

China's Regional Ethnic Autonomy Law: Does it Protect Minority Rights?

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Statement of

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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?

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 fifteen 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%. Though well below their proportion in the general population (over 75%), 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% (“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% 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 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% of Party members in Xinjiang were non-Han, though non-Hans comprised over 60% of the population. The numbers subsequently fell. In 1994, the percentage of non-Han Party members had decreased to 36.7%.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.

Notes:

1. Available at <http://www.eastwestcenterwashington.org/Publications/bovingdon.pdf>.
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).
6. The 1984 law is available in (Zhongyang dangxiao minzu zongjiao lilun shi 1998). The 2001 law can be found at

<http://www.cecc.gov/pages/selectLaws/laws/lawRegNatAuto.php?PHPSESSID=23df8b0d664177126ecb5807afd9598e> (consulted 2005/04/03).

7. Figures 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.

8. See, 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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