

THE LAWS ON THE ETHNIC MINORITY AUTONOMOUS REGIONS
IN CHINA: LEGAL NORMS AND PRACTICES

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I. Introduction	249
II. Regulated Autonomous Powers of the Ethnic Minority Autonomous Regions	251
A. Autonomous Legislation Powers	252
B. Special Personnel Arrangements	252
C. Other Autonomous Powers	253
III. Problems in the Operation of the Regional Ethnic Autonomous System: The Gap Between Law and Practice	254
A. Local Governmental Nature of the Autonomous Agencies	254
B. The Tale of Regional Autonomy Regulations: Insufficient Exercise of the Autonomous Legislation Power	255
C. Behind the Personnel Arrangement: Party Politics and the Ethnic Minority Regional Autonomy	257
D. The Vulnerable Autonomy	259
E. The Economic Gap and the Natural Resource Exploitation Issue	260
IV. Seeking Legal Guarantees: Improving the Exercise of the Autonomous Powers	262
V. Conclusion	264

I. Introduction

One of the most important aspects of China's central-local relations is the Regional Ethnic Autonomy System. China officially recognizes fifty-six nationalities.¹ Because the Han nationality makes up the majority of the population (91.51 percent),² other nationalities are generally called ethnic minorities. Based on the 2010 census, the ethnic minority population reached 113,792,211 and constituted 8.49 percent of the overall population.³ Article 2 of the Regional Ethnic Autonomy Law (REAL) states, "[r]egional autonomy is practiced in areas where ethnic minorities live in concentrated communities. Ethnic autonomous areas are

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¹ See *Regional Autonomy for Ethnic Minorities in China (2005)*, INFO. OFFICE OF THE STATE COUNCIL, http://www.gov.cn/english/official/2005-07/28/content_18127.htm (last visited May 24, 2009).

² COMMUNIQUÉ OF THE NATIONAL BUREAU OF STATISTICS OF PEOPLE'S REPUBLIC OF CHINA ON MAJOR FIGURES OF THE 2010 POPULATION CENSUS (No. 2), Nat'l Bureau of Statistics of China (APR. 29, 2011), http://www.stats.gov.cn/english/newsandcomingevents/t20110429_402722516.htm.

³ *Id.*

The Laws on the Ethnic Minority Autonomous Regions in China

classified into autonomous regions, autonomous prefectures, and autonomous counties.”⁴ Autonomous regions are autonomous areas at the provincial level, autonomous prefectures fall hierarchically between provinces and counties, and autonomous counties are autonomous areas at the county level.⁵ Currently, China has 155 ethnic autonomous areas,⁶ including five autonomous regions,⁷ thirty autonomous prefectures and 120 autonomous counties (banners).⁸ Of the fifty-five ethnic minorities, forty-four had their own autonomous areas.⁹ Ethnic minorities practicing regional autonomy constitute seventy-one percent of the total ethnic minority population and ethnic autonomous areas cover sixty-four percent of Chinese territory.¹⁰ Although most ethnic minority areas are less developed, the overall percentage of autonomous territory in China is extraordinary.

The laws regulating the minority autonomous system include the Constitution (articles 4, 112-122), the REAL, relevant laws, regulations and rules by the Standing Committee of the National People’s Congress, State Council and central governmental departments and committees, autonomy/self-governing regulations and specific regulations by autonomous areas at different levels.¹¹ The REAL implements the system of regional autonomy for ethnic minorities as provided in the current Chinese Constitution.¹² It covers all aspects of regional autonomy, including the self-governing political and administrative system, economy, culture and society, relations between the central government and the ethnic autonomous regions, as well as relations between different ethnic groups in ethnic autonomous areas.¹³

The laws grant numerous autonomous powers to minority areas that other provinces and local governments cannot enjoy. While legally broad, in practice these powers are not sufficiently exercised. Realistic and efficient solutions to the inconsistency between legal norms and practice will have to focus on improv-

⁴ See Zhonghua Renmin Gongheguo Minzu Quyū Zizhifa [Regional Ethnic Autonomy Law] (promulgated by the Standing Comm. of the Nat’l People’s Cong., May 31, 1984, effective Oct. 1, 1984) P.R.C. LAWS of 1984, art. 2 (amended 2011) (available on Lexis Nexis 1984 China Law LEXIS 361).

⁵ Xianfa art. 112 (1982) (China).

⁶ Info. Office of the State Council, *supra* note 1, § II (2).

