/message/>

²⁵ 2008. «Law of the People's Republic of China on Promotion of Employment»

among them by establishing a ‘sound system’. Article 23 People’s governments at all levels shall take measures to gradually improve and implement the labor and social insurance policies adapted to such flexible employment as part-time jobs, in order to provide assistance and services to the persons who look for flexible employment.

In January 2008, the leaders wrote and published ‘Provisions on Employment Services and Employment Management’. Even though would be revised in 2015, the first edition of the regulation showed leaders’ somewhat strong will on supporting start up business by migrants themselves, like article 8 below.

Article 8 The State encourages workers to start up business and seek employment by themselves. The administrative department of labor and social security at each level shall, jointly with other relevant departments, simplify procedures, enhance efficiency, and provide convenience and corresponding services for workers to start up business and seek employment by themselves.

In September 2008, “Guidelines to Enhance Efforts to Promote Employment through Start-up Business” was announced by the central government. The guides stress three aspects that comprehensive approach, a series of supportive policies and flexible employment. To achieve these kinds of purposes, the government have to make efforts to improve policies on start-ups²⁶. Right after the guide was shown, the leaders officially

²⁶ Employment Policies Report. ‘China: Promoting Decent Employment for Rural Migrant Workers’. International Labor Organization 2011

agreed to declare more concrete plan in October about start-up supporting of returning migrant workers²⁷. In the conference, they put the part in chapter 3 section 5²⁸. Since then, leaders keep touching this issue on main meetings. CPPCC's standing committee members consider financial crisis as a main cause of the birth of returning *nongmingong*. Especially, they said that the coastal districts has produced a great volume of returnings since late 1900s. They added that unless developed regions prepare institutional mechanism, leaders could not control the tremendous size of returning migrants, which directly cause a lack of labors. Therefore, they check the possible policy process by utilizing contemporary rural system with returnings.²⁹ In 2010, premier Wen Jiabao directly and strongly mentions on supporting *nongmingong*'s start-ups³⁰.

As the reports of the conference shows, Chinese leaders are willing to utilize migrant workers as key factors to develop rural economic system. Like other laws which are investigated above, leaders were trying to encourage migrant workers to go back their hometown, in guiding opinions 2010³¹. This guideline was mainly settled to promote urbanization and economic development in central and western regions of China. Until

²⁷ 中共中央关于推进农村改革发展若干重大问题的决定. 2008年10月12日中国共产党第十七届中央委员会第三次全体会议通过

²⁸ Ibid. 3-5

²⁹ 中国政协网. 民革省委建议力推甘肃出台意见引导鼓励农民工回乡创业. www.cppcc.gov.cn. 2009-08-19

³⁰ 温家宝. 政府工作报告. 2010年3月5日在第十一届全国人民代表大会第三次会议

³¹ 'Guiding Opinions of the State Council on Central and Western Regions' Undertaking of Industrial Transfer'. 2010.

then, there had been many people who think that migrant workers and their families are urban population eventhough migrants had not been considered in their ‘new’ resident³².

Therefore, state council had announced several opinions since early 2000s. For example, in 2007, “eleventh five-year plan’s compendium of national education development”, which was designed during the ‘eleventh five-year plan’, handles how to utilize migrant worker as skilled labor in their hometown³³. Then state council, in 2010, officially decided two rules in the guiding opinions: Article 20 and Article 23. These two articles are included in section 7. The section is stressing the method on how financially support labors, and how secure social welfare by provide appropriate residence construction. Through the methods, migrant workers could voluntarily go back to their home.

In 2012, to support *nongmingong*-their own business making, state council stipulated specific ways to helping them on the circular³⁴. There are three contents directly related to migrant workers: 3-1-3, 3-2-2 and 3-2-3. The first 3-1-3 is about giving various tax benefits and other benefits on a small loan, funds and location assignment. This is to create an atmosphere for starting their own business. The second 3-2-2 is saying that

32 Zhiyu Fu and Wenhong Yan. ‘Promoting the innovation of urbanization system in Western China from the perspective of public finance and taxation’. China Finance and Economic Review. 2016. 4:4

33 国务院. ‘国家教育事业发展 “十一五” 规划纲要’. 2007.03.25

34 “Circular of State Council on making instruction for strengthening employment from the year of 2011 to 2015”

nongmingong and other qualified person get some special tax cut. The last 3-2-3 shows macro economical credit policy for labor concentrated industry. Even though looked a lot same, 3-3-3 has connoted additional contents. This provision suggests each government have to establish ‘entrepreneurial city’. This kind of city could be founded by establishing more ‘vocational’ middle and high school. The educational mechanism could systemize not only to secure human resource for launching a startup but also to make funding providers to be naturally encouraged in the system.

Also in the period of Xi, there are two important reports which are financially supporting the workers. The first thing is mentioned by article 4-11 in ‘Opinions on Future Promoting Travel Investment and Spending’³⁵, which is published in 2011. The second thing was also announced in the same year, which is mainly consider the new generation for founding support which could be settled by returning migrant workers³⁶. The ‘economical supporting’ is, for migrant workers with low wage, the fundamental needs so that this could be affecting their life on returning to hometown.

Most recent provision announced in 2007 but revised by ministry of labor security in the last month of 2014 is to suggest opinions on

³⁵ 通过加强政策引导和专业培训，三年内引导和支持百万名返乡农民工、大学毕业生、专业技术人员等通过开展乡村旅游实现自主创业

³⁶ ‘A Report for Employment and Founding under the New Generation’. 2015. Article 2.11

employment services and employment management. This regulation is based on the employment promoting law, on the purposed of providing employment guides. Even though mentioning not directly about *nongmingong*, the article is implying the concept of migrants in specific articles: Article 8 and Article 30. Article 8 in chapter 2 arranged to make clear that the nation, or the party, is prone to support labors to autonomously open their own business or independently find their job. Office of public employment and service is main point of chapter 4 which takes article 30. This part indicates some ‘weak’ labor sectors for finding jobs to be considered by the offices.

3. Wage issue

Wage is an critical and basic issue that all kind of industry has irrespective of the characteristics of business whatever they are state-owned enterprises, non-state owned company, private sector or other types even worker’s sexuality. Actually, salary which is lower than minimum wages have had a bad influence on capabilities, efficiency and even on a buyer’s working market system³⁷. So regulations or laws which are connected to this issue has to be examined in this section. This section is mainly related to established labor law and that of revised.

³⁷ Jinlan Ni , Guangxin Wang & Xianguo Yao. Impact of Minimum Wages on Em
ployment: Evidence from China. Pages 18-38. 09 Dec 2014

In 1993, China issued its first national minimum wage regulation. However, there was rapid increased number of legal victims due to the CCP's reform of state-owned enterprises policy since early 1990s. On this account, in 2004, there was a new suggestion of provision on minimum wage. There are three articles connecting to the migrant workers: Article 10, Article 11 and Article 13.

The first of three articles are about the renewal of contents: When a specific case occurs, the standards on minimum wages also should be revised at least once every two years³⁸. Specific cases are shown in Article 6: the minimum costs of living of the local employees and the people supported by them, the urban residents' consumption price index, the social insurance premiums and the public accumulation funds for housing paid by the employee themselves, the average wage of the employees, the level of economic development, the status of employment and etc.³⁹. Unlike before, there have been many factors to fix the minimum wage criteria. The migrant worker could officially know their own minimum standards by their employing entities⁴⁰.

