

**IMPLEMENTATION OF THE INTERNATIONAL
CONVENTION ON THE ELIMINATION
OF ALL FORMS OF RACIAL DISCRIMINATION IN
THE PEOPLE'S REPUBLIC OF CHINA**

**A REPORT BY HUMAN RIGHTS IN CHINA
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People's Republic of China on Implementation of the United Nations International
Convention on the Elimination of All Forms of Racial Discrimination*

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EXECUTIVE SUMMARY

In its report, HRIC looked primarily at the PRC 报告 approach to racial discrimination to examine whether it met the standards set by the Convention. In doing so, we found that the anti-discriminatory laws and policies adopted by the PRC had left major groups virtually unprotected: rural residents, rural-to-urban migrants, and national minorities. In focusing on these three groups, we have also sought to assess whether ICERD 报告 previous recommendations to the PRC government had been taken into consideration and implemented, while identifying general compliance issues in the PRC government 报告 report. These include the problematic and narrow conception of discrimination adopted by the PRC government; inadequate analysis of the discrepancy between legislation and actual implementation; lack of adequate information and analysis on the situation of national minorities; and inadequate information on domestic promotion of ICERD among PRC citizens.

◆ Article 1

The PRC government report focuses on laws and policies relating to the status of “minority nationalities” (*shaoshu minzu*), thus conflating the issue of “racial discrimination” with the situation of officially recognized ethnic minority peoples, which is not as broad as taking action to combat racial discrimination. As a result, the anti-discriminatory laws and policies adopted by the PRC have left major groups virtually unprotected and ineligible for the putative benefits of special preferential policies.

HRIC 报告 report focuses on three main overlapping groups: rural residents (63.91 percent of the population), rural-to-urban migrants (or “floating population,” from 40 million to 120 million), and national minorities (106.43 million persons or 8.41 percent of the population.) Many members of national minorities are, in fact, included in the rural and internal migrants categories. Overall, these groups do not enjoy the same level of social and economic development as the Han majority or urban residents.

HRIC suggests that the concept of “minority nationalities” in the PRC is a construct of the state, rather than reflecting the self-identification of ethnic minority groups or the reality of ethnic and cultural diversity across the vast territory of the PRC. The PRC population is officially comprised of the majority “Han” (ethnic Chinese, over 90 percent of the population), and 55 officially recognized “minority nationalities.” This classification was undertaken in the 1950s by the new government, which “identified” groups that should be registered as official nationalities. More than 400 distinct groups originally applied. Those not accorded recognition were either classified as “Han” or put together with other ethnic minorities considered similar. In addition, within the population labeled Han, there is enormous ethnic, cultural and linguistic diversity.

◆ Article 2

Although the laws of the PRC provide for equality and the protection of the “rights of minority people and [the promotion of] their development,” in some cases these laws may in fact be exacerbating the gap in status between ethnic minorities and the dominant Han Chinese. Despite a body of laws and preferential policies, national minorities suffer unequal treatment and disadvantages in virtually every area of public life, as indicated by the widening discrepancies in terms of economic status and living standards.

Xinjiang, Tibet and Inner Mongolia offer the clearest examples of how racial discrimination relates directly to government policies. The effect of economic preferential policies in autonomous areas has virtually disappeared, since most other areas also enjoy such measures. The subsidies and tax breaks given to such areas have also declined in value and, according to various figures, collection of revenue from the minority areas actually exceeds what they are given by the central government. Furthermore, preferences accorded to coastal development zones and cities provide far more benefits than those enjoyed by the autonomous areas. As a result, in recent years, these regions have seen a marked decline in the welfare of their indigenous inhabitants.

The fruits of the PRC's economic reforms have not been evenly enjoyed throughout the country. Wealth is concentrated in China's cities—particularly along the eastern coast—while the country's western and rural regions are characterized by inadequate development resources. This divide is of particular significance for members of ethnic minorities, most of whom are either classified as rural or living in the western part of the PRC. The unequal development policies consistently pursued by the PRC state are discriminatory, and inconsistent with the right to development.

The PRC's ethnic-related laws and regulations described in the government report are excessively vague and lack specific implementation and enforcement mechanisms. They provide, at best, a formal framework of articulated rights and aspirations. For example, the National Autonomy Law is primarily a restatement of the general policies of the CCP towards ethnic minorities. It does not provide a workable legal mechanism to enable the elimination or reduction of ethnic and racial discrimination. However, the government's report fails to identify obstacles that have hampered implementation of domestic law and compliance with ICERD. In addition to the lack of statistical data, HRIC believes that the government report provided an agglomeration of information without sufficient context, analysis or comparison to make them meaningful.

◆ Article 3

Although international standards do not specifically refer to “rural origin” as a prohibited basis for discrimination, the *hukou* classifications are derived from the economic and social class characteristics of rural residents and from their place of birth. Soon after the founding of the PRC, the government set up the system of residence registration (*hukou*) under which individuals and families are tied to a particular place of residence and divided into nonagricultural (urban) or agricultural (rural) categories. The *hukou* system has institutionalized discrimination against rural people, including a large proportion of the ethnic minority population. Whereas urban workers were entitled to guaranteed employment, subsidized housing and food, and other benefits, rural localities were left to shoulder the responsibility for feeding, housing and employing the rural population. The policy of prioritizing the city over the countryside created a rigid social hierarchy based on descent (contravening ICERD, Article 1) and has been transmitted across generations. It has created a gulf between urban and rural areas, involving discrimination in economic, social, political, civil and cultural rights, and widening disparities in terms of economic status and living standards. Discrimination resulting from the *hukou* system has often been exacerbated by ethnic differences, which make people from other regions, from rural areas and from ethnic minorities instantly identifiable through dress and language. As a practice that has fostered separate and unequal rural and urban societies, the *hukou* system contravenes the prohibition of Article 3 against racial segregation, apartheid, and *all practices of this nature* (emphasis added).

◆ Article 4

Another part of the official classification project in the early years of the PRC was to classify national minorities on a linear scale of social evolution and to label groups according to the “stage of development” of their culture. Minorities without a written language were often classified as “primitive” and their religious beliefs denigrated as mere “superstition.” Most minorities were considered “backward,” awaiting the “civilization” to be brought to them by the Han “elder brothers.” This classification clearly advocated the superiority of certain races over others, and contributed to current “Great Han chauvinism” (*da hanzu zhuyi*) rhetoric fostering popular discrimination against ethnic minorities. The government bears significant responsibility for this, as such negative descriptions of national minorities have been included in school and education curricula. Furthermore, because it exacerbates discriminatory attitudes and cultural bias towards ruralites among urban residents, the *hukou* system is a practice that contravenes Article 2.

◆ **Article 5 (a): Equal treatment before the tribunals**

Within the context of a legal system in construction and undergoing reform, the PRC laws do not provide adequate procedural safeguards and rights for victims of racial or ethnic based discrimination. In addition to the many difficulties for ordinary defendants to be tried fairly and independently in criminal cases, defendants in politically sensitive cases stand much less chance of getting a fair trial. Members of minorities who advocate their national, cultural or religious identity are most likely to be viewed as engaging in an “act of splitting the country” and therefore, to be tried under the category of crimes of endangering state security defined by the Criminal Law.

◆ **Article 5 (c): Political rights**

Although some posts in the autonomous governments are set aside for minorities, top positions are usually reserved for Han cadres and Party officials. Minorities are not represented in the highest decision-making levels of the PRC, like the CCP Politburo. The process of selecting government representatives is dominated by the CCP committees, and thus the Party, not the autonomous areas, set the priorities for the governments that rule there.

◆ **Article 5 (d) (vii): Rights to freedom of thought, conscience and religion**

Contrary to claims by the PRC government, the right to freedom of conscience and religion is routinely violated. Religious practice is not tolerated within state institutions. Members of the CCP are not permitted to believe or engage in religion. Muslims have reportedly faced discrimination in public office or been fired from government posts for praying during working hours. In Tibet, since the launch of the Patriotic Education Campaign in 1996, there has been an emphasis in schools on promoting atheism and on undermining Tibetans’ loyalty to the Dalai Lama.

◆ **Article 5 (d) and (e): The enjoyment of fundamental rights in autonomous ethnic minority areas**

Discrimination in minority areas such as Xinjiang, Tibet and Inner Mongolia has been most manifest in the government’s efforts to curb “separatism” in the name of national unity, which has resulted in a variety of human rights abuses: arbitrary arrest and execution after summary trials to restrictions on freedom of expression, association, and religion.

The long-term, highly controversial official strategy of encouraging immigration of Han Chinese

into autonomous areas has resulted in increased economic discrimination. Xinjiang's economic development has largely bypassed the local ethnic population: the unemployment rate among Uyghurs is about 70 percent, while that of Han Chinese in the region is less than 1 percent. As a result of state hiring policies and relocation programs, demographics in Xinjiang have shifted dramatically: in Xinjiang's capital of Urumqi, Han Chinese comprise 80 percent of the 1.5 million inhabitants. In Inner Mongolia, Mongols are a minority in the whole region as a result of Han immigration.

Because of their generally inferior economic conditions, their predominantly rural status and the dominance of the Chinese language at higher levels of education, minorities in the PRC are doubly disadvantaged in access to education. Overall, the dominance of the Chinese language—in the education system, in official affairs and in business—affects members of minorities in all areas of public and economic life, and their right to develop and use their own languages is not respected. The huge disparity between urban and rural regions in terms of funding allocated to education, particularly in the western regions of the PRC that are predominantly ethnic minority, is another main reason why the condition of the schools and the quality of education they provide is inferior, as indicated by the high drop-out rate among minority children or the lower literacy rate among rural children compared with urban children. In fact, due to reform era decentralization, the central government has been providing less and less support to poorer provinces, and localities have to raise most of the funds for basic education. This means that the poorest areas have the least money available for education. This has led to extreme inequality in the educational field. Girls are particularly disadvantaged in poor areas in terms of education. The Sample Survey on the Situation of Children in 1993 reported that *three-quarters* of children not enrolled were girls, mostly in poor and national minority regions.

◆ **Article 5 (d) and (e): The enjoyment of fundamental rights by rural-to-urban migrants**

The regulatory regime governing internal migration imposes a set of discriminatory controls over migrant employment, health, fertility, education and housing. Owing to bureaucratic intricacies, a majority of migrants do not have all of the necessary permits (residency, work, population control) and live in a semi-illegal state where they are cut off from the few urban benefits linked to the permit schemes, and are subject to extortion by officials, abuse by employers, and ultimately the threat of detention and repatriation to their home areas under the form of administrative detention known as “Custody and Repatriation.”

Discriminatory attitudes against them have made it difficult for migrants to find employment and earn a fair wage. Migrants are clearly discriminated against in favor of urban workers. This is, in part, due to official policies to keep low urban unemployment rates. Migrants are particularly vulnerable to abuse in the workplace, including forced labor, dangerous working conditions, physical assaults and unfair dismissals.

◆ **Article 5 (e) (iv): The right to public health**

Rural residents, including a large proportion of ethnic minorities, suffer systematic discrimination in the provision of health care as compared to urban people. While health institutions are concentrated in urban areas, there is a shortage of skilled medical staff in rural and township areas; and in minority areas, non-Han patients are reportedly discriminated against by medical staff. The poorest among rural residents have been severely affected by “reforms” that have torn apart the social safety net; the cooperative insurance schemes which once provided for the basic health needs of over 75 percent of rural residents now only cover about 10 percent of the rural

population. Children in poor rural or minority areas are also seriously affected as reflected in a number of indicators, such as the infant mortality rate (14.2 per thousand in urban areas versus 41.6 per thousand in rural areas), or the fact that malnutrition impairs the growth of Tibetan children. The disparities in terms of access to health services are most clearly revealed in the life expectancy in different regions: Uyghurs have one of the shortest life spans of any ethnic group in Xinjiang (63 years, versus 70 on average in the PRC); and, according to local officials, in one of the counties comprising Liangshan Yi Autonomous Prefecture in Sichuan Province, average life expectancy is as low as 44-45 years.

◆ Article 6

The absence of a definition of discrimination meeting ICERD standards impairs the ability of those who have suffered from discriminatory treatment to seek redress. The lack of redress is compounded by the lack of institutional mechanisms providing effective remedies for victims of racially or ethnically based discrimination. Official discrimination on the basis of race or ethnicity is therefore not subject to legal challenge. More specifically, the lack of an independent judiciary free of interference or “supervision” of the Party within its structure and decision making process, inadequacies in the training of lawyers, procurators and judges, and the lack of clarity of the laws all contribute to the absence of effective protections and remedies. Furthermore, official discrimination and lack of status mean that migrants dare not or have difficulty accessing means to protect their rights, including official mechanisms that are supposed to enforce labor laws and regulations.

◆ Article 7

The educational curriculum fails to present a positive view of minority cultures, history and tradition. In the PRC as a whole, including autonomous areas, the curriculum is seen as essential for the guarantee of the integrity and unity of the country. “Patriotic education” in minority schools focuses on the theme that all nationalities should consider themselves an indivisible part of the “Chinese nationality.”

Negative perceptions of migrant workers persist in the official media. Many PRC academics also echo the official line, lauding migrants for their positive impact on economic development but describing them as a drain on state-subsidized goods and services, blaming them for the rise in crime rates and for violating the population control policy. Such misrepresentations resonate strongly among urban residents who are frustrated at the slipping away of state-subsidized services. HRIC believes that the government has failed to take meaningful measures to combat such prejudices. The PRC government’s report fails to discuss whether ICERD has been promoted as part of the country’s efforts to combat racial discrimination. ICERD was not included in compilations of UN instruments on apartheid and genocide published in the PRC. To our knowledge, the government does not use UN treaties in domestic legal awareness campaigns, and also bars the domestic media from reporting on review of its reports by UN treaty bodies.

I. INTRODUCTION

The combined 8th and 9th report of the government of the People's Republic of China ("PRC") under the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)¹ describes formal legislation and official policies that have been adopted to address the status of "national minorities" (*shaoshu minzu*). ICERD, Article 1 sets forth a broader definition of racial discrimination that includes "any distinction, exclusion, restriction, or preference based upon race, color, descent, or national or ethnic origin." As groups based upon national or ethnic origin, national minorities are clearly included in ICERD's definition. However, the definition of discrimination reflected in the PRC government's report is considerably narrower. As a result, the anti-discriminatory laws and policies adopted by the PRC have left major groups virtually unprotected and ineligible for the putative benefits of special preferential policies, and the serious and pervasive discrimination faced by a majority of PRC citizens have failed to be addressed.

Furthermore, ICERD's prohibition against racial discrimination includes not only discriminatory purpose but also discriminatory effect. HRIC's report focuses on the discriminatory effect of PRC laws and policies on three main overlapping groups: rural residents, that is people with rural household registration or *hukou*, comprising 63.91 percent of the population; internal rural-to-urban migrants, part of a vast "floating population" estimated to range anywhere from 40 million to 120 million; and national minorities, making up 106.43 million persons or 8.41 percent of the population.² These three groups together constitute the vast majority of the PRC's population, and the failure of the PRC government to provide equal access and treatment in political, economic, social, cultural and other fields of public life has created an apartheid-like system that threatens to undermine the security, stability and fairness of the PRC's modernization and reform efforts.

As one ICERD expert has written, "One of the main objectives of the Convention is indeed to promote racial equality. As such, the Convention not only aims to achieve *de jure* racial equality, but particularly also *de facto* equality, which allows the various ethnic, racial, and national groups to enjoy the same social development. The goal of *de facto* equality is central to the Convention."³ Yet, as discussed in this report, national minorities, rural residents, and rural migrants do not enjoy the same level of social development as the Han majority or urban residents.

In addition to the general obligation of States Parties to refrain from and to end acts of racial discrimination, and to pursue policies aimed at eliminating and improving interracial relationships, ICERD, Article 2(2) provides for "the adoption of special and concrete measures to further the enjoyment of human rights among various parts of the population" and recognizes the reality that almost all States Parties have ethnic or minority groups, such as indigenous populations, tribes, nomads, migrant workers, refugees, etc. Consequently, attention must be paid to the socio-economic and political situation of these groups in order to ensure that their development in the social, economic and cultural spheres takes place on an equal footing with

¹ 8th & 9th periodic reports of the PRC to the Committee on the Elimination of Racial Discrimination submitted October 3, 2000. ICERD/ C/ 357/Add.4 (Part 1).

² The figures on rural *hukou* holders and national minorities are from the preliminary data in the 2000 national census. Communiqué on Major Figures of the 2000 Census, PRC National Bureau of Statistics, March 28, 2001.

³ Luis Valencia Rodriguez, *The International Convention on the Elimination of All Forms of Racial Discrimination*, in *United Nations Manual on Human Rights Reporting* (Geneva 1997), p. 273.

that of the general population.”⁴ Yet, despite a body of formal PRC laws and preferential policies, national minorities suffer unequal treatment and disadvantages in virtually every area of public life. In addition to rising gaps in economic status and living standards, “[m]inority scholars also argue that the gap creates an 懸 ethnic psychological imbalance’ (*minzu xinli de bu pingheng*) that can emerge as an unfavorable factor for unity and stability.”⁵

Owing to their rural *hukou* status under the PRC household registration system, rural residents and internal rural-to-urban migrants constitute a group based on descent and ethnic-based identification under ICERD, Article 1(iii), (iv). Many members of national minorities are also included in these categories. As further described below, the *hukou* system, has created a system that privileges the urban population in terms of access to education, housing, economic opportunities and political participation. This *hukou* system thus violates the rights of rural residents and migrants to equal enjoyment and exercise of their human rights and fundamental freedoms set forth in ICERD, Article 5. Under ICERD, Article 4, the PRC also undertakes to condemn all propaganda that is based on ideas/theories of superiority and to prevent, prohibit and eradicate all practices of this nature. Because it also exacerbates discriminatory attitudes and cultural biases towards ruralites among urban residents, the maintenance of the *hukou* system is a practice that contravenes Article 4.

