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# The Legal Frameworks of Technical and Vocational Education and Training (TVET) from International Level to National Level of China<sup>1</sup>

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<sup>1</sup> 'China' in this thesis mere refers to 'China Mainland' not including China Hongkong, China Macau and China Taiwan.

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# **The Legal Frameworks of Technical and Vocational Education and Training (TVET) from International Level to National Level of China<sup>2</sup>**

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<sup>2</sup> 'China' in this thesis mere refers to 'China Mainland' not including China Hongkong, China Macau and China Taiwan.

# Summary

Technical and Vocational Educational and Training (TVET) deals with learning for work. It is enshrined in the right to education and right to work in international human rights instruments, and under the auspice of human rights exactly within the concept of those two rights, in the international level, TVET is guided by UNESCO and ILO, pacifically, UNESCO it is regulated as part of the Education For All (EFA), Education for Sustainable Development (ESD) and poverty reduction of UN Millennium Development Goals (UN-MDGs) through two TVET standard-setting instruments: UNESCO Convention on Technical and Vocational Education 1989 and Revised Recommendation on Technical and Vocational Education 2001, and UNESCO's platform based on UNESCO-UNEVOC, while in ILO it is mainly regulated in the framework of human resource development within the concept of employment and decent work through ILO standards: Convention No.142 on Human Resource Development 1975 and Recommendation No.195 on Human Resource Development 2004, and ILO's related projects and strong research especially in green kills<sup>3</sup> and trend identification of labour market. In the national Level of China, TVET is guided by Ministry of Education and Ministry of Human Resource and Social Security through strong policies and weak laws on education such as vocational education law 1996, and social laws such as employment promotion law 2007.

This thesis clarifies the concept of TVET and examines sequentially the TVET related legal framework from international human rights instruments, ILO, UNESCO to national context of China through assessing contents of related norms, examining their ratification and implementation and monitor, and comparing the difference between each other within and beyond the framework of their own. Meanwhile it highlights the identical characters, together with TVET legal instruments, of each of the international bodies, and examine the impact of both international legal instruments and other initiatives on national level of China. The thesis also draws on from the recent TVET research to complement the evaluation of the TVET legal framework in the international level. It concludes that TVET legal framework in international level do impacts on national level like China, but as other soft international level, their impact is quite limited ( thought ILO's standards relatively stronger), and oppositely TVET international platform, services and research seems much appealing and influential on national level like China.

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<sup>3</sup> Some argue that "green skills" are simply traditional skills that are put into use in environmental related sectors and activities, whist others argue that "green skills" represent a completely new set of skills which remain largely absent within existing labor markets, however, in most cases the new jobs created by the growth of the green economy will require a mix of both traditional and new "green skills" (OECD, CFE/LEED(2010)4, P 25) .

# Preface

Coming from the less developed region of China, I have already heard different work-related live stories from the people I know. Without adequate skills, most of them survive merely as cheap laborer wherever they try their fortune. On the way to my study of international human rights law in the summer of 2010, I heard another sad story about a 17-year girl who had been in coma for one week after 2-month work of cleaning electrical particles in a local factory of my home town, and the elder sister worried not only her own sister in coma but also other workers around 18 years old who also fainted quite often but were pleased by the factory with ice-sticks and one-day off after the faint. Those young workers just completed their 9-year compulsory education and they had not obtain any work-related special skills from that education.

At the end of the master program of international human rights law, I still feel not capable enough to deal with the Chinese problem in big concept of rule of law, democracy, good governance, and transparency etc., instead, I would rather explore the potential of skills obtaining for the purpose of expanding work or job choices through examining the TVET related legal framework in international level and national level of China, in order to see how to better guide TVET development in the international level and then impact on the national level and furthermore benefit the individuals.

For this thesis, sincere thanks now is packaged for delivery to: my supervisor Prof. Mia Ronnmar for her professional and patient supervision, all courses teachers for their imparting generic knowledge of human rights law, my opponent Erika Karlsson for her honest and constructive comments, the members of thesis seminars for their inspiring questions and suggestions, program coordinator Mr. Anders Trojer for his arranging work, and my parents for their stable financial support along the way.

# Abbreviations

ALMPs	Training-related Active Labor Market Programs
CCE	Climate Change Education
CCPR	Convention on the Civil and Political Rights
CEDEFOP	European Center for the Development of Vocational Training
CESCR	Convention on Economic Social and Cultural Rights
CEDAW	Convention on Elimination All Kinds of Discrimination against Woman
CR	UNESCO Committee on Conventions and Recommendations
CRC	Convention on the Rights of Children
CRMW	Convention on the Rights of Migrant Workers and Their Families
CRPD	Convention on the Rights of People with Disabilities
EFT	European Training Found
EFA	Education for All
ESD	Education for Sustainable Development
HRC	Human Rights Council
IGO	Inter-Government Organization
ILO	International Labor Organization
IOE	International Organization of Employers
ITUC	International Trade Union Confederation
NGO	Non-Government Organization
OECD	the Organization for Economic Co-operation and Development
OHCHR	Office of The United Nations High Commissioner for Human Rights
OJT	On-the-job Training
TVE	Technical and Vocational Education
TVET	Technical and Vocational Educational and Training
TVSD	Technical and Vocational Skills Development
UNECSCO	United Nations Economic Cultural and Social Cooperation
UNECSCO-UNEVOC	UNECSCO-United Nations Center of Technical and Vocational Education and Training
UDHR	Universal Declaration of Human Rights
UIS	UNESCO-Institute for Statistics
UNDP	United Nations Development Programs
UNDP-PD	UNDP- Population Department
UNEP	United Nations Environment Program
UNIDO	United Nations Industrial Development Organization
VT	Vocational Training
VG	Vocational guidance
WHO	World Health Organization
1989 convention	UNESCO Convention on Technical and Vocational Education (1989)
2001 revised recommendation	UNESCO Revised Recommendation on Technical and Vocational Education (2001)



# 1 Introduction

## 1.1 Research Purpose and Research Questions

Technical and Vocational Education and Training (TVET) is drawing more attention both from the international level and national level due to its intrinsic nature: education for employability<sup>4</sup> and its contribution to the economic, social and environmental development. Firstly, creating jobs and increasing productivity are at the top of agenda for policymakers across the world, and resilient and responsive TVET can supply the economy with the human capital of skilled workers; Secondly, skills have become a leading policy concern and there is strong demand for upgrading skills and improving linkages between learning and work, in the background of demographic shifts, rapid labor market changes and high youth unemployment in many countries; Thirdly, TVET can provide some of the new knowledge, skills and attitudes required by the transition to green economies and societies.<sup>5</sup> The increasing attention paid to TVET can be also embodied from the 3<sup>rd</sup> International Congress on Technical and Vocational Education and Training (3<sup>rd</sup> TVET congress) in May 2012, and World Bank's (WB) conceived publication '*The Right Skills for the Job?: Rethinking Training Policies for Workers*' which focuses on three types of training programs relevant for individuals who are leaving the formal general schooling system or are already in the labor market: pre-employment TVET, on-the-job training (OJT) and training-related active labor market programs (ALMPs), and world bank's *World Development Report 2012: Gender Equality and Development* repeatedly censures the technical and vocational training of women. However, it seems most attention is paid to TVET related policies and national practice, how is the TVET legal framework internationally and nationally, it is not well known.

TVET in Chinese context involves the author's original interests but the problem in Chinese democracy, rule of law, transparency, and legal and cultural tradition is what this thesis tries to avoid due to its complexity. Meanwhile, as a human rights activist, the author is convinced that not only Chinese people who need TVET to undertake the individual capacity building, but also people from other countries all through the world. Thus, this thesis mainly takes the international perspective: the TVET international legal framework together with other international guidance. It is hoped that those international guidance mainly international legal frameworks, can impact on single national TVET governance<sup>6</sup> and furthermore benefit individuals all through the world. This thesis endeavors to achieve the author's original interests in the way: TVET international legal framework and other guidance » Chinese TVET governance » Chinese individuals (for example, the 17-year girl in comma in the author's home town).

The research purpose of this thesis is to examine the TVET related legal framework in international level and in national level of China, in order to explore how to enhance the impact of TVET

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<sup>4</sup> According to ILO R195, 'employability relates to portable competencies and qualifications that enhance an individual's capacity to make use of the education and training opportunities available in order to secure and retain decent work, to progress within the enterprise and between jobs, and to cope with changing technology and labour market conditions.'

<sup>5</sup> UNESCO, 189 EX/6 Part II (2012), p 1.

<sup>6</sup> TVET governance: It is concerned with 'how the funding, provision, ownership and regulation of TVET systems are coordinated, which actors are involved, and what are their respective roles and responsibilities, and level of formal competence – at the local, regional, national and supranational level.' and state government 'continues to play the most significant role in coordinating TVET, the distribution of these responsibilities has been changing in response to calls for greater efficiency and effectiveness, particularly to engage employers.' (UNESCO, ED/ESB/TVET/2010/02.)

international guidance on the national TVET practice such as Chinese TVET governance. This top-down approach may be arguable, but the coverage of the influence will be possibly benefit individuals from the highest level and broadest geography, and it might be also a better approach to improve Chinese TVET governance if it is not called a tricky way by avoiding the analysis of Chinese fundamental problem in democracy, rule of law, and transparency etc..

To achieve the research purpose, the following research questions are raised:

1. What is the concept of TVET? And how many competent international bodies in this field?
2. In the international level, how many legal frameworks applicable to TVET? How are they related with each other? What are the most related to TVET?
3. How are those most related TVET legal framework in the international level, in terms of norms, ratification, implementation and monitor, and their impact on national level generally and on China pacifically? What is their comparative character with each other?
4. Are there any TVET initiatives or guidance from those mentioned international bodies except legal frameworks? If yes, what is their comparative character with each other? What is their impact on national level generally and on China pacifically by comparing with the TVET legal frameworks?
5. What is the TVET governance in China, including the laws and policies? What are the content and implementation and monitor of those TVET related laws and policies? What are their impact on individuals? Which functions better comparatively?
6. In Chinese TVET context, Which TVET international guidance affects China more than others, the legal framework or the initiatives or other guidance? Which the most influential one?
7. Any hints obtained from the above questions when considering to enhance the the impact of TVET international guidance on national TVET governance that countries like China can be benefit from?

## **1.2 Methodologies, Materials and Sources**

To well answer the research questions, the following methodologies are applied.

1. Relevance ranking and selection. For the competency in TVET of different international bodies and Chinese authorities, the different legal frameworks related to TVET both in the international level and national level of China, and the initiatives or other guidance such as policies of the competent international bodies and Chinese authorities.
2. Legal analysis. Its subject is the TVET legal frameworks of international human rights bodies, ILO, UNESCO and China. The content of the analysis for the international ones covers the norms, the ratification, the monitoring document and existing individual compliant (if any); The content for the Chinese ones covers the norms, the judicial applicability of the law, the cases (if any) and other way of implementation (if any).
3. Legal Comparison. For the international legal frameworks, comparing the content of the norm, the amount of the ratification, and the content of the monitoring documents; for the Chinese ones, comparing the content of the norms, the judicial applicability, the cases (if any), and the other implementation (if any); for these two veridical frameworks: international—national of China, comparing the contents of the norms.
4. Non-legal analysis and comparison. In the international level its subject is the TVET related initiatives or other guidance from the international competent bodies: ILO and UNESCO, and the analysis and comparison covers those initiatives or guidance in terms of the content, the character, the engagement scale of national states, and their relationship with the TVET legal framework within and beyond their own system; in the national level of China its subject is the Chinese policies through

analysing and comparing the content, implementation, and the amount of benefited individuals, and the relation with TVET related Chinese laws; in these two vertical line: international-national of China, the analysis and comparison cover the content of legal norms and other guidance or policies.

5. Quantity analysis. In the international level, it involves the quantity of member states of the relevant legal instruments, the coverage of the non-legal guidance, and the amount of states reports and the monitoring communication; in the China national level , it involves the quantity of the news report in China on the TVET laws or policies, the cases, TVET new development, and the quantity of China ratification and monitoring communication document on the relevant TVET international legal frameworks.

6. Quality analysis. On one hand, it involves analysing the contents of the monitoring communication by human rights bodies and ILO (UNESCO has not launched its monitor yet) to examine the compliance and monitoring function of those body on those legal instruments; on other hand, it involving analysing the contents of the TVET international non-legal guidance and Chinese policies.

7. Data analysis. It involves analysing the difference of the data reported in the Chinese news and official report, and other official source.

8. Phone interviews. To Chinese authorities for the TVET concept, and arbitration institutes for the training related arbitration in China.

9. Phone verification. To verify the truth of the news report in China Minxi case related to education right.

With the methodologies mentioned above, it refers mainly the publications working papers and reports from ILO, UNESCO, UNDP etc. those international organizations are mainly referred to, such as ILO's *Skills for Green Jobs: A global view*. And also the statistics, reports or official news publishing from Chinese relevant governmental departments. Constrained by the lack of literature in the TVET international legal frameworks, it refers the researching content of TVET as social science to complement the evaluation of norms of TVET related international legal instruments and other TVET guidance in the international level, and those literatures are mainly UNESCO TVET publications volume: *Technical and Vocational Education and Training: Issues, Concerns and Prospects*, for example, *International Handbook of Education for the Changing World of Work: Bridging Academic and Vocational Learning*, and *Handbook of Technical and Vocational Education and Training Research*, and *International Comparisons of China's Technical and Vocational Education and Training System*. Due to the inconvenience of access to Chinese literature in TVET when the author is outsidess of China, by literature it refers mainly those on line accessible articles written in Chinese by Chinese scholars or competent officials. The the content of news reports used as cases in china is verified by phone interviews, and other unverified contents are clear stated in the thesis.

### **1.3 The Structure of the Thesis**

The main body of this thesis is constructed by another six parts (from part 2 to 7) except part 1 introduction. Pacifically,

Part 2 clarifies the concept of TVET from the terms used in this field, the philosophies applicable to TVET conceptual framework, to the concrete definition provided by literature and ILO/UNESCO co-publication: *The Revised Recommendation on Technical and Vocational Education and Training 2001*. Part 3 examines the TVET related legal framework in international human rights instruments in terms of the norms, interpretation normative documents, monitoring documents, and no any TVET initiatives

or other guidance in this international body.

Part 4 examines the TVET related legal frameworks in ILO in terms of the norms, monitoring documents, and also examines ILO's TVET initiatives and other guidance such as ILO's green jobs initiatives, ILO's G20 training strategy etc..

Part 5 examines the TVET related legal frameworks in UNESCO in terms of the norms, monitoring documents, and also examines UNESCO's TVET initiatives and other guidance such as UNESCO-UNEVOC this field network including the Agencies for International Cooperation on Technical and Vocational Education and Training, and International Congress on Technical and Vocational Education and Training.

Part 6 examines the TVET in Chinese context, and it covers the TVET related Chinese laws and policies, and evaluate from their content, implementation and related cases.

Part 7 concludes the findings in terms of the function and impact of the international TVET guidance (both the legal framework and other guidance) on national level generally and on China specifically, and it also makes suggestions to further enhance the TVET international guidance and impact.

Law cannot solve every problem but law can help to solve most problems. The TVET international legal framework is mainly provided by the legal instruments from human rights bodies, UNESCO and ILO, specifically,

(1) Human rights instruments. Universal Declaration of Human Rights (UDHR) also called the bill of human rights 1948 (non binding), and five core international human rights treaties: Convention on Economic, Social and Culture Rights 1966 (CESCR), Convention on the Rights of the Child 1989 (CRC), Convention on the Elimination of All Forms of Discrimination against Women 1979 (CEDAW), Convention on the Rights of Persons with Disabilities 2006 (CRPD), International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families 1990 (CRMW).

(2) ILO standards under 'the subject of vocational guidance and training: ILO C142 and R195 convention and recommendation on human resource development, C140 and R148 convention and recommendation on paid educational leave, R136 special youth scheme.

(3) UNESCO two TVET standard-setting instruments: the 1989 convention and 2001 revised recommendation on technical and vocational education.

The TVET Chinese legal instruments comprise legislative instruments: constitution, laws on education, and social laws, and TVET related policy covers the main function of TVET: education and employment, specifically,

(1) The Constitution of P.R China (2004 amendment) non-applicable in judicial activities.

(2) Law on education: education law of P.R China 1995, vocational education law of P.R China 1996, compulsory education law of P.R China (2006 amended) and its implementation regulation 1992, higher education law of P.R China 1998, the temporary standard on establishing higher vocation school 2000, the temporary standard on establishing schools for training technical workers, senior technical workers, technicians 2007, law on the promotion non-public schools of P.R China 2002 and its implementation regulation 2004, regulations of P.R China on Chinese-foreign cooperation in running schools 2003 and its implementation arrangement 2004, the temporary rule on the fee charged in secondary vocational schools 1996, the criteria of inspecting and evaluating second vocational education 2011.

(3) Social law: Labor Law P.R China 1994, Labor Contract Law P.R China 2007 and its implementation regulation 2008, Law of P.R China on Promotion of Employment 2007, Law of P.R China on Safety in Mines 1992, Law of P.R China on prevention and control of occupational diseases 2001, Law of P.R

China on Work Safety 2002, Law of P.R China on Labor-dispute Mediation and Arbitration 2007. (4)TVET related Policies: the 12<sup>th</sup> five-year national development plan (2011-2015) by National People's Congress 2011, the framework of China education reform and development in medium and long term (2010-2020) by state council 2010, the plan on promoting employment (2011-2015) by state council 2012, the plan of developing the human resource on senior technical skills in medium and long term (2010-2020) by china ministry of human resource and social security and communist party's organization department 2011, Human Rights Action Plan of China (2012-2015), opinions on enhancing vocational training and promoting employment by state council 2010, opinions on strengthening the cultivation of services outsourcing talents and boosting employment of graduates from institutions of higher education by China ministry of commerce and China ministry of education 2009.

## 1.4 Unemployment, Human Rights, TVET and Education

Unemployment triggered by financial crisis may not directly link with the skills or profession the unemployed have, but European Center for The Development of Vocational Training (cedefop) recently does finds 'EU Rising unemployment hits low-skilled adults the hardest'.<sup>7</sup> At least, unemployment does directly links with human rights: the right to work, which 'is essential to realizing other human rights and forms an inseparable and inherent part of human dignity'.<sup>8</sup> the risk of human rights resulted from unemployment is displayed clearer when Greeks especially the elder one wait in the long queue for aiding food in last winter while the Greek government has been pressed to cut social welfare again and again, and it also displayed in occupy wall street activity in USA last year. No income from employment, no or insufficient unemployment benefit, the basic human dignity of living is endangered, not only of the individual but also their families Can financial recovery recover the old employment opportunities or the old occupational posts? It is doubted. 'In terms of formal skills, changes in industrial structure will combine with skill biased technological change to increase the demand for people with (formal) high and medium qualifications, at the expense of the low-qualified group' (p 12) and 'we need an improved capacity to anticipate change, as the expert group report New skills for new jobs: action now and Europe's strategy for 2020 emphasize'(p 2). Cedefop states so in its *Skills supply and demand in Europe Medium-term forecast up to 2020*.

Outsides of EU, most Asian and African countries are struggling for any employment opportunities no matter whether those employment opportunities provide decent work or not. One typical example from my living place in China can illustrate it. During the striking mass 'Foxconn suicides' in Shenzhen (South China) from January to November 2010, once a new factory of Foxconn was opened in Henan province (inland region of China) in the same year, thousands of local applicants still ran for the entrance examination, and for the first time, Foxconn added psychological test in that entrance examination which is accepted totally by applicants. Now in Foxconn's recruitment website for Henan province, the basic requirement for applicants is listed with the content of 'psychologically health'.<sup>9</sup> When an acquaintance was asked whether or not Foxconn suicides events affected his eagerness of applying for posts in Foxconn factory in Henan province, the answer was 'not at all, you should already thank giving once you find a job especially when the promising payment is not low (in local

<sup>7</sup>"EU Rising unemployment hits low-skilled adults the hardest", article on 4 May 2012, <http://www.cedefop.europa.eu/EN/articles/19851.aspx>, accessed on 4 May 2012.

<sup>8</sup> ECSCR General Comment No.18 on Right to Work E/C.12/GC/18 (2005), P 2.

<sup>9</sup> See <http://www.fskzpx.com/> accessed on 2 May 2012.

standards).’ How to protect those labor’s human rights if Foxconn does not endeavor to improve its regulation system but only applying to the psychological test to prevent the risk of suicide? Does this situation is generated by the serious surplus labor supply? The 1<sup>st</sup> quarter of 2012 Statistical Analysis on the Supply and Demand in the Labor Market in Several Chinese Cities shows that the supply of skilled laborers are mainly with certain primary or junior technical skills, and all gap rate of demand to supply on laborers with cetian vocational quality is above 1, and the larger gap rate of demand to supply on senior engineers, technicians, senior technicians is respectively 2.59, 2.32 and 2.18.<sup>10</sup>

Obviously, it is showed that TVET is necessary for both developed region like EU and less developed region like China in order to improve the capacity building of labours and solve the skills mismatch in the changing world. However, admittedly, as education, TVET is only one part of education; as part of employment promotion, TVET’s contribution is constrained by other factors especially the level of local economical development: the existing economic sectors and their scale and quality. Nonetheless, TVET does not only mean educate and train people in order to improve its employability, it also includes self-employment or entrepreneurship education and training that enable individual to contribute to the economic situation of the whole community or whole region, if the quality of TVET is guaranteed. What is more, the world demography change and transnational migration is enlarging the potential of TVET: it enables the TVET to response to the demand of broader labour market including international labour market, and enables the TVET receiver<sup>11</sup> to seek for oyster beyond their original local or regional labour market.

Employment concern, poverty deduction, the productivity of labourers, and the human capital for economic growth might be the strongest motivation to promote and improve TVET for state governments and international organizations like UNESCO, ILO, World Bank and OECD, and that is certainly pragmatic concern but that concern in less developed countries like China tends to prefer the short-term outcome of TVET and even simplifies TVET as streamline: training—employment—poverty reduction. Actually, besides those governing purpose, the education nature of TVET: 'education shall be directed to the full development of the human personality and the sense of its dignity'<sup>12</sup> within the concept of right to education in human rights context. TVET involves the general interest of individuals, and whether or not that so pragmatic way of labourer production undermines the full development of individuals, this question is always put aside when TVET's employment function is highlighted. Indeed, TVET systems are expected to produce individuals who are innovative, capable of evolving and adapting to changing circumstances, and there is a concept shift: ‘TVET for employment’ – ‘TVET for employability<sup>13</sup>’—‘skills development for employability and citizenship (Astrid Hollander and Naing Yee 44).

Thus it is always good to keep a balanced view of TVET: TVET is not only for employment but also self-employment and entrepreneurship, and TVET supplies the skilled labourers for the world of work but also serves the best education interests of TVET receivers: the individuals' full development.

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<sup>10</sup> 2012 年第一季度部分城市公共就业服务机构市场供求状况分析 (the demand-supply market analysis in some urban public employment service in the 1<sup>st</sup> quarter of 2012), published on 11 April 2012 ([http://www.lm.gov.cn/DataAnalysis/content/2012-04/11/content\\_706286.htm](http://www.lm.gov.cn/DataAnalysis/content/2012-04/11/content_706286.htm)) accessed on 2 May 2012.

<sup>11</sup> TVET receiver means the people who have been taking or have completed TVET learning.

<sup>12</sup> Art. 13 of ICESCR.

<sup>13</sup> About the definition of employability, see Supra note 3.

# 2 The Concept of TVET

## 2.1 The Terms Used in this Field

TVET: Technical and vocational education and training. UNESCO explains TVET concerned with the acquisition of knowledge and skills for the world of work, and brings various terms used to describe elements of the field to the umbrella of TVET, including: Apprenticeship Training, Vocational Education (VE), Technical Education, Technical-Vocational Education (TVE), Occupational Education (OE), Vocational Education and Training (VET), Professional and Vocational Education (PVE), Career and Technical Education (CTE), Workforce Education (WE), Workplace Education (WE), etc. (Astrid Hollander and Naing Yee 41) However, both in international level and in the regional level, the term used in this field has not been uniformed so far.

Because of TVET's nature: learning for work, within the UN system there is two renown competent agencies in TVET: UNESCO and ILO, however, due to the earlier justified roles division on TVET,<sup>14</sup> UNESCO concentrates on education and uses the term 'Technical and Vocation Education' TVE as its part of Education For All (EFA) initiatives and later the complementary of Education for Sustainable Development (ESD), while ILO focuses on employment and uses the term 'Vocational Guidance and Vocational Training' (VG and VT) promoting guidance and training for employment and workers welfare within its Decent Work Agenda. This term TVE and VG are used referring to different thing sometimes and the same thing other time. This split was criticized by 2<sup>nd</sup> TVET congress (Seoul 1999) as hairing split, and these two competent UN agencies were urged to stop the role division, instead, 'to address this issue seriously, so that we stop talking different things about what should be the same thing'. Responding to the urgency, later it issued a UNESCO/ILO publication: *Recommendations on TVET for the 21 Century* which contains the main policy statements of these two specialized agencies, however this publication was selectively adopted separatively by these two agencies: the *Revised recommendation regarding technical and vocational teaching* approved by UNESCO in 2001, evolved into one of UNESCO's TVET standard-setting instruments: 2001 Revised Recommendation on TVE which continuously uses the term TVE by following UNESCO 1989 convention; While the *Conclusions regarding training and development of human resources* approved by ILO in 2000, evolved into another ILO standard: Recommendation No.196 on Human Resource Development (2004), which continuously uses VG and VT by following ILO C142 (1975). That is to say, still UNECO and ILO these two competent UN agencies insist their own preference in the term usage and no uniformity.

International human rights instruments use 'technical and professional education' in UDHR, 'technical and vocational guidance and training' and TVE in ICESCR, and VG and VT more frequently in CRC, CEDAW and CRMW, and the norms interpreting document such as ICESCR general comment No 13<sup>15</sup>, uses TVE to cover the concerned rights. In the regionally level, there is much richer diversity in the terms use, for example, Career and technical education (CTE) (USA), Further education and training

<sup>14</sup>The role division between UNESCO and ILO was justified earlier when decades ago the skills required for a job was much simpler and could be obtained mere by informal apprenticeship or on-the-job practical experiences, but no such case any more nowadays for skills obtainment, and the contemporary jobs require vocational program comprises vocational education and vocational training. (UNESCO, final report of 2<sup>nd</sup> TVET Congress, 1999, P 13)

<sup>15</sup>CESCR, E/C.12/1999/10.

(FET) (UK, South Africa), Vocational and technical education and training (VTET) (South-East Asia including China), Vocational and technical education (VTE) (AUS), VT and VET (most Europe). However, TVET is used as an umbrella term increasingly, for instance, TVET as an independent theme appears in the UNESCO's education section, the name of international congress in this field changes from '2<sup>nd</sup> international congress on TVE' (Seoul 1999) to '3<sup>rd</sup> international congress on TVET' (Shanghai 2012), and the name and content of UNESCO's official documents wear more TVET than TVE, and ILO also uses TVET much often in its reports, working paper, workshop, and news etc..<sup>16</sup> However, at the moment the term TVET is popularized, some discussion replacing TVET with Technical and Vocational Skills Development (TVSD) was raised in the recent 3<sup>rd</sup> international congress on TVET (Shanghai 2012) when skills is realized as the core of TVET, but there has been no agreement in this point.

Therefore, before new term replaces TVET as umbrella term in this field, this thesis will use TVET as an comprising term to cover all terms used in this field like the TVE in UNESCO, VG and VT in ILO, and 'technical and professional education', 'technical and vocational guidance and training' and TVE etc in human rights instruments, VE, VT, VTE and VTET in China, etc.

## **2.2 The slow processing of building and the applicable philosophies concerning the TVET conceptual framework**

The fact that keys terms like TVET, TVE and TVSD etc in this field. are used differently across the world in different language and context, together with the complex landscape of skills development, the diverse learning environment (school or work-based, formal or non-formal) and the widely varying national system, are accused by UNESCO to render the impossible monitor of TVET for international comparison. This TVET monitor impossibility conflicts with UNESCO's one priority: Informing policy and review through improving national capacities and system for monitoring and assessing progress in skills development. To address this challenge, UNESCO adopted *A Strategy to Support the Development of TVET in Member States for 2010—2015* (abbreviated as TVET strategy hereafter).<sup>17</sup> This TVET strategy has three core areas, and 'Conceptual clarification of skills development and improvement of monitoring' is its 2<sup>nd</sup> core area. This 2<sup>nd</sup> core area focuses on defining a shared conceptual framework in the form of joint position paper with those key partners (like ILO, OECD, ETF and WB) in its identifying indicators for measuring process which starting from establishing a technical advisory mechanism to define different categories of skills, and this task is supposed to be completed in 2010-2011.(UNESCO 182 EX/INF.5, 2009) But this task was not completed as scheduled, because in the report on the implementing this TVET strategy in 2011 (UNESCO 187 EX/6 Part III) it was mentioned they 'UNESCO...is developing' this conceptual framework, and the work had been done are only a working paper drafted by UNESCO and ETF in collaboration with GIZ<sup>18</sup> and

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<sup>16</sup> About examples TVET this term used by ILO, report: Teachers and trainers for the future – Technical and vocational education and training in a changing world: Report for discussion at the Global Dialogue Forum on Vocational Education and Training (29–30 September 2010), Working paper: TVET Centers in Indonesia: pathway to revitalization, workshop: National Consultation Workshop on Promoting Gender Equality in TVET in Bangladesh, news: ILO Cinterfor Director Highlights Impact Evaluation of TVET.

<sup>17</sup> This strategy was adopted in UNESCO 181 EX/Decision 8 (2008) and revised in 182 EX/INF.5 (2009).

<sup>18</sup> Originally GIZ referred to Germany Agency for International Cooperation 'Deutsche Gesellschaft für Internationale Zusammenarbeit', and in Januray 2011 it becomes 'Deutsche Gesellschaft für Internationale Zusammenarbeit GmbH' (GIZ) after merging other three German organizations: the German Development Service (Deutscher Entwicklungsdienst, DED), the German Technical Cooperation (Deutsche Gesellschaft für Technische Zusammenarbeit, GTZ), and InWEnt - Capacity



ILO, and a complementary conceptual framework<sup>19</sup> responding to the request of the G20 Seoul Summit (November 2010).

After the 3<sup>rd</sup> international congress on TVET (Shanghai, May 2012), there is still no further agreement in the TVET conceptual framework, and therefore the ongoing conceptual debate around the definition of TVET including the use of other terms such as TVSD, was notified but not provided by corresponding recommendations by Shanghai Consensus Recommendations of the 3<sup>rd</sup> International Congress on TVET (abbreviated as 'Shanghai Consensus' hereafter). In deed before this 3<sup>rd</sup> congress, scholar like Jay W. Rojewski already complained that the development of any conceptual framework is of little value if action does not result, especially when ideas and options have been proposed, articulated and studied. (P. 37) The slowly processing in building this conceptual framework implies the difficulty and this difficulty may come from three factors: 1. the rapid development of TVET and the changing of world casts difficulty to conceptualize or re-conceptualize the changing domain of skills an TVET, and this can be exemplified by the concept shift 'TVET for employment' – 'TVET for employability' – 'skills development for employability, sustainable development and responsible citizenship', and what is more, it is hard to see the research work is already quite updated or predicating since they all build on the resources years ago while TVET's development is much faster; 2. interests conflicts among key partners especially between UNESCO and ILO, 'because UNESCO and ILO communicate with member countries through different channels and national agencies, two systems of human power preparation at the basic occupational levels emerge sometimes side by side with little or no co-ordination, and sometimes with rivalry and mistrust.'<sup>20</sup> 3. UNESCO proactively takes the leading role in this issue, however, the inefficiency resulted from bureaucratic backlash and the concern about the leadership image in this field may lead UNESCO over-cautious even if assuming there is enough professionals in this field.

Although the existing difficulty in building TVET conceptual framework, the underpinning philosophies applicable to TVET will help to grasp the whole picture of TVET nature. About the designing and implement public vocational education, mainly three views turns up on the nature of vocational education: 1) Essentialism represented by Charles Prosser, it considers social efficiency and claims main goal of schools were not to realize individual fulfillment but to meet the country's labor needs: the preparation of a well-trained compliant workforce, and this view has been supported by a majority of TVET proponents at the time but in recent years it was criticized for being class-based and tracking certain segments of society; 2) Pragmatism represented by John Dewey, it takes TVET receiver as active pursuers and constructor of knowledge and consequently claims the principle goal is to meet individual needs for personal fulfillment and preparation for life, and this view becomes the prevailing one those years but it was criticized for ignoring TVET receiver is the passive individual controlled by market economy forces and existentially limited by inherently proscribed intellectual capacities; 3) Reconstructionism (or Pragmatism with reconstruction stance) supported by M.D. Miller and J.A. Gregson, it embraces a proactive stance to change in both the profession and society, and it emphasizes the role of TVET in contributing solutions to problems such as discrimination in hiring, the glass ceiling<sup>21</sup> experienced by women and members of minority groups, or poor working conditions

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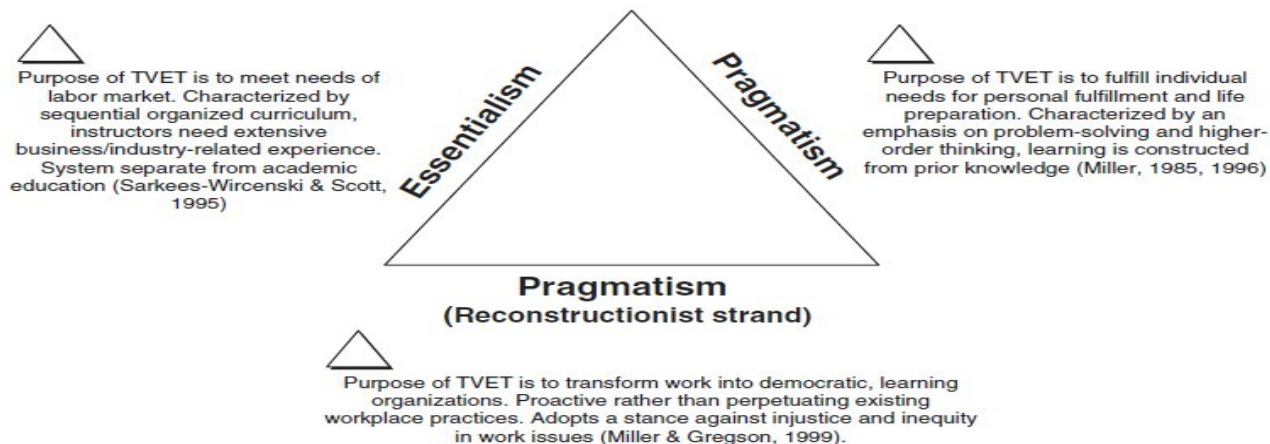
Building International (Internationale Weiterbildung und Entwicklung gGmbH, InWEnt).