Additionally, Not following regulations above, the entity ought to compensate the wages to the workers as much as their local government decided⁴¹. Even though this 'provision' has some weak points, these have

³⁸ Provisions on Minimum Wages. Article 10

³⁹ Ibid. Article 10

⁴⁰ Ibid. Article 11

⁴¹ Ibid. Article 13

gradually fixed through several leaders' revision process. Later on, this provision is 2010: 'Employment Effectiveness of Minimum wage on Finding jobs for Chinese Migrant Worker'

In March 2005, the 3rd conference of 10th national people's congress was held⁴². When the central government discussed about three agricultural issues, *nongmingong*'s wage overdue was one of the points, which already recognized by public. Lai Lianming(赖联明), who has worked for Ganzhou as a vice president of the city since 2004, announced to other leaders that the delayed wage payment has to be completely solved by a court and then the worker's rights could be secured. And soon, in last month of the same year, 19th conference of the congress was officially announced that the leaders would keep strict watching the minimum wage policy and would solve the problem at hand by utilizing Chinese labor law⁴³. Additionally, the State Council announced 'No.1 Central Document Focuses on Rural Issues(一号文件)' in 2004 to officially allow *nongmingong* lend money from the state system based on a structure of debits and credits, which could solve the problem on overdue wage issue⁴⁴.

Jin Haiping(金海萍), the president of national congress in 2005, discussed from a bit different point of view. He took a industry's stance

42 人民网. 傅志寰报告国民经济和社会发展规划的审查结果. <http://politics.people.com.cn>

43 中国人大网. 发言摘登: 分组审议劳动法执法检查报告. <http://www.npc.gov.cn/>

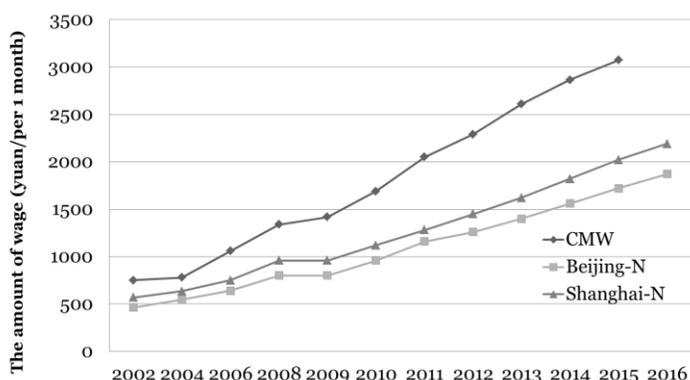
44 李汉宇: 为农民工设贷款. <http://www.cppcc.gov.cn/2011/10/26/ART11319591941828511.shtml>

that employers do not have fixed profits so Chinese central and local government should provide appropriate wage criteria suited to markets. This is a neutral opinion but, for migrants, it could be the starting point for further wage improvement.

All-China Federation of Trade Unions(ACFTU) officially brought out a guideline of legal aid for weak level workers in 2008. Even though being known as a group of friends of government leaders, ACFTU members has been tried to protect laborer's right by making official regulations. Rural migrants could have got the official aid system by virtue of Article 10. When employers do not accept migrant worker's requirement about overdue wage or work-accident compensation, labor unions could substitute worker to applicate legislation assistance. Before than, there have been two fundamentally mismatched recognition: the workers' could not fully understand what ACFTU do; ACFTU's role itself that the members are gone through⁴⁵. However, ACTFU has steadily attempted to be a great help to worker groups. This paper would deeply handle about Chinese migrant worker's right under the trade union law and ACTFU.

⁴⁵ Howell, Jude A. (2008) All-China Federation of Trades Unions beyond reform?: the slow march of direct elections. *The China Quarterly*, 196. pp. 845-863. ISSN 0305-7410

Figure5. CMW Wage and Minimum Wage Comparison(2002-present)



CMW: Chinese migrant workers

Data source :国家统计局农村司『农民工监测调查报告』

Table and graph arranged by the author

There was a revision talks on labor contract law which finally includes some contents providing better wage payment system for vulnerable workers. The amendment version has been implemented since July 2013 with ‘equal pay for equal work’ regulation. This ‘procedure’ is required at least the early 2000s because more than 70% of rural migrant workers already indicated that there had been discrimination in wage paid for equal work in 2002⁴⁶. Based on the 2008’s implementation of revised labor contract law, the supreme people’s court gave interpretations on criminal cases for delaying wage in 2013.

Let’s see the Figure5. The most highest *nongmingong*’s average wage in two main urban area are still lower than the minimum wage. However,. their salary in two big cities has been constantly increased since

⁴⁶ Sylvie Démurger, Marc Gurgand, Li Shi et al. Migrants as second-class workers in urban China? A decomposition analysis. *Journal of Comparative Economics* 37 (2009) 610–628

Hu's period and the rate of increase also accelerated. Therefore, the more local governments settle active political support on wage, the better life would be realized for migrant workers.

4. Implication of Policy Changes on Economic Rights

As shown in the previous parts, economic rights for the migrant workers have been gradually secured and even now the policy making discussion is still going on. There are several undertones to be arranged. Like above, this section handles employment promotion, wage issue and start-up orderly. In 2012, the 11th conference was held by the national standing committee of Chinese People's Political Consultative Conference(CPPCC). At that time, leaders at first stressed the concept of 12th Five-Year Plan which started since 2011 and then matched it to the way of utilizing *nongmingong* for developing their economic situation⁴⁷. Actually, since 2013, CPPCC leader members have mainly stated that the working group is supposed to be located in the center of start-up field. For this, members have encouraged college student and the migrants for Chinese economic stimulation⁴⁸. The leaders are becoming a lot more

⁴⁷ 中国政协网. 中国人民政治协商会议全国委员会常务委员会工作报告(2012年).2012/03/14. <http://www.cppcc.gov.cn/>

⁴⁸ 中国政协网. 中国人民政治协商会议全国委员会常务委员会关于提案工作情况的报告(2013年).2013/03/12. <http://www.cppcc.gov.cn/>

assertive for applying the migrants in the economic system.

For the section of the promoting employment, this study handles several circulars. The regulation announced in 2003 give an opportunity to company such as simplifying office procedure, which hires *nongmingong*. the system encourages the industry field to hire more migrants, which could be directly connected to increase of working place for them. Also, there are some policies inspiring the idle labor of migrants to go to near city. This is a solution solving lack of working labor.

Additionally, central and local government have tried to prepare high-quality migrants by assisting their training system. This movement could be a fundamental countermeasure for rural development. By protecting *nongmingong* legally from various discrimination, especially the law of promoting employment's article 62, the migrant workers could have get a right to sue a company or mechanism on all forms of discrimination relating to *hukou* system. Another regulation pricing 40% of a total amount of unemployment insurance also reduce a company's burden from hiring floating workers like *nongmingong*.

Next, considering wage-related policy for the workers, this paper is going to handle what is implicated from the legal system. The migrants got a clarification on their minimum wage and a suggestion on their minimum living standards through newly setted role expanding minimum wage system to a nationwide institution. Also, Chinese standing committee

completely altered their wage regulation from 'company' level minimum wage to that of all-level. This change also includes subject, procedures and determinants of the system for minimum wage.

In addition, CCP enforced sanctions against any construction industry which has a record of delayed payment of wage. This plan implicates the leaders has started to have most of the workers upon their mind. So the government has intensified the level of supervising whether the workers get their salary or not, to realize the plan. Plus, the leader members provide specific guideline to the workers, region by region, by differentiating the GDP criterion.

Third part is a start-up policy's implication. These policies are considered since not very long ago. It has been settled only after the central government started to make rural era be developed. The leaders had utilized *nongmingong* group to vitalize rural economy and had encouraged the crowd to participate in economic sector. Therefore, leaders diversify the way of assistance to business starters and simplify a procedure on granting.