HRIC 摺 report focuses on economic, social and cultural rights for all these groups, as well as PRC 摺 legislation and policies relating to racial discrimination and the political and economic arrangements for minority autonomy. Discrimination in minority areas of the PRC such as Xinjiang, Tibet and Inner Mongolia has manifested most intensely in the government 摺 efforts to curb “separatism” in the name of unity. The PRC government 摺 tactics for repressing separatism are comprehensive and often severe. The concentration of military strength in the regions inhabited by ethnic minorities, combined with periodic anti-crime crackdowns has resulted in a variety of human rights abuses. Violations range from arbitrary arrest and execution after summary trials to restrictions on freedom of expression, association, and religion. Often ethnic dissidents are incarcerated in prisons where conditions are deplorable. Hundreds of mosques and Buddhist temples have been destroyed. The government 摺 tolerance and even encouragement of mass immigration of Han Chinese tends to dilute ethnic populations; this is a particular source of resentment among non-Han peoples. However, this HRIC report does not examine the widespread and severe violations of human rights committed in the name of fighting against “separatism” or “splittism,” which have been extensively documented elsewhere by groups such as Amnesty International, Human Rights Watch, the Tibet Information Network and the Tibetan Center for Human Rights and Democracy.⁶

HRIC 摺 report first identifies and discusses some general compliance concerns raised by the PRC government report. These include the problematic and narrow conception of discrimination adopted by the PRC government; inadequate discussion of the gap between legislation and actual

⁴ Ibid. p. 277.

⁵ Barry Sautman, “Ethnic Law and Minority Rights in China: Progress and Constraints,” *Law and Policy*, Vol. 21, No. 3, July 1999, p. 285.

⁶ Amnesty International, *Annual Report 2001, Regional Indexes: Asia: China*; Amnesty International *Annual Report 2000, Regional Indexes: Asia: China (including Hong Kong & Macao)*; Human Rights Watch, *World Report 2001, China and Tibet: Human Rights Developments / Tibet / Xinjiang*; Human Rights Watch, *World Report 2000 Asia Overview: China and Tibet*; Tibetan Information Network <http://www.tibetinfo.net/>; Tibetan Centre for Human Rights and Democracy, *Annual Report, 2000: Enforcing Loyalty; China: State Control of Religion*; Human Rights Watch / Asia, NY, 1997.

implementation; inadequate information and analysis on the situation of national minorities; and inadequate information on domestic promotion of ICERD among PRC citizens. We then describe the economic, social, cultural, and political discrimination faced by rural residents, rural-to-urban migrants, and minority nationalities. Our analysis draws extensively on official PRC sources, scholarly literature, NGO studies and reports, studies by World Bank, UNDP, and various government reports.

II. ASSESSMENT OF THE PRC GOVERNMENT REPORT

The ICERD states that: “the term 种族歧视 shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms (Article 1). By focusing exclusively on national minorities law and policy, the PRC report conflates the issue of “racial discrimination” with the situation of people belonging to “minority nationalities,” not action to combat racial discrimination. Although the CCP and the government of the PRC do prohibit “racial discrimination,” the narrow concept of “racial discrimination” does not conform with the broader framework of ICERD. In the PRC government political lexicon, some serious racial discrimination, such as excluding ethnic minorities from the decision-making process, is not discrimination at all. Through its power framework, the government can easily change the political landscape as well as economic structure of minority areas without consent of or consultation with ethnic minority groups.

A. “Minority Nationalities” an arbitrary construct

In the official parlance adopted by the PRC, the population is comprised of the majority Han (ethnic Chinese), who make up more than 90 percent of the population, and 55 officially recognized “minority nationalities.” However, the concept of “minority nationalities” in the PRC is a construct of the state, rather than reflecting the self-identification of ethnic minority groups or the reality of ethnic and cultural diversity across the vast territory of the PRC. However, this is not to deny that ethnic differences exist, or that affirmative action should not be used to address the systematic discrimination ethnic minorities experience.

In the 1950s, the new government undertook the classification of peoples living in the PRC border regions, sending teams of researchers, social scientists and Communist Party cadres to “identify” groups that sought to be registered as official nationalities.⁷ The classification was influenced by the criteria used in the Soviet Union, called by Josef Stalin the “four commons”: “a common language, a common territory, a common economic life and a common psychological makeup.” Stalin later called this last criterion “a common culture.”⁸

More than 400 distinct groups applied for such registration, but only 41 were initially recognized in the 1953 census. The majority of the groups not accorded recognition were either classified as “Han” or put together with other minorities considered similar. Thus within certain “national minorities” there are groups that think of themselves as having distinct identities, and people of the various nationalities often do not view themselves in terms of the categories the state has

⁷ Dru C. Gladney, “Ethnic Identity in China: The New Politics of Difference,” Chapter 7 in William A. Joseph, ed., *China Briefing 1994*.

⁸ Ibid.

ascribed to them. The number of recognized minorities was increased to 53 in the 1964 census, and the 1982 and 1990 national censuses listed 56 “nationalities” (including the Han). Some, including the Sherpas, Kucong and Chinese Jews, are still seeking recognition, and in the 1990 census, 749,341 individuals were listed as being in this “unidentified” category.⁹

As a Mongol scholar of the PRC 祖国 minority policies has written:

The *minzu*-building project necessarily delineates, strengthens and distorts ethnic consciousness. It also defines what constitutes a member of a nationality, frequently blithely disregarding contemporary social reality and aspirations that may be independent of, or at odds with, stereotypical *minzu* categories. A *minzu* is no longer a society in its own right, but a location or positioning within the political economy of a nation-state.¹⁰

Furthermore, within the population labeled Han, there is enormous, cultural and linguistic diversity. Ethnolinguists have noted that among the eight mutually unintelligible language groups categorized as “Chinese,” there is as much difference as between Romance languages across Europe, and the common use of Chinese characters can be compared to the use of Latin in Europe in the Middle Ages.¹¹ Discrimination on the basis of ethnicity within the “Han” population is a common occurrence, particularly in the context of rural-to-urban migration, as discussed below.

B. Gap between “law on books” and “reality”

ICERD, Article 2 states that “States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races.” The PRC government report describes Constitutional provisions and a body of “ethnic-related laws and regulations” intended to “protect the rights of minority people and promote their development in the light of [their] special conditions and needs.”¹² The PRC Constitution, Article 33 provides, that all “citizens of the People Republic of China are equal before the law.” This principle of equality is reiterated, with particular regard to citizens who are members of the ethnic minorities, in Article 4 which stipulates that “all nationalities in the People 祖国 Republic of China are equal” and that “discrimination against and oppression of any nationality is prohibited.”¹³ Article 4 of the Constitution¹⁴ provides that ethnic-related law “should not contain anything that might lead to racial discrimination or oppression.”¹⁵

However, under ICERD, states parties have obligations for ensuring both *de jure* and *de facto* equality. While the enactment of these laws and regulations represents a beginning step in establishing a formal anti-discrimination legal framework, the implementation of these laws has proved problematic, and in some cases may in fact be exacerbating the gap in status of ethnic minorities and the dominant Han Chinese. Although UN human rights reporting guidelines

⁹ Ibid.

¹⁰ Uradyn E. Bulag, “Ethnic resistance with Chinese characteristics,” in Elizabeth J. Perry and March Selden, *Chinese Society: Change, Conflict and Resistance*, Routledge, 2000.

¹¹ Supra, see note 7, Gladney.

¹² ICERD/ C/ 357/Add.4 (Part 1), p4.

¹³ PRC Constitution

¹⁴ “In the ethnic-related legal system of laws, statutes and regulations, the Constitution [祖国] has supreme legal authority.” (ICERD/11/Part 1, p6.)

¹⁵ ICERD/9/Part 1/ p4.

include factors and difficulties encountered by States Parties in treaty implementation,¹⁶ the PRC Report does not adequately discuss implementation obstacles and difficulties. These implementation issues implicate structural, ideological, and systemic factors. Lacking adequate analysis and statistical data, the PRC government report provides an agglomeration of information without sufficient context or comparison to make them meaningful. As with past reports submitted by the PRC government, the 8th and 9th report fails to provide adequate details regarding enforcement of the laws and regulations it enumerates, or problems encountered in treaty implementation and compliance efforts.

For example, although the body of the PRC 担 “ethnic law” (*minzu fa*) aims to guarantee the rights of ethnic minorities, one Sinologist points out there are tensions between its two main aims of “(1) reversing the traditional Chinese pattern of marginalization and subordination of non-Han peoples and (2) constructing a minority elite whose loyalty is essential to political stability ... Minority elites are enjoined to be 德olitically loyal and professionally competent’ but must do so in the context of a developmentalism that valorizes 愷dvanced’ Han culture ... and produces an ever-widening economic gap between Han and minorities. Because ethnic law remains embedded in a modernization paradigm premised on uneven development between spatial, political and cultural Han core and a minority periphery, it cannot guarantee the full range of rights found in PRC discourse.”¹⁷

“Because ethnic law remains embedded in a modernization paradigm premised on uneven development between spatial, political and cultural Han core and a minority periphery, it cannot guarantee the full range of rights found in PRC discourse.” Barry Sautman, “Ethnic Law and Minority Rights in China: Progress and Constraints,” *Law and Policy*, July 1999.

Article 6 of ICERD states that “State Parties shall ensure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this Convention, as well as the right to seek from such tribunals adequate reparation or satisfaction for any damage suffered as a result of discrimination.” However, the absence of a clearer and broader definition of discrimination impairs the ability of those who have suffered from discriminatory treatment to seek meaningful redress for the harm done to them. The lack of redress is compounded by the lack of institutional mechanisms providing effective remedies for victims of racially or ethnically based discrimination. Taking these shortcomings into account, the ethnic-related laws and regulations touted by the PRC government provides at best a formal framework of articulated rights and aspirations for only one part of the population suffering discrimination.

The Autonomy Law and other laws and regulations more fully discussed in Section IV below, and the Administrative Litigation Law (“ALL”) do not provide practical legal mechanisms for people who have suffered discrimination and official discriminations. The ALL, Article 12(2), stipulates the people's courts shall not accept suits brought by citizens, legal persons or other organizations for a specified list of matters, including challenges to administrative rules and regulations, regulations, or decisions and orders with general binding force formulated and announced by administrative organs. By expressly stipulating that any legislation or general administrative acts will not be actionable under the law, the ALL underscores the lack of adequate remedies to address discriminatory effects of government actions.

¹⁶ The International Convention on the Elimination of All Forms of Racial Discrimination, in United Nations Manual on Human Rights Reporting (Geneva 1997), p. 23

¹⁷ Supra see note 5. Sautman p. 284.

Although the PRC Government Report outlines its law and policy for the protection of rights of PRC citizens, this legal and policy regime is developing within a judicial system undergoing reform. The existing system does not provide an independent tribunal, a right established by the Universal Declaration of Human Rights, Article 10, as the judiciary is not independent from the government and Party supervision. The PRC 8th and 9th reports on advances in Chinese criminal law and procedure, primarily stemming from the 1996 amendments to the Law on Criminal Procedure. These amendments include the abolition of detention for the purpose of interrogation as a compulsory measure, the right to retain counsel after the first interrogation, and protections for the victims of crimes.

A report by Human Rights in China¹⁸ outlines the ways in which these rights are not implemented in practice. Even though the PRC government claims that a dramatic increase in numbers of lawyers now safeguards the rights of citizens,¹⁹ reports document that due to pressure and harassment in politically sensitive cases, lawyers are often unwilling or unable to defend their clients.²⁰ The failure to implement these policies often impacts ethnic groups in a particularly harsh manner as the Autonomous regions come under heightened scrutiny for instances of “splittism” which allows cases to be tried as closed due to “state secrets.” As the HRIC CPL Report indicates, in addition to the many difficulties for ordinary defendants to be tried fairly and independently in criminal cases, the defendants in politically sensitive cases stand much less chance of getting a fair trial.

As long as the state does not recognize an independent judiciary, the right to counsel, and the rule of law, those accused of offences, especially in political cases, will be denied their basic right as set out under international law.” Lawyers Committee for Human Rights, *Criminal Justice with Chinese Characteristics*, 1993, p. 7.

Cases involving charges of minority separatism, defined both by the Criminal Law (as amended in 1997) and the State Security Law (1990), are likely to be treated as politically sensitive cases. Article 4 of the State Security Law stipulates that any organization or individual acting to or attempting, among others, to split the country shall be punished. Article 103 states that any act of “organizing, plotting, or conducting” to split country or damage the unity of the country shall be punished. Ethnic minorities who advocate their own national identity run the risk of being charged with engaging in an “act of splitting the country” according to the Criminal Law and the State Security Law. Behavior criticizing minority policy of the central government for whatever reason, pro-separation or not, may also well risk being labeled as “splitting the country” or “damaging the unity of the country,” and therefore, also be tried under the category of crimes of endangering state security as defined by the Criminal Law.

Taking these problems into account, the PRC ethnic-related laws and regulations described in the PRC Report provide at best a formal framework of articulated rights and aspirations. Although the PRC approach to legislation reflects the civil law approach of drafting more general laws, excessive generality and lack of specific implementation and enforcement mechanisms present serious problems within the context of a legal system under construction and undergoing reform. The absence of a clear definition of discrimination not only impairs the ability of those who have suffered from discriminatory treatment to seek meaningful redress for the harm done to them. The lack of redress is compounded by the lack of institutional mechanisms providing effective remedies for victims of racially or ethnically based discrimination. However, in order for these laws and policies to offer real protection or redress to minority nationals, efforts to build more effective legal institutions must also be addressed. These legal

¹⁸ Human Rights in China, CPL Report (2000).

¹⁹ PRC 8th and 9th ICERD Report

²⁰ US State Department Report: Human Rights: China 2000, p12.

institutions include an independent judiciary free of the interference or “supervision” of the Party within its structure and decision making process, a better trained legal profession including lawyers, procurators, and judges, and clearer laws.²¹ The PRC might report more on the domestic debates and legal reform initiatives underway.

C. Analysis on situation of National Minorities

Considering the previous requests of the ICERD for specific information on the situation of national minorities in the PRC and the wealth of information available to the PRC government on this issue, HRIC finds the current report under review to be severely inadequate. Over the last ten years, government agencies, scholars, think tanks and journalists inside and outside the PRC have published a wealth of reports, papers, analysis and statistical materials on the situation of minorities in the country. (See Appendix A, Selected bibliography). The PRC National Bureau of Statistics itself publishes an annual compilation of documents, regulations and statistical tables on the same topic, which provides much of the demographic data ICERD has requested. (See Appendix C, copy of the Table of Contents of this publication).

D. Information on domestic promotion of ICERD

The PRC report does not discuss whether the PRC government has made any effort to promote the ICERD as part of its efforts to combat racial discrimination. It is important to note here that in paragraph 114 of the PRC government report, mention is made of publication of UN treaties on apartheid and genocide in books on minorities published in the PRC, but evidently ICERD itself was not included in these compilations. To our knowledge, the PRC government does not use UN treaties in domestic legal awareness campaigns, and also bars the domestic media from reporting on review of its reports by UN treaty bodies. This means that many ethnic minorities and large sectors of the PRC population may even be unaware that the PRC has ratified ICERD, and certainly most PRC citizens will be unaware that a report to CERD is being considered in Geneva on July 31 and August 1, 2001.

A scholar of PRC minority policy contributed this comment:

The PRC government should be criticized for failing to do the kind of educational work required by the Convention with regard to racial discrimination. The level of Han chauvinism among migrants to many of the minority areas remains high and causes much resentment in Tibet, Xinjiang and other regions. In the 1950s, national leaders were outspoken against Han chauvinism and cadres were educated to renounce it. Today, injunctions against Han chauvinism are confined to the slogan to abjure it along with local nationalism. The continued adherence to the social evolutionary paradigm in China in the context of an increasingly hierarchical society may have something to do with the neglect of the state's responsibility to combat racism. This neglect should be underscored and corrected.²²

²¹ See e.g. Stanley B. Lubman, *Bird in a Cage: Legal Reform in China After Mao*, Stanford: Stanford University Press, 1999); Margaret Y.K.Woo, Courts, Justice, and Human Rights, in China Briefing, 1992, edited by William A. Joseph (Boulder: Westview, 1993): 81-102; and Lawyers Committee for Human Rights, *Lawyers in China: Obstacles to Independence and the Defense of Rights* (March 1998).

²² This person wishes to remain anonymous.

III. DISCRIMINATION AGAINST RURAL RESIDENTS AND RURAL-TO-URBAN MIGRANTS

The People's Republic of China's household registration system, known as the *hukou* system, has institutionalized long-standing urban prejudice against "peasants," incorporating all rural dwellers into this despised category. This system has been the basis for government policies that have, and continue to, privilege urban dwellers and restrict entry of rural population into the cities. This has created a gulf between urban and rural areas, involving discrimination in economic, social, political, civil and cultural rights. As described below, rural-to-urban migration has grown over the last 20 years, and institutionalized discrimination on the basis of descent has exacerbated discriminatory attitudes towards rural residents and migrants resulting in their being treated like "untouchables."

"Thus, development disparities among regions have increased together with the discordance from political change and conflicts among social interest groups, these changes have increased the threat of social and political instability." UNDP, China Human Development Report 1999: Transition and the State.

For internal migrants among the Han population, discrimination on the basis of descent has often been exacerbated by ethnic differences, which makes many rural-to-urban migrants instantly identifiable through dress and language. The long-term division of the countryside from the city has sharpened such ethnic divisions. Yet the construction of "racial discrimination" in the PRC fails to provide for measures to combat discrimination on the basis of *hukou* status or regional origin.

Members of minority nationalities are also disadvantaged under the *hukou* system and the rural-urban divide, suffering from similar patterns of discrimination. In fact, a larger proportion of the minority population has rural *hukou* status as compared with the proportion in the population as a whole. The latest available figures put the proportion of the population in the autonomous areas with rural *hukou* status at almost 79 percent in 1999.²³ Nationally, the 2000 census set the proportion of rural residents in the population at 63.91 percent.²⁴ The actual percentage of ethnic minorities with rural *hukou* status may be even higher, since in autonomous areas, the Han population tends to be concentrated in the cities.

