

A Multidimensional Approach to Assessing China's Adherence to Article 26(1) of the Universal Declaration of Human Rights (UDHR)

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Abstract

While China has frequently been accused of challenging international human rights, its involvement with the right to education has rarely been the centre of scholarly attention. Education as a fundamental right is deemed essential to securing social justice, enhancing individuals' dignity, and enabling their enjoyment of other rights. This paper investigates the degree to which China adheres to UDHR Article 26(1) through Tomaševski's three dimensions of education. Methodologically, this paper adopts elements of both document analysis and critique of practice by drawing on China's official law documents and practical applications, as well as academic literature on international human rights. This paper found that while the Chinese government shares some common ground with the UDHR on the right to education, it detracts from what is endorsed and implied in UDHR Article 26(1) to a large extent. Notably, due to different ideological beliefs between China and the dominant international community, nuances abound in the interpretations of the right to education and priorities placed on each aspect of this right. Furthermore, this paper noticed that under the present social and cultural conditions, it is difficult for China to translate its stated ambitions, which sometimes align with UDHR Article 26(1), into reality. Broadly, this paper contributes to the limited research on education as a fundamental human right in the Chinese context. It calls for a more in-depth investigation of the Chinese discourse and the UDHR, and a broadened scope of different types and levels of education.

Keywords: International Human Rights, Social Justice, Right to Education

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Introduction

In 2018, China's President Xi Jinping delivered a congratulatory speech at the Beijing Human Rights Forum to commemorate the 70th anniversary of the Universal Declaration of Human Rights (UDHR). He recognised the significance of this declaration in the history of human civilisation and its profound influence on the human rights cause globally. Despite being a signatory and co-drafter of the UDHR, China has been described as a “powerful enem[y]” of this declaration by the international community (Kinzelbach, 2018, para 1). While most human rights discussions have been concerned with China's violations of its citizens' freedom of expression (e.g., Chen, 2018; Chomhaill et al., 2015; Wellens, 2009), relatively little attention has been paid to China's engagement with the right to education. Education as a fundamental human right is deemed indispensable to the moral rationality of securing social justice, the enhancement of individuals' intrinsic dignity, and the effective enjoyment of other human rights (Akattu, 2013; Kumar, 2004; Nowak, 2016). This paper endeavours to examine the extent to which China has adhered to Article 26[This paper primarily focuses on the first part of Article 26 of the UDHR (hereafter referred to as UDHR Article 26(1)).] of the UDHR (1948), the first internationally accepted articulation of the right to education (Bergström, 2010):

Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

UDHR Article 26(1) identifies education with formal schooling as it categorises different kinds of education into elementary, technical, and higher. Accordingly, the present paper deals with formal education, which is “institutionalised, intentional, planned through public organisations and recognised private bodies” (Olcott, 2013, p.331). Among the various elements comprised in UDHR Article 26(1), this paper critically discusses everyone's right to education, free compulsory elementary education, and equal access to higher education (HE) by merit. I structure this paper based on three dimensions of education as a human right proposed by Tomaševski (2004, 2005): 1) education as a civil and political right that calls for the respect of freedom; 2) education as a social and economic right that requires the state's provision; and 3) education as a cultural right that regards it as a group right. Throughout the paper, I draw on academic literature on international human rights and China's official law documents to substantiate the analysis.