This study also finds that local governments sooner or later could make free use of the migrants. This is because the central government have a plan to build up several bases on start-up business for tourism which would be led by returned *nongmingong*. The movement hit local governments' stride in practically using returned migrants.

III. Comparison of Social Security System: Social Rights

Until now, this paper mainly have handled economic rights which is considered as the main reason of *nongmingong* issues. In other words, that is the reason why the concept of Chinese migrant workers has made to point out specific group in broad continent, China. Another problem, occurred and inevitable wherever economically developed area, is about people's asking for better life. Surely, considering rights for better socially living thing is taken as the upper level right than that of economics.

Like most developed countries, China's central and local government which are located in developed area has been asked to prepare rules and laws for better life. Especially there are various requests for Chinese migrant workers individually and also for their family life: Education for migrant children, dispute while they work, basic social welfare like insurance and *Hukou* system. Especially, *Hukou* is an ambush which is still existing until today despite China's breathtaking over the past few decades⁴⁹. Therefore this research is going to handle several issues mentioned above for the next few sections one by one.

⁴⁹ Nancy joseph. Despite china's modernization, the hukou system remains. <https://artsci.washington.edu>. 20.11.2016.

1. Education Policy Making

This section mainly covers how education policy, for migrant children, has been written since 2000s. Migrant workers are have been centered among many issues in china, who have a choice whether or not to leave home and work in the cities. In practice, they actually have to choose between economic deprivation in the countryside and social disadvantage in the urban cities. As migrant workers married, central and local government cannot avoid some issues related to their children, which is of course additional point they have to solve. **Qiu Xiaoping**, a pre-vice president of ACFTU in 2013, said like below⁵⁰.

... New generation of nongmingong has thought that they are not an simple working group but a group of citizen unlike their parents. ... Five years ago, the 11th CPPCC had only three members of nongmingong. In 2013, however, their number has increased to 31.

At the first time, because many migrant workers are not registered, children under 16 years old are then illegally required to register as temporary residents, and as only a small proportion of migrant children born in urban areas have their births registered⁵¹. It also caused some

⁵⁰ 中国经营网. <http://www.chinadaily.com.cn/> 2013年3月7日

⁵¹ 刘晓兵; 李树苗; 张烨霞 (2007),“中国流动儿童出生登记的探索性研究”,市场与人口分析, 13 (1) p.49-55.

difficult to accurately calculate their number in China's cities today⁵²⁵³.

Unlike their parents, children who move their residence have no choice but to passively live their life given by their parents and often suffer more than them in terms of psychological harm as well as economic and social deprivation.⁵⁴ So it is very important to focusing on the starting point of the compulsory education for 2nd generation of Chinese migrant workers since Hu Jintao era. Before seeing the period, this study show one article which is suggested in the labor law(1994).

Article 15 ... Art, sports and special-skill units that plan to recruit juveniles under the age of 16 shall go through examination and approval procedures according to relevant State regulations and guarantee the right of the employed to receive compulsory education.

This article is written in the law from the start and not even modified when the revised labor law was announced. This meant that CCP actually recognized and itself is very important for China eventhough it had no efficient enforcement mechanism⁵⁵. This article has being as the root of further rules and laws directly connected to migrant children.

⁵² "Law of the People's Republic of China on Residents' Identity Cards", Standing Committee of the National People's Congress, 28 June 2003, and effective on 1 April 2004.

⁵³ 新华网. 21 March 2008. "Registration system will mean migrant children are no longer the city's 'invisible children'".

⁵⁴ Daniel Fu Keung Wong, Chang Ying Li, He Xue Song(2007). "Rural migrant workers in urban China: living a marginalised life". *International Journal of Social Welfare*. Volume 16, Issue 1. 32-40

⁵⁵ Sean Cooney, Sarah Biddulph, Li Kungang and Ying Zhu (2007).

In the 1st period of Hu, Premier Wen Jiabao visited a school for migrant children in Beijing in 2003 and he wrote on the blackboard: Under the same blue sky, grow up and progress together⁵⁶. June 2003, the ministry of finance announced 《Circular on strengthen the efforts to curb arbitrary school fee collection》, which could be considered basically the first step on writing more concrete law for the children. In November 2005, Pang Lijian(庞丽娟) said one of the most important factors to improve overall rural life efficiently is that central and local government have to hold themselves ready to start compulsory education more orderly. And he added this education issue includes three parts and the third one for *nongmingong* issue, which is for their children.

Later, April 2006, Zhou Yuqing(周玉清), from Guangdong, checked about education issue for migrant children. The place he had been working on has more than 50 hundreds children of migrant workers but only 1 thousand children allowed to receive an education. So he stressed what is the first thing to consider the way of applicate the section to practice. He considered them, 10% of *nongmingong*'s children, as the core thing, and suggested that many of local government are not consider the issue so they should have responsibility to provide high-quality education for them.

⁵⁶ Ren, Yunxia(任云霞) & Zhang, Bomei(张柏梅) (2006), “社会排斥与流动儿童的城市适应研究, 山西青年管理干部学院, 19 (2).

Finally, June 2006, a law which is called compulsory education law was officially revised. A national survey in the mid-2000s showed that average educational expenditure for migrant children was 2,450 yuan per head per year, accounting for about 20 percent of family income, 194,195 with the cost in some coastal cities being even higher⁵⁷⁵⁸. In 1986, the first edition of the Law was announced but as time goes by CCP had to fix some parts. Article 12 has to come first which is settled in the law.

Article 12 ... the local people's governments shall provide equal conditions for them to receive compulsory education. The specific measures in this regard shall be formulated by provinces, autonomous regions, and municipalities directly under the Central Government ...

Also, the article is apparently mention like below: “in places other than the places of their registered residence and who have to receive compulsory education in the places where their parents or other statutory guardians work or reside”. This is not only for the person who officially move their place to live but also for some family who change their residence to achieve dream of their life.

Another member of National people's congress who is called Gao Baoling(高宝龄) was adding some opinion about the issue in October 2006 as well. Based on “Some Opinions of the State Council on Resolving the Problem of Migrant Workers” announced in 2006, he said that protecting

⁵⁷ 中央政府门户网站, 24 October 2006.

⁵⁸ National Bureau of Statistics. 人民网, 24 October 2006.

them legally as much as CCP can do is the important solution to solve the issue. Also he added that they have to review the sentence of ‘Local government should... give opportunity to migrant worker’s children have receive compulsory education ...’, which is written in article 27 of chapter 4 in the Compulsory education law.

As CCP and several local government had written this law, the ‘younger’ migrants around at the age of receiving compulsory education have receive better education legally and happily. Of course, by the first semester of first grade, every students in a same class, whatever their hometown is whether in the place or not, is expected to recognize 400 Chinese characters and should have to write 100 of them⁵⁹. Even though it is the first and hard to adjust for ‘the children’, they could be, and are, enduring the system. This has, however, been acting as one of the starting points of looking forward to gaining Chinese migrant workers’ basic social rights.

In some local government such as Shanghai and the atmosphere toward reforming education policy for the children was not very positive.⁶⁰ Shanghai had been actually the most highly developed in nation economically so that most of rural residences hope to earn money in there. As time goes by, the urban area became only one district that allows the younger migrants to receive same curriculum for education as local

⁵⁹ “China: Asia in Focus”, R. LaFleur 2010

⁶⁰ “上海：人才引进类居住证子女义务教育免借读费”，上海青年报，5August 2008.

students if their parents are satisfying Shanghai's rule of law.