Some minority leaders believe that the severity of the urban-rural divide is exacerbating ethnic tensions in the PRC. According to a 1995 survey conducted at training for officials of the National People's Congress, 97 percent of those who were from ethnic minority groups thought that economic disparities were having such an effect, and 84 percent thought that such problems were likely to worsen.²⁵

The PRC government is directly responsible for creating and enforcing the disadvantaged status of rural residents under the *hukou* system. People who are born into the underdeveloped rural communities are classified on the basis of their rural origin. The government uses this classification to regulate access to a range of services and subsistence rights. This state-constructed identity serves as the basis for systematically depriving rural *hukou* holders of core rights and perpetuates their economically and politically disadvantaged status, including when

²³ China Ethnic Statistical Yearbook (below, CESY) 2000, Ethnic Press.

²⁴ Supra, note 2, 2000 Census Figures.

²⁵ Hu Angang, *Report on Regional Disparities in China (Zhongguo diqu chabie baogao)*, Liaoning People's Publishing House, 1995; cited in Nicolas Becquelin, "Xinjiang in the Nineties," *The China Journal*, July 2000.

they migrate to the cities.

Although international standards do not refer to “rural origin” as a prohibited basis for discrimination, the *hukou* classifications are derived from the economic and social class characteristics of rural residents and from their place of birth. Both “property,” that is, economic class, and social origin are generally recognized as prohibited grounds for discrimination. Moreover, ICERD specifically prohibits discrimination based on “descent.”

A. Creating a two-class society

Since soon after the founding of the PRC, the system of residence registration (*hukou*) under which individuals and families are tied to a particular place and divided into urban or rural categories has institutionalized discrimination against rural people, including a large proportion of the ethnic minority population, leading to extensive and systematic violations of their rights, including their right to development. As a PRC scholar wrote at the end of 2000:

The fundamental situation of “separation between city and countryside, one country two policies” that was gradually established in the 1950s still remains unchanged until today. In many respects, there is one policy for cities and for urban residents, and a different policy for rural areas and ruralites. Both are citizens, but their political, economic, social and cultural treatment is not the same.²⁶

The roots of the *hukou* system lie in the policies of rapid industrialization adopted by Communist leaders after 1949. Influenced by the socialist theory and practice introduced by Soviet advisors, this developmental paradigm prioritized urban over rural development, industry over agriculture, commerce and services, and heavy industry above all.²⁷ The state stressed the importance of industrial workers, and took responsibility for providing them with guaranteed employment, subsidized housing and food, and other benefits. Rural localities were left to shoulder the responsibility for feeding, housing and employing the rural population. According to a prominent Sinologist:

[T]he policies and practices adopted from the 1950s to the 1970s profoundly favored urbanites and systematically disadvantaged China's rural population. In certain respects, an urban bias developed in a more extreme form than in other developing societies, including the Soviet Union. This is perhaps the supreme irony of the Chinese revolution—that rural revolutionaries who were committed to combating urban bias ended up institutionalizing that bias in deep-rooted forms.²⁸

The *hukou* system, bolstered by food rationing, state-owned housing and controls on employment and travel brought labor migration within the PRC to a virtual halt until the early 1980s.²⁹ At the

²⁶ Lu Xueyi, “The situation in China's countryside and the causes of the existing problems there” (*Zhongguo nongcun zhuangkuang ji cunzai wenti de yuanyin*), *The Year 2001: Analysis and Forecasts on the State of Chinese Society (2001 nian: Zhongguo shehui xingshi fenxi yu yuce)*, Social Sciences Documentation Publishing House, 2001.

²⁷ Tiejun Cheng and Mark Selden, “The Construction of Spatial Hierarchies: China's *Hukou* and *Danwei* Systems,” in Timothy Cheek et al. eds., *New Perspectives on State Socialism in China* (Armonk, New York: M.E. Sharpe, Inc., 1997).

²⁸ Martin King Whyte, “City Versus Countryside in China's Development,” *Problems of Post-Communism*, January/February 1996.

²⁹ For example, controls were tightened during the Socialist Education Movement of the mid-1960s, while they were largely ignored during the production drives of the Great Leap Forward.

same time, the policy of prioritizing the city over the countryside, with its accompanying socioeconomic benefits for urban dwellers, created a rigid social hierarchy that was transmitted across generations.³⁰ As Tiejun Cheng and Mark Selden write:

The Chinese state established two tracks for income, housing, grain rations, education, medical and other services, employment and retirement. In every sphere the city was privileged over the countryside, and state-sector workers over collective farmers. The state reserved its resources disproportionately for those classified as urban residents.³¹

B. Regulatory structure

During the mid-1950s, the state imposed a number of administrative mechanisms to stem what was referred to as the “blind flow” of migrants into the city.³² It also sought to impose controls on the population as a means of maintaining order, and provisional rules for the system of population registration were first set up for the cities in 1951, and then for the countryside in 1955.³³ These policies culminated in the 1958 PRC Regulations on Household Registration.³⁴ The household registration, or *hukou*, system provided the basic information infrastructure necessary for running a bureaucratic state. Bolstered by rationing, controls on employment and the severe shortage in and public allocation of housing, the system also controlled movement of all PRC citizens, especially rural farmers who were effectively bound to their collective-villages until the early 1980s. The 1958 regulations are still in effect today, although subsequent policy changes have altered their impact.

Under the 1958 regulations, the Public Security Bureau (PSB) in cities and towns enforced the *hukou* system through the maintenance of household registration books. Although the regulations did not specify what type of information was to be recorded, in most areas the registration books listed a family 户 place of permanent residence, temporary residence, births, deaths and out- and in- migration. In some areas, nationality (in other words ethnic origin), “native place,” educational level, class status (or other political labels) and military record were also recorded.³⁵

As well as fixing a person to a particular place of residence, the *hukou* regulations divide PRC society into two segments: nonagricultural (urban) and agricultural (rural). Until a reform in 1998 which allowed a child to be registered at the location of the *hukou* of either parent, children could only be registered at their mother 户 place of permanent residence, even if they were actually born at a different location.³⁶ Those with *hukou* from rural areas who are not state employees can only take up employment and residence in the cities temporarily.

³⁰ From 1960 to 1978, the *hukou* system also provided the administrative framework making it possible for nearly 40 million people to be “sent down” to, and kept in, the countryside.

³¹ See Cheng and Selden, *op cit*, see note 27.

³² These include the 1953 State Council Directive on Dissuading Peasants from Blind Influx into Cities, State Council, 1953; and the Joint Directive to Control Blind Influx of Peasants into the Cities, Ministry of Labor and Ministry of the Interior, 1954.

³³ These documents are cited in Kam Wing Chan and Li Zhang, “The *Hukou* System and Rural-Urban Migration in China: Processes and Changes,” *The China Quarterly*, No. 160, December 1999.

³⁴ *Zhonghua renmin gongheguo hukou dengji tiaoli*, presidential decree issued January 9, 1958.

³⁵ Hein Mallee, “China 户 Household Registration System under Reform,” *Development and Change*, vol. 26, no. 1, January 1995.

³⁶ The rationale for matrilineal inheritance of *hukou* status was that men tended to be more mobile—and thus more likely to seek work in the city—than women. Passing *hukou* status from mother to child would add less children to the urban population than passing it from father to child.

Under the 1958 regulations, it was extremely difficult for someone with a *hukou* from an agricultural locality to have his or her registration shifted to an urban area and to change from rural to urban status (*nongzhuanfei*). Permanent rural-urban migration was allowed only with official approval from both the original domicile and the authorities in the urban destination, and was generally subject to strict quotas.

Since the 1980s, population movement from the countryside to the PRC 中国 cities has drastically increased. The end of the collective system and the dismantling of food rationing and other structures that maintained the *hukou* system have necessitated the adoption of more flexible policies on rural-urban migration. The authorities have now accepted that some degree of migration is inevitable, and many officials recognize that labor mobility is necessary for economic growth. However, the government remains unwilling to scrap the *hukou* system out of fear that this would allow the registered urban population, and thus number of people entitled to urban benefits, to grow too quickly.

Even among those scholars inside the PRC who advocate eventual elimination of the *hukou* system and denounce its unfair and discriminatory nature—some have even likened it to apartheid—hardly any are willing to countenance its immediate dismantling, citing the dangers of an “influx” into the cities. This concern means that such students of this system generally agree that the discriminatory *hukou* system should be changed in a “gradual” manner.³⁷

C. The urban-rural divide

The *hukou* system continues to impose differential opportunities based on inherited status, and is one of the key factors that exacerbates the growing inequality maintained by the rural-urban divide.³⁸

Since 1978, rapid economic growth in the PRC has led to higher incomes for many in the PRC. However, the fruits of The People's Republic of China's economic reforms have not been evenly enjoyed throughout the country. This spatial inequality highlights a concentration of wealth in China's cities—particularly along the eastern coast—and a notable scarcity of resources in the country's western and rural regions. This divide is of particular significance for members of ethnic minorities, most of whom are either classified as rural or living in the western part of the PRC.

Significant gaps in income and living standards exist between urban and rural areas in the PRC. According to the State Statistical Bureau (SSB), per capita disposal income of urban residents amounted to 4,719 yuan between January and September 2000. Per capita cash income for rural residents during the same period was 1,500 yuan.³⁹ In other words, the average income in cities is approximately 2.8 times the figure for rural areas.⁴⁰ This figure is considerably higher than other

³⁷ See for example, Gu Shengzu, Jian Xinhua, *Dangdai Zhongguo Renkou Liudong Yu Chengzhenhua* (Population Mobility and Urbanization in Contemporary China), (Wuhan: Wuhan University Press, 1994).

³⁸ In addition, the system continues to function as an informational infrastructure for state control. For example, a handbook for registration administrators devotes several chapters to the use of registration data in preventing crime and tracking down criminals. Mallee, “China's Household Registration System.”

³⁹ Wang Hui, “Rural, urban disparity increases,” *China Daily*, November 8, 2000.

⁴⁰ *Ibid.*

low-income economies in Asia where city incomes are, on average, 1.5 times higher than rural incomes.⁴¹ In fact, one study has found that the People's Republic of China was among the more unequal societies in developing Asia during the mid-1990s. In 1995, the Gini ratio — an economic index of inequality—for The People's Republic of China (0.452) was higher than those for India, Pakistan and Indonesia.⁴²

*“Thus, urban and rural societies in China are in many respects different worlds with different cost structures and different social and economic expectations.” UNDP, China. *The China Human Development Report*, New York: Oxford University Press 1999, p. 61.*

These disparities are not merely due to accidents of geography and differing natural resources. They also reflect the government's policy choices, not only in the historical extraction of resources from the countryside to benefit the cities, but also in the government's development strategy in the reform era, which focused on promoting rapid economic growth in some areas through preferential policies. This version of trickle-down economics, a regional variation on the theme of “letting some get rich first,” exacerbated the natural disadvantages of the interior. As Jae Ho Chung writes:

“During much of the reformist phase, the Chinese government consistently pursued a regionally discriminating strategy of supporting the coastal region at the expense of the rest of the country.... Almost all cities and areas opened up in the 1980s were located in the coastal region and enjoyed highly preferential tax rates and investment authority. Preferential foreign exchange retention rates were also granted to the Special Economic Zones (100 percent) and some coastal provinces (50 percent for Guangdong and Fujian), while the inland provinces were permitted to retain only 25 percent of their foreign exchange earnings.”⁴³

This regional inequality contributes to the rural-urban divide. Income disparity has been increasing as city incomes grow apace and rural incomes lag behind. For instance, per capita city incomes grew by 8.4 percentage points over the last year while per capita rural incomes only increased by a mere 1.8 percentage points over the same period.⁴⁴ In fact, growth rates for farmers' incomes have seen a steady decline since 1997. One report notes that the growth rate of farmers' per capita net income has been 4.6, 4.3 and 3.8 percentage points in 1997, 1998 and 1999 respectively.⁴⁵ Such overall rates indicate that in certain areas farm incomes have actually been falling.

According to official figures, currently about 50 million individuals—or 6 percent of the rural population—live in abject poverty.⁴⁶ This is certainly an undercount: the PRC government only counts as poor those people who live in certain counties where average income is below a certain level. According to the World Bank, 106 million people in The People's Republic of China are

⁴¹ “Narrow income gap with growth,” *China Daily*, October 10, 2000.

⁴² Khan Azizur Rahman and Carl Riskin, “Income and Inequality in China,” *The China Quarterly*, 1998, p. 246. Khan and Riskin note that the Gini ratio is used for its easy recognition value, the wide availability of estimates of this index, and its relative absence of disadvantages as an index of inequality. However, the authors also note that international comparison of Gini ratios are subject to many problems.

⁴³ Jae Ho Chung, “Regional Disparities, Policy Choices and State Capacity in China,” *China Perspectives*, No. 31, September-October 2000.

⁴⁴ *Supra*, see note 39, Hui.

⁴⁵ *Ibid.*

⁴⁶ Jean Oi, “Two Decades of Rural Reform in China: An Overview and Assessment,” *The China Quarterly*, no. 159, September 1999.

living in dire poverty, defined as surviving on \$1 a day or less.⁴⁷ Most of these are in rural areas.

According to official statistics from the late 1990s, 70 million people were living below a very low poverty threshold of 300 yuan annual income with another 70 million just above it. National minorities accounted for 43.75 percent of this number, a disproportionate figure considering that they are below 10 percent of the total population. Of 592 rural counties officially-designated in 1993 as “poor counties” in other words, where average income falls below a certain level—257 were in autonomous areas.⁴⁸

In the two decades of economic reform, the proportion of the labor force in autonomous areas working in agriculture has actually increased, rising from 76.89 percent in 1981 to 83.09 percent in 1999.⁴⁹ This is an indication of the contraction of opportunities for non-farm employment in the minority regions of the country, as the focus of economic development has shifted to the coastal areas. Unfortunately, there is no breakdown available on the percentage of ethnic minorities in the farm and non-farm labor forces in the autonomous areas.

An indicator of inequality within the autonomous areas can be seen in the proportion of bank deposits from urban and rural areas. Although, as noted above, close to 79 percent of the population of these areas are classified as rural residents, in 1999, rural bank deposits were only 21.9 percent of those in urban financial institutions, which represented a small decline from the 1989 figure of 23.5 percent. In Xinjiang, the gap was even larger, with rural deposits amounting to only 12.6 percent of the urban total. Figures were not available for Tibet or Guangxi.⁵⁰ The average rural annual income in Xinjiang was only 684 per capita in 1998, but it was only around 200 yuan for predominantly the Uyghur southern part of the province.⁵¹

Such disparities explain the enormous gulf in consumption. According to UNDP, the rural-urban gap is wide in all areas, from consumption of foods and household expenditure on clothing to possession of various household appliances. These gaps are also apparent in public services and access to technology.⁵² When access to social benefits is taken into account, the rural-urban income gap widens to four times.⁵³ According to UNDP’s latest China Human Development report:

Social structure, policy, technology and the management arrangements of the economic system are all responsible for the urban-rural gap and its perpetuation. These have led to restrictions on the movement of population from countryside to city, and to the establishment of different social levels and identities for rural and urban people. Major public expenditures have been diverted to benefit the quarter of the population living in

⁴⁷ Jasper Becker, “11 percent live in absolute poverty,” *South China Morning Post*, September 14, 2000.

⁴⁸ Nicolas Becquelin, “Trouble on the marches: Interethnic tension and endemic poverty in the national minority areas,” *China Perspectives*, No. 10, March/April 1997. As part of its anti-poverty campaign, in the early 1990s the central government undertook to classify certain rural counties as officially poor. These were the ones to receive aid. Unfortunately, this process did not count poor people, but only average income, and thus many poverty-stricken areas were excluded from official anti-poverty programs.

⁴⁹ *Supra*, see note 23, CESY 2000, p. 441.

⁵⁰ *Ibid.* p. 535.

⁵¹ Nicolas Becquelin, “Xinjiang in the Nineties,” *The China Journal*, No. 44, July 2000, citing Xinjiang Statistical Yearbook, 1998.

⁵² UNDP, *China Human Development Report: Transition and the State*, 1999, p. 69.

⁵³ “China Faces Task of Lifting up Rural Poor, Market Reform, Says OECD,” *Agence France Presse*, March 20, 2001.

cities. The open and hidden subsidies to urban residents are neither fair nor efficient.⁵⁴

The unequal development policies consistently pursued by the PRC state are discriminatory and inconsistent with the right to development. The Declaration on the Right to Development directs states to formulate national development policies based on “fair distribution of the benefits” of development.⁵⁵ It also requires states to ensure “equality of opportunity for all in their access to basic resources, education, health services, food, housing, employment and the fair distribution of income.”⁵⁶

D. Discrimination against rural-to-urban migrants

Beginning in the early to mid-1990s, in an attempt to erect new structures of control so as to create an “orderly flow” of migrants, national and local authorities began to issue a series of policies and regulations, and set up a variety of joint institutions to cope with migrant populations in the country 扠 cities. These regulatory frameworks, which emerged place by place at first but were eventually adopted on the national level, share a tendency towards complicated certification procedures, set quotas and punishments for violations. At their heart lay the ongoing policy of preventing migrants from changing their *hukou* registration, consigning them to the status of “temporary residents” not permitted to settle permanently in the city.

In many ways, this system can be compared to regulatory regimes imposed by receiving countries on migrant “guest workers.” Indeed, in 1995 China 扠 Minister of Labor Li Boyong proposed to the National People 扠 Congress that the authorities should set up a system for controlling the movement of internal migrants “similar to international passport and visa requirements.”⁵⁷ In effect, this is what has happened, at least in respect of the regulatory regime. However, this regime does not merely seek to regulate the entrance of migrants to cities, but imposes a set of discriminatory controls over their employment, health, fertility, education and housing. Over the course of the last decade, the authorities have issued a staggering array of new regulations at the national, provincial and local level that deal with all these matters.⁵⁸

The certification procedures instituted by these regulations mean that, to legally work and live in the city, migrants have to apply and be approved for a range of permits at both their place of *hukou* registration and their urban destination. However, due to the cumbersome bureaucratic structures and burdensome fees involved, as well as lax enforcement, a majority of migrants do not have all of the necessary permits. The result is that many migrants live in a semi-illegal and tenuous state where they are cut off from the few urban benefits linked to the permit schemes, and are subject to extortion by officials, abuse by employers, and ultimately the threat of detention and repatriation to their home areas.

Government discrimination—in the form of its development policies, the *hukou* system and regulations that only apply to rural-to-urban migrants—has pervasive discriminatory effects reaching into the private sphere. Rural migrants are vulnerable to a wide range of human rights

⁵⁴ Ibid, p. 70.