⁷ See *id.* The Inner Mongolia Autonomous Region was established on May 1, 1947; the Xinjiang Uyghur Autonomous Region was established on October 1, 1955; the Guangxi Zhuang Autonomous Region was established on March 15, 1958; Ningxia Hui Autonomous Region was established on October 25, 1958; and the Tibet Autonomous Region was established on September 1, 1965. *Id.*

⁸ Dai Xiaoming, *Min zu fa zhi wen ti tan suo* [The Exploration on the Issues on the Ethnic Legal System] 14 (The Ethnic Publishing House 2002) (translated by and on file with author).

⁹ INFO. OFFICE OF THE STATE COUNCIL (P.R.C.), *supra* note 1, § II (2).

¹⁰ *Id.* Other sources also show that “[t]he area of the minority autonomous regions accounts for 63.9% of the whole country.” See Dai Xiaoming, *supra* note 8, at 243 (on file with author).

¹¹ See, *Socialist System of Laws with Chinese Characteristic*, SOCIALIST DEMOCRACY MILESTONE, CHINA DAILY (Oct. 28, 2011), http://chinadaily.com.cn/china/2011-10/28/content_13992489.htm (stating, “by the end of August 2011, the ethnic autonomous areas had enacted more than 780 regulations on the exercise of autonomy, as well as specific regulations, which are currently in force.”).

¹² See *id.*

¹³ See *id.*

The Laws on the Ethnic Minority Autonomous Regions in China

ing the legal status of the REAL and earnestly initiate regional autonomy regulation legislation to ensure legal guarantees and the meaningful exercise of autonomous powers.

Section II of the article categorizes the broad regulated autonomous powers into autonomous legislation powers, special personnel arrangements and other authorities. Section III investigates the problems in the legal and political practice in China with respects to the local governmental nature of the autonomous agencies, regional autonomy regulation legislation, scenes behind the personal arrangement, the historical vulnerable autonomy, the economic imbalance and the issue of natural resource exploitation. In an effort to seek practical remedies to ease the gap between law and practice, section IV recommends ways to improve the constitutional legal status of the REAL and, more significantly, conduct regional autonomy regulation legislation, whereby the central government should arguably play a dominated role.

II. Regulated Autonomous Powers of the Ethnic Minority Autonomous Regions

Mechanisms of self-government in ethnic autonomous areas perform the functions of local state organs as prescribed in Section Five, Chapter Three of the Constitution, which regulates the function and status of the local people's congress and the various levels of local government.¹⁴ These powers and functions include: ensuring the observance and implementation of the Constitution, statutes, and administrative rules and regulations; planning local economic and social development; adopting local regulations and ordinances; and conducting local administrative work concerning the economy, education, science, culture, public health, urban and rural development, finance, civil affairs, public security, ethnic minority affairs, judicial administration, supervision and family planning.¹⁵

The autonomous areas also exercise autonomous powers provided by the Constitution, the REAL and other laws. The autonomous powers the Ethnic Minority Autonomous Regions could enjoy include self-government within designated autonomous areas, proportional representation in government, freedom to develop their own languages, religions and cultures, and the power to adjust central directives to local conditions.¹⁶ The laws grant ethnic minorities greater control over local economic development than allowed in non-autonomous areas, the right to manage and protect local natural resources, and the right to organize local public security forces to safeguard public order.¹⁷ These powers can be categorized into three broad groups: autonomous legislation powers, special personnel arrangements, and other authorities.

¹⁴ Xianfa, arts. 95-111 (1982) (China).

¹⁵ *Id.* arts. 95-122.

¹⁶ *Id.* arts. 115-119.

¹⁷ *Id.* art. 120.

The Laws on the Ethnic Minority Autonomous Regions in China

A. Autonomous Legislation Powers

According to Article 116 of the Constitution, concerning an ethnic autonomous areas' right to formulate autonomy and specific regulations:

People's congresses of national autonomous areas have the power to enact autonomy regulations and specific regulations in the light of the political, economic and cultural characteristics of the nationality or nationalities in the areas concerned. The autonomy regulations and specific regulations of autonomous regions shall be submitted to the Standing Committee of the National People's Congress for approval before they go into effect. Those of autonomous prefectures and counties shall be submitted to the standing committees of the people's congresses of provinces or autonomous regions for approval before they go into effect, and they shall be reported to the Standing Committee of the National People's Congress for the record.¹⁸