Revising the rule announced in 2003, the state council once again wrote another circular as a central government level in August 2008. The circular was suggested to control soaring tuition fees for students that had blocked the opportunity for the migrant workers' children to receive school lesson⁶¹. Starting this regulation, several local government had to execute after fixing the rule for each of appropriate environment, such as Shenzhen, providing more concrete guide to well utilize it in their province. For instance, in September 2008, Shenzhen announced "two-waiver" policy which directly gives various benefits, like freely receive books or even lessons, for migrant students in actual⁶².

Later, report on the work of the government in March 2014 was announced by premier Li Keqiang(李克强) and the report stressed once again realizing upgraded education program fro migrant children, which is continuing described several more times in other national reports until the year of 2016⁶³.

The 2nd conference at the 12th national congress in 2014 covered 14 million migrant children's compulsory education as one of the issues which is needed more secured funds. As the fourth part of the second

⁶¹ “国务院关于做好免除城市义务教育阶段学生学杂费工作的通知”, 12August 2008.

⁶² Crystal Daily, 1 September 2008.

⁶³ 政府工作报告. 2014年3月5日在第十二届全国人民代表大会第二次会议 / 2015年3月5日在第十二届全国人民代表大会第三次会议

section for tax plan which is added on the conference showed, ministry of financial definitely eager to support the children by finding more efficient method than 2013. For instance, they would construct 706 secondary vocational school and 60 national model of higher vocational institutions. The project would be with the main stream of ‘Project 985(985工程)’ and ‘Institutions of higher learning innovation ability enhancement(2011计划)’⁶⁴. Overall plans from 2014 could be expected to handle more than 84 million children who are going to be educated in the near future.

In the 2016’s report, there are eight sectors elaborated for the following years which could be the 2nd generation of Xi’s. Among them, the third sector is to make more strong point with newly revealed blueprint to expand urbanization. With the plan, the central and local government would establish urban infrastructure and residential real estate from until 2020⁶⁵. After completing the plans, it would settle not a few residential place for migrants and their family. Then it could make them easy to receive compulsory education with secured life. No matter how Xi’s willingness to achieve these all education things is big, it would literally be accomplished even by next generation of leadership. Because the system of CCP has been cooperating to succeed their plan suggested since 1949.

⁶⁴ 关于2013年中央和地方预算执行情况与2014年中央和地方预算草案的报告—2014年3月5日在第十二届全国人民代表大会第二次会议上

⁶⁵ <http://www.cuyoo.com/article-20567-1.html>

2. Labor Dispute

This section is going to handle unavoidable issue between company and workers while people are working in industry field. China, eventhough it is under the political socialism, is no exception. Besides its political system, since 1978, economic restructuring is one of the main aspects of China's reform, which could make the differences between two different level of system⁶⁶. At one glance, someone think that china's kind of 'double sidedness' doesn't make sense. China, however, also has been trying to control efficiently dispute between two actors by using law, which is officially announced as 'Constitutionalism'⁶⁷. So growing number of labor dispute case could be, and has been, regulated by official opinion.

Some of other official materials that the labor dispute issue requires to analyze are interpretations of supreme people's court concerning the application of application of laws which handles the trial of labor dispute cases. China's court has been clarified that various cases could not be the origin body of law system. In this reason, the court keep announcing its interpretation about each case. There are four labor-law-related editions accumulated from the late 1990s to the early 2010s. Among the four readings, this chapter handle No.2, No.3 and No.4 because the first edition is somewhat ambiguous to directly consider Chinese migrant workers. Therefore, this section would deal with policy changing

⁶⁶ <http://www.china.org.cn/english/features/38200.htm>

⁶⁷ Edwards, et al., *Human Rights in Contemporary China*, 1986, pp. 121-2.

which is making sure of migrant workers' rights when labor dispute is occurred.

In July 2006, one provisions is suggested by executive committee of all-China federation of trade union which is related to not only trade union but also handled labor dispute⁶⁸. Before the provision was decided, the draft's article 33 concerned about the migrant workers that a company has to have migrant workers as a representative as much as that of head office⁶⁹. Final version of the provision erased the word '*nongmingong*' but women and minority race rested. This is because, unlike other two comprehensive concepts, a branch office is less likely to take account of migrant worker issues⁷⁰. Majority of similar provisions mainly rests in migrant laborers working field that holds a large majority in the construction industry and factory. So the provision has been trying to rearrange business structure and preparing to be flexible in responding to labor dispute by giving formal positions for *nongmingong*.

In 2007, the second edition is mainly considering wage issue. At that time, most bothering issue to migrant workers is overdue wage matter⁷¹. So the edition acted as the first step to solve the unpaid wage problem. Specifically, article 1 and 2 describe what is an act of illegality and how to be punished on employers. Article 14 following is showing

⁶⁸ Provisions on the Work of Enterprise Trade Unions (for Trial Implementation)

⁶⁹ Ibid. Article 33.

⁷⁰ This paper defines Chinese migrant workers (*nongmingong*) as workers who moves their residence out and make bread out of working in developed urban cities.

⁷¹ The Interpretation of the Supreme People's Court on Some Issues concerning the Application of Laws for the Trial of Labor Dispute Cases (II). August 14, 2006

how to workers, even cash-strapped workers like migrant workers, cope with the situation.

Article 14 ... if it finds upon examination that the applicant really has economic difficulties or there are evidences ... the people's court shall alleviate or exempt the laborer from the obligation to provide guaranty and timely take measures for property preservation.

These kinds of interpretation helped unfinished issues in first and second trial so that this study would handle how workers rights has been gradually increased beginning this interpretation. Before handling the next edition of interpretation in 2010, there are two important rule and law that has to be handled. Besides overdue wage, there is a problem caused by using a worker as an apprentice so that not less part of labor dispute has been occupied. Therefore, in 2008, one regulation on the implementation for labor contract law was announced⁷².

Article 15 An employee's wages during probation shall not be less than 80% of the minimum wages for the same post of the employer or 80% of the wages stipulated in the employment contract, and shall not be less than the minimum wage level of the place where the employer is located.

In the implementation, article 15 defines about the issue very clearly, like below. Based on the article, there has been migrant workers who are suffered from discrimination in terms of wages and discriminated when it

72 Regulation on the Implementation of the Employment Contract Law of the People's Republic of China. State Council. 2008/09/18

comes to the length of probation period by employers⁷³. There is getting somewhat detailed as rules and laws are getting accumulated.

Next year, China finally announced most critical law for labor dispute mediation and arbitration⁷⁴, briefly called mediation law in 2008 right after the regulation arranged. This paper picks two articles to analyze: Article 53 situated in Chapter IV and Article 6 in Chapter I. Firstly, even article 53 is mentioned after article 1, it is more effective and strong regulation for migrant workers. The article explicitly write the sentence as supplementary provisions that funding for labor-dispute arbitration commissions shall be guaranteed by the government⁷⁵.

With this part, *nongmingong*'s resulting cost and even time can be substantial. Next, article 6 of the law should be considered. The article is pointing out 'the parties' have to submit evidence for their claims⁷⁶. In most case, however, the 'evidence' relevant to the issue under dispute is mainly controlled by the employers so that a company naturally have the responsibility to give it⁷⁷. This article is reconsidered by the third explanation of supreme people's court later in 2010, which is handled right the next passage.

Before intuitively dissecting the third interpretation announced in 2010, this research gets back to that of the second. The second exposition

⁷³ 王林清、杨新忠. 劳动合同纠纷裁判精要与规则适用,北京大学出版社, 2014.6-7

⁷⁴ 《Law on Labor-dispute Mediation and Arbitration》 2008.5.1

⁷⁵ Ibid. Article 53.