⁵⁵ The Declaration on the Right to Development, Article 2(a).

⁵⁶ The Declaration on the Right to Development, Article 8(1).

⁵⁷ Dorothy Solinger, “Contesting Citizenship in Urban China,” citing March 25, 1997, Kyodo report.

⁵⁸ A 1995 official compilation of documents and statistics on the floating population in Shanghai in the 1990s, for example, lists 45 regulations on the management of migrants. *The Floating Population in Shanghai in the 1990s (Jiushi Niandai Shanghai Liudong Renkou)*, Shanghai, East China Normal University Press, 1995.

violations by private individuals and groups. The government has neither prevented such private acts of discrimination nor provided adequate remedies for rural migrants who suffer these abuses. Moreover, the media's derogatory portrayal of rural migrants as criminals and undesirables feeds the prejudice of urban dwellers, who view migrants as a drain on public resources and a threat to urban security. In this way, the PRC government has not only failed to meet its duty to protect internal migrants from violence and systematic discrimination, but has fostered hostility toward rural migrants and encouraged violations by private/non-governmental actors.

The combination of their rural origin and ethnic and linguistic differences from the city population make most rural-to-urban migrants, but particularly the poorest and most disadvantages of them, immediately identifiable to city people and urban officials. For example, "unsophisticated" migrant women are readily distinguished by their rural accents, local culture and food, less-than-fashionable clothing and even "weather-beaten" complexions. Ethnic lines dividing migrants and urbanites are most pronounced at work, where "ethnic" divisions of labor prevail.⁵⁹ They are viewed as distinct from "typical" workers in that they are considered expendable and suited only to the most menial jobs. For example, officials/administrators at a textile factory in Zhengzhou boasted that cases of muscle strain and silicosis were avoided by using migrant workers for short periods of time in positions involving exposure to toxic conditions.⁶⁰

The social and institutional bias against rural migrants is thus rooted in their ethnic identity and rural *hukou* status. The Government fails to meet its obligations under the Convention on the Elimination of Discrimination to eliminate discrimination, in particular Articles 2 and 5.

1. Discriminatory representation of migrants

The derogatory term *mangliu* (blind drifters) has been widely used to describe all rural-to-urban migrants at least since the 1950s. To central planners, the self-initiated movement of rural migrants, as distinct from planned migration, was anarchic and chaotic.⁶¹ This depiction was dominant despite research showing that in reality, many migrants go to the cities with jobs in mind, established through informal networks like kinship or regional ties, rather than leaving with no particular job or destination.⁶²

Though the term for migrant workers has shifted in recent years from the negative *mangliu* to the neutral *mingong*,⁶³ these negative perceptions persist in the official media.⁶⁴ Migrants are described as "loser transients," wandering about the cities "in a state of aimlessness and

⁵⁹ Emily Honig, "Identity, Labor and Ethnicity in Contemporary China." *Putting Class in its Place: Worker Identities in East Asia*. Elizabeth Perry, ed.

⁶⁰ Li Mengbai & Hu Xin, *Liudong renkou dui dachengshi fazhan de yingxiang ji duice* (The influence of the floating population on the development of large cities and measures to deal with it), Beijing: Economic Daily Publishing House, cited by E. Honig, *Putting Class in its Place* (1991).

⁶¹ Kam Wing Chan, "Post-Mao China: A Two-Class Urban Society in the Making," *International Journal of Urban and Regional Research*, vol. 21, no. 1, 1996.

⁶² See, for example, Ma, Laurence J.C. and Xiang Biao. 1999. "Native place, migration and the emergence of peasant enclaves in Beijing." *China Quarterly* 155: 546-582.

⁶³ This term, which literally means "civil worker," denotes someone undertaking temporary employment, as opposed to "*zhigong*" (professional worker), the term generally used for urban permanent employees in factories and other units.

⁶⁴ Li Si-Ming. 1997. "Population, migration, regional economic growth and income determination: A comparative study of Dongguan and Meizhou, China." *Urban Studies* 34: 999-127.

disorder,” and evincing “little sense of law and order.”⁶⁵ Largely because they have fallen outside urban control mechanisms traditionally characterized by neighborhood committees and work units, migrants have been perceived as rootless people who, free of communal or governmental constraints, embody potential societal chaos (*luan*).⁶⁶ “From the state point of view, people without, or far removed from, their organization or village are “anonymous” and thus “unaccountable, untraceable, [and] hard to control.”⁶⁷

a. Drain on social services

Government officials now usually preface criticisms of migrant laborers with a brief statement on the benefits that they have conferred on economic development. However, such routine acknowledgements are still accompanied by florid descriptions of migrants draining state-subsidized goods and services such as electricity and water, sewage systems, food supplies, communications, transportation services and public security. Indeed, reports commonly depict migrants as “adding new chaos to the social problems troubling our residents such as jobs, transportation, housing and environmental problems.”⁶⁸

Such representations resonate strongly among urban residents who are puzzled and frustrated at the slipping away of state-subsidized services once provided by a government now bowing out of its former provisioning role.⁶⁹ Migrants are obvious scapegoats and residents commonly view every fresh arrival to the city as yet another threat to job security in a time of cuts in employment, and as drains on public goods and public security. For example, the lay-off of urban workers have forced municipal governments to limit employment opportunities for migrants. In response to such demands, the Shanghai government has banned migrant laborers from 23 job sectors and Beijing has excluded them from more than 20 sectors.⁷⁰

b. “Excess birth guerillas”

Officials also deplore the rate of uncontrolled births among the “floating population,” saying this undermines the government birth control efforts.⁷¹ PRC urban dwellers who regard migrants as an illegitimate burden on already strained city infrastructures have readily adopted this view and perceive migrants as the root of much of China’s population problems.⁷² A prevailing misconception in the cities is that migrant women workers fall outside the reaches of the population control regime and therefore give birth to an excessive number of children. The term “excess birth guerillas” (*chaosheng youjidui*) that is used to describe such women reflects the alarm and hyperbole which pervade urban sentiments on this issue.

⁶⁵ Wang Sigang, “Shanghai aimless vagrants worsen ‘three more’ problems.” *Shehui* (Society) 128: 44-45.

⁶⁶ Hein Mallee. “Migration, *hukou* and resistance in reform China.” *Chinese Society: Change, Conflict, Resistance*. Ed. Perry, Elizabeth and Mark Selden (Routledge; NY: 2000), p. 85.

⁶⁷ *Ibid*, p. 86.

⁶⁸ *Supra*, see note 65, Wang.

⁶⁹ Dorothy Solinger, *Contesting Citizenship in Urban China: Peasant Migrants, the State and the Logic of the Market*, California University Press, 1999.

⁷⁰ Mark O’Leill, “Migrant workers a threat to the urban unemployed.” *South China Morning Post*. 9 January 1998.

⁷¹ Daniel Kwan, “Tougher law for migrant birth control.” *South China Morning Post* 23 Sept. 1998.

⁷² Laurence J.C Ma., and Xiang Biao. 1999. “Native place, migration and the emergence of peasant enclaves in Beijing.” *China Quarterly* 155: 547.

c. Source of crime

The depiction of migrant workers as criminals or potential criminals is especially pervasive in the public discourse. Government officials routinely speak of a steady rise in the percentage of crimes committed by migrants, most of them from China's rural regions.⁷³ Responding to a 1996 report that approximately 10 percent of all crimes in China were committed in Guangdong Province, the province's Public Security Division Deputy Director publicly blamed the figure on the surge in migrants from other provinces.⁷⁴

The urban population likewise identifies migrants with crime, citing criminality as the most important reason for suspicion and separation from the migrants.⁷⁵ When asked, for instance, what quality migrants most urgently need to improve, 42.5 percent of the participants in one study responded "observance of the law."⁷⁶

Such discrimination is fed in part by the media. Many PRC academics also echo the official line, lauding migrants for their positive impact on economic development but describing them as a drain on public goods and public security.⁷⁷ Some cite the additional burdens imposed by migrants because of the "inferior quality" of their work, which in the construction sector has supposedly led to the use of substandard building materials and a higher incidence of accidents.⁷⁸ Migrant retailers and hawkers have also been criticized for obstructing and littering the streets, selling bogus goods and cheating customers.

d. Perception versus reality

While the problem of migrant criminality has received much attention, most appraisals of the issue have been blatantly biased. Zhao Shukai, a noted scholar of migrant workers, has pointed out that the factors that make up migrant crime statistics are somewhat misleading. For instance, the definition of "migrant" as any "non-resident" results in an overly inclusive grouping by including individuals who are not necessarily rural workers but who travel to a city expressly for criminal purposes.

⁷³ Bi Shuqi and Xu Song. "Factors in social environment contributing to increase in crime committed by Migrant Laborers." *Guangming Ribao* 5 Oct. 1994, p. 5.

⁷⁴ Publications Translation Section of the U.S. Consulate General in Hong Kong. "Migrants blamed for rising Guangdong crime rate." 4-21 Feb. 1996.

⁷⁵ Jinhong Ding and Norman Stockman. "The Floating Population and the Integration of the City Community: A survey on the attitudes of Shanghai residents to recent migrants," p. 126.

⁷⁶ *Ibid*, p. 128.

⁷⁷ It should be noted that not all Chinese academics hold such derogatory views of migrants. For example, Cai Fang, deputy director of the Population Research Centre at the Chinese Academy of Social Sciences has argued that migrants, who supply China with a source of cheap labor, could contribute to the country's economic competitiveness if they were treated more fairly. (See, Mark O'Leill, "Migrant workers a threat to the urban unemployed." *South China Morning Post*). Others have also echoed such sentiments, suggesting that the *hukou* system be eventually abolished because it is unfair and a source of discrimination. He suggested that the system be abolished gradually because of the massive influx of migration that would otherwise be precipitated. (See, Gu Shengzu, Jian Xinhua, *Dangdai Zhongguo Renkou Liudong Yu Chengzhenhua* (Population Mobility and Urbanization in contemporary China). Wuhan: Wuhan University Press, 1994).

⁷⁸ See, for example, Li Mengbai, Wu Xin, et al., *Liudong Renkou Dui Da Chengshi Fazhan De Yingxiang Ji Duice* (The Impact of Migrants on the Development of Large Cities and Possible Solutions) Beijing: Economic Daily Press, 1991.

Crime figures frequently fail to capture reality. Many migrants are classified as “criminals” for minor public safety violations. Moreover, crime rates often do not include several types of serious criminal offenses, such as corruption and abuse of office, which are almost exclusively committed by urban people, not migrants.⁷⁹ Finally, local urban and migrant crime rates are not directly comparable. The local urban population comprises a broad demographic profile including the elderly, women and children. By contrast, the majority of the migrant population are young men who typically have a higher incidence of involvement in crime. Based on such different population bases, the recorded rates of migrant crime are naturally overly inflated.⁸⁰

Bald statements of migrant criminality do not take into account the fact that only a small percentage of migrants engage in criminal activity and most are hard working and law-abiding individuals.⁸¹ The pervasive depictions of migrants as criminals and the supposed statistics of increasing migrant crime rates that accompany every story are typically not accompanied by a balancing observation that migrants are also often victims of crime. Migrants are certainly vulnerable to crime yet no assessment of this is ever been made in reports on the subject.⁸²

Public perception of migrants has been dominated by an urban and state perspective which identifies migrants as outsiders who need to be “put in their place.”⁸³ A poll conducted by Zero Point after the 1997 Spring Festival found that of 255 families surveyed in the economic beacon cities of Beijing, Shanghai, Guangzhou and Wuhan, 17 percent found the migrants “disgusting,” and only one in four considered themselves sympathetic to the newcomers. Another 30 percent said they had become used to the migrants and were apathetic.⁸⁴ However, urban dwellers generally have little opportunity for significant contact with those from the floating population.⁸⁵

2. Effects of discrimination

Discrimination against the rural-to-urban migrants impacts every area of their lives and their enjoyment of economic, social, cultural, civil and political rights. Below we outline just a few effects of such discrimination, the way it exacerbates tensions with locals, the impact on migrants’ employment rights and the arbitrary detention of migrants under Custody and Repatriation.

⁷⁹ In 1994, this type of criminal accounted for 6.5 percent of all cases prosecuted. This implies that the crime rate for the local urban population has been underestimated by 6.5 percent, making the percentage of crimes committed by migrants seem higher than it should. Zhao Shukai, “Criminality and the Policing of Migrant Workers” translated by Andrew Kipnis. *The China Journal*, 43 January, 2000, p. 102-3.

⁸⁰ Ibid.

⁸¹ Wang Yuzhao, “Pros and Cons of Interregional Peasant Migration.” *Nongmin Ribao* 30 Mar. 1995, p. 4.

⁸² See, for example, Bi Shuqi and Xu Song, “Factors in social environment contributing to increase in crime committed by Migrant Laborers.” *Guangming Ribao* 5 Oct. 1994, p. 5.

⁸³ Supra, see note 66, Mallee p. 85.

⁸⁴ Andy Ho, “Rural Labour Draws Ire.” *South China Morning Post*. 29 Apr. 1997.

⁸⁵ Among those surveyed in the Caoyang Xincun area of Putuo District in Shanghai, 71.3 percent felt threatened (either seriously or somewhat) by the presence of migrants. When queried on specific aspects of urban life, 90.8 percent felt the “influence” of the floating population in the realm of transport; 80.8 percent felt an effect on the security of property; and 77.4 percent felt migrants had an impact on the quality of the environment. It should be noted, however, that respondents in this survey largely recognized the right of migrant children to attend city schools. Indeed, a large majority (80.3 percent) of those surveyed believe that the city schools should accept migrant children. See, Jinhong Ding and Norman Stockman. “The Floating Population and the Integration of the City Community: A survey on the attitudes of Shanghai residents to recent migrants.” p. 123; 125; 128.

a. Conflict with locals

The ubiquitous discrimination faced by migrant workers exacerbates conflicts with urban locals. Furthermore, Municipal Public Security Bureau researchers have reported that such prejudices partly contribute to extra-legal activities within the migrant community.⁸⁶

Conflicts between locals and migrants have erupted on several occasions, including a 1995 clash between Shenzhen villagers and migrant workers brought south largely from Hunan and Hubei to work on a highway project. After a Shenzhen local drove over a road freshly tarred by migrants, a fight broke out. When other Shenzhen locals and police hastened to battle back the migrants, a riot broke out in which several migrants were arrested and police opened fire over the crowd.⁸⁷ “In the eyes of the police, we are worse than dogs,” one migrant involved in the conflict said in a news report.⁸⁸ Demonstrations and riots, exacerbated by migrant worker mistreatment and pervasive discrimination, have also flared among miners on China’s northern border and workers in inland industrial centers in Hubei and Shanxi provinces.⁸⁹

Furthermore, discriminatory attitudes have made it difficult for migrants to find employment and earn honest wages. Many employers, for instance, would rather hire those who do not look like a “country bumpkin” in appearance.⁹⁰ Employers view *mingong* as workers suited only for the dirty, difficult or dangerous jobs that urban-dwellers refuse to take.⁹¹

Finally, some local officials have found that control of migrants sometimes benefits their own interests, either because cheap labor and services become available, or because it increases the opportunities for “institutional revenue raising and personal corruption.”⁹²

b. Migrants’ vulnerable status in the workplace

Because of the official discrimination against them, migrants are particularly vulnerable to abuse in the workplace, and have difficulty accessing means to protect their rights, including official mechanisms that are supposed to enforce labor laws and regulations. The many migrant workers whose status in the city is “illegal” generally do not dare to seek official assistance to deal with abuses they are facing.

Such abuse includes forced labor, dangerous working conditions, physical assaults and unfair dismissals. In most major cities, migrants face systematic discrimination in the types of work they may take up, and they are generally excluded from government social security schemes, most of which are only available to those with urban *hukou*.

• Violations of occupational health and safety

⁸⁶ Bi Shuqi and Xu Song, “Factors in social environment contributing to increase in crime committed by Migrant Laborers,” *Guanming Ribao* 5 Oct. 1994, p. 5

⁸⁷ “Hong Kong: Three Dead as Chinese Villagers, Migrants Clash,” Reuters News Service 5 Dec. 1995.

⁸⁸ John Gittings, “China: Migrants shot dead on the border,” *Guardian* 7 Dec. 1995.

⁸⁹ Margaret Harris, “China: Chinese Worker Unrest Turns Deadly,” *Sydney Morning Herald* 7 Dec. 1995.

⁹⁰ Feng Wang, and Zuo Xuejin. 1999. “Inside China’s cities: Institutional barriers and opportunities for urban migrants,” *American Economic Review* 89:276-31.

⁹¹ John Knight, Lina Song and Jia Huaibin. 1999. “Chinese rural migrants in urban enterprises: Three perspectives,” *Journal of Development Studies* 35: 91.

⁹² *Supra*, see 66, Mallee p. 95.

After leaving their rural hometowns in search of better opportunities, migrant workers often find themselves laboring in extremely hazardous work environments. Safety standards in factories employing migrants are often abysmal. One study reports that in 1998 alone there were 15,000 serious accidents in Shenzhen 担 9,582 factories, where the overwhelming majority of workers are migrants. According to the study, conducted by a *Worker 担 Daily* reporter, 31 workers are rendered handicapped each day from work related accidents. Every 4 days, a worker dies due to an industrial injury.⁹³

Long hours in dangerous work environments commonly lead to the deterioration of workers' health as well as serious accidents. PRC law defines "overtime" as any work performed beyond eight hours per day or 40 hours per week.⁹⁴ This standard is commonly not applied to migrant workers. Many report working a minimum of 12 hours a day, sometimes even during weekends.

Migrant workers are subjected to a range of abuses including physical violence and corporal punishment. Labor rights monitoring groups report that "workers complain that it is common to be fined, scolded and beaten without reason by factory security guards."⁹⁵ Female migrants also report that sexual harassment is common.