Civil and Political Dimensions

Education as a civil and political right relates to the freedom aspect, which “requires governments to permit the establishment of schools respecting freedom of and in education” (Tomaševski, 2004, p. 7). Coinciding with UDHR Article 26(1) that recognises everyone's entitlement to education, the Constitution of the People's Republic of China (PRC) (1982) proclaims that education is a fundamental right endowed to all Chinese citizens (Article 46). Specifically, the Compulsory Education Law of the PRC (2014) requires that “[a]ll school-age children and adolescents ... enjoy the equal right, and fulfil the obligation, to receive compulsory education” (Article 4). The duties of education receivers are further detailed in the Education Law of the PRC (1995), which includes “developing good ideology” and “studying strenuously” (Article 43). This right-duty duality mirrors the underlying expression of the Constitution of the PRC (1982) that “[e]very citizen is entitled to the rights and at the

same time must perform the duties prescribed by the Constitution and the law” (Article 33). While the UDHR is known for promoting individuals’ rights and disregarding their duties (Constantinides, 2008), its Article 26(1) contains the element of duty by making elementary education compulsory. This is justified on the belief that “the free choice is a right only for matured minds ... and that parents cannot be trusted to do what is in the best interest of their children” (Marshall, 1992, p. 16). Unlike the rationale provided for UDHR Article 26(1), the legal responsibility of receiving education in China stems from the state’s desire for economic development and societal regulation (Zheng, 2005).

Although the right to education is endorsed by both China and the international community, China seems to diverge from the UDHR in its proclaimed nature and scope of education. The Education Law of the PRC (1995) announces that “[e]ducation shall serve the construction of socialist modernization” (Article 5) and “[t]he state shall conduct education ... in patriotism, collectivism and socialism ... national defence and ethnic unity” (Article 6). The incorporation of socialist doctrines is also mandated for HE (Article 53 of the Higher Education Law of the PRC, 1998) and vocational education (Article 4 of the Vocational Education Law of the PRC, 1999). Evidently, while the educational purpose advocated in the Chinese law is closely related to the imposition of socialist ideology, UDHR orients the aim of education to “the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms” (Article 26(2)). Indeed, as asserted by Spring (1998), education as a human right should place the citizens in the position of demanding an education that serves their interests rather than the state’s. Hence, China’s promotion of a politically-driven education system departs from the human-oriented dimensions of education enshrined in the UDHR.

Coomans (2004), who studies international human rights instruments including the UDHR, argues that the right to education implies individuals’ liberty to choose educational institutions outside the state school system. This necessitates the government to authorise the establishment of educational institutions by private bodies (Tomaševski, 2005). In China, although private schools have been granted equal legal status as state schools (Hua, 2009), the state plays a prominent role in the development, inspection, and assessment of the former (Article 24 and 25 of the Education Law of the PRC, 1995). Another aspect of state interference in education is the marginalisation of certain content. For example, religious knowledge and activities are minimised from the compulsory education system (Mahmut, 2019) and “[a]ny organization or individual may not employ religion to obstruct activities of the state education system” (Article 8 of the Education Law of the PRC, 1995). As a result, although individuals are accorded the right to choose their desired type of education, the state has controlled the kinds and substance of education available, which renders education as a civil and political right opaque in the Chinese discourse.

Social and Economic Dimensions

The social and economic facets place the obligations of making education available and accessible on the state (Coomans, 2004; Tomaševski, 2001). With reference to Article 22 of the UDHR, Beiter (2005) affirms that the availability of education is associated with the state’s responsibility to provide educational institutions, teachers, and teaching resources. Reflecting the social and economic aspects, China has made it mandatory and free for its citizens to complete both primary and secondary (Grade 1 – Grade 9) education since 1986 (Article 2 of the Compulsory Education Law of the PRC, 2014). As UDHR Article 26(1) only mandates free compulsory elementary education, China has surpassed this minimum

requirement. Despite being a developing country, China has allocated plentiful resources to raise the educational level of its new generation, particularly those from underprivileged areas (Zhang et al., 2019). Statistically, China's total national education expenditure exceeded 5.3 trillion yuan (0.59 trillion pounds) in 2020, with 2.43 trillion yuan (0.266 trillion pounds) spent on compulsory education (MOE, 2020). The outcomes of China's efforts are reflected in the National Bureau of Statistics (2019), where in 2018, the primary school enrolment ratio of school-age children reached approximately 100%, and the primary-to-secondary school promotion rate reached 99.1%.