Article 19 of the REAL gives similar authorization but is more specific, stating, "The people's congresses of ethnic autonomous areas shall have the power to enact self-governing regulations and specific regulations in the light of the political, economic and cultural characteristics of the nationality or nationalities in the areas concerned."¹⁹ Further, ethnic autonomous areas have the right to implement state laws and policies in a way tailored to specific local conditions.²⁰ According to Article 20 of the REAL, regarding flexible implementation of higher-level directions:

If a resolution, decision, order or instruction of a state organ at a higher level does not suit the actual conditions in an ethnic autonomous area, an autonomous agency of the area may petition for the approval of the state organ at the next higher level to either implement it with certain alterations or cease implementing it altogether. The next higher-level state agency must give its decision within sixty days of receiving the report.²¹

B. Special Personnel Arrangements

The Constitution provides for self-governance of autonomous regions, prefectures, and counties through local people's congresses and people's governments,²² by stating, "The chairmanship and vice-chairmanships of the standing committee of the people's congress of an autonomous region, prefecture or

¹⁸ *Id.* art. 116.

¹⁹ Zhonghua Renmin Gongheguo Minzu Quyu Zizhifa [Regional Ethnic Autonomy Law] (promulgated by the Standing Comm. of the Nat'l People's Cong., May 31, 1984, effective Oct. 1, 1984) P.R.C. Laws of 1984, art. 19 (amended 2011) (available on Lexis Nexis 1984 China Law LEXIS 361).

²⁰ Xianfa, art. 115 (1982) (China).

²¹ Zhonghua Renmin Gongheguo Minzu Quyu Zizhifa [Regional Ethnic Autonomy Law] (promulgated by the Standing Comm. of the Nat'l People's Cong., May 31, 1984, effective Oct. 1, 1984) P.R.C. Laws of 1984, art. 20 (amended 2011) (available on Lexis Nexis 1984 China Law LEXIS 361).

²² The organs of self-government of autonomous areas do not include the people's Court or the people's Procuratorates. *See* Xianfa art. 112 (1982) (China).

The Laws on the Ethnic Minority Autonomous Regions in China

county shall include a citizen or citizens of the nationality or nationalities exercising regional autonomy in the area concerned.”²³ Further, the government head of an autonomous area must be a citizen of the autonomous ethnic group.²⁴ In addition to deputies from the autonomous ethnic group(s), the local people’s congresses must also include an appropriate number of members from other present ethnic groups.²⁵ Likewise, all other government posts must be appropriately apportioned between the autonomous ethnic group(s) and any other present minorities.²⁶ Finally, functionaries of working departments subsidiary to local government organs must be appointed similarly.²⁷ By requiring the chairman or vice-chairman of the standing committee of the autonomous areas’ people’s congresses and the government head to be a citizen of the autonomous ethnic group and requiring a proportional number of ethnic minority citizens be government members, these special personnel arrangements theoretically ensure self-governance.

C. Other Autonomous Powers

The laws nominally provide ethnic autonomous areas many other autonomous powers. These powers include independently managing the ethnic group(s)’ internal affairs within the autonomous area, using and developing the ethnic group(s)’ spoken and written languages, respecting and guaranteeing the ethnic minorities’ freedom of religious belief, and retaining or altering the folkways and customs of ethnic groups.²⁸ Autonomous areas’ organs of self-government have the right to independently manage economic construction, grass land and forest, and natural resources, and to independently develop and manage educational, scientific, technological and cultural undertakings, public health, and other related projects, etc.²⁹ The laws also oblige higher-level governments to ensure and support the exercise of these autonomous powers.³⁰

While the laws grant ethnic minority autonomous areas seemingly broad powers and authorities, enforceability remains problematic. No effective legal or political mechanisms exist to ensure that autonomous areas may exercise their powers unmolested. In fact, it has been difficult to put most of the granted powers into action.

²³ *Id.* art. 113.

²⁴ *Id.* art. 114.

²⁵ *Id.* art. 113.

²⁶ *Zhonghua Renmin Gongheguo Minzu Quyu Zizhifa* [Regional Ethnic Autonomy Law] (promulgated by the Standing Comm. of the Nat’l People’s Cong., May 31, 1984, effective Oct. 1, 1984) P.R.C. LAWS of 1984, art. 17 (amended 2011) (available on Lexis Nexis 1984 China Law LEXIS 361).

²⁷ *Id.* art. 18.

²⁸ *Id.* arts. 10, 11.

²⁹ *Id.* arts. 25-45.