- **Substandard and unpaid wages**

Many migrants must put up with substandard wages that are often not paid for months at a time. Although minimum wages are set by localities, migrants often are not paid at these rates. As one scholar points out, illegally low wages that are paid late often appear to be the norm in factories that hire migrant workers. She states, "The sporadic nature of payments was so prevalent that a very common question the workers asked each other was, '摸ave you been paid yet?' and a frequent response was, '惟ot yet. 控'⁹⁶

Although the Labor Law requires employers to pay employees during sick leave, many factories not only do not offer sick leave pay, but also fine workers for work absences, even when due to illness.⁹⁷ This may explain why many migrants fail to take leave or seek medical assistance despite suffering from physical ailments or other disabilities.

- **Forced labor**

The confiscation of workers' documents contributes to what can amount to a system of bonded labor for migrant workers. In places where the cost of an urban work permit is very high, factories pay the permit cost as an advance against a worker 担 future wages. Under such arrangements, the worker is placed in a bonded relationship with the factory and is essentially unable to quit. In other situations, factories require that workers pay a "deposit" at the outset of their employment, ranging from half a month to one month 担 wage. Workers who quit without

⁹³ Lin Gu, "One man 担 bid for workers' justice," *South China Morning Post*, March 26, 2000.

⁹⁴ Article 36 and 38 of the Labor Law states that the working time for an employee shall not exceed 8 hours a day, or 44 hours a week on average. Further, employers must ensure that workers have at least one day of rest each week.

⁹⁵ Hong Kong Christian Industrial Committee, *Change* December 1998, citing *Nanfeng Workers' Post* (Guangzhou), June 1, 1998, p. 4.

⁹⁶ Anita Chan, "The Culture of Survival —Lives of Migrant Workers Through the Prism of Private Letters," in Link, et al., *Popular Thought in Post-Socialist China* (Boulder: Rowman & Littlefield, forthcoming), p. 3.

⁹⁷ *Ibid*, p. 7.

permission of the management, or before their contract expires, are likely to lose their deposits.⁹⁸ Because most migrant workers cannot afford to lose such sums, they are often trapped in dangerous or abusive work environments with no ability to leave.

- **Excluded from certain occupations**

In many cases, migrants are clearly discriminated against in favor of urban workers. This is, in part, due to official policies to keep urban unemployment rates at around three percent.⁹⁹ Large cities, such as Beijing and Shanghai, publish annually updated lists of job sectors where employment of migrants is prohibited. For example, on February 10, 1998, Beijing's municipal labor bureau published a notice in the *Beijing Daily* announcing that all migrants working as postal workers, machinists, gardeners and street sweepers should be sacked and replaced with jobless Beijing residents within 20 days.¹⁰⁰ Migrants were only authorized to work in 12 sectors consisting of 198 types of work, usually of the most unpopular kind, such as in slaughterhouses, cleaning, mining, and on construction sites.¹⁰¹

c. No Social Security

Given the job insecurity many migrants face, social assistance is a critical issue. Some local governments have begun to implement various types of assistance programs such as medical insurance, pension schemes and unemployment assistance. However, these regulations are neither consistent nor comprehensive. Furthermore, they generally discriminate against and exclude migrant workers. Likewise proposals for health insurance schemes to replace the fraying urban social safety net focus entirely on the urban population, excluding those with rural registration, including rural-to-urban migrants.

3. Arbitrary detention

Migrant workers and individuals without urban *hukou* status can be subject to arbitrary administrative detention at any time under "Custody and Repatriation" (C&R).¹⁰² Governed by national and local regulations, C&R allows for the detention by urban authorities of people whose household registration is not located in the city where they are living or working, as part of periodic urban "clean-ups." People detained under this measure are generally held for a number of days and then sent back from the city to their place of origin, or bailed out by friends after paying hundreds of yuan.

Although generally imposed for up to ten days, C&R essentially allows the police to detain anyone for any reason virtually indefinitely, without any due process at all. Detention conditions

⁹⁸ Anita Chan, "Labor Standards and Human Rights: The Case of Chinese Workers Under Market Socialism," *The Human Rights Quarterly*, 20 (1998) p. 891.

⁹⁹ Cao Min, "More Help for Job-Seekers," *China Daily*, January 19, 1996; Cao Min, "Industry Works Hard to Solve Job Problem," *China Daily*, May 8, 1997.

¹⁰⁰ Tom Korski, "Migrants to Be Sacked in Drive to Help Beijing Jobless," *South China Morning Post*, February 10, 1998.

¹⁰¹ "Migrants Go Home," *Far Eastern Economic Review*, Intelligence brief, February 26, 1998; Mark O'Neill, "Beijing Orders Sacking of 120,000 migrant workers," *South China Morning Post*, April 17, 1998.

¹⁰² This section is a summary of the conclusions of a 1999 report by Human Rights in China, "Not Welcome at the Party: Behind the 'clean-up' of China's Cities—A Report on Administrative Detention Under Custody and Repatriation."

are reported to be appalling, with frequent beatings, insufficient sanitary conditions, and deprivation of food and water.

Under the vague and broad terms of national and local regulations governing C&R, those who fail to comply with the permit system can be detained at any time. Many are detained purely for not having the proper documents to show that they were permitted to live and work in that particular city. Police pick them up in the course of ID checks in migrant neighborhoods. They often claim, with no evidence, that people have committed crimes or are holding fake documents.

HRIC estimates that C&R now affects upwards of two million people every year. Most of those detained belong to some of the most marginalized groups in society, generally referred to by the city authorities as "three not-haves" (*sanwu renyuan*), having no papers, no job and no fixed abode. Articles published in professional journals for officials who operate the C&R detention centers have stated that the "vast majority" of C&R detainees are now migrant workers. Surveys have found that even in cities where compliance with the system of permits for migrants is at its highest, 20 percent of migrants do not have the necessary permits to make their stay in the city "legal." It is common practice for factory managers to retain migrant workers' permits so that they cannot quit without notice. Among C&R detainees interviewed by HRIC, many were in this situation, but police who detained them refused to listen when they explained the reason why they were not carrying the documents.

This system of detention is not only abusive, but is a clear form of discrimination against migrants, based on their rural *hukou* status and their appearance. Individuals are often targeted because the police hear from their language and see from their appearance that they are not from the locality. Urban people are almost never detained under C&R.

IV. DISCRIMINATION AGAINST NATIONAL MINORITIES

Although Article 4 of the PRC Constitution guarantees equality to the country's minority groups, the PRC's development policies and the government's national security concerns have often led to the institutionalization of racial discrimination and economic, social, and political inequality in some areas of the country. As one Sinologist states, "A rising tide may be lifting the boats of all ethnic groups, but, however one looks at it statistically, Han boats are rising much faster than minority boats."¹⁰³

HRIC suggests that ethnic discrimination in the PRC is facilitated and sometimes institutionalized by government policies. Beijing's economic liberalization programs, national security concerns and presumed need for centralized political control have created hostile environments in areas such as Xinjiang, Tibet and Inner Mongolia. In Xinjiang, repression has exacerbated tensions and actually fanned the flames of separatism among Uyghurs, and in Tibet and Inner Mongolia one finds quite demoralized societies.¹⁰⁴ Some other ethnic groups are in danger of losing their unique national characteristics - a process, of course, that began before the current regime came to power.

¹⁰³ *Supra*, see note 5, Sautman p. 285.

¹⁰⁴ Extrapolated from comments made by Uradyn Bulag, an expert on Inner Mongolia at Hunter College, New York. Quoted in "Unity of a Sort," *The Economist*, 4 September 1999.

A. Preferential Policies and Institutionalized Racism

ICERD, Article 1(iv) and Article 2(ii) envision that the equality norm reflected in the provisions prohibiting discrimination is consistent with special differential treatment for particular groups when circumstances warrant. A host of preferential policies (*youhui zhengce*) has been adopted to address problems of discrimination against ethnic minorities and their unequal access to education and economic and social opportunities. Preferential development policies of the PRC government reflect three common features: budgetary subventions, disproportionate investment in public works, and provisions for and training of personnel. These preferential policies are provided in exchange for cooperation for the exploitation of natural resources from the autonomous regions. The PRC central government claims to invest 30 billion dollars a year in minority areas, a sum equal to revenues extracted.

The PRC central government promotes its policy of stability through the enhancement of comparative advantage in the socialist market economy through: liberal investment laws, exemptions from tariffs of some imported goods, subsidized high salaries for skilled persons in state-owned enterprises, and inducements for development. Minority areas and minority individuals are subject to preferential policies in five major areas:

- Family planning, exemption from minimum marriage age and one child restrictions'
- Education, preferential admissions (quotas, added points), lowered school fees, boarding schools, remedial programs & preparatory programs arranged between minority areas and universities
- Employment, consideration in promotion and the hiring of cadres
- Business development, special loans, grants, and tax exemptions
- Political Representation, proportionate or greater representation of ethnic minorities in people's congresses and among minority leaders

The preferential admission policy is applied to all minority groups, and is given without regard to residence within a minority area. There is also a policy for allowing entrance examination taking in indigenous languages (*min kao han*). Quotas are basic to the entrance system as are added points. The scholar Barry Sautman acknowledges the PRC government's belief that unequal treatment can lead to 'quality in fact,' and that this policy is intended to narrow the ever-growing economic and social gap between the minority and the Han.

These preferential policies would constitute the special measures envisioned by ICERD, Article 1(4). However, critics point out that these preferential policies

- Fail to produce "genuine" autonomy for minority areas and reflect too narrow a conception of ethnic autonomy
- Are inadequate to overcome ethnically stratifying effects of marketization as the law also does not mandate the creation of minority economic opportunities sufficient to overcome the tendency of the "socialist market economy" to increase the gap between Han and minority living standards
- Do not provide for regularized state intervention to protect the dignity of minority peoples from affronts by "Great Han chauvinism" (*da hanzu zhuyi*).¹⁰⁵ This contravenes Article 4 of ICERD.

¹⁰⁵ Supra, see note 5, Sautman p. 285-286.

The “border regions” of Xinjiang, Tibet and Inner Mongolia offer the clearest examples of how racial discrimination relates directly to government policies. Even though they are often rich in natural resources, in recent years these regions have seen a marked decline in the welfare of their indigenous inhabitants. Ecologically insensitive resource exploitation has led to widespread land degradation. In addition, the large-scale influx of job-seeking Han Chinese has turned some ethnic groups into marginalized ethnic minorities in their own homelands. As more and more settlers move in, local cultures become devalued as non-Han residents and their children must learn the Chinese language and adopt Chinese ways in order to avoid derision and job discrimination.

B. Social evolutionary paradigm promotes superiority of “Han race”

Another part of the project of classification of “national minorities” in the early years of the PRC involved situating each group on a linear scale of social evolution, and labeling each according to the culture’s “stage of development.” Thus, ethnic minorities without a written language were often classified as “primitive” and their religious beliefs denigrated as mere “superstition.” Some ethnic minorities, such as the Tibetans, were even categorized as a feudal serf-owning society. With a few exceptions, most ethnic minorities are considered “backward,” awaiting “civilization” to be brought to them by the Han “elder brothers.” As PRC academic and activist Tan Leshan has written:

From the viewpoint of the CCP’s historical materialism, ethnic minorities are generally seen as ‘backward’ and at a low stage of social evolution. Thus, they need help and instruction from the CCP to “develop their political, economic, cultural and educational construction work.” Such help and instruction, however, in practice often appears to be mandatory and coercive, especially during radical political movements.¹⁰⁶

This social evolutionary paradigm implicitly advocates the superiority of certain races over others, and contributes to fostering popular discrimination against ethnic minorities. It has a particularly pernicious impact in the context of the education system, as detailed below in the section on education.

C. Autonomy

1. Minority “autonomy”

Regional autonomy for minority nationalities is the central plank of the PRC government’s policy on the treatment of ethnic minorities. However, in practice, such autonomy no longer means a great deal, particularly since what economic benefits it provided to ethnic minorities under the central planning system have been eroded by the economic reforms. As one PRC scholar puts it: “Regional autonomy is essentially a tactical policy serving the ultimate goal of socialization, national integration and political stability in China.”¹⁰⁷

2. Party dominance vitiates autonomy

¹⁰⁶ Tan Leshan, “Autonomy is not what it was,” *Chinabrief*, Vol. II, No. 4, December 1999-March 2000. The quote is from the 1949 Common Program of the Chinese People’s Political Consultative Conference.

¹⁰⁷ Ibid.

On a political level, although certain posts in the autonomous governments are reserved for national minorities, generally the more important positions are reserved for Han cadres. Normally in the current PRC political system, Party secretaries outrank government officials at the same level, and in minority areas, the real positions of leadership are held by Han Party officials. As one scholar writes:

Although most minority regions and districts have minority government leaders, the real source of power is in the Communist Party, which in all of these areas are dominated by the Han majority, reflecting China's active watch over the five so-called autonomous regions. As a result, these regions actually come under closer scrutiny than other provinces with large minority populations.¹⁰⁸

The Party secretaries in the major minority areas are not themselves local minority people, raising the question of why the Party cannot find anyone who it deems to be competent and loyal enough among the eponymous populations of the autonomous areas.

In the reform era, none of the autonomous regions has had a person from the local minority as first Party secretary, although there were ethnic minorities who held such posts in the past. Ulanhu was Party secretary in Inner Mongolia until he lost his position in the Cultural Revolution in 1967, and Uyghur leader Saifudin was Party secretary until 1978. There has never been a Tibetan holding the top Party post in the Tibet Autonomous Region (TAR).

A similar situation prevails at the minority regions' lower levels. For example, although the population of Guangxi is nearly 40 percent Zhuang,¹⁰⁹ only one of Guangxi's 11 prefectural and prefectural-level municipality CCP general secretaries was Zhuang.¹¹⁰ In Xishuangbanna Dai Autonomous Prefecture, a Dai has never been the Party secretary, and the former prefectural head, a Party member since 1957, was not even a member of the prefectural Party standing committee.¹¹¹

In the highest decision-making levels of the PRC government, there is a complete absence of representation of minority officials. There are no ethnic minority members of the CCP Politburo and have not been any since the early 1980s. Ismail Amat, the Uyghur in charge of the State Ethnic Affairs Commission, is the only member of the State Council who is not a member of the CCP Politburo. (The Commission, a minor department within the State Council, deals with the implementation of the government's minority policies.)

Minority cadres have themselves from time to time (and at some risk to themselves) have raised the question of this "glass ceiling," particularly as it relates to autonomous areas. One cadre in Tibet told a scholar that she had included in *neibu* (unpublished) documents her criticism of the Party's failure to appoint a Tibetan as TAR Party Secretary and that she was criticized for having done so. She has not moved up the ladder since then. A cadre in Xinjiang told a scholar that he had spoken at meetings about the replacement of certain county level Uyghur party secretaries by Han after a period of unrest. He said that he was old and only dared to make his complaints because he had made his peace with Allah.¹¹²

¹⁰⁸ Supra, see note 7, Gladney.

¹⁰⁹ A minority group created by the official taxonomy, and incorporating a number of disparate groups.

¹¹⁰ Palmer Kaup, *Creating the Zhuang*, p. 133

¹¹¹ Supra, see note 106, Leshan.

¹¹² Interview material provided on condition of anonymity.

Ethnic minorities who have criticisms of government policies that especially affect ethnic minorities, or even criticisms of Han chauvinism, fear being accused of “local nationalism.” Such an accusation can be severely damaging in terms of a career and puts one under suspicion of engaging in separatism, at least if the person involved is a Tibetan, Uyghur, or Mongol. The government report indicates that even affirmation of ethnic identity may be considered as a *negative* activity threatening “national unity.” As a scholar of Inner Mongolian origin writes: “The official injunction today is that nobody should say or do anything detrimental to nationalities amity. This injunction effectively closes any legitimate way to express ethnic grievance, lest it undermine “nationalities amity.”¹¹³ This situation prevails despite the claim in paragraph 79 of the government report that “no organization or individual is allowed to compel citizens of ethnic minorities . . . not to worship, nor to discriminate against ethnic minorities who worship or do not worship.”¹¹⁴”

3. Law falls short in guaranteeing autonomy

The National Autonomy Law of the People’s Republic of China (Autonomy Law) was enacted on May 31, 1984, and amended on February 28, 2001, by the NPC Standing Committee. The Autonomy Law is primarily a restatement of the general policies of the CCP towards ethnic minorities (See Appendix B). In our view it does not provide a workable legal mechanism to enable the elimination or reduction of ethnic and racial discrimination. Furthermore, due to its vagueness, it does not provide a basis for the exercise of regional autonomy.

First, the Autonomy Law fails to provide sufficient detail delineating the authority of the local autonomy government and its relationship with other higher-level governments or the central government. The scope of “autonomy” in the sense of administrative authority is not made clear. The contraction is apparent, for example, in Article 14 of the Autonomy Law, which states: “People’s governments of all levels in autonomous regions are administrative organs under the unified leadership of the State Council and subordinated to the State Council.” Under the law, autonomous areas must obtain permission from higher levels for any waiver of a national law or policy in that locality. Similarly (and more importantly), the practice of “autonomy” under Party leadership applies to all organs, including the people’s congresses, at all levels in the autonomous regions.

Second, although the Autonomy Law speaks against discrimination, it does not provide a practical legal mechanism for people to challenge discriminatory effects of official actions. In our view, one of the biggest flaws contained in the law is that official discrimination on the basis of race or ethnicity is not subject to legal challenge. Although the 1990 Administrative Litigation Law (which is the primary mechanism for citizen suits against government actions) was a major step in the direction of achieving rule of law in the PRC, the law states that any legislation or abstract administrative act (regulations, circulars, and official documents) are not actionable under the law. Since many instances of racial discrimination result directly or indirectly from such “abstract” official acts, this means an effective mechanism to correct such acts is lacking. Instead, the law only provides an ambiguous and difficult-to-prove principle prohibiting state organs or officials from engaging in racial discrimination (Article 11). Violations of the law by

¹¹³ Uradyn Bulag, “The cult of Ulanhu in Inner Mongolia: history, memory and the making of national heroes,” *Central Asian Survey*, Vol. 17, No. 1.

¹¹⁴ The Department Annual Report on Human Rights, China Report, Freedom of Religion section.

the higher government organs, who set such rules, may thus only be addressed by those institutions themselves.

The only effective and practical way to address racial discrimination would be to allow those aggrieved to bring in an independent arbitrator, such as judicial review, of any alleged racial discrimination. However, neither the Autonomy Law nor the Administrative Litigation Law provides such remedy.

