



**The Management of Foreigners in China:  
Changes to the Migration Law and Regulations  
during the Late Hu-Wen and Early Xi-Li Eras and  
Their Potential Effects**

Tabea **Bork-Hüffer**\*  
*National University of Singapore*

Yuan **Yuan-Ihle**\*\*  
*Free University Berlin*

**Abstract**

Several substantial changes and amendments to the migration law of the People's Republic of China (PRC) have been introduced during the late Hu-Wen and early Xi-Li eras. The major objective of this article is to discuss whether the new provisions will generally change non-Chinese foreigners' livelihoods and opportunities for working and residing in the country. This paper analyses policy documents and reports, scholarly literature on the management of foreigners in China, and national and international media reports. We conclude that while there has been a rhetorical shift from a focus on strictly managing and controlling foreigners in China to attracting and promoting their inflow since the Hu-Wen era, new measures benefitting foreigners primarily target the so-called foreign talents. At the same time, greater emphasis is placed on monitoring and controlling other groups of foreigners and on reducing the "three illegalities" (illegal entry, illegal employment, and illegal stay). The new regulations that were released under the new leadership of Xi-Li during the summer of 2013 account for continuity since the Hu-





Wen era. The recent population census indicated that the number of foreigners in China is insignificant compared to the country's total population. However, the recent changes have made clear that the current PRC regime does not intend to increase the number of foreigners substantially and approaches its foreign population cautiously.

**Keywords:** *migration law, African migration, illegal migration, international migration, leadership change*

**JEL Classification:** *F22, J15, J61, K31*

## **1. Introduction**

Each generation of Chinese leaders since the opening reforms had acted deliberately in revealing the direction that reforms would take during its legislative period (cf. Callahan 2013). Cautious and long-term preparations ensured a smooth leadership transition during the last turnover from the generation of leaders under Hu Jintao and Wen Jiabao to the new regime led by Xi Jinping and Li Keqiang. Maintaining political, social and economic stability during this period is deemed of the highest importance for preventing socio-political unrest, maintaining steady economic growth, and maintaining one-party rule. Therefore, we can only surmise possible paths that will be pursued by the new leadership. Yet, Xi and Li joined the nine-member Politburo Standing Committee during the 17th Congress of the Chinese Communist Party in 2007, and have been groomed as the heirs and deputies of Hu and Wen; for this reason, Xiao (2013) expects continuity of policy rather than change.

Nevertheless, the management of foreigners in the People's Republic of China (PRC) has developed through the amendments and revisions in entry and exit administration law announced and partly implemented around the time of the leadership change during the late Hu-Wen era and the early Xi-Li era. The main objective of this article is to discuss the expected effects of the recent migration law changes. Will the management of foreigners change, and if so, to what extent? What





are the implications for foreigners' livelihoods and opportunities to work and reside in the country? In this paper, we focus on non-Chinese foreigners who live in or seek to live in mainland China (that is, not including the Hong Kong and Macao Special Administrative Regions). Therefore, we examine a narrower portion of China's migration law than is commonly considered in scholarly literature, which usually includes outflows of Chinese citizens for the purposes of tourism, visiting relatives, studying abroad, employment, or permanent residence and their return as well as the *Haiwai Huaren* (Chinese overseas) (e.g. Liang and Morooka, 2008; Zhu *et al.*, 2008; Liu, 2009, 2011).

Attracted by China's unprecedented economic boom and its resulting opportunities and demands, an increasing number of foreigners from diverse places have flown into the country, particularly in the aftermath of China's WTO accession. Among these new arrivals are expatriates working for transnational and Chinese companies, individual businessmen, students, journalists, and diplomats (Brady, 2000; Willis and Yeoh, 2002; Yeoh and Willis, 2005; Pieke, 2010, 2012). The 6th national census included data on foreigners living in mainland China for the first time and counted the number of foreigners at 593,832 at the end of 2010 (excluding those in the Hong Kong and Macao Special Administrative Regions and those on short-term business or tourist trips) (*People's Daily* as of 29 April 2011).

The next section (section 2) describes the development of Chinese migration law and policies prior to 1978 until the economic reforms, which is necessary to understand the impact and relevance of recent policy changes that are subsequently identified. In section 3, we consider the heterogeneous group of Africans residing in China to examine the management of foreigners in the PRC. We briefly outline African migration to China and analyse how Africans' immigration, livelihoods, and businesses have been affected by previous migration law changes and policy measures. In the discussion section (section 4), we consider the possible ramifications of recent alterations to the PRC's exit and entry law during the late Hu-Wen and early Xi-Li eras. We focus, first, on contingent general effects and, second, on the specific consequences for Africans living in China.





This paper is based on analysis of policy documents and reports, Chinese and international media reports, and scholarly literature on the management of foreigners in China. The case study of Africans in China is also based on the first author's fieldwork experiences in south-eastern China.

