

CHINA'S REGIONAL ETHNIC AUTONOMY LAW: DOES IT PROTECT MINORITY RIGHTS?

ROUNDTABLE

BEFORE THE

CONGRESSIONAL-EXECUTIVE COMMISSION ON CHINA

ONE HUNDRED NINTH CONGRESS

FIRST SESSION

APRIL 11, 2005

Printed for the use of the Congressional-Executive Commission on China



Available via the World Wide Web: <http://www.cecc.gov>

U.S. GOVERNMENT PRINTING OFFICE

21-045 PDF

WASHINGTON : 2005

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512-1800; DC area (202) 512-1800
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MONDAY, APRIL 11, 2005

CONGRESSIONAL-EXECUTIVE
COMMISSION ON CHINA
Washington, DC.

The roundtable was convened, pursuant to notice, at 2 p.m., in room 2255, Rayburn House Office Building, John Foarde (staff director) presiding.

Also present: Susan Roosevelt Weld, general counsel; Carl Minzner, senior counsel; Katherine Kaup, special advisor for minority nationality affairs; and Laura Mitchell, research associate.

Mr. FOARDE. Good afternoon, everyone. Let us get started. It is such a beautiful spring day outside that I admire the fortitude not only of our panelists, but also of all of you who have come to listen to them this afternoon. I assume that we will have a few more people attending in due course. But in any case, we have prided ourselves over the last three and a half years at getting started on time and ending on time, so we are going to get busy.

I would like to welcome our three panelists, and everyone in the audience, on behalf of Senator Chuck Hagel, the chairman of the Congressional-Executive Commission on China, and the members who have been appointed so far on the Senate side and in the Administration.

We are gathered this afternoon to take a look at the regional ethnic autonomy law, particularly with respect to three distinct minority groups in China. The Chinese Government recognizes over 100 million people living within its borders as belonging to one of 55 minority nationalities. Although minorities constitute less than 9 percent of China's total population, they occupy over 60 percent of the country's total landmass, primarily along international borders. Minority areas are often located in resource-rich regions. More than 30 of the groups have ethnic counterparts abroad, making the assurance of their loyalty of strategic concern to the Chinese Government.

The Constitution and the 1984 Regional Ethnic Autonomy Law guarantee numerous rights to minorities, including self-government within designated autonomous areas; proportional representation in the government; freedom to develop their own languages, religions and cultures; and the power to adjust central directives to local conditions. The laws also guarantee minorities greater control over local economic development than allowed in non-autonomous areas, the right to manage and protect local natural resources and

the right to organize local public security forces to safeguard public order.

The implementation of the Regional Ethnic Autonomy Law has varied greatly across China. The Chinese Government systematically denies some minorities their legal rights and arbitrarily arrests their members for exercising legally protected freedoms. The government has particularly failed to uphold the legal rights of minorities living in the Tibetan Autonomous Region, the Xinjiang Uighur Autonomous Region, and the Inner Mongolian Autonomous Region. So this afternoon we want to look in depth at how the Regional Ethnic Autonomy Law and its implementation affects people in Tibet, Xinjiang, and Inner Mongolia.

To help us with that inquiry, we have three distinguished panelists. I will introduce each in greater detail before they speak. David Phillips, senior fellow at the Council on Foreign Relations; Gardner Bovingdon, assistant professor, Department of Central Eurasian Studies at Indiana University; and Christopher Atwood, associate professor in the Department of Central Eurasian Studies, also at Indiana University.

I would like to recognize, then, to start, David Phillips. As I introduce him, let me say that, carrying on with the practice we have had over the last three years or so, we will ask each of our panelists to speak for 10 minutes. After about eight minutes, I will tell you that you have two minutes remaining, and that is your signal to wrap things up. Inevitably, you will not reach all the points that you want to make, and we will try to pick those up in the question and answer session that will follow the formal presentations. We will give each of our staff panel about five minutes to ask a question and hear the answer, and we will do as many rounds as we have time for until you are exhausted and cry “uncle” or until 3:30 arrives, whichever is first.

So, let me introduce David Phillips. He is the project director of a collaborative research project on “Legal Standards and Autonomy Options for Minorities in China: the Tibetan Case;” and he is deputy director of the Center for Preventative Action at the Council on Foreign Relations. He is currently a visiting scholar at Harvard University’s Center for Middle East Studies, and director of the Program on Conflict Prevention and Peace Building at American University’s Center for Global Peace. In his alleged spare time, he has also been an analyst for NBC News, and works today providing commentary to the BBC. He has served as a senior advisor to the United Nations Secretariat, and also to the U.S. Department of State. Formerly the president of the Congressional Human Rights Foundation, Mr. Phillips serves on numerous boards of organizations concerned with human rights, humanitarian affairs, peace, and conflict prevention.

Welcome, David Phillips. Thank you for sharing your expertise with us this afternoon.

**STATEMENT OF DAVID L. PHILLIPS, SENIOR FELLOW AND
DEPUTY DIRECTOR, CENTER FOR PREVENTIVE ACTION,
COUNCIL ON FOREIGN RELATIONS, AND VISITING SCHOLAR,
HARVARD UNIVERSITY, NEW YORK, NY**

Mr. PHILLIPS. Thank you, Mr. Foarde and members of the staff panel. It is a great pleasure to be with you this afternoon and to discuss the report that Mr. Ted Sorensen and I authored, published at Harvard University's Belfer Center for Science in International Affairs, titled "Legal Standards and Autonomy Options for Minorities in China: the Tibetan Case." I have also submitted for the record a copy of the report and a compilation of 161 laws and regulations concerning autonomy arrangements in the ethnic Tibetan areas of western China.

The focus of our work was on the five provinces of western China, the Tibet Autonomous Region, and the provinces of Sichuan, Yunnan, Gansu, and Qinghai. The report provides an assessment of existing national, provincial, and prefectural-level laws and regulations. It analyzes and outlines existing international standards for treatment of minorities and autonomy arrangements, offers a menu of autonomy options based on international models, itemizes Chinese laws, and provides a more complete description of 22 global autonomy arrangements.

During a trip to China in June 2004, we had extensive contact with Chinese officials, think tank representatives, and cadres involved in ethnic autonomy issues. Our discussions focused on implementation of the existing body of law in China.

Having visited China a number of times over the past 12 years, I heard a dramatically different message on this visit than previous visits. Chinese officials talked about the need to "improve" the country's legal system, "perfect" arrangements for ethnic autonomy, "adapt" measures to local conditions, and "conform" laws and regulations on minority rights to international standards. I remember my first meetings with the United Front's Bureau Number 2, the office that deals with ethnic Tibetan matters. Discussions were a one-way street. In contrast, there was genuine discourse and an exchange of views during our visit nine months ago.

Recent developments are important to note. They provide political context for scholarly analysis as well as our discussions here today. Chinese officials affirmed that their contact with overseas Tibetans in Dharamsala proved that "This method proves there is contact between the central government and the Dalai Lama. The lines of communication are open."

Tibetans also recognize that autonomy is the best and most realistic way to preserve Tibetan culture. The Dalai Lama has adhered to the "one-China line" with increasing clarity over the years. In an important interview two weeks ago in the South China Morning Post, he indicated: "I'm not in favor of separation. Tibet is a part of the People's Republic of China. Tibetan culture and Buddhism are part of Chinese culture." He also recognized the "broader interest" of Tibetans, suggesting that Tibetans would benefit from China by sharing in its material wealth. His statements create an opportunity to deepen discussions between representatives from Dharamsala and Chinese officials, hopefully paving the way for the Dalai Lama's return to Lhasa in his spiritual and religious capacity.

In order to advance this goal, and responding to the openness of Chinese officials to conform autonomy arrangements with international standards, I would like to propose that, as part of the bilateral dialogue between China and the United States on human rights, that the U.S. Government propose the establishment of an international study group on international models of autonomy. The activities of the study group would include exchange programs between Chinese and international scholars, field research by Chinese officials to autonomous areas in other countries, and the establishment of an academic consortia providing policy and program information, as requested by Chinese participants. It is envisioned that this study group would be resourced by the U.S. Government; its terms of reference would be jointly negotiated between U.S. and Chinese officials; the study group could be established at a university or a think tank in the United States, and it may involve participation from European institutions or institutions in the Asia-Pacific region. Suitable Chinese counterpart institutions might include the State Ethnic Affairs Commission, the Chinese Academy of Social Sciences, Chinese Minorities University, and/or the Chinese Center for Tibetology Research.

The report that you have, and which is entered into the record, provides detailed information on Chinese laws and regulations on matters concerning governance, economy, and culture. It assesses laws and regulations that have been adopted at the national level, the provincial level, and to the greatest extent possible, at the prefectural levels. But for the purpose of brevity, I will summarize the laws and regulations concerning religion, which is the focus of overtures from the overseas Tibetans to the Chinese Government. Under a 1952 State Council decision, all minorities are to enjoy, among other things, the same freedom of religion as is enjoyed by Han people in the same locality. The State Ethnic Affairs Commission requires that the observance of minority holidays, dietary restrictions, and religious practices be allowed.

The PRC Autonomy Law requires the autonomy agencies of ethnic autonomy areas to guarantee the freedom of religion of citizens of all ethnic groups. No state agency, social group, or individual may force any citizen to adopt any beliefs or disavow any religious beliefs and may not discriminate against citizens who have religious beliefs and those who do not. The state protects "normal" religious activities. However, no person may use religion to destroy social order, damage the health or well-being of citizens, or interfere with the state education system. In addition, religious groups and institutions may not accept support from "foreign forces."

While the government respects and protects religious freedom of citizens, all religious activities must be carried out within the scope of the Constitution and in compliance with all laws, regulations and policies of the Chinese Government. All religious groups and places of religious activity and individuals must accept the leadership of the Communist Party of China, the government, and support the socialist system.

Religion or places of religious activity may not be used to incite trouble, create havoc, or carry out criminal activities such as separatism, steps to destroy the unity of ethnic groups, or disturb social and public order. The approval of the Central People's Government

is required for the rebuilding or opening of all places of religious activity. Registered places will receive legal protection. Places of religious activity are to be managed by “patriotic religious groups,” whose members must support the Party and socialism, be patriotic and law-abiding, and who safeguard the unity of the state and ethnic group.

The Interim Measures of the Tibet Autonomous Region on the Administration of Religious Affairs set a quota and an application system for monks and nuns. Applicants who wish to become a monk or nun must, among other things, be patriotic and law-abiding.

Propaganda and publishing departments are to control the publication of documents that contain religious content so that they conform to the religious policies of the Party or the state. Approval from relevant departments is required to edit, publish, or distribute religious materials, including video and audio recording.

In Gansu Province, religious teachers may not proselytize outside places of religious activity. Moreover, the activities of self-proclaimed preachers are prohibited. No foreign donations for proselytizing activities may be accepted by any party. Major donations from foreign organizations or followers require the approval of the Central People’s Government or the Religious Affairs Bureau of the State Council.

Foreign personnel who go to Qinghai may not, without approval, “broadcast” audio or videotapes of sermons by foreign religious persons or distribute religious tracts.

The report that we have published is not a human rights report; it is an assessment of Chinese law. There is clearly a gap between the legislative intent of Chinese laws and regulations and their implementation.

Of significance, Chinese officials did not dispute the need to move forward with both drafting and implementing laws in a way that standardizes the approach in all of the ethnic Tibetan areas of western China.

Thank you, Mr. Foarde.

[The prepared statement of Mr. Phillips appears in the appendix.]

Mr. FOARDE. Thank you very much, David Phillips, for kicking off our conversation and raising a host of interesting issues that we will take up during the question and answer session.

Next, I would like to recognize Christopher P. Atwood, associate professor from the Department of Central Eurasian Studies at Indiana University in Bloomington, IN. He is associate professor of Mongolian Studies, and he has published extensively on Mongolia and Inner Mongolia. In his 2000 book, “Young Mongols and Vigilantes in Inner Mongolia: Interregnum Decades 1911–1931,” he used recently opened Mongolian archives to explore early Chinese Communist Party nationality policy and pan-Mongol activism. He is the author of the “Encyclopedia of Mongolia and the Mongol Empire,” a comprehensive reference work on the region. His research interests include Mongolian nationalism, demography, and ecological immigration.

Welcome, Christopher Atwood.

STATEMENT OF CHRISTOPHER P. ATWOOD, ASSOCIATE PROFESSOR, DEPARTMENT OF CENTRAL EURASIAN STUDIES, INDIANA UNIVERSITY, BLOOMINGTON, IN

Mr. ATWOOD. Thank you, Mr. Foarde. I would, first, like to express my appreciation for the opportunity to appear today before this staff-led panel of the Congressional-Executive Commission on China and present my perspective on the question of "China's Regional Autonomy Law: Does it Protect Minority Rights?" Rather than discuss the broad range of minority rights issues in play in Inner Mongolia today, I would like to focus on the issue of ecological migration, which illustrates in a striking manner how the guarantees of autonomy in the Regional Autonomy Law failed to provide sufficient protection against massive state-directed dislocation of ethnic Mongol communities in China.

The earliest versions of ecological migration were pioneered in the early 1990s in Alashan district in far-western Inner Mongolia under the moniker of "three-ways labor restructuring." Responding to ongoing severe desertification and pasture degradation in Inner Mongolia's driest district, the Alashan authorities started with the basic premise that excess population and livestock are at the root of pasture degradation. Their "three-ways restructuring" plan envisioned one-third of the current pastoral population continuing as herders, one-third switching to arable cultivation, and one-third entering township or urban enterprises.

In 2001, this basic idea was adopted by the Inner Mongolian Government and renamed "ecological migration." The vastly expanded plan involved moving up to 650,000 persons out of areas where grasslands are subject to severe degradation into towns and other areas. Considerable sums are being assigned to build housing and other infrastructure for the new migrants, although whether these sums are adequate is controversial. In most areas, it appears the relocations are not total, with a small number of herders regarded as "rationally" managing rangeland being allowed to stay.

Those relocated may return after five years if they, too, can demonstrate an ability to manage the grasslands "scientifically." Thus, "ecological migration" accelerates the trend to polarization in which a small number of relatively well-off herders, whether ethnically Mongol or Chinese, who have assimilated contemporary Chinese ideas of proper livestock management will continue herding, while the poorer, less sophisticated herders will be forced off the land.

Any evaluation of ecological migration must deal with the undeniable ecological crisis in Inner Mongolia today and the legacy of decades of over-reclamation and over-grazing. Massive dust storms in Beijing have alerted the Chinese central government to the seriousness of the situation. There exists a consensus among outside observers that, while overstocking of livestock, particularly sheep and goats, valued for their wool and cashmere, is currently driving much pasture degradation, historically, over-reclamation of marginal lands for farming has damaged Inner Mongolian pastures the most. Although Inner Mongolian policy in 1984 officially prohibited further reclamation of pasture, the 2003 land use law in Inner Mongolia appears to again encourage "wild-cast" land reclamation. Economically, we can say that the bankruptcy of smaller-scale, less capitalized producers and their replacement by larger scale com-

mercialized producers is an unfortunate, but universal, aspect of economic development, although rarely so explicitly directed by the government as in this case.

In terms of human rights, ecological migration raises serious problems. On an individual level, we can ask, "Are these transfers truly voluntary, as claimed?" Reports are contradictory. Yet, it would be naive to put too much stock in the possibility that the implementation of such migration is fully voluntary. Ecological migration is now government policy, adopted without significant public input. Those slated for migration are undoubtedly aware that resistance is futile.

I would like to dispose of a red herring immediately. Ecological migration is often cast as a conflict of purely traditional Mongols, seen as stubbornly attached to rural life and pastoral nomadism for cultural reasons, and Han Chinese practicing innovative, high-productivity land use. In reality, however, the Mongols of Inner Mongolia are highly educated, with strong aspirations to success in modern sectors. In fact, their literacy rate is slightly higher than that of the Han Chinese in Inner Mongolia, and they are over-represented in the ranks of cadres there. Pastoralists in Inner Mongolia are more commercialized and have a higher income than farmers. For better or for worse, Mongolian herders have been quite willing to adopt the new, intensive managerial strategies of herding. At the same time, the contention that this managerial herding will be less harmful to the steppe than nomadic pastoralism is quite dubious, scientifically. In fact, increasing, not decreasing, mobility may be the key to saving the grasslands. What is beyond doubt is the almost 20 years of state-directed and scientifically managed programs to alleviate grasslands degradations have not worked, and indeed may be accelerating desertification. The minority rights issue, thus, is not modernization versus tradition, but ensuring that the Mongols have meaningful voice in the nature of the modernization of their own communities. Thus, ecological migration remains an ethnic issue. Although Han Chinese herders and farmers in affected areas are also being deported, the Mongols remain the predominant population group in the arid regions of Inner Mongolia slated for population removal, and hence are being disproportionately influenced by ecological migration. These arid grasslands constitute the heartlands of ethnic Mongol life where they are the local majority and dominate the community. Until 2001, Mongolian language, social standards, and culture still formed the norm in these remote areas to which the immigrant Han partially conformed.

Ecological migration is breaking up many, if not most, of these last redoubts of Mongol community life in Inner Mongolia. In their new environment, the resettled migrants will often lack proper skills and aptitudes for their new occupations. Indeed, by moving the least "managerial" or least successful herders, the authorities are choosing the ones least likely to be able to adapt to a more urban way of life. When settled on the outskirts of predominantly Han cities and towns, the Mongols often lack Mongol language schools and become marginal residents in a culturally and socially alien environment. Already, there are alarming signs of dramatic drops in income among the resettled migrants, as well as sharp

drops in school attendance as relocated Mongol students find themselves with either no local schools, or only Chinese language ones.

Ecological migration thus runs directly contrary to any minority's right to preserve their communal life. Before 1947, pasture and unreclaimed Mongol steppe was held collectively by the "banner," that is to say, a county-level unit. Decades of political and social conflict among the Mongol-Han frontier in the years leading up to 1947 revolved around the Mongols' tenacious and resourceful attempts to protect these collective land rights from encroachment by Chinese land-developers and their allies in the provincial governments.

From the very inception of Chinese Communist land reform, however, land was transferred as a whole to the Chinese state, with rural producers being granted only longer or shorter leases. The deprivation of land rights has hardly affected only Mongols or minorities; collectivization in 1956 and the current rampant abuse of government powers of eminent domain to facilitate urban sprawl are simply two other egregious examples of this cavalier disregard of land rights.

Articles 27 and 28 of the Law on Regional National Autonomy discuss land use and give the autonomous regions the right to determine ownership of pastures and forests. The same articles, however, absolutely prohibit any "damage" to the grasslands, whether by individuals or collectives, and call on the autonomous authorities to give "priority to the rational exploitation and utilization of the natural resources that the local authorities are entitled to develop." Technocracy, thus, explicitly trumps individual or collective land rights. The ongoing destruction of Mongol local community life involved in ecological migration is, thus, fully in accord with, and may indeed actually be mandated by, China's National Autonomy Law—as long as one accepts the disputed premise that nomadism and overstocking are behind desertification.

Still, if Inner Mongolia's regional national autonomous organs actually spoke for the Mongol nationality, then Articles 27 and 28 would still put these technocratic land use decisions in the hands of the Mongols, at least. This is not the case, however. Along with the rejection of banner communal land-ownership in 1947, the newly created Inner Mongolian Autonomous Region in 1949 rejected the then-common practice of overlapping Han and Mongol local jurisdiction with Han *xian*, or counties, and Mongol banners in favor of unitary local government. Inner Mongolia was eventually expanded to include most of China's far-flung Mongol communities, but only at the price of thereby acquiring an overwhelming Han majority. At the prefectural and county levels, administrative changes ostensibly intended to give each unit a balance of agricultural and pastoral economies frequently yoked sparsely settled majority Mongol districts with vastly more populous Han majority districts. As a result, only in the arid zone townships—*sumu*—and in some purely steppe banners do Mongols actually predominate in government. At the prefectural and all-regional levels, the Mongols have the worst of both worlds: over-represented enough through "affirmative action" to generate resentment, but not numerous enough to actually control decisionmaking in Mongol interests. This

does not even take into account the power of the central government in Beijing.