⁷⁶ Ibid. Article 6

⁷⁷ Ulla Liukkonen,Yifeng Chen edited. "Fundamental Labor Rights in China - Legal Implementation and Cultural Logic". Springer. 2016.volume 49.

emphasis on the overdue wage issue. Then what about the third one? Since 2006, there has been rapidly increasing number of labor dispute on retroactive claims for overtime wage. This is all the worse in labor spot not only for laborers but also for company. Accordingly, supreme people's court has quite political strategies to prevent migrant worker's law abuses, which is giving the burden of proof for extra work wage. This part, as mentioned above, is connected to article 6 of arbitration law with different way of approach from before 2010.

In 2012, this section mentions representative one regulation and one law. Firstly, 《Labor Contract Law》 was revised in 2012 so that this law have articulated more rationally for the employment relationship. Generally, migrant workers have been accused on specific issues such as 'equal pay for equal work', labor dispatching. The revised law specifically guides such as when labor authorities could confiscate all illegal gains and how much company would be fined when they abuse migrant workers⁷⁸. Through these instructions, there has started prohibiting overuse or "abuse" of labor subcontracting, such as hiring long-term employees as subcontracted workers⁷⁹. 'Dispatching' issue would be handled later in this paper, which is also weighted in revised labor contract law.

Let's go to the second regulation. The second one is a regulation

⁷⁸<http://www.china-briefing.com/news/2013/03/18/china-revises-labor-contract-law.html>

⁷⁹ Mary Gallagher, John Giles, Albert Park, Meiyang Wang. 'China's 2008 Labor Contract Law: Implementation and Implications for China's Workers'. Discussion Paper No. 7555. 2013

on mediation and negotiation for company's labor dispute settled in the same year⁸⁰. In the regulation, a trade union could take a lead at a labor dispute and a laborer also could consign other association. Showing clearly, article 15 says that the representative are taken by some members of trade union or elected by overall laborers⁸¹. Therefore, with this article, migrant workers also could get some official positions allowing them raise strong voice in opposition, which also could let them participate in the dispute.

Article 4 Where a mediation agreement is reached only on payment obligations upon mediation by a people's mediation committee, both parties may jointly apply to the basic people's court at the place ..

In 2013, leaders announced the fourth edition of supreme people's court's interpretation on the cases. Until 2016, this is the last one but not the least. See below article 4. The edition strengthens the validity of procedure of the labor dispute mediation. Unlike previous two interpretations which are settled by considering one side economic actor, this newest provision is pointing out both of two actors. From this ground, this research could examine how gradually labor and company are going to be equal in working place level as the explanation of interpretation developed.

⁸⁰ 企业劳动争议协商调解规定. 人力资源和社会保障部令 第17号. 2011

⁸¹ Ibid. Article 15

3. Social Welfare: Migrant child, Insurance under *hukou*

For migrant workers in China's cities the single biggest barrier to decent healthcare is the exorbitant cost of seeing a doctor or other healthcare professionals⁸². With the development of the private economy part and privatization of most state-owned enterprises over the last two decades, the vast majority of Chinese citizens now have to bear the cost of medical care.⁸³

Firstly this paper takes policy's change on migrant children abuse. Until now, there have occurred not inconsiderable amount of cases on abusing migrants and their children as workers. Even receiving less than half of migrant worker's wage, the children sometimes are illegally asked to work in unfamiliar place. Hu and other leaders took actions aggressively to secure all children, not just migrant children. Therefore, specific provision was announced in 2007⁸⁴. Especially, the regulation directs a probation regulation on job mediations not to introduce people like children who have legal identifications⁸⁵. If the organizations do not follow contents of the law, they could be legally stopped their business by upper

⁸² Beach, M, "China's rural health care gradually worsens," *The Lancet*, No. 358 (1997), pp. 567–68.

⁸³ Gao, J.; Tang, S.; Tolhurst, R. & Rao, K. (2001), "Changing access to health services in urban China: implications for equity," (*Health Policy and Planning*), 16(3):302–312.

⁸⁴ 《Provisions on Employment Services and Employment Management》

⁸⁵ *Ibid* 58.

level governments⁸⁶.

Secondly, even migrant workers had met with more secured laws, there were needed better and sharp regulations for their human life. As mentioned previous section, newly announced labor contract law was announced in 2000s. The law was upgraded by state council's new implementation which likely acts more clear guideline protecting migrant workers in 2008⁸⁷. The law, specifically article 22, was apparently a good new for the workers at that time⁸⁸. The temporarily working migrants for some projects in construction section are secured by the article. This article is apparently mentioning about the worker's right even after temporary contract was ended. Employers have to compensate with money when workers hope to get economical benefits based on their contract with company.

Table1. Injury Insurance Subscribers Rate on Migrant worker in 2015

%	Manufacturing	Sales&Survice	Govn't units
Min	13	0	20
Max	36	12	30

Third issue for migrant worker's social welfare, which has been considered as a harsh point of their life, is an insurance section. Although

⁸⁶ Ibid 74.

⁸⁷ 《Implementation of Labor Contract Law》 2008

⁸⁸ Kotra. 중국 노동계약법 실시조례 해설. Global vusiness report 08-041. 2008-10.10.

various characteristic insurances have already been settled in China, this paper would like to examine how these system has been settled.

. In 2008, Beijing's Ministry of labor and social security announced a circular on the method of paying social security insurance⁸⁹. This law specifies how much employers have to assign insurance payment for *nongmingong*'s life. For example, employers should allocate 1% of the payment every month. Also, central government announced a regulation which is for the disclosing the government information in 2008. Even though this provision is not apparently taking the concept of *nongmingong* or the migrant workers, the article 10 of this regulation is basically written to secure social security and employment which are the fundamental issue for supporting 'non-native' workers⁹⁰.

In the next year, a basic instruction manual was suggested in a meeting for national labor relationship coordination on state council⁹¹. This form should be managed when the workers contract with construction, mining, manufacturing, restaurant-related business industry employers. The manual suggests that it is adjusted for floating labors such as rural workers, which means that the state council make company employers provide better contract mood to rural migrants.

While preparing new labor law system in Hu's era, main members of central government discussed about it deeply. In June 2005, Lu Ming(路

⁸⁹ 《关于调整本市部分社会保险缴费问题的通知》2008

⁹⁰ Regulation on the disclosing the government information. 2008.

⁹¹ 国家协调劳动关系三方会议办公室

明) who has been a vice president of the Ministry of Agriculture gave a public opinion about the tasks that the leaders have to prepare to keep public migrants safe. He pointed that industry sector should provide *nongmingong* a legal social security, unemployment insurance, accident insurance and medical insurance, etc. Then he added if there is a company which well provide social system for the workers, the workers could get more income improving their quality of life. Also, in December 2006, Cheng Siwei(成思危), a pre-vice chairman of the standing committee, pronounced an opinion about a migrant social security issue⁹². He got a key point by saying like below.

... China's existing law until 2006 has no specific guide or regulation for social securing mechanism so that new labor contract law has to have social insurance part and then state council should make the law's contents more specifically... to get labor contract law be more useful..