<sup>19</sup> This complementary conceptual framework refers to 'a conceptual framework for the development of internationally-comparable skills indicators and a joint approach to enhancing national strategies for skills development' prepared by UNESCO the Inter-agency Working Group on TVET (IAGTVET).

<sup>20</sup> UNESCO, Final report of the 2<sup>nd</sup> international congress on TVE, 1999. P 13.

<sup>21</sup> Glass Ceiling indicates 'the unseen, yet unbreachable barrier that keeps minorities and women from rising to the upper

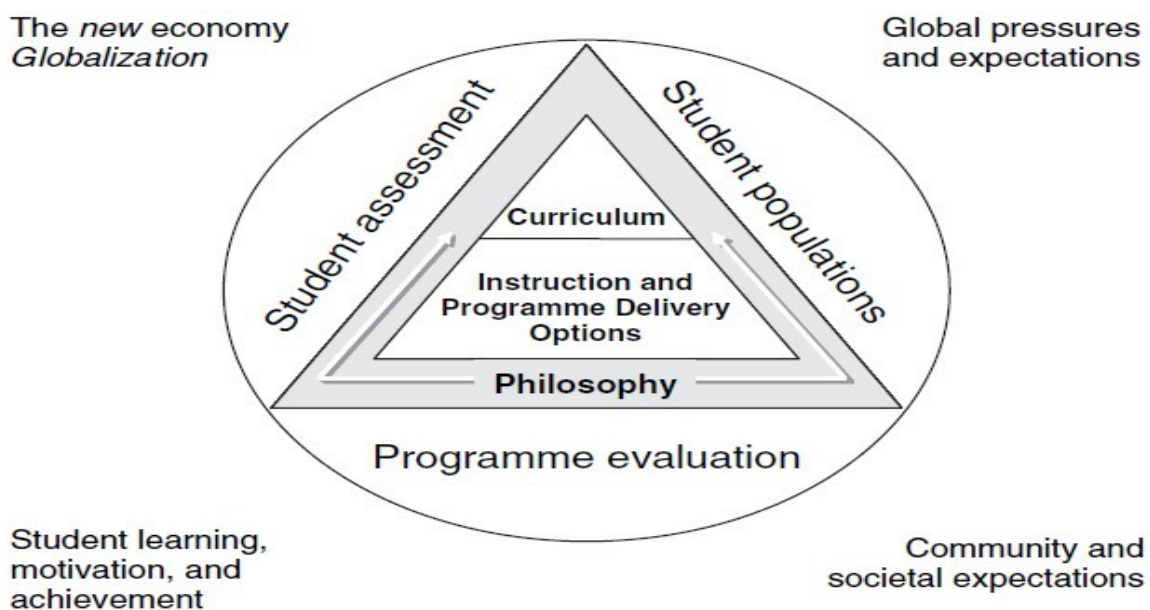
(J.W. Rojewski 20-22). These Three philosophies can be displayed in the following chart and 'Specific



**Fig. 1** Alternate philosophies for TVET

choices about the nature and scope of TVET depend on the specific combination of philosophies selected to define a particular program' (Rojewski 22).

Furthermore, the content of TVET conceptual framework can be illustrated as below (Rojewski 25).



**Fig. 2** Visual representation of the conceptual framework for TVET

Rojewski's two graphs concisely display the underpinning philosophies and main general contents of the TVET conceptual framework. About the emerging TVET conceptual framework, Hoachlander views it reflects effort at local, state and national levels 'to broaden vocational education—integrating the curriculum more closely with rigorous academics, improving articulation to post-secondary education (two-year and four-year), and stressing long-term preparation for productive careers that will be subject to increasing technological change and economic reorganization.'(p. 1) About the TVET trend,

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rungs of the corporate ladder, regardless of their qualifications or achievements.' (U.S Federal Glass Ceiling Commission, *A Solid Investment: Making full use of nation's human capital*, Washington 1995, P 4)

Rojewski states secondary programs will continue a trend: but not like post-secondary education which will remain in the best position to prepare students for specific jobs, secondary program 'will provide more general knowledge about the workforce, offer career awareness and exploration activities in specified career clusters, nurture higher-order thinking skills development, and supports students in making initial decisions about their career goals and plan post-secondary activities necessary to achieve those goals.' (p. 36) Rojewski concludes that 'collectively, the field must be willing to tackle tough questions and debate potentially contentious issues delineated in the professional literature to arrive at and then maintain a clear and concise framework.'(p. 37)

Rojewski's research enable the whole picture of TVET to embody itself in a rough way. However, it is better to keep in mind that this philosophies, the main contents, and the emerging trend etc. concerning TVET conceptual framework only reflects the knowledge human being have achieved before while TVET may develop faster than researching goes, and it is not a closed or ended but still an opening or developing field. Anyhow, those researching work in TVET conceptual framework helps to capture the general image of TVET and also helps to assess whether or not the concrete definition of TVET follows this points, and they can even help to further evaluate whether or not the content of TVET related legal norms reflect this key points in the following parts of the thesis.

## 2.3 The Concrete Definition of TVET

There is not so many concrete definition of TVET, and the most referred one derives from the UNESCO 2001 revised recommendation (which was thought to stem from ILO/UNESCO Recommendations on TVET for the 21 Century accurately from the part adopted by UNESCO: *2001 Revised Recommendation Regarding Technical and Vocational Teaching* and republished by UNESCO as *2001 Revised Recommendation on TVE or TVET for 21 Century: UNESCO Recommendations*). This concrete definition was published as the definition of TVE (not TVET) in UNESCO's preference and it provides that "technical and vocational education" is used as a comprehensive term referring to those aspects of the educational process involving, in addition to general education, the study of technologies and related sciences, and the acquisition of practical skills, attitudes, understanding and knowledge relating to occupations in various sectors of economic and social life.' This definition is consisting with UNESCO 1989 Convention but develops it, and it is most cited definition of TVET all through the world. What is more, this 2001 revised recommendation states that TVE 'is further understood to be: (a) an integral part of general education; (b) a means of preparing for occupational fields and for effective participation in the world of work; (c) an aspect of lifelong learning and a preparation for responsible citizenship; (d) an instrument for promoting environmentally sound sustainable development; (e) a method of facilitating poverty alleviation.'<sup>22</sup>

Although this definition is thought quite inclusive and abroad, still it is questioned 'Is this a widely agreed upon definition outside UNESCO and ILO circles?'<sup>23</sup> Meanwhile, this definition is criticized for placing emphasis much greater on 'education' than on 'training' that supposes to be explicitly highlighted, which reflects the role preference between UNESCO and ILO, (A. Hollander and N.Y. Mar 41) and also triggers the doubt: Is this definition really from ILO/UNESCO co-publishing and agreed by ILO? Or at what extent is it agreed between this two competent UN agencies?

<sup>22</sup> Art.2 of UNESCO Revised Recommendation Concerning Technical and Vocational Education (2001).

<sup>23</sup> Gerd-Hanne Fosen, *Education for All and TVET—Two Sides of the Same Coin?* Norwegian National Commission for UNESCO, 2002.

To make it much clearer, UNESCO compares TVET with related terms. For instance, TVET those aspects of educational process involving - in addition to general education - the study of technologies and related sciences and the acquisition of practical skills, attitudes, understanding and knowledge relating to occupations in various sectors of economic life(which uses the definition of TVE to define TVET); while VT (vocational training) is often used to describe short-term training in specific occupationally related skills; Additionally, Formal TVET: training typically provided by an education or training institution, structured (in terms of learning objectives, learning time or learning support) and leading to certification; Formal learning is intentional from the learner's perspective; Non-formal education and training: Education and training which takes place outside the formal system either on a regular or intermittent basis; Informal learning: Learning resulting from daily life activities related to work, family or leisure; Informal learning is part of non-formal learning, referred to as experience based learning and can to a certain degree be understood as accidental learning (Guidelines for TVET Policy Review, ED/ESB/TVET/2010/02).

UNESCO plants the concept of TVE into TVET without adding and highlighting the T: training, so the critics especially by ILO and some scholar is reasonable and scientific, however, it is the undeniable fact that this definition together with clarification of the related terms, provide the concrete concept of TVET that fills the gap in this field. Besides this UNESCO TVET definition, J. MacKenzie and R.-A. Polvere define TVET as 'from Post-compulsory education and training, excluding degree and higher level programs delivered by higher education institutions, which provides people with occupational or work-related knowledge and skills.' but they also recommend to refer to other related terms in this field (p. 73). Compared with UNESCO's definition of TVE or TVET, this definition provides TVET in another angle but this angle seems too narrow and incomplete.

International human rights bodies referred to UNESCO's definition in its interpreting document: CESCR GC No.13 on right to education(1995), not from the 2001 revised recommendation due to its availability then but from the UNESCO 1989 convention, and other human rights bodies cite this interpretation such as CRC. In China, the vocational education law 1996 states that vocational education comprises 'vocational school education' and 'vocational training' provided by 'vocational schools' and 'vocational training institutions'.<sup>24</sup> No explanation of 'vocational education', but 'vocational training' is explained as including per-employment training, the training for demolished soldiers for civilian work, apprentice training, on-the-job training, job-transfer training and other forms of training of vocational nature.<sup>25</sup> After consulting the office for legal affair in China ministry of education, it is told that further normative unified definition about the term in this field is being conceived, and the amendment proposal of China vocational education law also has poses this definition clarification in this field.<sup>26</sup>

## 2.4 Concluding Remarks

TVET this term is used increasingly in this field as an umbrella term covering all other terms such as TVE, TV and VET etc. although regionally other terms are still being used and the term TVSD is considered to replace it. The original role division and interests conflict especially between ILO and

<sup>24</sup> Art.13, 14 of vocational education law of P.R China 1996.

<sup>25</sup> Art.14 of vocational education law of P.R China 1996.

<sup>26</sup>Xinhua, 'New amendment of china educational law should demonstrate the multi-character', China education newspaper 21 July. 2011: C17.

UNESCO undermines the process of building TVET conceptual framework, so that even UNESCO places itself in the leadership position of TVET but still mainly address TVET within its TVE scope when it comes to build TVET concept, and no joint position paper ever been made in this issue though the strategy of TVET has required explicitly in this point. This difficulty in conceptual clarification casts real challenge to UNESCO's monitoring of TVET for global comparison when TVET seems developing faster than UNESCO's researching pace and ILO has its own independent researching and well designed supervisory mechanism

Nevertheless, the TVET will not slower its developing pace due to UN agencies' unproductive work and interests conflict in the building of conceptual framework, and the philosophies and essential contents of TVET conceptual framework, together with UNESCO' s concrete definition, will be helpful in forming TVET policies in national level. Chinese TVET definition is as if far from satisfaction, and how much China senate, other policy-maker and scholars can draw on from those already forged TVET conceptual framework in the international level, which is worthy expecting.

# 3 TVET Related legal framework in International human Rights Instruments

The birth of UN charter and Universal Declaration of Human Rights (UDHR) marked the human rights movement, and the international Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Culture Rights (ICESCR) normative found international human rights.<sup>27</sup> International convention on Rights of child (CRC), on Elimination all kinds of Discrimination against Woman (CEDAW), on the Rights of People with Disability (CRPD), and on the Rights of Migrant Workers and their family (CRMW) provides more specific human rights for special groups. Therefore, international human rights instruments are classified into three levels according to their birthday and influence: 1<sup>st</sup> level, the bills of human rights, including UDHR, ICESCR, ICCPR and ICCPR's 2 protocols; 2<sup>nd</sup> level, the core international human rights instruments (treaties under the monitor of treaty bodies), ICESCR and its protocol, CEDAW, CRC, CRPD and ICCPR and its protocols etc.; 3<sup>rd</sup> level, the universal human rights instruments: declarations, rules and guidelines etc. with no formal monitor, and some ILO conventions that binding to member parties e.g. ILO convention No.169 about indigenous and tribal peoples.

In international human rights instruments, individuals are the rights holder while the states are the prime obligation bearer. The general human rights obligation of state is 'respect, protect and fulfill (or implement)', specifically, respect individual's human rights and fundamental freedom, protect individuals from third party's violation, and fulfill (or implement) the human rights obligations.<sup>28</sup> However, with the increasing cases embodying the incapacity or the unwillingness of the state to fulfill its human rights obligation, even worse the deliberate human rights abuse by the state, the international human rights instruments has been evolved in order to provide possibility of remedy to individuals or groups. Now a trend is to engage more human rights stakeholders such as human rights NGOs and influential private factors and even individuals to take human rights responsibility to promote, prevent and protect (no fulfill or implement) human rights.<sup>29</sup> Nevertheless, just as clarified by Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms,<sup>30</sup> the prime responsibility and duty to promote and protect human rights and fundamental freedoms lie with the State. Therefore, the TVET related obligation enshrined in the right to education and right to work in the core international human rights instruments is initially levied on the state government, but it also encourage relevant human rights stakeholders to participate in the protection of those two rights.

In the 1<sup>st</sup> level: bills of human rights and 2<sup>nd</sup> level: core international human rights instruments, it follows formal human rights structure: rights holder of individual and obligation bearer of mainly state. while in 3<sup>rd</sup> level of human rights: universal human rights instruments, it goes beyond the formal

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<sup>27</sup>Henry J. Steiner et al., *International human rights in context: law politics, morals* (3<sup>rd</sup> edition), (New York: Oxford university press, 2007) 58-456.

<sup>28</sup> --- 475-496

<sup>29</sup>For example, On 24 April 2012 of the events in commemoration of the centenary of Raoul Wallenberg's birth (Lund, Sweden), in the individual speech, Professor Kjell Åke Modéer delivered 'The heritage of Raoul Wallenberg: Individual Responsibility and Human Rights' and UN former Secretary-General Mr. Kofi A. Annan gave 'Prevention, Promotion and Protection: Our shared Responsibility'.

<sup>30</sup>Adopted by UN General Assembly resolution 53/144 of 9 December 1998.

structure of human rights and also loses the formality in terms of the implementation and binding force(except some relevant ILO conventions that we will omitted in this chapter). Therefore, Part 3 will focus on the TVET related norms in UDHR, ICESCR, CRC, CEDAW, CRPD, CRMW.

The TVET related legal framework in international human rights instruments are provided in the UNHR and ICESCR as part of the right to education and the right to work. Within the right to education and the right to work, TVET related norms are also provided in other human rights instruments, such as in 2<sup>nd</sup> level: CRC, CEDAW, CRPD, CRMW, and as well as the instrument from 3<sup>rd</sup> level human rights instrument that this part will trivialized: UN Declaration on the Rights of Indigenous People 2007, UN Rules for the Protection of Juveniles Deprived of their Liberty 1990, Standard Minimum Rules for the Treatment of Prisoners 1977, Declaration on Social Progress and Development 1969, and some ILO conventions like C169 on indigenous and tribal peoples. Because Part 3 of the thesis will independent elaborate the TVET related ILO standards, here ILO related standards in human rights concept will be omitted. Noticeably, TVET related norms in human rights instruments does not comprise the complete contents of technical and vocational education and training, and it is abstracted only different parts of TVET, such as technical and professional education(in UDHR), technical and vocational guidance and training program(in ICESCR), technical and vocational education (in ICESCR)etc. According to the conceptual framework of TVET (Part 2 of the thesis), it is clear that all the term used in human rights instruments fall into the scope of TVET.

### **3.1 The UDHR, the ICESCR and ICESCR's General comment No.13 and 18**

The legal form of ICESCR<sup>31</sup> is the international treaty which mainly binding to member states (individuals' responsibility is mere to promote and observe those enunciated rights), but to some extent, together with ICCPR it have been widely accepted as standard in this field when evaluating and judging the human rights performance of non-member states. The main obligation of state member under ICESCR is 'progressively achieve the full realization of the recognized rights, guarantee those enunciated rights to be exercised without discrimination,' and developing countries may determine to what extent non-nationals' recognized economic rights would be guaranteed,<sup>32</sup> that is to say, those enunciated rights can be realized progressively, not necessarily immediately or with certain deadline. Because of this reasonable consideration of the different level of development in state members, arguable space is left when the human rights performance of state is evaluated. The committee on ICESCR is called CESCR, and it functions as the treaty body (established according to the treaty), monitor body (monitor the implementation of the treaty) and interpretation body (interpret the provisions of the treaty). As the interpret body, CESCR interpretation is in the form of General Comment(GC) on thematic issue, such as General Comment (GC) No.13 on the right to education(1999) and GC No.18 on the right to work (2005). The treaty committee of CRC, CEDAW, CRPD and CRMW also have the same function and they are also made some GC within their convention provisions.

UDHR is in the legal form of Declaration, and it is recognized as the original source of human rights. Its article 23(1) provides 'Everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment.' and its article 26 states '(1) Everyone has the right to education. Education shall be free, at least in the elementary and fundamental

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<sup>31</sup>ICESCR was adopted by UN General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force in 3 January 1976.

<sup>32</sup>Art.2 of ICESCR.

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. ....' unlike other international law binding to state members, UDHR is nonbinding instrument and its purposes is to promote and respect those declared rights and freedom, and secure their universal and effective recognition and observance. (Preamble UDHR)

Compared with the provisions in UDHR, ICESCR provides some new points about TVET, specifically, for the right to work, the article 6(2) of ICESCR states 'The steps to be taken ... to achieve the full realization of this right shall include technical and vocational guidance and training programs, ... to achieve ... full and productive employment ...'; for the right to education, the article 13(2) of ICESCR requires 'The states parties... recognize that... (b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education...' If the TVET provisions in ICESCR is interpreted together with the UDHR, we can conclude: for the right to work, state has the obligation to provide technical and vocational guidance and training programs as the mean of preventing unemployment and achieving full and productive employment; while for the right to education, the state has the obligation to, except the general obligation in education, make technical and professional education generally available for all, in particular, make technical and vocational secondary education generally available and accessible to all by every appropriate means (in particular by the progressive introduction of free education).

For the provision interpretation, in the CESCR GC No.13<sup>33</sup> on the right to education, CESCR uses 'technical and vocational education (TVE)' to cover the term 'technical and professional education' in UDHR and 'technical and vocational guidance' in ICESCR. Noticing in ICESCR article 13(2) mentions the importance of TVE in secondary education level while 6(2) does not mention the level of TVE related to the right to work, and recognized the broad role of TVE and the UNHR's TVE call: generally available, CESCR takes the view that as part of right to education TVE includes all educational levels of TVE.<sup>34</sup> About the TVE character required within the right to education and right to work, firstly, CESCR in its general remarks adopted essential 'four A' features of education<sup>35</sup>, namely, availability, accessibility, acceptability and adaptability, and the accessibility includes non-discrimination, physical accessibility, economic accessibility (affordability), and then CESCR refers to the UNESCO 1989 convention and found this convention is also reflected in ILO standards,<sup>36</sup> so ECSCR adopts the TVE contents provided in UNESCO 1989 convention. In CESCR GC No. 18 on the right to work,<sup>37</sup> firstly CESCR asks the national employment policy to provide adequate education and vocational training and to support equal access to employment for young persons, in particular young women, and secondly it thinks article 6(2) of ICESCR implies children shall be able to pursue their full development and acquire technical and vocational education, and finally it recalls its GC No. 13 in particular the definition of TVE as a component of general education. Here it is clear that in UDHR, ICESCR and CESCR GC No.13 and No. 18, as part of the right to work and the right to education, TVET as part of human rights includes TVET in all educational level, and it has to have the '4 A' common character of education and the TVET special character forged by UNESCO 1989 convention, and it has to be incorporated in the

<sup>33</sup>CESCR, E/C.12/1999/10.

<sup>34</sup>The comment was noted that: A view also reflected in the Human Resources Development Convention 1975 (Convention No. 142) and the Social Policy (Basic Aims and Standards) Convention 1962 (Convention No. 117).

<sup>35</sup>set out in Paragraph 50 of E/CN.4/1999/49 by a Special Rapporteur on the right to education.

<sup>36</sup> Op. Cit. 34.

<sup>37</sup>CESCR, E/C.12/GC/18, 2005.



national employment policy and be provided adequately, and TVET has to be made accessible including for child, especially for young women.

### **3.2 The TVET related norms in other human rights instruments and relevant General Comment (GC)**

In CRC (1989), in the field of work or employment, no provisions; in the field of education, this convention encourages the development of secondary vocational education, and requires vocational education, vocational information and guidance accessible and available to all children by measure such as free education or financial assistance if need, and for children alleged as, accused of, or recognizing as having infringed the penal law, the convention also call for a variety of dispositions including education and vocational training programs. In GC No.9 for the child with disability, the treaty body requires for disabled children, vocational skills are developed as early as possible through curriculum design in compulsory education, and vocational training beyond elementary school but within compulsory level should be mandatory and with guarantee of policy and funding. In CRC GC No. 11 for indigenous child, it required the state to respect of school education and vocational training of indigenous children, and to identify any barriers in effective elimination of exploitative child labor among indigenous communities.<sup>38</sup>

In CEDAW (1979), it states that appropriate measures should be taken to ensure the equality of men and women, on the same conditions for career and vocational guidance in pre-school, general, technical, professional and higher technical education, as well as in all types of vocational training, and on the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training.<sup>39</sup> There is no general commend interpreting the provisions of the CEDAW, the treaty body uses the form of general recommendation and no no TVET related content was found in all general recommendations (until 30<sup>th</sup> May 2012)

In CRPD (2006), it requires state parties to ensure that, persons with disabilities are able to access general tertiary education, adult education and lifelong learning, general technical and vocational guidance programs, vocational and continuing training, without discrimination and on an equal basis, and reasonable accommodation should be provided.<sup>40</sup> the treaty bodies has not made any general commend or recommendation.

In CRMW (1990), in the field of education, no provision, and in the field of employment, for the migrant works, it requires that hosting state to guarantee the equality of treatment with nationals of that state in relation to access to vocational guidance, placement services, vocational training and retraining facilities and institutions; for their family, only the family member who lives in the same country where the migrant works, is entitled certain equality, but the equality only in relation to access to vocational guidance, training institutions and services, nothing else.<sup>41</sup> In GC No.1 about migrant domestic workers<sup>42</sup> (2011), the committee suggests the state parties where appropriate supporting pre-departure

<sup>38</sup>Art.28(1)b.d, 40(4) of CRC, and CRC/C/GC/9 (2007) P 17 and CRC/C/GC/11 (2009) P 19.

<sup>39</sup>Art.10.a , 11(1) c of CEDAW.

<sup>40</sup>Art.24(5), 27(1) of CRPD.

<sup>41</sup>Art. 43(1), 45(1) Of CRMW.

<sup>42</sup> ILO C189 Domestic Workers Convention defines in that convention, 'domestic work' means work performed in or for a household or households, and 'domestic worker' means any person engaged in domestic work within an employment relationship, while a person who performs domestic work only occasionally or sporadically and not on an occupational basis

training that offers basic language preparation, training for specific types of work (including key job skills where appropriate), and cross-cultural destination-specific orientation. Meanwhile, it also recommends state of origin and employment to cooperate on regular and public reporting of migrant domestic workers flows, employment, rights issues and training etc. (CMR/C/GC/1 p.7).

In UN Declaration on the Rights of Indigenous 2007, it claims indigenous peoples' right in the areas of education, employment, vocational training and retraining, without discrimination.<sup>43</sup> In UN Rules for the Protection of Juveniles Deprived of their Liberty 1990, it claims every juvenile shall have the right to receive vocational training in occupations likely to prepare him or her for future employment, and suggests the opportunity to perform remunerated labor (if possible) within the local community for future convenience.<sup>44</sup> In Standard Minimum Rules for the Treatment of Prisoners 1977, it says education, vocational guidance and training shall be used as one of appropriate means, non-profit one, and vocational training in useful trades shall be provided for prisoners especially young prisoners. In Declaration on Social Progress and Development 1969, it suggest that vocational and social guidance for the rehabilitation of mentally or physically disabled persons shall be provided, and measures should be adopted to accelerate the extension and improvement of general, vocational and technical education and of training and retraining, and those education and training should be provided free at all levels.<sup>45</sup>

In the human rights instruments mentioned above, it shows that TVET related content is considered important to secure the employment benefit of migrant workers and their family, education benefit of children, and employment and employment benefits of woman, disabled, indigenous people, juveniles and prisoners and social progress.

### **3.3 The implementation of the TVET related norms in core international human rights instruments and its monitor**

Because TVET related norms in universal human rights instruments (those declaration, rules, and guideline) are not legally binding, so the implementation of TVET related norms here only means the implementation of human rights treaties ICESCR, CRC, CEDAW, CRPD, and CRMW in state parties. The monitor way of those treaties bodies is quite similar: the treaty body has the general monitor mandate of reviewing the reports from state members and make recommendation, and the mandate of handling individual compliant is not common because it is provided in protocols and those protocols are binding due to ratification.<sup>46</sup> About the monitor mandate of reviewing the state reports, all the treaty bodies set certain guideline of reporting according to their TVET related provisions,<sup>47</sup> for example, the guideline of the report under ICESCR requires the report to 'indicate what technical and vocational training programs are in place in the state party and their impact on empowering the workforce,

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is not a domestic worker. (Art.1)

<sup>43</sup>Art.21(1) of UN Declaration on the Rights of Indigenous 2007.

<sup>44</sup>Art.42,45 of Rules for the Protection of Juveniles Deprived of their Liberty 1990.

<sup>45</sup>Art. 19.d, 21.b of Declaration on Social Progress and Development 1969.

<sup>46</sup>for instance, ICESCR protocol adopted in 2008 with 8 states parties, CEDAW protocol adopted in 1999 with 104 states parties, and CRPD protocol adopted in 2006 with 67 state parties. (CRC 2 protocols are not about individual complaints but about children rights in armed conflict, child sale, prostitution and pornography, and its latest protocol about the individual compliant has not been taken into force.) <http://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&lang=en> accessed on 20 April 2012.

<sup>47</sup>See "Compilation of Reporting Guidelines including the guidelines on common core document and treaty specific reports" 2009.

especially disadvantaged and marginalized individuals, to enter or re-enter the labor market.<sup>48</sup>

About the monitor body of these treaties, it is quite same in these 5 conventions. The committee on convention functions as the treaty body (established according to the treaty), monitor body (monitor the implementation of the treaty) and interpretation body (interpret the provisions of the treaty). As the interpret body, they interpret norms of treaty by theme in the form of General Comment (GC) for example see ICESCR GC No13 and 18 (Part 3.1 of the thesis); As monitor body they suppose to have two monitor mandates: the 1st is examining and commending the report from state party on the measures they have adopted which give effect to the rights recognized herein and on the progress made in the enjoyment of those rights,<sup>49</sup> and the 2nd is non-state complaints procedure: receiving and handling complaints from non-state about the human rights abuse within the jurisdiction of state parties, and this 2<sup>nd</sup> monitor mandate is authorized not by treaty themselves but the optional protocol<sup>50</sup> which only binding to double membership of state in treaty and the treaty's this optional protocol. The fact is the 2<sup>nd</sup> monitor mandate of treaty committee is not active at all due to series of reasons. One example is only eight of 160 states parties of ICESCR ratified the protocol recently starting from 2010.<sup>51</sup> The case raised by the 2<sup>nd</sup> monitoring mandate could not be accessed on OHCHR online so there is no way to examine how the 2<sup>nd</sup> monitoring mandate work for its limited state parties. More details as in Table 1.

**Table 1.** The amount of state parties respectively in international human rights conventions and their special protocol which authorizing treaty body's 2<sup>nd</sup> monitor mandate: receiving non-state complaints (until July 9, 2012)

The Amount of State Parties				
ICESCR(1966) / protocol (2008)	CEDAW(1979) / protocol(1999)	CRC(1989) / protocol(2011)	CRPD(2006) / protocol(2006)	CRMW(1990) / no protocol
160 / 8	187 / 104	193 / 0	117 / 71	46 /

The table 1 shows that these 5 conventions themselves are well ratified by states even if CRMW has the least one: 46 state parties, and when it comes to the protocols that authorizes treaty body to receive non-state complaints about human right abuse within the jurisdiction of state parties, it demonstrates two problems: first, no such protocol or such protocol is too new, pacifically, CRMW has had no such protocol so far, and CRC and ICESCR only leased this kind of protocol recently years, so no or quite few ratification; second, some state parties of the convention are not willing to subject themselves to the treaty bodies' 2nd monitor mandate of non-state complaints besides the reporting mechanism provided by the convention, such as in CEDAW and CRPD, and for example China ratified ICESCR, CEDAW, CRC and CRPD but none of their protocol.

From the amount of state parties of these conventions, it seems those conventions has big potential to impact in state level, however, the fact reveals that potential is quite limited. Although the existence of the guideline of reporting, the monitor mandate by reviewing the reports of state parties still have three problems, (1) the frequency of the reporting is quite low: for initial report, 1-2 year(s) after the treaty entry into force in the state country, and for periodic reports every 4-5years after the initial report. Reporting period for each of these five conventions see Supplement A; (2) Overdue reporting is

<sup>48</sup>E/C.12/2008/2, p. 26.

<sup>49</sup> Art.40 (1) of ICESCR.

<sup>50</sup>This protocol was adopted in Dec 2008.

<sup>51</sup><http://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&lang=en>, accessed on 26 April, 2012.

common and serious and the outcome of the failure of reporting is quite lenient. For example, no any state report under CRMW has been found until the 31<sup>th</sup> of May 2011 and CRMW committee issued one procedure rule 'Consideration of States parties in the absence of a report' in April 2012 but this rule is only contain 6 quite simple and lenient points,<sup>52</sup> and the CEDAW committee made a list of 48 States parties whose reports are due or overdue and had not been submitted as at 31 December 2011,<sup>53</sup> and the ICESCR committee adopted a 'Procedure in response to non-submitted and considerably overdue reports' in 2011 as well;<sup>54</sup> (3) If state parties fail to report to the treaty bodies, then the monitoring mandate of these treaty bodies are nullified and the lenient procedure of dealing with this failure could not help too much in a political nudging way.

After examining the annual reports from the treaty committees of ICESCR, CRC, CEDAW, CRPD and CRMW from 2009 to 2012, it is found that: a) CRMW is still in the process of disseminating the rights enshrined in the convention and no TVET this concrete concern yet; b) CRPD has not paid attention to TVET related content so far; c) CEDAW committee finds 'employers often regard older women as a non-profitable investment for education and vocational training' and without recommend;<sup>55</sup> d) ICESCR committee recommends vocational training as one of measures to promote employment especially for youth, and it stresses the significance of equal access to secondary and technical and vocational education that with good quality;<sup>56</sup> e) CRC committee notices vocational education and training is not adequate, with limited provisions, and is expanded too slowly and not sufficiently, including for children who dropped out of school. It recommends providing more early education facilities and vocational training centers accessible in all regions of the country (including for children who have dropped out of school), assisting children in acquiring vocational skills, and finding occupations respecting the age limits set by the ILO C138, meanwhile it notices the needs to have balanced investment across the whole span of education in order to ensure quality and resources to education at all levels.<sup>57</sup>

In order to further examine the impact of those TVET related content in those international human rights instruments, 4 countries: China, Congo, Argentina and Spain are selected according to countries geography location, and the examination covers the situation of ratification of treaties (including their protocols) by these 4 countries, their reports to treaty bodies, and the treaty bodies' comments especially the concluding observation concerning each of the 4 countries, and the respective monitoring documents and concluding observations from Human Rights Council (HRC) who has the general and thematic monitoring mandate in all human rights instruments. See Supplement B

Examination finds that: (1) Not every country accept these conventions and the protocol for non-state complaints For example, China has not ratified CRM and any protocol for non-state complaints, which means treaty bodies are not able to handle non-state complaints about human rights abuse in China.

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<sup>52</sup> <http://www2.ohchr.org/english/bodies/cmw/SPAbsenceReport.htm>

<sup>53</sup> [www2.ohchr.org/english/bodies/cedaw/.../StatusOfSubmissionE.pdf](http://www2.ohchr.org/english/bodies/cedaw/.../StatusOfSubmissionE.pdf)

<sup>54</sup> Three procedures are: (1) To review three lists of States parties whose reports are overdue: States parties with reports that were due within the past eight years, from 8 to 12 years ago, and more than 12 years ago; (2) To send reminders to States parties: a first letter – a second – a third due to the responding act of the state party; (3) to defer the monitor mandate for on session when where the state party concerned indicates that a report will be provided to the committee and upon a request from the state party, the chairperson may decide to defer its consideration of the implementation of the covenant in the State party for one session. ( Page 9-10, E/2011/22 and E/C.12/2010/<sup>3</sup>)

<sup>55</sup> A/66/38 (2011), p. 122.

<sup>56</sup> E/2009/22 (2009), p. 34, 55, 125.

<sup>57</sup> CRC/C/49/3 (2010) and CRC/C/48/3 (2009), p. 73.

Congo is not member state of CRPD and CMW and all protocols. Oppositely, Argentina and Spain participate highly in these human rights instruments. (2) Overdue report still exists, for example, Congo. (3) HRC has not raised any TVET related human rights problem concerning these 4 countries. (4)CRMW has not performed its monitoring mandate properly because no TVET related problem and concluding reservation was found from this treaty body concerning Argentina and Spain who are state parties. (5) ICESCR as main provider in the right to education and right to work where the TVET related human rights dwells, it seems the treaty body has not paid enough attention on TVET related norms because no identified TVET problem and corresponding recommendation. (6) CRC and CRPD relatively monitor better in TVET related norms because they identified some TVET related problems and made corresponding recommendations, especially CRC. Except CRC, other treaty bodies have not made any TVET recommends for China.

### **3.4 Concluding Remarks**

Human rights bodies do not provides any TVET related initiatives or program or policies, all its impact on national TVET content comes from the international human rights instruments: legal instruments. The TVET related content in these human rights instrument is quite few and sporadic and shallow, and it is totally constrained within simple education and employment consideration, pacifically, the equality and accessibility for all, secondary TVET, vocational training (and retraining) and vocational guidance for the interests of education and employment of special groups (woman, children, the disabled, migrant workers and their family, people deprived liberty especially the juvenile) as the minimum standard in this field, because all human rights are considered the minimum standard to sustain human dignity. Further interpretation of TVET content is provided by ICESCR treaty body's GC No. 13 which states (1) Right to TVET includes right to TVET at all educational levels; (2) TVET needs to have '4 A' common character of right to education; (3)TVET needs to be incorporated in employment policy and delivered in a non-discriminate way with consideration of the interests and needs of children, young people especially women, those dropping out of schools, and the disabled (no mention migrant workers and their families as special vulnerable group);(4) the concept of TVET is referred to UNESCO 1989 convention because treaty body found which is also referred by ILO relevant standards.