## **2. The Management of Foreigners: Development of the PRC Entry and Exit Law and Regulations**

### ***2.1. The Emergence of the PRC Migration Law and Its Changes from 1978 until the Mature Hu-Wen Era***

Before turning to recent changes to China's exit and entry system and how these potentially affect foreigners, especially African migrants residing in the country, it is necessary to briefly sketch the development of migration law in the PRC. After assuming power in 1949, the communist regime developed a coercive entry and exit administration system (Liu, 2009). One objective of the system was the cautious control of the flow of foreigners as well as their activities in the country. In the subsequent decades, only a carefully selected, very small number of foreigners who were sympathetic to the regime were permitted to remain in the country (Brady, 2003). The foreign population was cautiously separated from the local population through strict monitoring and regulations (Bork-Hüffer *et al.*, 2014).

In regard to the time after the opening reforms, changes to the entry and exist system were slowly implemented. A new foundation for migration law was laid with the "Law of the People's Republic of China on Control of the Entry and Exit of Aliens" (中华人民共和国外国人出境管理法), which was adopted and promulgated on 22 November 1985 and implemented through specific rules that were approved and promulgated in December 1986 (Liu, 2009, 2011). Alterations included the abrogation of the Exit Visa or Exit Certificate for foreigners, which had been introduced in 1954 (Liu, 2009).

Major modifications of regulations of the inflow of international migrants were fostered by the reinforced market reforms begun in 1992 and China's accession to the WTO in 2001. For instance, the Foreign



Exchange Certificate (FEC), which was a surrogate currency that foreigners in China were required to use for all purchases they made in the country (Petracca, 1990), was abolished in 1994. Since the 1990s, the strict separation of places of work and residence for foreigners and locals was gradually dissolved (Brady, 2000; Farrer, 2010; Bork-Hüffer *et al.*, 2014). Other regulatory aspects have remained in place until today, including the obligation to report the place of residence to the authorities within 24 hours in urban areas and 72 hours in rural areas, which allows close monitoring of foreigners' residences and movements.

One of the most progressive changes made to the entry and exit system for foreigners during the period following WTO accession was the modification to the residence permit system and the introduction of permanent residence. After the new conditions for residence permits were tested in Shanghai and Beijing in 2004, this new measure was applied to all of China (Liu, 2011). A new residence permit not only entitled the holder to reside legally in China but also replaced his or her visa and allowed for (multiple) entry into the country for the duration of the residence permit (Liu, 2011). This change to the residence permit system was of relevance for those who had entered China on an X (study), Z (work) or D (permanent residence) visa, and applications for resident permits could be handed in for periods of one, two, three, four, or five years.

In addition, a permanent residence scheme, the "Regulations on Examination and Approval of Permanent Residence of Aliens in China" (外国人在中国永久居留审批管理办法), was implemented in 2004. The permanent residence scheme allowed foreigners to apply for long-term stay in the country for the first time in case they had successfully obtained a D visa (cf. Liu, 2011). Three groups became eligible to apply for permanent residence: skilled migrants, business migrants and family migrants. Yet, the number of D visa holders was small and potential candidates were required to fulfill rigorous criteria, which radically diminished the number of applicants (cf. Liu, 2009). Consequently, the number of foreigners who received permanent residence permits during the seven years after the release of the "Regulations on Examination and Approval of Permanent Residence of Aliens in China", from 2004 to



2011, was insignificant. There were approximately 1,700 successful permanent residence applicants (*Wen Wei Po* as of 18 September 2013). However, a significantly higher number of permanent residences was approved in 2012. A total of 1,202 foreigners received a permanent residence permit in this single year; however, at least 53 per cent of these permits were issued to overseas Chinese (Anonymous, 2013). While this legislation included the preconditions that foreigners must fulfill to apply for permanent residence, no measures addressing the integration of these residents into the social welfare, education and other service systems available to Chinese citizens were included (Liu, 2009).

The gradual delegation of responsibilities within the administration to lower levels of government since the economic reforms has produced different local practices for managing and controlling foreigners and also varying initiatives targeted at attracting and catering to the foreign population (Brady, 2000; Wang and Lau, 2008; Liu, 2011; Bork-Hüffer *et al.*, 2014). The reforms of the exit and entry regulations implemented after 2001 led to local measures and regulations enforced by local authorities that amend (Liu, 2009) or conflict with the national regulatory framework. For example, as residence permits are issued by local Public Security Bureaus (Liu, 2011), local authorities have a much higher stake in deciding upon the lengths of stay of foreigners who work and study in their administrative zone ever since residence certificates have come to replace their holders' visas.

Moreover, local governments have increasingly undertaken activities to attract selected groups of foreigners – especially high-skilled foreign managers and professionals who are thought to be important for local economic development. Examples of such initiatives include the promotion of high-end gated communities adapted to the demands of the foreign population that are being built in Beijing (Wu and Webber, 2004) and Shanghai (Wang and Lau, 2008) and the release of the “Provisional Rules on the Implementation of the Shanghai Municipality Residence Certificate while Introducing Talents” (引进人才实行上海市居住证制度暂行规定) in Shanghai in 2002, which entitled foreigners with a Shanghai residence permit to obtain the same welfare benefits as Chinese citizens (Liu, 2011).