Third, the preface of the Autonomy Law enshrines the principle of the leadership of the CCP, and this is implemented throughout all autonomous regions and areas. The CCP committees dominate the process of selecting the government; thus the Party, not the autonomous areas, set the priorities for the governments that rule there.

Finally, the guarantees regarding financing of autonomous areas and education for ethnic minorities are weak. The wording perpetuates the idea that ethnic minorities are “backward” and need to be helped. The ethnic minorities, of course, may not see the situation that way, but it is questionable whether members of ethnic minorities have the choice of refusing certain types of “assistance” the higher level governments are intent on providing.

It is regrettable that the 2001 revision of the Autonomy Law wrought no major changes. It is true that central planning has been eliminated from the text. Otherwise, the changes are more ideological than substantive. In the preface, the new law adds “Deng Xiaoping Theory” to Marxism, Leninism and Mao Zedong Thought as among the guiding principles of regional autonomy. The status of the autonomy policy also appears to have been upgraded from “important” political system, to a “basic” political system.

Two new provisions on the legal responsibilities of the central government do indicate the intention to stabilize the territory of autonomous areas and give autonomous governments somewhat larger powers. Article 14 spells out clearer rules on the demarcation of autonomous areas. In the previous version, changes in the borderlines of the autonomous areas were to be subject to the superior government and approval of the State Council. Now, these changes are subject to legal procedure and State Council approval is not necessary. Article 20 requires superior governments to respond to requests from the autonomous governments to cease implementation of those laws and regulations, deemed to be incompatible with the “circumstances” of the localities concerned, within 60 days.

But in at least one respect, the new text indicates a stiffening. Article 44 stipulates that the minority areas shall implement the family planning policy, which was not so definite in the previous law. The old version read: “The autonomous governments of autonomous areas shall, in accordance with law and taking consideration of the local circumstances, promulgate rules with regard to the family planning.” The new law reads: “The minority autonomous areas implement family planning and the eugenic policy (*you sheng you yu*) to improve the quality of the minority population. The autonomous governments of autonomous areas, in accordance with law and taking consideration of the local circumstances, promulgate rules with regard to the family planning.”

4. Lack of economic control

The effect of the preferential economic policies that autonomous areas once enjoyed, to manage their own industrial and agricultural production, “is now virtually non-existent” since most other

areas also enjoy such rights.¹¹⁵ The subsidies and tax breaks given to such areas have also declined in value, and according to various figures, collection of revenue from the minority areas actually exceeds what they are given by the central government.¹¹⁶ Furthermore, as mentioned in the section on the urban-rural divide, preferences accorded to coastal development zones and cities accord them far more benefits than those enjoyed by the autonomous areas.

Many of the autonomous areas are rich in natural resources, but the minority populations rarely benefit from the extraction of these resources. Some scholars have labeled this pattern a form of “internal colonialism.”¹¹⁷ An example is found in the Jianshui County of the Honghe Hani Autonomous Prefecture in Yunnan Province, where 94 percent of the zinc, 41 percent of the coal resources, and all of the manganese are extracted by companies owned by central or provincial governments. Hardly any of the production is given to the local government, nor are the profits shared. Moreover, the local areas often have to provide large sums in price subsidies for the workers in these enterprises. Pollution is an additional problem. The environmental impacts of resource extraction can have a serious effect on minority areas.

Often few members of minority groups are employed in these extractive industries. In the Xinjiang oil industry, according to one scholar:

In newer oilfields, the minority presence is assertedly minimal. It was reported in 1993 that “Aside from a few truck drivers, virtually no Uyghur or member of any other Moslem minority is employed on the oilfields.” Asked to comment, then-vice-governor and now Xinjiang Party Secretary Wang Lequan stated: “The workforce in Xinjiang 油田 all come from other oilfields in China so we don’t take local people...[I]n the oilfields elsewhere in China there are no minority populations. With development of the oil industry here, we surely will hire minority people.” By 1995, however, there were only 253 minority people among 4,000 technical workers in the Taklamakan Desert oil program. Minorities are few among the 20,000-plus Tarim Basin oil workers. Asked about the absence of minorities at Xinjiang oil stations, a China National Petroleum Corporation official replied, “They aren’t good enough. Training takes them too long and costs too much.” Allegedly all 2,200 Boskam petrochemical factory workers are Han and only 13 of 2,000 Urumqi tractor factory workers are Muslims. Resentment by Xinjiang Muslims of Han predominance in industry is said to be strong.¹¹⁸

5. Han immigration

Another form of “internal colonialism” can be seen in the role of the Xinjiang Production and Construction Corps (PCC, also known as the *Bingtuan*¹¹⁹), a huge state-owned organization established in the early 1950s, which is administered largely independently from the Xinjiang Uyghur Autonomous Regional government. The PCC has its own police force, courts, agricultural and industrial enterprises, as well as its own large network of labor camps and prisons.¹²⁰ It exemplifies the PRC government’s dual purpose of developing the region economically and curtailing Uyghur separatism.

¹¹⁵ *Supra*, see note 106, Leshan.

¹¹⁶ *Ibid*.

¹¹⁷ See, for example, Becquelin, “Xinjiang in the Nineties,” see note 48.

¹¹⁸ Barry Sautman and Yan Hairong, “China’s ethnic minorities: from self-determination to self-representation,” unpublished paper.

¹¹⁹ Amnesty Uyghur report, p. 4.

¹²⁰ *Ibid*, p. 5.

Both an administrative organ and a large development corporation,¹²¹ the PCC 担 2.4 million employees are 97 percent Han Chinese. Although it is supposed to be a profitable enterprise, the PCC actually receives a higher level of direct central government subsidy than does the province as a whole. In 1994, the PCC 担 13.5 percent of the population of the province received a subsidy of around 1 billion yuan, while the provincial government, which has to address the livelihood of the remaining 86.5 percent, received only 4.24 billion yuan.¹²²

The PCC is just one dimension of a long-term, highly controversial strategy of encouraging immigration of Han Chinese into Xinjiang and other autonomous areas, popularly known as “mixing sand” (*chan shazi*).¹²³ Although Beijing no longer directly organizes such migration, there is ample evidence that the PRC government 担 economic policies in these regions have such an effect. Partly as a result of immigration, Xinjiang has become the PRC 担 largest cotton producer¹²⁴ and its per capita GDP ranks 12th among the PRC 担 31 provinces, autonomous areas and self-governing cities.¹²⁵ However, economic discrimination against Uyghurs manifests in the fact that the region 担 economic development has largely bypassed the local ethnic population. The unemployment rate among Uyghurs is about 70 percent, while that of Han Chinese in the region is less than 1 percent.¹²⁶

As a result of state hiring policies and relocation programs, demographics in Xinjiang have shifted dramatically: Whereas in 1949, the Uyghurs accounted for more than three quarters of the population while Han Chinese amounted to about 6 percent, according to 1997 census reports (which are apt to be conservative), the population exceeded 17 million, with Uyghurs making up 47 percent of the population and Han Chinese accounting for 38 percent. In Xinjiang 担 provincial capital of Urumqi, Han Chinese comprise 80 percent of the 1.5 million inhabitants.

In Inner Mongolia, Mongols have long been in the minority as a result of Han immigration. And there is significant concern about immigration into Tibet as well, as documented by many NGOs and scholars researching the situation there.

D. Education in minority areas

ICERD specifically enjoins the States Parties to this convention to *bear in mind* the Convention Against Discrimination in Education (CADE) adopted by UNESCO in 1960. Therefore, as well as ICERD, we use CADE as a benchmark in assessing the PRC 担 progress in the area of education.

¹²¹ See James D. Seymour, “Xinjiang’s Production and Construction Corps, and the Sinification of Eastern Turkestan,” *Inner Asia*, 2, 2000, p. 171-193; and James D. Seymour and Richard Anderson, *New Ghosts, Old Ghosts: Prisons and Labor Reform Camps in China* by James D. Seymour, Richard Anderson, and M.E. Sharpe, 1998, ch. 3 (also available in Chinese).

¹²² Xinjiang Statistical Yearbook and Zhang Wenyue, “Some thoughts on the development of Xinjiang and the PCC relating to structural reform” (*Guanyu Xinjiang ji bingtuan jingji fazhan yu jizhi gaige de ruogan sikao*), *Xinjiang Rural Economy*, no. 4, p. 1-7.

¹²³ Becquelin, “Xinjiang in the Nineties,” see note 48.

¹²⁴ Nader Hasan, “China 担 Forgotten Dissenters,” *Harvard International Review*, Fall 2000, Vol. 22, No. 3, p. 38-41.

¹²⁵ “China 担 Restless Minorities,” *Swiss Review of World Affairs*, April 1, 1997.

¹²⁶ *Supra*, see note 124, Hasan.

Because of their generally inferior economic conditions, their predominantly rural status and the dominance of the Chinese language at higher levels of education, ethnic minorities in the PRC are especially disadvantaged in access to education. (While the focus of this section is on minority areas, many of the problems it outlines also apply to poor rural areas of the country as well.) A principal reason for the disadvantage ethnic minorities face is the acute shortage of funding for education. In the reform era, fiscal decentralization has dramatically decreased the funds available for social endeavors in the poorest parts of the country, increasing the already existing inequality in provision of resources for education.¹²⁷

Despite the increased local control of education in autonomous areas since the early 1980s, the combination of the emphasis on “unity” and the dominance of state-sponsored ideological constructs including the social evolutionary paradigm mean that the educational curriculum generally does not present a positive view of minority cultures, history and tradition. The failure to promote the general use of minority languages in autonomous areas means that children who attend schools in which minority languages are the medium of instruction are disadvantaged at secondary and higher education levels.

1. The legislative regime for minority education

For ethnic and linguistic ethnic minorities the right to education is “an essential means to preserve and strengthen their cultural identity.”¹²⁸ Article 4(b) of CADE requires that states “ensure that the standards of education are equivalent in all public education institutions of the same level, and that the conditions relating to the quality of education provided are also equivalent.”

The 1954 PRC Constitution confirmed equal rights for all ethnic minorities and a commitment to develop minority languages and writing systems. As part of its commitment to this, the PRC government did indeed expend much effort in researching and creating written script for ethnic minorities that did not already have them in order to increase literacy level, and there is evidence that in this they have been partially successful.¹²⁹

Since the excesses of the Cultural Revolution (during which expression of minority cultures was virtually banned in many areas), the state has sought to placate the ethnic minorities. Concessions within education—the use of minority languages and the establishment of non-Han schools—have been a part of this. The 1982 Constitution and 1984 Law on Regional Autonomy thus represented an advance on the 1954 Constitution in terms of decentralization, with greater autonomy allowed with regard to the funding of cultural and educational matters, as well as the use of minority languages.

However, a subtle, yet important change in the 1982 Constitution was the explicit statement that Mandarin should be used by all nationalities. In the 2001 revision of the Regional Autonomy Law, the level of education at which Mandarin teaching becomes obligatory has been lowered. In the 1984 law, Article 38 required that the teaching of Chinese in minority schools begin either in the top grade of primary school (grade 6) or the first grade of junior middle school. Article 37 of the new law requires that Chinese be taught at lower grades of primary school.

¹²⁷ See the section of this report on the rural-urban divide.

¹²⁸ Fons Coomans, “Clarifying the Core Elements of the Right to Education,” in Fons Coomans and Fried van Hoof, eds., *The Right to Complain about Economic, Social and Cultural Rights*, Netherlands Institute of Human Rights, Utrecht, 1995.

¹²⁹ Gerard Postiglione, “Introduction: State Schooling and Ethnicity in China,” in Postiglione, ed., *China's National Minority Education: Culture, Schooling and Development*, Falmer Press, New York, 1999.

2. Official perspectives dominate curriculum

In the PRC as a whole, including autonomous areas, education is seen as a vehicle for inculcating the values of the CCP. In the 1995 Education Law, the primary function of education is described as being to: “serve socialist modernization construction and train workers and successors with fully developed virtues, intelligence, as well as health to the socialist cause” (Article 5). The guiding principles for education are defined as “Marxism, Leninism and Mao Zedong Thought, and socialist theory with Chinese characteristics” (Article 13). Likewise, during a speech on education for the new millennium, President Jiang Zemin called on the whole society to be concerned about education, emphasizing: “It is especially to help our young people, children and students to develop a correct world view, view of life and sense of values by strengthening their thought education in patriotism, collectivism and socialism.”¹³⁰

Locally, the education system takes on the political agenda of the leadership. Indeed, as a PRC official in the TAR explained in 1996, “The curriculum for both schools and universities must depend on whether it can guarantee the unity and essential integrity of the country; the curriculum is directly connected with the question of the 稳定 (stability) of the whole country.”¹³¹ One “patriotic education” test given in a Lhasa secondary school in 1990 contained the following question: “Do you consider that the Dalai Lama is a religious leader or a political leader? Give your reasons.”¹³²

“Patriotic education” in minority schools focuses on the theme that all nationalities should consider themselves an indivisible part of the “Chinese nationality” (*Zhonghua minzu*). The symbols presented are the mythical Yellow Emperor, presented as the “ancestor” of this Chinese nationality; Olympic sports heroes; the national flag and emblem.

As one observer notes: “The actual content of schooling reflects the state 担 (view) of the nature of ethnic inter-group processes: to conserve ethnic minority cultures within a national context that places a premium on Han Chinese cultural capital.”¹³³ The emphasis on “stability” and “unity” gives education for ethnic minorities in the PRC an assimilationist character. It remains Han-dominated and the curriculum Han-centric, part of what Steven Harrell has called “China 担 (civilizing) projects.”¹³⁴

The social evolutionary paradigm under which most ethnic minorities are considered “backward” is presented in the classroom as scientific fact. Dai students from Xishuangbanna are taught that they have, in common with other minority nationalities, preserved their own typical “feudal serf society.” At the same time, they learn that the students from other nationalities, such as the Akha, Blang, Jinuo and Lahu with whom they share their school are even more backward, having no script and believing in “superstition” rather than a “real religion” such as the officially recognized Buddhism. A lesson on “when mankind entered the era of civilization” taught students that those

¹³⁰ Jiang Zemin, “Speech on the Question of Education,” Xinhua News Agency, January 3, 2000.

¹³¹ Catriona Bass, *Education in Tibet- Policy and Practice since 1950*, New York: Zed Books, 1998.

¹³² Ibid. This sort of political testing of children is against CRC Article 13 (1) “The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds...,” Article 14 (1) “States Parties shall respect the right of the child to freedom of thought, conscience and religion.”

¹³³ Gerard Postiglione, “Ethnic Minority Education in China 担 (Market Economy: Equality vs. Multiculturalism?)” paper presented at the Association of Asian Studies annual meeting, 1998.

¹³⁴ Supra, see note 129, Postiglione.

ethnic minorities without a script still belonged to “primitive society,” while the Dai themselves had progressed from this stage, but was still backward when compared to the Han majority.¹³⁵

The lack of a balanced presentation of the minority issues in the curriculum can have a severe impact on children's self-esteem. The Tibetan scholar Baden Nima wrote: “Minority nationality children become very self-abased when they find no reference to their own culture or history in school materials. When there is no content which can make them feel proud of being a person of their own nationality, they lose self-esteem and interest in schooling. This is reflected in the high dropout rates of minority children.”¹³⁶

In short, the minority pupil is encouraged to forsake his or her own culture in favor of something “superior” an approach which is specifically cautioned against in ICERD Article 4, which calls for condemning “all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one color or ethnic origin.” Although students may not be taught that this superiority is based on “racial differentiation,” the message is, nevertheless, a “doctrine of superiority” which is condemned in ICERD as “scientifically false, morally condemnable, socially unjust and dangerous.”¹³⁷ ICERD also requires the state to “discourage anything which tends to strengthen racial division,”¹³⁸ and yet the state curriculum would seem to exaggerate the differences between the ethnic minorities and the Han, with the Han being viewed as elder brothers (*xiong*) and the ethnic minorities as younger brothers (*di*).

3. Education standards

Since 1949 the PRC government has made efforts to raise education standards in the country. In the case of some ethnic groups this meant starting from scratch. The expansion rate in the number of primary schools in the minority areas between 1952-82 was 92 percent, from 59,597 to 114,164.

In recent years, the number of ethnic minority students attending all levels of education appears to have increased. According to official figures, the average rate of enrolment in primary school for all ethnic minority regions is about 96.5 percent and the average nationally is about 98.5 percent.¹³⁹ However, official statistics for actual numbers of primary school enrolments in autonomous areas appear to contradict this high rate. In 1985, 18.369 million children were enrolled in primary school in such areas, and by 1996, this number had only increased to 20.147 million, with a slight decline to 19.274 million by 1999.¹⁴⁰

Furthermore, overall statistics conceal wide disparities between Han and some minority populations. By 1990 the average number of years of schooling for the PRC was 6.26 years, whereas the average for the ethnic minorities was only 5.29 years.¹⁴¹ Local studies, such as that

¹³⁵ Mette Halskov Hansen, “Teaching Backwardness or Equality,” in Postiglione, ed., *China's National Minority Education*.

¹³⁶ Supra, see note 129, Postiglione p. 17.

¹³⁷ ICERD Preamble.

¹³⁸ ICERD Article 2(1) (e).

¹³⁹ UNDP, *China Human Development Report: Human Development and Poverty Alleviation 1997*, February 1998. However, other surveys have suggested the real figure is nearer 96 percent in urban areas and 91 percent in the countryside.

¹⁴⁰ CESY 2000, see note 20 for reference.

¹⁴¹ Linda Benson and Ingvar Svanberg, *China's Last Nomads—The History and Culture of China's Kazaks*, Armonk, New York: M.E. Sharpe, 1998.

conducted in Xishuangbanna in Yunnan Province, found that only 55 percent of children finished five years of schooling.¹⁴² In 1992, the national dropout rate stood at 35 percent, or eight million children.¹⁴³

Higher education figures reveal even greater disparities in achievement, with 0.42 percent of minority nationalities reaching higher education compared with a figure of 0.63 percent for the whole population.¹⁴⁴ This overall figure conceals much lower rates for certain groups, since the Koreans, Tartars, Russians and Xibe all have had an even higher proportion of university graduates than do Hans.¹⁴⁵

There is a huge gulf between urban and rural regions in educational provision, in both quantity and quality. According to official figures, which are widely accepted to present an overly rosy picture of the situation of rural education, rural to urban ratios for spending in this area show a rate of 1:1.66 for primary education and 1:1.67 for junior middle school level.¹⁴⁶ Obviously, this translates into differing literacy rates as well. While 91.50 percent of urban Shanghai is literate, literacy in Anhui hovers around 80.60 percent.