Thus, the regional national autonomous organs simply cannot act as protectors of specifically ethnic Mongol interests. Now, no one can deny that it would be fundamentally unfair for decisionmaking in a region only 16 percent Mongol, as Inner Mongolia as a whole is, to be monopolized by Mongols. Yet, apart from such a monopoly it is hard to see how the Mongols, as a group, can be said to have had any meaningful voice in the momentous decision taken in 2001 to remove whole communities from their ancestral lands. Under Chinese law, regional national autonomy, for better or for worse, is the only organ through which the minority nationalities exercise their collective right to autonomy, yet in a region with borders drawn wherever possible to combine Han and Mongol communities, such autonomy cannot help but be fictitious.

As a result, ecological migration, despite its origins within the Inner Mongolian bureaucracy, is one more example of the inability of Chinese regional national autonomy, as currently structured, to allow the legitimate concerns of minorities even to be voiced openly, let alone to prevail, in the public arena.

Thank you, Mr. Foarde.

[The prepared statement of Mr. Atwood appears in the appendix.]

Mr. FOARDE. Thank you very much for bringing us, for the first time, some real expertise and depth on the whole question of the Mongolian minority. We have been watching things for a long time, and I know we will have a chance to get into things in more depth during the Q&A.

It is my privilege now to recognize an old friend of the Commission and the Commission staff, someone who has appeared before us here in Washington, and we are delighted to welcome back Professor Gardner Bovingdon of the same Department of Central Eurasian Studies at Indiana University. Gardner is the author of several articles and book chapters on Xinjiang. He is fluent in both Uighur and Chinese. He obtained his Ph.D. from Cornell University in 2002, and conducted much of his dissertation field work from Xinjiang University. He has published "Autonomy in Xinjiang: Han Nationalist Imperatives and Uighur Discontent" as part of the East-West Center's Study Group on Xinjiang, and he is currently revising a manuscript for publication entitled "Strangers in their Own Land: The Politics of Uighur Identity in Chinese Central Asia."

Welcome, Gardner Bovingdon, please.

STATEMENT OF GARDNER BOVINGDON, ASSISTANT PROFESSOR, DEPARTMENT OF CENTRAL EURASIAN STUDIES, INDIANA UNIVERSITY, BLOOMINGTON, IN

Mr. BOVINGDON. Thank you very much, Mr. Foarde. I would also like to thank the other members of the Commission staff for organizing what is once again a very important panel on an important topic. I would also like to preface my prepared remarks by observing that the question of what exactly are universal human rights is very much a vexed and still contentious one, as we all know.

I applaud the work of Mr. Phillips and Mr. Sorenson in preparing comparative legal materials, because I think it is only

through this kind of rigorous comparison of the laws of the land in various autonomy regimes that we can come to any consensus about what ought to be included in a system of autonomy.

I have been invited to address the question of whether the regional autonomy law protects minority rights in the Xinjiang Uighur Autonomous Region. In a recent short monograph, mentioned a moment ago, I considered the matter at greater length. Here, I will focus on one particular right invoked in the regional autonomy law, that of each non-Han ethno-national group, or *minzu*, to administer its own internal affairs within the autonomous unit or units assigned to it. Throughout, I will refer to these groups not as minorities, but as *minzu*, a Chinese term that keeps attention focused not on their numbers, but on their cultural distinctiveness with respect to the Han.

I will take up three related matters. First, how is the right defined? In other words, what constitute the so-called “internal affairs?” Second, who administers this right? Third, what legal recourse do groups have if the right is abridged?

Now, on its face the term “internal affairs” seems irremediably vague. In fact, much of the political contention in modern Xinjiang can be understood as a dispute over the meaning of the term.

Here, I would leap off the page of my prepared remarks and observe that since so much of national level political discourse is couched in terms of the general interest, and the very term “democratic centralism” presumes that when the minorities’ interests differ from those of the majority, the majority will prevail. But this lends even greater urgency to the question of determining exactly what are “internal affairs.”

The law itself does little to clarify the question. Specific articles enumerate the rights of members of each *minzu* to vote, to be treated as equals with all other citizens, to use and develop their native language, to foster the “excellent parts” of their native culture, and to conduct court proceedings in their native language. Other articles describe special powers of autonomy, such as the right to modify national laws if inappropriate to local circumstances, to modify educational materials, to make special fiscal arrangements locally and with Beijing, and to propose general and special autonomy laws for each unit. Yet, in each case the exercise of the power of autonomy is subject to approval by higher-level government organs. In plain language, it is not autonomous.

In the view of many Uighurs, a number of matters properly constitute internal affairs in the autonomous region bearing their name: control of immigration into Xinjiang, the exploitation of its land, water, and mineral resources, the content of education and the language in which it is delivered, the practice of religion, the choice of family size, and the management of expressive culture, including music, novels, film, and so on. At present, all these are beyond popular control, by which I mean the final say on what can be produced, what can be promulgated, et cetera, lies outside control of the locals.

If ordinary Uighurs have little opportunity to manage their collective internal affairs, they must depend on political representatives to do so on their behalf. As other scholars have demonstrated, there are very few mechanisms of interest aggregation available to

ordinary citizens of China. Though the PRC Constitution explicitly guarantees free speech, assembly, and press in Article 35, many citizens throughout China have been prosecuted for words they have spoken or written, many others for taking part in demonstrations or other peaceful gatherings.

The evidence suggests that these restrictions have fallen with particular force on certain non-Han groups such as Uighurs. Attempts by Uighur individuals or groups to raise concerns with the government, or even to express them publicly, have been harshly punished. Peaceful demonstrators, poets, teachers, and business people have all been jailed on charges of “separatism” or “leaking state secrets.” The stark limitations on popular political expression lends special importance to those who represent ordinary citizens in government organs and in the Party.

The PRC’s recent experiments with electoral democracy have thus far been confined to the local level. Most officials at higher levels of the government have long been, and continue to be, appointed by other officials. Party elites and autonomous units made extraordinarily efforts to recruit government officials from among non-Hans during the 15 years after the PRC was founded. Here, I should explain when I speak of “non-Hans” in Xinjiang, it is not an accident.

On the one hand, I point to the fact that Xinjiang has long been, and continues to be, a region inhabited by many different groups, not just Hans, not just Uighurs, but also Kazakhs and others, and also the fact that when the government promulgates figures indicating the percentage of cadres who are of the various—what we are calling here today—“minority nationalities,” they are lumping them all together, if you will, to aggregate the numbers to make them look better.

I would add that, in the view of many Uighurs—and I am not evaluating them myself—this is disingenuous, since after all, in the Uighur Autonomous Region, the percentage of Uighurs should itself be broken out from the whole.

The considerable success of Party elites in doing the recruitment I just described is reflected in the more than 100,000 non-Han in government positions in Xinjiang by 1965. Of a total body of 190,000 cadres, non-Hans thus constituted nearly 56 percent. Though well below their proportion in the general population of over 75 percent, these cadres lent substance by their numbers to the slogan of *minzu* regional autonomy, “*minzu quyü zizhi*.” Unfortunately, the vast majority were purged during the Cultural Revolution, 1966 to 1976. By 1983, most of those had been reinstated, and many more non-Han recruited into the government, raising the total number to over 180,000. However, while the raw number of non-Han cadres rose substantially, their share in the total number fell over 10 percentage points to 43 percent. According to the PRC State Council’s 2003 white paper in Xinjiang, the percentage has risen since then. Today, the nearly 350,000 non-Han cadres constitute almost 52 percent of the total.

The general point to be made is that there has consistently been a substantial gap between the proportion of non-Han in government and in the population, though massive Han immigration has narrowed that gap considerably. The increased proportion of non-

Han in government positions since the 1970s was the direct result of Beijing's calls in the early 1980s for increased "nativization"—*minzuhua*—of governments in autonomous regions. Many Uighurs and other non-Han hoped that this presaged more numerically representative governments and, thus, broader autonomy in Xinjiang.

The 2001 revision of the Regional Autonomy Law points in the opposite direction: where the original 1984 law suggested that officials "as far as possible"—*jinliang*—be selected from among non-Han, the new version stipulates only that positions be apportioned "reasonably"—*heli*—among groups.

There has never been a corresponding initiative in the Party. The percentage gap mentioned above is much more pronounced in the case of Party members. In 1987, only 38.4 percent of Party members in Xinjiang were non-Han, though non-Hans comprised more than 60 percent of the population. The numbers subsequently fell. In 1994, the percentage of non-Han Party members had decreased to 36.7 percent. The small and falling proportion of non-Han in Xinjiang's Party apparatus is particularly significant, given the dominance of the CCP in political life. Party officials outrank government officials at corresponding ranks in the political hierarchy, and therefore have the final say in matters of consequence.

The disproportion is even more pronounced in leadership positions. At all levels of the hierarchy, from village to provincial level, the overwhelming majority of Party first secretaries in Xinjiang have always been Han. There has never been an official explanation of this seeming statistical anomaly. This level of numerical detail suggests in broad terms that Uighurs and other non-Han have never enjoyed representation in government organs commensurate with their proportions in the population, and have been even less well-represented in the Party. It remains to point out that, in the estimation of ordinary Uighurs, those Uighurs who have risen to top leadership positions have been selected not for their responsiveness to popular concerns, but for their tractability in the eyes of the Party.

Thus, the problem of defining the right under consideration is compounded by an inadequate body of representatives charged with giving substance to that political right. Where can ordinary Uighurs turn if they feel the right to manage Uighurs' internal affairs have been compromised and their representatives have not protected their interests? The Chinese legal scholar Yu Xingzhong illustrates a crucial weakness in the 2001 Regional Autonomy Law. Though the law enumerates certain rights, including the one under consideration here, it is, in his words, "non-actionable." "The enforcement of this law," he says, "rests entirely on the conscience and awareness of the departments concerned. If a state organ fails to implement such a law, there is no legal basis to hold such an organ responsible and hence no remedy can be sought. . . . In addition, a basic law like this is constitutional by nature and as such, like the PRC Constitution itself, is not actionable. Past experience has shown that the Regional Autonomy Law has rarely been cited to decide court cases." In plain language, the law does not specify legal consequences if a right is abridged, nor does it indicate where redress might be pursued.

In sum, given the fuzziness with which the right of each *minzu* to manage its own internal affairs is defined, the paucity of *minzu* representatives empowered to exercise that right in Xinjiang, and the absence of clear legal recourse if the right is infringed, one is led to the conclusion that the Regional Autonomy Law, as amended in 2001, does little to protect minority rights. It is to be hoped that the next version does better.

Thank you, Mr. Foarde.

The prepared statement of Mr. Bovingdon appears in the appendix.]

Mr. FOARDE. Thank you very much, Gardner Bovingdon.

I am going to let our three panelists rest their voices for a moment while I encourage everyone who is attending today to continue to check the CECC Web site at www.cecc.gov for not only the proceedings and the full transcript of this roundtable in a few weeks, but also all of our previous roundtables and hearings are posted there, together with staff papers and other information about China and about the topic of today's roundtable.

Let us go on, then, to the question and answer session. Our staff panel up here will address questions either to one specific panelist, or perhaps to all of you. If a question is addressed to one panelist, but the others have a comment they wish to make, by all means, because we want to hear everybody's views.

Let me begin the questioning by asking David Phillips a couple of things. Just for the record, I was struck by your comment about the difference in the first time that you visited China and talked to some of the same interlocutors, or at least similar ones, and this last time. When, for the record, was the first time that you had these sorts of conversations with, was it United Front Work Department? What year, roughly?

Mr. PHILLIPS. About 10 years ago, the mid-1990s.

Mr. FOARDE. Do you have a view on to what we could attribute the gap between what the law says and the implementation of the law, with specific focus on Tibet and Tibetans?

Mr. PHILLIPS. Lack of consultation with affected populations, and then lack of recourse by those affected populations if there is a gap between the legislative intent and the implementation. There are few civil society organizations or local government institutions that monitor implementation of laws. In cases where they have called deficiencies to the attention of local People's Congresses, those concerns have largely been unaddressed.

There should be more civil society participation in monitoring legal implementation and a procedure for addressing shortfalls that involves the affected populations.

Mr. FOARDE. Useful. Thank you.

The work that you and your colleague did in coming up with a recommendation for the international study group, I thought was a fascinating idea. But one thing that I did not hear, and I was wondering why, was whether or not there is a role for both the U.S. and Chinese Governments in terms of supporting this international study group not only with cash, but also with in-kind support. I only heard you talking about it being underwritten by the United States. Did you give any thought to, or were any discussions had, about what the role of the PRC central government

might be, or even the Tibet Autonomous Region Government? Is there a role for an agency or organization in the U.N. system?

Mr. PHILLIPS. To my understanding, the most effective bilateral dialogue on human rights has been the dialogue between China and Norway. The non-confrontational demeanor of Norwegian officials is welcomed by their Chinese counterparts. It is difficult for U.S. officials to engage in such discussions because of the significance of the political and security role that the United States plays worldwide. Chinese officials are sensitive to any suggestion that dialogue might represent interference in their internal affairs. Just by virtue of America's political persona, its intentions can be misconstrued. Therefore, the proposal is that, as part of the bilateral dialogue on human rights between the United States and China, terms of reference would be mutually agreed and then a quasi-governmental organization or academic institution would carry that dialogue forward.

The dialogue can involve U.S. and Chinese institutions, but it can also be multilateralized. There is extensive expertise on global autonomy arrangements in the Asia-Pacific region, as well as experts on power sharing formulas in western Europe.

I think the ultimate objective here is to provide information to Chinese counterparts in a way which is benign and non-intrusive, so they can benefit from the experience of international partners, and then incorporate that experience into their own approach and methodology.

Mr. FOARDE. Thank you. Useful. Let me ask Christopher Atwood, roughly how much money is the central Chinese Government investing in the ecological migration program?

Mr. ATWOOD. I have not been able to find figures. Apparently, there are figures for the entire region, aggregated sums. They are figures that are apparently being dispersed at local levels in accordance with local desires, and I have not been able to find the totals. Also, the funds for funding migration are often lumped locally with all expenses for fighting desertification, tree planting, sowing grass, and the like.

Mr. FOARDE. So there is no sort of line item in the central People's government budget for this particular program.

Mr. ATWOOD. Not that I am aware of.

Mr. FOARDE. Interesting. I was interested in your comments about the programs that the relocated Mongolians are having outside of predominantly Han cities. One of the questions that we look into quite a lot here on the Commission staff, is the whole problem of *hukou*, the residency permit system, and whether or not it can be modified or whether or not it should be scrapped, or what its future might be.

How does the existing *hukou* system affect these Mongolian migrants?

Mr. ATWOOD. Well, these migrants' *hukous* are transferred to their new residency. Of course, the key thing is that they are prohibited from returning to the area that they have left without permission from the local district from which they have been moved, for that five-year period, and even after that only with approval. So in this case, the *hukou* system is functioning not to keep people

out of the urban areas, but rather to keep them out of the rural areas from which they have been moved.

Another problem is not so much the transfer of *hukou*, but simply the construction of the necessary infrastructure—having it in place. The reporting on this is not systematic. Certainly, large sums of money are being devoted to building housing. Most of these ecological migrants are to be housed in adobe houses or sometimes apartment-block style housing. This seems to be adequate in some cases and seems to be inadequate in other cases.

The areas of most concern with this are primarily employment and adapting to the new environment. Are the employment opportunities sufficient in the area to which they are being moved? Are they adapting well to them? Also, schooling, as I said. Does there exist Mongol-language schooling? Is there Mongol-language schooling where they are being moved, to largely Han areas?

I should say that there are a number of relatively small town-like settlements in the steppe where the Mongols are also a significant percentage of the population, so they are not all being moved to the more dominantly Han cities and towns on the steppes, such as Shiliin Hot and other urban places. But where they are being moved to those dominantly Han areas, it is a question of, does the Mongolian culture have a future? In fact, this is taking place in a wider context of Mongolian language education, and Mongolian autonomous institutions, so to speak, facing a real crisis of confidence from the Mongolian populations there.

Mr. FOARDE. Thank you. I would now like to pass the microphone to Susan Roosevelt Weld, who is the general counsel of the Commission. Susan.

Ms. WELD. Thanks a lot, John. Thank you all for very exciting remarks so far. I want to address my first question to Mr. Phillips. This great—actually rather admirable—structure of laws seems to be quite an advance in the way it provides minority rights to people who otherwise have been overwhelmed by the Han population in China. It seems, if you compare that structure to reality, it is quite unrelated to what you otherwise would see in the history of some of the minority areas. So I am wondering, how do you put those two things together? Can you challenge one with the other? I think to myself, civil society in China is beginning, it is hopeful. And I remember that Wang Dan says that here is where we should put all our energies, into trying to promote civil society in China.

But there are also new laws, for example, the Administrative Litigation Law. Could there be some adjustment legally so that a minority person in Tibet, for example, could use the law to enforce some of this grand structure? A structure which seems in all too many ways not to be effective?

Mr. PHILLIPS. On the subject of minority rights, there is no single covenant that enumerates minority rights standards. Our research looked at a range of different treaties, conventions, national constitutions, and regional documents in order to aggregate a standard for minority rights.

We found, in large measure, Chinese laws have been drafted in a way that accommodates international standards. But there is a significant gap between the drafting of those laws and their execution on the ground. We purposefully did not get into an implemen-

tation analysis law-by-law. We felt that this work is best done by human rights groups. Besides, that was outside the mandate of our activity. Clearly, the gap between the international standard and the laws is less significant than the gap between the laws and their implementation in China.

On the question of civil society, I think that civil society goes hand-in-hand with local government responsibility. A great deal of focus, when it comes to governance of China, has been on local elections and the development of local institutions. China has welcomed international participation in monitoring and evaluating local elections.

I would like to pick up on Mr. Foarde's comments when it comes to matters of budgeting. If there was local responsibility, transparency, and reporting on the development of natural resources—whether they be pastoral, energy or mineral—so that there was an accounting as the basis for returning some value to the local population, it would serve the interests of those populations and be consistent with Chinese and international objectives to strengthen local governance.

Ms. WELD. So that would be done by the National Audit Bureau, which has just begun raising its head above the water last summer. Apparently it is now going to be pushing its inspection efforts down to lower levels of government. That is a real recommendation that I think could be added to your report so the National Auditor's Office could go into the autonomous areas and see where the money is actually going.

Mr. PHILLIPS. Yes, that is a worthy recommendation. I would not restrict that process entirely to a top-down review. I think it is also important and consistent with the assignment to an autonomous agency with responsibility for economic development and the finances of autonomous governance activities that there would be a mechanism that corresponds with that audit process that can accurately reflect realities on the ground and provide an outlet for civil society concerns that are raised locally, so that those concerns are heard with national government officials in Beijing.

Ms. WELD. Thank you.

Mr. FOARDE. It is always important for us to recognize the people who do the heavy lifting in organizing these staff-led roundtables, so it is my great pleasure to recognize Dr. Katherine Palmer Kaup, who is our visiting special advisor on minorities issues for this calendar year. She joins us from Furman University in Greenville, SC. We are really happy to have you, Kate, and thank you for doing this today.

Ms. KAUP. Great. Thanks. I want to thank you all again very much for coming. You had great testimony and I think we have learned quite a lot already.

I would like to pick up on a question raised by Dr. Bovingdon on the training of minority ethnic cadres. The preface to the Law of Ethnic Regional Autonomy states that the law "embodies the state's full respect for, and guarantee of, the right of minority nationalities to administer their internal affairs." It goes on to say that this requires "a large number of cadres at various levels be trained from among the minority nationalities." Article 17 then says that posts in the people's governments of autonomous areas

should be “equitably allocated among people of the nationality exercising regional autonomy and other minority nationalities in the area concerned.”

Dr. BOVINGDON gave us some good figures on the number of cadres in government offices, but I would like to pursue that a bit further and ask, how are these cadres selected? What role, if any, do the local minority communities have in deciding exactly who fills these government posts and other official positions, including teachers, who are officially part of the cadre corps. I raise the question to all three panelists.

Mr. BOVINGDON. Unfortunately, I do not personally have—and I am not sure anyone outside China has—very good information on the topic you just raised, how officials are recruited above the local level. We know that there are village-level elections. Now, the story that one hears from ordinary Uighurs is that this is essentially a top-down process in which likely candidates at lower levels are selected and promoted if they act in consonance with Party goals and local government goals. But, unfortunately, I cannot give you more detailed information on that very important question.

Mr. ARWOOD. Particularly above the township level, I would have to concur with what Gardner just said. Apart from the general impression that it is very much a top-down directed process, details would be hard to come by.