A restrictive visa issuance policy preceding the mega-events that the country has hosted over the last five years – including the Beijing Olympic Games 2008, the Shanghai Expo 2010, the Guangzhou Asian Games 2010, and the celebrations for China’s 60 year anniversary – was the subject of considerable international attention and criticism (cf. Bork-Hüffer *et al.*, 2014). These policies included decreases in the number of visas issued for business and travel purposes, rejections of multiple entry applications, and increased required documentation for visa applications, such as return tickets and hotel bookings for the entire stay (*Wallstreet Journal* as of 22 May 2008). Furthermore, citizens of 33 countries were no longer eligible to apply for visas in Hong Kong, and an invitation letter was also required in Hong Kong, where many intermediaries previously had procured visas without such documents (*Asia Times* as of 25 April 2008). These changes were introduced without a warning and affected many foreigners staying in or intending to travel to China.

Additionally, two other developments have been intensely discussed in China since the mature Hu-Wen era: With the increasing inflow of foreigners, Chinese media and scholarly sources, especially those discussing the management of foreigners in Guangzhou (e.g. *China Newsweek* 中国新闻周刊, 2009; Zhang, 2005; Liao and Du, 2011; Pan and Qin, 2011), have voiced great concern about the “three illegalities” (*sanfei* 三非: illegal entry, illegal stay and illegal employment of foreigners) and consider *sanfei* to be a significant source of criminality. While the de facto number of foreigners culpable of *sanfei* is unknown, this topic is discussed intensively in the state media and public and sometimes reveals xenophobic sentiments. Furthermore, migration intermediary agencies, mostly for exit-related services for Chinese but also for the immigration of foreigners, have proliferated to meet increasing demand. Several regulations were released in 1999, 2001 and 2002 to administer the activities of these intermediaries (Liu, 2009). However, reports on the informal activities conducted by these organizations have increased recently. For example, these organizations utilize loopholes in the system to issue visas to foreigners without invitation letters or other required documents (Bork-Hüffer *et al.*, 2014).





## ***2.2. Changes to the PRC Exit and Entry Law and Regulations during the Late Hu-Wen and Early Xi-Li Eras***

Three major amendments or revisions to the exit and entry system were made during the late Hu-Wen and early Xi-Li eras. The changes include an interim measure that allows foreigners to participate in the social insurance system for the first time, a new migration law and specific rules for implementing the new law, which will be outlined in the following paragraph.

The “Interim Measures for Social Insurance System Coverage of Foreigners Working within the Territory of China” (hereafter referred to as “Interim Measures for Social Insurance”) (在中国境内就业的外国人参加社会保险暂行办法) were released on 11 September 2011 and implemented since 15 October 2011 (Ministry of Human Resources and Social Security of the People’s Republic of China, 2011). This regulation applies to all foreigners legally employed in China (e.g., by private and public enterprises, public institutions, and registered non-governmental organizations) and covers all five social insurance schemes available to Chinese employees (pension insurance, medical insurance, work-related injury insurance, unemployment insurance and maternity insurance). Employers are responsible for registering their foreign employees for insurance within 30 days after the employees received their official employment permit (i.e., employment permit, foreign expert certificate, or certificate of resident foreign journalist). So far, only measures for the reimbursement of contributions made to pension insurance are specified in the regulation. Item 5 stipulates that when a foreigner leaves China before he or she is entitled to receive pension benefits or submits a written application to terminate the social insurance contract, the individual contribution to the pension fund can be refunded.

The second major change was the adoption of the “Exit-Entry Administration Law of the People’s Republic of China” (hereafter referred to as the “New Law”) (中华人民共和国出境入境管理法) (Standing Committee of the National People’s Congress of China, 2012) on 30 June 2012, which has replaced China’s “Law of the People’s Republic of China on Control of the Entry and Exit of Aliens” (hereafter





referred to as the “Old Law”). The New Law came into force on 1 July 2013. It substantially concretizes the previous version and integrates interim regulations and policies, e.g., the new procedures for residence permits and permanent residence. For instance, in accordance with the “Regulations on Examination and Approval of Permanent Residence of Aliens in China”, item 47 reaffirms the preconditions for acquiring permanent residence and stipulates that foreigners who have made remarkable contributions to Chinese social and economic development or comply with other preconditions specified in the “Regulations on Examination and Approval of Permanent Residence of Aliens in China” (e.g., high value direct investment and family reunion) may receive permanent residence. Residence permits are divided into two categories: employment and non-employment purposes.

Along with new provisions facilitating visa application, easing general entry and application for permanent residence, the New Law introduces additional measures for stricter supervision of the entry of foreigners and specifies prohibited activities related to the entry and exit of foreigners. The New Law also specifies penalties for foreigners committing *sanfei* activities and for persons providing support to these foreigners. For example, item 7 widens the authority of police and Ministry of Foreign Affairs to collect fingerprints and biological evidence from foreign travelers at borders and ports. Item 43 stipulates that a foreigner shall be considered to be illegally employed when he or she has not obtained either a work permit or work residence permit or he or she works in fields beyond the scope prescribed in the work permit. A foreign student shall be considered illegally employed if he or she works in violation of the rules for foreign students or works beyond the prescribed scope or time limits.