It seems human rights bodies quite follow the guide of ILO and UNESCO in this field, and the proof is that CRMW treaty body issued its first GC concerning the domestic migrant workers (2011) just after ILO released its C189 Domestic Workers Convention in 2011, and when ICESCR treaty body tried to define the concept of TVET provided in ICESCR, it referred to UNESCO 1989 convention and adopted the content of the 1989 convention in GC No.13 after it made sure ILO also referred to that convention in ILO relevant standards.

Regarding to the monitor of the implementation of these TVET related provisions in human rights instruments, the 1<sup>st</sup> monitoring mandate on state parties' reporting, has been established in ICESCR, CEDAW, CRC, CRPD and CRMW, and the 2<sup>nd</sup> monitoring mandate on non-state compliant was established in ICESCR, CEDAW, CRPD, CRC but not in CRMW, the 2<sup>nd</sup> is not well accepted and its influence is quite limited, furthermore, no available resource or cases on handling non-state complaints could show how this monitoring works and impact on national level in reality. Thus basically, the treaty bodies only exercise the monitoring mandate through reporting from state parties. However, failure and overdue reporting makes this monitoring to some extent nullified and the human rights bodies seem unable to take strict measure to tackle this issue. Regarding to the TVET related problem and

recommendation communicated in reporting monitor, CRC and CRPD identify little more problems and offer more recommendations than other treaty bodies do, but in general it seems they (except CRC) has not paid enough attention to the only few TVET related provisions, and for the states who are not member of these conventions, there is no impact while for those are members, the impact is still quite limited due to the few and simple TVET related provision and deficient attention in monitor of the implementation.

The positive point is the significant value of the TVET norms in human rights instruments lies in the human rights nature --the highest level in the family of rights as the minimum standard to sustain human dignity, that is to say, the right to TVET is not mere legal rights provided in national law or policy but more significantly the universal human rights that state government has to provide to some level no matter the national law or policy provides it or not and whether or not provide it in the right way. This human rights status empowers the individuals with TVET interests and other TVET stakeholders, and the implementation and monitor on these TVET related human rights is actually disseminating the knowledge and human rights nature of this right. This is proved by that ILO relevant standards and UNESCO's TVET standard-setting instruments all subject themselves to the superiority of human rights instruments, especially UDHR and ICESCR and legitimize and justified themselves with the relevant TVET content in human rights instruments. What is more, the monitor does helps to detect some national TVET problem in human rights level especially by stressing the TVET (potential) receivers though the attention needs to be increased.

# 4 ILO's TVET Related Standards and Practice

ILO's TVET related guidance all through the world lies in three aspects, 1) ILO TVET related standards which put TVET content mainly in the human resource development, such as ILO C142 and R195 about human resource development, and C140 and R148 about paid educational leave; 2) TVET related research, such as in the supply and demand of green jobs and green skills; 3) political participation in employment related TVET content, such as G20 training strategy ILO provided; 4) country project in TVET, such as ILO training project in Bangladesh. The research, political participation and country project in TVET field all follow the ILO's TVET related standards, that is to say, within ILO the TVET activities are conducted in a quite coherent way through following and promoting relevant labor standards and ILO TVET other policies or initiatives.

ILO's TVET related labor standards (conventions and recommendations) do not provide the complete aspect of TVET contents but only focus on the vocational guidance (VG) and vocational training (VT) due to the traditional roles division with UNESCO (see 2.2 of this thesis), and like human rights instruments, these labor standards use rights language: right to TVET. ILO labor standards provides VG and VT mainly in the framework of human resource development within the concept of lifelong learning, and sporadically in the standards concerning the employment and the interests of special group like child, young people, women, disabled people, and migrant workers etc.. 'Vocational guidance and training' is one independent subject covered by ILO standards, under this subject the relevant ILO standards is displayed as: a) up-to-date instrument: C142 human resources development convention 1975, R195 human resources development recommendation 2004, C140 paid educational leave convention 1974; b) instrument with interim status: R148 paid educational leave recommendation 1974 and R136 special youth schemes recommendation 1970.<sup>58</sup>

However, the provision containing VG and VT is also provided in other standards such as, 1) Under elimination of child labor and protection of children and young people: C138 minimum age convention 1973 (Art. 3.3 and 7.1.b) and its recommendation R146 (Art. 2.d, 3 and 4), C182 worst forms of child labor convention (Art. 7.2.c) and its recommendation R190 (Art.4 and 15.k.ii), and R125 Conditions of Employment of Young Persons (Underground Work) Recommendation 1965 (Art. 13.a); 2) under equality of opportunity and treatment: C111 discrimination (employment and occupation) convention 1958 (Art.1.3, 3.e) and its recommendation R111 (Art.1.3, 3.a.ii & b), R 90 equal remuneration recommendation 1951 (Art. 6.a & b), C 156 workers with family responsibilities convention 1981 (Art.7) and its recommendation R169 (Art.9.a, 13, 14); 3) under employment policy and employment promotion: R122 employment policy recommendation 1964 (Art.5.1) & R169 employment policy (supplementary provisions) recommendations 1984 (Art.16.a, 17.f, 35.i, 40), R193 promotion of cooperatives recommendation 2002 (Art. 8.1.e), R189 job creation in small and medium-sized enterprises recommendation 1998 (Art.10.1, 17.g), C88 employment service convention 1948 (Art. 6.a.i), C159 vocational rehabilitation and employment (disabled persons) convention 1983 and its recommendations R009 & R168; 4) under migrant workers: R151 migrant workers recommendation 1975 (Art. 2.a-b, 24.b) and R100 migrant workers recommendation 1955 (Art. 15.c, 17.a, 40.a); 5) under other categories: C189 domestic workers convention 2011 (Art. 4.2) and some for

<sup>58</sup><http://www.ilo.org/dyn/normlex/en/f?p=1000:12030:6093881482158338::NO:::> accessed on 1 May 2012.

seafarers, fishermen, dockworkers, indigenous and tribal people, and specific categorized workers. In the standards mentioned above, the contents of VG and VT are repeated in some different standards, and can be summarized as below:

**a)** when the age 16 taken as the minimum age for work (or employment) in national law or young people employed (or to be employed) underground in mines, it has to be conditioned on that the young persons have received adequate specific instruction or systematic vocational training in the relevant branch of activity; **b)** the employment or work of persons 13 to 15 years of age on light work, or domestic work performed by domestic workers under the age of 18 and above the minimum age of employment, cannot prejudice their participation in vocational orientation or training programs; **c)** children and young persons who do not have families or do not live with their own families and of migrant children and young persons who live and travel with their families, should be included in the provision of fellowships and vocational training; **d)** ensure access to free basic education (wherever possible and appropriate, vocational training) for all children removed from the worst forms of child labor, and realize the need for job creation and vocational training for the parents and adults in the families of children who worked in worst forms of child labor; **e)** The terms employment and occupation in discrimination convention C111 include access to vocational training, and non-discrimination principle needs to be observed and promoted in the activities of vocational guidance and vocational training, and the equal or equivalent facilities for vocational guidance and vocational training for both sexes should be ensured, and women should be encouraged to use those facilities; **f)** For the workers with family responsibility or with disability, their right to vocational training should be guaranteed and vocational training facilities and employment service (e.g. vocational guidance) should be made available to them as well; **g)** vocational guidance and training should be taken, to build up the means of production and develop human capacities fully, to assist young and disadvantaged groups and persons within a rational vocational training policy based on the research of employment prospects, to train or retrain those who have to change jobs because of structural changes in production and employment, and to enable (habitually or repeatedly) receiving country of migrant workers to assist the vocational training of the local workers from the developing countries (same as the migrant workers 'original countries); **h)** Develop the technical and vocational skills of members, workers and managers, as well as multiple vocational and managerial skills needed by small and medium-sized enterprises in which organizations of employers or workers should consider to participate in the monitoring and analysis of social and labor-market issues such as vocational training.

Because those provisions mentioned above are quite sporadic and relative simpler like those in human rights instruments and they do not provide how to carry out TVET, the following part will only focus on the most relevant TVET related ILO standards: those under the subject of vocational guidance and training, namely, C142 human resources development convention 1975 and R195 human resources development recommendation 2004, C140 paid educational leave convention 1974 and R148 paid educational leave recommendation 1974, and R136 special youth schemes recommendation 1970.

#### **4.1 The Content of the ILO Standards under the Subject of Vocational Guidance and Training**

The vocational guidance and vocational training and other related education is taken within the concept of human resource development focusing on the competency, employability and quality of human capital.



#### 4.1.1 The content of ILO C142

In ILO C142, there are totally 13 articles, mainly about policy formulation of vocational guidance and vocational training (VG & VT), as the main contents of human resource development. So for the policy formulation of VG & VT, ILO C142 poses the following requirement:

- (1) The comprehensive and coordinated policies and programs of VG & VT, linking to employment through employment service. Due account: regional and national employment needs and opportunity & problems, socio-economic and cultural level and development, multi-relationships between different objectives. Methods: suit national condition. Purpose: capacity building of individuals on the influence on working and social environment, encouraging and enabling all to develop and use their capability for work. (Art.1)
- (2) An open, flexible and complementary systems of general, technical and vocational education, educational and vocational guidance and vocational training within and outside of formal education. (Art.2)
- (3) Vocational guidance. System should be extended with broader coverage both in information and receiver like children, young persons, adults, all handicapped and disabled. Contents should include the choice of an occupation, vocational training and related educational opportunities, the employment situation and employment prospects, promotion prospects, conditions of work, safety and hygiene at work, and other aspects of working life, general aspects of collective agreements and of the rights and obligations of all concerned under labor law etc.. (Art.3)
- (4) VT system gradually be extended, adapted and harmonized to the needs of lifelong learning for all people in all economic sectors. (Art.4)
- (5) Co-operation with employers' and workers' organizations and other interested bodies in the process of policy formulation. (Art.5)

#### 4.1.2 The content of ILO R195

The R195 was adopted in 2004 and contains much more developed contents of VG & VT. The R195 is structured with totally 22 articles by 10 main parts, namely, 1) objective, scope and definition; 2) development and implementation of education and training policies; 3) education and pre-employment training; 4) development of competencies; 5) training for decent work and social inclusion; 6) framework for recognition and certification of skills; 7) training providers; 8) career guidance and training support service; 9) research in human resource development, education, training and lifelong learning; 10) international and technical cooperation. Basically, the member states of ILO C142 are required to fulfill this following obligations according to R195:

**About human resources development, education, training and lifelong learning.** 1. Working method: social dialogue in formulating, applying and reviewing the policy. 2. Due consideration in policy formulation: the link of the lifelong learning and employability to decent work and sustainable economic and social development especially the development of competencies, job retention, social inclusion and poverty reduction in globalizing economy and knowledge-and skill-based society; the importance of innovation, competitiveness, productivity, growth of the economy, the creation of decent jobs and the employability of people, with noting that innovation creates new employment opportunities which demands new skills that education and training is expected to provide; supporting workers transforming from informal economy into decent work by providing relevant training and validating prior learning and skills etc.; promoting and sustaining public and private investment for the use of information and communication technology; reducing inequality in the participation. 3. Goals and its realization: recognizing education and training are a right for all, collaborating with social

partners to achieve lifelong learning access for all by explicit commitment: 'by governments by investing and creating the conditions to enhance education and training at all levels; by enterprises in training their employees; and by individuals in developing their competencies and careers.' 4. terms clarification: the definition about lifelong learning, competencies, qualifications, employabilities.

**About development and implementation of education and training policies.** 1. Defining a national strategy and establishing a guideline framework at national, regional, local, and sectoral and enterprise levels; 2. Strengthening social dialogue and collective bargaining at those levels for system development, program relevance, quality and cost effectiveness; 3. Developing supportive social and other policies and economic environment and incentives to enable and motivate all to participate, especially for enterprises and other social partners in social dialogue, investment, and further training through providing working experience opportunity, while for individuals in participating, developing and applying entrepreneurship skills etc. 4. Localizing a delivery system; 5. establishing, maintaining and improving a coordinated system within the concept of lifelong learning and considering the priority to education and pre-employment training and training the unemployed and social partners' role in further training; 6. Assume the primary responsibility for investing in quality education and pre-employment training with guaranteeing qualified teachers and trainers working under decent conditions; 7. Developing a market responsive national qualification framework to facilitate lifelong learning, assist skill match, and to guide individual choices; 8. Incorporating basic knowledge, literacy and numeracy skills and the appropriate use of information and communication technology into the education and pre-employment training; 9. Promoting equal opportunity for women and equal access for people with nationally identified special needs, such as youth, low-skilled people, people with disabilities, migrants, older workers, indigenous people, ethnic minority groups and the socially excluded, and for workers in small and medium-sized enterprises, in the informal economy, in the rural sector and in self-employment; 10. Considering the benchmarks in relation to comparable countries, regions and sectors when making decisions about investment here.

**About education and pre-employment training.** 1. Improve access for all to enhance employability and to facilitate social inclusion by collaborating with social partners; 2. Developing non-formal approach especially for adults who missed the opportunity when young; 3. Encouraging the maximum use of new ICT; 4. Ensuring provision of vocational, labor market and career information and guidance and employment counseling, and relevant legal rights and obligations; 5. Ensuring the relevance and quality of the programs; 6. Ensuring the system is developed and strengthened for the development and certification of skills relevant to the labor market.

**About development of competencies.** 1. Promoting the ongoing identification of trends in competencies needed by individuals, enterprises, the economy and society as a whole; 2. Recognizing the roles of the social partners, enterprises and workers in training and providing positive measures to stimulate investment and participation in training, for example: supporting social partners' initiatives in bipartite dialogue, supporting individuals to balance their work, family and lifelong learning interests, urging private and public employers to adopt best practices in human resources development, and calling upon multinational enterprises to provide training for all levels of their employees in home and host countries; 3. Recognizing workplace learning (including formal and non-formal, working experience) and promoting the expansion of workplace learning and training through utilizing high-performance work practice, organizing on-and off-the job training, and adopting new forms of learning that make participation convenient; 4. Reducing inequality by developing equal opportunity strategies, measures and programs for the training of women, specific groups and economic sectors, people with special needs, and promoting equal access to career guidance and skill upgrading for all workers including retaining employees whose jobs are at risk, and promoting equitable training policies and opportunities for all public sector employees with considering the social partners' roles.

**About training for decent work and social inclusion.** 1. Giving training priority to the unemployed, those seeking to enter or re-enter the labor market and people with special needs, by using measures like incentives and assistance; 2. Recognizing the roles played: social partners' role in integrating the unemployed and people with special needs in jobs and local authorities, communities and other interested parties in implementing programs for people with special needs.

**About framework for recognition and certification of skills.** 1. Using a national qualifications framework to develop, implement and finance a transparent mechanism for the objective and non-discriminatory and standardized assessment, certification and recognition of skills (including prior learning and previous experience, irrespective of the countries where they were acquired and whether acquired formally or informally); 2. Incorporating a credible system of certification into this national qualification framework in order to ensure the skills are portable and recognized across sectors, industries, enterprises and educational institutions; 3. Designing special provision to ensure ensure recognition and certification of skills and qualifications for migrant workers.

**About training providers.** 1. Diversifying the training provision to meet the different needs of individuals and enterprises and to ensure high- quality standards, recognition and portability of competencies and qualifications within a national quality assurance framework; 2. Developing a framework to certificate training providers' qualification; 3. Developing quality standards for trainers and creating opportunity for them to meet such standards; 4. Dividing roles of government and social partners in expanding and diversifying training; 4. Incorporating quality assurance in the public system and promoting it in the private training market, and evaluating the outcomes of education and training.

**About career guidance and training support services.** 1. Assuring and facilitating the participation and access to, vocational and career information and guidance, job placement services and job search techniques and training support services; 2. Using ICT and traditional best practice in this field; 3. Identifying roles and responsibilities of employment services, training providers and other relevant service providers in this regard; 4. Guiding entrepreneurship, promoting entrepreneurship skills, and raising educators and trainers' awareness of the importance of enterprises in creating growth and decent jobs.

**About research in human resource development, education, training and lifelong learning.** 1. Evaluating the impact of the the education, training and lifelong learning policies on the progress made; 2. Developing the capacity of nation and social partners in analyzing trends in labor markets and human resource development and training; 3. Collecting information disaggregated by gender, age and other characteristics, on educational levels, qualifications, training activities, and employment and incomes in regular survey of the population, and on competencies and emerging trends in the labor market from a variety of sources ( including longitudinal studies) not confined to traditional occupational classifications; 4. Establishing databases and quantitative and qualitative indicators on the national training system, and gathering data on training in the private sector with aware of the impact of data collection on enterprises; 5. Supporting and facilitating research on human resources development and training which cover: learning and training methodologies, skills recognition and qualifications frameworks, its policies and strategies and frameworks, training's investment and effectiveness and impact, trends identification and measure and forecast in supply and demand for competencies and qualifications in the labor market, barriers remove in accessing training and education, gender bias sweep in the assessment of competencies, reports and document release; 6. Applying research outcome to guide planning, implementation and evaluation of programs.

**About international and technical cooperation.** 1. Developing mechanisms that mitigate the adverse impact on developing countries of the loss of skilled people through migration; 2. Promoting national capacity building to reform and develop training policies and programs (including the capacity for social dialogue and partnership building in training); 3. Strengthening the capacity of the social partners to contribute to dynamic lifelong learning policies (in particular in relation to the new dimensions of regional economic integration, migration and the emerging multicultural society); 4. Promoting recognition and portability of skills, competencies and qualifications nationally and internationally; 5. Developing entrepreneurship and decent employment and sharing experiences on international best practices; 6. Increasing technical and financial assistance for developing countries, and at the level of the international financial institutions and funding agencies, promoting coherent policies and programs centering education, training and lifelong learning; 6. Considering the specific problems of the indebted developing countries, exploring and applying innovative approaches to provide additional resources; 7. Promoting cooperation between and among governments, the social partners, the private sector and international organizations on all other issues and strategies encompassed in this instrument.

#### **4.1.3 The content of ILO C140, R148 and interim instrument R136**

ILO C140 Paid Educational Leave Convention 1974 is structured by totally 19 articles and the main contents is enshrined in 13 provisions. Firstly, about the concept, it is said 'paid educational leave means leave granted to a worker for educational purposes for a specified period during working hours, with adequate financial entitlements.'<sup>59</sup> General purpose of the policy for paid educational leave is to contribute to 'the promotion of appropriate continuing education and training, helping workers to adjust to contemporary requirements'.<sup>60</sup> Secondly, about the granting of paid educational leave, it is said it should be for the purpose of: a) training at any level, b) general, social and civic education, c) trade union education, and no exclusion of workers out of discrimination, and When difficulties for particular categories of workers<sup>61</sup> or undertakings<sup>62</sup> to fit into general arrangements of paid educational leave, it calls for special provisions to ensure those workers or workers in these undertakings would not be excluded from the benefit of paid educational leave. Thirdly, about financing, it requires financing arrangements for this on a regular and adequate basis and in accordance with national practice. Fourthly, about the promotion, it requires the public authorities, employers' and workers' organizations, and institutions or bodies providing education and training to be associated for the promotion of paid educational leave.<sup>63</sup> Fifthly, about the interests during the period of paid educational leave, it requires a period of paid educational leave to be assimilated to a period of effective service for the purpose of establishing claims to social benefits and other rights deriving from the employment relation.<sup>64</sup> So far 34 countries ratified this convention.<sup>65</sup>

ILO R148 Paid Educational Leave Recommendation 1974 is structured with total 21 articles by five parts, namely, 1 definition; 2 Formulation of policy and methods of implementation; 3 Measures for

<sup>59</sup> Art.1 of ILO C140.

<sup>60</sup> Art. 3. d of ILO C140.

<sup>61</sup> Such as workers in small undertakings, rural or other workers residing in isolated areas, shift workers or workers with family responsibilities (Art.9 of ILO C140)

<sup>62</sup> Such as small or seasonal undertakings (Art.9 of ILO C140)

<sup>63</sup> Art. 6 of ILO C140.

<sup>64</sup> Art.11 of ILO C140.

<sup>65</sup> [http://www.ilo.org/dyn/normlex/en/f?p=1000:11300:1975625525408071::NO:11300:P11300\\_INSTRUMENT\\_ID:312285](http://www.ilo.org/dyn/normlex/en/f?p=1000:11300:1975625525408071::NO:11300:P11300_INSTRUMENT_ID:312285), accessed on 3 May 2012.

promotion of paid educational leave; 4 Financing; 5 conditions for granting of paid educational leave. Maybe because R148 was adopted in the same year of ILO C140 paid leave convention, R148 repeats the C140 a lot. However, still it provides some new points. Firstly, about the educational nature of paid educational leave, R148 makes it clear that 'paid educational leave is not a substitute for adequate education and training early in life and it is only one of a variety of means for continuing education and training.'<sup>66</sup> Secondly, measures to promote the policy, it recommended '(a) to ascertain the current and future education and training needs of workers which may be met by paid educational leave;(b) to make full use of all available education and training facilities, and to establish new facilities to meet the education and training purposes of paid educational leave;(c) to take account in teaching methods and education and training programs of the objects and the terms of paid educational leave, which reflect new needs;(d) to encourage workers to make the best use of education and training facilities available to them;(e) to encourage employers to grant paid educational leave to workers.'<sup>67</sup> Meanwhile it requires to build 'adequate systems of information and guidance regarding possibilities of paid educational leave'<sup>68</sup> and adequate arrangement to ensure that the education and training provided are of appropriate quality. Thirdly, financial issues, it suggests that '(a) employers, collectively or individually,(b) public authorities and educational or training institutions or bodies, and(c) employers' and workers' organizations, may be expected to contribute to the financing of arrangements for paid educational leave according to their respective responsibilities',<sup>69</sup> and also asks that 'the financial entitlements of workers during paid educational leave should (a) maintain their level of earnings by continued payment of their wages and other benefits, or by adequate compensation therefore, as provided for by national laws or regulations, collective agreements, arbitration awards or such other means as may be consistent with national practice;(b) take account of any major additional costs of education or training.'<sup>70</sup> Fourthly, the granting of paid educational leave, it states that 'workers should remain free to decide in which education or training programs they wish to participate'.<sup>71</sup> It also requires granting to consider 'the types of education or training programs available and of the needs of workers and their organizations and of undertakings, as well as of the public interest',<sup>72</sup> and to give priority to 'particular categories of workers, or particular occupations or functions, which have especially urgent education or training needs,'<sup>73</sup> as required by national or local circumstances or by the circumstances of an undertaking.

R136 Special Youth Schemes Recommendation 1970, as a small complementary recommendation in ILO training policy, its limited coverage and interim character decides its constrained application. Nonetheless, its value in labor projects or programs might be still important. Generally, special schemes are those 'designed to enable young persons to take part in activities directed to the economic and social development of their country and to acquire education, skills and experience facilitating their subsequent economic activity on a lasting basis and promoting their participation in society'.<sup>74</sup> Concerning the relevance to TVET, it is the part three of R136: schemes which meet needs for youth employment and training not yet met by existing national educational or vocational training programs or by normal opportunities on the employment market. These kind of schemes are dedicated to serve

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<sup>66</sup>Art.6 of ILO R148.

<sup>67</sup>Art.8 of ILO R148.

<sup>68</sup>Art.9 of ILO R148.

<sup>69</sup>Art.12of ILO R148.

<sup>70</sup>Art.20 of ILO R148.

<sup>71</sup>Art.14 of ILO R148.

<sup>72</sup>Art.17.1 of ILO R148.

<sup>73</sup>Art.19 of ILO R148.

<sup>74</sup>Art.1.1 of ILO R136.

the unsatisfied youth employment and training, and their contents cover purpose, participation, content of special schemes, conditions of service, selection and training of staff, assistance to participants for their occupational future, specifically, (1) the participation. It requires 'Special schemes should allow as large a number of young people as possible to transfer to normal economic activity or to regular educational or vocational training programs and the period of participation should accordingly be limited.'<sup>75</sup> (2) the content of the scheme. It generally requires it to 'be adapted to and may vary, even within one scheme, according to the age, sex, educational and training level and capacities of the participants,'<sup>76</sup> and for the scheme of providing young persons who have limited opportunities with the skills necessary for useful economic activity, it requires it to '... (b)provide participants with a sound basis of practical skills and related theoretical knowledge; (d) facilitate and, as far as possible, ensure-- (i) transition to regular educational or vocational training programs or to other special schemes for further education or training, particularly of those showing special abilities...'<sup>77</sup> and for those involving young persons in economic or social development projects, it requires it 'include training, at least to the extent of providing full training as required for the work to be undertaken, and training in relevant health and safety measures...'<sup>78</sup> (3)the condition of service, it consider the balance of the young participants' life and asks '... the hours spent in a day and in a week on work and training should be so limited as to allow sufficient time for education and for rest as well as leisure activities.'<sup>79</sup> (4)the selection of staff, except the satisfactory qualifications for and experience on the work, it also emphasizes on understanding of young persons, on qualities of leadership and on adaptability, and requires 'at least some members of the staff should have experience of normal employment outside special schemes.'<sup>80</sup> Regarding to 'special schemes under which young persons from one country participate in activities directed to the development of another country,' the part six on international cooperation of this recommendation requires the competent authorities and bodies concerned to apply the relevant provisions of this Recommendation as fully as possible.

## **4.2 The ILO Supervision of the Conventions and Recommendations under the Subject of Vocational Guidance and Training**

In ILO there are two kinds of supervisory mechanism<sup>81</sup>: the regular system of supervision and the special procedures. The regular system of supervision comprises 1) the committee of experts on the application of conventions and recommendations (CEACR), 2) the international labor conference's tripartite committee on the application of conventions and recommendations (ILCCR). The regular supervision system mainly works on supervising the application of ILO standards in law and practice in member states by examining the reports from state parties and the observations from the workers' organizations and employers' organizations. Every two years for the eight fundamental and four priority conventions<sup>82</sup> and every five years for all other conventions (except those shelved), state parties are obliged to submit reports detailing the steps they have taken in law and practice to apply the labor standards they have ratified, and this report may be requested at shorter intervals. Therefore, the regular

<sup>75</sup>Art.14 of ILO R136.

<sup>76</sup>Art.16 of ILO R136.

<sup>77</sup>Art.19 of ILO R136.

<sup>78</sup>Art.20 of ILO R136.

<sup>79</sup>Art.22.c of ILO R136.

<sup>80</sup>Art.24.1 of ILO R136.

<sup>81</sup><http://www.ilo.org/global/about-the-ilo/how-the-ilo-works/ilo-supervisory-system-mechanism/lang--en/index.htm>. accessed on 5 May 2012.

<sup>82</sup>ILO C087and C098, C029and C105, C138 and C182, C100 and C111.

annual reporting period for ILO C140 and C142 is every five years. The CEACR examines the application firstly and then makes two kinds of comments: observations and direct requests. Observations contain comments on fundamental questions raised by the application of a particular convention by a state, which are published in the Committee's annual report, while direct requests relate to more technical questions or requests for further information, which are not published in the report but are communicated directly to the governments concerned.<sup>83</sup> Therefore, the CEACR's observations concerning application of ILO C140 and C142 are one subject of the analysis of the supervision. The CEACR's annual report needs to be submitted to the ILCCR, and the ILCCR examines the report and selects from it a number of observations for discussion. In many cases the ILCCR draws up conclusions recommending that governments take specific steps to remedy a problem or to invite ILO missions or technical assistance, and those discussions and conclusions are published in ILCCR's report.<sup>84</sup> Therefore, ILCCR's conclusions on some CEACR's observations concerning the application of ILO C140 and C142 are other subject of the analysis of the supervision. while the special procedures comprises 1) procedure for representations on the application of ratified conventions, 2) procedure for complaints over the application of ratified conventions, 3) special procedure for complaints regarding freedom of association (freedom of association committee). Those three special procedures listed are based on the submission of a representation or a complaint<sup>85</sup>, therefore, only complaints concerning ILO C140 and C142 or content of vocational guidance and training, handled by the procedure for complaints over the application of ratified conventions, are the another subject of analysis of the supervision.

#### **4.2.1 The Supervision on ILO C142 and C140 under the Regular Supervision System**

So far C142 has 67<sup>86</sup> member states while C140 has 34<sup>87</sup> member states and China has not ratified either of them so far. Compared with TVET related human rights instruments, ILO C142 and C140 are not accepted as widely as human rights instruments, which makes the C142 this so TVET related, most updated, international standard could not be as influential as it suppose to be. C140 this paid educational leave convention has two levels of state parties, one is developed countries in West Europe like Sweden and Germany who have the resource and social regime to guarantee this policy, the other is less developed countries like Afghanistan and Guinea who are lack of resource and supportive social policies and therefore almost impossible to implement this convention.

In ILO data base, searching with 'all countries', 'all years', the subject of 'vocational guidance and training' in 'all conventions', for 'all CEACR comments' in the form of 'observation' specifically 'comments on application of conventions' and 'all', total 74 observations concerning ILO C142 and C140 are found and they were published from 1989 to 2012, and 31 of them were published during 2009 to 2012 (23 concerning C142 and 8 concerning C140).<sup>88</sup> By reading the 31 observations published

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<sup>83</sup><http://www.ilo.org/global/standards/applying-and-promoting-international-labour-standards/committee-of-experts-on-the-application-of-conventions-and-recommendations/lang--en/index.htm> accessed on 5 May 2012.

<sup>84</sup><http://www.ilo.org/global/standards/applying-and-promoting-international-labour-standards/conference-committee-on-the-application-of-standards/lang--en/index.htm> accessed on 5 May 2012.

<sup>85</sup><http://www.ilo.org/global/about-the-ilo/how-the-ilo-works/ilo-supervisory-system-mechanism/lang--en/index.htm> accessed on 5 May 2012.

<sup>86</sup> [http://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300\\_INSTRUMENT\\_ID:312287](http://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:312287) Accessed on 14 July 2012.

<sup>87</sup>[http://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300\\_INSTRUMENT\\_ID:312285](http://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:312285) Accessed on 14 July 2012.

<sup>88</sup><http://www.ilo.org/dyn/normlex/en/f?p=1000:20010:5639954766196457::NO::> accessed on 4 May 2012.

during 2009 to 2012, it is found that contents of those observations mainly about asking for information in the field CEACR concerns, either for the information the state report have not stated or not enough, or for the information about the impact or development of the ongoing (or new) programs or initiatives or other activities concerning the application of C142 and C140. CEACR makes comments to the activities or measures reported concerning C142 and C140, and for some countries it recalls its comments concerning ILO C122 employment policy convention and C111 discrimination (employment and occupation) convention, or R189 job creation in small and medium-sized enterprises recommendation. The wording of those observations is quite polite, no any condemn, but the information CEACR requires state parties to submit do expresses the real concern of the application and the guide of the next step in application of C142 and C140. Specially, the situation of application of C142 and C140 observed from CEACR observation from 2009 to 2012 is as following:

**About reporting.** Overdue reports.<sup>89</sup>

**About main observance concerning C142.** In general, it mainly found that: a) existing policies and programs are not coordinated, or not closely linking to employment, or not through the employment service. b) Non-discrimination and equal basis for all seems not well implemented and the special needs are not well considered. c) The cooperation of employers' and workers' organizations and other interested bodies in the formulation and implementation process, is always not well applied to, or applied not sufficient. d) Information submitted lack of the data support, or not disaggregated by in the required way. e) The system of VG is not expanded to meet the needs in all economic sectors. f) lifelong learning is not facilitated enough.

**About main observation concerning C140.** The main observation concerning C140 is the followings: the policy formulation of paid educational leave in most countries is as if still not well done, the tripartite consultation seems not well established in the coordination of national policies and policy planning for the promotion, the detailed implementation in some national context is not clear, and the risk of discrimination and the situation in private sector is concerned.

In order to further assess the regular supervision of C142 and C140, five individual countries are selected according to their location, the date of ratification of C142 and C140, and their development level. Those five countries are Sweden, Finland, Brazil, Tanzania (united republic of) and Afghanistan. According to the search result in ILO data base by searching criteria: the specific 'name of the five countries', 'all year', under the subject of 'vocational education and training', 'all convention', 'all CEACR comments': 'observations' or 'direct requests' about the 'application of conventions', 'all', the supervision of C142 and C140 for those five selected countries is displayed as followings.<sup>90</sup> (Finding details see Supplement C)

**About general situation.** The observance matches the real development level of member states. For example, no observance concluded concerning Sweden and it implies that Sweden implements C142 quite well, while the primary problems rose in Afghanistan such as the equal right to women, which totally coincides with the common reality and the predictable outcome.

**About supervision performance.** CEACR persists in posing the problem it already detected even though the concerning state overdue the report, like concerning the alleged discrimination on women in

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<sup>89</sup>For instance, because Guinea and Guyana those two countries have not reported under C42 and C140 for so long time, the old observations for those two countries were repeated a lot: for Guinea the 2004 observation concerning ILO C142 has been repeated by CEACR once a year during 2009 to 2012, while its 2006 observation concerning C140 was also repeated in 2011 and 2012. For Guyana, last reports respectively concerning C142 and C140 were received in 2003, so two observations raised by those two old reports were repeated again and again. What is more, Brazil and Tanzania Republic have not reported on time either concerning C140.

<sup>90</sup><http://www.ilo.org/dyn/normlex/en/f?p=1000:20010:4050026897917303::NO::> accessed on 3 May 2012.



Afghanistan.

**About the problems detected.** The posed problems are usually not the concern of CEACR any more after at most two communications, which implies the problems have been tackled by the state with the monitor of CEACR, for example in Finland.

Regarding to the second step of ILO regular supervision: the ILCCR's supervision, no any comment is found in ILO data base with the searching criteria: 'all countries' 'all year' under the subject of 'vocational guidance and training' 'all conventions' for 'all ILCCR comments' 'all' and 'all' and 'all' .<sup>91</sup> So it implies no comments in the field of vocational guidance and training has been raised up by ILCCR.

#### **4.2.2 Supervision on ILO C142 and C140 under the special procedure: the procedure for complaints over the application of ratified conventions, and the annual survey on the labor standards: 1999 survey on C142 and C140**

As mentioned above, only the procedure for complaints over the application of ratified conventions is the subject of analysis on the supervision of ILO standards under the subject of vocational guidance and training. In ILO database, under the complaints/ commission of inquiry (Art.26), nine cases<sup>92</sup> are found from 1962 to 2012,<sup>93</sup> but none of them rose from ILO C142 or C148.