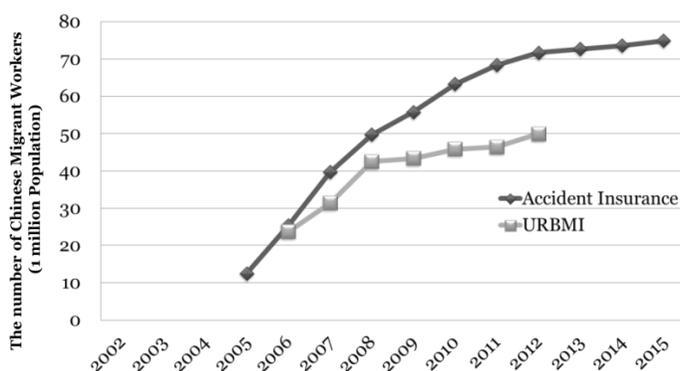
Finally, the new system was ready to be enacted 《Labor Contract Law》 with piecemeal changes through a series of specific regulations and provisions starting from the 1994 《Labor Law》. It was at the year of 2011, however, these separated parts of social insurance system in labor laws were codified into a comprehensive national framework in the 《Social

⁹² 审议劳动合同法草案发言摘登. 2006年12月30日

Insurance Law》.⁹³

As experts mentioned, the fundamental insurance law allows the migrant workers to facilitate their own movement to other developed urban cities. Also this law takes foreign employees to become a good member of China's social security system. While preparing Chinese labor contract law to be enacted, as Figure 6, many insurance system was offered and the migrant workers could have participated in the aid system.

Figure6. Insurance Subscribers Comparison(2002-present)



URBMI: Urban resident basic medical insurance
Data source: National Bureau of Statistics of China
Table and graph arranged by the author

Social insurance administration center was suggested one circular on distributing the 2012 work plan for service management on social insurance⁹⁴. Especially, this circular emphasized on the migrant worker's

⁹³ <http://www.clb.org.hk/content/china%E2%80%99s-social-security-system>

⁹⁴ 中央政府门户网站. 关于印发2012年社会保险经办管理服务重点工作要点的通知. 人社险中心函. [2012] 1号. www.gov.cn

endowment insurance system in proportion to the number of rural migrants⁹⁵. In 2014, migrants who had a pension and medical insurance were less than 35%. Injury insurance is more well covered because enormous number of migrant workers are hired in working places confronting danger. This meant the occupation's employers take advantage of injury insurance as one of economical gains⁹⁶.

In 13th September 2016, CPPCC and Commission for Legal Affairs members held a conference named 'Issues and measurement on migrant workers under the national new-type of urbanisation system'⁹⁷. This meeting focused on making proper type of urbanisation. It means that even migrants let to be out of work, the workers should receive social welfare system under equal treatment.

4. Implication of Policy Changes on Social Rights

Considered the second part of paper, social rights for the migrant workers are not totally secured even now. Like economic right issue, discussions are still proceeding on making better law, regulation or frames. This paper focuses on education for the worker's children,

⁹⁵ Ibid 2-5

⁹⁶ <http://www.clb.org.hk/content/migrant-workers-and-their-children>

⁹⁷ 中国政协网 “新型城镇化进程中→民工市民化问题与对策”专题调研报道“逆城镇化”之辩. www.cppcc.gov.cn 2016-09-18

insurance system and labor dispute issue. Therefore, this section looks what implications could be addressed in suggested policies previously, for the migrants' social rights.

About education issue there is one of the most important inference. Since 2006, each local government have had responsibility to offer educational right for migrants children. This is beneficial not only to working migrants or children itself but also to the leaders. If children would be highly educated person, then some local governments could reap the golden harvest when the migrants family go back to their hometown, by strongly linking the young migrants to economic field.

Next issue is a insurance system with *hukou*. This study choose the circular on future strengthening on resolving the problem of delaying wage payment in construction area. According to article 12 of the circular, *nongmingong* was written and it could allow to them to get legal safeguard. Without the article, it is definitely unclear whether or not the migrants could be an applicable object in labor law system. Social welfare law is also stipulating the word, *nongmingong*.

Even an ordinance of industrial accident insurance suggested in 2003 confirms the migrants to be the beneficiaries of the insurance. The activities implicate that Hu's leadership officially admitted the worker's mobility. Moreover, Hu and the leaders discussed how to solve a residential issue to avoid a shortage of labor and to get enough quantity of migrants. For this they arranged an appropriate provision in 2010. In 2012,

the 11th conference held by CPPCC was more likely to be located in social rights for the migrant workers than 12th meeting. Based on the official concept of Hu's period, *hexie*(和谐), leaders had developed the group's living condition to put them on the general social community.

Since year of 2015, Xi's leadership has actively moved for two problems which has to be solved. Firstly, they tried to eliminate discrimination for the coming generation of migrants, caused by hukou system. Secondly, Xi and the leaders have attempted to fundamental social problems relating to the workers by enacting legal announcement. These two points are going to be handled by the leaders during current 5th generation.

The study catches a few implicit points from labor dispute policies. While the migrants were intervened in a labor dispute, Hu and the leaders make sure the migrant's economic right by supporting entire cost of the dispute. Also, it is expanded to illegalized management units. The exoansion allows *nongmingong* in everywhere to be participated in the system. However, there has been a counterpart to prevent the abuse of labor dispute of course. The generation fully assigned an obligation to prove to the labors. Therefore this research reaches to one implication that the leaders intended to assign migrant issue to local govejrnmnts.

IV. Chinese Migrant Workers under Trade Union Law

Trade unions are for the first time allowed to support workers right. Of course migrant worker could demand their own rights through this law⁹⁸. At the end of 2005, only 12% of the total migrant workers joined in the union. Actually the trade unions play a very limited role in helping migrant workers but had tried to recruit more than eight million migrant workers until 2009⁹⁹. Therefore, this section examines how trade union law and its revision have handled *nonmingong* concept.

1. Basic Rights

This section argues for engagement of trade unions and the law as good actors in preventing migrant worker labor abuse. In accordance with the Decision on Amending the Trade Union Law of the People's Republic of China, revised trade union law adopted at the 24th meeting of the standing committee of the 9th national people's congress on October 27, 2001¹⁰⁰. At the first time, totally 42 articles and 9 chapters were settled in the law but one more article is added revised edition in 2001. ACFTU's

⁹⁸ Caroline Heuer. 'China's labor law: an effective instrument of workers' representation'. China analysis 45. May 2005

⁹⁹ <http://www.china.org.cn/english/MATERIAL/184113.htm>

¹⁰⁰ <http://www.china.org.cn/english/DAT/214784.htm>

pre-vice head of Gu Ruiyang(贾瑞阳) officially said that there have been various social changes since 14th national congress, such as structure of social economy system, employment ways, relation and distribution of interests, so revision has to be essentially settled. The revising process was to make *nongmingong* group to easy to become a part of trade union¹⁰¹.

Additional article is only one but there was a main changes in the section1 and the section2 for the migrant workers¹⁰². Trade unions are clarifying that they are mass organizations of the working class formed by the workers and staff members on a voluntary basis¹⁰³. Like below, Article 6 are more likely to support floating workers to enjoy trade union system.

Article 6... Trade unions shall coordinate labor relations and safeguard the rights and interests enjoyed in work by the workers and staff members of enterprises through consultation at an equal footing and the collective contract system.

Article 20 below is the one that stresses a concept of ‘equal’, which gradually make gradual expand of migrant worker’s participation.

Article 20 Trade unions shall, on behalf of the workers and staff members, make equal consultations and sign collective contracts with enterprises or institutions under enterprise-style management.

¹⁰¹ 노사발전재단. ACFTU 규약개정. 2008. <http://www.koilaf.org>

¹⁰² Trade Union Law of the People's Republic of China 2001.

¹⁰³ Ibid. Article 2.

Plus, trade union law was a kind of guild line on making labor contract law. In the 19th national people's congress, there was a legislators review draft decision on labor contract law. In the congress, one of the leaders, Sun Xiaoqun(孙晓群), said that *gonghui* has to be act as a representative of workers including migrant workers,¹⁰⁴. Generally speaking, the law had broaden and had strengthen since August 2001 and then every city finally had tripartite commissions in 2004. Eventhough the law does not surely let the unions freely active, some articles for 'democratic' pursuit in the enterprise level trade unions mechanism¹⁰⁵.