³⁰ *See id.* art. 8 (stating, “State organs at higher levels guarantee autonomous agencies in ethnic autonomous areas the power of autonomy and shall, in accordance with the characteristics and needs of these areas, strive to help them speed up their socialist construction.”).

III. Problems in the Operation of the Regional Ethnic Autonomous System: The Gap Between Law and Practice

A. Local Governmental Nature of the Autonomous Agencies

Article 3 of the REAL requires that “[e]thnic autonomous areas establish autonomous agencies that function as local agencies of state power at their respective levels. Autonomous agencies in ethnic autonomous areas shall apply the principle of democratic centralism.”³¹ While autonomous areas should be able to exercise their power within the set limits and tailor the laws and policies of the state to existing local conditions, in general, autonomous agencies remain local governmental institutions in reality. Autonomous powers tend to be overwhelmed by non-autonomous local governmental functions.³² According to some scholars, autonomous regions, like other provinces, serve as branches of the central government for the following reasons:

Systematically, a minority autonomous region is a local level government under the unified leadership of the central government. Although the Constitution and the Regional Ethnic Autonomy Law provide broad autonomous powers, their actual scope depends on the centralization or decentralization policies of the central government. For ethnic autonomous areas, due to historical and cultural reasons, their local economic and cultural development remains fairly weak, and this objectively forces them to continue to rely on the central government, further limiting the exercise of their autonomous powers. Economically, for a long time China had run a planned economic system. The centralized nature of the economic policy put the local economies, including those in the minority autonomous regions, under a unified national plan.³³

Thus, from a practical point of view, minority autonomous regions are not substantially different from other Chinese local governments. Furthermore, “Autonomous agencies in ethnic autonomous areas must uphold the unity of the country and guarantee that the Constitution and other laws are observed and implemented in these areas.”³⁴ Article 7 of the REAL stresses, “Institutions of self-government in ethnic autonomous areas shall place the interests of the state as a whole *above all else* and *actively* fulfill all tasks assigned by state institutions at higher levels.”³⁵ Safeguarding state unity and fulfilling higher-level tasks thus takes precedence over exercising autonomous powers.

³¹ *Id.* art. 3.

³² See Lin Shangli, *Zhongguo de zheng fu jian guanxi* [Governmental Relations in China] 284 (Zhejiang Renmin Press 1998) (translated by and on file with author).

³³ *Id.*

³⁴ *Zhonghua Renmin Gongheguo Minzu Quyu Zizhifa* [Regional Ethnic Autonomy Law] (promulgated by the Standing Comm. of the Nat’l People’s Cong., May 31, 1984, effective Oct. 1, 1984) P.R.C. LAWS of 1984, art. 5 (amended 2011) (available on Lexis Nexis 1984 China Law LEXIS 361).

³⁵ *Id.* art. 7 (emphasis added). There is no such explicit demand on other common local governments in Chinese laws, rather, according to the Constitution, “The division of functions and powers between the central and local state organs is guided by the principle of giving full play to the initiative and enthusiasm

The Laws on the Ethnic Minority Autonomous Regions in China

B. The Tale of Regional Autonomy Regulations: Insufficient Exercise of the Autonomous Legislation Power

The power to enact autonomy or self-governing regulations has not been sufficiently or smoothly exercised. Historically, “[s]ince May 1, 1947, with the establishment of the first minority region, Inner Mongolia, there has been no single regulation at the regional (provincial) level. Among the five Minority Autonomous Regions, no region has ever promulgated an autonomy regulation.”³⁶

Regional autonomy regulations are the most important autonomous regulations, as the autonomous regions are the highest level of minority autonomous areas. Autonomous regions report and are responsible directly to the central government. The absence of regional autonomy regulations leaves the whole ethnic autonomous legal system broken in the middle. According to many legal scholars, the failure of the regional autonomy regulation legislation can be traced not to the minority regions, but to the central government and its departmental branches. Professor Chen Yunsheng commented, “We have to say that the five autonomous regions (Inner Mongolia, Ning Xia, Xin Jiang, Tibet and Guangxi) have pushed hard on autonomy regulation legislation; they have drafted 15-20 editions of relevant regulations; however, no regulation so far has managed to get to the legal ratification procedure.”³⁷