Considering the relevance to vocational guidance and training, those two cases concerning C111 discrimination (employment and occupation) are analyzed, and it is found that only one of them contains some content about vocational guidance and training: the 1989 Romania case.<sup>94</sup> In this report, the committee found that 'the situation of members of the Rom minority was characterized by both direct and indirect discrimination. ... Indirect discrimination occurs in training and access to employment: certain Roma are marginalized because of their low incomes; consequently, their children are unable to receive the technical or vocational training provided by the educational system. The result is that these children encounter difficulties in respect of access to skilled jobs and are reduced to a marginal status which tends to repeat the pattern set by the previous generation.'<sup>95</sup> Although the effort was noticed, this committee still thought 'these positive measures adopted by the Romanian Government are not sufficiently extensive to cope with the problem',<sup>96</sup> therefore, it expressed that 'considerable thought, which cannot be limited to the context of Convention No. 111, must be given to the problem of defining measures designed to promote equality of opportunity and treatment in employment and education, for this minority.'<sup>97</sup>

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<sup>91</sup><http://www.ilo.org/dyn/normlex/en/f?p=1000:20010:5639954766196457::NO::> accessed on 2 May 2012.

<sup>92</sup>For those nine cases, four cases concerning C087 freedom of association and C098 collective bargaining, 1 case concerning C087, C098 and C144 tripartite consultation, two cases concerning C029 forced labor, two cases concerning C111 discrimination (employment and occupation).

<sup>93</sup>[http://www.ilo.org/dyn/normlex/en/f?p=1000:50011:2732793404170445:::P50011\\_DISPLAY\\_BY:1](http://www.ilo.org/dyn/normlex/en/f?p=1000:50011:2732793404170445:::P50011_DISPLAY_BY:1) accessed on 2 May 2012.

<sup>94</sup>The report of the commission of inquiry about this case was published in ILO Vol. LXXIV, 1991, series B, supplement 3. [http://www.ilo.org/dyn/normlex/en/f?p=1000:50012:2732793404170445::NO:50012:P50012\\_COMPLAINT\\_PROCEDURE\\_ID,P50012\\_LANG\\_CODE:2507519,en:NO](http://www.ilo.org/dyn/normlex/en/f?p=1000:50012:2732793404170445::NO:50012:P50012_COMPLAINT_PROCEDURE_ID,P50012_LANG_CODE:2507519,en:NO) accessed on 2 May 2012.

<sup>95</sup> The report of the commission of inquiry in ILO, Vol. LXXIV, 1991, series B, supplement 3, p 592.

<sup>96</sup> ... p 601.

<sup>97</sup>ibid.

This case shows that the committee of the inquiry in the complaints special procedure held a balanced view in the discrimination issue, and it noticed the indirect discrimination the Roma minority received in the training and employment and evaluated the effort Romanian government made but it also realized other factors in this issue and therefore suggested the measures going beyond the C111 context. The recommendation of the committee in this case cover the rule of law and democracy development issues, which means the committee grasped a whole picture of the problem raised and not only stick in the point itself.

Unlike UNESCO who is inactive in disseminating, promoting, implementing and monitoring its 1989 convention and 2001 revised recommendation, ILO makes annual survey on its labor standards under a certain subject once a year in order to apply and promote the standards, and the relevance and impact of its C142 and C140 was studied in 1991, and the survey report showed that ILO had been proactively endeavoring the assessing and implementing its labor standards C142 and C40 for better arranging its further work in human resource development and paid educational leave. This survey also gave the information that in 1991 ILO invited UNESCO to co-monitoring the TVET issues raised from ILO C142 and C140, which indicates that ILO had been developed in a rapid space and accumulated its trust and reputation through its remarkable works in the international level, because the co-monitoring invitation implies that at that time ILO's international influence was not as strong as UNESCO in this field and in generally as well.

### **4.3 ILO Initiatives, other Guidance in TVET and Their Impact on National Level**

As mentioned before, TVET in ILO is carried out within the Decent Work Agenda which requires 'promoting employment by creating a sustainable institutional and economic environment in which individuals can develop and update the necessary capacities and skills they need to enable them to be productively occupied for their personal fulfillment and the common well-being'.<sup>98</sup> It focuses on integrating skills development into national and sector development strategies, expanding access to employment-related training for youth, persons with disabilities and other vulnerable groups, and improving the ability of public employment service. ILO prefers to address TVET in the aspect of training, accurately, through improving the quality and relevance training and employment service to improve employability and productivity of laborers and meanwhile the productivity and competitiveness of enterprises, which is demonstrated clearly by International Labor Conference 2008 *the Conclusion on Skills for Improved Productivity, Employment Growth and Development*. This conclusion is quite productive in covering the key points, and it aims to change the vicious circle: inadequate education-poor training-low-productivity jobs-low wages-the trap of working poor, into a virtuous one covering core skills, higher level of skills and portability of skills, through clear roles division among state government, social partners, and ILO support in aspects of : 1) Skills development at the workplace and along value chains for sustainable enterprises and employment growth; 2) Skills development to help manage global drivers of change, which recommends states government to take advantage of opportunity with the change divers like climate change, trade policy, migration, demography trends and growing corporation of agricultural activities; 3) Early identification of current and future skills needs to feed into national and sectoral development strategies, which reminds the skill mismatch and recommends a quantitative and qualitative forecasting of skills; 4) Linking education, skills development, labor market entry and lifelong learning, which requires a National

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<sup>98</sup>ILO Declaration on Social Justice for A Fair Globalization, 2008.

Qualifications Framework to facilitate seamless pathway among them; 5) Skills development for social inclusion of targeted groups, which recommends to transform the workers in informal economy into the decent work in appropriate method.

Except the benchmark of labor standards, ILO takes its tripartite consultation working method to reaches policy recommendations on skills development and provides this recommendations to member states and social partners, for example, A Skilled Workforce for Strong, Sustainable and Balanced growth: A G20 Training Strategy. However, maybe more influential TVET related activities in ILO are its strong researches, programs and projects, for instance: 1. ILO research program on implementation and impact of National Qualifications Framework, providing *An Introductory Guide to National Qualifications Framework: Conceptual and Practical Issues for Policy Makers*,<sup>99</sup> which covers plenty of useful information. 2. ILO *Global Employment Trend 2012* which found the world faces 600 million jobs challenge. 3. Knowledge Sharing in Early Identification of Skill Need (joint EC/ILO project) is already supported by three reports *Comparative analysis of methods of identification of skill needs on the labor market in transition to a low carbon economy*, *Skills and occupational needs in green building*, *Skills and occupational needs in renewable energy*, which will guide other states to better identify the skills they need and this is paramount in formulating TVET. 4. *the Preliminary Assessment of Training and Retraining Programs Implemented in Response to the Great Recession*<sup>100</sup> which identified some policy and service improvements and innovations (such as training measures incorporated into short-time work) and shared best practice. 5. *Management Handbook: Vocational Education and Training Institutions*, which provides practical guidance for TVET undertakings. 6. Green Job Initiatives launched by UNEP, ILO, IOE and ITUC, ripping 2008 report *Green Jobs: Towards Decent Work in a Sustainable, Low-Carbon World*, and *Skills for Green Jobs: A Global View*<sup>101</sup> a synthesis report based on 21 country studies, and this synthesis report found that: a) like Brazil, India and Philippine, China seems has not undertaken any major green shift (p. 56); b) China needs to retrain and upgrade the skills and make them green skills in agriculture, forestry, extractive industries, fossil fuel and energy generation, emissions-intensive manufacture, and cement (p.65); c) About the green stimulus package, China provides the world largest size US\$218bn while its proportion, 34% of total stimulus looks still modest compared with 79% in Korea and 64% in some EU members (p.46); d) The projected gaps between labor supply and demand in selected countries now and in 2020 (quantity analysis) displays that except Sweden, South Africa etc. most countries will encounter labor shortages in green collars, and China will continuously suffer this shortage now and in the following decade, especially in the Eco-smart electricians (p.29).

What is more, ILO has training centers such as Inter-American Center knowledge Development in Vocational Training (CINTERFOR), International Training Center (Turin), and it is also undertaking other programs such as ILO-Irish Aid Partnership Program, Training for rural Economic Empowerment (TREE) Program, Regional Skills and Employability Program in Asia and the Pacific (SKILLS-AP) which focuses on green jobs, youth employment, industrial relations, and migration (as migration origin countries like Thailand), and this SKILLS-AP provides on-going support for major skills development projects currently in Vietnam, Cambodia, Indonesia, Timor Leste, Pakistan and Bangladesh, and on-going support in skills development for both the formal and informal economies is

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<sup>99</sup>Ron Tuck, *An Introductory Guide to National Qualifications Framework: Conceptual and Practical Issues for Policy Makers* (Geneva: ILO, 2007).

<sup>100</sup>Ellen Hansen (assisted by Zulum Avila), *the Preliminary Assessment of Training and Retraining Programs Implemented in Response to the Great Recession*, ILO Employment Working Paper No.122, 2012.

<sup>101</sup>Olga Strietska-Ilina etc., *Skills for Green Jobs: A Global View*, 2011.

also supported to Lao PDR Mongolia, India, Afghanistan and many of the Pacific Island nations, and it has not covered China so far.

To sum up, besides the relevant labor standards, ILO addresses TVET in a 'productivity' related way which can be taken as quite clever and strategic approach because productivity related way involves the major concern of state government and enterprises and meanwhile enshrines laborers' interests when it is linked to decent work. ILO clarifies that, training itself cannot leads to employment growth, and only responsive and qualified training can, while skills development cannot lead to productivity, and only decent work provided for skills development can.<sup>102</sup> This great insight and approach explicates the key points briefly. What is more, ILO's emphasis on early identification of skills needs currently and in future, National Qualifications Framework also guide and respond (to) government, enterprises and TVET interests. ILO was invited to provide G20 Training Strategy, which sent a good sign and also is a proof that ILO's approach is endorsed by TVET primary obligation bearer: state government. Likewise, the clear roles division among state government, social partners and ILO inheres ILO's pragmatic and high-efficient working method and tripartite consultation, which demonstrates ILO this UN special agency's competency. Also, *the Conclusion on Skills for Improved Productivity, Employment Growth and Development* adopted in International Labor Conference 2008 is not constrained within training and employment aspect of TVET, and it also addresses the *Linking education, skills development, labor market entry and lifelong learning*. Furthermore, ILO's independent research in Global employment trends 2012 embodies the job challenge and also provides reference to transnational migration, which will definitely help national government even relevant enterprises to facilitate their relevant policies. Likewise, ILO's co-research in green jobs and green skills covers so many important industry countries and it shares the best practice and alerts individual shortcoming, which is precious volume comparative research that will at least benefit China if the China government is responsible enough. Additionally, ILO put the accent on youth employment which is said to have triggered Egypt revolution and alarmed many political leaders' tension. ILO's this concern is based on the realistic situation and also meet the needs of the governing party in national level, more importantly it raises the youth's awareness about their situation and their rights, which wins the youth support to ILO's work, for example, ILO general director Juan Somavia presented in Davos Economic Forum 2012 in Global Shaper (a youth organization) about the youth employment problem, and ILO's magazine: *The world of Work* No. 74 (May 2012) titled *Giving Youth A Better Start*. Last but not less important, ILO's field work like SKILLS-AP provides professional assist in skills development, and it has not covered all countries but already quite many. The only problem is the way to assess ILO's program and especially field work like SKILLS-AP is mere based on the reports and information ILO provided and there is no way to get the information from the beneficiary country about how much ILO's work impact. The single source of the information also implies ILO's good utilize of the media and public domain and documentary system in TVET activities.

#### 4.4 Concluding Remarks

Regarding to the TVET related labor standard C142 and R195 about human resource development, C140 and R148 about paid educational leave, and R136 interim special youth scheme recommendation, the content of those provisions are much advanced than the simple right language in human rights instruments, and TVET complete key points have been provided especially in C142 and R195. But

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<sup>102</sup>The Conclusion on Skills for Improved Productivity, Employment Growth and Development adopted in International Labor Conference 2008.

C142 and R195 provides more TVET policy guidelines rather than TVET operational prescription. R195 the world most updatest TVET standard is considered new by ILO themselves for the following points: 1. its terms clarification about 'competency' 'qualification' 'employability' 'lifelong learning', which serves a normative framework and encourage the further conceptual framework in this filed; 2. rights language: education and training is the right for all and ILO endeavors to make it be exercised by population; 3. integration of economic and social objectives in terms of addressing the productivity, competitiveness, development and social inclusion etc.; 4. equity in access to quality training and education in order to combat social exclusion; 5. conceptual National Qualifications Framework (NQF); 6. Clear Role divisions: the explicit commitment by government, social partners, and individuals; 7. research on human resource development, and so on (CINTERFOR references paper p.9-11). The terms clarification is novel for sure, the rights language could be considered as the human rights derivation, and the clear roles divisions is also plausible, but others points advertised as new by ILO can be assessed together with the UNESCO 2001 revised recommendation because after all R195 was adopted in 2004 while UNESCO 2001 revised recommendation in 2001.

Regarding to ILO supervision on labor standards, it seems ILO's supervision is much more thorough than the human rights monitor. ILO regular supervision on C142 and C40 seems quite sufficient even if the existing overdue reports. From the amount of observations made by CEACR totally 74, and the contents of those 31 observations published from 2009 to 2012, it is demonstrated that the CEACR's active role with the supervision mandate and its sharp observance of the existing problem or potential risk on the application of C142 and C140. From the assessment of the supervision of C142 and C140 in five selected countries, it is displayed that CEACR has been helping the state to identify the problem or risk in the application of the C142 and C140, and when the problems observed in old observation disappeared or decreased in the new observation, it may imply that the situation in that aspect has been improved. What is more, the comments is persisted even if the new report has not been received, and CEACR referred to the C142's recommendation the R195 frequently, and also comments (or concerns) raised in other related ILO standards or research, which helps state parties to understand the C142 and C140 thoroughly and to apply those two conventions in a comprehensive and coordinated way. Additionally, ILO tripartite working method in CEACR supervision may enhance the communication among the public authority and social partners in the application of the conventions, which helps CEACR to gasp the main problems of application in specific country and then improve the standard making and supervision in this field. Although no special case on vocational guidance and training handled by the special procedure: the procedure for complaints over the application of ratified conventions, ILO's competence in coping with the issues raised from ILO standards has been embodied perfectly. Therefore, undoubtedly, ILO's supervision mechanism in the existing conventions under vocational guidance and training seems much more effective than human rights monitoring. However, the problem is ILO TVET related standard has not be accepted widely by states, especially when comparing with those human rights instruments, that is to say, the direct impact of those labor standards on national level is also limited due to the limited amount of ratification and reluctant cooperation of state parties: overdue reporting.

Regarding to ILO's TVET initiatives or other guidance, it is quite obvious that ILO's education and training—employability—decent work—productivity—competitiveness—development, is a super clever approach endorsed and accepted easily by state government, enterprises or employers and laborers. ILO's co-initiative in green jobs and its research in green skills helps to build its good image and also provides useful materials for national green restructuring and skills development. Its active involvement in international media and youth by releasing its Global employment trend 2012 and youth

employment trend and relevant magazine in youth voice, both help to enhance its global impact in this field even sometimes it makes little use of the UN influence and international politics like G20 training strategy. ILO's research is always timing and productive, its working method: tripartite consultation and clear roles division looks high efficient, its concern guides the world attention in this field, and all these advantages make up the limitation of the vertical impact of ILO TVET labor standards, but the only concern might come from the overemphasized training and employment aspect of TVET. ILO's approach is quite pragmatic and responsive to the ongoing crisis and future concern and also responsible for laborers' interests including its lifelong learning and active citizenship, however, it might finally lead TVET to develop in the path of TVET Essentialism (see 2.3 of the thesis): producing skilled workforce as the realistic purpose of TVET no matter how it claims the individual's interests, because after all decent work concerns more the laborers' employment interests not the education interests (it usually in long terms), and under the pressure of employment, and even social stability, economic growth, the risk is in the national level ILO's guidance might be implemented in a training and employment focused TVET: short-term interests, and how ILO's good guidance and standards could be properly formulated and implemented, it still heavily depends on the state government's willingness, complemented on social partners' participating roles and the individuals' awareness and power, and ILO could not exert any direct pressure except diplomatically 'naming and shaming'. Nevertheless, ILO's approach is hard to be criticized and shaken at the international level so far.

# 5 The UNESCO's TVET Related Standards and Practice

In UNESCO, TVET is undertaken in the concept of capacity building- Educational for All (Cap EFA), lifelong learning, Education for Sustainable Development (ESD) and the Poverty Deduction goals in UN Millennium Development Goals (MDG) within the theme of education, so the educational value of TVET is emphasized more than employment value stressed in ILO. EFA requires TVET with 4 A character: available, accessible, adaptable, and affordable, and no discrimination; lifelong learning requires TVET designed and delivered both for youth and adults, in the form of initial and continuing education with seamless pathway to different TVET and any other type of education; ESD requires TVET to be reformed and greened especially in the UNESCO Climate Change Education(CCE) and UN Decade of Education for Sustainable (UN DESD) 2005-2014, and it also requires integrating skill education in the EFA for poverty reduction and individual development.<sup>103</sup>

UNESCO's TVET legal framework comprises two standard-setting instruments: the Convention on Technical and Vocational Education (the 1989 Convention) and the revised recommendation on concerning technical and vocational education (the 2001 revised recommendation), and some related ones such as UNESCO Convention against Discrimination in Education (1960) and its recommendation (1960) and UNESCO-UNEVOC Bonn Declaration (2004) which suggest to provide TVET in the concept of EFA lifelong learning and ESD. UNESCO use its field network UNESCO-UNEVOC to carry out most of its TVET activities, UNESCO strategy on TVET demonstrates the role restructure of UNESCO in TVET, and the UNESCO report from 3<sup>rd</sup> International Congress on TVET (Shanghai, May 2012) reflects the updated TVET trends and concern.

## 5.1 The Contents of Two UNESCO TVET Standard-setting Instruments

Concerning the TVET relevance and the formality of the instruments, this part will only focus on the UNESCO 1989 convention and its 2001 revised recommendation. The 1989 convention and the 2001 revised recommendation, serve as resource material generating systemic reform (e.g. policy issues and the day-to-day practice of TVET ), and aim to help guide the member states to improve their national TVET systems and to align their TVET systems more closely with the needs of today's workplace. Those two instruments highlight the demands of the contemporary world of work, such as, the need for multiple skills including information technology skills and 'soft' skills (entrepreneurship and adaptability to changing work situations), TVET availability as a part of lifelong learning, TVET accessibility to all in line with the with UNESCO initiated global Education For All process.<sup>104</sup> So it is clear that UNESCO does not stress rights language of TVET: right to TVET but emphasis on EFA and it prefers to take TVET as part of national policy.

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<sup>103</sup> The three terms Sustainable Development (SD), Environment Sustainable Development (ESD) and United States Decade on Environment Sustainable Development (UNDESD) mean the same thing, it allows every human being to acquire the knowledge, skills, attitudes and values necessary to shape a sustainable future.

<http://www.unesco.org/new/en/education/themes/leading-the-international-agenda/education-for-sustainable-development/>

<sup>104</sup>John Daniel, Foreword, *UNESCO's normative instruments concerning technical and vocational education*, 2004.

### 5.1.1 The Contents of UNESCO 1989 Convention

The 1989 convention is in the legal form of international treaty binding to contracting states. In its preamble human rights value is highly underpinned and core international human rights law UDHR, CESCR and CCPR is applied to value the TVET norms in international level, and meanwhile ILO standards are referred to; in its main body about state obligations it comprises 4 basic provisions ranging from article 2 to article 7: policy framing, quality assurance, international cooperation, and reporting. Compared with ILO C142 and R195, the new points of this convention come as below:

**About policy framing.** Due account: a) national population, skills and knowledge and qualification level that all economic sectors need now and in future, national and regional and local employment situation now and in future, environmental protection, etc; b) supporting, assisting and assessing TVE provider including the participating cooperative undertakings.

**About quality assurance.** Estimating the TVE undertakings and guaranteeing graduation quality. Estimation is taken by periodic review to the TVE structure, study programs, plans, training methods and materials, forms of cooperation between schools and world of work, while the guarantee of the graduation qualification is done by non-discriminate recruiting, equipping and updating the teaching staff.

**About international cooperation.** It encourages to use international technical standard and recognizing equivalence of qualification, to internationally exchange teachers and administrators and other specialists, to offer study opportunities to students from developing world for technology transfer and application, to collect and disseminate TVE information, to promote TVE cooperation between all particularly industrialize countries and developing ones, and to mobilize resources for strengthening international cooperation.

**About reporting.** Contracting state is obligatory to periodically report to UNESCO general congress. The report is supposed to cover the legislative provision, regulations and other measures adopted to implement the convention.

### 5.1.2 the Content of UNESCO 2001 Revised Recommendation

The 2001 revised recommendation has totally 100 articles and much more than UNESCO 1989 convention (5 main articles), ILO C142 (5 main articles) and ILO R195 (totally 22 articles), and we can assume that its 100 articles cover much larger quantity of TVET content than any other TVET legal instruments. Actually, although the 2001 revised recommendation was released 3 years earlier than ILO R195, it has covered almost all R195's concerns in a much broad and detailed way except the terms clarification R195 provides, and even 11 years later its concerns is still echoed by the 3<sup>rd</sup> international congress in TVET (Shanghai, May 2012) which has not gone beyond this 2001 revised recommendation much further. However, the 2001 revised recommendation continuously addresses TVET in the education-weighted way compared with ILO's training and employment-weighted way, and it uses TVE as the synonym of TVET. It as if UNESCO delicately emphasizes its competence in education that different from ILO's in training and employment, vice verse.

The 2001 revised recommendation embraces the TVET development (especially with the new enlarged partnership and stakeholders) and locates it in the frame of lifelong learning and pays more attention to the continuing TVET and the seamless pathway between TVE and all other education, and at the same time it perceives the trend in labor market (such as integration, transnational migration) and correspondingly adds contents such as: taking not only national needs but also regional needs (if



possible) into consideration when planning TVE policy, studying a foreign language and at least a foreign language of international use for the international employment, making TVE accessible for foreigners especially migrants and refugees and their accompanying children, encouraging the TVE regional cooperation. Meanwhile, it notices the modern means of processing information and therefore requires to make the full use of the modern means, and importantly it stresses the TVE funding in many processes. 2001 revised recommendation is structured by ten parts, namely, 1 scope; 2 TVE in relation to the educational process: objectives; 3 policy, planning and administration; 4 technical and vocational aspects of general education; 5 TVE as preparation for an occupational field; 6 TVE as continuing education; 7 guidance; 8 the learning process; 9 staff: a) teaching staff, b) administrative and guidance staff; 10 international cooperation. In general, compared with ILO standards and UNESCO 1989 convention, the 2001 revised recommendation is characterized as following aspects:

**About Scope.**<sup>105</sup> The formal and non-formal education with the technical and vocational nature was both covered and the TVE's lifelong learning concept was emphasized more. TVE definition was broadened and TVE value and function was expanded<sup>106</sup>; the applicable legal norms in TVET were listed clearly for the first time, namely, article 26 of UDHR, UNESCO convention and recommendation against discrimination on education (TVET as one component of education), UNESCO 1989 convention. Space and flexibility were given to states to implement this recommendation.

**About TVE in relation to the educational process: objectives.**<sup>107</sup> Concrete measures for more respecting the individual's freedom of choice of education, broader coverage of possible TVE receiver, and updated TVE value for individual development. Generally, 1. Setting TVE as a vital aspect of the educational process and a part of lifelong learning; 2 Improving life quality by creating a learning culture in order to abolish all unnecessary barriers; 3 Broadening TVE base and facilitating horizontal and vertical articulation within the education system and between school and world of work; 4 Taking freely and positively chosen of individual as the means, and considering individuals needs, aspiration to serve their harmonious development of personality, character, spiritual and human values, skills and other capacity; 5 Making TVE readily available to all and for all appropriate types of specialization and adapting the needs of women, the disabled, social and economically disadvantaged groups (like immigrants, refugees, minorities), demobilized soldiers, underprivileged and marginalized youth.

**About policy, planning and administration.**<sup>108</sup> It noticed the changing factors related to TVE and updated its requirements on the TVE policy planning, such as, TVE responding not only to the social, economic but also the environmental needs, not only to national needs but also the regional needs, not only related to world of work in urban but also in rural area; state government still carries the primary TVE obligation but the new partnership associating all stakeholders needs to be built and able to participate the TVE policy design and delivery; Regarding to the least developed countries, bilateral and multilateral TVE capacity-building cooperation is recommended; state government is asked to streamline TVE responsibilities within a public institutional framework to the maximum extent possible to coordinate the national TVE effort; TVE investment, funding and the allocation of financial resources was considered more, similar as ILO's approach, it also stresses that TVE is not cost but investment with return on well-being of workers, enhanced productivity and international competitiveness. New partnership is about: public authorities (education authority bearing the primary responsibility), representatives of NGOs within each occupation sector (from among employers and workers, of the informal economy, small enterprise owners and entrepreneurs), authorities or bodies

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<sup>105</sup> Art. 1-4 of the 2001 revised recommendation.

<sup>106</sup> see the Part 2 of the paper.

<sup>107</sup> Art. 5-8 of the 2001 revised recommendation.

<sup>108</sup> Art. 9-18 of the 2001 revised recommendation.

responsible for out of school education and training, representatives from public and private education (like teachers, examining bodies and administrators), representatives from parents, former pupils, students and youth organization. Concretely, 1. Policy for the TVE structural improvement, which clarifies the roles division; 2 Policy for ensuring the TVE quality, which asks national TVE to meet international standard and to be subjected to periodic review and evaluation with designed criteria and standards applied to subjects of all TVE aspects; 3 Policy for fostering TVE research, which mentions the curriculum development, teaching and learning methods and material, effectiveness evaluation by using relevant statistics, experiment of the research outcome and widely dissemination of the research experiment with positive result etc.; 4 Policy for TVE administrative structure, which suggests subjecting all TVE programs to the approval of the public authorities, and giving individual TVE institutions the autonomy of designing programs and selecting teaching materials etc.

**About technical and vocational aspects of general education.** <sup>109</sup>The importance and value of the technical and vocational initiation and studies in general education especially those for youth, is emphasized. It requires those technical and vocational initiation and studies to be an essential component (beginning in primary education and continuing through the early years of second education) of general education, and also requires the lasting open opportunities for different interests (e.g. within education system or outside it such as in places of work or community at large) and full respect to all spheres of youth interests and abilities (including aimless graduates with no skill). Meanwhile it requires that initiation and studies to be drawn up in collaboration with the professional community and with the responsible TVE in order to provide the added value such as democratization, environment protection, community welfare, individual ability of problem-solving, teamwork and craftsmanship etc., and it also realized technical and vocational programs should 'be closely related to the local environment without, however, being limited to it.'<sup>110</sup>

**About technical and vocational education as preparation for an occupational field: a) organization; b) program content.** <sup>111</sup>It has much more overlap with ILO standards because here TVET is planned with much more employment perspective. Generally it requires the highest priority to TVE in formal education and the accordingly adapted structure and content of traditional education through the diversification of secondary education in the later stages and the development of educational structures and program on all levels (focusing on the organized and flexible interchange between educational institutions including universities, training institutions and the world of work.), and also requires TVE to provide both a thorough and specialized preparation for initial employment(including self-employment), specifically, regarding to the TVE organization, it regulates the scale, pattern, and public measures of encouraging part-time education, high priority of TVE in tertiary level, usage of high cost of equipment, and the partnership of enterprises in their involved specific sector. Regarding to program content, noticeably it requires the interdisciplinary character and multicultural perspective of programs and the study of a foreign language and at least one foreign language if international use for the possible international employment and international acquirement of knowledge and skills etc. Respectively, it give the concrete suggestion on the study leading to university qualification, agriculture business, commercial and service (including the tourism and hospitality industries), social service system at all level (e.g. community and family work, nursing and paramedical occupations, nutrition and food technology, home economics and environmental improvement).

**About technical and vocational education as continuing education.** <sup>112</sup> TVE as continuing education

<sup>109</sup> Art. 19-23 of the 2001 revised recommendation.

<sup>110</sup> Art. 22 of the 2001 revised recommendation.

<sup>111</sup> Art. 24-44 of the 2001 revised recommendation.

<sup>112</sup> Art. 45-53 of the 2001 revised recommendation.

in the frame of lifelong learning, requires in strategy, incentives and delivery, TVE development and expansion as a priority objective of all educational strategies to facilitate seamless pathways for learners to continue both their professional and general education, both within and outside the formal education system, with an emphasis on articulation, accreditation and recognition of prior learning, and in order to permit adults to make up deficiencies in general or vocational education.

**About guidance.** <sup>113</sup>Both in regular school and in vocational institutions and this guidance is not only vocational guidance but also include any other aspect that can assist student and their parents to make the best decision.

**About the learning process.** <sup>114</sup>The TVE challenge in 21 century is illustrated as 'learner-centered innovative and flexible approaches including a reoriented curriculum to take account of new subjects and issues such as technology, the environment, foreign languages and cultures, entrepreneurship and the requirements of rapidly growing service industries'.<sup>115</sup> Therefore, in the TVE learning process, the value of evaluation or assessment is stressed and the concrete requirements are provided: motivates the learners, applying to appealing media, using right methods and materials used, and evaluating and assessing the process.

**About staff.** <sup>116</sup>It requires the priority to 'the recruitment and initial preparation of adequate numbers of well-qualified teachers, instructors/trainers, administrators and guidance staff, and to the provision of continuous professional upgrading throughout their career, and other facilities to enable them to function effectively.'<sup>117</sup> and also requires the compared favorably emoluments and conditions of service with those enjoyed by persons with similar qualifications and experience in other occupational sectors, and it also requires to count any relevant experience acquired in employment outside the educational sector when deciding promotions, salaries and pension scales for TVE staff.

**About international cooperation.** <sup>118</sup>The new points come as regional cooperation, TVE accessible to foreigners and their children, and the incorporating TVE support from all TVE stakeholders including concerned international organizations (e.g. international financial or labor bodies).

## 5.2 The Implementation and Monitor of the UNESCO Two Instruments

Although the 1989 convention and the 2001 revised recommendation are taken as two TVET standard-setting instruments in UNESCO but only 17 less developed countries (except United Arab Emirates) have adopted the 1989 convention so far<sup>119</sup>. About the monitor in UNESCO, the general monitoring work is carried by the Committee on Conventions and Recommendations (CR): one of the permanent subsidiary bodies of the UNESCO Executive Board, and the CR's monitoring mandate has evolved especially since 2001, and now it covers two fields: 1) considering all questions entrusted to the Executive Board concerning the implementation of UNESCO's standard-setting instruments, including member states' periodic reports on the implementation of the conventions and recommendations;<sup>120</sup> 2) examining communications relating to cases and questions concerning the exercise of human rights in

<sup>113</sup> Art. 54-62 of the 2001 revised recommendation.

<sup>114</sup> Art. 63-71 of the 2001 revised recommendation.

<sup>115</sup> Art. 63 of the 2001 revised recommendation.

<sup>116</sup> Art. 72-92 of the 2001 revised recommendation.

<sup>117</sup> Art. 72 of the 2001 revised recommendation.

<sup>118</sup> Art. 93-100 of the 2001 revised recommendation.

<sup>119</sup> They are Oman, United Arab Emirates, Zimbabwe, Mongolia, Bahrain, Jordan, Niger, Lithuania, Bulgaria, Zambia, Kyrgyzstan, Uzbekistan, Rwanda, Iraq, Kuwait, Indonesia, Central African Republic.

<http://www.unesco.org/eri/la/convention.asp?KO=13059&language=E> accessed on 2 March, 2012.

<sup>120</sup> in accordance with Article 18.1 of the Rules of Procedure concerning recommendations to Member States and international conventions.

UNESCO's fields of competence. In 2007 the 1989 convention was put in the CR regular monitor mandate together with another two conventions,<sup>121</sup> and the 2001 revised recommendation was also selected as one of the 11 priority recommendations in the field of education,<sup>122</sup> however, so far the substantial monitor of the implementation of those two instruments has not been launched.

### **5.2.1 The Strategy for TVET**

In order to improve the situation and maintain (or strengthen) the UNESCO's competency in TVET, after close consultation and cooperation with a broad range of partners (including specialized United Nations agencies), UNESCO developed a strategy to support the development of TVET in Member States for 2010-2015.<sup>123</sup> and it focuses in three core areas: 1) provision of upstream policy advice and related capacity development at the country level, specifically, develop and review comprehensive national TVET policies, and establish coherent and cooperative multilateral; 2) conceptual clarification of skills development and improvement of monitoring, specifically, towards a joint definition of "skills", identify TVET indicators, and assess and monitor the normative instruments; 3) acting as a clearing house and informing the global TVET debate, including administrative and financial implications. In this strategy, it suggests the establishment of systematic cooperation and improved coordination with agencies like ILO, OECD, WB, ETF, UNIDO, and relevant regional bodies, and full use of UNESCO's TVET network to maximize the impact and also identification of excellent regional centers<sup>124</sup>. Also it suggests further conceptual clarification by defining a shared conceptual framework leading to a joint position paper among key partners (this task is required to be completed in the short term: 2010-2011.) Importantly, it suggests in 2012 UNESCO would formally monitor the implementation of the two normative instruments on TVET: the 1989 convention and the 2001 revised recommendation, but with a preliminary step: an independent study on the impact of the instruments, examining in particular why only 17 Member States have ratified the convention. In August 2011, progress achieved on implementing the TVET strategy was reported<sup>125</sup>, and it obviously shows the strategy required short-term task (2010-2011) had not been completed concerning conceptual clarification by defining a shared conceptual framework, but the independent study about the low ratification of 1989 convention and the relevance of UNESCO two standard-setting instruments had been commissioned.

### **5.2.2 The Evaluation Result on the Relevance and Impact of the Instruments and Reasons for low ratification of the 1989 convention**

In September 2011, the main finding of the preliminary study was published.<sup>126</sup> The study applied methodologies: questionnaire survey sent to a selection of 50 UNESCO member states (whether or not they had ratified the 1989 Convention) and analysis of questionnaire replies, and in-depth interviews of four of the countries that replied to the questionnaire (states parties and non-state parties to the 1989 Convention). However, in the 50 selected member states, only 15 countries (including six states parties to the Convention) replied to the questionnaire survey, which 'betokens UNESCO Member States'

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<sup>121</sup>Part II, UNESCO 177 EX/Decision 35, 2007.