However, behind the facade of fee-free state provision are growing numbers of fee-paying private schools (Zhang et al., 2019). Contrary to UDHR Article 26(1) that upholds education as a human right, privatisation of education echoes "[education] as a service" defined by the international trade law (Tomaševski, 2005, p. 1). Besides those established by entrepreneurs for middle-class children, many privately-run schools have been built for underprivileged rural children (Schulte, 2018). While the former type of schools gives economically-capable families more options, the latter is used as a solution to compensate for the state's inability or unwillingness to provide free-of-charge education in underdeveloped regions (ibid.). In light of this, China has not been entirely successful in executing its mandate to provide free compulsory education for all despite remarkable resource mobilisation.

Compared to elementary education, UDHR Article 26(1) provides less guarantee for other types of education. For example, HE is required to be accessible rather than free, compulsory, or available. Similarly, while China has developed a fairly complete legal system of HE (Xue, 2010), which has driven college enrollment rates from 9.1% in 1997 to 42.7% in 2016 (Li, 2019), China's current material circumstances cannot allow everyone to pursue their right to obtain HE (Jin & Zhou, 2020). Consequently, China has also implemented a nationwide HE tuition charging system (Dong & Wan, 2012). Although the tuition fees are low compared to many western countries, they constitute an economic obstacle for the financially difficult (Xue, 2010). Given this, the government has provided abundant educational loans and student aids to impoverished candidates. Thus, as affirmed by Tian and Liu (2019), HE in China can be described as a quasi-public good as it is selective, fee-charging, yet considerably funded by the state. Therefore, regarding HE, China parallels with UDHR Article 26(1) as both offer lower and vaguer promises in terms of the availability and affordability of HE than elementary education.

Cultural Dimensions

As indicated by the word "everyone" in UDHR Article 26(1), the right to education accrues to all. In conjunction with Article 2 of the UDHR, social categories "such as race, colour, sex, language ... [or] birth" should not deny individuals' entitlements of the right to education. An example of a breach of this right would be restricting entry to state education of citizens belonging to a particular social community (Coomans, 2007). In China, children of migrant workers (usually those who have migrated from rural to urban regions for brighter economic prospects) have limited access to free state schooling outside their original place as a result of China's unique household registration system (Chen & Feng, 2019). While the government has recently allowed these children to receive state education in cities where their parents work through legalisation and resource allocation, their educational right has not been effectively realised at the city government or school level (Goodburn, 2016; Pils, 2017). Consequently, many of these children end up attending substandard migrant-run private schools (Goodburn, 2015, 2016). Therefore, despite the central government's well-

intentioned endeavours, the right to free primary education has not been fulfilled for everyone on a non-discriminatory basis as delineated in UDHR Article 26(1).

Concerning HE, UDHR Article 26(1) declares that it “shall be equally accessible to all on the basis of merit”. This suggests that no one should be barred from entering HE by factors other than individual excellence (Beiter, 2005). Consistently, China also adopts a merit-based model of HE admission by assigning HE opportunities as per candidates’ scores through the National College Entrance Examination (NCEE) (Li, 2019). This is deemed a highly fair system as it disallows the use of social connections, a commonly employed method in modern Chinese society (Muthanna & Sang, 2015). Furthermore, this merit-dependent selection is believed to enable the hardworking yet socially disadvantaged to actualise upward mobility (Li, 2019). However, as argued by Huijser et al. (2008), displaying merit is contingent upon one’s previous access to educational opportunities, which can be significantly affected by various social conditions. One type of social inequality salient in China is the severe rural-urban divide, where urban families are far more capable of investing in their children’s learning by utilising various forms (i.e., social, cultural, and economic) of capital (Wu, 2008). Aside from these structural inequalities, which have been increasingly addressed by the government (Li, 2019), rural students also encounter what Roberts and Green (2013) term rurality-based spatial injustice, where they are socially constructed as deficient and have their cultures devalued in the urban-centric testing regime (Li, 2019).