The comparatively low levels of literacy amongst many of the minority groups are perhaps the most important indicator of lack of schooling. In 1990 the illiteracy rate nationally was 22.2 percent but that in the minority areas was 42.54 percent. These statistics do not adequately reflect the disparities between regions, as the literacy rate of some minority nationalities was high, with at least some ethnic minorities having a higher rate than Han.¹⁴⁷

The reason for this is partly historical and partly economic. The PRC 祖 east and northeast were targeted by missionaries and the Japanese who set up schools in the first half of the twentieth century and could thus be described as having a head start. In contrast, the picture elsewhere is less positive. The Hui and Uyghurs (the two most populous Muslim groups) have illiteracy rates of 33.1 and 26.1 respectively, and among the Dongxiang the figure is as high as 82.6 percent. The rates in Ningxia, Yunnan, Gansu, Qinghai and Guizhou—all provinces with a high concentration of ethnic minorities—were all below 75 percent; the rate in Tibet was 46 percent.¹⁴⁸

4. Funding shortages

While government appropriations for education rose by 301.47 percent between 1991 and 1997, tuition and miscellaneous fees rose by 1,009.60 percent in the same period - this even though the

¹⁴² Supra, see note 129, Postiglione.

¹⁴³ Jasper Becker, "At the back of the class," *South China Morning Post*, January 1, 2000.

¹⁴⁴ Supra, see note 131, Bass.

¹⁴⁵ Barry Sautman, "Expanding Access to Higher Education," in Postiglione, ed., *China 祖 National Minority Education*, see note 125.

¹⁴⁶ Guan Ruijie, The Warning Bell Must Sound Loudly for "An Issue of Paramount Importance 告 Rural Compulsory Education ("zhong zhong zhi zhong" de zhongguo nongcun yiwu jiaoyu bixu jingzhong changming), paper given at the Universities Services Center, Hong Kong, 2000.

¹⁴⁷ The Manchus, Koreans, Hezhe, Dahaner and Ewenke averaged 81 percent literate.

¹⁴⁸ UNDP 1999, p. 100, see note 49.

1995 Education Law states that nine years of compulsory education are supposed to be provided to all free of charge in the PRC.¹⁴⁹

And because of their relative poverty, the education system of rural areas, particularly those in the western regions that are predominantly minority, have been particularly hard-hit. Indeed, lack of adequate funding is the principal reason why the condition of the schools and the quality of education they are able to provide is inferior.

Due to reform era decentralization, the central government has been providing less and less support to poorer provinces, and even within provinces, localities have to raise most of the funds for basic education on their own. This means that the poorest areas have the least money available for education, which has led to extreme inequality in educational. In 1990 some 87 percent of budgeted expenditures on education (37.97 percent of which came from non-governmental sources), and virtually 100 percent of those spent on primary education, came from provincial and sub-provincial level.¹⁵⁰

Even though both GNP and government revenue have been growing, the share of government expenditure on education in the PRC 占 GDP has not kept pace with this, accounting for only two percent of GDP in 1995. Although the PRC government had promised to increase education funding to four percent by the year 2000, by the end of 1999 it was obliged to admit that it had only reached 2.79 percent.¹⁵¹

Local governments have been authorized to levy educational supplemental taxes—primarily for compulsory education—rates for which are supposed to be determined by local educational needs and may only be used for this purpose.¹⁵² Meanwhile social contributions including private donations and industrial funding are encouraged for compulsory education. But even though there are some government aid programs for the educational needs of poor localities, and despite local resort to charging students tuition, surcharges and other kinds of fees to finance educational costs in the face of general decline in revenues from higher levels,¹⁵³ schools in the poorest areas are woefully under-resourced.

These funding shortages have had a obvious impact on educational institutions. Official statistics present a disturbing picture of the decline of schools, colleges and universities in autonomous areas at a time when their populations have been growing. Higher education institutions fell in number from 106 in 1989 to 95 in 1999, while specialized secondary schools (generally providing a technical education) went down from 648 in 1991 to 554 in 1999. For ordinary secondary schools, the decline was less sharp: from 11,880 in 1994, to 11,209 in 1999. But the number of primary schools has shown a gradual contraction in the reform era, from 121,874 in 1986 to 87,150 in 1999.¹⁵⁴

¹⁴⁹ UNDP 1999, p. 55, see note 49.

¹⁵⁰ UNDP 1997, p. 43, see note 135.

¹⁵¹ Yang Dongping, “2000 Report on Developments in China 占 Education” (2000 nian Zhongguo jiaoyu fazhan baogao), in *Society Blue Book: 2001 Analysis and Forecast on Conditions in Chinese Society (Shehui lanpishu: 2001 nian Zhongguo shehui xingshi fenxi yu yuce)*, Social Science Documentation Publishing House, 2001. Yang cites a November 13, 2000, dispatch from Xinhua.

¹⁵² Funds are sometimes corruptly diverted from intended educational purposes. In Tsethang in the TAR, the problem was so serious local people staged a demonstration against this in May, 1993. *Supra*, see note 131, Bass p. 123.

¹⁵³ UNDP 1997 p. 44, see note 135.

¹⁵⁴ CESY 2000.

Because of inadequate government funding, substantial costs are passed on to parents. Poor parents cite the financial burden as the single most important reason children are not attending school.¹⁵⁵ Although the 1995 Education Law outlaws “tuition fees,” this merely means that local authorities call the charges they levy something else. Families are required to pay for their children’s education through “miscellaneous fees,” which include charges for books, food, electricity and any other charge which the school decides to levy. This is in direct contravention of CADE, Article 4(a) that “primary education is free and compulsory.”

An example from a very poor area gives an impression of what this may mean for families. The average annual income amongst the Qiang ethnic minority in Maoxian County, Sichuan Province, is 960 yuan, but to educate three children would cost 600 yuan per year.¹⁵⁶ An observer who paid a recent visit to a Yi minority county in the same province writes: “The reported primary enrolment rates of above 90 percent on average seem surprisingly high, since virtually every family we visited had at least one child out of school.... Given extremely low cash incomes, it would be surprising if in nine out of ten cases parents could find the 150 yuan per annum for administrative and text book fees.”¹⁵⁷

A schoolteacher in a Tibetan county in Gansu Province detailed the condition of the school in her township: “There is only one building and two teachers, neither of whom are qualified. The school is financed by local taxes. It gets no grant from any higher-level government. The school house is drafty and cold, and the children have to sit on the floor.”¹⁵⁸ Many Uyghur schools are also so poorly equipped that students sit and write on the earthen floor.¹⁵⁹

Many ethnic minority schools are actually unsafe. An article in the official *China Daily* admitted that of the country’s “dangerous” middle school buildings, a disproportionately high number were in the poor parts of central and western China, often inhabited by ethnic minorities. For example, the Ningxia Hui Autonomous Region, which has only 3.2 percent of the country’s population, has 5.3 percent of the total of unsafe middle schools.¹⁶⁰

Girls are often particularly disadvantaged in poor areas in terms of education. Liu Su, the vice governor of Gansu Province, reported that out of 157,300 school-age children not in school in Gansu, 85 percent were girls.¹⁶¹ This trend is confirmed nationally. The Sample Survey on the Situation of Children in 1993 reported that enrollment rates were higher for boys (94 percent) than for girls (91 percent) and that *three-quarters* of not-enrolled children were girls, mostly in poor and national minority regions.¹⁶²

5. Disadvantage compared to Han population

¹⁵⁵ UNDP p. 44.

¹⁵⁶ Ma Guihua, “Youngsters who dream of extra homework,” *South China Morning Post*, July 25, 2000.

¹⁵⁷ “Still struggling for the basics—Profile: Sichuan, Liangshan Yi Autonomous Prefecture, Jinyang and Butuo Counties,” *Chinabrief*, Vol. III, No. 4, Winter 2000/2001.

¹⁵⁸ Quoted by Catriona Bass from an interview with a Tibetan schoolteacher in September 1996. *Supra*, see note 131, p. 87.

¹⁵⁹ *Supra*, see note 119, Amnesty Uighur Report p. 5.

¹⁶⁰ Li Ming, “Quality of school buildings stressed,” *China Daily*, April 7, 2000.

¹⁶¹ “Keep rural girls in school,” *China Daily*, cited in Gladney, (Title) in Postiglione, Gerard A., ed. *China’s National Minority Education: Culture, Schooling and Development*. New York; London: Falmer Press, 1999.

¹⁶² UNDP 1997, p. 39, see note 135.

Han children who live in remote, poor areas in the central and western regions are also likely to miss out educationally. However, as mentioned above, the proportion of ethnic minorities living in remote and rural areas is higher than for the Han population. And there is abundant evidence that ethnic minorities fare worse proportionately in the state schooling system than the Hans.

According to two scholars, “the sparse data available suggest that these [minority] schools were inferior to those in the Han areas.”¹⁶³ It also appears that Han schools enjoy more highly-qualified teachers than do minority schools, as better-qualified teachers are less willing to teach in poor and culturally “backward” areas.¹⁶⁴ The situation is exacerbated by the fact that for the few minority members who attain a higher education there is little incentive to return home to work, given that job opportunities and pay levels are so low.

In addition, comparisons of the Han and minority population within the autonomous areas show that the Han generally have a distinct advantage. For example, 69 percent of Hans in Qinghai province receive some schooling, whereas only 38 percent of Hui and 27 percent of Tibetans are able to do so.¹⁶⁵ The difference between the ethnic minorities at regional level can also be seen in the figures which show that the primary school completion rate in Heilongjiang was 94 percent, whereas it was 84 percent in Yunnan, 83 percent in Qinghai, and 79 percent in Jiangxi—all provinces with substantial ethnic-minority populations.¹⁶⁶

“Sharp differences in educational opportunities among the provinces promise to extend regional inequalities indefinitely into the future.”

UNDP, China. *The China Human Development Report*, New York: Oxford University Press 1999, p.61.

One of the reasons for low completion rates among minority children is explained by a comment from a schoolteacher from a Tibetan county in Gansu Province, “To get into *secondary* school you have to compete with children who have been living in the town, and with children of Chinese and Tibetan officials..., rural children stand no chance against them. They don't get in, so there is no motivation at *primary* school.”¹⁶⁷ So long as their children are discriminated against in the ways documented above, there is very little incentive for parents to squander their hard-earned money on tuition.

6. Language

Implicit in Article 2(2) of ICERD is the right to use one's own language. Furthermore, the Declaration on the Rights of Minorities (Article 4(3)) explicitly mandates that “States should take appropriate measures so that, wherever possible, persons belonging to ethnic minorities may have

¹⁶³ Julia Kwong and Hong Xiao, ‘Educational Equality Among China's Minorities,’ (*Comparative Education* Volume 25, No. 2, 1989).

¹⁶⁴ According to the *People's Daily*, in 1999 only 12.41 percent of primary and junior secondary teachers in Jiangxi Province held higher education qualifications, which is 7.64 percent lower than the national average. Indeed it has been posited that the likelihood of being sent to work in rural areas is one of the main reasons why teaching is increasingly unpopular in China. The salaries, dependent on local resources, and living conditions, are usually better in the cities and more developed eastern China. In 1992 rural teachers were owed 340 million yuan in back wages and they were still being paid less than manual workers. Jasper Becker, “At the back of the class,” *South China Morning Post*, January 1, 2000.

¹⁶⁵ Zhu Yongzhong and Kevin Stuart, “Education among the Minhe Monguor,” in *China's National Minority Education*, see note 125.

¹⁶⁶ UNDP 1997, p. 43, see note 135.

¹⁶⁷ *Supra*, see note 131, p. 87.

adequate opportunities to learn their mother tongue or to have instruction in their mother tongue.”¹⁶⁸ Article 1 of CADE states that “discrimination includes any distinction, exclusion, limitation or preference which, being based on language as the purpose or effect of nullifying or impairing equality of treatment in education and in particular a) of depriving b) of limiting education of an inferior standard.” It would appear that the PRC is flouting the provisions of these international agreements in its relegation of minority languages to a second-class status within the PRC education system.

Although, as mentioned above, under autonomy provisions the state allows decisions as to the language of education in minority schools to be taken the local and regional levels, the general dominance of the Chinese language—in the education system, in official affairs and in business—make it very difficult to promote education in native languages. Fulfilling the state requirement of promoting the general use of Chinese is in conflict with preserving the right of “national minorities” to develop and use their own languages.

Han cadres in minority areas remain reluctant to use minority languages in official business, generally because many of them are unable to speak these languages. The government attempts to persuade Hans living in minority regions to learn minority languages, particularly in Xinjiang where Han immigration has changed the balance of the population so dramatically, have been described as “superficial and ineffective.” In Urumqi, the capital of Xinjiang, one sentence of Uyghur is taught on television each week and there are very few programs or even phrase books for Hans to use to learn basic Uyghur.¹⁶⁹

It appears to be the view of the state that the endemic poverty of the minority regions can only be relieved by the widespread adoption of Chinese—that it is the language of success. However, there is no reason why local languages have to be relegated to such second-class status. The situation could be resolved if more funding was available for teacher training to produce an educated bilingual population in minority areas and if there was a real effort to implement bilingualism in autonomous areas.

Figures for the number of schools teaching in both minority languages and Chinese are not available, nor for the numbers of teachers who are actually qualified to teach bilingually. However, there are 60 ethnic minority languages in use in schools and 29 ethnic minority-writing systems. But only 5.6 percent of teachers are from minority groups. Therefore, often minority children whose first language is not Chinese are taught by monolingual Han teachers. A survey conducted by one scholar in Yunnan, Guangxi and Inner Mongolia found that while 79 percent of students indicated that their teachers used Mandarin in teaching, only 17 percent of them spoke any dialect of Chinese at home and were thus able to relate what they had learned at school to the domestic sphere.¹⁷⁰

¹⁶⁸ The Convention on the Rights of the Child, to which China is a party, states in Article 30: “In those states in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his her own culture, to profess and practise his or her own religion, or to use his or her own language.”

¹⁶⁹ Justin Jon Rudelson, *Oasis Identities—Uyghur Nationalism Along China's Silk Road*, New York: Columbia University Press, 1997.

¹⁷⁰ Gerard Postiglione, “National Minority Regions: Studying School Discontinuation,” in Judith Liu, ed., *The Ethnographic Eye: An Interpretative Study of Education in China*, New York, Garland Publishing, 1999, p. 65.

Financial considerations mean that the extra money required to produce non-Chinese textbooks and to train teachers qualified to teach bilingually are given low priority. The result is that there is a serious shortage of qualified teachers of minority languages.

In 1990 only half of the 140,000 language teachers in Tibet were qualified to teach Tibetan. In Xishuangbanna the Dai script was reintroduced for elementary education, while schoolteachers have been encouraged by the education department to use Dai to explain Chinese terms and sentences that students do not understand. In reality this is seldom practiced due to the shortage of Dai teachers.¹⁷¹ Among the Monguors in Qinghai, as in other minority regions and counties, whole schools may be Monguor in composition, yet neither primary nor secondary texts are available in bilingual editions.¹⁷²

There is evidence that where Tibetans have been able to use their mother tongue as the medium of instruction, this has raised standards. In southern Gansu Province students were dropping out of school because the instruction was in Chinese: “In a school in a Tibetan area of Zhuoni county, Tibetan was not used for teaching. This created a language barrier in all subjects [] consequently the parents lost confidence in the school and all but 150 of the students dropped out. Of necessity the curriculum was revised and Tibetan was put into use wherever possible with the result that the number of pupils quickly rose to 290.”¹⁷³

Despite this positive experience, in most Tibetan areas it would appear that the provision of Tibetan-medium teaching is being scrapped in favor of a bilingual approach, even though in 1998 only 360 out of 15,000 teachers knew Mandarin well enough to teach in it.¹⁷⁴ Yet Tibetans concerned about this trend may not dare to speak out against it. As one speaker in a Lhasa television debate said: “When we speak about Tibetan education, about using the Tibetan language, we are accused of wanting to split the motherland.”¹⁷⁵

One major obstacle for ethnic minorities is that, at the secondary level, teaching is likely to be exclusively in Chinese. In order to progress to secondary school, children must prove proficiency in Chinese. However, the ethnic minorities are discriminated against because the quality of education they received at elementary school does not allow them to compete on an equal footing.

Given the emphasis on Chinese, many minority parents actually choose Chinese-only education for their children. In Yanjuan Village, Baiwu Township in Liangshan Yi Autonomous Prefecture in Sichuan Province, children of the Yi minority living in a remote location with mediocre schools have actually been found to out-perform the local Han residents. The most important reason for this is that many of the governmental and educational positions, from county party secretary down through the heads of various bureaus and offices, along with a large number of school administrators and teachers, are Yi. They have been involved in channeling government initiatives to local advantage, for which a formal education in the Han language is essential.¹⁷⁶

¹⁷¹ Supra, see note 131, Hansen.

¹⁷² Zhu and Stuart, “Education among the Minhe Monguor,” see note 161.

¹⁷³ Supra, see note 131, *Education in Tibet*, p. 96.

¹⁷⁴ Ibid.

¹⁷⁵ Ibid.

¹⁷⁶ Stevan Harrell and Ma Erzi, “Folk Theories of Success: Where Han Aren't Always the Best,” in *China's National Minority Education*.