But I would like to emphasize that at the township level in Inner Mongolia, the general impression you get from a number of researchers—it is also my own personal impression from those areas I have visited—that, at the township level, the local governments are still dominated by what we can call local oligarchies. Most of these date—and many of them are held quite continuously by one or two families—back to the Land Reform period in the 1940s. This land reform took place from around 1947 to around 1948 and was extremely violent and extremely divisive, particularly in Eastern and Inner Mongolia, and created community divisions that are still active today. The populations of Inner Mongolia generally tend to be concentrated toward the east, so the eastern areas are the ones with the largest populations. That is to say, the people who were the victors in that conflict are still there, many of them family by blood or related by marriage, and are still more or less running those local party and government organizations.

They form the very basic level for the recruitment of Mongol cadres, who mostly come from the countryside, because of the largely rural distribution of the Mongol population as a whole. So that, I think, is something important to consider sort of at the grass-roots level.

Mr. PHILLIPS. It is no wonder that Dr. Bovingdon did his field research at Xinjiang University, because a lot of data just simply is not available sitting at an academic institution, whether Cornell or Harvard. We were fortunate in benefiting from a team of a dozen Chinese-language lawyers who worked with us on the academic research. Through the course of our research we discovered that we were really just scraping the tip of the iceberg. It is particularly important to go out to the ethnic Tibetan areas of western China and conduct research there, which was beyond our scope at the time.

The international study group that I proposed should have a point of contact in Beijing, but it should also seek to involve institutions that are working in the ethnic Tibetan areas of western China, because a lot of the data, both factual and empirical, is only available when you are on the ground talking to local cadres.

Mr. BOVINGDON. I would like, if I may, to correct one slight misimpression. I was affiliated with Xinjiang University. I actually spent considerable time in local villages interviewing ordinary individuals. When I say that I do not have detailed information on the processes of selection and promotion, what I mean is that I was not able to speak to the kind of people who would speak knowledgeably about this question. I can say, for instance, that when I went to villages I heard such remarks. In fact, I will tell a little story. In a village in eastern Xinjiang, I went with a group of Han Chinese students who had studied Uighur at Xinjiang University and were there for a practicum. They were there to learn how to speak the language, since they really could not speak it yet.

Some local officials remarked, out of the hearing of these students, that these would be the future leaders and Party Secretaries in the area, and so the village ought to take very good care of them and do a good job with them. So here, at least, we have anecdotal evidence of the process by which they are selected.

Mr. ATWOOD. We all seem to be adding little bits. I would like to just point out that there is information at the higher levels. We have a number of reports of large-scale factionalism within the Inner Mongolian Autonomous Region, at the regional level of the Inner Mongolian Autonomous Region's Government. Generally speaking, the factions are divided by observers from published sources into three large groups. Uradyn Bulag's recent works are the best source on this issue. But his analysis is what I have also heard from other people in Inner Mongolia as well.

One, you have the West Mongol faction which, in the 1980s and 1990s, was largely focused around the Yun family, which was the family of Ulanfu, Inner Mongolia's party and government leader before the Cultural Revolution, and restored afterwards. The family had the Yun surname, but Lanfu was a revolutionary alias. Then you have the East Mongol faction, which is largely from the Mongolian-speaking rural areas of Eastern Inner Mongolia, particularly the Khorchin subgroup; and then, finally, the local Han faction, the Han of Inner Mongolia.

Interestingly enough, the Party secretaries in Inner Mongolia, since the Cultural Revolution have not been from any of these factions. The Party secretaries are always Han, and not only just Han, but also not local Han, Han cadres from outside the autonomous region.

So the fact that, for a while in the late 1980s and 1990s, the Yun family achieved a sort of domination of a number of positions in both the regional and in the prefectural-level governments, indicates quite clearly, non-meritocratic procedures have been at work in cadre selection. I should say, though, since about the mid-1990s, the Yun family has been eased out of power almost entirely.

Mr. FOARDE. One more, David. Then we are going to go on.

Mr. PHILLIPS. All right. One should not underestimate the extent to which local interlocutors are intimidated by foreigners who come

to do research. There are different ways of handling that. One, is to identify local researchers with whom you can work, but they are usually accountable to their institutions in Beijing.

Another anecdote: When I was negotiating an ethnographic mapping project, I presented detailed terms of reference to our Chinese partner in the State Ethnic Affairs Commission. I thought that all of that was understood and that we were going to be able to go forward. I took him out for breakfast beforehand, reviewed all the details, and I asked "Is everything clear?" He paused for about 30 seconds and he said, "I really like the yogurt here in Norway." So, it was clear that we did not have a deal.

I then went back to China and they took me out to a lavish dinner and presented their counter proposal, which essentially was, give us all the money, we will do the research, and then report the data to you. I paused for about 30 seconds and said, "I really like the noodles here in China." [Laughter.] Once we had established the principal of equality, we were then able to go forward.

Mr. FOARDE. Well done.

Mr. PHILLIPS. So, one has to be wary of influence by central government authorities.

Mr. FOARDE. Thank you. I would now like to turn the questioning over to a colleague whose portfolio encompasses a lot of the themes that have come up today, such as NGO development and *hukou* reform. Carl Minzner is a senior counsel on the Commission staff.

Carl, over to you.

Mr. MINZNER. Thank you very much, John. To the panelists, thank you all for coming here and allowing me to learn about Xinjiang, Mongolia, as well as Tibet.

All of you have raised issues of the implementation of the Autonomy Law itself in your respective areas. A discussion of these issues with PRC interlocutors is often complicated by their tendency to view foreigners who raise these issues as attempting to carve up China, to encourage secession, et cetera, et cetera. Given this tendency, if we put you in the role of an advisor to an American Government official who is going to China to talk about these issues, are there any specific topics that you think could be raised usefully, given the mind-set of the Chinese officials with whom they might be interacting?

Alternatively, is it simply the case that, with that mind-set of many Chinese officials, there is really no way to effectively raise some of these issues you brought up regarding the Autonomy Law?

Mr. PHILLIPS. You used the term "Tibet" in your question. Let me differentiate the term "Tibet," which is a political term that typically refers to the Tibet Autonomous Region and ethnic Tibetan areas, which refers to the five provinces where Tibetans live. It would be particularly important in those discussions to choose one's words carefully. Any autonomy arrangement that differentiates the TAR from the other ethnic Tibetan areas would not be acceptable to Tibetans worldwide. Therefore, a more uniform approach that encompasses the five provinces would be imperative.

Mr. ATWOOD. To address that, actually, there is another terminological issue that, perhaps for opposite reasons, is probably very

important, that is to distinguish Mongolia from Inner Mongolia. To compare, it is like saying "Mexico" when you mean "New Mexico."

In one sense, ecological migration is a very good issue to bring up. I think that while the issue here has, as I have tried to emphasize, very important ethnic repercussions, it is my belief that the Chinese Government is attempting sincerely to deal with a real problem, which is desertification, and they are attempting to do so based on science. I think there are a number of studies that show that the science upon which they are basing this looks pretty faulty. At any rate, it is definitely not working. The data are very clear on the fact that pasture degradation is not slowing. In fact, it has been accelerating since 1984. So, I think that is an area where, definitely, there is room for common dialogue, to say "We have these concerns based on a number of pieces of information that this is not the best for the people involved." Also, "We have this science that indicates that this may not be the right approach to dealing with this very real problem."

Second of all, I just would like to also emphasize that in Inner Mongolia, it is not often realized the extent to which Mongol rural community life has actually survived up until this period. I think that is worthwhile to emphasize how there are still these sort of vesiculated—as Gardner Bovingdon has said—communities in Inner Mongolia; many times it is not realized the degree to which Mongolian-language education, Mongolian control of their own community life in many of the arid zones has survived to the present. That is something that can be emphasized as a positive feature, which is unfortunately being lost due to this new policy.

Mr. FOARDE. Gardner, if you have a comment, please, by all means.

Mr. BOVINGDON. Thanks. It strikes me that there is one rhetorical approach and one substantive matter that the United States side might bring to such an interaction.

The first thing which I think would be very likely to please the Chinese side—although I hasten to add it would be extremely unsatisfactory to the international Uighur community—would be to approach the Chinese side by acknowledging their sovereign control of all the territory of China, including Xinjiang, and to say that any suggestions made are consistent with the idea that the territory should be peacefully administered throughout.

The substantive issue, it seems to me, would be that of building a bridge between the United States' continued grappling with how to acknowledge the rights of Native Americans, a population that has long been in many territories in the United States, and the concerns of the Chinese Government.

One caveat I should add, is that the Chinese Government has always, since 1949, been loath to—in fact, refused to—describe any of the 55 *minzu* as indigenous, for the very reason that they are concerned about the implications of attaching indigeneity to the land. But it does seem to me that, beginning with a stance of saying that we, too, face such problems of politically and ethnically distinct populations within our territory might be less likely to rub them the wrong way and induce that sense of "foreigners meddling in our internal affairs."

Mr. FOARDE. Thank you. I would now like to recognize our research associate, Laura Mitchell, for questions. Laura.

Ms. MITCHELL. Thank you. Thank you for being here.

Could you speak about the exploitation of natural resources in the autonomous areas? The Regional Ethnic Autonomy Law states that compensation should be given when the central government extracts natural resources from the autonomous areas. Are there guidelines as to how the compensation should be divided? Who ultimately has control over the resources?

Mr. BOVINGDON. I will start. There are materials that I would like to have with me here, that I do not, to describe how the proceeds are apportioned. What I do know, in general terms, is that at this point the rich oil and gas reserves of Xinjiang are exploited largely for processing and consumption in China's interior, and that these resources are not monetized and paid for locally. Rather, some part of the taxes from the exploitation of these resources is reserved to the local government. So in that sense, one cannot say that the locale is compensated from the basic proceeds themselves, but rather only on the margins. Although I should add that Xinjiang, in the estimation of a number of scholars whom I respect, has long received subsidies which may be, as Nicolas Becquelin has put it, a disguised compensation for resource exploitation.

I would just like to add that, in the view of many ordinary Uighurs, many that I interviewed, there is no connection, in their view, between their perception that these resources belong to the locality and to the people there and Beijing's conception, as written down in the Constitution, that the resources really belong to the whole people of China. Essentially, there is a substantial gap there, and Uighurs have a feeling that they have no capacity to influence how, at what price, when, or to what degree resources are exploited.

One more final point. I apologize. There is also a perception among Uighurs that, because there are very few Uighurs employed in the gas and oil industries, they lack even the chance to receive employment and training from this enterprise.

Mr. ATWOOD. I would just like to emphasize, all of what Gardner just said would be applicable to Inner Mongolia, particularly that last part. The extractive industries in Inner Mongolia are overwhelmingly Han Chinese dominated. So the towns created for these extractive industries, such as Bayan Oboo in Southwestern Inner Mongolia, coal towns like Wuhai and so on, are up to 98, 99 percent Han Chinese, and that are largely from outside of Inner Mongolia in their population.

I would like to also make another comment that I think links up this question with the question of different economy, laws, and practices that go along with these sort of resources, and also Gardner Bovingdon's point about the question of reservations, which might be a way of defusing hostility.

I just want to emphasize that pre-1947 arrangements—I say 1947 because the establishment of Chinese Communist Party control occurred two years earlier in Inner Mongolia than it did in the rest of China—in Inner Mongolia also form a very rich fund of experience, which is, unfortunately, not being used because it is, of

course, excoriated as being feudal, part of the whole Qing Dynasty past.

The strength of these autonomy systems, the traditional banner system, was that first of all, it dealt with the relative dispersion of the Mongolian population, both by being decentralized within itself, and also by having local government divided by ethnic status: banners for Mongols, counties for Chinese. Now, for a number of functions, this is not going to work. But for areas such as education and a number of cultural issues, a kind of divided local government, with people of different ethnic groups coming under different authorities for cultural purposes, may have something to offer, and it has been used in a number of other countries as well.

Also, the banners were common property- and resource-holding corporations. The local Mongols were members of these, outsider Mongols and Han Chinese were not. Therefore, exploitation of these resources by outsiders involved payment of funds which had to be negotiated. This included not only just for renting farmland, but also for exploiting salt lakes, coal mining, and a number of other things.

Now, obviously we cannot just reinstitute the pre-1947 system, but this is a font of institutional experience which I think could also be fruitfully included, especially because it is something that the Mongols themselves have done, have experience of, know, and which, to a certain extent, still has some kind of legitimacy or memory among the Mongols.

Finally, about natural resources. The other thing left to consider is environmental degradation. For example, in the suburbs of Baotou, one of China's largest steel metropolises, the herding areas of Agarautai have extensive air pollution, and the Mongols there feel that it is degrading the quality of the pastures.

We also have the issues of eminent domain, with recent reports of a number of abuses of the power of eminent domain, people being moved off for power plants, coal mines, and other industries in Inner Mongolia. These new institutions are going to move herders off the land. So, this is another issue that has to be brought into play when we talk about natural resources.

Mr. FOARDE. David, if you have a comment, please go ahead.

Mr. PHILLIPS. For each of the ethnic Tibetan areas, there are implementation measures that call on local authorities to bear responsibility for managing and protecting natural resources. In the TAR, laws demand "rational" development. There are stipulations that prescribe a certain percentage of mineral development, gold and silver, that is extracted be set aside for decorative uses by Tibetans or for religious iconography.

When it comes to the training of local cadres involved in economic development, laws in the TAR call for modifying the admission score of ethnic Tibetans. There is an active affirmative action program which seeks to promote indigenous participation.

There are extensive international reports that parts of the TAR are used as a dumping ground for radioactive material via a contract that the Chinese Government has entered into with other countries for disposal of nuclear waste. That clearly is being done without the consent of local authorities.

If I could return to your earlier question, Dr. Weld, and associate myself with Professor Bovingdon. The United Nations really does not have a significant role to play in these matters.

When it comes to the United Nations, Chinese officials focus on the Human Rights Commission, special rapporteurs, and Chapter VII intervention. So, I do not think that the right institutional mechanism for the kinds of cooperative arrangements I have proposed involve U.N. agencies. However, that does not mitigate the importance of multilateralism in technical cooperation.

Mr. FOARDE. Thank you. Really useful. Let me sneak in a couple of very quick questions and see if we can give everybody another chance to ask a question before we break up.

Gardner Bovingdon, I was really struck by one of the things that you said about the official government policy, among other things, being to foster the "excellent parts" of local culture. Is the term "excellent parts," or what constitutes "excellent parts," defined anywhere in law or regulation as far as you know?

Mr. BOVINGDON. It is an important question to which I do not have a satisfactory answer. All I have is speculations. It is possible that there are legal rubrics that define what constitutes excellent parts of a culture. I can tell you what my suspicions are based on extensive field experience in Xinjiang. What this small turn of a phrase does is enable officials to object to the fostering of certain aspects of what are regarded as Uighur culture, or the culture of any minority group in China, in the sense that this is intended to say that this is not a blanket approval of support for all kinds of culture. Some may be regarded as retrograde.

Here, I would like to relate my comments to what Professor Atwood has previously said about "scientific" versus "unscientific" farming. Once again, the definition of these terms is in the eye of the beholder, and in this case the beholder is also the power holder. Therefore, I regard this as kind of an insidious qualification to the original term.

Mr. FOARDE. Thank you. Professor Atwood, I wanted to pick up on something that you talked about implicitly, but we did not really ask a specific question about it. One of the things that has always interested me, is how much contact and influence across the border into Mongolia is there? And how many contacts back and forth are there from Inner Mongolia and Mongolia, particularly with respect to nationalities issues?

Mr. ATWOOD. Yes. That is a really important issue, definitely one not to bring up when you are talking with Chinese Government officials. Although I will say, in fact, in some ways the situation turned out a lot better for the Chinese authorities than they were expecting in the late 1980s.

Inner Mongolia and Mongolia had extensive contacts in the 1920s, were separated by politics in the 1930s and 1940s, and had controlled, but still fairly extensive, contacts again in the 1950s, and after that were again separated during the Sino-Soviet split. The normalization of relations between Mongolia and China, along with the Soviet Union and China, in 1989 opened the way for people on both sides of the border to come back into contact.

That produced a couple of strikingly interesting reactions. First of all, there was the expected creation of organizations in inde-

pendent Mongolia to promote Inner Mongolian human rights and nationalism. These remained, however, very small. The Mongolian Government has been extremely strict about acknowledging explicitly, without any reservation, that they respect the territorial integrity of China, acknowledge one China, all of those things. But as a democracy, they do not suppress the existence of these various groups supporting Inner Mongolian nationalism, though none of them are particularly active. So, that was the thing that China did not like.

For example, there is a recent report about the Mongolian heavy metal band Hurd, which was going to be playing in Hôhhot. They had done it a couple of times before, but this time the Inner Mongolian Government prevented the students from attending that concert. I think it was because the latest CD had a title song called "Born in Mongolia," and it went on from there with very nationalistic lyrics.

On the other hand, though, and more strongly, the Inner Mongolians and the Mongolians, over their period of separation, have become very different in their whole viewpoints and way of life, so there was quite a bit of mutual disillusionment there with that situation. The constituency for pan-Mongolism in Mongolia is now actually shallow, extremely shallow. So in a sense there is quite a bit of contact, but it has only exacerbated the sense of "these people are different from us" on both sides. Inner Mongolians and the Mongolians do not really feel themselves to be a part of the same political community in the same way that they were hoping to in the mid-1980s.

Mr. FOARDE. Interesting. Thank you.

Mr. PHILLIPS. It sounds as though Hurd has taken a number from Bruce Springsteen's playlist.

Mr. FOARDE. Susan, do you want to pick up the questioning?

Ms. WELD. Sure. This is a little bit outside what we have been talking about so far. I am interested in some of the trafficking in women and children that has been going on in China recently. I noticed that there was a case where one of these gangs purchases babies from hospitals locally and puts them into a sort of trafficking flow throughout China to another place where they want to buy the babies. Is this a problem in Mongolia? It does not seem to be something that happens in ethnic areas, perhaps because their preference for sons is not as strong as in the Han areas. Does anybody have any answers on that?

Mr. ATWOOD. The only thing is early in the 1960s, the government placed orphaned Chinese children from Shanghai with Inner Mongolian families, and they have grown up to be Mongolian-speaking herders, registered as Mongols, but of Han Chinese origin, Shanghai origin. But, no, I do not believe there is any particular traffic.

Mr. FOARDE. Let me pass it on to Kate for another question.

Ms. KAUP. Great. Thanks.

I am struck, listening to all of you, at how differently minority policy has been applied in different areas. My own fieldwork has been in Southern China among the Zhuang and the context is very different there. So I would like to direct my question specifically to

Gardner, and then ask David Phillips to expand on the Tibetan case as well.

A number of Xinjiang analysts—including Western analysts, human rights activists, Uighurs within Xinjiang, as well as Uighurs in exile—have noted an increase in central controls in Xinjiang, particularly since 2000.

These analysts have noted increased Chinese Government violations of Uighurs' rights of expression, religious practice, and of their right to use their own language. They have noted an increase in arrests of Uighurs who question the state's minority policy. Most of these analysts point to an increase in governmental controls since the "Develop the West" campaign was launched in 2000, and they note a major crackdown, particularly on Muslims, in the post-September 11 time period.

I would like to ask, first, if you have noticed similar trends. Second, given—I think it is a given—increased tensions at the moment between the Han Chinese and the minority groups, what concrete steps can be taken to ease these tensions?

Specifically, if you had a chance to speak to the Chinese Government, how would you encourage them to loosen controls and reassure them that doing so is not going to lead to increased separatist activity or support for independence?

Mr. BOVINGDON. That is a full plate of questions.

Let me agree, first of all, with the findings of other analysts that you mentioned, that there has clearly been increased crackdown, however we want to put it, political repression, in Xinjiang since 2000.

In addition to the matters that you took up, I would also add the fact that there have been book burnings on several occasions, something I find astounding in the 21st century.

Very recently, within the last month and a half, a Uighur poet, Nurmamet Yasin, was thrown in prison and all copies of an allegorical short story he wrote about a pigeon were destroyed. It seems to me that this, along with the recent increase in the arms given to police and other peacekeepers in Xinjiang, and the fact that over the last five years there have been several clear initiatives to recruit low-level officials from the interior of China, often in terms that make it clear they specifically want Hans—that all these signs point to a concern in Beijing with increasing security in Xinjiang, and in turn officials understand increasing security to mean increasing repression, something I think we would all agree is lamentable.