The revisions include specific and higher fines for activities related to illegal entry, stay, or work for all those involved, i.e., the foreigners and any person or entity helping foreigners to illegally exit or enter, work or reside in the country (items 71-74, 78-80). Additionally, measures to address foreigners guilty of *sanfei* were codified in PRC law for the first time. These measures include on-the-spot interrogation (item 59), continuous inspection (item 59), detention (items 60, 63), restriction





of foreigners' movements (item 61), and repatriation (item 62).

With the release of the New Law, new regulations for its implementation have been formulated under the new leadership: the "Administrative Regulations of the People's Republic of China on the Entry and Exit of Aliens" (hereafter referred to as the "New Regulations") (中华人民共和国外国人入境出境管理条例) (State Council of the People's Republic of China, 2013) were adopted in July 2013 and implemented since 1 September 2013. They introduce new types of visas and measures allowing stricter management of foreigners living in China.

The number of visa types increased from 8 (C, D, F, G, J, L, X, Z) to 12 (C, D, F, G, J, L, X, Z, R, M, Q, S). A new long-term visa, the R visa, should be issued to high-level foreigners with specialized skills that China urgently needs (item 6). To address illegal employment and criminal activities conducted by foreigners holding a short-term visa for visiting purposes (F visa), the scope of activities allowed under the F visa has been reduced in the New Regulations, as visitors on an F visa may no longer conduct commercial activities in China. Temporary visits for business purposes are now issued a new visa type, the M visa, which requires an invitation letter issued by a Chinese business partner (item 7). F visas can only be issued for visits with non-commercial purposes (e.g., cultural exchange, scientific investigation and research) and require an invitation letter from a Chinese host organization (item 6 and 7).

While Z visas (work) remain in place, family members of Z visa holders will now be issued an S visa for the purpose of visiting spouses, parents, children under 18 years old, and in-laws who are working or studying in China. The former L visa for tourist and family visits was divided into types L and Q. L visas will be issued only to tourists. The X (student), S (family visits to foreign family members residing in China), and Q (family or relative visits to family members or relatives holding Chinese citizenship or to foreigners holding permanent residence) visas are each divided into long-term (X1, S1, Q1) and short-term (X2, S2 and Q2) stays (item 6).

The New Regulations clarify provisions that address *sanfei*. Item 25





defines an illegal stay, which includes holding an expired visa or travel document and conducting activities that are beyond scope of the visa. To address the illegal employment of foreign students (e.g., teaching foreign languages or conducting illegal commercial activities) (cf. Ye, 2011), item 22 confirms the right of foreign students to obtain internships in China, but stipulates that any work-related activities must be allowed by the educational institute and require an appended note by the police on the residence certification. Furthermore, item 26 stipulates that employers and educational institutes are obliged to report to the police when their foreign employees or students leave, are missing, die or violate the New Regulations.

### **3. The Management of Foreigners: Africans in the PRC**

#### ***3.1. General Background of Africans in the PRC***

Drawing from the substantial body of literature on African migration to mainland China and fieldwork in China conducted between 2006 and 2010 that included qualitative interviews and a quantitative survey of Africans living in Guangzhou and the bordering city of Foshan as well as expert interviews with leaders of African home country unions, resident committees, and real estate agents (cf. Bork *et al.*, 2012; Bork-Hüffer *et al.*, 2014), we first introduce the diverse African population in China before turning to impacts of the immigration process on African migration to China and their livelihoods in the country. The possible effects of recent policy changes on African nationals are then presented in the discussion of overall ramifications in section 4.

African migration to mainland China began during the mid-1990s and was influenced by several parallel developments. First, some African students remained in China and entered the trading business. Second, African businessmen located in Hong Kong, attracted by the closeness of production sites and the established trading base that existed in the city of Guangzhou, began to explore mainland China. Third, the Asian financial crisis in 1997 encouraged some Africans who had been working in Southeast Asia to relocate to China to look for new business opportunities (Bertoncello and Bredeloup, 2007; Bodomo, 2012). The





influx of Africans increased substantially after China became a WTO member in 2001. Africans have (temporarily) settled in many major cities in mainland China of which the largest numbers reside in Guangzhou, Yiwu, which hosts the second largest cluster of Africans, Shanghai, and Beijing (Bodomo, 2012: 10). Furthermore, African diaspora communities reside in the Hong Kong and Macao Special Administrative Regions (cf. Bertoncello and Bredeloup, 2007; Bodomo and Teixeira-E-Silva, 2012; Mathews and Yang, 2012); however, these communities will not be considered in this paper.

Based on surveys of China's African community, Bodomo (2012: 12) estimates that 400,000 to 500,000 Africans have settled in or are temporarily visiting China. Unlike the official number of foreigners in the PRC based on the 2010 census, this number includes Africans on tourist or business (former F) visas. Most Africans in China work in the export/import of Chinese goods and were issued F visas, which were not counted in the last census. Others are enrolled as students at Chinese universities, employed as professionals (e.g., teachers, professors, professional athletes, diplomats) or are visiting for a short time for business purposes (Bodomo, 2012: 12-13).