Studies conducted amongst the Zhuang people have revealed a similar pattern. Zhuang rural residents have actually rejected the Party's attempts to introduce the Zhuang script. As the director of the National Minorities Language Committee acknowledged: "The Zhuang have been studying Han written script for fourteen hundred years, so it's natural that after a few decades of promoting the Zhuang written script, both peasants and many cadres are not yet fully convinced of its utility."¹⁷⁷

According to a scholar of Inner Mongolia, in that region the dominance of the Chinese language is such that even Mongol language researchers and professors in universities send their own children to Chinese school. "Ironically, these teachers instruct students to read and write Mongolian, yet make sure their own children learn Chinese and specialize not in Mongolian studies but in science or computer courses taught exclusively in Chinese."¹⁷⁸

Sometimes the nomadic life style also affects educational access, especially for peoples such as the Kazaks and Mongols. However, the state has sought to resolve the problem by providing boarding schools for such children.¹⁷⁹ In fact, there are over 6,000 state run boarding schools in China. However, these are often a double-edged sword for ethnic minorities. Although they may teach in a minority language, they otherwise involve a complete separation from the minority culture.¹⁸⁰ Although some such students may be able to maintain their attachment to their home, for others it is simply too difficult. As one student explains: "During my education all teachers taught according to Marxism and dialectic materialism. I always disagreed with their viewpoints on religion and history. I have learned a lot of new things, but I do not agree with everything and I have not changed my mind about my own religion."¹⁸¹

But such cultural tenacity seems to be exceptional. The authorities are increasingly aware of the "value" of boarding schools in providing a "suitable" education for young people. For example the Beijing Tibet Middle School has 760 high-school students and about 200 middle-schoolers. Although they are taught in Tibetan, they are 2,500 kilometers away from their homeland and a world away culturally and religiously.¹⁸²

7. Religious and independent schools

The maintenance of a private education system is one of the major ways in which the ethnic minorities should be able to preserve their cultures. However, the Compulsory Education Law of the People's Republic of China (1986) and its Implementation Rules (1992) stipulate that parents or legal guardians are not allowed to choose schools for their children. For minority parents who wish their children to be educated in a religious school or one which has a particular cultural orientation, this represents a violation of their children's right to education.

This right is spelled out in CADE, which calls upon states to "respect the liberty of [minority] parents," and "recognize the right" of ethnic minorities who wish to withdraw from state education and establish their own schools.¹⁸³ CADE requires states to permit the establishment of separate schools "for religious or linguistic reasons" provided that they conform to "such

¹⁷⁷ Supra, see note 110, Kaup p. 140.

¹⁷⁸ Supra see note 10, Bulag.

¹⁷⁹ Supra, see note 141, Benson & Svanberg p. 150.

¹⁸⁰ Supra, see note 129, Postiglione.

¹⁸¹ Supra, see note 135, Hansen.

¹⁸² R J Michaels, "Education on the Move" *South China Morning Post*, March 2, 2001.

¹⁸³ CADE, Article 5(1)(b) & (c)

standards as may be laid down or approved by the competent authorities, in particular for education of the same level.” It must be noted that CADE only provides for the state to interfere in order to ensure the same *standards*, and not the same *curriculum*, as the education provided by the state.

In contradiction to this, the PRC 教育 laws demand that: “Society-sponsored education, as state sanctioned education, must adhere to the four core principles of socialist education, implement state education policy and submit to the leadership of the local education authority.”¹⁸⁴

This may create particular problems of people who wish their children to receive an education in which religion plays a part. Religious education and the practice of religion is banned in PRC state schools.¹⁸⁵ Where clerics are allowed to help with language teaching, for instance, they have to wear secular clothes. Students themselves are forbidden from reading religious books or praying in schools.

Many Muslim families and Buddhists living in Tibetan and Dai areas, send their sons to be educated in the mosque or temple. By law the young men are not supposed to receive education in religious institutions until after the age of 18, when they can enter the academies set up by the officially sanctioned religious institutions. These institutions train *imams* (religious teachers) on behalf of the state to work in official mosques and government religious affairs bureaus. In practice officials in Xinjiang at least, seem to be willing to overlook the small Koranic schools, which teach children from aged 13.¹⁸⁶ This means that in conservative areas, such as Linxia Hui Autonomous Prefecture in Gansu Province, low school enrollment and high drop out rates conceal the large numbers of children who are receiving a traditional education studying the Quran at home.¹⁸⁷

In Tibet, since the 1996 launch of the Patriotic Education Campaign, there has been an emphasis in schools on undermining Tibetans’ loyalty to the Dalai Lama and promoting atheism. An editorial in the *Tibet Daily* recently stated that young children should be educated in atheism in order to help rid them of the “bad influence of religion.” Children also reportedly had “protection cords” confiscated by teachers, who levied small fines on pupils who wore them, and “named and shamed” the children concerned in front of the whole school.¹⁸⁸

The fact that the PRC government often views the independent spread of minority culture and religion as a threat to the security and “stability” of the PRC state remains a barrier to the right to education of minority children.

E. Health

1. Vast inequalities in medical care

Rural residents, including a large proportion of ethnic minorities, suffer systematic discrimination in the provision of health care as compared to urban people. The poorest among them have been

¹⁸⁴ “Relevant Provisional Regulations of the State Education Commission on Society-sponsored Schools” (*guojia jiaoyu weiyuanhui guanyu shehui liliang banxue de ruogan zangxing guiding*), issued on July 8, 1987.

¹⁸⁵ Gladney in *China 中国 National Minority Education* p. 59.

¹⁸⁶ *Supra*, see note 169, Rudelson.

¹⁸⁷ Gladney in *China 中国 National Minority Education* p. 83

¹⁸⁸ Tibet Information Network on the web, 20th Feb 2001, www.tibetinfo.net/news-updates/nu200201.htm

particularly severely affected by “reforms” that have torn apart the social safety net; the cooperative insurance schemes which once provided for the basic health needs of over 75 percent of residents in the countryside now only cover about 10 percent of the rural population.¹⁸⁹

Overall, health expenditure share of the governmental budget has fallen from 32 percent in 1986 to 14 percent in 1993.¹⁹⁰ Medical care accounts for only 3.2 percent of GNP.¹⁹¹ While government health spending nearly tripled in real terms between 1978 and 1993, it was out-paced by private health spending, which increased by a factor of ten.¹⁹² Although according to official statistics, only 16.7 percent of villages in autonomous areas are without a health care station, down from 32.6 percent in 1989, in many, if not most, of those villages that do have them, residents would have to pay for any care they receive.¹⁹³

Health and medical services offer telling details of increasingly different urban-rural conditions. For example, whereas in 1986 urban per capita consumption on health and medicine was 2.18 times that in rural areas, by 1997, this ratio had increased to 2.88 times. Although between 1980 and 1997 the population of the rural areas officially increased by 70 million (and the real number could be higher, given non-registration of some rural children), during that period the number of hospital beds in the countryside has remained at 800,000. To state the problem another way, there are six times the number of hospital beds per capita for urban dwellers as for rural residents.¹⁹⁴

About 60 percent of public health spending is disbursed for 15 percent of the population who live in cities or are employed by government, and only 4 percent of spending covered the needs of the poorest quarter of the rural population (1993 figure).¹⁹⁵ “Many poor rural residents cannot receive even the most basic medical services,” then Health Minister Chen Minzhang said in 1997.¹⁹⁶ As a scholar who recently studied health care provision in a number of poor rural areas writes:

China's rural health system had founded its success on two great principles: preventive care and universal access to treatment; the reforms have swallowed them up.... While Shanghai's infant mortality rate is lower than New York's, tens of thousands of country children die from lack of treatment, for bronchitis, or diarrhea, or an abscess. It is the “absence of the state” that is at the root of the problem: the lack of any public funding or control.¹⁹⁷

According to a survey of 320 officially designated “poor counties” in six provinces conducted by the Amity Foundation, a church-founded PRC organization, 15,407 villages had no medical

¹⁸⁹ UNDP 1997, p. 37, see note 135.

¹⁹⁰ Ibid.

¹⁹¹ Michael R. Phillips, “The transformation of China's mental health services,” *The China Journal*, No.39, January 1998, provides an excellent overview of issues relating to psychiatry and provision of medical care in general in China today.

¹⁹² World Bank, *China 2020: Financing Health Care*, p. 19.

¹⁹³ Supra see note 23, CESY 2000.

¹⁹⁴ UNDP 1999, see note 49 p. 69.

¹⁹⁵ Charlotte Cailliez, “The collapse of the rural health system,” *China Perspectives*, No. 18, July-August 1998.

¹⁹⁶ Vivien Pik-Kwan Chan, “Warning on health care's sick state,” *South China Morning Post*, December 13, 1997.

¹⁹⁷ Supra, see note 195, Cailliez. Cailliez raises questions about the reliability of health data based on her experience in some of China's poorest counties: “As for collecting epidemiological data, no one is doing it; one may wonder where the Ministry of Public Health gets its statistics.”

presence whatsoever.¹⁹⁸ In many other villages, there are only private doctors, who need fees from patients to make a living. A 1996 survey of 180 villages in poor areas found that 30 percent had no doctors at all, and that 28 percent of the population did not seek health care when ill because they could not afford the cost; 51 percent who were advised to go to hospital refused because they could not afford the cost; 25 percent had to borrow money to pay for health care and 6 percent had to sell their assets to pay for care.¹⁹⁹

A survey of peasants in the rural counties of Beijing Municipality found that 84.4 percent were most worried about medical problems.²⁰⁰ People who cannot pay for health services are now frequently turned away from hospitals, even if they are in critical condition.

Even the number of health workers and institutions in rural areas conceals a system that is of substantially lower quality than those in urban areas. Rural health workers often have little or no training. Those classified as “rural doctors” recruited in the 1960s and 1970s may have had only a few weeks or months elementary medical training, while more recent recruits generally attended six or 12 month programs in county level training centers. Concern has been raised about the quality of these latter programs. Staff in township hospitals are also poorly trained, with less than 20 percent having graduated from tertiary level medical colleges or universities. A 1994 Ministry of Health survey of poor counties found that there were no university-qualified doctors working in townships in these areas.²⁰¹

2. Disturbing trends in autonomous area

Although somewhat confusing, statistical indicators from official data on “autonomous areas” also point to disturbing declines in the provision of health care services. Overall, the number of “health care institutions” fell from a high of around 31,000 between 1986 and 1992 to 16,733 by 1999. The rise in the number of hospitals in this total, from 11,659 in 1984 to 12,464 in 1999 indicates a concentration of medical facilities in urban centers, since few hospitals are located in rural areas. Two figures are given on the decline in the number of hospital beds, from a high in 1994 of 380,626, to either 357,972 or 261,888 by 1999. The number of disease control stations also fell (from 1004 in 1993 to 887 in 1999), as did the total of mother and child health facilities (with 649 in 1993 and only 529 by 1999).²⁰²

While autonomous areas saw a rise in the number of “rural doctors,” distinct contractions were seen in the number of “medical technical personnel,” from 500,254 in 1991 to 482,722 in 1999, with doctors falling from 259,481 in 1994 to 230,138 in 1999. The number of midwives also went down, from 141,857 in 1989 to 80,421 in 1999.²⁰³

A portrait of the health situation in a two poor counties in a minority area of Sichuan Province, Liangshan Yi Autonomous Prefecture, found a health system in crisis, where most of the public money going into the system was paying salaries of a few staff in dismally-equipped hospitals whose services were underused because local residents were too poor to pay for them. None of the two counties’ 545 health workers had graduated from a medical university, and only 53 had

¹⁹⁸ Cited in *ibid.*

¹⁹⁹ Cited in Marion E. Jones, “Rising inequality and declining living standards in China since 1983,” unpublished paper, 1997.

²⁰⁰ “Peasants in the vicinity of Beijing become poor due to illness,” *Ming Pao*, May 21, 1997.

²⁰¹ “The structure of health services in China,” *China Development Briefing*, Issue 5, April 1997.

²⁰² *Supra*, see note 23, China Ethnic Statistics Yearbook 2000.

²⁰³ *Ibid.*

completed vocational secondary school. Fifty percent of these were working in hospitals and health facilities in the county seats, and a further unknown proportion as officials in the health bureau. Since the local governments stopped paying stipends for village health workers in 1993, the former “barefoot doctor” system had virtually disappeared.²⁰⁴

3. Child health especially affected

While the infant mortality rate stands at 14.2 per thousand in urban areas, in rural areas it is 41.6 per thousand, and is even higher in some poor areas.²⁰⁵ The mortality rate of children under five shows the same disparity, with the figure of 16.4 per thousand in cities and 51.1 per thousand in the countryside.²⁰⁶ Furthermore, the maternal mortality rate in urban areas is 39.2 per hundred thousand, while it is 76 per hundred thousand in rural areas.²⁰⁷ These averages conceal huge disparities: in one poor minority county in Sichuan Province, the maternal mortality rate was approximately 667 per 100,000 and the infant mortality rate from 292 per 1,000 live births—both about 10 times the national average.²⁰⁸

Despite the PRC 担 spirited children 担 health campaigns, including vaccination drives, unexpected outbreaks of immunizable diseases have been reported in some areas.²⁰⁹ According to the official *China Daily*: “Twenty million babies born in China each year urgently need to have regular inoculations, but are presently neglected.”²¹⁰ The World Health Organization and UNICEF are concerned that the level of vaccination coverage for children against infectious diseases has fallen since 1983. Particularly at risk are unregistered children, whose parents may have to pay to have their children inoculated. Moreover, a joint study by the Chinese Academy of Preventive Medicine and UNICEF found that 310,000 babies die from malnutrition each year and that 39 percent of rural children suffer from below-normal growth rates due to lack of food.²¹¹

*Of 2,078 Tibetan children under the age of 84 months, more than half (mostly in rural areas) had moderate or severely stunted growth 且 1,556 children over 24 months, 65 percent had stunted growth. Citing: Harris, et al., “Nutritional and Health Status of Tibetan Children Living at High Altitudes,” *New England Journal of Medicine*, February 1, 2001*

Tibet offers one of the most extreme examples of malnutrition among children. A recent study conducted jointly by doctors in Tibet and in the United States found that, of 2,078 Tibetan children under the age of 84 months, more than half (mostly in rural areas) had moderate or severely stunted growth that was associated with rickets, skin lesions and bloated abdomens. Of 1,556 children over 24 months, 65 percent had stunted growth, and in a quarter of those cases the stunting was severe. As a result, there is a high rate of morbidity.²¹²

²⁰⁴ “Still struggling for the basics” see note 153.

²⁰⁵ UNDP, “Education, health and women's issues in China,” <http://www.edu.cn/undp/shd/social.htm>.

²⁰⁶ Ibid.

²⁰⁷ UNDP, “Education, health and women's issues in China.”

²⁰⁸ “Still struggling for the basics,” see note 153.

²⁰⁹ UNICEF, “Comments on maternal and child health needs and strategies for the 1990s in China,” New York, (no date) cited in World Bank, *China 2020: Financing Health Care*, p. 12.

²¹⁰ Cited in “Urban health care seen as top priority,” *South China Morning Post*, May 7, 1997.

²¹¹ Tom Korski, “310,000 Chinese babies dies from malnutrition,” *South China Morning Post*, December 17, 1997.

²¹² These problems were solely the result of poor nutrition, and not to other factors such as altitude. Nancy Harris, et al., “Nutritional and Health Status of Tibetan Children Living at High Altitudes,” *New England Journal of Medicine*, vol. 344, no. 5., February 1, 2001, p. 341-347.

A nationwide sample survey conducted by the Ministry of Public Health in 1999-2000 found that almost a quarter of minority children living in rural areas suffered from vitamin A deficiency, a substantially higher proportion than for rural children as a whole. Experts have called this a “silent killer” as it means that affected children are much harder hit by common diseases. The deficiency can also cause blindness, stunting, increased incidence of respiratory infections and diarrhoeal disease. The survey found that vitamin A deficiency in urban children was at “developed country” levels. The proportions suffering from the deficit were as follows: male: 12 percent; female: 11.5 percent; urban: 5.2 percent; rural: 15 percent; Han: 8.8 percent; minority: 22.6 percent.²¹³

4. Lower life expectancy

The disparities discussed above are also most clearly revealed in the life expectancy in different regions. According to the Statistical Yearbook of China, life expectancy in Shanghai, Beijing and Guangdong is 75.20 years, 73.60 years and 73.00 years respectively. This contrasts sharply with Anhui, Hebei and Sichuan where the life expectancies are 69.80 years, 71.80 years and 67.10 years respectively.

This effect is even more striking for Uyghurs, who have one of the shortest life spans of any ethnic group in Xinjiang. According to the PRC Ministry of Health, life expectancy for Uyghurs averages 63 years, compared with typical Chinese life expectancy of 70 years. Authorities insist that 10,000 village nurses and doctors had brought better health care to Xinjiang since the PLA took control of the region in 1949. *People's Daily* has claimed the Xinjiang life expectancy, represented “a real step forward” for Uyghurs. “The average life span has risen from 33 years since liberation,” it said. “Infectious diseases such as the plague, cholera and hepatitis have been effectively controlled.”²¹⁴

Even economics does not explain all of the disparity. UN data indicates that the life expectancy for Xinjiang's eight million Uyghurs was lower than life spans in neighboring republics such as Tajikistan, Kazakhstan and Kyrgyzstan, where the average is 68 years. Of all countries in the region, only people in war-torn Afghanistan have a shorter life expectancy than Uyghurs.²¹⁵ Thus, we must look for some other explanation. Hospitals in Xinjiang reportedly give preferential treatment to Han Chinese patients, and hiring policies are strongly in favor of Han Chinese doctors.²¹⁶ Tibetans also report discriminatory treatment in hospitals, stating that Tibetans in need of medical attention are generally put into unclean wards and made to pay medical fees whereas Han Chinese have priority access to the best facilities free of charge.²¹⁷

It is evident that the inequities are caused not only economic factors, but that outright racial

²¹³ “Survey shows minority children vulnerable to ‘silent killer’ vitamin A deficiency,” *Chinabrief*, Vol. III, No. 3, Autumn 2000.

²¹⁴ Tom Korski, “Uyghurs’ lives shorter than most other parts of the region,” *South China Morning Post*, February 3, 1998. This article cites as sources Xinhua, *People's Daily*, United Nations Statistics Division.

Some other minority areas have even lower life expectancy than those for Uyghurs. In one of the counties comprising Liangshan Yi Autonomous Prefecture in Sichuan Province, according to local officials average life expectancy was as low as 44-45 years.

²¹⁵ *Ibid.*

²¹⁶ *Ibid.*

²¹⁷ Tibetan Centre for Human Rights and Democracy, *Racial Discrimination in Tibet*, September 2000, p. 5.

discrimination is partially responsible for the disparities.