<sup>122</sup>UNESCO 34 C/Resolution 87.

<sup>123</sup>This strategy for TVET was adopted in 181 EX/Decision 8 (2008) and revised in 182 EX/INF.5 (2009).

<sup>124</sup>e.g. the Australia National Centre for Vocational Education Research and the Korea Research Institute for Vocational Education and Training

<sup>125</sup>UNESCO 187 EX/6 Part III, 2011.

<sup>126</sup>UNESCO 187 EX/20 Part IV, 2011.

interest in and/or knowledge of the two standard-setting TVET instruments'.<sup>127</sup> The main finding of the study is: 1) the 1989 convention seems too outdated and hardly updated compared with the international practices such as EU measures in the form of 'soft law' (most of their TVET legal form is recommendation), and there is some overlap with other international TVET text such as ILO and EU; 2) the 1989 convention has had no governance (real monitoring and steering mechanisms) so far; 3) the 1989 convention potentially has the broad scope but in fact quite narrow owing to the low ratification and hard to adapt to the needs, and the 2001 revised recommendation is updated but still lack of monitoring and management (only the UNEVOC network); 4) dissemination strategy is limited: dearth of funding for the information activities and context translation etc., makes those two instruments merely symbolic; 5) no coordination strategy: although the member states' strong demand for assistance from UNESCO regional office, the need for assistance is not met adequately and the UNESCO's TVET regional action is little known;<sup>128</sup> 6) a demand for common standard-setting instruments: possible joint UNESCO-ILO work programs and tools that streamlining of activities and texts and the stepping up of support operations, though it is not easy to build it; 7) The two instruments "participatory" in terms of their construction while "top-down" in terms of their implementation, plus the difficulties of "universal" implementation in all regions of the world.<sup>129</sup> 8) Conclusion: the reality is not positive but they are important benchmarks, irrespective of the ratification status of the Convention.

The study also provides recommendation with two scenarios, the scenario 1 established precedent (which is not really recommended), and the scenario 2 internationally coordinated action (which is recommended). The scenario 2 comprises: 1) maintain the universality of the two instruments and regionalize UNESCO's action;<sup>130</sup> 2) mobilize the UNEVOC network;<sup>131</sup> 3) strengthen the link between TVET instruments and instruments on lifelong education and Learning, precisely, forming TVET in a multi-stakeholder strategy, and formulating a common strategy (especially with ILO) in order to reduce the impression of overlap between standards that have the same objectives, despite of difficulty due to different institutional mechanisms, the overall terms of reference, etc.. Unfortunately, executive board did not adopt any recommendation the study provided, instead decided to add in the 3rd International Congress on TVET (Shanghai, 13-16 May, 2012) a discussion on the content, relevance and scope of the 1989 Convention and of the 2001 Revised Recommendation on TVET, and to resume consideration of this item at its 190th session (2012).<sup>132</sup> It has virtually postponed the real monitor of implementation of the two instruments from 2012 that suggested in the TVET strategy. Now the 3<sup>rd</sup> international congress has ended, but still there has been no information for launching the monitor of the 1989 convention and recommendation, oppositely, the Shanghai consensus suggests to consider the relevance and currency of UNESCO's two TVET standard-setting instruments with a view to the possible

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<sup>127</sup>UNESCO 187 EX/20 Part IV.

<sup>128</sup>It is said the expected UNESCO's role: mediator between local actors, is undermined owing to the constraint of partnership: relations mainly with ministries of education and to a very small extent with other relevant ministries, NGOs, social partners and national, local and regional TVET stakeholders.

<sup>129</sup>It suggests (a number of broad principles must be universal but operations need more flexible and better adapted to regional contexts.

<sup>130</sup>Precisely, adopting universal standard-setting texts (conventions and recommendations) for regional or local implementation, for example for standard-setting texts, specifying and implementing major principles and general implementation procedures by means of special procedures adapted to the specific features of regional areas.

<sup>131</sup>Precisely, activating or reactivating UNEVOC network for seminars and other awareness-raising and training activities to amend and guide national compliance, and capitalizing on network proximity as much as possible and mobilizing all stakeholders.

<sup>132</sup>UNESCO 187 EX/50, 2011. And a note of this in the accordingly revised 2009-2013 timetable of work of the CR on the monitoring of the implementation of UNESCO's standard-setting instruments.

development of new or revised normative instruments adapted to a changing world.<sup>133</sup> However, UNESCO has uploaded its strategy on TVET in the TVET main web page and re-roles itself with the renewed mission: the three core areas the strategy on TVET set<sup>134</sup> Which means the strategy on TVET is carried out but the two TVET standard-setting instruments is and their monitoring are actually put aside due to the lack of support from member states and lack of confidence on these two instrument from UNESCO itself.

### **5.3 UNESCO's TVET initiatives, other guidance and their impact on national level**

Except these two standard-setting instruments, UNESCO also has the Bonn Declaration 2004 and 2009 which advocates to adopt a broader perspective for TVET which empowers people for change and equips people with the knowledge, competencies, skills, values and attitudes for sustainable living and participation in society and decent work. Besides, UNESCO has other guidance in TVET within the EFA goal 3 and goal 6: Ensuring that the learning needs of all young people and adults are met through equitable access to appropriate learning and life-skills programs (Goal 3), and improving all aspects of the quality of education, and ensuring excellence of all so that recognized and measurable learning outcomes are achieved by all, especially in literacy, numeracy, and essential life skills (Goal 6). The strategy of TVET best demonstrates UNESCO's whole guidance in TVET. Th strategy on TVET actually does not emphasize on the two standard-setting instruments but 1) provision of upstream policy advice and related capacity development at the country level; 2) conceptual clarification of skills development and improvement of monitoring; 3) acting as a clearing house and informing the global TVET debate. It is expressed that, under the 1<sup>st</sup> core area, UNESCO will support some 15-20 Member States to review and develop comprehensive national TVET policies according to their needs and priorities, and promote harmonization of partners' interventions by systematically cooperating with relevant UN agencies like ILO, WB and other partners, and by assisting member states in coordinating all in-country partners; Under the 2<sup>nd</sup> core area, UNESCO will establish a technical advisory mechanism involving key partners to clarify the definition of "skills", leading towards the identification of indicators for measuring progress, which will be undertaken in close cooperation with the UNESCO Institute for Statistics (UIS), and will also review the impact of the two TVET standard-setting instruments; under the 3<sup>rd</sup> core area, UNESCO will revitalize the global UNEVOC Networks to improve information sharing and cooperation, and collect standardized information on national TVET systems and make it available to policy-makers, and meanwhile thematic reviews on specific issues such as TVET and gender or TVET and sustainable development.<sup>135</sup> No doubt, that is the wonderful strategy of TVET and implementation plan, and the only concern is about how it will really carried out and to what extent and in what kind of quality.

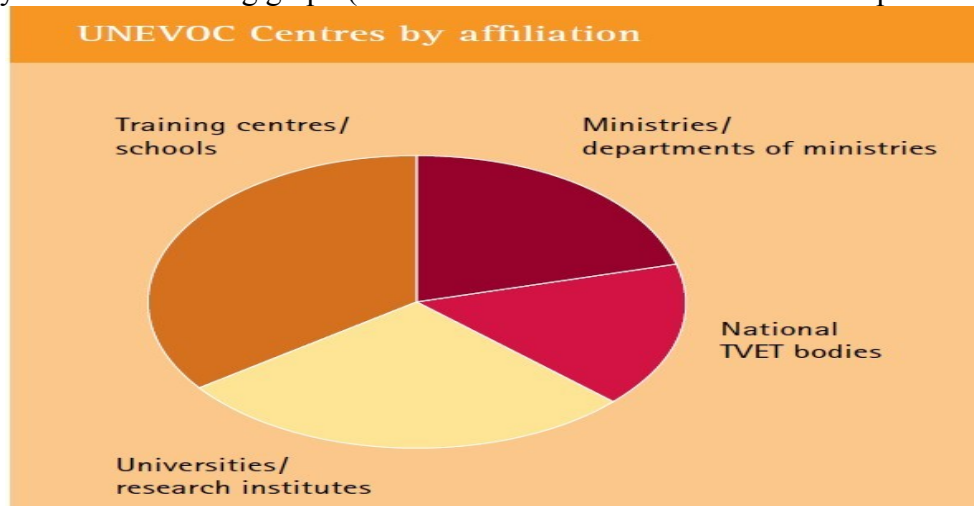
UNESCO's TVET resources are presented as 1. Normative documents (two TVET standard-setting instruments, Bonn Declarations 2004 and 2009 etc.); 2. Publications (not too many and the newest on was published in 2010 and most of them are concerning best practice sharing); 3. Guidelines (totally two: *Skills for Sustainable Livelihoods: implementing the UNESCO Normative Instruments concerning TVET 2006*-- A reference resource for TVET policy-makers and practitioners in Central and Eastern

<sup>133</sup> Shanghai Consensus, the outcome document of the 3<sup>rd</sup> international congress on TVET (Shanghai, May 2012)

<sup>134</sup><http://www.unesco.org/new/en/education/themes/education-building-blocks/unesco-tvet/> accessed on 17 May 2012.

<sup>135</sup> <http://www.unesco.org/new/en/education/themes/education-building-blocks/unesco-tvet/programme/> visited on 20 July 2012.

Africa, *Guide to TVET Donor Agencies 2004*—A information resource); 4. Tool-kits & Teaching materials; 5. TVET Library (same as the UNEVOC's publications); 6. TVETipedia; 7. UNESCO Open Training Platform.<sup>136</sup> This implies that UNESCO prefers to undertake TVET knowledge sharing rather than field programs or projects. Most of UNESCO activities are undertaken by UNESCO-UNEVOC, which is UNESCO's specialized resource and capacity building center for TVET and the hub of a worldwide network of UNEVOC Centers, and which helps UNESCO's 195 Member States strengthen and upgrade their TVET systems and promote a greater availability of skills development options so as to implement Article 26 of the UDHR and UNESCO TVET normative instruments. UNEVOCcenter can be displayed in the following graph (source: UNEVOC in Action Biennial Report 2010-2011)



UNESCO-UNEVOC works through creating synergies with UNESCO Headquarters, UNESCO Institutes or Centers and Field Offices, and using close partnership with other international and national agencies in TVET field. UNEVOC's work focuses on 1) Stimulating international and regional cooperation concerning human resource development; 2) Promoting UNESCO normative instruments and standards; 3) Promoting best and innovative practices in TVET; 4) Knowledge sharing; 5) Mobilizing expertise and resources ; 6) Strengthening partnerships with other relevant agencies.<sup>137</sup> *UNEVOC in Action Biennial Report 2010-2011* states that, its capacity development focused on TVET policies and frameworks, greening TVET for sustainable development, entrepreneurial learning, TVET teacher education and training, Its and TVET, TVET HIV and Aids, but constrained by the limited amount of staff in the center, its activities were mainly about regional or international network meeting, international consultation or expert meeting, conference, workshop, seminar, and research etc. Because the donor of the center is quite few, and there is no many programs started in the field, and even there is some and the programs are also earmarked. However, one significant contribution of the UNEVOC that cannot be neglected is its publications, the research work from the education philosophy and TVET curriculum design to the learning innovation etc. for example, *International Handbook of Education for the Changing Word of Work: Bridging Academic and Vocational Learning* (2009), *Handbook of TVET Research* (2008), Book Series on TVET: issues, concerns and prospects which includes *the International Comparisons of China's TVET system* (2011) that can be taken as the most updated and complete reference to Chinese TVET system, UNESCO-UNEVOC Annotated Bibliographies of TVET (a series of literature reviews on key issues in TVET), UNESCO-UNEVOC Discussion Papers Series, and Case Studies of TVET in Selected countries etc.<sup>138</sup> Different from ILO's publications, UNESCO-

<sup>136</sup> <http://www.unesco.org/new/en/education/themes/education-building-blocks/unesco-tvet/> accessed on 21 July, 2012.

<sup>137</sup> UNESCO-UNEVOC mission statement.

<sup>138</sup> UNESCO-UNEVOC International Library of TVET: Publications Lists.

UNEVOC pays more attention to the education content of TVET meanwhile does not lose its employment perspective, which is extremely helpful when national state or even individual TVET provider formulate their TVET, and at least only from UNESCO-UNEVOC publications, can readers like the author of this paper who has no knowledge of TVET before grasp the whole picture of TVET main contents and concerns as a kind of education. The only problem is, these publications are so dominating and monopoly that it is difficult to find too much critics about UNESCO and UNEVOC's work.

The Shanghai Consensus reached by 3<sup>rd</sup> international congress on TVET (Shanghai, May 2012) invites the Director-General of UNESCO to seek to implement the following actions: 1. Facilitate the debate on the place of TVET and skills for the world of work in the post-2015 international education and development agendas, drawing lessons from the implementation of UNESCO's Strategy for TVET (2010-2015); 2. Consider the relevance and currency of the 1989 convention and 2001 revised recommendation with a view to the possible development of new or revised normative instruments adapted to a changing world; 3. Explore the possibility to develop international guidelines on quality assurance for the recognition of qualifications, based on learning outcomes, and identify a set of world reference levels, to facilitate the international comparison and cognition of TVET qualifications; 4. Provide, with the technical support of the UNESCO Institute for Statistics, the basis for developing cross-national statistical frameworks and data platforms for both regional and global monitoring; 5. Undertake appropriate regional and international follow-up actions. Shanghai consensus's expectation to UNESCO in the TVET reflects that UNESCO's role in TVET international guidance is not replaceable, and UNESCO is not expected to carry out national programs like ILO or other NGOs do but expected to organize debate and prepare statistics and internationalize standards especially concerning TVET quality for the TVET macro-monitoring. So far it is still too early to predict how UNESCO will perform under all kinds of expectations.

## 5.4 Concluding Remarks

In terms of the contents of UNESCO's two TVET standard-setting instruments: the 1989 convention and the 2001 revised recommendation, although there is low ratification of 1989 convention, the evaluation study<sup>139</sup> found the 2001 revised recommendation is still thought 'updated' and with 'more flexibility' to some extent and important benchmark, and even one of the seven UNESCO CR members also expressed 'the normative instruments have relevance in their countries'.<sup>140</sup> and the critics about the 2001 revised recommendation is about 'lack of monitoring and management'.<sup>141</sup> The 2001 revised recommendation is the UNESCO/ILO recommendations on TVET for 21 century, and it already has combined TVET's education and employment concern, that is why so many tracks of ILO R195 (2004) can be found in the 2001 revised recommendation no matter how much ILO promotes the innovation of R195. In deed, ILO R195 only innovated by clarifying some key term in the filed and adding ILO's tripartite consultation and laborer mobilization working method, other parts of the R195 can be taken as the concisely grasp and display of key points of UNESCO 2001 revised recommendation. Admittedly, even well structured, 2001 revised recommendation with 100 articles is too long to embody the gem of the instrument by considerately providing so many practical and

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<sup>139</sup> Commissioned according to the Strategy on TVET to examine the reason of low ratification and relevance and impact of 1989 convention and 2001 revised recommendation. See UNESCO 187 EX/20 Part IV, 2011.

<sup>140</sup> UNESCO 187 EX/50, 2011. p.7.

<sup>141</sup> UNESCO 187 EX/20 Part IV, 2011.



concrete measure, reminding and details, while ILO R195 with 21 articles only grasps the key points in TVET development and presents them in a much brief and clearer way though without too much concrete measures or recommendations. 2001 revised recommendation might intend helpful by providing plenty of concrete measure and recommendation and details, undeniable which is really helpful for those less developed countries whose TVET system has not been well established and functioning, however, it may also be considered out-of date by countries whose TVET has been functioning in a much higher level. ILO R195 provides most principles in developing TVET, therefore, it is applicable both in TVET less developed countries and well-developed countries. Even for China (discussed in Part 6 of this paper), it also shows that China government tries to follow the ILO R195's guidance as the sign of TVET advancement, but actually Chinese TVET related legislation and policies have not reached and well implemented the considerate concrete recommendations 2001 revised recommendation provides.

The Shanghai census (2012) suggests updating and revising UNESCO normative instruments might because 1. the 1989 convention with 5 main articles is really too simple and primary and its requirement that industrialized countries should provides study opportunities for students from developing world for the technology transfer and application,<sup>142</sup> might frighten industrialized countries to support this convention as those industrialized countries may prefer take that as the freedom of selectively favor not the obligation or even commercialized opportunity because this is the era education and technology transfer have been globally commercialized; 2. It was the first time for 1989 convention and 2001 revised recommendation were raised for international evaluation, and TVET normative legal instruments in UNESCO and ILO had been supported before by experts without too much doubt as most experts are from these two UN agencies and their research are prevailing and dominating in this field. This suspect could be evidently reflected by the fact that the first evaluation study on the two instruments was proposed by UNESCO strategy on TVET in 2009, which means no relevant evaluation to those TVET legal instruments before, and it was not the TVET experts from UNESCO or ILO but an independent French evaluating capacity had been commissioned to conduct the study on examining the reason of low ratification of 1989 convention and the relevance and impact of 1989 convention and 2001 revised recommendation. Consequently, it can be assumed that although no support from the recent 3<sup>rd</sup> international congress on TVET, the content of 2001 revised recommendation is still useful generally and relevant to most national TVET development (except in the TVET well developed regions like west Europe, Australia etc.)

Regarding to the monitoring of the two instruments, the lack of monitoring weaken the impact and influence of these two instruments, and it even subjects the UNESCO to the suspect of monitoring incapacity, for example, one member of UNESCO CR expressed that 'the dysfunction of the CR in its capacity to monitor normative instruments emphasizing the time gap between the adoption of the convention and the decision to review the progress made in the ratification of the convention by member states'.<sup>143</sup> Additionally, UNESCO's monitoring incapacity may be also due to other reasons such as the strategy of TVET mentioned, 'Currently, some 10 staff have full or partial TVET portfolios. However, they serve in different locations (field offices, Headquarters, the institutes and the UNEVOC International Center) and there is a lack of coherence in their programmatic approach... While awaiting the implementation of these adjustments, the current lack of a critical mass of experts will lead UNESCO to seek assistance from external experts, possibly via extra-budgetary funding and

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<sup>142</sup> Art. 6 of the Convention on Technical and Vocational Education (1989).

<sup>143</sup> See Supra note 141.

secondments, and to strengthen partnerships and networking.’<sup>144</sup> What is more, it is not until 2007 that UNESCO adopted the Framework Guidelines: Specific mulch-stage procedure for the monitoring of the implementation of UNESCO conventions and recommendations, but no specific institutional mechanism is provided there, and the guideline is mere about the preliminary work division on arranging and processing the monitor work within UNESCO.<sup>145</sup>

In respect of the disappointing monitor on these two instruments, the insights of strategy of TVET is undeniable, and that strategy might not help UNESCO to reach its goal: strengthening global leadership in education including in TVET, but it absolutely designs a better and much more suitable role for UNESCO and the implementation plan for this strategy seems quite promising, furthermore, the new calling and expectation from Shanghai census 2012 also sets much clearer roles-playing for UNESCO. Under these political calling and pressure and considering the UNESCO's IGO nature (contacting state officials) and its ambition of leadership in this field as UN official agency, so it is still feasible to predict the new achievement of UNESCO in TVET, actually, UNESCO's first progress in TVET has been demonstrated on the organization the 3<sup>rd</sup> international Congress on TVET and the increasing TVET budget.<sup>146</sup> Therefore, UNESCO's future achievement in TVET might not come from its TVET legal instruments, but from its TVET policy advocacy like TVET knowledge sharing and international debate, and TVET international service like providing comparative statistics in TVET and standardizing TVET quality and relevant indicators internationally etc.. as the strategy of TVET planned.

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<sup>144</sup>UNESCO 182 EX/INF.5, 2009, p. 4-5.

<sup>145</sup>UNESCO 177 EX/Decision 35 Part I, 2007.

<sup>146</sup>TVET program got 17% of CapEFA total budget allocation during 2009-2011 according to UNESCO 36 C/5, 2011.

# 6 China's TVET Related Legal Instruments and Policies

As a centralized republic country, China has only one constitution and this constitution is not applicable in any Chinese judicial activities. China's national laws made by national people's congress, and policies (in the forms of regulations, rules, opinions etc.) made by central government or any department of the state council, are applicable to any provincial level: provinces, autonomous regions or municipalities directly under the central government. All provincial (or lower level) government is authorized to certain legislative activities in the local level concerning the implementation laws or policies from government or judicial system in the higher level, or concerning totally local affairs, but still those legislative activities is required within the constraint of the laws and policies from central government, even if autonomous regions where Chinese ethnic minorities main dwell enjoy relatively much more legislative space concerning the local affairs. Those laws are legally binding while those policies from central government are treated as laws, and even the relevant policies from local government are referred to in the Chinese judicial activities, and the jurisdiction (or opinions) from China supreme court is treated as law: judicial interpretation of law at least even if there is no case law in china while other jurisdiction (no opinion) from lower level courts are referred to in judicial activities as well. Thus TVET related laws from national people's congress and policies from china central government and the jurisdiction (or opinions) from china supreme court, are the focus of this part, and some practices in China provincial level, jurisdiction from lower courts can be referred to assess the impact of those laws and policies. About the official text, all laws are already provided with alternative English version, so do some policies displayed in the government official websites, while others such as implementation regulations on certain law, criteria of evaluating TVE, and policy opinions etc. are the translation from Chinese to English by the author (this private translation will be notified in footnotes once it first appears.)

In general, TVET related Chinese legal instruments include legislative instruments and policies and jurisdictions/opinions from China Supreme Court (if any). Legislative instruments comprise: China constitution (2004 amended), laws on education and social laws, while policies comprise medium and long term planning, opinions and official notifications from competent authorities.

## 6.1 The Contents of TVET Related Legislative Instruments in China

### 6.1.1 TVET norms in the Constitution of P.R China (2004 amended)

In the Constitution of P.R China (2004 amended), under the right to education it states that 'The state establishes and administers schools of various types, universalizes compulsory primary education and promotes secondary, vocational and higher education as well as per-school education.'<sup>147</sup> and under the right to work it sates 'The state provides necessary vocational training for citizens before they are employed.'<sup>148</sup> Although China constitution is not applicable in the Chinese judicial activities, its

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<sup>147</sup> Art.19 of China constitution.

<sup>148</sup> Art. 42 of China constitution (2004 amendment).

supreme status in Chinese law is still unshakable, but unfortunately, the constitution only promises that the state 'promotes' vocational education and provides 'necessary' 'pre-employment training' for 'citizens'.

## 6.1.2 TVET Related Norms in Chinese Laws on Education

### 6.1.2.1 TVET Content in Education Law of P.R China (1995)

In Education Law of P.R China (1995), under the basis education system, it requires 'The state shall adopt a vocational education system and an adult education system. The People's government at different levels, relevant administrative departments, enterprises and institutions shall adopt measures to develop and ensure for citizens vocational school education or vocational training in various forms.<sup>149</sup> and it puts the lifelong learning within the adult education system. Meanwhile it states that 'Employees shall have the right and duty to receive vocational training and continuous education according to the law.'<sup>150</sup> which demonstrates the 'right and duty' confusion in many provisions in Chinese law. Specifically regarding to secondary vocational schools, it requires state to encourage enterprises, institutions, public organizations and other social organizations to cooperate by various ways with those schools in teaching and learning, scientific research, technology development and dissemination, management etc..<sup>151</sup> This law also requires state to encourage foreign exchange and cooperation in education,<sup>152</sup> and to adopt a qualification-based post-employment system and to improve the quality of teachers and strengthen the development of teachers by way of examination, rewards, cultivation and training.<sup>153</sup> Additionally, it also asks Chinese governments at various levels to separately list fiscal budget for educational appropriations, and to keep this appropriations increasing at a faster rate than their regular revenues, the average expenditure on per enrolled student increasing steadily and the teachers' salaries and the average public expenditure per student increasing steadily.<sup>154</sup> This law locates VET in education system and clarifies the responsible bodies and potential VET stakeholder in an incomplete lists and stresses the cooperation between those stakeholders, and it expresses the attention to second VET and the financial and quality guarantee to education generally.

### 6.1.2.2 TVET Content in Vocational Education (VE) Law of P.R China(1996)

The Vocational Education Law of P.R China (1996) combines 'vocational school education' and 'vocational training' into vocational education, and divides VE undertakings into vocational schools and vocational training institutions. This VE law is structured by totally 40 articles in five parts, namely, 1. general provisions, 2. the system of VE, 3. the implementation of VE, 4. the (financial) guarantee of VE, 5. supplementary provisions. Specifically as followings:

**About the status of this law**, it clears that this law is enacted pursuant to the Education Law and Labor Law P.R China,<sup>155</sup> correspondingly, it states that any violation of the Education Law P.R China 1995 in vocational education activities 'shall be penalized in accordance with the relevant provisions of the Education Law.' That is to say, this law totally subjects itself to the China education law (1995), which

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<sup>149</sup> Art. 19 of Education Law of P.R China (1995).

<sup>150</sup> Art. 40 of Education Law of P.R China (1995).

<sup>151</sup> Art. 46 of Educational aw of P.R China (1995).

<sup>152</sup> Art. 67 of Education Law of P.R China (1995).

<sup>153</sup> Art. 34 of Education Law of P.R China (1995).

<sup>154</sup> Art. 55 of Education Law of P.R China (1995).

<sup>155</sup> Art.1 of the Vocational Education Law of P.R China (1996).

is criticized as most improper law due to its lack of independent penalty provision for the infringement of its own provision, and the official suggestion for the amendment of this law also pointed this.<sup>156</sup>

**About the scope and general classification**, it says this law applies to vocational school education at various levels and in various forms except special training conducted by state organs for their personnel.<sup>157</sup> Its forms are in vocational school education and vocational training respectively classified into three levels, and providers include vocational schools and vocational training institutions.

Precisely, 1) vocational school education, it includes primary, secondary and higher vocational school education. The first two is provided respectively by primary and secondary vocational schools, and for higher vocational school education, by higher vocational schools or by common institutions of higher learning due to the actual needs and conditions. Additionally, this vocational school education may be also implemented by other schools at their corresponding levels in accordance with the overall planning of the education administrative department.<sup>158</sup> 2) vocational training, it includes training before

employment, training for army men transferred to civilian work, training for apprentice, on-the-job training, job-transfer training and other forms of training of vocational nature, and it may be classified into primary, secondary or further vocational training according to the actual situation. Training providers are corresponding vocational training institutions and vocational schools, and may also other schools or educational institutions if they develop various forms of vocational training within their educational capacity.<sup>159</sup> About the basic condition required for establishing VE undertaking, the requirement for vocational schools is little higher than for vocational training institutions.<sup>160</sup>

**About running vocational schools and vocational training institutions**, it requires the competent departments of the governments and trade associations to (or jointly) sponsor their own such undertakings,<sup>161</sup> and meanwhile to organize, coordinate and direct the enterprises and institutions of their own sector or trade to run such undertakings. It also requires the state to encourage institutional organizations, social organizations, other social groups and citizens to run them, and governments at county level and above to sponsor such undertakings, particularly to provide guidance and support to those established by enterprises, institutional organizations, social organizations, other social organizations or citizens, and asks the state council to formulate the procedures for sponsorship by organizations or individuals from abroad. If it is a jointly sponsoring undertaking, a contract for the joint sponsorship is required. When a competent department of the government, trade association, enterprise or institutional organization entrusts such undertaking with VE, a contract need be concluded.<sup>162</sup> This shows the multichannel running of TVET undertakings and the governments supportive service to maximum attractive the social partners to run TVET undertakings.

**About responsibility division on VE**, it requires: 1) Governments at various levels to incorporate its development into the plans of national economic and social development. 2) Governments at the county level and above to strengthen the leadership, overall coordination, supervision, direction and

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<sup>156</sup> Such as in the article Liquan Ruan etc. *Exploring the Civil Liability of Vocational Education: Thoughts on Revising of Vocational Education Law*, Journal of Chongqing Normal University Edition of Social Science 2009 (6). In the news report *National Representatives Suggests Revising Vocational Education Law*, Legal daily 8 Jan. 2012. [http://www.legaldaily.com.cn/index\\_article/content/2012-01/08/content\\_3274825.htm](http://www.legaldaily.com.cn/index_article/content/2012-01/08/content_3274825.htm) accessed on 3 May 2012.

<sup>157</sup> Art.2 of the Vocational Education Law of P.R China (1996).

<sup>158</sup> Art.13 of the Vocational Education Law of P.R China (1996).

<sup>159</sup> Art.14 of the Vocational Education Law of P.R China (1996).

<sup>160</sup> Art. 24 of the Vocational Education Law of P.R China (1996).

<sup>161</sup> This may be with Chinese character, because the bureaucracy in high level is allowed to establish or run their own VE undertakings, such as the ministry of commerce might ran some VE schools or institutions in commerce related education and training, but it is less and less now, except the special training program such as the Ministry of Commerce and Ministry of Education cooperated to ran the VET program for outsourced talents in certain field.

<sup>162</sup> Art.17,19, 21-22 of the Vocational Education Law of P.R China (1996).

assessment in their own administrative regions. 3) Education administrative department of the state council to overall plan, comprehensively coordinate and macro-control it. 4) Education administrative department, the labor administrative department and other relevant departments of the state council to be respectively responsible for relevant work in this field. 5) Trade organizations, enterprises and institutional organizations to perform their duties to carry out it.<sup>163</sup> This part is criticized for its vague, especially the procedure and incentives for enterprises' participation is criticized as not explicit<sup>164</sup> It is said enhancing the TVET attractiveness is not only for the students and their parts but also for the social partners like enterprises and thus the incentives and penalty for enterprises' TVET responsibility and rights should be enriched and clarified and guaranteed.<sup>165</sup>

**About special attention in VE**, it requires state to adopt measures to develop vocational education in rural areas, support its development in ethnic minority regions, remote border areas and poverty-stricken areas, to assist women, organize unemployed, support people with disability to receive vocational education.<sup>166</sup> Specially for the rural area, it requires governments at county level and above sponsor undertakings of vocational education and provide guidance and support to those established in rural area, to promote the development of rural vocational education with the concept of rural economy, agricultural science and technology, and rural education,<sup>167</sup> meanwhile it asks governments at various levels to appropriate proper amounts for rural vocational training from the funds for developing agricultural science and technology or for the spreading of technology.<sup>168</sup> This attention of TVE for special groups is considered with the interests of education justice and it is usually mentioned together with the target of gradually achieving the free secondary VE as one mean of poverty deduction because the majority of the participants in the secondary VE are from rural areas where the GDP/per capital is relatively much lower than in urban areas, such as in less developed region Guangxi province.<sup>169</sup>

**About enterprises and VE**, it claims that 'the state shall adopt a system whereby workers shall receive necessary vocational education before taking up occupations or job posts',<sup>170</sup> but coming to concrete measure, only in enterprises part does it embodied little bit. it says 'enterprises shall, in accordance with their actual situation, provide vocational education in a planned way for their staff, workers and persons to be employed', and 'staff and workers engaging in technical work must receive proper training before going to their posts; staff and workers engaging in special work must receive relevant training and obtain qualifications for the special work.'<sup>171</sup> Meanwhile it states that enterprises may jointly run or run on their own vocational schools and vocational training institutions, and may also entrust those undertakings with the vocational education of their staff, workers and persons to be employed by them, and the expenses for such entrusting training should be covered by the enterprise, but concrete measures shall be formulated by the financial department together with other relevant departments in the state council or by the governments in provincial level. If enterprises fail to perform

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<sup>163</sup> Art.6, 11 of the Vocational Education Law of P.R China (1996).

<sup>164</sup> 程方平, 职业教育法需在10个方面重点完善. 中国教育报, 2011年7月20日. Fangping Chen, *The 10 main points need attention when Vocational Education Law is revised*, China Education Newspaper, 20 July. 2011.

<sup>165</sup> 郭扬, 职业教育需要“大力发展”和“增强吸引力”, 《上海教育》半月刊. 2010年4A期. Yang guo, *Vocational Education needs to be promoted developed and become more appealing*, The Journal of Shanghai Education 2010 (4A).

<sup>166</sup> Art.7, 15 of the Vocational Education Law of P.R China (1996).

<sup>167</sup> Art.17-18 of the Vocational Education Law of P.R China (1996).

<sup>168</sup> Art.31 of the Vocational Education Law of P.R China (1996).

<sup>169</sup> Using VE as the mean of poverty deduction in all regions of Guangxi Province is reported intensively recently, such as, guoqing.china.com.cn/.../content\_25967203.htm (July 21 2012), www.lajy.net/include/web\_content.php?id=12094 (July 6 2012), www.gxbstv.com (July 18 2012), <http://www.fpb.heagri.gov.cn/content.aspx?id=090052483659> (April 9 2012) etc. accessed on July 25 2012.

<sup>170</sup> Art.8 of the Vocational Education Law of P.R China (1996).

<sup>171</sup> Art.20 of the Vocational Education Law of P.R China (1996).

as mentioned above, government at the county level or above is required to order it to make correction; if enterprises refuse to correct, its bearing share of vocational educational funds may be collected for local use for vocational education.<sup>172</sup> This part has not provided concrete and feasible measure to encourage and force enterprises to conduct pre-employment training or necessary one, and therefore, it will be one of the important attention in revising this law.<sup>173</sup>

**About study certification, teachers and the research in VE**, it requires VE to adopt systems of academic credentials, training certifications and vocational credentials. After passing administered examination, students receiving education in vocational schools shall be issued academic credentials, while those receiving VT from vocational schools or vocational training institutions shall be issued certification of training, and those academic credentials and certification of training shall be used as certifications of graduates and trainees when they are employed.<sup>174</sup> It also pays attention to teaching materials used, and requires to incorporate the training of VE teachers into the planning of construction of the contingent of teachers, and also asks relevant unites to facilitate the recruitment specialized technical persons, persons with special technical ability and teachers from other educational institutions as part-time teachers in undertakings for vocational education.<sup>175</sup> It says state shall encourage and organize scientific research on VE and reward relevant organizations and individuals in this field, and shall establish and improve a vocational education system that keeps abreast of market economy and social progress (no specifically mention technology change and skills update).<sup>176</sup>

**About the way of conducting VE**, it requires the state to implement VE at different stages mainly after junior middle school, to develop it concurrently and to connect it with other forms of education. In this regard, it says that common middle schools may open vocational courses or appropriately increase teaching contents of vocational education, in accordance with actual needs and local conditions.<sup>177</sup>

When conducting VE, it requires those VE undertakings to 'integrate education with production, serve the local economic development, and maintain close ties with enterprises and train practical personnel and skilled workers.'<sup>178</sup> in this regard, it states that: a) those vocational schools and vocational training institutions may run enterprises or training places but the income received from running of enterprises and provision of social service shall be mainly used to develop VE;<sup>179</sup> b) Strengthening the construction of productive and training bases for VE; c) enterprises and institutional organizations shall accept students and teachers from those undertakings to do practice and those doing practice on certain spots shall be paid properly.