The countries of origin vary by location: the large group of traders in Guangzhou mostly originates from West African countries, while many Africans in Yiwu are from the Maghreb region (Bodomo, 2012: 11). Scholars have described the emergence and consolidation of an ethnic enclave in Guangzhou around the Xiaobeilu area – a residential and business location dominated by Africans (Li *et al.*, 2008; Zhang, 2008; Li *et al.*, 2012; Li *et al.*, 2013). There are strong links within the diverse African communities: chain migration plays an important role in the continuous inflow and final destination of newcomers to China. Migrants without a network or resources often begin working as employees for established African traders. Strong bonding within the communities is also reflected in shared and celebrated socio-cultural customs; Bodomo and Ma (2012) have emphasized the importance of food and eating together for community building among West Africans in Guangzhou. African migrants in China have created home country unions that provide their members with a variety of services (cf. for an





overview of home country unions in China, Bodomo, 2012, and for the types of services, Bork-Hüffer *et al.*, 2014), which are based in Guangzhou due to the large population of Africans in south-eastern China.

In addition to their attachment to the own migrant communities, many African traders have developed economic and social links to the host society. They reinvest a significant portion of their profits in the country (Bertoncelo and Bredeloup, 2007), some offer employment opportunities to locals in their businesses (Bertoncelo and Bredeloup, 2007; Bork-Hüffer *et al.*, 2014), a few have local partners, or marry Chinese nationals (Bork-Hüffer *et al.*, accepted for publication). However, as Xu and Liang (2012) have noted, exchange with locals and integration into the host society is largely dependent upon the migrants' ability to speak either Mandarin or the local dialect, which is true for only a small percentage of Africans. Furthermore, Müller and Wehrhahn (2013) have pointed to the economic difficulties faced by Africans due to contracts or oral arrangements breached by their local trading partners.

### ***3.2. The Effects of the Management of Foreigners on the Inflow, Lives and Businesses of Africans in the Mature Hu-Wen Era***

Overall, Africans occupy a special position among foreigners in China for several reasons. The majority of them are individual businessmen and businesswomen. Unlike other groups of foreigners (of which many are expatriates who were recruited by transnational and Chinese companies for their specific expertise), African petty traders have come to China looking for niches in the import and export trading system. Their inflow has not been supported by the national government or the local communities they reside in as the one of the so-called "foreign talents". Additionally, black Africans have been particularly affected by discrimination and racism against foreigners in China (cf. Callahan, 2013).

While the types of visas that African professionals have held varies (work visas [Z], business visas [F], diplomatic visas), most African traders have been issued business visas (the former F visas; Bork-Hüffer





et al., 2014) because they either have their own business or work for other small businesses (mostly operated by Africans) and are not eligible for Z visas, which require employment in a larger, recognized company. Those enrolled in universities obtain student visas. Several authors have reported that African traders who do not manage to obtain business visas overstay or stay on tourist or student visas (Haugen, 2012; Mathews and Yang, 2012; Müller and Wehrhahn, 2013; Bork-Hüffer *et al.*, 2014).

The entry of foreigners in general, and for Africans in particular, has become much more difficult since the Beijing Olympic Games in 2008. During this and other mega-events (cf. section 2.1), the Hu-Wen regime was eager to create a progressive and prestigious image of the nation and convince national and international audiences of the success of the economic reform path (Broudehoux, 2007; Brady, 2009; Callahan, 2013). The regime, and thus the local municipalities, feared tarnishing these endeavours with any negative reports that could be caused by the activities of its foreign population. As Li *et al.* (2012) have reported, in 2008, the Guangzhou government was reprimanded by the People's Consultative Conference (CPCC) for not monitoring and controlling its foreign, particularly African, population more effectively. Tension increased when Africans protested in Guangzhou in 2009 after two African textile retailers were seriously hurt escaping a police raid. A similar protest occurred in 2012 after the death of an African in police custody. Both the national and city governments have been alarmed, especially prior to the Asian Games in November 2010.

At the local level, the municipal government increased controls and raids of business locations in the Xiaobeilu and Guangyuanxi areas in Guangzhou and at residences. These culminated in almost daily inspections in the months prior to the Asian Games during which Africans often faced harsh and offensive treatment by the foreigner police; such raids were witnessed by the first author in Guangyuanxi. At the national level, only short-term visas were issued to many foreigners, particularly Africans, who were unable to obtain extensions for their F visas to conduct business (Bodomo and Ma, 2010; Müller and Wehrhahn, 2013; Bork-Hüffer *et al.*, 2014).