I think one problem with convincing Chinese officials that decreasing, rather than increasing, repression is likely to have a beneficial outcome, is that hardliners who have always thought that decreased control leads to chaos are very much in the ascendant in the political climate in China today. Wang Lequan, who is the Party Secretary of Xinjiang and who also sits on the highest political body in Beijing, has long believed this himself.

I think one strategy would be to try to reach the softline constituency and point out that in fact, in the 1980s, in the first few years of the reforms, while there were a few episodes of ethnic riots, this was actually not only a fairly free time, but a fairly peaceful time. Economic growth was high, Uighur cultural produc-

tion was high, there was a lot of satisfaction in the memories of many of my informants with increased cultural freedoms. I think a case can be made that carefully managed decreased repression, rather than increased repression, could lead to the kind of good outcomes that we saw in the 1980s.

Add to this that the kinds of political infiltration that the Chinese Government feared coming from Central Asia are less likely to happen with the Taliban out of the way in Afghanistan, with the climate in Pakistan changing. These, by the way, are areas directly contiguous with southwest Xinjiang. I think a case could be made that it is far less likely that decreasing repression will lead to the infiltration of undesirable ideas, particularly religious radicalism, et cetera.

Mr. FOARDE. David, do you want to pick that up with respect to Tibet?

Mr. PHILLIPS. Sure. Just to respond, briefly, to Susan Weld's interest on the family matter. One child-one family rules apply in the ethnic Tibetan areas, but there are provisions for a second child in certain instances, particularly in Sichuan, and prefectures in Yunnan and Ganzi. There are also arrangements for a third child under controlled circumstances.

Related to Dr. Kaup's question, in May of 2004 the Chinese Government issued a white paper on its Tibet policy. If you read that paper, it sounded like a throwback to hardline approaches of the 1960s. If I were a Chinese official contemplating the third visit by overseas Tibetans to Beijing, I would also have laid down a hard line and used that as a point of departure for discussion. The fact that the third visit by the Dharamsala representatives followed the issuance of that white paper suggests to me that Chinese officials treat these discussions with greater and greater importance.

In terms of preventing independence, it is essential that discussions about cultural and religious autonomy include the element of finality. If there is an arrangement between the Dalai Lama's representatives and Chinese officials, implementation needs to be monitored. Moreover, there can be no exit clause that allows the arrangement to be revisited in the future, unless there are serious violations with implementation. The question of finality is going to be a very important consideration in Beijing if they want to address the Tibetan question once and for all. We emphasize elements of finality in all of our discussions with Chinese officials.

Mr. FOARDE. Thank you. Let us take a couple more minutes and ask Carl Minzner to ask another question.

Mr. MINZNER. Thank you very much, John.

In the eastern areas of China, with regard to migrants coming into urban areas, one thing that you see is the emergence of a socially excluded migrant underclass. Based on my reading of some of your written statements, it seems to me that both economic development in China, as well as direct Chinese policies, are effectively leading to the breakup of previously cohesive, small rural communities in all of the areas that you all focus on, and resettlement, or migration of those people into urban areas.

Could you first tell me if you think that is an accurate assessment, and, second, perhaps speculate a little bit on the social implications of that with regard to the areas that each of you study?

Mr. ATWOOD. Yes. First, I would say that that is an excellent summary of the issue. I like the way, also, that you divided it into both economic forces working during development, and also the government force. I think that is really important to emphasize that both of those are occurring at the same time and they are both pushing largely toward the same end. This is, exactly as you said, that there is going to be a significant urbanization of the minority populations that have previously been largely rural.

This is particularly important for the Mongols who, unlike the Uighurs, do not have the tradition of special ethnic enclaves or wards within cities. Inner Mongolia has not had special urban wards of Mongol minorities within the cities. The cities have been almost exclusively Han enclaves.

So that process you described is occurring, and I think that is the worry, that it will lead to the creation of something that has not existed before, a kind of Mongol shanty town. It would be a kind of housing project neighborhoods—adobe houses or apartment blocks as the case may be—for Mongols out on the edges of cities and district towns in Inner Mongolia. That is the worry. But that is exactly where indications seem to be showing where we are heading, both the economic factors and also the government's policy.

Mr. BOVINGDON. I would concur. You see similar processes in Xinjiang. I would just add one extra note that is perhaps a little bit far from what you were talking about, but I think will in fact compound the problem that you described.

In Urumqi and Kashgar, the government has taken the initiative, and I suppose in some cases it is private money as well, to tear down long-existing city blocks and districts and replace them with new high-rise apartments.

On the one hand, this seems to be a good outcome in the sense that you have more spaces in which people can live. The problem with them is, of course, that they are priced far beyond the reach of the former residents. I am not aware of any special arrangements being made for the former residents, other than telling them that they can get into this apartment if they can afford it.

The reason that I mention this issue is because I think we are seeing already, and will see more in the future, not only the arrival of people coming off the farms who can no longer find gainful employment there, but also the dispersion of previously core urban populations in the very ethnic neighborhoods Chris was just referring to, now being forced themselves into situations of uncertain safety and quality.

Mr. FOARDE. David.

Mr. PHILLIPS. With consideration for the Commission's practice of ending the roundtable on time, I will defer an answer.

Mr. FOARDE. All right. Then let me give the last set of questions this afternoon to Laura Mitchell.

Ms. MITCHELL. Recently, the Renewable Resources Law was passed, in part, to address environmental degradation that has accompanied development and, in part, to develop sources of energy in rural and remote areas.

A recent Beijing Review article mentioned that, in Xinjiang, Inner Mongolia, and Tibet, there have been a number of projects

to develop the use of natural resources such as hydro power, solar power, and wind power. How have the projects impacted the people living in the areas?

Mr. ATWOOD. The development of renewable resources.

Ms. MITCHELL. Right. Right.

Mr. ATWOOD. The use of wind power, in particular, was a kind of beacon of appropriate small-scale technology in Inner Mongolia, and also, in Mongolia now as well. Basically, you have windmills that are portable and are, therefore, compatible with nomadism, if one is still nomadic or transhumant, and is able to give people in very remote areas some kind of way of generating electricity for light, for operating a radio or television, and other things. So, it has played a significant role and it has actually a relatively important source of electricity for a number of people on the grasslands.

I should say, of course, Mongols resettled in these migrant communities do not need windmills any more. They will get power from the power grids of the towns and cities where they are being settled.

Mr. FOARDE. Either of the other panelists, please go ahead.

Mr. PHILLIPS. Just given the altitude of western China and the ethnic Tibetan areas, portable photovoltaic solar technology has been widely used for remote electrification. In addition, solar cookers have been used as a substitute for hydrocarbon fuel sources.

I would add forests to your list a non-renewable resources. There has been considerable deforestation in western China. Integrating renewable energy technologies may be a remedy to deforestation.

Mr. BOVINGDON. A last word. I too worry about ecological devastation and exploitation of non-renewable resources. Since a number of you have visited Xinjiang, I just want to acknowledge something all of you must have seen from the train cars, which is an enormous windmill farm outside of Urumqi: beautiful, tall, slender stalks on which state-of-the-art windmills are to be found. I applaud such an initiative to try to generate power in a renewable and non-polluting way.

Mr. FOARDE. Thank you all very much.

Probably the most gratifying thing about doing these issues roundtables over the last 38 months has been the very high quality of the conversation that we have had, and we have continued our excellent record this afternoon. This result is owing not only to the excellent staff work of my colleagues here, but particularly to the quality of the panelists. So, thank all three of you very much on behalf of Senator Chuck Hagel and the Members of the Congressional-Executive Commission on China.

But since we have gone a few minutes over our allotted time to keep the conversation going, let me now gavel this one to a close with our thanks. Thanks to everyone who attended. Good afternoon.

[Whereupon, at 3:38 p.m. the issues roundtable was concluded.]

APPENDIX

PREPARED STATEMENTS

PREPARED STATEMENT OF DAVID L. PHILLIPS

APRIL 11, 2005

Thank you for the opportunity to address the Congressional Executive Committee on China's roundtable on "China's Regional Autonomy Law: Does it protect Minority Rights."

I am submitting for the record a copy of *Legal Standards and Autonomy Options for Minority Rights in China: the Tibetan Case*.¹ Also submitted for the record is a compilation analysis of 161 laws and regulations establishing autonomy in the ethnic Tibetan areas of Western China including the provinces of Sichuan, Yunnan, Gansu, Qinghai and the Tibet Autonomous Region (TAR).

The report offers a directory of Chinese laws and regulations on minority rights and autonomy. It:

- Provides an assessment of existing national, provincial and prefectural level Chinese laws and regulations.
- Analyzes and outlines the existing international standards for treatment of minorities and autonomy arrangements.
- Offers a menu of autonomy options, based on examples of existing autonomy models from around the world.
- Itemizes the full list of Chinese laws and regulations reviewed for the report.
- Describes 22 other illustrative autonomy arrangements.

Scholarship should not exist in a vacuum. To have practical application, it must take into account the political context. To this end, Mr. Theodore C. Sorensen and I visited Beijing in June 2004. The purpose of our trip was to assess the views of Chinese counterparts on Tibetan issues. *Legal Standards and Autonomy Options for Minorities in China: The Tibetan Case* is designed as a technical resource for strengthening ethnic minority rights in China, with specific focus on Tibetans in China, within the context of Chinese law. It is published in English and Chinese. Research included contact with Chinese officials, scholars and think-tank representatives. Ongoing cooperation with Chinese counterparts and dissemination strategies are being explored.

Based on our discussions, we determined that Chinese officials increasingly appreciate that effective autonomy would enhance, not impair, China's sovereignty and territorial integrity while reinforcing its stated commitment to the rule of law. They welcomed our view that a uniform approach to autonomy in the ethnic Tibetan areas of the TAR, Sichuan, Yunnan, Gansu and Qinghai provinces would enhance stability and prospects for development. Chinese officials, think-tank representatives and scholars all affirmed the need to:

- "Improve" the country's legal system.
- "Perfect" arrangements for ethnic autonomy.
- "Adapt" measures to local conditions.
- "Conform" laws and regulations on minority rights to international standards.

Today's context provides an opportunity for progress on the Tibetan issue. We are encouraged by the direct contact between Chinese officials and Tibetan representatives from Dharamsala who have visited China three times between 2002 and 2004. A spokesman for the Chinese Ministry of Foreign Affairs affirmed, "This method proves there is contact between the central government and the Dalai Lama. The lines of communication are open."²

Tibetans also recognize that autonomy is also the best and most realistic way to preserve Tibetan culture. The Dalai Lama has reiterated his clear and unambiguous support for the "one-China line." He recently went one step further by giving up demands for Tibetan self-government so long as Tibet's culture, spirituality, and environment are preserved. He stated, "I am not in favor of separation. Tibet is a part of the People's Republic of China. Tibetan culture and Buddhism are part of Chinese culture."³ He also recognized the "broader interest" of Tibetans suggesting that Tibetans would benefit from China sharing the benefits from its rapid economic growth while Tibetan Buddhism could enhance "internal values" by contributing to

¹ Harvard University, Belfer Center for Science and International Affairs at the John F. Kennedy School of Government, September 2005.

² The Washington Post, June 14, 2004, "World in Brief," p. A20.

³ South China Morning Post, March 14, 2005, "Dalai Lama yields ground on Tibet self-rule," p. 1.

China's spiritual identity. The Dalai Lama's statements create a unique opportunity to deepen discussions about autonomy for ethnic Tibetan areas in China paving the way for his return to Lhasa in the capacity as a spiritual leader.

Objective analysis of the existing body of China's laws on ethnic minority rights and autonomy is the essential starting point for evaluating enhanced autonomy options. Following is an analysis of Chinese national, provincial, prefectural, and county laws and regulations in areas of governance, economy, and culture. The analysis encompasses ethnic Tibetan areas including the TAR, six autonomous prefectures in Qinghai, one autonomous prefecture in Yunnan, one autonomous prefecture and one autonomous county in Gansu, and two autonomous prefectures and one autonomous county in Sichuan.

China's Laws on Autonomy and Ethnic Minority Rights

After the revolution of 1949, the Chinese Communist Party developed legal provisions for autonomy, recognizing the advantages of providing minority groups with self-government. China has since added to this body of laws. China's official stance has always been that minorities share equal legal status with the majority Han, and that minorities should exercise autonomous self-government to protect their unique culture.

GOVERNANCE

National laws and regulations on self-governance of minorities

Article 4 of the Constitution of the People's Republic of China (PRC) sets forth the fundamental policy of the State with respect to ethnic groups. It indicates that all ethnic groups are equal. The State guarantees the legal rights and interests of all minorities and safeguards and protects the equality, unity, and relationships of all ethnic groups. Article 4 also prohibits discrimination against and oppression of ethnic groups and prohibits activities that destroy the unity of ethnic groups or create ethnic separatism. In accordance with the "special characteristics and needs" of all minorities, the State shall assist minority areas to accelerate the development of their economy and culture. Autonomy is to be implemented in areas where minorities are concentrated. All autonomous areas are an integral part of the People's Republic of China. Each ethnic group has the freedom to use and develop its own oral and written language and to maintain or "reform" its own customs and traditions.

The people's congresses of ethnic autonomous areas have the power to formulate regulations in accordance with the political, economic, and cultural characteristics of the local minorities. Such regulations are to be submitted to the Standing Committee of the National People's Congress for approval before they become effective. Regulations of autonomous prefectures and autonomous counties are to be submitted to the standing committee of the people's Congress of the province or autonomous region for approval before becoming effective and are to be submitted to the Standing Committee of the National People's Congress for the record.⁴ The Standing Committee of the National People's Congress has the authority to abolish any local laws or regulations formulated by state-level agencies in the provinces, autonomous regions, or municipalities directly under the central government that conflict with the Constitution or other laws or administrative regulations.⁵

Several other national instruments provide for the equal rights of minorities to self-governance while protecting the unity of the State.⁶ All minorities are to enjoy the same freedoms of thought, expression, assembly, religion, movement, association, communication, and residence as are enjoyed by the Han people in the same

⁴Constitution, § 116. In contrast, the people's congresses and their standing committees of provinces and municipalities directly under the central government need only submit their local legislation to the Standing Committee of the National People's Congress for the record—Constitution § 100.

⁵Constitution, § 67(8).

⁶Decision of the State Council Regarding the Guarantee of the Equality of Rights of Minorities Living in Dispersed Communities (adopted on February 22, 1952, by the 125th Session of the State Council, and issued on August 13, 1952), the Report of the State Ethnic Affairs Commission (transmitted on October 12, 1979, by the Central Committee of the Chinese Communist Party and the State Council), and the Law of the People's Republic of China on the Autonomy of Ethnic Areas (effective October 1, 1984, adopted at the Second Session of the Sixth National People's Congress and amended on February 28, 2001, by the 20th Session of the Standing Committee of the Ninth National People's Congress).

locality.⁷ Like the Han majority, minorities are entitled to vote, join groups, pursue any profession, and use their own languages when instituting or defending lawsuits or in any investigation conducted by a procuracy.⁸ The development of a minority's culture and economy are to gradually eradicate inequality,⁹ but "reforms" of a minority's customs and traditions cannot be imposed if a majority of the group wishes otherwise.¹⁰ Observance of minority holidays, dietary restrictions, and religious practices must be allowed,¹¹ and complaints of discrimination are to be handled by the people's governments.

The Law of the People's Republic of China on the Autonomy of Ethnic Areas (the PRC Autonomy Law) requires that areas where minorities are concentrated are to implement regional autonomy through autonomy agencies at the regional, prefecture, and county levels.¹² Autonomy agencies must place a priority on the interests of the State as a whole, especially the unity of the State, while safeguarding and developing the equality and unity of minorities and the socialist minority relations of mutual assistance.¹³ Discrimination against any minority is forbidden.¹⁴

The PRC Autonomy Law contains provisions relating to the right of autonomy agencies to establish schools; reduce or waive taxes; establish local commercial banks and credit cooperatives; strengthen culture by developing minority literature, art, news, publishing, films, and television; protect historically significant minority sites and relics; keep and develop "excellent" aspects of minority culture; and establish border trade. Decisions or orders relating to an autonomous area must be "suitable" to circumstances in the area.¹⁵ If any "higher level state agency" decision is not appropriate for the actual circumstances of a locality, an autonomy agency may request that such state agency change the decision or request a cessation of its implementation. The state agency is required to respond within 60 days after receipt of the request.¹⁶ Popular consultations are neither forbidden nor required.

Regional and local laws and regulations on self-governance of minorities

TAR regulations¹⁷ have been formulated to "standardize" legislation-making activities and improve the procedures for lawmaking. Regulations define the authority of the people's Congress and its standing committee, prescribing proposal-making procedures for local regulations in Lhasa, and identifying which authorities have the power to interpret legislation. Lhasa regulations provide that draft legislation be submitted to the TAR People's Congress or the Lhasa People's Congress in both Tibetan and Chinese languages.¹⁸

The autonomy regulations of Tibetan autonomous prefectures in Gansu, Qinghai, and Sichuan Provinces provide for local implementation by the people's congresses and people's governments of the PRC Autonomy Law. In addition, the prefectural regulations provide for translation agencies to support the use and development of the Tibetan language¹⁹ and require Chinese cadres²⁰ to learn Tibetan.²¹ When

⁷ Decision of the State Council Regarding the Guarantee of the Equality of Rights of Minorities Living in Dispersed Communities (adopted on February 22, 1952, by the 125th Session of the State Council and issued on August 13, 1952), § 1.

⁸ Supra note 13, § 4; PRC Autonomy Law, § 47.

⁹ Report of the State Ethnic Affairs Commission (transmitted on October 12, 1979, by the Central Committee of the Chinese Communist Party and the State Council), Part 2.

¹⁰ Supra note 15, Part 3.

¹¹ Supra note 15, Parts 3 and 4.

¹² The autonomy agencies are the people's congresses and the people's governments.

¹³ Supra note 13, Part 2 and Part 3; PRC Autonomy Law, §§ 5, 7, 9.

¹⁴ PRC Autonomy Law, § 9.

¹⁵ PRC Autonomy Law, § 54.

¹⁶ PRC Autonomy Law, § 20.

¹⁷ Regulations of the Tibet Autonomous Region on Legislation (effective July 1, 2001; adopted by the Fourth Session of the Seventh People's Congress of the TAR on May 21, 2001).

¹⁸ Regulations on the Formulation of Local Laws by Lhasa Municipality (effective June 1, 2001; adopted on March 25, 2001, by the Fifth Session of the Seventh People's Congress of Lhasa Municipality and approved on May 8, 2001, by the 19th Session of the Standing Committee of the Seventh People's Congress of the TAR), § 47.

¹⁹ E.g., Certain Provisions of Gansu Province on the Implementation of the Law on the Autonomy of Ethnic Areas (adopted on September 20, 1988, by the Fourth Session of the Standing Committee of the Seventh People's Congress of Gansu Province) (the "Gansu Autonomy Regulations"), § 24; Autonomy Regulations of Hainan Tibetan Autonomous Prefecture (effective October 1, 1987; adopted on April 25, 1987, by the Second Session of the Eighth People's Congress of the Hainan Tibetan Autonomous Prefecture and approved on July 18, 1987, by the 27th Session of the Standing Committee of the Sixth People's Congress of Qinghai Province) (the "Hainan Autonomy Regulations"), § 15.

²⁰ A "cadre" is a Party or government official.