**About funding**, multichannel founding is taken as the guarantee of vocational education in this law. The decision maker for the average financial standard per student of vocational schools is authorized to government in provincial level within their administrative regions and financial department together with other relevant departments in state council under their administration. Governments at various levels and relevant departments of the state council are required to increase step by step the financial allocations for VE undertakings, but only governments in provincial level are allowed to set aside a special sum or arrange a portion for VE from the local extra charges that they have decided to collect for education. Tuition fee for secondary and higher vocational school education and vocational training is allowed, and partial or total tuition waiver is entitled to students with financial difficulties or with

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<sup>172</sup> Art.20, 28-29 of the Vocational Education Law of P.R China (1996).

<sup>173</sup> See Supra note 166, and also the 2009 report on the development and reform of vocational education by China state council.

<sup>174</sup> Art. 8, 25 of the Vocational Education Law of P.R China (1996).

<sup>175</sup> Art. 36, 38 of the Vocational Education Law of P.R China (1996).

<sup>176</sup> Art. 3, 5, 9, 10 of the Vocational Education Law of P.R China (1996).

<sup>177</sup> Art. 12, 16 of the Vocational Education Law of P.R China (1996).

<sup>178</sup> Art. 23 of the Vocational Education Law of P.R China (1996).

<sup>179</sup> Art. 33 of the Vocational Education Law of P.R China (1996).

disabilities. Enterprises, institutional organizations, social organizations, other social groups and individuals (including abroad) are encouraged to establish scholarships and loans, to provide funds or to donate for vocational education and financial institutions is encouraged to provide support by applying the use of credit.<sup>180</sup> The financial guarantee covers the largest amount of provisions of this law, and this part is approved by some scholar.<sup>181</sup>

**About implementation of this law**, it states that citizens shall have the right to receive VE while no mention how to exercising the right and how to remedy if the infringement of this right occurs. So far there has been no any implementation regulation issued by the state council concerning this law, and this law is criticized for hard to be implemented and revising suggestion also covers this point.<sup>182</sup>

### **6.1.2.3 TVET Norms in Compulsory Education Law of P.R China (2006 amended) and Higher Education law of P.R China (1998)**

Compulsory Education Law of P.R China (2006 amended) and its implementation regulation (1992), clarifies that ‘The State adopts a system of 9-year compulsory education. Compulsory education is education which is implemented uniformly by the State and shall be received by all school-age children and adolescents. It is a public welfare cause that shall be guaranteed by the State. No tuition or miscellaneous fee may be charged in the implementation of compulsory education.’<sup>183</sup> The implementation regulation of this law (1996)<sup>184</sup> clarifies that providers of compulsory education includes primary vocational schools,<sup>185</sup> which coincides with the provision of vocational education law (1996) ‘Tuition fee for secondary and higher vocational school education and vocational training is allowed’, not in the primary vocational schools. Higher Education law of P.R China (1998) provides that ‘higher education institutions are universities, independent colleges, and specialized higher education schools, including higher vocational schools and higher education schools for adults.’<sup>186</sup>

### **6.1.2.4 TVET Norms in the Law on the Promotion Non-public Schools of P.R China (2002)**

In Law on the Promotion Non-public Schools of P.R China (2002) and its implementation regulation on (2004),<sup>187</sup> the following contents are provided: (1) The way treating non-public schools: The state applies the principles of enthusiastic encouragement, vigorous support, correct guidance, and administration according to the law, and safeguards the autonomy of the Non-public schools in running their own business, and the law sets its equal legal status with government-run schools.<sup>188</sup> (2) Establishment of non-public schools: The implementation regulation 2004 does not allow the entities of providing examination on education, vocational certificate, or the certificate of skill scale, to establish

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<sup>180</sup> Art. 26-17, 30, 31, 34-35 of the Vocational Education Law of P.R China (1996).

<sup>181</sup> 刑晖, *职业教育法修订应体现“跨界”特征*, 中国教育新闻网, 2011年7月21日. Hui Xing, *The revising work of the China vocational education law should demonstrate the character of 'beyond the border'*, China Education News, 21 July. 2011. [http://zhijiao.jyb.cn/zcjd/201107/t20110721\\_444019.html](http://zhijiao.jyb.cn/zcjd/201107/t20110721_444019.html) Accessed on May 2, 2012.

<sup>182</sup> 刘育锋, *论澳大利亚职业教育法对我国职业教育法修订的借鉴意义*, 中国教育与成人教育网, 2011年4月6日. Yufeng Liu, *What can be drawn on from Australian vocational education law when revising Chinese vocational education law*, China education and adult education news, 6 April. 2011. <http://www.cvae.com.cn/www/zl/lyf/11-04-06/9457.html> accessed on May 17, 2012.

<sup>183</sup> Art. 2 of the Compulsory Education Law of P.R.China (2006 amendment).

<sup>184</sup> Translated from Chinese by the Author.

<sup>185</sup> Art. 6 of the Implementation Regulation on the Compulsory Education Law of P.R.China (1996).

<sup>186</sup> Art.68 of the Higher Education law of P.R China (1998).

<sup>187</sup> Translated from Chinese by the author.

<sup>188</sup> Art.3, 5 of the implementation regulation on the law on promotion non-public schools of P.R China (2004).



or run non-public schools which education and training content falls into their examination.<sup>189</sup> And the law (2002) requires 'the establishment of a Non-public school mainly providing training for vocational skills and vocational qualifications to be subject to examination and approval by the administrative department of labor and social security under the people's government at or above the county level within the limits of its powers defined by the state, which shall send a duplicate of the approval document to the administrative department of education at the same level for the record.'<sup>190</sup> (3) Certifying the receivers' skills or quality. The law (2002) says 'students who receive training in vocational skills may be awarded vocational qualification certificates when they are considered qualified by the vocational skills appraisal authority approved by the State.'<sup>191</sup> (4) the conduction of non-public schools. The non-public schools for higher education and secondary technical and vocational education leading for academic certificate, can autonomically decide the programs provided, courses opened, and material used, but they have to duplicate it to the supervisory authority. The non-public schools providing training for vocational certificate or for vocational skills may conduct their activities in according to the national vocation standards.<sup>192</sup>

#### **6.1.2.5 TVET Norms in the Regulation of P.R China on Chinese-foreign Cooperation in Running Schools(2003)**

Regulation of P.R China on Chinese-foreign Cooperation in Running Schools (2003) issued by state council, was formulated in accordance with China Education Law (1995), Vocational Educational Law (1996), and the Law on Promotion of Non-public Schools (2002), therefore those schools are required to meet the basic requirements prescribed by those laws plus china Higher Education Law (1998) and other laws and administrative regulations.<sup>193</sup> This regulation applies to the activities of the cooperation between foreign educational institutions and Chinese educational institutions (Chinese and foreign cooperator in running schools) in establishing educational institutions (Chinese-foreign cooperatively-run schools) in China to provide education service mainly to Chinese citizens.<sup>194</sup> The Chinese-foreign cooperation in running schools are encouraged to conduct in the field of higher and vocational education, and are entitled for preferential policies and autonomy when conducting educational activities in accordance with Chinese law.<sup>195</sup> Their establishment is required to follow the standards for the establishment of state-run educational institutions of the same type and at the same level, and the application of establishing such school for offering vocational qualifications training is subjected to examination and approval of the labor administrative department of the proposed local provincial governments, and specific measures for examination and approval and administration of cooperatively-run educational projects for offering vocational skill training supposes to be formulated by the labor administrative department of the state council, and those kind of schools are not allowed to offer compulsory education service or special education service.<sup>196</sup> About certificating the vocational qualification of students who receive vocational qualifications training in this kind of schools, certificate granting is permitted and the condition for such granting is no difference with those for students from other schools.<sup>197</sup> An implementation arrangement about this regulation was issued by

<sup>189</sup> Art.10 of the implementation regulation on the law on promotion non-public schools of P.R China (2004).

<sup>190</sup> Art. 11 of the the law on promotion non-public schools of P.R China (2002).

<sup>191</sup> Ibid.

<sup>192</sup> Art.22 of the implementation regulation on the law on promotion non-public schools of P.R China (2004).

<sup>193</sup> Art.1, 11 of the Regulation of P.R China on Chinese-foreign Cooperation in Running Schools (2003).

<sup>194</sup> Art.2 of the Regulation of P.R China on Chinese-foreign Cooperation in Running Schools (2003).

<sup>195</sup> Art.3-4 of the Regulation of P.R China on Chinese-foreign Cooperation in Running Schools (2003).

<sup>196</sup> Art.3,6,12-13,61 of the Regulation of P.R China on Chinese-foreign Cooperation in Running Schools (2003).

<sup>197</sup> Art.34 of the Regulation of P.R China on Chinese-foreign Cooperation in Running Schools (2003).

Order No. 20 of China ministry of education in 2004, this arrangement states in its provision 12 that the ministry of education and governments in provincial level can invite foreign education institutes for running schools in such cooperative way, when there is relevant agreement with foreign government or such request from Chinese educational institutes, and the invitation shall be preferably sent to international or national renowned higher education institutes or vocational education institutes.

#### **6.1.2.6 TVET norms in The Law of P.R China on Prevention of Juvenile Delinquency (1999)**

The Law of P.R China on Prevention of Juvenile Delinquency (1999), does not belong to the laws on education but criminal laws, however, TVET content it provides is related with education right and it is better to be put in this part. This law requires the jail, administration and education separated from adults for juveniles detained, arrested and in sentence serving, and also requires legal education and vocational and technical training to be enforced and conducted to them by the executing organ during those juveniles' sentence serving.<sup>198</sup>

#### **6.1.2.7 Temporary Standard on Establishing Higher Vocation School (2000) and School for Training Skilled Laborers (2007)**

The temporary standard on establishing higher vocation school (2000) was issued by China ministry of education (2000) No.41, and it can be displayed in the table 4 (See Supplement 4),<sup>199</sup> the regulated subjects cover principle and deputy principle, the head of the program, teachers, the amount of courses or programs provided in recruitment, the amount of full-time students, equipment, library, practice courses, funding, and lenient establishing conditions. Similarly structured is also in the temporary standards on establishing school for training skill laborers (2007) which was issued not by Chinese ministry of education but China ministry of human resource and social security (old name: ministry of labor). It includes three independent establishing standards on schools for training skilled workers according to the skill levels, respectively, skilled workers, senior skilled workers, and technicians. There is only small difference resulted from the skill level provided among those three standards. The whole structure of those three temporary standards is similar with the temporary standard on establishing higher vocation school (2000) in terms of the regulated subjects such as principals and other leading administrative figures, teachers and teaching structure, facilities, funding and lenient offer. However, those three standards still shows common characters of schools for training skilled workers which distinguishes from that for other schools, for instance, those schools are basically formulated by formal education & vocational training, school education & enterprise practice, and all those schools at three levels together provide employment service and service on training and certifying the vocational quality related to the programs provided by them, and all qualified graduates from those schools will be awarded graduate certificate together with the certificate for vocational quality, and minimum length of working experience in relevant enterprises is also specifically required for teachers and principals. What is more, for those schools for training senior skilled workers or technicians, at least three (or five for technicians) cooperative enterprises with advance equipment and superior skills in the field are mandatory and so is the institutional research on teaching the professions. The learning of foreign language is not mentioned and the local and regional needs of economic development and industry updating mentioned as the primary guidance for training skilled workers in different levels. From the date the standards were issued it seems the Ministry of Human Resource and Social Security was not active or quite competent to perform its administrative responsibility on TVE for training

<sup>198</sup> Art.46 of the Law of P.R China on Prevention of Juvenile Delinquency (1999).

<sup>199</sup> Translated from Chinese by the author.

vocational skills because the standard of establishing such kind of schools was not issued until 2007.

#### **6.1.2.8 The Temporary Arrangement on the Fee Charged on Secondary Vocational Schools (1996)**

The Temporary Arrangement on the Fee Charged on Secondary Vocational Schools (1996) was issued by Order No.101 of China ministry of education and ministry of finance before the vocational education law (2006) and it is still valid. This temporary arrangement applies to all vocational senior middle schools, regular secondary special schools including secondary norm schools, schools for training skilled workers, and vocational senior middle classes provided by regular middle schools, and the fee charged to students in secondary vocational schools is justified by non-compulsory nature of this education. The allowed fee charged comprises tuition and non-profit boarding, and for some students with tight budget in several programs, considerable fee deduction or waiver is recommended and the concrete deducting and waiving measure is handled by provincial government. It needs permit for starting charging fee and any changing of the fee, and it also promises that this fee and its expenditure should be accessible for public but without providing any concrete measure or facilitation. This temporary arrangement contradicts with the TVET related human rights instrument and Chinese vocational education law (2006) concerning the promotion of gradually achieve the free secondary vocational education, and the newest Chinese TVET related policies (see the 6.2 of this paper) has already eventually conducting the free secondary vocational education for rural population and urban population with tight budget, and it as if this temporary arrangement is waiting the achievement of policies for its final invalidity

#### **6.1.2.9 The Criteria of Inspecting and Evaluating Secondary Vocational Education (2011)<sup>200</sup>**

This criteria for inspecting and evaluating secondary vocational education was newly released, and that means the evaluation on Chinese vocational education was not standardized with certain criteria before, and even now still no evaluation criteria on other levels of vocational education. The concrete content of the criteria can be displayed in the table 5 (See Supplement 5), and it covers the indicators concerning policy formulation, funding, facilities, development level. This criteria is brand new obviously, and it seems quite coherent with UNESCO 2001 revised recommendation, however, the such kind of criteria for other types and levels of TVET have not been released though they are similarly significant for Chinese TVET development.

### **6.1.3 TVET norms in Chinese social law**

#### **6.1.3.1 TVET norms in Labor Law P.R China (1994)**

Labor Law P.R China (1994), contains one independent chapter of vocational training. This law stresses the equal right to training in vocational skills and lays the duty of providing vocational training respectively on laborers, employing units and the state by saying that: 1) laborers, shall fulfill their labor tasks and improve their vocational skills and those engaged in specialized operations (or technical work) must receive specialized training and acquire qualifications before taking up that position; 2) employing unit, shall establish a system of vocational training, retain and use vocational training in the legal way and provide laborers with vocational training in a planned way and in the light of the actual conditions of the unit; 3) State shall develop vocational education and expand vocational training

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<sup>200</sup> Ibid.

undertakings and set professional skill standards for the occupations classified by the state within a system of vocational qualification certification, and governments at various levels shall incorporate it into the plans of social and economic development, and encourage and support enterprises, institutions, public organizations and individuals, if conditions permit, sponsor vocational training in various forms. Meanwhile, this law provides laborers' right to trade union and the independence of the trade union when carrying out their activities, and also requires the state to encourage and protect laborers in conducting scientific research, technical renovation, inventions and creations, and commend and reward model and advanced workers. However, no cause of vocational training in the list of contents for labor contract including collective contract but saying other clauses can be agreed.<sup>201</sup> This law is criticized for other content quite a lot but not in this training part because this part does not raise enough attention.

### **6.1.3.2 TVET norms in Labor Contract Law P.R China (2007)**

Labor Contract Law P.R China (2007), takes training as one of important matters directly bearing the immediate interests of workers and asks the employing unit to put forward plans and suggestions and make decisions after consulting with the trade union or the representatives of the workers when make decision about those matters, and lists training as one cause that can be discussed and put in labor contract with agreement, and when concerning labor-dispatching, the law requires the receiving unit to provide the dispatched workers training necessitated by that taken post. when an employing unit provides special funding for a worker's training and gives him professional skills training, for specifying the term of service an agreement can be concluded with the workers, and if the workers breach the agreement, the agreed penalty should be paid to the employing units, but the sum of the penalty may not exceed already paid training expenditure and the portion of the training expenditure allocatable to the unperformed portion of the term of service, and during the term of service, raise in the workers remuneration resulted from the regular wage adjustment mechanism shall not be adversely affected.<sup>202</sup> The implementation regulation on this law issued by State Council Order No.535 in September 2008, clarifies that, the training expenditure the employers can claim for refund in certain proportion when the employee who received the training breaks the independent training contract, comprises the training fee, traveling cost during the training, other training related expenditure caused by the training receiver, and all those expenditure need be supported by invoice and other receipt when they are claimed.<sup>203</sup>

### **6.1.3.3 TVET norms in Law of P.R China on Employment Promotion (2007)**

Law of P.R China on Employment Promotion (2007), contains one independent chapter of vocational education and training, and it sets employment growth as one of important goals in sci-economic development for all governments at or above county level and correspondingly recommends strengthening vocational education and training as one of necessary measures to achieve the goal by raising the level of laborers' vocational skills and increasing their employability and capability of starting undertakings. Governments at or above the county level ( or also relevant departments of governments) are required to: 1) Formulate and implement plans for the development of vocational capabilities in light of the need of economic and social development and market demand, and to improve coordination under an overall plan; 2) Encourage the workers to participate in various forms

<sup>201</sup> Art.3, 5-7, 19, 33, 52, 55, 66-69 of Labor Law P.R China (1994).

<sup>202</sup> Art. 4, 17, 22, 62 of Labor Contract Law P.R China (2007).

<sup>203</sup> Art.16 of the Implementation Regulation on the Labor Contract Law (State Council Order No.535[2008]).

of training; 3) Encourage and support various types of vocational colleges and schools, vocational skills training institutions, and also encourage and support employers to provide pre-employment training, on-the-job training, re-employment training and self-employment or entrepreneurship training, in particular mobilizing the enterprises and asking them to allocate funds for carrying out vocational skill training and continued education among their workers, and stressing the importance of close ties with enterprises for vocational colleges and schools and vocational skills training institutions; 4) Provide a certain period of VET to the graduates from middle schools who need to find jobs for a sound national labor pool system; 5) Help the unemployed to update their skills and better support them starting their own undertakings, and a training subsidies may entitled to qualified training participants of the unemployed; 6) Taking effective measures to arrange and guide rural workers seeking for employment in cities to participate in skill training and encourage various types of training institutions to provide skill training to such rural workers; g) Encourage and support the various sectors of the society to provide skill training, job information and other services to the persons with difficulty in finding jobs. Additionally, it requires to release information on jobs supply and demand, guidance about the rates of wages on the market, and vocational training, and also to establish a statistical system for workforce survey and a system for employment and unemployment registration conducted by statistics departments and administrative departments of labor. What is more, vocational training, appraisal of occupational skills, job recommendation etc. can be subsidized by special funds for employment.<sup>204</sup> This law is relatively new and therefore there has not been so many comments on the TVET related content except the policy illustration for promoting dissemination of this law. It seems follows most of ILO C142 and R195 though China has not ratified that labor standards.

#### **6.1.3.4 TVET norms in Law of P.R China on Work Safety (2002)**

Law of P.R China on Work Safety (2002), sets education and training in work safety as the obligation both for employees and employers, and for employees failing to pass the qualification tests after receiving education and training in work safety, no post is allowed to be offered to them, and the operating work at special posts are only allowed for those obtaining relevant qualification certificate. Before using new techniques, technologies, materials or equipment, this law requires employers to get to know and to master the safety issue of their technical properties, and to keep safety priority and adopt effective protective measures, and then provide special education and training of it to their employees. This law also production and business to arrange funds for the provision of work protection gears and for training in work safety. Violation in this field can be committed by failing to conduct required education and training in work safety among its employees or by assigning special posts to workers who have not received special training in safe operation or obtained relevant qualification certificates, and the consequent is an order of rectification within a time limit, or furthermore the order of suspending production or business operation for shake-up and may together with a fine of no more than 20,000 CNY, if no rectification on time.<sup>205</sup>

#### **6.1.3.5 TVET norms in Law of P.R China on Safety in Mines (1992)**

Law of P.R China on Safety in Mines (1992), requires mining enterprises to obligatorily provide safety education and training to their workers and staff who may not take up a post of duty without receiving safety education and training, and requires the competent departments of labor administration of governments at or above the county level to exercise supervisory functions and responsibilities in this

<sup>204</sup> Art. 4-6,15, 24, 44-51, 54 of Law of P.R China on Promotion of Employment (2007).

<sup>205</sup> Art. 21-23, 39, 50, 82 of Law of P.R China on Work Safety (2002).

regard, and an violation of this law can be committed by assigning any worker or staff member a post of duty without due education and training in safety, and consequently followed by an order of rectification (usually together with) and a fine(sum is not specified). Meanwhile, the monitoring personnel responsible for safety work in mining enterprises is also asked to receive relevant training before take their monitoring post, and authorities in charge of mining enterprises under governments at or above the county is required to organize the training of managers of mines and personnel in charge of safety work in mining enterprises.<sup>206</sup>

#### **6.1.3.6 TVET norms in Law of P.R China on Prevention and Control of Occupational Diseases (2001)**

Law of P.R China on Prevention and Control of Occupational Diseases (2001), provides training in occupational health as workers' right to receive and the employer's duty to provide such per-service and regular in-service training, and expenses for such training is asked to be incorporated into the production cost, and trade union is required to urge and assist the employer in publicity and training in occupational health. A violation of this law can be committed by failing to make arrangements for workers to receive such training and to take measures for guiding and urging individual workers to protect themselves against occupational diseases, and consequently followed by a disciplinary warning from the public health administration department together with an order of rectification within a time limit, or further fine of no more less 20,000 CNY if no compliance. Meanwhile, this law also requires the leading members of the employer to receive such training.<sup>207</sup>

#### **6.1.3.7 TVET norms in Law of P.R China on Labor-Dispute Mediation and Arbitration (2007)**

Law of P.R China on Labor-Dispute Mediation and Arbitration (2007), states that it applies to labor disputes arising between employers and employees concerning training and occupational protection.<sup>208</sup> In order to ease the pressure of Chinese courts from the numerous dispute raised from industry relation indirectly from the population pressure, labor-dispute mediation and arbitration before was the pre-condition of filing a suit in Chinese courts, and now it is not the case any more but it is still highly recommended as the process of pre-trial in court in order leave space to solve labor dispute in multiple way, not only in judicial trial.

## **6.2 TVET related Chinese Policies**

### **6.2.1 TVET Related Policy in the Framework of National Human Resource Development in Medium and Long Term (2010-2020)**

The Framework of National Human Resource Development in Medium and Long Term (2010-2020) by national people's congress, mentions the existing problem of Chinese human resources as the lack of creative human resources in higher level, the weak innovative ability, unreasonable structure and location of human resources, unresolved barrier in the mechanism of human resource development, the insufficient investment in human resource development etc.. The framework sets one of important targets in human resources development as: the rate of the human resource with senior technical skill in

<sup>206</sup> Art.26, 33, 34, 40 of Law of P.R China on Safety in Mines (1992).

<sup>207</sup> Art. 31, 37, 38, 63 of Law of P.R China on Prevention and Control of Occupational Diseases (2001).

<sup>208</sup> Art.2 of Law of P.R China on Labor-Dispute Mediation and Arbitration (2007).

all technical laborers rises from 24.4% in 2008 to 27% in 2015 and to 28% in 2020, and inside this target, another target is until 2020 to build groups of studios of senior technicians all through the country, 1200 training bases of senior technical skill, 1000,000 senior technicians. The technicians and senior technicians are the priority of the following development for human resource with senior technical skills, correspondingly, the measures are recommended as: 1) advancing the training system which featuring: enterprises leads and vocational educational undertakings provides, school education and enterprises go together, government and social partners support; 2) enhancing vocational training, over-planning the development of vocational education, integrating and utilizing the existing resources of vocational education and training, and building several exemplifying national training base and public trial base for senior technical skills based on the advanced large scale enterprises and important vocational schools and training institutions; 3) popularizing the educational mode of enterprises and schools cooperation, school education together with enterprises practice, and apprenticeship or internship on the real posts; 4) developing the teachers groups who are teachers as well as technicians; 5) popularizing the double certificates for graduates: graduate certificate and the certificate of vocational qualification; 6) gradually realizing the free tuition for secondary vocational education and allowance system for students. For the rural areas, this framework suggests the distance –learning on line and various training programs dedicated to peasants from all kinds of vocational schools and training institutions starting with the network building of vocational education and training in country level.<sup>209</sup>

### **6.2.2 TVET Related Policy in the Framework on China Education Reform and Development in Medium and Long Term (2010-2020)**

The Framework on China Education Reform and Development in Medium and Long Term (2010-2020) (released for opinions not yet officially issued), identifies the existing problems in vocational education, such as the prevailing disrespecting attitude to it, its unsatisfying structure and quality, its insufficient investment and low standard of facilities, insufficient teacher who are teachers as well as technicians, its weak impact on rural population, and unmotivated participation of enterprises, and correspondingly suggests, 1) intensively endeavor for developing vocational education. Here it stresses the vocational education has to demonstrate the idea of lifelong learning and meet the demand on high vocational quality, and the government has to incorporate the development of vocational education into the plan of sci-economic development and industry development, and increase the investment from various channel, make standards of establishing vocational schools, and the education quality has to be guaranteed through improving recruiting and promoting standard on teachers certificate and their professional technical occupation(or title), and engaging enterprises in evaluation of educational quality of vocational education, and through holding national contest of vocational quality. 2) Active and motivate the enterprises' participation in vocational education. Here it suggests establishing an instrument with government dominating, industry consulting and enterprises participating, and making and improving the relevant legal instruments concerning the cooperation between school and enterprises and providing supportive policy to encourage enterprises to receive the practice of students and teachers and also encourage them to increase the investment on vocational education. 3) Speed up the development of vocation education for rural population. Here it focuses the vocational education in country level, and asks for the broader coverage of vocational education to the rural population, and requires the gradual free pre-employment training to the growing labor force in rural areas. 4) Make vocational education much more appealing. Here it calls for the gradually free secondary vocational

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<sup>209</sup>Translated from Chinese by the author.

education and financial aid to student with tight budget, and suggests the continuing double certificates: graduate certificate and the certificate of vocational quality, and the match of the content of the courses provided and the industry standards. Also it suggests to implement the rule of training before employment (or taking posts), and encourages the continuing education for workers in service and for graduates from vocational education. Meanwhile it suggests improving the income, social welfare and social status, and the official rewards of people with senior technical skills. In this framework, broadening international cooperation in education is also independently arranged, and the arrangement includes: the exchange of students and teachers, introducing foreign educational institutes, experts and teaching materials, providing more scholarship for oversea studies both for Chinese students and foreign students (especially from less developed countries) who like to study in China, assisting Chinese graduates to do voluntary work in other less developed countries, enhancing the cooperation with UNESCO and other relevant international organizations, participating bilateral, multilateral and regional and international educational cooperation, and so on.<sup>210</sup> This framework is a basic white paper, and its green paper is expected.

### **6.2.3 TVET Related Policy in the Plan of Developing the Human Resource on Advanced vocational Skills in Medium and Long term (2010-2020)**

The Plan of Developing the Human Resource on Advanced Technical Skills in Medium and Long term (2010-2020) by china ministry of human resource and social security and communist party's organization department 2011,<sup>211</sup> is said as the first national plan on develop human resource on advanced technical skills. The plan sets three goals, five tasks and eight measures. three goals are: 1) the stable increase of the amount of human resource on senior vocational skills, precisely, the amount reaches 125 million by 2015 and 140 by 2020, and mandatory training on updating skills and knowledge reaches 15 days/two years by 2015 and 30 days/ 2020; 2) good working system for human resources on senior technical skills, precisely, about 400 national training bases for such human resources by 2015 and about 1000 national studios for those with remarkable technical skills; 3) establish and facilitate relevant law and policies to serve the development of those kind of human resources. Five tasks are: 1) improving the training system with industry association and enterprises leading and vocational education undertakings supporting; 2) modifying the evaluation or assess system to those human resources, with fair and just content, legal operated and scientific administrated; 3) building the use mechanism on those human resources, with effective incentives, real guarantee, reasonable mobility; 4) cultivating the benign social atmosphere that respect labor, appreciate technical skills, motivate innovation; 5) engaging social partner and all stake holder in the activities. The eight measures are corresponding to the five tasks, including that expanding the whole training system and its coverage with focusing on training of young people and the in-service training from enterprises, , and technology and financial support to this activities etc..<sup>212</sup> This is another white paper.

### **6.2.4 TVET Related Policy in the 12th Five-year National Development Plan (2011-2015)**

The 12th five-year national development plan (2011-2015) by National People's Congress 2011, asks

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<sup>210</sup>Ibid.

<sup>211</sup>No full text found but only the interview with relevant officials in this ministry and some analysis on this plan, and both the interview and the analysis originally published at the same newspaper: China labor security newspaper in June 2011 and then posed in other websites with second hand, including the websites of China ministry of human resource and social security.

<sup>212</sup>Translated from Chinese by the author.



implementing the strategy of 'employment as priority', and in the sub-policy of strengthening public employment service, it requires setting up a vocational training system that serves all laborer, and increasing the vocational training capacity and level, and enhancing self-employment training. Under the chapter 28 of this plan: speeding up the reform and development of education, it ask for developing vocational education proactively, in particular the vocational education targeted at rural areas, following the educational mode of education and practice combined, educational undertakings and enterprises cooperated, and apprenticeship or internships on real posts assisted. One important education project listed is about enhancing the basic capacity building of vocational education, supporting the bases for practice, building and exemplifying excellent secondary and higher vocational education schools, and enhancing the development of teachers groups who are teachers as well technicians.<sup>213</sup>

### **6.2.5 TVET Related Policy in the Plan on Promoting Employment (2011-2015)**

The Plan on Promoting Employment (2011-2015) by state council (2012) No.6, analyzes three main challenge in the employment of 2011-2015, 1) the pressure caused by surplus labor supply continuing grows, 25million /per year in urban areas ask for employment meanwhile quite huge amount of rural population join the urbanization; 2) the shortage of technical laborers worse together with the industry update and technology change, in several regions and industry sectors, skills mismatch seriously traps enterprises and laborers at the same time; 3) sci-economical change poses new challenge to laborers' vocational quality and urbanization, and the public employment service and vocational training cannot meet the demand of this challenge and the information build of the labor market is out of date. This plan stresses the principle of combining the employment promotion and human resource development, and endeavoring for enhancing vocational training and self-employment training and capacity building of laborers, and meanwhile it sets goals on training opportunity for all laborers, total amount of technical laborers reaching 125 million, among them laborers with senior technical skills reaching 27%: 34 million, and laborers with professional skills reaching 68 million. What's more, the plan asks for vocational training and self-employment training for graduates of higher education and the rural population (including establishing the course of self-employment training in secondary vocational schools and higher schools), and asks for the organization and deliver vocational training targeted at the unemployed, the laid-off laborers due to the updating the technology change, domestic workers, the disabled (with allowance), workers waiting for changing jobs or posts. Additionally, the plan mentions certificate regulating of vocational quality, the assessing and evaluating of professional skills and scaling and titling those workers, and the information release on employment, vocational guidance, and vocational training.<sup>214</sup>

### **6.2.6 National Human Rights Action Plan of China (2012-2015)**

National Human Rights Action Plan of China (2012-2015) provides that (1) about **the right to work**, it plans to launch multiform vocational training to rural and urban workers though guaranteeing every new employee access to corresponding vocational training opportunities, ensuring that technical workers can take part in at least one skill-upgrading training program, and encouraging the localities to establish practical training bases; (2) about **the right to education**, it plans to developing vocational education with great effort through making secondary vocational education has more or less the same

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<sup>213</sup>Ibid.

<sup>214</sup>Ibid.

enrollment as regular senior high schools, training teaching staff with theoretical knowledge, ability to teach, and practical experience and skills, gradually abolishing the tuition fees for secondary vocational schooling; (3) about **the right to basic standard living**, it plans to conduct training programs in practical skills for the impoverished laborers in rural areas; (4) about **the rights of ethnic minorities**, it plans to attach importance to the training and utilization of talented people from ethnic minorities, and to vigorously promote the development of vocational education and make greater efforts in the training and cultivation of teachers and strengthen pair-up assistance in education; (5) about **the right of people with disability**, it plans to provide employment services and vocational training for disabled people who seek employment, and to provide skills training for 800,000 disabled people in rural areas by 2015.

### **6.2.7 TVET Related Policy in the Opinions on Enhancing Vocational Training to Promote Employment (2010 No.36)**

Opinions on Enhancing Vocational Training to Promote Employment (2010 No.36) by state council, is motivated by the framework of national human resource development in medium and long term (2010-2020) and the framework on China education reform and development in medium and long term (2010-2020), and five points are expressed in the opinions, specifically, (1) Realize how important and urgent vocational training is. here it requires to target at 'train one person and make one person employed, and employ one person and train one person' and enable every new individual laborer to have a training opportunity, every employee in technical post to have at least one opportunity of updating the skill, every individual who like to start his/her own business to have a opportunity for self-employment training. (2) Proactively carry out various vocational training. Here it requires: a) employability training, here includes the training of primary skills for registered unemployed in urban area and the labor force waiting for urbanization in rural area, the 1-2 semester preparing labor training for the rural and urban graduates from middle schools who do not want to continue education, the pre-employment training for newly employed through apprenticeship and concentrate training, free vocational training for demolished soldiers, training the secondary or above vocational skills and quality for students in vocational education, courses on employment and self-employment and vocational guidance for graduates from higher education; b) in-service training, here calls for improving the in-service training system in enterprises and promoting all kinds of in-service training and encourage enterprises to establish studios of remarkable technicians, update system for technicians, run or co-run training institute; c) self-employment training, here calls for cohesion between self-employment training and related policies such as small amount loan, tax reduction or waiver, and related service such as self-employment guidance, green-house for scheme from new graduates etc. (3) improve the quality of vocational education. Here calls for employment –leading training mode, expanding impact of vocational skills contest and examination and evaluation on vocational quality, primary capacity building of training, employment service, the participation of social partner in vocational training activities, and the public purchase of service of vocational training such as in the form of training tickets. (4) Increase the investment on vocational training. Here asks for a) improve and implement the policy on training allowance, in particular, to enterprises who trained its employee in the right way, to rural or urban training receivers who pass the examination and are rewarded the certificate on primary and above vocational skill after they completed the vocational training or self-employment training, to training receivers of graduates from middle schools (living stipends are also available to those new labor force who have tight budget); b) increase the fiscal allocation to vocational education, and special fund/ allocation is required in this field; c) guarantee the enterprise fund on vocational education, and

ask enterprises to full-amount provision educational fund and 60% of this fund to be used on educating and training the employee working in the operating posts; d) enhance the monitor of the allocation and use of training fund. (5) Improve the organization and guide in this field. Here calls for the responsibility of government at all levels and relevant departments of the government to be fully responsible in this field.<sup>215</sup>

### **6.2.8 TVET Related Policy in the Opinions on Strengthening the Cultivation of Services Outsourcing Talents and Boosting Employment of Graduates from Institutions of Higher Education ([gaojiao] 2009 No.5)**

Opinions on Strengthening the Cultivation of Services Outsourcing Talents and Boosting Employment of Graduates from Institutions of Higher Education ([gaojiao] 2009 No.5) by Ministry of Commerce and Ministry of Education in 2009, illustrates the importance of cultivate and train the service outsourcing talents, and sets goals within five years: cultivating and training 1.2 million services outsourcing talents, employing 1 million college or university graduates, and realizing the goal of USD 30 billion in international services outsourcing projects undertaken by 2013, and claims to establish a system for the cultivation and training of services outsourcing talents. In the planned system, the training centers for services outsourcing talents would be set up in selected model cities, and the ministry of commerce and ministry of education are jointly responsible for the establishment of those centers, criteria formulations for those centers, public training bodies and practitioners. The roles of different actors is called as: 1) those training centers, coordinate the cultivation, training, practice and internship between local institutions of higher education, public training bodies and services outsourcing enterprises; 2) institutions of higher education and public training bodies, follow relevant standards in cultivation an training service; 3) service outsourcing enterprises, organize and accept students from institutions of higher education for professional practice and social practice; 4) local governments, strengthen policy support for those training centers, institutions of higher education and public training bodies, and enhance the quality of cultivation and training; 5) ministry of commerce and ministry of education, regularly publish the number of both graduates of institutions of higher education and those who have gone through training by public training bodies and have been employed by services outsourcing enterprises, and cooperate with other relevant departments in establishing a services outsourcing talents bank.