Differences in local strategies of addressing foreigners were reported in a comparison of Guangzhou and Yiwu (Bodomo and Ma, 2010) and Guangzhou and Foshan (Bork *et al.*, 2012; Bork-Hüffer *et al.*, 2014). Bodomo and Ma (2010: 288) note that “more efficient, more professional, less corrupt and more racially tolerant” enforcement personnel is found in Yiwu, which accounts for fairer treatment of Africans compared to treatment observed in Guangzhou. In addition, they report that Africans in Yiwu experience greater religious freedom compared to their compatriots in Guangzhou, where many migrants have joined illegal Pentecostal churches, which are not allowed to practice (cf. Haugen, 2013). Bork-Hüffer *et al.* (Bork *et al.*, 2012; Bork-Hüffer *et al.*, 2014) found that a considerable number of traders had relocated their place of residence from Guangzhou to the neighbouring city of Foshan, while continuing to work in Guangzhou. In addition to economic incentives such as more affordable housing in Foshan, the more lax treatment of foreigners and less control of documents influenced relocation to Foshan. However, the authorities in Foshan have also started to change their attitude towards its growing African population. This change was reflected in an unofficial order issued at the beginning of 2010 to all registered housing agents in the main areas where Africans were residing to stop leasing apartments to Africans.

#### **4. Discussion: Evaluating Recent Changes in China’s Migration Law and Policy**

While China’s exit and entry administration system has undergone gradual relaxation and differentiation since the opening policies in 1978 (cf. Liu, 2009, 2011), there have been profound amendments during the late Hu-Wen and early Xi-Li eras. The specific implementation and effects of recent modifications are awaited, and only preliminary conclusions based on past developments are possible at this time. We first discuss the potential success of the “Interim Measures for Social Insurance” before turning to an analysis of the different implications of the New Law and New Regulations. We will also discuss possible ramifications of the changes for African migrants living in China.





#### **4.1. Evaluating the “Interim Measures for Social Insurance”**

A change towards providing more services to foreigners is clearly reflected in the “Interim Measures for Social Insurance System Coverage of Foreigners”, which offers foreigners the possibility to join the national social security scheme for the first time. However, we argue that this system is not yet of high interest to many foreigners in the country. Although it is on the rise, the number of foreigners who manage to obtain permanent residence and who have a long-term perspective to remain in the country is still very low. The past arbitrariness of the entry and exit law, e.g., changes in advance of the mega-events that the country has hosted, leaves many foreigners feeling insecure about their stay and the personal benefit of joining the Chinese social insurance programme. Participating in the insurance also requires that foreigners are employed by a company or institution, which excludes individual business-owners.

Additionally, the specifics of the regulation are lacking in three areas. First, details of how insured foreigners benefit from social insurance within and outside China are missing. Second, a clear explanation of benefits and how the contributions paid to medical insurance, work-related injury insurance, unemployment insurance and maternity insurance would be refunded after an insured foreigner leaves China is needed. So far, only measures on the reimbursement of contributions to the pension insurance have been released (see section 2.2). Third, China has signed bilateral agreements on the exoneration of pension insurance and unemployment insurance only with Germany in 2001 and with South Korea in 2003 on the exoneration of pension insurance. Thus, so far, transnational companies and their foreign employees from other countries worry that they must pay contributions to social insurance in both China and their country of origin (*China Economic Weekly* 中国经济周刊, 2011).

These factors significantly reduce the attractiveness of the social insurance system for many foreigners. The Chinese media has also repeatedly stressed that the integration of foreign employees into the Chinese social insurance system may make an enormous contribution to





the social insurance fund and benefit Chinese society. According to an estimate by PricewaterhouseCoopers, if the approximately 600,000 foreigners working in China became members of the social insurance system, they could potentially contribute 3,360 million RMB to the social insurance fund (*China Economic Weekly* 中国经济周刊, 2011: 40). However, actual benefits of the “Interim Measures for Social Insurance” for foreigners remain undefined.

#### **4.2. Evaluating Recent Changes Related to the New Law and New Regulations**

Overall, the New Law and New Regulations have clarified China’s migration law for foreigners. These measures are intended to attract foreign talents and increase control of foreigners. Changes to the exit and entry law and regulations during the Hu-Wen era in addition to the “Interim Measures on Social Insurance” that benefit foreigners are actually restricted to a small and privileged group of foreigners. These measures include the introduction of permanent residency in 2004 and changes to the scope of residence permits and their integration in the New Law in 2012. The promotion of permanent residence during the late Hu-Wen era was clearly notable in the increase in permanent residencies granted in 2012 but their overall number is still very low.

The promotion of the inflow of foreign talent has been strengthened in the New Regulations under the new leadership, e.g., through the creation of new R (talent) visas. However, concrete guidelines for the issuance of this visa have not been agreed upon and the effects are unknown. According to a *China Daily* article (*China Daily* as of 4 May 2013) that refers to a draft of the New Regulations, R visas are divided into R1 and R2 visas: an R1 holder would be entitled to apply for a residence permit for up to 5 years with unlimited entry and exits, while a R2 holder may stay in China for up to 180 days without having to leave the country in-between while the R2 also comes with the right for multiple entries and exits. It remains unclear when a foreigner should apply for an R visa and when to apply for a Z (work) visa. Hence, the eligibility for these visas must be further determined and it remains to be seen how many foreigners will successfully obtain an R visa.