²¹ E.g., Hainan Autonomy Regulations, § 56.

studying and using their own language, minority cadres “should” also study Putonghua and the Chinese written language.²²

The regulations for the Sichuan prefectures in most cases contain a provision that religion may not be used to “interfere” with marriage.²³ Investigators and judicial staff may not concurrently hold the position of interpreter.²⁴ Regulations call for population planning to promote good health and the improvement of the population.²⁵ The development of minority medicine should be pursued by autonomy agencies or by research agencies established by autonomy agencies.²⁶ Generally, the regulations specify that the head of the prefecture government and the chairman or vice chairman of the standing committee of the people’s congresses are to be Tibetan, and that leadership positions in the people’s courts and people’s procuracies are also to include minorities.²⁷ Several regulations also require the suppression of “majority racism,” particularly “Han racism” and “regional racism.”²⁸

The Guoluo Autonomy Regulations require that at least one half of the members of the standing committee of its people’s Congress be Tibetan.²⁹ The Huangnan Autonomy Regulations require the autonomy agencies to adopt measures to gradually change, as determined by the masses, “old concepts and customs” that obstruct progress toward a socialist life. They prohibit anyone from, among other things, using religion to “interfere with” the promotion of technology or to coerce individuals into making contributions to religious institutions.³⁰

National laws and regulations on executive governance

National laws set quotas for minority representation in the National People’s Congress.³¹ Article 65 of the Constitution also provides that the Standing Committee of the National People’s Congress is to have an “appropriate” number of minority representatives. To this end, provisions exist (i) clarifying the guidelines and main tasks for selecting minority cadres; (ii) strengthening the training and education of minority cadres and further improving their political and professional quality; (iii) strengthening the team of minority cadres at the basic levels; (iv) strengthening the team of minority specialists and technical cadres; (v) carefully selecting the minority

²² E.g., Hainan Autonomy Regulations, § 56.

²³ Autonomy Regulations of Haibei Tibetan Autonomous Prefecture (effective October 1, 1987; adopted on April 25, 1987, by the Second Session of the Eighth People’s Congress of the Haibei Tibetan Autonomous Prefecture and approved on July 18, 1987, by the 27th Session of the Standing Committee of the Sixth People’s Congress of Qinghai Province) (the “Haibei Autonomy Regulations”), § 9; Autonomy Regulations of Huangnan Tibetan Autonomous Prefecture (effective March 1, 1988; adopted on October 12, 1987, by the Second Session of the Ninth People’s Congress of the Huangnan Tibetan Autonomous Prefecture and approved on December 26, 1987, by the 30th Session of the Standing Committee of the Sixth People’s Congress of Qinghai Province) (the “Huangnan Autonomy Regulations”), § 11; Autonomy Regulations of Yushu Tibetan Autonomous Prefecture (effective July 25, 1988; adopted on November 19, 1987, by the Third Session of the Seventh People’s Congress of the Yushu Tibetan Autonomous Prefecture and approved on April 20, 1988, by the Second Session of the Standing Committee of the Seventh People’s Congress of Qinghai Province) (the “Yushu Autonomy Regulations”), § 10; Autonomy Regulations of Guoluo Tibetan Autonomous Prefecture (effective January 1, 1991; adopted on April 16, 1990, by the Sixth Session of the Eighth People’s Congress of Guoluo Tibetan Autonomous Prefecture and approved on November 3, 1990, by the 17th Session of the Standing Committee of the Seventh People’s Congress of Qinghai Province) (the “Guoluo Autonomy Regulations”), § 9; Autonomy Regulations of the Haixi Mongolian and Tibetan Autonomous Prefecture (effective October 1, 1987; approved on July 18, 1987, by the 27th Session of the Standing Committee of the Sixth People’s Congress of Qinghai Province and amended on August 28, 1992, by the 28th Session of the Standing Committee of the Seventh People’s Congress of Qinghai Province) (the “Haixi Autonomy Regulations”), § 5.

²⁴ Haibei Autonomy Regulations, § 21; Huangnan Autonomy Regulations, § 21.

²⁵ Haibei Autonomy Regulations, § 52; Huangnan Autonomy Regulations, § 59; Yushu Autonomy Regulations, § 54; Guoluo Autonomy Regulations, § 54; Haixi Autonomy Regulations, § 50.

²⁶ Haibei Autonomy Regulations, § 51; Huangnan Autonomy Regulations, § 58; Yushu Autonomy Regulations, § 53; Guoluo Autonomy Regulations, § 53; Haixi Autonomy Regulations, § 49.

²⁷ Haibei Autonomy Regulations, §§ 11, 13, 20; Huangnan Autonomy Regulations, §§ 13, 14, 20; Yushu Autonomy Regulations, §§ 11, 12, 19; Guoluo Autonomy Regulations, §§ 11, 12, 14; Haixi Autonomy Regulations, §§ 12, 14.

²⁸ Hainan Autonomy Regulations, § 54; Haixi Autonomy Regulations, § 53.

²⁹ § 11.

³⁰ §§ 8, 11.

³¹ A National People’s Congress has a term of five years. See Constitution § 59; Proposal Regarding the Allocation of Quotas for the Minority Representatives of the Tenth National People’s Congress (adopted on April 28, 2002, by the 27th Session of the Standing Committee of the Ninth National People’s Congress), which is a reiteration of proposals for prior National People’s Congress (6th through 9th) for minority representation on the National People’s Congress.

cadres who are to be leaders; and (vi) including the training and selection of minority cadres in the agendas of departments in each area.³²

Regional and local laws and regulations on local executive governance

Implementing measures³³ provide for the composition of residents' committees, which are the most basic autonomy organization of the people. Measures also relate to the election of representatives of the TAR to the National People's Congress and people's congresses at all levels. Representatives of the TAR on the National People's Congress and the representatives on the people's congresses of the autonomous regions or cities are to be elected by the lower-level people's congresses.³⁴ Voters shall directly elect the representatives on the people's congresses of cities, areas directly under the control of the municipalities, counties, autonomous counties, villages, ethnic villages, and townships.³⁵ The standing committees of the people's congresses of autonomous areas or cities are to manage the election of representatives to the people's congresses at their level, and the lower level administrative subdivisions are to establish election committees to manage the election of representatives to the people's congresses at their levels.³⁶ The Election Measures set forth the number of representatives serving in the various levels of people's congresses in the TAR.³⁷ If other minorities live in concentrated areas in the TAR, then they also are to have representatives sitting on the people's congresses in accordance with the national election law.³⁸ The Election Measures provide for the creation of electoral districts, voter registration, nomination of candidates, and election procedures. If a person has the right to directly elect a representative, he or she shall exercise his or her vote by presenting either an identification or voting card. If more than half of the electorate vote, then the vote is valid, and a candidate will be considered to be elected if he or she receives a majority of votes.³⁹ Where the people's Congress at the county level and above elect the representatives to the next level people's congress, the former shall convene a meeting, and a candidate will be considered to be elected if he or she receives a majority of the votes of all of the representatives.⁴⁰ Elections are to be conducted by secret ballot.⁴¹ The Election Measures also provide that all Chinese citizens 18 or older have the right to vote and to be elected to the people's congresses.⁴² All documents used in elections shall be in both Chinese and Tibetan.⁴³ It is an offense, among other things, to incite ethnic relations, destroy the unity of the peoples, or instigate the separation of peoples.⁴⁴ Meetings of the people's Congress of the TAR must be conducted in both Chinese and Tibetan.⁴⁵

National laws and regulations on police and security

Section 120 of the Constitution provides that the autonomy agencies of ethnic autonomous areas may, upon the approval of the State Council and in accordance with the military system of the State and the needs of the locality, organize public security forces for the local area to safeguard social and public order.

³²Opinion of the State Ethnic Affairs Commission on the Work of Further Training and Selecting Minority Cadres, effective December 30, 1993, Zhongzufa [1993] No. 9.

³³Implementing Measures of the TAR for the Law of the People's Republic of China on the Organization of Urban Residents Committees (adopted on December 26, 1993, by the Seventh Session of the Standing Committee of the Sixth TAR People's Congress), and Detailed Rules for the Implementation of Elections of Representatives of People's Congresses at All Levels Within the Tibet Autonomous Region (adopted on April 18, 1981, by the 5th Session of the Standing Committee of the Third TAR People's Congress; as amended through the September 28, 1995, by the 16th Session of the Standing Committee of the Sixth TAR People's Congress in accordance with the Decision of the 12th Session of the Standing Committee of the Eight National People's Congress on February 28, 1995, on the Amendment to the Law of the People's Republic of China on the Election of the National People's Congress and the People's Congresses at All Levels in the Localities) (the "Election Measures").

³⁴Election Measures, § 2.

³⁵Election Measures, § 2.

³⁶Election Measures, § 8.

³⁷Election Measures, § 13.

³⁸Election Measures, § 18.

³⁹Election Measures, §§ 44, 52.

⁴⁰Election Measures, §§ 45, 52.

⁴¹Election Measures, § 46.

⁴²Election Measures, § 3.

⁴³Election Measures, § 20.

⁴⁴Election Measures, § 59(2).

⁴⁵Procedural Rules for the People's Congress of the Tibet Autonomous Region (adopted on August 7, 1989, by the Second Session of the Fifth TAR People's Congress and amended on January 20, 2002, by the 24th Session of the Standing Committee of the Seventh TAR People's Congress), § 4.

Regional and local laws and regulations on police and security

The TAR and various prefectures in Qinghai Province have adopted regulations to implement the Decision of the Standing Committee of the National People's Congress on Strengthening the Comprehensive Administration of Social and Public Order. The regulations set forth a framework to combat crime, specifying the roles of various agencies such as the courts, people's procuracies, public security bureaus, state security agencies, judicial agencies, and the people's armed police, as well as agencies, social groups, and enterprises. The goal is to combat crime by organizing social forces to use political, economic, legal, administrative, cultural, educational, and other measures to attack, prevent, and reduce crime and safeguard social order and stability. The local regulations for the TAR and the Haixi prefecture require the "relevant departments" to "strengthen the management" of religious affairs.⁴⁶

Regional and local laws and regulations on minorities' rights

The Law of the People's Republic of China on Assemblies, Processions and Demonstrations and the implementing measures of the TAR⁴⁷ and Lhasa Municipality⁴⁸ require permits to be issued by the competent authorities before assemblies, processions, and demonstrations may be held. Competent authorities include public security bureaus of the locality, municipality, or county.⁴⁹ No person may use religious or other activities to initiate or organize any assemblies, processions, or demonstrations that endanger the unity of the State or destroy the unity of ethnic groups or social stability.⁵⁰ Activities that oppose the Constitution, harm the State, instigate division among ethnic groups, or endanger public security and order are prohibited.⁵¹ Citizens may not initiate, organize, or participate in any assembly, procession, or demonstration held in cities outside the place where they reside. Without the approval of the competent authorities, foreign nationals may not participate in any assemblies, processions, or demonstrations organized by citizens in the TAR.⁵² Measures adopted in the TAR are also intended to implement the national legislation for the protection of women, minors, and disabled persons. Guarantees are established to promote the equality and rights of women and the disabled and set forth the legal obligations of parents to minors and the obligation of guardians, schools, social organizations, and the judicial system.⁵³

⁴⁶Regulations of the Tibet Autonomous Region on the Comprehensive Administration of Public Security (effective August, 18, 1994; adopted on August 18, 1994, by the 10th Session of the Standing Committee of the Sixth TAR People's Congress and amended on May 9, 2002, by the 26th Session of the Standing Committee of the Seventh TAR People's Congress), § 14; Regulations of Haixi Mongolian and Tibetan Autonomous Prefecture on the Comprehensive Administration of Public Security (effective October 1, 1995; adopted on April 25, 1995, by the Sixth Session of the Standing Committee of the Ninth People's Congress of the Haixi Mongolian and Tibetan Autonomous Prefecture of Qinghai Province and approved on July 29, 1995, by the 19th Session of the Standing Committee of the Eighth People's Congress of Qinghai Province), § 26.

⁴⁷Implementing Measures of the Tibet Autonomous Region for the Law of the People's Republic of China on Assemblies, Processions and Demonstrations (adopted on May 15, 1990, by the 10th Session of the Standing Committee of the Fifth TAR People's Congress).

⁴⁸Implementing Measures of Lhasa Municipality for the Law of the People's Republic of China on Assemblies, Processions and Demonstrations (effective May 15, 1990; adopted on May 5, 1990, by the 17th Session of the Standing Committee of the Fifth People's Congress of Lhasa Municipality and approved on May 15, 1990, by the 10th Session of the Standing Committee of the Fifth TAR People's Congress).

⁴⁹Supra note 53, § 5; supra note 54, § 4.

⁵⁰Supra note 53, § 4; supra note 54, § 5.

⁵¹Law of the People's Republic of China on Assemblies, Processions and Demonstrations, Article 12; supra note 54, § 12.

⁵²Supra note 53, §§ 13, 23; supra note 54, § 25.

⁵³See Implementing Measures of the Tibet Autonomous Region for the Law of the People's Republic of China on the Protection of the Rights and Interests of Women (adopted on August 18, 1994, by the 10th Session of the Standing Committee of the Sixth TAR People's Congress and amended on March 29, 1997, by the 23rd Session of the Standing Committee of the Sixth TAR People's Congress), Implementing Measures of the Tibet Autonomous Region for the Law of the People's Republic of China on the Protection of Minors (adopted on November 23, 1994, by the 12th Session of the Standing Committee of the Sixth TAR People's Congress, amended on March 29, 1997, by the 23rd Session of the Standing Committee of the Sixth TAR People's Congress, and further amended on November 25, 1999, by the 10th Session of the Standing Committee of the Seventh TAR People's Congress), and Implementing Measures of the Tibet Autonomous Region for the Law of the People's Republic of China on the Protection of Disabled Persons (effective April 1, 1998; adopted on January 9, 1998, by the 28th Session of the Standing Committee of the Sixth TAR People's Congress and amended on July 26, 2002, by the 27th Session of the Standing Committee of the Seventh TAR People's Congress).

National laws and regulations on economic rights

The PRC Autonomy Law grants autonomy agencies the authority to govern matters that affect the economic conditions of minority areas under their administration. Under the PRC Autonomy Law, autonomy agencies have the authority to determine the use, ownership, and protection of grasslands and forests; manage and protect natural resources; and undertake local infrastructure projects. Autonomy agencies also have the authority to develop foreign economic and trade activities and manage local finances, including contingency funds, taxation, banks, and credit cooperatives.

The PRC Autonomy Law stipulates that:

- (a) The State shall formulate preferential policies to support the development of foreign economic and trade activities of autonomous areas, expand the foreign trade powers of production enterprises in the autonomous areas, and encourage the export of locally produced products. Autonomous areas may open foreign trade ports with the approval of the State Council. Areas that share a border with foreign countries may, upon the approval of the State Council, develop border trade. Such areas shall enjoy preferential policies of the State with respect to their foreign economic and trade activities.⁵⁴
- (b) The State is to formulate preferential policies to attract and encourage the investment of domestic and foreign capital in ethnic autonomous areas. In determining national social and economic development plans, the “higher level state agencies” shall give attention to the special characteristics and needs of ethnic autonomous areas.⁵⁵ In accordance with uniform plans and market demand, the State shall give priority to natural resource development projects and infrastructure projects in ethnic autonomous areas. In major infrastructure projects, the State will “appropriately” increase the proportion of its investment and the ratio of “policy-nature” bank loans. When arranging infrastructure projects in ethnic areas, the State may reduce the amount of matching funds that an ethnic area must provide or exempt them entirely.⁵⁶
- (c) “Higher level state agencies” shall support the improvement of conditions for the production for agriculture, animal husbandry, and forestry industries, as well as water, transportation, energy, communications, and other infrastructure.⁵⁷
- (d) When the State develops natural resources or carries out construction in autonomous regions, the State shall consider the interests of the autonomous area and make arrangements that benefit the economy of the autonomous area, with consideration to the production and lives of local minorities. The State shall take measures to give compensation for natural resources that are transported out of autonomous areas.⁵⁸
- (e) Autonomy agencies have the authority to manage and protect natural resources in autonomous areas.⁵⁹

The Ministry of Labor has implemented preferential labor policies for minority autonomous areas such as lowering minimum standards for recruitment, giving minorities priority in employment if all conditions are equal, and giving priority to hiring minorities to fill jobs created by natural attrition. In addition, the Ministry has sought to encourage minority students to take entrance exams for vocational training schools and to require vocational schools in minority areas to enroll a “certain percentage” of minority students and “appropriately” modify the admissions score standards.⁶⁰

The Provisions on the Management of Subsidies for Minority Areas⁶¹ authorize subsidies for minorities in the national budget to meet special expenses of minorities for promoting production, culture, education, medical care, and health.

Regional and local laws and regulations on economic rights

The regional and local autonomy regulations that implement the PRC Autonomy Law in the autonomy areas in Qinghai, Sichuan, and Yunnan Provinces (specifically the prefectures of Yushu, Guolu, Haixi, Ganzi, A Ba, and Qiang, Diqing and Muli

⁵⁴ §31.

⁵⁵ §55.

⁵⁶ §56.

⁵⁷ §63.

⁵⁸ §65.

⁵⁹ §28.

⁶⁰ Letter of the General Office of the Ministry of Labor on Giving Special Consideration to Minority Areas in respect of Labor Matters (Laobantinghanzi (1991) No. 11, April 8, 1991.

⁶¹ Issued on July 7, 1979, by the State Ethnic Affairs Commission and the Ministry of Finance.

County) contain provisions on economic rights that essentially mirror the corresponding provisions in the national PRC Autonomy Law. Autonomy agencies have autonomy in arranging and managing the economic development and the finances of the autonomous area. The autonomy agencies are mandated to actively organize the procurement and supply of goods that are specially required by minorities and to give support and consideration in the form of “capital, technology, and the supply of raw materials.”⁶²

Regional and local laws and regulations on natural resources

Regulations of the TAR provide for the “rational development” and use of mineral resources.⁶³ Entities that develop mineral resources in the TAR are to take into account the interests of the people in the mining area and promote economic development and social progress in the area.⁶⁴ All levels of people’s governments are to actively encourage and attract mining activities in remote and impoverished areas.⁶⁵ Other regulations protect scenic areas, lakes, rivers, and drinking water sources; control air and noise pollution; and provide other environmental protections.⁶⁶

The regulations of Tianzhu County in Gansu Province require that mining programs must implement policies relating to ethnic groups as well as laws relating to workers of an ethnic group and are to respect the minorities’ traditions and religion and safeguard and develop the unity of ethnic groups.⁶⁷ Prefecture regulations give priority to the prefecture regarding the rational development and use of natural resources.⁶⁸ In Gannan prefecture of Gansu Province, a portion of the gold or silver produced may be used by ethnic minorities in the area to make decorative products.⁶⁹

⁶² E.g., Autonomy Regulations of Hainan Tibetan Autonomous Prefecture (effective October 1, 1987; adopted on April 25, 1987, by the Second Session of the Eighth People’s Congress of the Hainan Tibetan Autonomous Prefecture and approved on July 18, 1987, by the 27th Session of the Standing Committee of the Sixth People’s Congress of Qinghai Province) (the “Hainan Autonomy Regulations”), §§ 30 and 35; Autonomy Regulations of A Ba Tibetan and Qiang Autonomous Prefecture (effective July 12, 1986; adopted on May 21, 1986, by the Fourth Session of the Fifth People’s Congress of the A Ba Tibetan Autonomous Prefecture and approved on July 12, 1986, by the 20th Session of the Standing Committee of the Sixth People’s Congress of Sichuan Province; adopted on January 5, 1988, by the First Session of the Sixth People’s Congress of the A Ba Tibetan and Qiang Autonomous Prefecture and approved on March 16, 1988, by the 2nd Session of the Standing Committee of the Seventh People’s Congress of Sichuan Province) (the “A Ba Autonomy Regulations”), § 37.

⁶³ Regulations of the Tibet Autonomous Region on the Management of Mineral Resources (effective July 1, 1999; adopted on April 1, 1999, by the 6th Session of the Standing Committee of the Seventh TAR People’s Congress and amended on January 20, 2002, by the 24th Session of the Standing Committee of the Seventh TAR People’s Congress), § 3.

⁶⁴ *Supra* note 69, § 4.

⁶⁵ *Supra* note 69, § 5.

⁶⁶ Regulations of the Tibet Autonomous Region on the Protection of the Environment (effective September 1, 2003; adopted on July 24, 2003, by the Fifth Session of the Standing Committee of the Eighth TAR People’s Congress).

⁶⁷ Regulations of Tianzhu Tibetan Autonomous County of Gansu Province on the Management of Mineral Resources (effective March 1, 1995; adopted on March 20, 1994, by the Second Session of the Thirteenth People’s Congress of Tianzhu Tibetan Autonomous County, approved on January 21, 1995, by the 13th Session of the Standing Committee of the Eighth People’s Congress of Gansu Province, and amended on March 26, 1999, by the 9th Session of the Standing Committee of the Ninth People’s Congress of Gansu Province), § 4.