### **6.3 The Implementation of These TVET Related Legal Norms and Policies (including cases brought to Chinese courts)**

In china there is no official reports found on how the law are implemented but only how the policy under certain subject s is implemented and facilitated. Once the official report on some subjects starts, it always tarts with related conducts of the governing party, state council or top leaders' speech in this subject, law is only mentioned slightly, such as the report on the situation of vocational education reform and development by the minister of education on behalf of state council in 2009. Therefore, the best way to examine the implementation of legislative instruments is to analyze relevant cases brought to court, which also help to examine the rights awareness of individuals in this field, and also the news reports in the field. while the only way to examine the implementation of policy is to analyze reports from government (and NGOs or other sources if any), or policy news from accredit websites, but actually no reports from NGOs or other sources is found concerning TVET issue in China, and all

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<sup>215</sup>Ibid.

implementation information available is from the official reports and Chinese news reports, which may affect the evaluation of implementation.

### 6.3.1 The Implementation of TVET Related Provisions in China Constitution and China Educational Legislative Instruments

China constitution is not applicable in judicial activities, and in the special procedure<sup>216</sup> handling the conflict between existing legislative instruments with constitution, none conflict is reported so far. China education law (1995) is not written in right language that provides measure for rights realization. China vocational educational law (1996) does not contain independent legal liability, which makes the right to vocational education hard to be exercised and make the law itself hard to be applied by individuals in judicial activities, and maybe it is which why all legislative instruments on education are categorized into administrative legal instruments. What is more, the implementation arrangement of this law was not issued timely by different provincial government,<sup>217</sup> for example, this law came into force in 1997 but the implementation arrangement in Hubei Province was issued in 2007 (10 years later) and Inter-Mongolia in 2003 (5 years later). Nevertheless, because of the unemployment pressure and new acknowledgment of TVET's contribution to sci-economical goals like productivity, competitiveness and human resource, recent years the implementation of this law are paid attention by the government all all levels especially in local level, and some heads of local government in county level start to inspect the implementation of this law, which was intensively reported especially in 2012.<sup>218</sup> Actually the rule of law in TVET field had already been claimed and criticized in *the Report on the Problems Concerning China Education and Human Resource Development*<sup>219</sup> which recommends establishing laws or regulations in human resource development and fixing the judicial/administrative/arbitrary remedy in the field of education. The investigation work prepared for revising China vocational education law (1996) has been started around 2003 and the revising proposal has been submitted to the national congress almost every year, and the Report on Vocational Education Reform and Development by state council (2009) also mentioned the contents that need to be revised in this law, however, so far the revising work is still under the process of investigation and survey, for example, the recent new report committee different members of national congress was conducting revising investigation in developed region and also in less developed ethnic minority dwelling region.<sup>220</sup>

Several cases (not many) brought to Chinese court concerning the education right, but right to education has been never directly applied and it seems no legal source to support this right, and in the

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<sup>216</sup>Politically arranged mainly by 'supervision working procedure on legislative instruments issued not by national people's congress but by state council, the departments of state council, provincial government etc.' issued by standing committee of national people's congress in 2005.

<sup>217</sup> The vocational education law (1996) came into force in 1996, while the implementation arrangement in Intermogolia was issued in 2003.

<sup>218</sup> For example, Sishui in May 2012 (<http://www.ss.jinedu.cn/gzdt/ShowArticle.asp?ArticleID=1188>) Xiangtan in March 2012 ([http://www.xiangtan.cn/html/news\\_33943.htm](http://www.xiangtan.cn/html/news_33943.htm)) and Chenggu in April (<http://www.cgjyw.net/newsInfo.aspx?pkId=5917>) all the websites were accessed on July 4, 2012.

<sup>219</sup> 上海市教育科学研究院, *从人口大国迈向人力资源强国: 中国教育与人力资源问题报告* (北京: 高等教育出版社, 2003). Shanghai Education Science Institute, *Changing large population to strong human resource: the report on the problems concerning China education and human resource*, (Beijing: Higher Education Press, 2003).

<sup>220</sup> For example the news in the website of China national congress on the June 25 2012 ([http://www.npc.gov.cn/npc/bmzz/jkww/2012-06/25/content\\_1726103.htm](http://www.npc.gov.cn/npc/bmzz/jkww/2012-06/25/content_1726103.htm)) and on June 21, 2012 ([http://www.npc.gov.cn/npc/bmzz/jkww/2012-06/21/content\\_1726290.htm](http://www.npc.gov.cn/npc/bmzz/jkww/2012-06/21/content_1726290.htm)), accessed on July 17, 2012.

already raised cases, none of defendants in those case are governmental bodies: the primary obligation bearer to individuals' right to education. The first case in this field came in 2001, and the fact is plaintiff Qi yuling's admitted letter from a higher school was intercepted by the middle school she graduated from, another person secretly stood on Qi and received education in that higher school with Qi's admitted letter and her name in 1990, and ten years later Qi found this fact and brought the case to court in 2001. The applied court did not know how to apply the law when Qi claimed her right to education, so the opinion of china supreme court was asked for and the reply issued by china supreme court said that the infringement of right to name provided in china civil law caused the outcome of that Qi's right to education provided by China constitution was infringed. The court avoided mention the right to education Qi claimed and the legal source of this right because China constitution is applicable in judicial activities, and the court just made decree with higher amount of compensation to Qi. This case show that right to education cannot be upheld by the legislative instruments on education in judicial activities, and the judicial system avoided this right. In 2008, China Supreme Court abolished the legal force of this reply<sup>221</sup> and therefore right to education becomes much vague in judicial activities.

After using the searching engines Google and Chinese Baidu with keywords `vocational education right` or `vocational education`, and the searching in the websites of courts in 7 selected Chinese provincial cities with the same keywords, only one case is reported in non-court websites. This reported case is concerning the Minxi higher vocational school (in Fujian province of China) demolished one student and together erased the educational records of that student, which made that student hard to be accepted by any other schools because of lack of educational records. The report said the court of first instance applied the China higher educational law (1998) and found the conduct of expelling the student and erasing the educational records could be treated as exterior administrative conduct that falls into the scope of China administrative procedure law, and then the court applied China administrative law and found the schools did not used due legal administrative procedure when such decision was made and the school regulation the expelling decision depended on does not provide concrete content about such expel, therefore, the court withdrawn the decision the school made, and in 2010 the case was appealed but the first decree was upheld.<sup>222</sup> After calling the named law firm with naming the reported lawyer, the truth of this reported case is verified. This is an ordinary case concerning china administrative procedure law, not the education laws, even if it also applies the China higher educational law (1998), and the reasoning part of the jurisdiction does not mention the right to education of the plaintiff at all, that is to say it is not the right to education that wins in this case but the administrative procedure wins.

From the searching result and the cases reasoning, it is assumed that if the right to education is hard to be protected by existing law, then no mention right to vocational education or TVET related rights in China educational legislative instruments. All these described TVET related Chinese laws in education directly serve the education administration purpose and they do not expect the individuals to resort to it for rights protection, therefore, once the responsible administrative bureaucracy dysfunction, individuals' TVET interests and whole community's TVET interests will be jeopardized due to the lack of effective monitor, transparency and remedy. What is more, the market economy already tends to change TVET in the profit routine, which may contradict the public interests of TVET as one kind of education, therefore, a Chinese scholar worries that once Chinese responsible government dysfunction

<sup>221</sup>By the decision of judicial interpretation (2008) No 15 from China Supreme Court.

<sup>222</sup> Summarized and translated from the report in Chinese `law knowledge` website:

<http://china.findlaw.cn/falvchangshi/jiaoyu/shoujiaoyuquan/qfsjyq/102877.html> accessed on 2 May 2012.

or resign the leading role in TVET development, Chinese TVET will collapse.<sup>223</sup>

### **6.3.2 The Implementation of the TVET Related Norms in China Social Law**

In the TVET related Chinese social law (see part 6.2 of this law), the law on employment promotion (2007), labor law (1994) and labor contract law (2008), do not obligate pre-employment training, on-the-job training, and general training for employmentability, and the training obligation is set as policy arrangement, such as trade union's duty, the mobilization of enterprises' participate etc. Therefore all the implementation of this law only can be taken as government administration and the liability for any failure in this field of TVET mainly trigger administrative liability solved in the administrative way. Individuals could not claim and exercise TVET rights according to these laws. Only the law on work safety (2002), the law on safety in mines (1992), and the law on prevention and control of occupational disease (2001), obligate certain training for safety and provide independent legal liability on failing to providing relevant training to employees, but the failure on providing safety training only trigger the order of rectification within certain time limit first, and continuing noncompliance only trigger the fines no more than 20,000 CNY or the worst of suspension of production, which means the liability is handled in administrative way, and individuals are not provided with the remedy if no such training. Besides, the dispute concerning the training falls into the category of labor dispute which is preferably handled by administrative mediation and labor arbitration. So it is predictable that not so many cases are brought to courts and even the compliant is filed to court and they may be rejected due to the lack of legal source for their training rights and interests. These three laws also mention the labor department's obligation on organizing and training enterprises manager and special personnel on charging of safety in the enterprises, which are not guaranteed by legal liability.

With the key words 'training right' or 'right to vocational training' or 'vocational training right', searching with Google and Chinese Baidu, and searching in the websites of courts of appeal in seven selected provincial capital cities<sup>224</sup>, even no any case concerning the training dispute, no mention the claim of training right or right to vocational training. No active and accurate response from five selected labor arbitration institutes<sup>225</sup> in this field and therefore the situation on arbitration institutes of possible handling training dispute or training right is unknown. However, the cases are not rare about the dispute where employers claim the proportionally refund the training fee when employees who received training but break the independent training contract,<sup>226</sup> however, this kind of dispute is mainly about performing contract, not about the awareness on training rights.

### **6.3.3 The Implementation of TVET Related Policy**

Because some polices are issued in 2012 or late 2011 and they are quite new, there is no official reports on the implementation of those policies, but the news reported on activities carried by the responsible departments of state council and the provincial government or their departments will help to imply

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<sup>223</sup> See Supra note 145.

<sup>224</sup> See Supra note 224.

<sup>225</sup>The five arbitration institutes selected are Zhengzhou arbitration institutes on labor dispute, Shenzhen arbitration institutes on labor dispute, Wenzhou arbitration institutes on labor dispute, New Pudong district arbitration institutes on labor dispute(Shanghai), Dalian arbitration institutes on labor dispute.

<sup>226</sup> For example, lawyers' report about real cases concerning this dispute in <http://www.hllawyers.com/publications/cn/publications-59.html>, <http://www.wise111.com/blog.php?do-showone-tid-527805.html>, accessed on May 3, 2012.

the real implementation of those policies. The following will examine policies by main items the relevant policies provide:

**About expanding vocational education, especially the second vocational education.** From the 3<sup>rd</sup> international congress on TVET in Shanghai organized by UNESCO, the Chinese government official news agency Xinhua reports that: China has built the world largest scale of vocational education system.<sup>227</sup> It is reported that in 2011 there were total 13177 secondary vocational schools with 21.97 million students, total 1280 higher vocational schools with students 7.44 million, total above 60 million various trainings by schools and vocational educational institutes, and 9.6% of secondary vocational schools and 24% of higher vocational schools are held by industry association or enterprises, and total 3164 non-public vocational schools. From the Statistical Communique of the P.R China on the 2011 National Economic and Social Development by National Bureau of Statistics of China<sup>228</sup>, it said in 2011 vocational secondary schools of various types had 21.966 million enrolled students. The data reported coincides with the statistic state council partially published, and possibly the data reported are the official statistic that has not been published completely on relevant official websites, so the news report is reliable possibly. However, the brief introduction of Chinese education says that in 2010 the scale of secondary vocational education stably expanded but with a lower growing rate, and total 22.385 million students in schools. That is to say, the secondary vocational education was shrinking actually concerning students' size in schools from 22.385 million in 2010 to 21.966 million in 2011.<sup>229</sup> Zhixi Zhu one committee member of national congress, mentioned in the official news press that the whole enrollment in all vocational education had been decreased gradually, and he thought this was the wrong trend.<sup>230</sup> Therefore, China may have built the world largest scale of vocational education system based on its world largest population, but whether or not the vocational education has been expanded, it is not certified due to lack of reliable statistics.

**About gradually carrying out free tuition in secondary education.** The 2011 White Paper on Poverty Deduction in Rural Areas states that in the total 42.89 graduates from secondary vocational education from 2001 to 2010, most of them come from the rural areas or urban destitute family, which helps to understand the reason and importance of this policy.<sup>231</sup> The Xinhua news from 3<sup>rd</sup> international congress on TVET reports that since 2009 free tuition covers all full-time rural students with tight budget and students in agriculture related programs in secondary vocational schools, and since 2010 this policy also covers full-time urban students with tight budget, and in 2011 total 3.95 million students benefited from this policy. However, this 3.95 million beneficiary students was said including those not in secondary vocational education but in agriculture related programs, in the Report on Fiscal Expenditure in 2011.<sup>232</sup> The minister of education mentioned the number of beneficiary students as 4.4 million, about 22% of total students in schools, and 90% students in secondary vocational education were covered by financial stipends, in the 2011 Work Report on Implementing the Framework of National Educational Reform and Development in Medium and Long Term (2010-2020).<sup>233</sup> Here it is

<sup>227</sup>"China has built the world largest scale of vocational education system," Xinhua news, 14 May 2012.

[http://news.xinhuanet.com/edu/2012-05/14/c\\_111949778.htm](http://news.xinhuanet.com/edu/2012-05/14/c_111949778.htm), accessed on 14 May 2012.

<sup>228</sup>It is made by National Bureau of Statistics of China but published on the website of state council on February 22, 2012.

<sup>229</sup><http://www.moe.edu.cn/publicfiles/business/htmlfiles/moe/s5990/201111/126550.html> accessed on 6 May 2012.

<sup>230</sup>In December 2011, the standing committee of national peoples' congress received the interview concerning the implementation of the framework of national education reform and development (2010-2020)

<[http://www.china.com.cn/zhibo/2011-12/30/content\\_24283421.htm?show=t](http://www.china.com.cn/zhibo/2011-12/30/content_24283421.htm?show=t)>, accessed on 30 April, 2012.

<sup>231</sup>China white paper on new improvement of rural poverty reduction by news office of state council, 16 Nov 2011.

<sup>232</sup> China Ministry of Finance, The Report on Fiscal Expenditure in 2011, June 2012.

<sup>233</sup>Reported on 28 Dec 2011 to standing committee of national people's congress.

clear there is a gap in the figure of beneficiary students between gross 3.95 million and unknown 4.4 million. It seems it is certain the coverage of the policy expands, but how many students indeed have benefited from it, there is no convincing figure. In local level, other news report about the implementation in local level seems much positive, such as, the province of Inner Mongolia released in its 2012 local education conference that, in 2012 this autonomy region will expand its free tuition and free books to all students in senior middle schools level including secondary vocational education, and about 820,000 students will benefit from this 2 billion policy subsidy.<sup>234</sup> Jicheng, shuozhou and Yangquan in Shanxi province, those three municipal area realized target of free tuition to all student in full-time academic study in secondary vocational education by the end of 2011, and in whole Shanxi province total 300,000 those students will benefit from the policy.<sup>235</sup> It seems in the provincial and local level, this free tuition policy for secondary vocational education has been implemented quite well in some region, while obviously dominating regions-the unreported regions have not implement so well and might need to catch up, but how to spur the local government to implement this policy, it is not known.

**About training targeting at rural population (in particular, the rural labor force that waiting for urbanization), potential young labor force who do not continue further education after middle schools), the unemployed, the demolished soldiers, the graduate from higher education etc..**

China statistic shows that by the end of 2011 there were about 656.56 million about 48.7% of total population still in rural areas,<sup>236</sup> and the 2012 work report of state council says total about 253 million laborers from rural areas are in urban areas now and 159 million of them are outside of their original provinces<sup>237</sup>, which means it is not easy to organize those laborers with rural origin to receive vocational training. During 2008 world financial crisis and high unemployment, thousands of laborers with rural origin came back from urban areas to their rural origin; in Nov 2008 china ministry of education issued an urgent notice: secondary vocational education schools have to provide vocational education targeting the returning rural laborers, and it asks all education department in county and municipal level organize local secondary vocational institutes to simplify enrollment procedure for those laborers, build the educational record for those enrolled for academic study, provides courses and programs in the form that takes into consideration of the learning habit and their working experience, and allow them to complete their study in the part-time way within longer time limit. Meanwhile this notice also suggests the education department and vocational education institutes to adopt relevant measure to train the young rural laborers, employees in county factories, demolished soldiers and unemployed in the county.<sup>238</sup> Obviously, this is a timing and quite clever arrangement, but in a form of official urgent notice and lack of long-term arrangement, it seems not formal and serious enough to carry on this heavy task. In the local level, news reports that May 2012 the provincial department of human resource and social security in Hebei province issued the policy of the training allowance of 800-16000 CNY according to the final skill level of certificate training receivers pass and are rewarded at the end of their training, to laborers with rural origin, young labor force in the future who do not continue education after middle schools, the employed and one-year fresh graduates from higher schools, and this policy also offer different kinds of skills and all interested applicants can get the

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<sup>234</sup>Retrieved from [http://www.jyb.cn/basc/xw/201203/t20120320\\_483855.html](http://www.jyb.cn/basc/xw/201203/t20120320_483855.html) accessed on March 20 2012.

<sup>235</sup>Retrieved from [http://www.sxgov.cn/shanxi/shanxi\\_content/2012-03/20/content\\_1615055.htm](http://www.sxgov.cn/shanxi/shanxi_content/2012-03/20/content_1615055.htm) accessed on March 20 2012.

<sup>236</sup>Table 15: Population and Its Composition by the end of 2011, in the Statistical Communique of the P.R China on the 2011 National Economic and Social Development.

<sup>237</sup>Work Report of State Council by prime minister Wen jiabao on March 5, 2012.

<sup>238</sup> Retrieved from [http://www.gov.cn/jrzq/2008-11/29/content\\_1163520.htm](http://www.gov.cn/jrzq/2008-11/29/content_1163520.htm) accessed on 1 May 2012.



training information from the public employment service in municipal level.<sup>239</sup> No doubt, this is applauding but it can be better if the dissemination of training information and registration work can be carried on the country level at the convenience of laborers with rural origin. Another report says Pinqiao district government in XinyangXinyang, Henan province, is issuing training tickets of value 1000 CNY for any interested and with Pinqiao household registered, demolished soldiers, families with no member is employed, returning graduates from middle schools.<sup>240</sup> This is also applauding and it will benefit the local community for sure, but the restriction on the local household registration demonstrates the common problem of implementing policy: regional disparity and local protectionism. Of course, the reported ones usually are the most proactive implementers, it is reasonable to assume in most of regions China, this policy has not been facilitated quite well, or at least implemented in different level according to the local resource and the local governments' willing and capacity.

**About building and exemplifying training bases for senior technical skills, studios of remarkable technicians.** This is a task assigned by the ministry of human resource and social security, in its (2012) No.89 notice, this ministry encourages its departments in provincial level to apply for the establishment of studios for remarkable technicians, and total studios planned is 150 and every provincial areas have no more than 4 quota and the championed application will be once-aided 100,000 CNR for the studio. This notice sets the basic application standards of establishing studios based on enterprises, and based on public vocational training bases, and it also clarifies the criteria of so called 'remarkable technician' and the assessing procedure and criteria on the application. The ministry's (2012) No.88 notice is about the project of building the training bases from May 2012 to May 2014. The scope of applicants for this project is 2008 national exemplified training bases for senior technical skills, technical schools and vocational training institutes for secondary and senior technical skills, public training bases on municipal and above level, and every champion applicants will be once-aided 5 million for their training cost. This notice sets basic standards for the applicants in the aspect of administration, training capacity, quantity and quality of teachers, the cooperation and connection with enterprises or industry association. There is no quota for any region, but the assessing procedure includes local government recommend and the ministry and ministry of finance co-examine and grade. About the final quality of those studios and training bases and their impact, it is still too early to predict, but it is clear this implementation has been started though there is doubt concerning transparency and equality in the selection process.

**About improving quality of vocational training from: the teachers with teacher certificate and technician certificate, students expecting graduate certificate and certificate of vocational quality, standard or criteria setting (in certificate assessing, school sand enterprises cooperation, or concerning quality of teachers and students), incentives and motivation imposed to teachers and enterprises, and the participation of industry association and enterprises.** Ministry of education in its jiaozhicheng (2011) No.17: the opinion s on enhancing the development of teachers in secondary vocational education during 2010-2015, sets target that by the end of 2015 the ratio of full-time teacher to the students in the school goes below 20:1 and part-time teacher in professional courses goes up 30% of all teachers in professional courses, and in the national level the number of training bases for those teachers reaches 100 and the practicing enterprises for those teachers reaches 100. Unfortunately, no concert measure recommended reaching that target. In its jiaozhicheng (2011) No.16: the opinions on enhancing the development of teachers in secondary vocational education, it suggest to provide free education for all students in vocational norm schools and recruit those graduates from vocational norm

<sup>239</sup> Retrieved from [http://hebei.hebnews.cn/2012-05/09/content\\_2680497.htm](http://hebei.hebnews.cn/2012-05/09/content_2680497.htm) accessed on 1 May 2012.

<sup>240</sup> Retrieved from <http://vae.haedu.gov.cn/0zcyj/02/2012/1002.html>, accessed on 3 May 2012.

schools in all channels, and to encourage and recommend the tops performers in national contest of vocational skills to go to vocational norm school and prepare themselves to become teachers in vocational schools in the future, and to support the national teacher training bases and relevant programs in regular higher schools to expand their annual enrollment of the students preparing for teachers in vocational education. Also it suggests the existing teachers in vocational education to update their academic degree or other continuing education, and to practice in enterprises, and it suggests school-enterprises jointly effort in teachers' training and education. Those suggestions are useful but it is suggestive opinion and lack of integrated arrangement: much more creative arrangement. No other documents or report or news are found in this field and it seems the policy in this field is still in the planning stage and targets was set but with slight way to reach them. This is the basic quality guarantee of TVET, including the essential and urgent needs: the standard setting about the recruit and certificate those teachers and the criteria of assess or evaluation etc. , but the implementation in this significant issue is quite disappointed from the available information.

**About financial guarantees to vocational education.** No concrete financial arrangement is found. The Report on Fiscal Expenditure in 2011 states the expenditure in education in 2011 is 99.905billion-127% of the planned budget, and the extra expenditure went to the undergraduates in national key universities and students in master programs in higher education.<sup>239</sup> It seems it is not TVET undertakings and students who received special financial allocation in 2011, but the students who are considered with the potential to be elite. The scholar Yangguo mentioned that the average study expenditure/per student in second vocational education schools was 1.4 times higher than those in normal middle schools in 2005, and 30% of the fund in TVET undertakings for running and operation this education and training is from fee charged in 2005,<sup>241</sup> that is to say, without sufficient financial guarantee, TVET cannot really realize neither the free education nor the expansion of second vocational education, and the enhanced attractiveness of TVET as well. However, now constrained by the lack of data and information, it is hard to know whether or not the financial allocation has paid enough attention to TVET development.

## 6.4 Concluding Remarks

**About the TVET related Chinese laws in education.** They do not demonstrate the TVET's importance in whole education system, do not provide TVET within the concept of lifelong learning by failing to design the seamless pathway between TVET and other forms of education or different level of TVET, do not provide independent and sufficient liability and do not expect TVET receiver or potential receiver to protect their TVET interests by resorting to these laws, and do not embrace the regional and international labor market, technology change and global trends, though the intention to improve TVET development has been demonstrated in the regulation on international cooperation is demonstrated in China-foreign cooperation in running schools, and it still implies to solve problems locally by using foreign administration experience, not to innovate a solution with global strategy. These laws are not written in right language but the administrative language which treat the individuals as lifeless object and offer no space for individual's and other social partners (except enterprises and industry association) participation in TVET planning, implementation and monitoring. When the totally government leading role in TVET development meets the lack of reliability and transparency and exterior monitor, individuals are disabled by such arrangement and the rights awareness is hard to grow. The implementation of these laws is quite mysterious because almost all implementation is

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<sup>241</sup> Op. Cit. 167.

constrained within administration process which is not transparent and there is no so much available information in this field except the official information under suspect inflation, which causes research difficulty in this field, such as *The International Comparisons of China's Technical and Vocational Education and Training System* complains that 'problems with statistical data collections and data collecting methods in China raise issues with regard to both quality and quantity.'<sup>242</sup>The participation and monitor of individuals and social partners in the implementation is not facilitated including judicial remedy process, and the implementation arrangement on China vocational education law in provincial level were not made timely (even 10 years later in Hubei ) and the procedure of making such arrangement was also with shortage of the participation of TVET stakeholders. Consequently, the TVET related Chinese laws in education are mainly symbolic 'law' by missing the important liability and sufficient remedy, and in the name of law they are not paid serious attention either by the administrative bureaucracy or TVET stakeholders. The long-running revising work about China vocational education law suggests the relentless legislature capacity in TVET due to the rapid development of TVET both in international level and Chinese context, and it seems China has difficulty to follow the international TVET development space in an agile way. The new TVET related policies seems functioning as the alternative or pre-trial of revised Chinese vocational education law. The TVET related norms in Chinese laws in education has long distance from UNESCO 1989 convention and 2001 revised recommendation, and ILO C142 and R195.

**About the TVET related norms in Chinese social law.** They do not consider more than employment and work safety benefit of the individuals and economy, and the pre-employment training and on-the job training promoted or provided by employers are merely recommended, and the simple obligatory pre-employment training for work safety is lack of the guarantee with effective punishment. What is more, 'work-based training is not officially recorded.'<sup>243</sup> Basically they imply that government try to leave enough space for enterprises and employers to expand their business and profit and competitiveness, while intent to trivialize individuals' the right to training and training benefit. Training arrangement for employment interests is much more softer as law and it sounds like policies, such as the trade union's obligation of providing vocational training while trade union is never treated seriously by officials or ordinary individuals in peace time of China. Therefore, these laws do not entitle individuals or TVET stakeholders to claim and guard their TVET benefit no matter in administrative remedy, arbitration or judicial remedy, no matter against employers or responsible bureaucracy of the government. It seems the training awareness of TVET stakeholders is still quite low concerning these laws. The TVET related norms in Chinese social law are not coherent too much with UNESCO 1989 convention and 2001 revised recommendation, and ILO C142 and R195, and there is no provisions about paid educational leave ILO C140 and R 148 required.

The content and implementation of TVET related Chinese policies. The content of TVET related Chinese policies sent one strong signal: secondary vocational education and training especially for people with rural origin, and general TVET for the large population is dedicated to produce skilled labor workers and to decrease unemployment rate and to maintain the social stability, and the senior skilled workers, technicians and senior technicians or even advanced technician master are the good human resource that the government need to invest for the skill innovation, and while those top technology innovators are not provided by TVET and and they are called advanced technology human resource. This invisible segregation of human resource and label TVET in lower level of innovation

<sup>242</sup> Z. Guo and S. Lamb, *International Comparisons of China's Technical and Vocational Education and Training* (Netherlands: Springer, 2010) 181.

<sup>243</sup> --- 179.

and lower quality of human resource, decide the financial allocation and administrative attention to TVET and other type of education, and even to TVET in different levels. Indeed, this locate TVET and TVET receivers per say reflect the low confidence in Chinese TVET quality, and which makes it harder to complete the task of making TVET much more appealing when government themselves do not think TVET is so productive and important. Academician Wang Mengshu from China National Academy of Engineering was ever surprised and moved when he asked a German veteran professional what university that veteran graduated from and the answer was vocational educational school, and he criticized the man-made low image of TVET.<sup>244</sup> Indeed government bear the primary liability for such low image of TVET by failing to facilitate relevant and coherent policies and measures, such as the policy goal on establishing national studio for senior technician masters was implemented timely with the sufficient financial guarantee while the goal of training for young labor force with rural origin and domestic labor workers are still not able to be assessed due to the lack of official information. The questionable implementation outcome might resulted from the invisible conflict between the devalued TVET in human resource and innovation strategy and high promoted TVET in education and employment related policies. Admittedly, those policies are much advanced than TVET related Chinese laws, and are also much coherent with international TVET standard like UNESCO 2001 revised recommendation and ILO R195, but still no arrangement about paid educational leave. Those policies function as the leading engine of TVET development. Actually reported news about the inspection on the implementation of China vocational education law, implies that it is the planning policies that cast more pressure to the local government in implementing China vocational education law after decade this law came into force, accurately the main pressure is the employment growth goal set for government in all levels, that is to say, TVET related policies decide how TVET related legal instruments are selectively implemented in the field. This demonstrates the Chinese governing character 'rule of policies' that means government especial the administrative bureaucracy enjoys large margin in implementing rules in a problem interior solving way, and almost all individuals, public and TVET stake holders are mainly disabled in the policy formulation and implementation and evaluation and monitoring by offering mere administrative remedy such as complaining to responsible administrative organs if any TVET interests undermined. This government's solo performance cast the risk to TVET policy design, implementation, evaluation, monitoring, partnership building, rights awareness and rule of law in TVET regulation.

The TVET related international standards impact on TVET related Chinese policies much more than on legislative instruments, that makes TVET related Chinese policies go faster than related legislation. Precisely, the ILO R195 affects more in the TVET related employment legislation and policies while UNESCO 2001 revised recommendation influences more in TVET related education policies. Even China has not ratified neither UNESCO and ILO standards in TVET, the development strategy emphasizing the employment contribution of TVET : the essentialism of TVET rather than a balanced individual fulfillment and employment growth and social-economic goals: constructionism of TVET, drives China to approach ILO TVET related standards much closer than ILO, however, China related policies publicly express the willing of enhancing cooperation with UNESCO in this field, no mention the cooperation with ILO, which implies the UNESCO's official engagement with state government in UN system. Indeed that fact is also that ILO country office in Beijing has not conducted too many remarkable activities and it is not as credible and plausible in China as ILO in international level,<sup>245</sup> which is a pity because ILO does has the potential to do more work in China. About TVET related

<sup>244</sup> Retrieved from [http://news.xinhuanet.com/edu/2012-03/16/c\\_122840263.htm](http://news.xinhuanet.com/edu/2012-03/16/c_122840263.htm) accessed on 8 May, 2012.

<sup>245</sup> This opinion is concluded by the discussion with some staff from different NGOs operating in China during February to July 2012.

human rights instruments, although China ratified ICESR, CEDAW, CRC and CRPD, all TVET related Chinese legislative instruments and policies are not written in right language and they do not directly serve individuals' interests but governance convenience, and the lack of sufficient remedy make all TVET related legislative instruments function like policies.

## 7 Conclusion

According to the assessment in Part 2-6 and with the consideration the research question in Part 1, it can be concluded in the following aspects: (1) the comparison of legal context in related human rights instruments, ILO standards and UNESCO instruments; (2) The comparison of implementing those TVET legal instruments in international level; (3) The comparison of the TVET initiatives or other guidance from human rights bodies, ILO and UNESCO and the influence of those guidance; (4) The general influence of TVET contents from human rights bodies, ILO and UNESCO; (5) The impact of TVET international legal instruments and other guidance on Chinese context; (6) The limit of TVET related international legal instruments; (7) The possible improvement in TVET international guidance that Country like China may benefit from.

### 7.1 The Comparison of Legal Context in Related Human Rights Instruments, ILO Standards and UNESCO Instruments

In terms of the context of TVET provisions in human rights instruments, ILO standards and UNESCO two instruments, there is no any found comment about the TVET related provisions in human rights instruments so far, and the existing research in the field of TVET focus on the TVET content development and operation and delivery etc rather than in the legal framework of TVET in the international level. Within UNESCO and ILO these renown competent UN agencies in TVET field, they have not made negative comment to the standards they adopted except criticizing the heavier-weight on education or employment perspective of TVET of the other's. This seems to indicate the TVET is developing in a trial way, and its legal frameworks in the international level has to wait until the further successful outcome of the TVET trial in the policy level. Concretely concerning the TVET content in these three international bodies:

**Human rights instruments**, do not have its own regulation on TVET except integrating TVE as part of right to education and right to work. It interprets TVE as human right but requires covering all educational levels (not only secondary TVE), and obtaining the '4 A' common character of education. It defines TVE by referring to UNESCO 1989 convention but after verifying that this UNESCO 1989 convention was also referred by ILO, which suggests human rights body embodies its regulation TVET in the human rights level while left the practical and technical TVET issues to the competent UNESOCO and ILO. Regarding to VT, human rights instruments stresses the equality, non-discrimination in access to VT, and notifies VT special needs for special groups with certain disadvantage physically, economically or socially. human rights instruments add human rights value and legitimacy to TVET and also demonstrate the basic humanitarian and original legal consideration in TVET.