For the majority of foreigners, the New Law and the New Regulations imply stricter monitoring and control. Specifically, the New Regulations that have been released and implemented under the new leadership regime intend to more closely monitor individuals who come to China for business purposes and who have previously stayed on F visas but must now apply for M (business) visas. Moreover, no option for long-term stays for the large number of foreigners who have their own businesses and for their foreign employees currently exists because these applicants are barred from obtaining Z (work) or R (talent) visas that require their applicants to be employed by a Chinese or larger transnational company or institution. Additionally, few applicants will be able to fulfil the rigorous set of criteria required to apply for a D (permanent residence) visa. Thus, although some (e.g. petty African businessmen or businesswomen) might (intend to) stay in China for a long period, these people are dependent on frequent renewal of their short-term M visas.

A major focus of the New Law and the New Regulations was the new measures to target the three illegalities (*sanfei*) and illegally operating migration intermediaries. The formulation of more concrete provisions on visa categories and illegal acts increases transparency for foreigners. The official announcement of unitary guidelines on measures that can be taken by the authorities and of limits for penalties and fines for foreigners guilty of *sanfei* also reduces the scope for arbitrary enforcement by local authorities. The stricter penalties for migration intermediary agencies could discourage their operations. However, the success of measures targeting *sanfei* will depend on the success of their local enforcement, and previous reports suggest that insufficient resources and corrupt enforcement personnel often affect enforcement (cf. Bork-Hüffer *et al.*, 2014).

The changes in immigration processes prior to mega-events have shown that short-term modifications are implemented without a warning. The resulting confusion among foreigners is fuelled by speculation in local and international media reports that often deviates considerably because they draw from partial or biased information. Only when such short-term measures are stopped and all modifications to the





management of foreigners and immigration processes are officially announced – in reasonable advance of their implementation – can transparency be permanently improved.

The privileging of selected foreigners during the Hu-Wen era is consistent with the Mao Zedong and early Deng Xiaoping eras during which foreigners that sympathized with the Chinese leadership were invited to China and strategically utilized by the government to bolster political legitimacy (Brady, 2000). However, unlike during the Mao era, the late tendency to favour certain groups of elite foreigners and foreign talent is more economically than politically motivated as these groups are regarded as having knowledge, skills, and relationships that are beneficial for China's economy.

Constructing a special status of selected foreigners also has a long tradition in China, which was enacted e.g., through the FEC for financially privileged foreigners (cf. Petracca, 1990) and the restriction of their residences to high-class hotels and accommodation for foreigners (Brady, 2000). Instead of fostering preferential treatment of elite foreigners, policies should rather focus on accommodating foreigners as equal components of the Chinese society. Yet, as Brady (2000) has argued, foreign policy and the management of foreigners have not only been implemented to supervise foreign influences but also play an implicit role in controlling the Chinese population. The government's interest is to maintain the notion of the foreign "other" rather than to achieve close bonds between foreigners and Chinese locals or integrate the former. It is unlikely that any such change in China's strategy of managing foreigners will occur in the future.

Separating foreigners into wanted and unwanted groups is aggravated by the practices of local authorities, which also focus on policies and activities that attract high-skilled, well-funded foreigners and investment to their cities. The design of new, high-class luxury gated communities for foreign professionals, as reported by Wang and Lau (2008), in Shanghai is only one example of such local policies. We argue that this preferential treatment of foreigners produces a "second type of segregation" of foreigners from locals. The first type of institutional segregation of foreigners occurred through high-class foreigner-centred





hotels and accommodations during the Mao era, which have only recently been abolished. Such measures are detrimental to the integration of foreigners into China and cause discontent in the local population and encourage the xenophobic voices that have become much louder during the last decade.

#### ***4.3. Evaluating the Effects of Recent Changes in China's Migration Law and Policy for Africans in the PRC***

To evaluate possible ramifications for Africans living in China, it is necessary to distinguish among the different groups that reside in the country. The immigration of African elite migrants may be positively affected by recent changes; China's continuous economic development maintains the demand for highly skilled professionals, teachers, and professors at a high level. Some of these foreigners might become eligible for R1 or R2 visas or benefit from eased preconditions for permanent residency. Likewise, these individuals could become members of the social insurance system.

However, we expect that the recent changes are detrimental to the entry and work of African traders in China, i.e., the vast majority of Africans in China, because they do not benefit from the new regulations. Rather, these migrants are intended to be more strictly controlled. How the changed conditions for the issuance of the F business visa affects the entry of these foreigners and whether they will be issued M visas remains to be seen. As noted above, individual businessmen and -women continue to be barred from visa types granting long-term stays in the country and must continuously renew their M visas. Furthermore, African traders are also not eligible to become members of the social insurance system.

As noted in section 3.2, the tightening of visa issuance and controls in relation to the international events that were staged in China during recent years have had profound effects on the livelihoods of African traders. Many are required to leave and return to the country regularly for business purposes, e.g., to maintain contact with intermediaries and buyers in their home or other countries from which they import goods. These traders were particularly affected by the downturn in applications





for multiple entries. Furthermore, migrants of several African nationalities (among them South Africans and Nigerians) were also among the citizens of 33 nations that were no longer allowed to apply for visas in Hong Kong prior to the Beijing Olympic Games (*Asia Times* as of 25 April 2008). As generally applying for or renewing expiring visas in Hong Kong was and is a common practice among Africans based in south-eastern China (cf. Müller and Wehrhahn, 2013; Bork-Hüffer *et al.*, 2014), this policy harshly affected those staying in the region.