⁶⁸ E.g., A Ba Autonomy Regulations, § 25; Autonomy Regulations of Ganzi Tibetan Autonomous Prefecture (effective July 12, 1986; adopted on June 4, 1986, by the Third Session of the Fifth People’s Congress of the Ganzi Tibetan Autonomous Prefecture and approved on July 12, 1986, by the 20th Session of the Standing Committee of the Sixth People’s Congress of Sichuan Province), § 29; Autonomy Regulations of Muli Tibetan Autonomous County (effective March 13, 1992; adopted on March 18, 1990, by the First Session of the Seventh People’s Congress of the Muli Tibetan Autonomous County and approved on March 13, 1992, by the 28th Session of the Standing Committee of the Seventh People’s Congress of Sichuan Province), § 24.

⁶⁹ Regulations of Gannan Tibetan Autonomous Prefecture of Gansu Province on the Management of Mineral Resources (adopted on March 30, 1999, by the Second Session of the Twelfth People’s Congress of Gannan Tibetan Autonomous Prefecture and approved on May 26, 2000, by the 16th Session of the Standing Committee of the Ninth People’s Congress of Gansu Province), § 24.

National laws and regulations on education

Official opinions and notices⁷⁰ direct public institutions to take measures aimed at ensuring an adequate education for minorities. To this end, schools may waive or lower tuition and other fees for minority students who have special hardships; minority young people with work experience or who have excelled should have priority in admission into colleges and universities; preparatory classes at colleges and universities should be available to minorities; students who successfully complete the one year preparatory program and who have “a good political outlook” should be admitted to colleges or universities; threshold admission scores may be lowered for minority students; central government subsidies should be provided for the development of vocational education for minorities; schools for teachers are permitted to have quotas for the admission of minority students from ethnically commingled areas and minority graduates of such schools are to be given priority in assignments to schools for minorities or schools that have a large minority student population; medical schools in minority areas must guarantee that an “appropriate” number of minority students are accepted each year such that the ratio of minority students to non-minority students will “eventually” reflect the population ratio in the minority area; and medical schools in economically developed provinces should be paired up with those in minority areas—encouraging visiting teachers from minority areas to conduct advanced study and research and sending specialists to minority areas to teach, hold seminars, and train local professionals. For example, Beijing should support Inner Mongolia, Shandong should support Qinghai, Tianjin should support Gansu, Shanghai should support Yunnan and Ningxia, and the entire country should support Tibet.

With respect to medical education, special attention is to be given to the development of minority medical studies, Mongolian, Tibetan, and Uighur medical studies shall be performed in Inner Mongolia, Qinghai, and Xinjiang, respectively.⁷¹

Regional and local laws and regulations on education

The PRC Autonomy Law provides that the autonomy agencies have the authority, in accordance with the education policies, laws, and regulations of the State, to determine the education plans of the locality, establishing all types of schools, the school system, the form of classes, the curriculum, the language of instruction, and the method of recruiting students.⁷² Public schools for ethnic minorities shall primarily be boarding schools with special financial assistance targeting schools in minority pastoral areas and mountainous regions where minorities are dispersed and there are economic difficulties. The local financial departments are to “resolve” the funding for establishing schools and for providing financial aid. If they have difficulties, then the higher level financial departments are to grant subsidies.⁷³ Schools and other educational institutes that focus on minority students and have the

⁷⁰ E.g., Opinion on Strengthening Medical Education in Minority Areas (effective May 26, 1980, issued by the Ministry of Health, the State Ethnic Affairs Commission and the Ministry of Education), Opinion on Strengthening the Vocational Skills Education of Minorities and Minority Areas (effective April 8, 1992, Jiaozhi [1992] No. 8, issued by the State Education Commission), Opinion on the Recruitment of Excellent Minority Youth into Colleges and Universities (effective October 16, 1992, Jiaominting [1992] No. 13, issued by the Office of the State Education Commission), Opinion on Supporting the Poor through Education in the 143 Impoverished Minority Counties Throughout the Country (effective October 19, 1992, Jiaominting [1992] No. 12, issued by the Office of the State Education Commission), Opinion on Strengthening Minority Education in Areas Where Minorities are Commingled (effective November 2, 1992, Jiaominting [1992] No. 15, issued by the Office of the State Education Commission), Opinion on Strengthening Minority Preparatory Classes in Ordinary Colleges and Universities (effective November 17, 1992, Jiaominting [1992] No. 17, issued by the Office of the State Education Commission), Notice on Circulating the Guide on the Development of Electronic Education Systems for Minorities and in Minority Areas (effective March 9, 1993, Jiaodian [1993] No. 2, issued by the State Education Commission and the State Ethnic Affairs Commission), Notice on Use of Uniform Textbooks for Students in Minority Preparatory Classes (effective May 12, 1993, Jiaominting [1993] No. 10, issued by the Office of the State Education Commission), Notice on Fulfilling Recruitment Plans for Minority Classes in Universities Directly Administered by the Ministry of Education (dated May 19, 1999, issued by the Ministry of Education), Opinion on Accelerating Vocational Education Reform and Development for Minorities and Minority Areas (effective July 28, 2000, Minweifa [2000] No. 199, issued by the State Ethnic Affairs Commission and the Ministry of Education).

⁷¹ Opinion on Strengthening Medical Education in Minority Areas (effective May 26, 1980, issued by the Ministry of Health, the State Ethnic Affairs Commission and the Ministry of Education), § 4.

⁷² § 36.

⁷³ § 37.

resources shall use textbooks in minority languages. In addition, the minority language shall be the language of instruction. Chinese classes will be offered, depending on the circumstances in the lower grades of elementary schools or middle schools. Putonghua and standardized Chinese characters will be promoted.⁷⁴ Regional and local laws and regulations that govern education have been formulated to implement the Law of the People's Republic of China on Compulsory Education, which requires nine years of compulsory education. Religion may not be advocated in schools, and superstitious thinking may not be propagated.⁷⁵ In the TAR and Gansu, Qinghai, and Sichuan Provinces, all children, including minority children, who have reached the age of six or seven are required to enroll in school and receive their compulsory education for a prescribed number of years, which may be less than the nine year goal depending on circumstances in the locality.⁷⁶ In the TAR and Gansu, Qinghai, and Sichuan Provinces, laws and regulations ensure that minority students receive instruction in both their minority language and Chinese.⁷⁷ In some of these provinces, regulations ensure that students use textbooks in minority languages.⁷⁸ In the Hainan prefecture of Qinghai, teacher training schools for minorities are to be established for training elementary school teachers. The teaching schools are to strengthen the teaching of the Chinese and Tibetan languages and other subjects so that student elementary teachers can master both Chinese and Tibetan and other required subjects.⁷⁹

No person may carry out religious activities or "advocate" religion to students in elementary or high schools.⁸⁰ Other regulations prohibit school age children from

⁷⁴ Ibid.

⁷⁵ E.g., Measures for the Implementation of the Law of the People's Republic of China on Compulsory Education (adopted on February 25, 1994, by the 8th Session of the Standing Committee of the Sixth People's Congress of the TAR, and amended on November 23, 2001, by the 23rd Meeting of the Standing Committee of the Seventh People's Congress of the TAR) (the "TAR Education Regulations"), § 6; Measures of Qinghai Province for the Implementation of the PRC Compulsory Education Law (effective October 1, 1988; adopted on September 2, 1988, by the 4th Session of the Standing Committee of the Seventh People's Congress of Qinghai Province and amended on August 28, 1992, by the 28th Session of the Standing Committee of the Seventh People's Congress of Qinghai Province) (the "Qinghai Education Regulations"), § 11.

⁷⁶ E.g., TAR Education Regulations, § 7; Measures of Gansu Province for the Implementation of the PRC Compulsory Education Law (adopted on September 3, 1990, by the 16th Session of the Standing Committee of the Seventh People's Congress of Gansu Province; amended on May 28, 1997, by the 27th Session of the Standing Committee of the Eighth People's Congress of Gansu Province; and further amended on March 30, 2002, by the 27th Session of the Standing Committee of the Ninth People's Congress of Gansu Province), § 8; Qinghai Education Regulations, § 5; Supplementary Provisions of A Ba Tibetan and Qiang Autonomous Prefecture to Implement the Compulsory Education Regulations of Sichuan Province (effective April 6, 1998; adopted on December 13, 1997, by the First Session of the Eighth People's Congress of the A Ba Tibetan and Qiang Autonomous Prefecture and approved on April 6, 1998, by the 2nd Session of the Standing Committee of the Ninth People's Congress of Sichuan Province) (the "A Ba Education Regulations"), § 3; Provisions of Ganzi Tibetan Autonomous Prefecture for the Implementing Regulations of Sichuan Province on Compulsory Education (effective May 28, 1991; adopted on December 21, 1990, by the 11th Session of the Standing Committee of the Sixth People's Congress of Ganzi Tibetan Autonomous Region and approved by the 23rd Session of the Standing Committee of the Seventh People's Congress on May 28, 1991) (the "Ganzi Education Regulations"), § 3.

⁷⁷ E.g., Tibet Education Regulations, § 20; Gansu Education Regulations, § 5; Qinghai Education Regulations, § 10; A Ba Qiang Education Regulations, § 5; Ganzi Education Regulations, § 8.

⁷⁸ E.g., Minority Education Regulations of the Hainan Tibetan Autonomous Prefecture (effective October 1, 1994; adopted on March 30, 1994, by the 6th Session of the Standing Committee of the Ninth People's Congress of the Hainan Tibetan Autonomous Prefecture of Qinghai Province, approved on July 30, 1994, by the 11th Session of the Standing Committee of the Eighth People's Congress of Qinghai Province; adopted on November 30, 1997, by the Third Session of the Tenth People's Congress of Hainan Tibetan Autonomous Prefecture and amended and approved on April 3, 1998, by the 1st Session of the Standing Committee of the Ninth People's Congress of Qinghai Province), § 11.

⁷⁹ Minority Education Regulations of the Hainan Tibetan Autonomous Prefecture (effective October 1, 1994; adopted on March 30, 1994, by the 6th Session of the Standing Committee of the Ninth People's Congress of the Hainan Tibetan Autonomous Prefecture of Qinghai Province, approved on July 30, 1994, by the 11th Session of the Standing Committee of the Eighth People's Congress of Qinghai Province; adopted on November 30, 1997, by the Third Session of the Tenth People's Congress of Hainan Tibetan Autonomous Prefecture and amended and approved on April 3, 1998, by the 1st Session of the Standing Committee of the Ninth People's Congress of Qinghai Province), § 26.

⁸⁰ E.g., TAR Education Regulations, § 6; Qinghai Education Regulations, § 11; A Ba Education Regulations, § 6.

entering temples and ban religious organizations from recruiting them for religious study.⁸¹

National laws and regulations on language

Official notices and national laws provide for the development of minority languages⁸² and indicate that all ethnic groups have the freedom to use and develop their own oral and written language.⁸³ Autonomy agencies of ethnic autonomous areas are to use the local commonly used language or languages in performing their duties in accordance with the stipulations of the autonomy regulations of the ethnic autonomous areas.⁸⁴ Han cadres working in minority areas are required to learn the local minority language, and minority cadres must learn Chinese.⁸⁵ All ethnic groups are encouraged to learn each other's languages.⁸⁶ Ethnic groups that do not have their own written language or standard written language are encouraged to choose an existing written language.⁸⁷ Schools with mostly minority students are required to use textbooks in the minority language of the students. While the language of instruction will be the minority language, Chinese language classes are to be offered at the appropriate grade and the use of Putonghua is to be promoted.⁸⁸ For the medical education of minorities under the Opinion on Strengthening Medical Education in Minority Areas,⁸⁹ minority languages may be used provided that the schools have adequate resources. Departments involved in publishing have been instructed to actively support the requests of ethnic groups with a standardized written language to publish books in ethnic languages, regardless of the size of the ethnic group. The budget for minority publishing is to be increased on an annual basis, and efforts should be made to increase printing and expand the distribution of minority publications.⁹⁰

Article 134 of the Constitution provides that citizens of all ethnic groups have the right to use their own minority language in conducting litigation. In addition, the people's courts and the people's procuracies are to provide translators for litigants who are not familiar with the locally used language. In hearing cases in areas where minorities are concentrated or where several minorities reside, the locally used language is to be used. Complaints, judgments, notices, and other written documents shall be in the locally used language or languages in accordance with actual needs.

Regional and local laws and regulations on language

Regional and local laws and regulations guarantee the freedom of Tibetan minorities to use and develop their own language.⁹¹ They also stipulate that the languages of all ethnic groups are equal.⁹² All official seals, forms of identification, and signs

⁸¹ E.g., Ganzi Education Regulations, § 6; Compulsory Education Regulations of Yushu Tibetan Autonomous Prefecture (effective November 23, 1994; adopted on May 13, 1994, by the Fifth Session of the Eighth People's Congress of the Yushu Tibetan Autonomous Prefecture of Qinghai Province and approved on November 23, 1994, by the 13th Session of the Standing Committee of the Eighth People's Congress of Qinghai Province), § 13; Compulsory Education Regulations of the Guoluo Tibetan Autonomous Prefecture (effective October 1, 1995; adopted by the Sixth Session of the Ninth People's Congress of the Guoluo Tibetan Autonomous Prefecture of Qinghai Province and approved by the 19th Session of the Standing Committee of the Eighth People's Congress of Qinghai Province on July 29, 1995), § 12.

⁸² E.g., Report of the State Ethnic Affairs Commission on Further Doing a Good Job in Respect of Minority Languages (issued on April 30, 1991, by the State Ethnic Affairs Commission and transmitted on June 19, 1991, by the State Council) ("SEAC Report"), PRC Autonomy Law, § 10; Regulations on the Work on Urban Ethnic Groups (effective September 15, 1993; approved on August 29, 1993, by the State Council), § 20.

⁸³ Constitution, Article 4; Law of the People's Republic of China on the Commonly Used Oral and Written Language of the State (effective January 1, 2001; adopted on October 31, 2000, by the 18th Session of the Standing Committee of the Ninth National People's Congress and published on October 31, 2000, by Decree No. 137 of the People's Republic of China), § 8; PRC Autonomy Law, § 10.

⁸⁴ Constitution, § 121.

⁸⁵ E.g., Hainan Autonomy Regulations, § 56.

⁸⁶ SEAC Report.

⁸⁷ Ibid.

⁸⁸ PRC Autonomy Law, § 37.

⁸⁹ Effective May 26, 1980, issued by the Ministry of Health, the State Ethnic Affairs Commission, and the Ministry of Education, § 1.

⁹⁰ Report of the State Ethnic Affairs Commission and the State Publishing Bureau on Strengthening the Publication of Books in Minority Languages (transmitted on March 14, 1981, by the State Council).

⁹¹ E.g., Hainan Autonomy Regulations, § 7; Haibei Autonomy Regulations, § 8; A Ba Autonomy Regulations, § 6.

⁹² E.g., Provisions of the TAR on the Study, Use and Development of the Tibetan Language (adopted on July 9, 1987, by the Fifth Session of the Fourth TAR People's Congress and amended on May 22, 2002, by the Fifth Session of the Seventh TAR People's Congress) (the "TAR Lan-

of regional and local government agencies, as well as signage for public facilities, advertisements, place names, street signs, and so forth are required to be in the local minority language.⁹³ Judicial agencies and courts at all levels are required to use minority languages in hearing or investigating cases and to provide litigants with interpreters.⁹⁴ Minorities also have the right to use their minority language when undertaking “letters to and visits with officials.”⁹⁵ Other minority language protections include laws and regulations providing that individuals who speak both Tibetan and Chinese enjoy preferential treatment with respect to hiring for government positions and⁹⁶ that Tibetan language broadcasting, television programs, and other media be developed.⁹⁷ Election materials may be in minority languages,⁹⁸ and product packaging and product information for goods that are manufactured in the TAR or autonomous prefectures for sale in those areas are to be written in Chinese and Tibetan.⁹⁹

National laws and regulations on cultural traditions

Official notices and explanations¹⁰⁰ that govern cultural traditions protect certain traditions, particularly ancient texts as well as the oral and funeral traditions of minority groups. The preservation, collection, and organization of ancient texts of ethnic groups have been deemed a priority by the State Ethnic Affairs Commission, which identifies such texts as part of China’s cultural heritage.¹⁰¹ Relevant departments have been instructed to create the necessary working and living conditions for specialists to organize ancient texts.¹⁰² The provinces, autonomous regions, and municipalities directly under the central authorities are to organize people to collect and save oral traditions.¹⁰³ The right of certain minority groups to retain or “reform” their own funeral traditions is also respected. Although subject to certain restrictions for the protection of public health such as the prohibition on moving and the requirement for immediate sterilization and cremation of bodies of persons who

guage Regulations”), § 2; Working Regulations of the Gannan Tibetan Autonomous Prefecture of Gansu Province on the Tibetan Language (approved on June 1, 1996, by the 21st Session of the Standing Committee of the Eighth People’s Congress of Gansu Province). (the “Gannan Language Regulations”), § 2; Working Regulations of the Hainan Tibetan Autonomous Prefecture on the Tibetan Language (effective on June 28, 1990, adopted on May 20, 1989, by the Fifth Session of the Eighth People’s Congress of the Hainan Tibetan Autonomous Prefecture and approved on June 28, 1990, by the 15th Session of the Standing Committee of the Seventh People’s Congress of Qinghai Province), (the “Hainan Language Regulations”), § 2.

⁹³ E.g., TAR Language Regulations, § 11; Gannan Language Regulations, § 14; Hainan Language Regulations, § 10; Working Regulations of the Ganzi Tibetan Autonomous Prefecture on the Use of the Tibetan Language (adopted on November 21, 1997, by the Fifth Session of the Seventh People’s Congress of the Ganzi Tibetan Autonomous Prefecture and approved on April 6, 1998, by the 2nd Session of the Standing Committee of the Ninth People’s Congress of Sichuan Province) (the “Ganzi Language Regulations”), § 18.

⁹⁴ E.g., TAR Language Regulations, § 5; Gannan Language Regulations, § 12; Hainan Language Regulations, § 16; Ganzi Language Regulations, § 10.

⁹⁵ The “letters and visits” system is a petition system that allows individuals to make complaints or present grievances to state agencies and officials by writing letters, making phone calls, or visiting such agencies. E.g., Hainan Language Regulations, § 17, Ganzi Language Regulations, § 11.

⁹⁶ TAR Language Regulations, § 10; Working Regulations of the Tianzhu Tibetan Autonomous County of Gansu Province on the Tibetan Language (adopted on January 18, 1999, by the Second Session of the Fourteenth People’s Congress of the Tianzhu Tibetan Autonomous County and approved on March 26, 1999, by the 9th Session of the Standing Committee of the Ninth People’s Congress of Gansu province), § 8.

⁹⁷ TAR Language Regulations, § 9; Hainan Language Regulations, § 20; Ganzi Language Regulations, § 15.

⁹⁸ Ganzi Language Regulations, § 9; Working Regulations of the Guoluo Tibetan Autonomous Prefecture on the Tibetan Language (effective July 17, 1993, adopted on April 24, 1993, by the Fourth Session of the Ninth People’s Congress of Guoluo Tibetan Autonomous Prefecture and approved on July 17, 1993, by the 4th Session of the Standing Committee of the Eighth People’s Congress of Qinghai Province) (the “Guoluo Language Regulations”), § 13.

⁹⁹ TAR Language Regulations, § 12; Gannan Language Regulations, § 15; Hainan Language Regulations, § 11; Ganzi Language Regulations, § 18.

¹⁰⁰ Notice of the Office of the State Council Transmitting the Request of the State Ethnic Affairs Commission on Saving and Organizing Ancient Minority Books (April 19, 1984) (the “Ancient Text Notice”); Explanation Regarding the Provisions of the Funeral Management Regulations of the State Council Relating to Respect of Minority Funeral Traditions (effective June 10, 1999, issued by the Ministry of Civil Affairs, the State Ethnic Affairs Commission, and the Ministry of Health; Minshifa [1999] No. 17) (the “Burial Provisions”).

¹⁰¹ Ancient Text Notice, Preamble.

¹⁰² Ancient Text Notice, Preamble.