Another social group with lower chances to attend HE through the NCEE is the ethnic minorities in China, who are believed to have low educational levels and less exposure to the ethnic majority mainstream culture (Lang, 2010; Teng & Ma, 2009). In order to safeguard their right to education, the state has enacted laws to compensate for their disadvantage in the current HE admission system, such as allowing them to be educated and examined in their ethnic language (Article 37 of the Regional Ethnic Autonomy Law of the PRC, 2001; Liu & Liu, 2015). One controversial policy is granting them substantially more marks or setting substantially lower cutoff marks in the NCEE (Lang, 2010). This is legally supported in the Regional Ethnic Autonomy Law of the PRC (2001) that “[i]nstitutions of higher education ... shall appropriately set lower standards and requirements for the admission of students from ethnic minorities” (Article 71). Guided by the principle of “different but equal”, this policy aims to provide equal access to HE through differential treatments in HE admission on the basis of ethnic identities (Lang, 2010, p. 45). However, opponents of this policy regard it as reverse discrimination against the ethnic majority’s educational right, especially those from equally disadvantaged backgrounds (Teng & Ma, 2009). Therefore, as this preferential policy prioritises collective right over individual equality (Lang, 2010), it violates the individual merit-based equal access to HE enshrined by UDHR Article 26(1).

Discussions and Conclusions

Through the three lenses of education as a civil and political right, a social and economic right, and a cultural right, this paper has examined, theoretically and practically, the degree of China’s adherence to UDHR Article 26(1). By considering the civil and political dimensions, it has found that the Chinese legislation concurs with UDHR Article 26(1) as both recognise the right-duty duality, with China being more explicit about the duty aspect, justified by its socialist development aspiration. However, as education in China is fraught with political indoctrination (at least based on the legislation), it differs from the UDHR, which cherishes the fulfilment of personal autonomy. Moreover, while the free choice of the education type seem to be granted for individuals in China, the kind of education available has already been

regulated or restricted by the government. From social and economic perspectives, China has exceeded the minimum criteria outlined in UDHR Article 26(1) by implementing free compulsory primary and secondary education. In reality, however, the presence of private schools as supplementary educational providers means that China has not yet attained its proclaimed goal. For HE, which the Chinese government has heavily financed, China aligns with UDHR Article 26(1) by implying less guarantee of availability and affordability. Regarding education as a cultural right, China has not ensured everyone's right to free primary education as endorsed by UDHR Article 26(1), with the case of migrant children exemplifying place of origin-based discrimination. Separately, although China embraces the merit-oriented HE entry policy stated in UDHR Article 26(1), other social categories such as rurality have influenced the accumulation of merit in the first place. Additionally, the case of implementing preferential policies to secure ethnic minorities' collective right runs counter to the individual right espoused in UDHR Article 26(1).

In the final analysis, this paper argues that although the Chinese government shares some common ground with the UDHR on the right to education, China departs from what is embodied and implied in UDHR Article 26(1) to a large degree. Notably, while the principles expressed in China's rhetoric often coincide with UDHR Article 26(1), there are nuances in interpretations and priorities owing to different ideological consciousness between China and the dominant international community. Further, it appears challenging for China to translate its ambitions into reality under the present practical and cultural environments. Reflexively speaking, as a Chinese citizen who has been through the Chinese education system, crafting this paper has allowed me to question what was previously beyond my contemplation. Yet, I acknowledge that the choices made during researching, writing, and argumentation were subject to my own socially constructed worldview. That said, this paper contributes to the limited research base on education as a human right in the Chinese context. Further research could strengthen the analytical rigour through a more in-depth investigation of the interpretations behind the Chinese discourse and the UDHR. Moreover, technical and professional education, non-citizens' and adults' right to education, and a similar topic in other contexts, which are beyond the scope of this paper, could be areas for future exploration.

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