Overall, problems in obtaining valid visas have decreased the number of African traders staying in China. Due to the changed circumstances, migrants sought alternative strategies for remaining in the country. While some decided to overstay their visas, others who could obtain sufficient funds bought a visa from intermediary agents based in Guangzhou, in Hong Kong or in their home country and that would sell visas without necessary documents (e.g., an invitation letter) for a high price (Haugen, 2012; Bork-Hüffer *et al.*, 2014). Because their livelihoods and relatives back home depend on the businesses they have established in China, such short-term changes in immigration processes hardly gives them the option to look for other opportunities.

Those who had overstayed were found to be in a “second state of immobility” by Haugen (2012) in her study on Nigerians in Guangzhou because both their transnational and translocal mobility were affected by not holding valid papers that would allow them to go abroad and the constant threat of being caught in China. Furthermore, some undocumented Nigerians turned to illegal activities, such as selling drugs, when they had not perceived other opportunities for making a living. Policy changes have also significantly increased insecurity among traders, which is detrimental to the stabilization of relations with intermediaries and business partners, the establishment of trust, generating a secure trading base, and the traders’ general economic situation according to Müller and Wehrhahn (2011, 2013).

It is questionable whether the number of undocumented Africans working and residing in China can effectively be reduced simply through the higher penalties that were approved with the New Law. As Haugen





(2012) notes in her study on undocumented Nigerians in Guangzhou, these migrants are willing to take high risks given the lack of alternatives, such as returning to their home country or migrating somewhere else. Overall, as Bork-Hüffer *et al.* (accepted for publication) argue, African traders “contribute to increasing the demand for and international trade with Chinese products, they invest and/or consume in the country, and a substantial number employ Chinese workers, which are all factors that benefit the Chinese economy and society”, which renders the arbitrary immigration measures themselves rather than the response of the Africans as questionable.

## 5. Conclusions

There has been a rhetorical shift from a focus on strictly managing and controlling foreigners in China to attracting and promoting their inflow since the Hu-Wen leadership era. However, a close examination of the Interim Measures for Social Insurance and the New Law reveals that such changes refer almost solely to the so-called foreign talents. For all other groups, the recent alterations produce stricter monitoring and control. Emphasis has been placed on the control of illegal entry, stay, and employment. The New Regulations released under the leadership of Xi-Li in summer 2013 account for continuity since the Hu-Wen era.

Nevertheless, the formulation of precise and clearer guidelines for entry, exit, stay, and employment of foreigners in China throughout the late Hu-Wen and early Xi-Li eras has increased transparency. However, additional implementation rules still need to be determined (e.g., in regard to the new visas) and it has to be seen how the new regulations will be enforced.

Overall, the New Law, New Regulations, and notably low number of issued permanent residences have made clear that the former and current PRC regimes have not intended and do not intend to increase the number of foreigners substantially and maintain a cautious stance towards foreigners. The recent population census indicates that the number of foreigners in China is insignificant compared to the country's total population. China will face an increasing labour shortage in the





coming decades because of the one child policy, which has created an imbalanced dependency ratio as an increasing number of older people are supported by working-age people (Pieke, 2012). Unlike other countries that are experiencing falling birth rates and decreases in population, China's government does not seem to consider immigration to be one strategy to address its shrinking population.

## Notes

\* Dr Tabea Bork-Hüffer is Alexander-von-Humboldt-Foundation Fellow at the Migration Cluster of the Asia Research Institute, National University of Singapore (NUS). She has studied geography, sociology and social anthropology at the Universities of Bonn, Belfast and Cologne and received the national award of the Association of Geographers at German Universities (VGdH) for her Ph.D. thesis ("Migrants' health seeking actions in Guangzhou, China", Steiner Publishers, 2012). Her research interests and publications centre on the changing geographies of internal and international migration, space and place, health, and new media with a regional focus on China, Southeast Asia (Malaysia and Singapore) and Germany. Before arriving at NUS, she was the scientific coordinator of the German Research Foundations' Priority Program "Megacities – Megachallenge: Informal dynamics of global change", which includes 10 projects and 70 researchers in China, Bangladesh and Germany. <Email: [aritbh@nus.edu.sg](mailto:aritbh@nus.edu.sg)>

\*\* Dipl.-Polit. Yuan Yuan-Ihle 袁苑 is a Ph.D. candidate at the Otto Suhr Institute of Political Science, Free University Berlin, Germany. She obtained a Bachelor's degree in international politics from Beijing University, PR China and a Diploma degree in Political Science from the Free University of Berlin, Germany. She was a research fellow at the Free University of Berlin as part of the projects "Governance in areas of limited statehood" and "Megacities-Megachallenge – Informal dynamics of global change", which were both funded by the German Research Foundation. Her current research interests include internal and international migration, health policy, and policy transformation. <Email: [yuan yuan@zedat.fu-berlin.de](mailto:yuan yuan@zedat.fu-berlin.de)>





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