**ILO standards**, C142 and R195 on human resource development reassure their legitimacy and purpose from human rights instruments, they provide essential policy planning in TVET especially VT with policy suggestions, working methods, and some technical advise.<sup>246</sup> VG and VT in C142 and R195 is required to conducted through employment service within the lifelong learning, which demonstrates ILO's TVET employment focus (heavily illustrated in C142) but still with some education balance (especially illuminated in R195). R195 reflects most key points of UNESCO 2001 revised recommendation though all those key points are formulated in R195 in a much concise and ILO's

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<sup>246</sup> Such as the method to collecting information in vocational guidance and TVET research.

tripartite-engagement way. ILO C140 and C48 on paid educational leave provide one way to get VT and it is absolutely unique though its main point in VT is only one: the right to paid educational leave for VT. In all ILO standards, no any mention of UNESCO's TVET instruments or work.

**UNESCO two TVET standard-setting instruments:** 1989 convention and 2001 revised recommendation, 1989 convention like ILO's C142 provides principle in TVET planning in national level, such as due consideration in TVET policy formulation, TVET national qualification frameworks and the adoption of industry standards and international standards if possible, and international cooperation etc.. UNESCO the 2001 revised recommendation provides tremendous TVE information which is sufficient enough to familiarize any one with TVET general knowledge and key points, but may also lose its explicit in main points. This Recommendation has already enshrined the humanitarian consideration such as the provisions designed for the full-development of individuals though it is not written in rights language. For most developing countries including China, this recommendation is valuable if it is paid enough attention. There is no any mention of ILO's standards in UNESCO's TVET instruments, which imply that UNESCO and ILO both prefer to advertise their own instruments and enhance their competency and influence in TVET international guidance so that some interests conflict between this two UN agencies is inevitable. This recommendation weighs heavier in educational value of TVE but still does not lose its balance in TVET employment perspective, and it is understandable that ILO could not stand such recommendation with insufficient provision in employment-related VT(A. Hollander and N.Y. Mar 41).

## **7.2 The Comparison of Implementing Those TVET Legal Instruments in the International Level**

UNESCO two instruments have not yet been real implemented and monitored, and its study for the low ratification on 1989 convention and the relevance of UNESCO two TVET standard-setting instrument was also completed in recent years, which betokens UNESCO's pessimistic monitoring performance in the standards. While TVET related human rights instruments and ILO standards have implemented stably (except the CRMW which has not started its monitoring work), and especially, ILO makes annual survey for the relevance and impact of its labor standards under one subject once a year and the C142 and C40 had already been reported by the 1991 survey which helped to hustle the birth of ILO R195 the update recommendation in human resource development, an apparently comparison with UNESCO's inactivity. Although the monitor in human rights instruments and ILO standards both encounter overdue reports of state members and 4-5 year long cycle of periodical report, still some related TVET problem has been detected. The main difference of implementation in human rights instruments and ILO standards lies in that human rights monitor seems not pay attention to TVET as much as ILO monitor body does, which might be resulted from the relevance of TVET to their relevant legal instrument: TVET is only small part as the rights language in human rights instruments, but the significant content in ILO human resource development and even the paid educational leave, and what is more, human rights bodies assume themselves not as competent as UNESCO and ILO to deal with TVET concrete content and thus they prefer to maintain the roles division within UN system and only stay in the human rights clarification level. From the amount and content of TVET problems communicated by monitor bodies of ILO and human rights bodies, unquestionable, ILO monitoring has been identifying much more TVET related problems especially in the TVET policy formulation, the collaboration with social partners, special attention to special needs etc. while human rights bodies has been focusing on the TVET access to all, accessibility, equality and nondiscrimination, affordability, and special attention to youth who dropped out before obtaining any vocational skills etc. It can be concluded that, UNESCO's TVET related legal instruments has not been properly launched due to

UNESCO's policy-preference or diplomatic working method which prefers the non-binding political engagement rather than implement international law, while human rights bodies and ILO carry out the legal implementation but still with flexibility in addressing the identified problems and ILO address it in a much advanced way in terms of the suggestions or recommendations. Additionally, within the human rights bodies, different human rights instrument has paid different attention to TVET related issues, such as CESCR is supposed to pay more attention to TVET but it has not, and CSR and CEDAW seem quite alert the TVET issues, and it is as if human rights bodies have been raising its attention to TVET related human rights issues due to the worldwide jobs crisis and they also have drawn on from ILO and UNESCO.

### **7.3 The Comparison of the TVET Initiatives and other Guidance from Human Rights Bodies, ILO and UNESCO and those guidance's Influence**

Human rights bodies maintain their roles in human rights claim with the monitoring in essential and general principles for rights exercise, and they have not involved in UNESCO and ILO's TVET competencies, so they have not launched any TVET initiatives or other guidance. UNESCO proactively takes the leading role in TVET international guidance and conducts TVET research especially with the education theory and employment consideration, international or regional congress, regional or national workshop, etc. and its strategy in TVET display its role preference as cleaning house in TVET knowledge sharing, best practice sharing, international or regional coordination, the management of international donation or aid in TVET etc. UNESCO-UNEVOC as the field work has demonstrated its strong capacity in TVET research and the sharing of TVET knowledge and best practice. UNESCO undertake TVET together with EFA and ESD and implement it in the top-down way, and this in one hand may have the inherent advantage: broad engagement of the state government and direct influence in the national policies and practice, but in other hand, it might depend on the state government too much and risk the unwillingness or incapacity of the state government and the inefficiency of the government due to the lack of pressure resulted from the weak awareness in TVET and rights exercise of the public and individuals. UNESCO as the UN agency established according to UN charter, it has the potential to mobilize much larger quantity of international or national NGOs including the international or national financial institutes, but it has not full-explored this potential so far.

ILO also conducts lot of TVET research but most of them with the employment consideration, and ILO has allocated enough attention to green skills and also engages a lot in G20 and international economic forum for the jobs crisis and youth unemployment and the employment for the disabled. Unlike UNESCO, ILO mobilizes much more TVET stakeholders: government, Trade unions, individuals especially young people, some NGOs, and ILO participates governmental activities like G20 and World Economic Forum meanwhile engages powerful young people and help them to voice their employment claim, which can be taken as the much clever and diplomatic approach, because it overcomes the disadvantage of mere the top-down mode and empowers the individuals and the disadvantaged group on the ground.

ILO's approach can be drawn on by the human rights bodies, and human rights bodies may have the potential to use the human rights value to engage much more NGOs and international donations. However, because TVET involves skills, the competitiveness of national human resource and business, the TVET for advanced skills may only get financial support from national government, and



international donation in TVET may be earmarked for poverty deduction which does not exert skill competitiveness, and the TVET international program already verified this assumption.<sup>247</sup> This is understandable and hard to change, as the primary investment obligation still lies in national government not foreign aid. A country like China who already posed cheap labor pressure (or so called human capital pressure) and corresponding price pressure to the international market, is with the slim chance to get the international aid in TVET program generally while the Chinese government prefers to invest heavily in advanced skills, plus enterprises are still not fully motivated in investing in the primary or medium level of skills education or training, which leads to the totally shortage of funding in Chinese secondary and medium level of TVET. The recently published (July 2012) *The Report on Analyzing and Forecasting the Investment in Chinese Vocational Education Market in 2012-2016* found that the higher vocational education is much attractive both for the state government, Chinese indigenous enterprises and foreign investment, however, the secondary vocational education, vocational education for rural population still needed the policy support and financial allocation from government budget.<sup>248</sup>

#### 7.4 The General Influence of TVET related Contents from Human Rights Bodies, ILO and UNESCO

The Amount of State Parties in TVET related International Legal Instruments					
TVET related Human rights instruments	ICESCR	CEDAW	CRC	CRPD	CRMW
	160	187	193	117	46
TVET related ILO standards	C142 human resource development convention		C140 paid educational leave convention		
	67		34		
TVET related UNESCO instrument	UNESCO 1989 convention on TVET				
	17				

This table shows how much those TVET related international legal instruments are accepted by the state members in quantity while the quality of giving force to those instruments cannot indicated by this table.

The TVET related contents from human rights bodies only come from its provision of human rights instruments-- the right to TVET within the right to education and right to work, the implementation and monitoring of the these provisions, because there is no other guidance in TVET from human rights bodies. So its influence derives from the human rights claim in TVET as part of right to education and right to work, that is to say, no matter how national government, social partners or even individuals view TVET, human rights bodies clarify that TVET involves human rights that can not be denied or

<sup>247</sup> Such as the World Bank's New economy Skills for Africa Program—Information and Communication Technologies (2008), ILO's Technical and Vocational Education and Training (TVET) Reform Project in Bangladesh (From December 2008 to December 2012) ,

<sup>248</sup> 蔡灵, 沈哲彦. 2012-2016 年中国职业教育市场投资分析及前景预测报告. 北京: 中投顾问. 2012 年修订版(2008 年第一次出版). Ling Cai, Zheyang Shen (eds). *The Report on Analyzing and Forecasting the Investment in Chinese Vocational Education Market 2012-2016*. Beijing: China Investment Consulting. 2012 (revised version and 2008 first published).

ignored or neglected no matter the condition of the national laws or policies, which empower individuals and other TVET stakeholders, and this clarification and claim helps to assess the human rights performance of state government and even other TVET stakeholders. The implementation and monitoring in those TVET related provisions also has such function though as the minimum standard, only the primary TVET principles and content are monitored in human rights level. Human rights instruments receives the largest amount of ratification all thorough the world compared with ILO's TVET related standards and UNESCO's 1989 convention, which tokens that TVET as part of human rights is well accepted no matter how much its policy can be formulated and what quality it can be provided. ILO uses human rights value its own standards, which tokens the TVET in human rights instruments actually sets its supreme legitimacy and fundamental principles.

The TVET contents from ILO mainly come from ILO's labor standards (specifically C142 and R195, C140 and R148 etc.) and their implementation and supervision, ILO's research in TVET qualifications framework, green skills, and TVET for people with disability, as well as their relevant country programs in those fields, and ILO's political participation in training policy such as the G20 training strategy no matter how much this strategy can be followed accurately. Unquestionable, ILO's TVET related standards provides much more content in TVET policy formulation and consulting method applied in the process of planning, implementation and evaluation. ILO's supervision over those standards is also strong and effective, which makes those standards function in reality even indirectly function in those countries who have not ratified this convention due to its other consideration, because most of the member states of those standards are developed countries whose TVET policy and practice are drawn on always by the less developed countries who have not ratified this standards.<sup>249</sup> ILO's TVET related research and country programs have been leading the TVET trend in a convincing way, although its research projects and country programs are also constrained by the funding or earmarked funding, and the fact that most developed countries prefer to entrust ILO to conduct relevant TVET programs, implies ILO's competency in TVET and its good reputation and influence, for example, the TVET programs in Bangladesh from Dec 2008—Dec 2012 is funded by EU, and since 2004 Republic Korea has funded ILO approximately \$8 million for decent work including the skills development in selected Asian countries.<sup>250</sup> It is also because employment target is the tough task for every government, ILO's role and influence in training and employment guidance is increasing intruding among all other UN agencies or non-UN institutions. From proactively inviting UNESCO to co-monitoring the TVET related issues in ILO C142 (see ILO 1991 survey in C142 and C140), to the independently voice its own claims in the TVET research and development trend and becoming not pleasing to cooperate with UNESCO in TVET field, ILO has witnessed its growth and development in the field of TVET pacifically and in generally.

The TVET related content from UNESCO mainly come from its two TVET standard-setting instruments 1989 conventions and 2001 revised recommendation (no implementation so far due to the postponed official monitoring), its combined promotion in TVET and EFA and ESD, its strategy on TVET, its field network UNESCO-UNEVOC and the series publications in TVE, and its TVET knowledge and best-practice sharing platform in all kinds of conference, workshop and seminars especially international ones, after the 3<sup>rd</sup> international congress on TVET (Shanghai May 2012), UNESCO's data service for international comparison will be opened with the assistance of UNESCO's

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<sup>249</sup> For example, Chinese TVET scholars like to draw on from TVET practice in Germany, Sweden, Denmark etc and those countries actually are all member states of ILO TVET related standards and they follow ILO's standards in a much honest way.

<sup>250</sup> Retrieved from, [http://www.ilo.org/asia/info/public/pr/WCMS\\_184186/lang--en/index.htm](http://www.ilo.org/asia/info/public/pr/WCMS_184186/lang--en/index.htm) accessed on 9 July, 2012.

statistics institute, which is called for by UNESCO's large amount of member states, so it is predictable that UNESCO's influence in TVET will also be broad and advanced although its role is mainly coordinating the international cooperation in TVET, knowledge/ best-practice sharing in the form of research publications and conference or workshops etc. and statistics service to member states. It seems UNESCO is not expected to promote its 1989 TVET standard-setting instruments but to facilitate the information/knowledge service and coordination in TVET, so the low ratification on 1989 convention won't affect UNESCO's role and influence in TVET too much if the strategy of TVET is carried out properly.

## 7.5 The Impact of TVET International Legal Instruments and Other Guidance on Chinese Context

The TVET related international legal instruments are all in the form of treaty/convention and recommendation. And the convention/ treaty in its legal nature only take force in states that has ratified it on the agreed provisions.<sup>251</sup> Because so far China only ratified ICECR, CRC, CEDAW, CRPD among those TVET international instruments, only those human rights instruments have the direct impact on China. That is to say, whether or not follow ILO TVET related labor standards and UNESCO two instruments, it totally depends on China willingness. Due to the limited attention to TVET in those human rights and its capacity on monitoring this subject, the TVET problem in Chinese legislative instruments has not been observed or mentioned so far, and the zero lawsuits on training rights-related dispute and education dispute with vocational education nature, also suggests the rights awareness in TVET as human right has not been raised. The present impact could not predict too much because the awareness of general human rights might help to enlighten individuals whose TVET interests are involved. Although the present official suggestions on amendment of Chinese vocational education law already emphasized the liability part, not mentioned the right to TVET,<sup>252</sup> we can predict the improved liability part will help to remedy the right to TVET if the law is amended and is able to be resorted to by individual. The problem is how long this right can be realized and judicial remedied is applicable to individuals. No matter it is just a gesture or real plan, the *National Human Rights Action Plan 2012-2016* has exhibited human rights contents of TVET, which is a TVET progress in human rights level. In Chinese policy, The impact of UNESCO two instruments and ILO related labor standards have been reflected a lot, which means as non-member states, China actually has been self-motivated to follow the TVET instruments in UNESCO and ILO, and indeed China also expresses in its framework of education reform and development (2010-2020) that it will enhance international cooperation with international organizations such as UNESCO etc. and regional associations. ILO's working habit and labor standards written in the rights languages, is not what China political party prefers, thus it may possible that China does not follow ILO too close in some field in the appearance but actually drawn on from ILO standards like R195 and other guidance especially employment guidance and research in green skills etc., Chinese the Opinion on Promote Employment proves the impact of ILO C142 and R195 on Chinese TVET ideology: undertake TVET through employment service. The rule of policy in China decides that China prefers the TVET non-binding guidance, that is to say, TVET related legally binding instruments in international level could not be supported by Chinese government publicly as much as the TVET international other guidance. However, due to the weak status of Chinese trade

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<sup>251</sup>Reservation in all forms may exclude some provision of treaty to take force to the reservation claimer or the third claimed party.

<sup>252</sup>[http://www.legaldaily.com.cn/index\\_article/content/2012-01/08/content\\_3274825.htm](http://www.legaldaily.com.cn/index_article/content/2012-01/08/content_3274825.htm), accessed on 4 April 2012.

union and individual judicial remedy, most of the TVET international guidance including the legal instruments and other guidance only can impact China in the top-down way, which risks the Chinese individuals' TVET interests when relying on the government so heavily. From the Chinese TVET research, it shows that the international guidance is not paid as much attention as the TVET best practice in developed countries, and it implies that the dominating idea in TVET development focuses on the essentialism of TVET philosophy, which endanger the individuals' potentials in life.

## **7.6 The limit of TVET related International Legal Instruments**

TVET related international legal instruments cannot be harder than in the form of law, but all international law has to subject themselves to the Charter of United Nations which is funded by the common will of independent nations and doctrines to with the best effort respect the equal sovereignty of independent nations, and sovereignty means the large margin of self determination and free will. That is to say, all those TVET related international legal instruments cannot take into force automatically in national level if the national state does not endorse it in the official way, no matter what is the content of these legal instruments. Now actually the contents of those legal instruments, per say, is also not constructed by the forcible provisions but the policy suggestions and recommendations in according to the TVET's dependence on the national resource and economic condition etc factors. This design of those contents is understandable but also reflects one dilemma in soft international law: rights are universal, standards are universal, but implementation is heavily localized and failure to reach the standards is acceptable both in the international community and the national community no matter it is due to national governing will, or local resources, or other factors, if the local individuals has not protest it in the effective way. Besides, those TVET related international legal instruments are losing their nature as proper law when they are not implemented, or implemented in a lenient monitoring way (no punishment but always suggestions for rectification), therefore, they may not able to win more respect and obedience than other TVET guidance do. Additionally, with the common shortage of law, those legal instruments could not update as fast as the TVET development in reality including the TVET development ideology and responsive change according to the global economic, climate, demography, and labor market, culture change, which makes them look not as smart as other TVET international guidance, such as policy guidance or research.

## **7.7 The Possible Improvement Concerning TVET International Guidance that Countries like China may Benefit From**

Like any other international legal instruments, the impact of TVET international legal instruments is also constrained by the situation of ratification and member states, the cooperative willingness and performance of states in report, communication and other governing or research issue, and also like China, many state prefer to enjoy more freedom without subjecting themselves into the treaty obligations. However, individuals need their government to perform in a proper way, without abusing the individuals' rights, especially individuals' human rights. When state enjoys its huge space to undertake TVET, individual's right to TVET might wait for state's legislative provision, administrative implementation and judicial remedy, however, once state fails to realize any step of them properly, individuals' TVET right is risked. In that case, the universal human rights are the best reason to require state to perform in the human rights required way. However, as elaborated above, it is hard to claim and list TVET right as human right independent from right to education and right to work, and it is only pragmatic to help human rights bodies to allocate more attention to the monitor of this field within its

influence, such as by raising rights awareness. But UNESCO and ILO have potential to go further in this field. UNESCO's strategy of TVET has already designed a much competent role for UNESCO in TVET: up-streaming policy advice and related capacity development at the country level, conceptual clarification of skills development and improvement of monitoring, and acting as a clearing house and informing the global TVET debate. ILO's potential derives its well engaged multiparty consulting way in policy formulation and program implementation and evaluation, its top-down and bottom-up and full mobilized approach in rights claim and rights protection, and its raising reputation and increasing financial support from donating developed countries and beneficiary less developed countries. It is not easy to conduct TVET global statistical monitoring (Cardoso 2053-2065),<sup>253</sup> but it is not difficult to build the international platform that leads TVET develop with the change of world and development of human being, and in that way, any country or government including china, can be guided in TVET regulation in a way that national countries think it is private and with more freedom. TVET related international legal instruments can be set as the flag or benchmark in this filed no matter how much they can be ratified or implemented, because flag and benchmarks are vital according to its shortage as law: the stability (or uneasy to be updated). If law's goal does not mere lay on the public endorsement by individuals or state government but also on obedient performance, then those TVET related international legal instruments have already been reaching the dedicated goal: performed in the obedient way by member states or self-motivated non-member states. However, ILO and UNESCO's experience illustrate that all the existing and future TVET international norms need to be disseminated promoted and implemented on time with follow-up assessment, otherwise they could not function as binding instruments and exert influence globally. What is more, in today democracy-dominating world, the leadership in TVET can not be hegemony, and it does not matter ILO or UNESCO or even human rights bodies who goes further in this field, but who can pay more attention to TVET issues within their competency, who can deliver more services demanded by TVET development in international and national level, who can win much more endorsement from scholars, politicians and the donors, who can mobilize more role players including government, social partners and individual participants, who can balance the employment target and individual development rather than using TVET to produce cheap laborers like produce any other commodities, and finally who can compact on the behavioral and mental habit in TVET individually and collectively.

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<sup>253</sup> Cardoso thought the challenges of the TVET global statistical monitoring come from the following aspects: 1 Improving coverage by ensuring that all forms of TVET are included: education and training; formal education; non-formal education; informal learning; public and private sector or community provision; 2 Distinguishing TVET from other types of education, such as general and pre-vocational education, or adult education. A related challenge would be clarifying sponsorship of TVET programs by ministry, public or private provision, etc.; 3 Classifying TVET programs by International Standard Classification of Education (ISCED) level and type of subsequent education or destination; 4 Counting enrollments in these programs, while bearing in mind the issue of part-time and short courses in order to avoid the double counting of those involved in several part-time courses simultaneously or several short courses back to back in the same year; 5 Developing indicators (such as gross enrollment ratios and net enrollment rates) or other appropriate indicators for monitoring participation in TVET.

# Supplement A

Reporting periodicals under the treaties (source: OHCHR Fact Sheet 30)<sup>254</sup>

Treaty	Initial report†	within Periodic reports every
ICESCR*	2 years	5 years
CEDAW	1 year	4 years
CRC	2 years	5 years
CRMW	1 year	5 years
CRC-OPSC	2 years	5 years or with next CRC report
CRC-OPAC	2 years	5 years or with next CRC report

† after the treaty entry into force to the member states

\* Article 17 of the Covenant does not establish a reporting periodicity, but gives ECOSOC discretion to establish its own reporting program.

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<sup>254</sup>OHCHR. The United Nations Human Rights Treaty System: An introduction to the core human rights treaties and the treaty bodies (Fact Sheet No. 30). [www2.ohchr.org/english/bodies/docs/OHCHR-FactSheet30.pdf](http://www2.ohchr.org/english/bodies/docs/OHCHR-FactSheet30.pdf)

# Supplement B

	<b>China</b>	<b>Congo</b>	<b>Argentina</b>	<b>Spain</b>
<b>ICESCR</b>	Ratified in 2001	Accessed in 1983	Ratified in 1986	Ratified in 1977
<b>ICESCR protocol</b>	no	no	Ratified in 2011	Ratified in 2010
<b>CRC*</b>	Ratified in 1992	assessed in 1993	Ratified in 1990	Ratified in 1990
<b>CEDAW</b>	Ratified in 1980	accessed in 1982	Ratified in 1985	Ratified in 1984
<b>CEDAW protocol</b>	No	no	Ratified in 2007	Ratified in 2001
<b>CRPD</b>	Ratified in 2008	no	Ratified in 2008	Ratified in 2007
<b>CRPD protocol</b>	no	no	Ratified in 2008	Ratified in 2007
<b>CRMW</b>	no	no	Ratified in 2007	Ratified in 2008
*CRC have two protocols but they are not about the individual compliants but about the child rights in armed conflict, prostitute and pornagrahy.				
<b>Substantial TVET related content in the concluding observations or non-government reports from 2000 to 2012 (only examined those written in English)</b>	China	Congo	Argentina	Spain
ICESCR	No	No	No	No
CRC	Yes in CRC/C/CHN/CO/2, 2005	Yes in CRC/C/COG/CO/1, 2006	Yes in CRC/C/ARG/CO/3-4, 2010	Yes in CRC/C/ESP/CO/3-4, 2010
CEDAW	No	Yes in CEDAW/C/COG/CO/6, 2012	Yes in CEDAW A/59/38, 2004 & CEDAW/C/ARG/CO/6, 2010	No
CRPD	No concluding observation yet	X	No reports from Argentina and therefore no comments	No
CRMW	X	X	No	No report from Spain and therefore no comments
Human rights Council (HRC) with 35 thematic mandates (including the special Rapporteur on the right to education)	No	No	No	No

# Supplement C

	Sweden	Finland	Brazil	Tanzania	Afghanistan
Date of ratifying C142 <sup>255</sup>	1976	1977	1981	1983	1979
Date of ratifying C140 <sup>256</sup>	1975	1992	1992	1983	1979
Observation found concerning C142	none	3, adopted in 1988, 1992, 2004	4, adopted in 1992, 1993, 1998, 2004	2, adopted in 2003, 2009	4, adopted from 1997 to 2000
Observation found concerning C140	none	1, adopted in 2004	1, adopted in 2010	2, adopted in 2004, 2008	none
<b>the main contents of those observations concerning C142</b>					
Sweden	No any comment concerning application C142 in Sweden				
Finland	In 1988, CEACR recalled that formulating and implementing policies and programs for vocational guidance and training in co-operation with employers' and workers' organizations, amongst others, and hoped the necessary co-operation will be achieved by efforts from all parties concerned; about the scheduled practical training system mentioned by government report, CEACR asked to cooperate with even the apparently differing views on this question, and asked for information on the practical effect of this aspect of its vocational training strategy. In 1992, CEACR wanted to know how those policies and programs had been developed, and it referred to the ILO 1991 general survey on human resources development (precisely, paragraph 105) concerning the collaboration with social partner, and required the information on the formal consultative procedures and machinery established and the composition of the various bodies, their competence and the frequency of their meetings etc. In 2004, CEACR emphasized the importance of providing job training positions to ensure the availability of qualified labor for government agencies in the future, meanwhile CEACR assessed the new strategy concerning lifelong education and training policies, and asked for the information on 'overall practical results of this new strategy, including information on the efforts, in cooperation with the social partners, to bring training and working life closer together including through the revised concept of on-the-job training', and also asked for information on targets set in the 2003 Policy Program and the extent of their fulfillment.				
Brazil	In 1992 CEACR expressed the need of extension gradually the systems of vocational guidance and vocational training in cooperation with employers' and workers' organizations, in 1993 it concerned the adequacy of this system and the information coverage of vocational guidance, in 1998 it concerned the methods used to 'put into practice comprehensive and coordinated policies and programs of vocational guidance and training and their relationship with employment and the public employment services', as well as the manner used to build this systems for the lifelong vocational training needs in all sectors of the economy, and in 2004 it concerned only lifelong education and training policies, requires more information on 'the manner in which vocational guidance and training systems cover the continuing vocational learning and training needs of persons with specific needs and in all sectors of the economy'.				
Tanzania	In 2004, regarding to the poverty reduction strategy applied to Tanzania, CEACR asked for information on any particular difficulties encountered in achieving the employment and training				

<sup>255</sup>[http://www.ilo.org/dyn/normlex/en/f?p=1000:11300:6880182231437416::NO:11300:P11300\\_INSTRUMENT\\_ID:312285](http://www.ilo.org/dyn/normlex/en/f?p=1000:11300:6880182231437416::NO:11300:P11300_INSTRUMENT_ID:312285) accessed on 3 May 2012.

<sup>256</sup>[http://www.ilo.org/dyn/normlex/en/f?p=1000:11300:6880182231437416::NO:11300:P11300\\_INSTRUMENT\\_ID:312287](http://www.ilo.org/dyn/normlex/en/f?p=1000:11300:6880182231437416::NO:11300:P11300_INSTRUMENT_ID:312287) accessed on 3 May 2012.



	objectives in this strategy, the manner of ensuring the cooperation of workers' and employers' organizations, and 'disaggregated statistics on education and training participation and on placement rates'. In 2010 CEACR welcomed the competence-based education and training (CBET) approach as a tool for implementing demand-driven training, and asked for information on the impact of the action taken to promote skills under the national employment policy. Concerning the formulation and implementation of education and training policies, CEACR asked for information on the existing methods for developing comprehensive and coordinated policies and programs, in particular the manner in which the national vocational education and training authority (VETA) contributes to the effective coordination and the manner in which those policy and programs are linked to employment and to public employment services. Worrying the coverage by the vocational training system of vulnerable groups, CEACR asked for information 'on the measures taken to increase gender-balanced access to education and training and to encourage women to develop and use their professional abilities in all branches of economic activity and at all levels of skill and responsibility'. Concerning the cooperation with the social partners, CEACR asked for information on the measures adopted to ensure the collaboration of the social partners and other interested bodies in formulating and implementing education and training policies and programs.
Afghanistan	Overdue reports. In 1997 CEACR referred to its observation concerning C111 Discrimination (Employment and Occupation) Convention, and recalled the Government's obligation under C142 to develop policies and programs to encourage and enable all persons, on an equal basis and without any discrimination whatsoever, to develop and use their capabilities for work, and asked for full information on women's access to education and training and measures taken in this respect. In 1998, 1999 and 2001, the 1997 observation was repeated because of the overdue reports.
<b>the main contents of those observations concerning C140</b>	
Sweden	No observation but 4 direct requests on 'applications of the conventions', concerning continuing information on applying C140.
Finland	In 2004, CEACR noticed the importance of the framework of the national policy on paid educational leave for workers in all sectors of the economy and persons with specific needs (such as ageing unemployed persons), and its coordination with other related general policies, so it asked for the information on the measures taken within this framework.
Brazil	Overdue report. Previous observation is repeated: the definition of paid educational leave and coordination of the policy to promote the granting of paid educational leave with general policies. Information required: information about the terms used for granting paid educational leave, the conditions for such granting and the length of the leave and the level of financial entitlements, steps taken to coordinate the national policy on paid educational leave with general policies on employment, education and training and hours of work.
Tanzania	Overdue report. In 2004, CEACR wanted to know whether or not the framework of national policy on paid educational leave cover all workers in all economic sectors and whether or not this policy coordinates with other related policies, so CEACR asked for the information on the measures taken to realize this. Concerning the discrimination, CEACR asked for information on measures taken to ensure that workers have equal access to paid educational leave without discrimination. Concerning the practical application, CEACR asked for the general appreciation of the manner in which C140 is applied in practice, including the number of workers granted paid educational leave (if it is available). In 2008, the 2004 observation was repeated due to the overdue report.
Afghanistan	No observation, but 10 direct requests on 'applications of the conventions', concerning giving effect of the C140.

# Supplement D

<b>Temporary standard on establishment of higher vocational schools (main points)</b>					
<b>Subjects regulated</b>	<b>For establishment</b>	<b>Target need be reached within four years</b>			
Principal and deputy principal	Full-time only	Vice senior and above professional technical occupation in higher education.			No mention
The head of programs	Full time only	Vice senior and above professional technical occupation, experience of working in higher education.			No mention
Tea- chers	In general	Full-time together with part-time. For full-time teachers:	Amount no less than 70 for those with bachelor and above degree	no less than 20% of them with vice senior and above professional technical occupation	Amount no less than 100 for those with bachelor and above degree
	in every major or program	For full-time teachers	Amount no less than 2 for those with vice senior and above professional technical occupation , and no less than 2 for those with medium professional technical occupation in the same major or program No mention		No mention
	In every essential course for professional quality	For full-time teachers	Amount no less than 2 for those with medium professional technical occupation in relevant major or program No mention		No mention
The amount of the majors or programs provided to students in recruitment	for first recruitment	No less than 5	No mention		
The amount of full-time students in the school	No mention	No less than 2000			
Value of the equipments for teaching use	No less than 6,000,000 Chinese Yuan(CNY) (1 CNY equals 0.16 USD and 1.12 SEK according to exchange rate on 15 may 2012)	No less than 10,000,000CNY			
Amount of books in Library	No less than 80,000	No less than 150,000			
buildings in school	No less than 20 m <sup>2</sup> /per student for teaching, experiment, and administration.	Total size no less than 60,000 m <sup>2</sup>			

<b>Subjects regulated</b>	<b>For establishment</b>	<b>Target need be reached within four years</b>
90% and above of the planned courses for experiment and practical training shall be really conducted		
For every major or program provided	Training for relevant basic skills, facilities for animating operation, stable base for apprenticeship and practicing, the course for foreign language and computer operation and relevant facilities	
Funding	Stable and reliable resource and practical guarantee	No mention
Lenient establishment conditions		Relevant lenient condition dedicated for those higher vocational schools located in remote area, or non-public, or in special kind.

# Supplement E

<b>Supervision and evaluation criteria on secondary vocational education</b>
<b>2<sup>nd</sup> class indicators</b>
<b>1<sup>st</sup> class indicators: A1 Policy formulation</b>
B1 planning of vocational education
B2 co-joint meeting mechanism
B3 employment entrance and certificate of vocational quality
B4 cooperation between education and practice, schools and enterprises
<b>1<sup>st</sup> class indicators: A2 Funding</b>
B5 financial aid and fee waiver
B6 quality framework and evaluation
B7 administration on teaching and teachers
B8 the ratio of planned budget for secondary vocational education to total planned educational budget
B9 the ratio of extra educational fund allocated to secondary vocational education
B10 the ratio of planned budget / per student in secondary vocational education to in regular middle schools
B11 the ratio of planned budget / per student in secondary vocational education to in totally planned education budget
B12 yearly growth rate of fund for teachers
B13 the ratio of students with fee waiver to total student in the school
B14 the ratio of student with national financial aid to total students in the school
<b>1<sup>st</sup> class indicators: A3 Facilities</b>
B15 rate of secondary vocational schools reaching the establishment standard
B16 square of practical base / per student
B17 value of equipment / per student
B18 amount of computers for teaching use
B19 ratio of full-time teachers to students
B20 the ratio of provincial (or municipal) influential professions or professional cadres to total teachers
B21 the ratio of teachers as well as technicians to total teachers
B22 the ratio of teachers in senior professional technical occupation to total teachers
B23 the rate of teachers obtaining the required degree
B24 ratio of part-time teachers to total teachers
B25 the scale of teachers training
<b>1<sup>st</sup> class indicators: A4 development level</b>
B26 ratio of recruiting scale in secondary vocational education to regular secondary education
B27 the scale of vocational training
B28 the employment rate of graduates in secondary vocational schools
B29 the degree of social satisfaction on secondary vocational education
B30 the development character of secondary vocational education

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# Table of Cases

1. The situation for China, Argentina, Congo and Spain on ratifying core international human rights instruments ICESCR, CEDAW, CRC, CRPD and CRMW, and their reporting performance under relevant reporting obligation in their ratified conventions, and the corresponding observations made by the monitoring bodies.
2. The situation for China, Sweden, Finland, Brazil, Tanzania and Afghanistan on ratifying ILO C142 and C140, and their reporting performance under relevant reporting obligation in their ratified conventions, and the corresponding observations made by ILO regular supervision mechanism.
3. 1989 Romania case concerning ILO C111 which was handled by ILO special procedure: compliant procedure.
4. 2001 Qi yuling Vs. Chen Xiaoqi, Chen Kezheng(Chen Xiaoqi's father), Jining Commerce college, Tengzhou No.8 middle school, and Tengzhou education committee in Shangdong province. The first case concerning Education right in China.
5. 2009 Zhong Yangjie Vs. Minxi Vocational college in Fujian Province. Appealing case relates to the education right in China.