2. Dispatch System and Contract

This section examines about dispatch system which is utilized by employers to save worker's wage. In other world, there is a dispatch system which takes uncombined contract with a enterprise. Until now, business industry have made wrong use of migrants as dispatch workers just for company's economic profits. Actually, there are no direct relationships between the migrant workers and a dispatching company or a person in charge of it¹⁰⁶. From 2008 to 2011, there was 10~11% of

¹⁰⁴ http://www.npc.gov.cn/npc/xinwen/2005-12/29/content_343883.htm

¹⁰⁵ Anita Chan. 'Recent Trends in Chinese Labor Issues—Signs of Change'. China Perspectives. 2005.

¹⁰⁶ 労働和社会保障部. (2007) 『中華人民共和国労働契約法講座』中国労働社会保

dispatched labors among Chinese migrant workers. This is not very a big percentage at first glance but this is more than 20 million person in each year.

According to the survey of ACFTU reported in 2011, *nongmingong*'s average wage received from user company is just about 500 dollars(2,508 *yuan*). The average of salary is just 81% of a total amount of wage for the migrants. This is surely gain to the user company. Because of these kinds of situation, Labor Contract Law also handles labor dispatch issue in Section 2. Article 66 indicates that workers are dispatched generally for temporary, auxiliary or substitute jobs. This means if employers abuse any unrelated field worker just for their profits or whatever, they could be punished legally.

Article 63 ... If a receiving unit has no workers holding the same kind of posts, labor remuneration shall be determined in light of that paid to the workers holding the same or similar posts at the place where the receiving unit is located.

Article 63 settles a regulation of 'equal wage for equal work' for dispatched workers. The article specifically show special possibility as well. Eventhough only 12% of migrants took contract in 2000s and it is hard to reach dispatch migrants, the labor dispatch legislation has been brought great impact on the country's political economy system. Much more dispatch agencies have been effected by the regulation so that they should

reduce the number of illegally dispatched *nongmingong*¹⁰⁷.

3. Implication of Policy Changes with Trade Union Law

This study covers two issues on the trade union law: the migrant worker's basic right and dispatch issue.

Firstly, Hu's generation leaders stressed the necessity of securing *nongmingong*'s basic right supported by trade union. Also, the labor's right to speak in work site has been increased through official articles such as Prevention and Control of Occupational Diseases Law, etc. By the late 2000s, trade union's role to shelter migrants had been weakened by its internal corruption. So the group setted its own binding to divide its role with the governments. Even in the transition period for the next political generation, CCP continued to embody the way of punishment on a company's misfeasance which could be conceptualized with Safe Producing Law.

Next, the Chinese government prepared a countermeasure for an abuse of dispatched *nongmingong*'s low labor costs. One of the regulation is suggested in 2014 that the leaders set a limit on the number of

¹⁰⁷ Daniel S. S. Cairns. New formalities for casual labor: addressing unintended consequences of china's labor contract law. Washington international law journal association. Vol. 24 no. 1. 2015.

dispatched workers. Additionally, a migrant worker who is called Ju Xiaolin(巨曉林) is working for ACFTU and elected as a vice president of it in 2016. Therefore, overall migrants expect to be increased their social rights and Xi has to live up to their expectations.

V. Local Government's Policy Revision and Implication: Beijing

Beijing is known as one of the most large-people-living capital of the China. As labor market size much greater, the capital city has gradually become taking important economic section. In fact, even before contract law was settled, the city's migrant workers tended to make young and big group, which could have had long and formal contract in their working place¹⁰⁸. In late 1990s, Beijing's migrants addresses 20 per cent of total employment, which is 15 per cent less than Shenzhen¹⁰⁹.

Until now, the city has undergone an unexpected change. After the 2008 Olympics officially came to an end, Beijing was awakened its labor system which has to be reconstructed by policy¹¹⁰. For example, there is one case on Beijing. A policy considered *xiagang*(下岗) workers was firstly suggested in Beijing in 2000 but later on state council selected and broaden the policy's application from Beijing to overall local government¹¹¹. Therefore, in this section, the study is going to handle what

¹⁰⁸ John Knight , Lina Song & Jia Huaibin (1999) Chinese rural migrants in urban enterprises: Three perspectives, *The Journal of Development Studies*, 35:3, 73-104,

¹⁰⁹ Ibid.

¹¹⁰ "One Year of My Blood" Exploitation of Migrant Construction Workers in Beijing. *Vo lume 20, No. 3(C)*. March 2008.

¹¹¹ 《关于调整鼓励下岗职工再就业有关政策的通知》北京市劳动和社会保障局、北京市财政局 2000 & 《关于调整鼓励下岗职工再就业有关政策的通知》国办发[2003]40号

did Beijing local government has made new policy and has revised existing regulation.

1. Policy Revision for Chinese Migrant Workers in Beijing

At the top of this section, there have to be settled when specific policies was arranged and what they want to control in the sector of Beijing migrant workers. In 1999, Beijing municipal bureau of labor suggested a interim regulation: how Beijing participates a insurance system for endowment and unemployment section(1999.99). The interim provision is for contract workers from rural era living in Beijing. Soon after, Beijing added more concrete tentative regulation by bureau of human resources and social security bureau to re-execute endowment insurance for the migrant workers(2001.125). The point is that these two regulations had become sources of a announcement in 2009.

In 2007, one of building-rent management regulations was made and enforced in Beijing in the first place(2007.11.3). In article 14, upper grass-roof units are assigned mission that they would have to offer expected tax service for migrants who get married, have children, invest in

properties or witch jobs¹¹². This would be the guideline of supplemented material which had implemented all around China four years later(2011.5.5). Before the most influential 2009 edition was published, one more manual had settled. One year later the local government tried to modifying the rate of social insurance insurance premium(2008.237).

The local government once announced a summary on labor dispute seminar in July 2009.¹¹³ In Beijing, when *nongmingong* retired, requestment on cash compensation for defaulted endowment insurance are legally admitted. Workers having urban hukou could be handed down a sentence that their company have to pay supplementary social insurance. Unlike the workers, migrant workers coming from abroad cannot easily get supplements so that labor dispute could be utilized as a problem solving mechanism¹¹⁴. Therefore, the Chinese court of law have declared entrepreneurs to compensate the old-age insurance with cash based on the working period when mediation is suggested by the migrants. In chapter 7, article 36 express Beijing's stance on calculating method for *nongmingong*'s endowment insurance cost¹¹⁵.

¹¹² 北京市房屋租赁管理若干规定. 2007.11.3. Beijing local government (2011 revised)

¹¹³ 北京市劳动和社会保障局. 北京市高级人民法院. '关于劳动争议案件法律适用问题研讨会会议纪要(Summary of Seminar on applicating law concerning labor dispute)'. 2009

¹¹⁴ Ibid. 1-1-3.

¹¹⁵ From Jun 1, 1999 to December 31, calculate employer's payment amount in proportion to 19%; Since January 1, 2003, calculate employer's payment amount in proportion to 20%. The wage index of insurance payment sets up with the minimum wage standard.

In December 2009, the central government suggests a trial guideline to protect *nongmingong* by allowing them move their account of endowment insurance when they move to other region. Actually before this regulation was announced, migrant workers could not continue their existing insurance benefits just because they ‘move’ their residences and contribute to other city’s market system. Based on the central leaders’ announcement, Beijing official members revised a bit and enacted in 2011¹¹⁶. So the 2009 circular has been great help for the workers, which has effected on Beijing migrant worker’s insurance system.