¹⁰³ Ancient Text Notice, Section 2(5).

have died of the bubonic plague, cholera, or anthrax, no group may be forced to carry out cremations.¹⁰⁴

Regional and local laws and regulations on cultural traditions

Regional and local laws and regulations that govern cultural traditions vary. The development of Tibetan medical undertakings is to be included in the national economic and social development plans, as well as regional public health plans.¹⁰⁵ Public health institutions are required to have Tibetan medical personnel, instruments and equipment, and a Tibetan medical pharmacy.¹⁰⁶ Some regulations also encourage the development of traditional Tibetan medicine, as well as the protection and management of herb, plant, animal, and mineral resources used in the production of Tibetan medicines.¹⁰⁷ The people's governments at all levels in the Gannan prefecture of Gansu Province are required to protect and promote Tibetan and traditional Chinese medicine.¹⁰⁸ Other regulations call for the promotion of Tibetan medical studies, the development of Tibetan medical theory and practice, and the gradual regularization, scientificization, and modernization of Tibetan medical work.¹⁰⁹

Regional and local laws and regulations on the family

Regional and local laws and regulations that govern reproduction allow for variations from the national "one couple, one child" policy, which is not strictly enforced in minority regions. Although the "one couple, one child" policy¹¹⁰ is advocated for Tibetans, a second child is permitted, and a third child is controlled.¹¹¹ If both the husband and wife are state cadres, workers, or other non-rural residents, then permission for a second child may be granted if either the husband or wife is Tibetan or the first child has been evaluated as a child with a nonhereditary illness and is unable to participate in the normal labor force.¹¹² With respect to Tibetan people who live in pastoral villages or forested areas, the one child policy shall be advocated, but second and third children are permitted.¹¹³ For the third child, spacing between births is advocated. In the case of state cadres, workers and other non-rural persons, and rural and pastoral residents who wish to have a second child,

¹⁰⁴ Burial Provisions, §§ 1, 2 and 3.

¹⁰⁵ Regulations of Qinghai Province on the Development of Chinese, Tibetan and Mongolian Medicine (effective June 1, 2002; adopted on March 29, 2002, by the 29th Session of the Standing Committee of the Ninth People's Congress of Qinghai Province) (the "Qinghai CTM Medicine Regulations"), § 7; Regulations of Qinghai Province on the Development of Chinese, Tibetan and Mongolian Drugs (effective October 1, 2002; adopted on July 29, 2002, by the 31st Session of the Standing Committee of the Ninth People's Congress of Qinghai Province) (the "Qinghai CTM Drug Regulations"), § 4; Regulations of the Gannan Tibetan Autonomous Prefecture of Gansu Province Regarding the Development of Tibetan Medicine (approved on September 28, 2001, by the 24th Session of the Standing Committee of the Ninth People's Congress of Gansu Province) (the "Gannan Tibetan Medicine Regulations"), § 5.

¹⁰⁶ Gannan Tibetan Medicine Regulations, § 11.

¹⁰⁷ Qinghai CTM Drug Regulations, § 11; Gannan Tibetan Medicine Regulations, § 10; Regulations of the Yushu Tibetan Autonomous Prefecture on the Management of Tibetan Medicine (effective November 1, 1995, approved on May 14, 1995, by the Sixth Session of the Eighth People's Congress of the Yushu Tibetan Autonomous Prefecture of Qinghai Province and adopted on September 22, 1995, by the 20th Session of the Standing Committee of Eighth People's Congress of Qinghai Province), §§ 8, 9.

¹⁰⁸ Regulations of the Gannan Tibetan Autonomous Prefecture of Gansu Province Regarding the Development of Tibetan Medicine (approved on September 28, 2001, by the 24th Session of the Standing Committee of the Ninth People's Congress of Gansu Province).

¹⁰⁹ Qinghai CTM Regulations, §§ 18, 22, 23; Gannan Tibetan Medicine Regulations, § 4.

¹¹⁰ Regulations of Gansu Province on Population and Family Planning (adopted on November 28, 1989, by the 11th Session of the Standing Committee of the Seventh People's Congress of Gansu Province, amended on September 29, 1997, and further amended on September 27, 2002), § 21; Regulations of Qinghai Province on Population and Family Planning (effective January 1, 2003; adopted on September 20, 2002, by the 32nd Session of the Standing Committee of the Ninth People's Congress of Qinghai Province), § 13; Adapting Provisions of the Gannan Tibetan Autonomous Prefecture of Gansu Province on the Implementation of the Regulations of Gansu Province on Family Planning (adopted on September 2, 1999, by the 11th Session of the Standing Committee of the Ninth People's Congress of Gansu Province) (the "Gannan Family Planning Regulations"); Measures of Ganzi Tibetan Autonomous Prefecture on Family Planning (adopted on June 24, 1988, by the 27th Session of the Standing Committee of the Fifth People's Congress of Ganzi Tibetan Autonomous Prefecture and approved on May 8, 1989, by the 9th Session of the Standing Committee of the Seventh People's Congress of Sichuan Province; amendment adopted on December 18, 1998, by the 35th Session of the Standing Committee of the Seventh People's Congress of Ganzi Tibetan Autonomous Prefecture and approved on June 1, 1999, by the 9th Session of the Standing Committee of the Ninth People's Congress of Sichuan Province) ("Ganzi Family Planning Regulations").

¹¹¹ Gannan Family Planning Regulations, § 3.

¹¹² Gannan Family Planning Regulations, § 4; Ganzi Family Planning Regulations, § 4.

¹¹³ Gannan Family Planning Regulations, § 5; Ganzi Family Planning Regulations, §§ 14, 15.

the period shall be at least three years.¹¹⁴ “Remedial measures” may deal with unplanned pregnancies for couples who already have two children. In areas that permit three children, when a couple already has three children, either the husband or wife must undergo sterilization.¹¹⁵

In the TAR, Qinghai, and Sichuan, traditional minority marriage ceremonies are permitted, though polygamy and polyandry have been abolished, and religion may not be used to “interfere” with marriage.¹¹⁶ Laws and regulations in certain Tibetan prefectures in Qinghai and Sichuan expressly protect the right of persons of different ethnic groups to marry one another.¹¹⁷ Prohibitions exist for arranged marriages and the sale of a person into marriage.¹¹⁸

National laws and regulations on religion

Under a 1952 State Council decision, all minorities are to enjoy, among other things, the same freedom of religion as is enjoyed by Han people in the same locality.¹¹⁹ The State Ethnic Affairs Commission requires that the observance of minority holidays, dietary restrictions, and religious practices be allowed.¹²⁰

The PRC Autonomy Law requires the autonomy agencies of ethnic autonomy areas to guarantee the freedom of religion of citizens of all ethnic groups. No state agency, social group, or individual may force any citizen to adopt any beliefs or disavow any religious beliefs and may not discriminate against citizens who have religious beliefs and those who do not. The State protects “normal” religious activities. However, no person may use religion to destroy social order, damage the health or well-being of citizens, or interfere with the state education system. In addition, religious groups and institutions may not accept support from “foreign forces.”¹²¹

Regional and local laws and regulations on religion

While the government respects and protects the religious freedom of citizens,¹²² all religious activities must be carried out within the scope of the Constitution and in compliance of all laws, regulations, and policies.¹²³ All religious groups and

¹¹⁴ Gannan Family Planning Regulations, § 6; Ganzi Family Planning Regulations, § 16.

¹¹⁵ Gannan Family Planning Regulations, § 9.

¹¹⁶ Adapting Regulations of the TAR on the Implementation of the Marriage Law of the People's Republic of China (effective January 1, 1982; adopted on April 18, 1981, by the 5th Session of the Standing Committee of the Third TAR People's Congress), §§ 2, 3, 4; Supplemental Provisions of the Huangnan Tibetan Autonomous Prefecture on the Implementation of the PRC Marriage Law (effective August 7, 1982; approved on August 7, 1982, by the 19th Session of the Standing Committee of the Fifth People's Congress of Qinghai Province) (the “Huangnan Marriage Provisions”), § 4; Supplemental Provisions of the Haibei Tibetan Autonomous Prefecture on the Implementation of the PRC Marriage Law (effective July 16, 1983; approved on July 16, 1983, by the 2nd Session of the Standing Committee of the Sixth People's Congress of Qinghai Province) (the “Haibei Marriage Provisions”), § 3; Supplemental Provisions of the Ganzi Tibetan Autonomous Prefecture of Sichuan Province on the Implementation of the PRC Marriage Law (effective July 1, 1982; adopted on November 19, 1981, by the Sixth Session of the Fourth People's Congress of Ganzi Tibetan Autonomous Prefecture and approved on December 26, 1981, by the 13th Session of the Standing Committee of the Fifth People's Congress of Sichuan Province) (the “Ganzi Marriage Provisions”), §§ 3, 7.

¹¹⁷ Huangnan Marriage Provisions, § 5; Haibei Marriage Provisions, § 4.

¹¹⁸ Ganzi Marriage Provisions, § 4, Supplemental Provisions of A Ba Tibetan and Qiang Autonomous Prefecture on the Implementation of the PRC Marriage Law (effective January 1, 1984; adopted on March 17, 1983, by the 12th Session of the Standing Committee of the Fourth People's Congress of the A Ba Tibetan Autonomous Prefecture and approved on July 12, 1983, by the 2nd Session of the Standing Committee of the Sixth People's Congress of Sichuan Province; amended on July 8, 1988, by the 4th Session of the Standing Committee of the Sixth People's Congress of A Ba Tibetan and Qiang Autonomous Prefecture and approved on September 26, 1988, by the 5th Session of the Standing Committee of the Seventh People's Congress of Sichuan Province), § 2; Hainan Marriage Provisions, § 3.

¹¹⁹ Supra note 13, § 1.

¹²⁰ Supra note 15, Parts 3 and 4.

¹²¹ PRC Autonomy Law, § 11.

¹²² Interim Measures of the TAR on the Administration of Religious Affairs (effective December 20, 1991; adopted on December 9, 1991, by the Standing Committee of the TAR People's Government) (the “TAR Religion Measures”), § 1; Interim Provisions of Gansu Province on the Administration of Religious Affairs (effective November 16, 1991, adopted by the 21st Session of the Standing Committee of the People's Government of Gansu Province) (the “Gansu Religion Provisions”), § 29; Provisions of Yunnan Province on the Administration of Religious Affairs (effective January 1, 1998; adopted on December 2, 1997, and issued on December 25, 1997, by the 39th Session of the Standing Committee of the People's Government of Yunnan Province) (the “Yunnan Religion Provisions”), § 3.

¹²³ TAR Religion Measures, § 2; Provisions of Qinghai Province for the Administration of Places of Religious Activity (effective October 1, 1992; adopted by the 28th Session of the Stand-

places of religious activity and individuals must accept the leadership of the Communist Party of China and the government and support the socialist system.¹²⁴ Religion or places of religious activity may not be used to incite trouble, create havoc, or carry out criminal activities such as separatism, destroy the unity of ethnic groups, or disturb social and public order.¹²⁵

The approval of the people's government is required for the rebuilding or opening of all places of religious activity.¹²⁶ Registered places will receive legal protection.¹²⁷ Places of religious activity are to be managed by "patriotic religious groups whose members must support the Party and socialism, be patriotic and law abiding, and who safeguard the unity of the State and ethnic groups."¹²⁸

The Interim Measures of the TAR on the Administration of Religious Affairs set a quota and application system for monks and nuns.¹²⁹ Applicants who wish to become a monk or nun must, among other things, be patriotic and law abiding.¹³⁰

Propaganda and publishing departments are to control the publication of documents that contain religious content so that they conform with the religious policies of the Party or the State.¹³¹ Approval from "relevant departments" is required to edit, publish, or distribute religious materials, including video and audio recordings.¹³²

In Gansu Province, religious teachers may not proselytize outside places of religious activity.¹³³ Moreover, the activities of self-proclaimed preachers are prohibited.¹³⁴

With respect to foreign contacts, places of religious activity are to abide by the principles of independence and autonomy.¹³⁵ No foreign donations for proselytizing activities that have "conditions" attached to them may be accepted.¹³⁶ Major donations from foreign organizations or followers require the approval of the people's government or the religious affairs bureau of the State Council.¹³⁷ Foreign personnel who go to Qinghai may not, "without approval," broadcast audio or video tapes of sermons by foreign religious persons or distribute religious tracts.¹³⁸

PREPARED STATEMENT OF CHRISTOPHER P. ATWOOD

APRIL 11, 2005

I would first like to express my appreciation for the opportunity to appear today before the Congressional Executive Commission on China and present my perspective on the question of "China's Regional Autonomy Law: Does it Protect Minority Rights?"

Rather than discuss the broad range of minority rights issues in play in Inner Mongolia today, I would like to focus on the issue of "ecological migration" which illustrates in a striking matter how the guarantees of autonomy in the regional autonomy law fail to provide protection against massive state-directed dislocation of the Mongol nationality in China.¹

ing Committee of the Seventh People's Congress of Qinghai Province) (the "Qinghai Religious Places Provisions"), §10; Gansu Religion Provisions, §21; Yunnan Religion Provisions, §5.

¹²⁴TAR Religion Measures, §3; Qinghai Religious Places Provisions, §12; Gansu Religion Provisions, §29.

¹²⁵TAR Religion Measures, §25; Gansu Religion Provisions, §8; Yunnan Religion Provisions, §6.

¹²⁶TAR Religion Measures, §4; Qinghai Religious Places Provisions, §3; Gansu Religion Provisions, §§5, 7; Yunnan Religion Provisions, §15.

¹²⁷TAR Religion Measures, §4; Gansu Religion Provisions, §5.

¹²⁸TAR Religion Measures, §§16, 18; Qinghai Religious Places Provisions, §6; Gansu Religion Provisions, §§6, 33; Yunnan Religion Provisions, §9.

¹²⁹§7.

¹³⁰§8.

¹³¹TAR Religion Measures, §27.

¹³²Yunnan Religion Provisions, §26; Gansu Religion Provisions, §9.

¹³³Gansu Religion Provisions, §11.

¹³⁴Gansu Religion Provisions, §24.

¹³⁵TAR Religion Measures, §19; Qinghai Religious Places Provisions, §19; Gansu Religion Provisions, §38; Yunnan Religion Provisions, §7.

¹³⁶TAR Religion Measures, §24; Yunnan Religion Provisions, §29.

¹³⁷TAR Religion Measures, §24; Gansu Religion Provisions, §41.

¹³⁸Qinghai Religious Places Provisions, §20.

¹Information on ecological migration is very difficult to obtain, a fact which by itself casts doubt on whether the policy's rationale and implications have been sufficiently debated. In preparing this paper I have been greatly assisted by the panelists at the panel "Ecological Migration: Environment, Ethnicity, and Human Rights in Inner Mongolia," which I chaired at the Association for Asian Studies (AAS) Annual Meeting in Chicago on April 3, 2005. I would like

The earliest versions of “ecological migration” were pioneered in the early 1990s in Alashan district in far-western Inner Mongolia under the moniker “three-ways labor restructuring.” Responding to ongoing severe desertification and pasture degradation in Inner Mongolia’s driest district, the Alashan authorities started with the basic premise that excess population and livestock are at the root of pasture degradation. Their “three-ways restructuring” plan envisioned one-third of the current pastoral population continuing as herders, one-third switching to arable cultivation, and one-third entering township or urban enterprises.² In 2001, this basic idea was adopted by the Inner Mongolian government and renamed “ecological migration.” The vastly expanded plan involved moving up to 650,000 persons out of areas where grasslands are being subject to serious degradation into towns and other areas.³ Considerable sums are being assigned to build housing and other infrastructure for the new migrants, although whether these sums are adequate is controversial.⁴ In most areas it appears the relocations are not total with a small number of herders regarded as rationally managing rangeland being allowed to stay.⁵ Those relocated may return after five years if they too can demonstrate an ability to manage the grassland “scientifically.” Thus “ecological migration” is accelerating the trend to polarization in which a small number of relatively well-off herders (whether ethnically Mongol or Han Chinese) who have assimilated contemporary Chinese ideas of proper livestock management will continue herding, while the poorer, less sophisticated herders will be forced off the land. This social polarization corresponds to a polarization in the landscape itself, in which slowing expanding oases of intensively managed fodder and crop fields are set within rapidly growing desert areas, both squeezing out the remaining areas of usable natural grass pasture.

Any evaluation of “ecological migration” must deal with the undeniable ecological crisis in Inner Mongolia and the legacy of decades of over-reclamation and over-grazing. Massive dust storms in Beijing have alerted China’s central government to the seriousness of the situation. There exists a consensus among outside observers that while overstocking of livestock, particular sheep and goats valued for their wool and cashmere, today is currently driving much pasture degradation, historically it is over-reclamation of marginal lands for farming that has damaged Inner Mongo-

to thank the panelists Judith Shapiro (American University), Jeannine Brown (graduate student, University of East London), Hong Jiang (University of Wisconsin at Madison), S. Sodbilig (Inner Mongolia University), and Enhebatu Togochag (Southern Mongolian Human Rights Information Center) for their very informative and insightful papers and comments.

²A. Hurelbaatar, “A Survey of the Mongols in Present-Day China: Perspectives on Demography and Culture Change,” in *Mongolia in the Twentieth Century: Landlocked Cosmopolitan*, ed. Stephen Kotkin and Bruce A. Elleman (Armonk: M.E. Sharpe, 1999), p. 201.

³A key question about which data remains scarce is the actual destinations of “ecological migrants.” In Uūshin Juu sumu (Mongol township), Hong Jiang found that ecological migrants were being directed not to the mostly Mongol township center, but to the new town (zhen) of Chaghan Sūme (Chinese Chahanmiao) with a population of over 10,000 that are “mostly migrants from outside the area” recruited to exploit a natural gas field (Hong Jiang, “Fences, Ecologies, and Changes in Pastoral Life: Sandy Land Reclamation in Uxin Ju, Inner Mongolia, China” [unpublished paper], and “Cooperation, Land Use, and the Environment in Uxin Ju: The Changing Landscape of a Mongol-Chinese Borderland in China,” *Annals of the Association of American Geographers*, 94.1 [2004], p. 129). In Alashan it appears that half of the herders or 20–25,000 were originally to be resettled on a 70,000 hectare oasis communities as farmers, although the construction of this oasis seems to be currently mired in corruption, incompetence, and flawed science (Jeannine W. Brown, *State Sponsored Resettlement in Inner Mongolia: A Case Study in Environmental Forced Migration* [M.A. Thesis, University of East London, 2004], pp. 35–36; “Irresponsible cultivation causes desertification, environmental destruction threatens Beijing,” August 21, 2004, at <http://www.smhric.orgnews—45.htm>, accessed April 13, 2005). Many of the migrants are slated to become sedentary dairy farmers working with foreign-breed milk cows; see Brown, *op. cit.*, pp. 43–44.

⁴In Ordos, migrants receive 20,000 yuan (\$2,400) being given to each migrant (Jiang, “Fences, Ecologies, and Changes in Pastoral Life”). In Chakhar, Mongol herders being moved due to the production of a power plant received 10,000 yuan (\$1,100) if they agreed to renounce all return to their previous pastures; those who wish to retain their right to return would receive only a mud-brick house worth 5,000 yuan (\$550) and would have to purchase an Australian milk cow; see “Power Plant Project Forces Local Mongols to Abandon Ancestral Lands,” September 4, 2003, at <http://www.smhric.orgnews—30.htm> (accessed April 6, 2005).

⁵In Ereen Khot (Erlian) the city boundaries were recently expanded to include pastures with 354 herding households. Of these only 50–80 have been chosen to be allowed to stay on the land to promote “animal husbandry for tourism.” See “Ereen Hot municipality lends every effort to implement ecological migration project,” August 8, 2004, at <http://www.smhric.orgnews—43.htm> (accessed April 13, 2005). 100 households are being moved from Būridū gachaa (a sub-township unit) in Uūshin Juu township (Jiang, “Fences, Ecologies, and Changes in Pastoral Life”); the only figure on the total population of that gachaa available to me, that of 210 households in 1984 (Nei Menggu Zizhiqie diming zhi: Yike Zhao meng fence [Höhhot: Inner Mongolian Autonomous Region Local Names Commission, 1986], p. 326), would indicate that roughly a third of the households are being moved.

lian pastures the most.⁶ Although Inner Mongolian policy in 1984 officially prohibited further reclamation of pasture, the 2003 land-use law in Inner Mongolia appears to again encourage “wild-cat” land reclamation.⁷ Economically, the bankruptcy of smaller-scale, less capitalized producers and their replacement by larger-scale commercialized producers is a universal, if often painful, aspect of economic development, although rarely so explicitly decreed by the government as in this case.

In terms of human rights “ecological migration” raises serious problems. On an individual level we can ask, are the transfers truly voluntary? Are the residents being adequately compensated and given the ability to make a living in their new homes? Reports are contradictory. One geographer working in Ordos reports that the possibility of a prosperous town life is enticing for many poor herders, yet the fact that in this same community the possibility of returning after five years is also being touted as a concession palliation indicates migrants may have reasonable doubts of whether they will really succeed as towns people.⁸ Other observers report cases of forcible eviction by the police of communities unwilling to move.⁹ Undoubtedly implementation of such a vast program differs widely in the localities. Yet it would be naive to put too much stock in the possibility of the implementation of such movement being fully voluntary. “Ecological migration” is now government policy, adopted without significant public input and those slated for migration are undoubtedly aware that resistance is futile.¹⁰ As with any issue of (broadly speaking) eminent domain, i.e. use of government power to abridge citizens’ existing property rights, the question is, does this abridgement disproportionately affect one community more than another and was the decision taken with input from all the affected communities?

Since pasture degradation is linked to the dynamics of herding and farming, an issue with long ethnic repercussions in Inner Mongolia, the “ecological migration” issue must also be seen in the light of minority rights. Nomadic pastoralism was the traditional way of life for most Mongols up to the twentieth century and the herding life has been the font of Mongol values, art, literature, and national feeling. Although the pastoral Mongols in Inner Mongolia had largely shifted to sedentary ranching by the 1980s, herding remains important for the Mongols, both practically and symbolically.

Yet I would like to dispose of a red herring immediately. “Ecological migration” is often cast as a conflict of purely traditional Mongols, seen as stubbornly attached to rural life and pastoral nomadism for cultural reasons, and Han Chinese practicing innovative, high-productivity land use. In reality, however, the Mongols of Inner Mongolia are highly educated with strong aspirations to success in the modern sector. In fact their literacy rate is slightly higher than the Han Chinese, and they are over-represented in the ranks of cadres.¹¹ Pastoralists in Inner Mongolian are more commercialized and have a higher income than farmers.¹² For better or for worse, Mongol herders have been quite as willing to adopt the new intensive managerial strategy of herding.¹³ At the same time, the contention that this managerial ranching will be less harmful to the steppe than nomadic pastoralism is quite dubious scientifically; in fact increasing, not decreasing, mobility may be the key to

⁶Dennis Sheehy, “Grazing Management Strategies as a Factor Influencing Ecological Stability of Mongolian Grasslands,” *Nomadic Peoples* 33 (1993), pp. 17–30, esp. pp. 26–27.

⁷“Inner Mongolian authorities carry out new policies: Land use first, formalities later on” June 24, 2003 at <http://www.smhric.orgnews—27.htm> (accessed April 6, 2005).

⁸See Hong Jiang, “Fences, Ecologies, and Changes in Pastoral Life.”

⁹Gardi Borjigin, “Inner Mongolian Environment Threatened, Nomads Forced to Move,” at <http://www.expertclick.comNewsReleaseWiredefault.cfm?Action=ReleaseDetail&ID=8211> (accessed April 6, 2005).

¹⁰In April, 2002, a speech by CCP Politburo member Jiang Chunyun on tour in eastern Inner Mongolia monitored by the BBC made it clear that effectively implementing ecological migration will be the test for any cadre who hopes for promotion. “Any cadres in desertified areas who fail to attach importance to the environment should not be cadres; those who fail to build a sound environment are not good cadres . . . In areas where desertification is serious and where the conditions for human survival are more or less lost, ecological migration should be conducted.” Jiang Chunyun’s remarks on this tour are one of the clearest expressions of the central government’s views on environmental policy in Inner Mongolia. See <http://coranet.radicalparty.orgpressreviewprint—right.php?func=detail&par=3268> (accessed April 13, 2005).

¹¹Song Naigong, *Zhongguo renkou* (Nei Menggu fence) (Beijing: China Finance and Economics Press, 1987), pp. 363, 359–361.

¹²Nei Menggu da cidian (Höhhot: Inner Mongolia People’s Press, 1991), pp. 275, 296.

¹³Hong Jiang, “Cooperation, Land Use, and the Environment in Uxin Ju,” pp. 117–139.

saving the grasslands.¹⁴ What is beyond doubt is that the almost twenty years of state-directed and scientifically managed programs to alleviate grasslands degradation have not worked and indeed may well have accelerated desertification.¹⁵ The issue is thus not modernization vs. tradition, but ensuring that the Mongols have meaningful voice in the nature of the modernization of their own communities.

“Ecological migration” thus remains an ethnic issue. Although Han Chinese herders and farmers in affected areas are also being deported, the Mongols remain the predominant population group in the arid regions of Inner Mongolia slated for population removal, and hence are being disproportionately influenced by ecological migration.¹⁶ These arid grasslands constitute the heartlands of ethnic Mongol life, where they are the local majority and dominate their community as the long resident native population. Until the 2001, Mongolian language, social standards, and culture still formed the norm in these remote areas to which the immigrant Han Chinese partially conformed.¹⁷

Ecological migration is breaking up many, if not most, of these last redoubts of Mongol community life in Inner Mongolia. In their new environments, the resettled migrants will often lack proper skills and aptitudes for their new occupations. Indeed by moving the most traditional and least capitalized and managerial-style herders, the authorities are choosing also the ones least likely to adapt to urban life. When settled on the outskirts of predominantly Han cities and towns, the Mongols often lack Mongol-language schools and become marginal residents in a culturally and socially alien environment. Already there are alarming signs of dramatic drops in income among the resettled migrants as well as sharp drops in school attendance as relocated Mongol students find themselves with either no local schools, or only Chinese-language ones.¹⁸

Ecological migration thus runs directly contrary to any minority right to preserve its own communal life. Before 1947, pasture in un-reclaimed Mongol steppe was held collectively by the “banner” (or county-level unit). Decades of political and social conflict along the Mongol-Han frontier before 1947 had revolved around the Mongols’ tenacious and resourceful attempts to protect these collective land rights from encroachment by Han Chinese land-developers and their allies in the provincial governments. From the very inception of Chinese Communist land reform, however, land was transferred to the Chinese state, with rural producers being granted only longer or shorter leases. The deprivation of land-rights has hardly affected only Mongols or minorities; collectivization in 1956 and the current rampant abuse of government powers of eminent domain to facilitate urban sprawl are two other particularly egregious examples of this cavalier disregard of land rights.¹⁹ Articles 27 and 28 of the Law on Regional National Autonomy discuss land use and give the autonomous regions the right to determine ownership of pastures and forests. The same articles, however, absolutely prohibit any “damage” to the grasslands by individuals or collectives, and call on the autonomous authorities to give “priority to the rational exploitation and utilization of the natural resources that the local authorities are entitled to develop.” Technocracy thus explicitly trumps any and all land rights. The ongoing destruction of Mongol local community life involved in ecological migration is thus fully in accord with and indeed may actually be mandated by Chi-

¹⁴This was the conclusion reached by the large Macarthur Project; see Caroline Humphrey and David Sneath, *The End of Nomadism? Society, State and the Environment in Inner Mongolia* (Durham: Duke University Press), esp. pp. 292–93.

¹⁵Dennis Sheehy, op. cit.; Dee Mack Williams, *Beyond Great Walls: Environment, Identity, and Development on the Chinese Grasslands of Inner Mongolia* (Stanford: Stanford University Press, 2002), esp. pp. 117–137; Hong Jiang, op. cit., esp. fig. 9.

¹⁶A BBC broadcast includes interviews with Han farmers from Taipusi Banner and Mongolian herders from around Shiliin Gol both being affected by “ecological migration”; see <http://www.bbc.co.uk/worldserviceprogrammes/ramparched—landsparched—lands3.ram> (accessed April 6, 2005). While no ethnic breakdown has been released, the ethnic demography of Inner Mongolia and the overwhelming testimony of observers agree that mostly Mongols are being affected.

¹⁷Burton Pasternak and Janet W. Salaff, *Cowboys and Cultivators: The Chinese of Inner Mongolia* (Boulder: Westview, 1993), pp. 143–253.

¹⁸A study of 111 households relocated in Sönid Right Banner showed their average incomes dropping from 2,872 yuan before relocation in 2000 to 503 yuan after relocation in 2002. At the same time their debt load rose from 0 yuan to 7,000–8,000 yuan. Enrollment in Inner Mongolia’s elementary schools dropped 19.4 percent from 2002 to 2003. See Enhebatu Togocho, “Ecological Immigration and Human Rights,” paper presented at the Annual Meeting of the AAS, April 3, 2005.

¹⁹Abuses of eminent domain are also found in Inner Mongolia; see for example “Power Plant Project Forces Local Mongols to Abandon Ancestral Lands,” September 4, 2003, at <http://www.smhric.org/news—30.htm> (accessed April 6, 2005).

na's regional national autonomy law, as long as one accepts the disputed premise that nomadism and overstocking are behind desertification.

Still, if Inner Mongolia's regional national autonomous organs actually spoke for the Mongol nationality, then the articles 27 and 28 would still give the Mongols input into these technocratic land use decisions. This is, however, not the case. Along with the rejection of banner communal land-ownership in 1947, the newly created Inner Mongolian Autonomous Region also rejected the then common practice of over-lapping Han and Mongol local jurisdictions (Han counties or xian and Mongol banners) in favor of unitary local government. Inner Mongolia was eventually expanded to include most of China's far-flung Mongol communities, but only at the price of thereby acquiring an overwhelming Han majority. At the prefectural and county levels, administrative changes ostensibly intended to give each unit a balance of agricultural and pastoral economies frequently yoked sparsely settled majority-Mongol districts with vastly more populous Han-majority districts. As a result, only in the arid zone townships (sumu) and in some purely steppe banners do Mongols actually predominate in government.²⁰ At the prefectural and all-regional levels, Mongol cadres have the worst of both worlds: over-represented enough through "affirmative action" to generate resentment, but not numerous enough to actually control decisionmaking in Mongol interests.²¹ This does not even take into account the power of the central government in Beijing. Thus the regional national autonomous organs simply cannot act as protectors of specifically Mongol ethnic interests.

Now, no one can deny that it would be fundamentally unfair for decisionmaking in a region only 16 percent Mongol, as Inner Mongolia as a whole is, to be monopolized by Mongols. Yet apart from such a monopoly, it is hard to see how the Mongols as a group can be said to have had any meaningful voice in the momentous decision taken in 2001 to remove whole communities from their ancient ancestral homes. Under Chinese law, regional national autonomy is for better or for worse the only organ through which the minority nationalities exercise their collective right to autonomy, yet in a region with borders drawn wherever possible to combine Han and Mongol communities, such an autonomy cannot help but be fictitious. As a result, "ecological migration," despite its origin within the Inner Mongolian bureaucracy, is one more example of the inability of Chinese regional national autonomy, as currently structured, to allow the legitimate concerns of minorities to even be voiced openly, let alone prevail in the public arena.

PREPARED STATEMENT OF GARDNER BOVINGDON

APRIL 11, 2005

I have been invited to address the question of whether the Regional Autonomy Law protects "minority rights" in the Xinjiang Uyghur Autonomous Region. In a recent short monograph, I considered the matter at greater length.¹ Here, I will focus on one particular right invoked in the Regional Autonomy Law: that of each non-Han ethnonational group, or minzu, to "administer its own internal affairs" within the autonomous unit(s) assigned to it. Throughout I will refer to these groups not as "minorities" but as "minzu," a Chinese term which keeps attention focused not on their numbers but on their cultural distinctiveness with respect to Hans. I will take up three related matters: First, how is this right defined; in other words, what constitute "internal affairs"? Second, who administers the right? Third, what legal recourse do groups have if the right is abridged?

²⁰The sumu is a Mongol township; typically Mongols monopolize local government and police in the sumu even where Han migrants make up a large percentage or even a majority of the residents. See for example Pasternak and Salaff, *Cowboys and Cultivators*, esp. pp. 170–172. The special administrative terms used in Inner Mongolia's Mongol regions are as follows: Regular Chinese terms—Inner Mongolia's Mongol areas; Province—Autonomous Region; Prefecture or municipality—league (aimag in Mongolian, meng in Chinese); County (xian)—banner (khoshuu in Mongolia, qi in Chinese); Township (xiang)—sumu.

²¹William B. Jankowiak, in his *Sex, Death, and Hierarchy in a Chinese City: An Anthropological Account* (New York: Columbia University Press, 1993), pp. 33–37, 303, stresses the resentment which preferential policies for Mongols raise among Han in Inner Mongolia's capital, Hohhot; Uradyn E. Bulag describes the ethnic and regional factionalism in Inner Mongolian government in his "Dialectics of Colonization and Ethnicity Building," in *Governing China's Multiethnic Frontiers*, ed. Morris Rossabi (Seattle: University of Washington Press, 2004), pp. 84–116.

¹Available at <http://www.eastwestcenter.washington.org/Publications/bovingdon.pdf>.

1. A CONUNDRUM: WHAT ARE “INTERNAL AFFAIRS?”

On its face, the term “internal affairs” seems irremediably vague. In fact, much of the political contention in Xinjiang can be understood as a dispute over the meaning of the term. The Law itself does little to clarify the question. Specific articles enumerate the rights of members of each *minzu* to vote, to be treated as equals with all other citizens, to use and develop their native language, to foster the “excellent” parts of their native culture, and to conduct court proceedings in their native language. Other articles describe special powers of autonomy, such as the right to modify national laws if inappropriate to local circumstances, to modify educational materials, to make special fiscal arrangements locally and with Beijing, and to propose general and special autonomy laws for each unit. Yet in each case the exercise of the power of autonomy is subject to approval by higher-level government organs. In plain language, it is not autonomous.² In the view of many Uyghurs, a number of matters properly constitute “internal affairs” in the autonomous region bearing their name: control of immigration into Xinjiang; the exploitation of its land, water, and mineral resources; the content of education and the language in which it is delivered; the practice of religion; the choice of family size; and the management of expressive culture, including music, novels, film, and so on.³ At present all of these are beyond popular control.

2. WHO IS TO ADMINISTER THIS RIGHT?

If ordinary Uyghurs have little opportunity to manage their collective “internal affairs,” they must depend on political representatives to do so. As other scholars have demonstrated, there are very few mechanisms of interest aggregation available to ordinary citizens of China. Though the PRC Constitution explicitly guarantees free speech, assembly, and press (Article 35), many citizens have been prosecuted for words they have spoken or written, many others for taking part in demonstrations or peaceful gatherings. The evidence suggests that these restrictions have fallen with particular force on certain non-Han groups, such as Uyghurs. Attempts by Uyghur individuals or groups to raise concerns with the government, or even to express them publicly, have been harshly punished. Peaceful demonstrators, poets, teachers, and businesspeople have all been jailed on charges of “separatism” or “leaking state secrets.”⁴ The stark limitations on popular political expression lend special importance to those who represent ordinary citizens in government organs and in the Party. The PRC’s recent experiments with electoral democracy have thus far been confined to the local level. Most officials at higher levels of the government have long been and continue to be appointed by other officials. Party elites in autonomous units made extraordinary efforts to recruit government officials from among non-Hans during the 15 years after the PRC was founded. Their considerable success is reflected in the more than one hundred thousand non-Hans in government positions in Xinjiang by 1965. Of a total body of 190 thousand cadres, non-Hans thus constituted nearly 56 percent. Though well below their proportion in the general population (over 75 percent), these cadres lent substance by their numbers to the slogan of “*minzu* regional autonomy.” Unfortunately, the vast majority were purged during the Cultural Revolution (1966–76). By 1983, most of those had been reinstated and many more non-Hans recruited into the government, raising the total number to over 180 thousand. However, while the raw number of non-Han cadres rose substantially, their share in the total number fell over 10 percentage points to around 43 percent (“XUAR *gaikuang*” *bianxiezu* 1985: 52–4). According to the PRC State Council’s 2003 White Paper on Xinjiang, the percentage has risen again; today the nearly 350 thousand non-Han cadres constitute almost 52 percent of the total.⁵ The general point to be made is there consistently been a substantial gap between the proportion of non-Hans in government and in the population, though massive Han immigration has narrowed the gap considerably.

The increased proportion of non-Hans in government positions since 1970s was the direct result of Beijing’s calls in the early 1980s for increased “*nativization*” (*minzuhua*) of governments in autonomous regions. Many Uyghurs and other non-Hans hoped that this presaged more numerically representative governance—and thus broader autonomy—in Xinjiang. The 2001 revision of the Regional Autonomy

² See, e.g., Moneyhon (2002).

³ In a survey of autonomy regimes around the world, Hannum and Lillich suggest that most regimes offering substantial autonomy include local control of such matters, with the possible exception of population flows, and further include an independent legislature and judiciary (Hannum and Lillich 1980).

⁴ For examples, see Dillon (2004); Becquelin (2004).

⁵ Available at <http://www.china.org.cn/e-white/20030526/8.htm> (Consulted 2005/04/01).

Law points in the opposite direction: where the original 1984 law suggested that officials “as far as possible” be selected from among non-Hans (Articles 16, 17, and 18), the new version stipulates only that positions be apportioned “reasonably” among groups.⁶

There has never been a corresponding initiative in the Party. The “percentage gap” mentioned above is much more pronounced in the case of Party members. In 1987 only 38.4 percent of Party members in Xinjiang were non-Han, though non-Hans comprised over 60 percent of the population. The numbers subsequently fell. In 1994, the percentage of non-Han Party members had decreased to 36.7 percent.⁷ The small and falling proportion of non-Hans in Xinjiang’s Party apparatus is particularly significant given the dominance of the CCP in political life. Party officials outrank government officials at corresponding ranks in the political hierarchy, and therefore have the final say in matters of consequence. The disproportion is even more pronounced in leadership positions. At all levels of the hierarchy from village to provincial level, the overwhelming majority of Party First Secretaries in Xinjiang have always been Hans; there has never been an official explanation of this seeming statistical anomaly.⁸

This level of numerical detail suggests in broad terms that Uyghurs and other non-Hans have never enjoyed representation in government organs commensurate with their proportions in the population, and have been even less well represented in the Party. It remains to point out that, in the estimation of ordinary Uyghurs, those Uyghurs who have risen to top leadership positions have been selected not for their responsiveness to popular concerns but because of their tractability. Thus the problem of defining the right under consideration is compounded by an inadequate body of representatives charged with giving that right political substance.

3. WHAT SAFEGUARDS THIS RIGHT?

Where can ordinary Uyghurs turn if they feel their right to manage Uyghurs’ internal affairs have been compromised and their representatives have not protected their interests? The Chinese legal scholar Yu Xingzhong illustrates a crucial weakness in the 2001 Regional Autonomy Law. Though the law enumerates certain rights, including the one under consideration here, it is in his words “non-actionable”:

“The enforcement of this law . . . rests entirely on the conscience and awareness of the departments concerned. If a state organ fails to implement such a law, there is no legal basis to hold such an organ responsible and hence no remedy can be sought. . . . In addition, a basic law like this is constitutional by nature and as such, like PRC constitution itself, it is not actionable. Past experience has shown that the Regional Autonomy Law has rarely been cited to decide court cases.”⁹

In plain language, the Law does not specify legal consequences if a right is abridged, nor does it indicate where redress might be pursued.

In sum, given the fuzziness with which the right of each minzu to administer its own internal affairs is defined, the paucity of minzu representatives empowered to exercise that right in Xinjiang, and the absence of clear legal recourse if the right is infringed, one is led to the conclusion that the Regional Autonomy Law as amended in 2001 does little to protect minority rights. It is to be hoped that the next version does better.

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⁷Figures calculated from Xinjiang Nianjian (Xinjiang Yearbook), editions from 1988 and 1995. There are several plausible explanations for the disparity: either the Party was reluctant to recruit non-Hans, or they were averse to joining, or both.

⁸See, e.g., (McMillen 1979: 48). An authoritative observer notes drily that there was “never . . . any suggestion that Party leaders in the nationality areas would need to be members of the relevant nationality” (Mackerras 1994: 156).

⁹(Yu Xingzhong n.d.).

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