Besides Beijing’s endowment insurance system, another system which is to be checked for the workers is a work-related accident insurance. Because most of the migrant workers, about 400,000 people, have worked in construction industry which could be very dangerous working place. In 2004, the Ministry of Health announced that more than 80% of township and village-based industry do not consider their dangerous working place¹¹⁷.

Finally in 2006, Beijing government specifically suggested how the local leaders control construction workers by providing occupational insurance¹¹⁸. Additionally this regulation was keep revised and create some

¹¹⁶ 《北京市基本医疗保险关系转移接续有关问题的通知》.京人社医发 [2011] 127号

¹¹⁷ Yang QL, Li WD. Current issues on occupational health and control strategies. China Occup Med. 2004;31:58–59. in Chinese.

¹¹⁸ 《关于做好北京市建筑业农民工参加工伤保险工作的通知》京劳社工发 [2006] 138号 《关于执行〈关于做好北京市建筑业农民工参加工伤保险工作的通知〉的若干意见》

opinions to make more clear adaptation¹¹⁹. Since the regulation was established, there has been a bit increased in the number of *nongmingong*'s insurance participation. Construction *nongmingong* workers at night around the main spot of Beijing is one good example¹²⁰. Near the *liudakou*, there are many villages and other newly renovated buildings which are under construction. Some migrant working group members who were participated in investigation are at that time received official insurances securing their working life.

2. Implication from Beijing Case

As mentioned above, Beijing is a main 'political' capital of China and one of the big cities migrants have gathered. In these reasons, Beijing has likely to be the first city enacting newly setted law or regulations. Until now, for about 20 years, the number of Beijing migrants getting a benefit from law system has increased.

This paper goes to one example to show how Beijing migrants have encouraged by the local government's law system. A migrant worker having his own vendor has been under Beijing government's frame about 5

京劳社工发 [2006] 177号

¹¹⁹ 关于做好北京市建筑业工伤保险工作的通知. 京人社工发 [2015] 218号

¹²⁰ A field rsearch done by the author in June 2016

years¹²¹. He is a *nongmingong* from Shandong and has a *nongmin's hukou*. He came Beijing because his daughter has to receive high school education in advanced environment. By receiving the local government's tax favor and letting her receive Beijing's education curriculum, his child finally accepted to enter a college in the area. Eventhough it is not covered all migrants' situation, this case could represent specific group of *nongmingong* in the capital.

From now on, the local government would continue to develop specific plans for implementations of *nongmingong* regulations to prevent conflicts between local people and new comers, as well.

¹²¹ A field rsearch done by the author in July-August 2016

VI. Conclusion: Evaluation and Expectation

A number of *nongmingong* getting a benefit from the law system has increased in many issues. The CPC has considered Chinese migrant worker issue and they mentioned no small points of the issue to give *nongmingong* the social security system. As *nongmingong*'s situation is differentiated, it is possible that the party announces more various level of policy. Basically China is too broad so there are still myriads of people suffering from existing regimes.

This study has examined to find out the answer of the question that how rules and roles for Chinese migrant workers have been changed by Chinese central government from 2002 to 2016 and what are the implications of the changes.

There are three findings for evaluating *nongmingong* policy system through this study. Firstly, even though Hu's period has been evaluated relatively weak generation, it was a strong and discerning leadership system. Just after the open and reform area was established and Hu started concerning low level workers, or *nongmingong*, it looks like having a weak policy power. However, connecting each generation's policy, Hu's leadership was based on the main stream of CCP which dominates socialism, nation-controlled economic system as well.

Secondly, Hu had tried to make efficient political institution for the

migrant workers from the beginning of his generation. Even though Chinese central government has continued overall policies which are decided by pre-generation of leadership, Hu and the central leaders requested strong demand to local governments to utilize their migrants policies based on each city's conditions. The reason many local government have had *nongmingong* measures is pre-generation's continuous attempting. Therefore, until now, once a policy or regulation for weak labors is announced in National congress or other conference, other local governments follow up even if it takes time or they revises original plans.

Lastly, this research found that Chinese policy making process have a 'flexibility' for each government system. Even though China and its government are founded on socialism, they have kept their own concept of 'Socialism with Chinese characteristics'. This is also expressed in *nongmingong* policy. All Chinese local government could adjust how much they are economically developed, when they want to enact migrants regulation or how much they have the rate of each city's unemployment. This is, of course China is one of the most broad nation in the world so it could be natural. However, an important part is that they are politically flexible even though under the socialism.

Like this study has indicated, two leadership's a great deal of trials, through law system, has reduced *nongmingong*-related discrimination that was actually the leaders have created at first. This research considers that

the leaders will let migrants to live their life equal with urban residence, for its own sake. As Xi's current generation keeps trying to provide a better working condition for the migrants with law arrangement, there would be a marked distinction later not only on the *nongmingong* but also on the whole worker's living standard. Therefore, Xi and his fellow chinese politicians provide the constant policy making for them until the end of this term.

According to the three implications, this study wish to connect with further study which would adjusts Chinese government's law policy on migrant's various kinds of right.

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국문초록

중국 제4세대 지도부 등장 이후 농민공의 권익에 관한 법률 변화

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개혁개방기 이후, 중국은 대외정책 및 국내정치를 통해 급속한 경제발전을 이뤄왔다. 하지만 중국의 사회발전이 경제의 변화와 상이한 속도로 보이며, 각종 범죄 및 기본권에 침해가 되는 사회문제를 피할 수 없었다. 본 논문에서는 여러 사회문제 중의 하나인 중국 국내이주민 즉, 농민공에 초점을 맞추고 있다. 특히, 농민공의 권익을 보장하기 위해 중국 정부가 활용해온 정책 및 법률의 변화를 분석한다.

본 논문은 후진타오 시기 이후부터 2016년까지 농민공의 권익보장에 관한 법률 변화를 살펴본 결과 다음과 같은 세 가지를 발견하였다. 첫째, 강하고 유능한 정부 지도자 체제 하에서의 정책 변화에 따라 중국의 사회주의 및 국가주도 경제체제 하에서 농민공들은 2000년대 이후 점차 다양한 법률의 직접적인 보호를 받게된다.

둘째, 후진타오 집권 초기부터 현재까지 점차 효율적인 제도를 통한 농민공의 경제적·사회적 권리 보장이 이루어지고 있다. 여러 법규 또는 통지에 분산되어 있던 농민공 관련 규정들은 노동계약법 제정 및 노동법의 개정을 통해 명시된다.

이는 효율성을 제공할 뿐만 아니라 구체적인 시행 방식까지 제시함에 따라 농민공의 기본권 보장이 더욱 고려된다는 점을 의미한다.

셋째, 두 지도자 체제의 농민공 관련 정책 작성방식은 상대적으로 유연하다. 후진타오 시기 이후의 전반적인 정책을 볼 때, 중앙정부 중심의 강력한 일방적 농민공 정책시행이 아닌 지방정부에 대한 일정부분 자율성이 부여됨을 알 수 있다. 즉, 각 지방의 재정 및 기타 현상을 적용할 수 있는 조항을 제시하며 지방정부가 자체적으로 농민공 법률 정책을 시행할 수 있는 여지를 제공하는 것이다.

이에 따라 본 논문은 2000년대 초반 이후 2016년 까지 중국 당 정부가 농민공에 대하여 점차 구체적인 지침을 제시하는 모습을 볼 수 있었다. 이러한 당 정부의 정책 제시 움직임에 기초하여 향후에도 다양한 농민공 수정된 정책을 제시할 것을 예측한다. 그에 따라 농민공 전반의 삶의 질 향상을 기대한다.

주요어: 농민공, 후진타오, 노동법, 노동합동법, 노동자 정책

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