The legal ratification/approval procedural requirement, as established by the Constitution and the REAL, which does not apply to local regulations of common provinces, dictates that “[t]he autonomy regulations and specific regulations of autonomous regions shall be submitted to the Standing Committee of the National People’s Congress for *approval* before they go into effect.”³⁸ Pragmatically, due to this requirement, autonomous regions could only enjoy partial autonomy legislation powers, and would have the power only to make autonomy legislation proposals. There is no specific procedure to be followed by the central legislature in this respect. The law is too vague and lacking in standards also on the ratification/approval review. Clearly, based on the Legislation Act, a “basic principle” legality review test will be sufficient for the approval under the circumstances when the autonomy regulation varies or modifies the provisions of a law or administrative regulation. In contrast, a strict legality review applies when no variances are allowed when involving “any provision of the Constitution or the Law on Ethnic Area Autonomy and provisions of any other law or administrative regulations that are dedicated to matters concerning ethnic auton-

of the local authorities under the unified leadership of the central authorities.” See Xianfa art. 3 (1982) (China).

³⁶ Chen Yunsheng, *Xianfa ren lei xue* [The Constitutional Anthropology] 733 (Peking Univ. Press 2005) (translated by and on file with author).

³⁷ *Id.*

³⁸ Xianfa art. 116 (1982) (China); *Zhonghua Renmin Gongheguo Minzu Quyu Zizhifa* [Regional Ethnic Autonomy Law] (promulgated by the Standing Comm. of the Nat’l People’s Cong., May 31, 1984, effective Oct. 1, 1984) P.R.C. LAWS of 1984, art. 19 (amended 2011) (available on Lexis Nexis 1984 China Law LEXIS 361).

The Laws on the Ethnic Minority Autonomous Regions in China

mous areas.”³⁹ In practice, however, rationality review has frequently been initiated even though enacting autonomy regulation legally belongs to the autonomous powers. Autonomy regulations can thus be easily blocked even before entering the approval process. In the case of the Guangxi Zhuang Autonomous Region’s autonomy regulation legislation, the National People’s Congress Standing Committee (NPCSC) sent the eighteenth draft of the proposed regulation to the departments of the State Council seeking opinions.⁴⁰ Only a few departments agreed to the proposal—those that did not submitted several opinions in opposition.⁴¹ Some argued that the regulation was in conflict with the relevant policies of their departments, and others suggested Guangxi was “asking for a too high price.”⁴² A central governmental department can thus deny certain provisions and destroy the whole autonomy regulation based on its own departmental interests.

Although most autonomous prefectures and counties promulgated autonomy regulations, most of these are redundant and superficial,⁴³ “basically copying the existing articles of the Constitution and the Regional Ethnic Autonomy Law, or simply imitating other autonomy regulations.”⁴⁴ Specific regulations published by the minority autonomous areas also basically concern minority language, minority custom, or education of minority cadres.⁴⁵ Regulations of economy, finance, taxation and other such substantive issues are very rare.⁴⁶ Another notable factor of the autonomy regulation dilemma is that no autonomy regulations have ever been promulgated by any autonomous areas of the 5 autonomous prefectures and 6 autonomous counties in Xinjiang Uyghur Autonomous Region.⁴⁷ This phenomenon deserves further attention.⁴⁸

³⁹ Li Fa Fa [The Legislation Act] (promulgated by the Ninth National Congress, 3rd session, March 15, 2000, effective July 1, 2000), art. 66, 2000 *STANDING COMM. NAT’L PEOPLE’S CONG. GAZ.* 112 (P.R.C.).

⁴⁰ Dai Xiaoming, *supra* note 8, at 95-96.

⁴¹ *Id.*

⁴² *Id.*

⁴³ Autonomous areas had promulgated 123 autonomy regulations and 153 specific regulations until 2001. See Zhongguo Minzu Quyu Zizhi Falü Fagui Tong Dian [The Collection of Laws and Regulations of the Regional Ethnic Minority Autonomy in China] 11 (The Sec’y Dep’t of Standing Comm. of the Nat’l People’s Congress & The Politics and Law Bureau of the Nat’l Minority Affairs Comm. eds., Central Univ. for Nationalities Press 2002) (translated by and on file with author).

⁴⁴ Chen Yunsheng, *supra* note 36, at 734.

⁴⁵ Zhongguo Minzu Quyu Zizhi Falü Fagui Tong Dian, *supra* note 43, at 151-80.

⁴⁶ See *id.* at 297.

⁴⁷ Pan Hongxiang, *Zizhi Qu Zizhi Tiaoli Chu Tai Nan de Yuan Yin Fen Xi yu Dui Ce* [The Reason Analysis of the Difficulty of the Introduction of the Regional Autonomy regulations and Strategy] BEI FANG MIN ZU DA XUE XUE BAO (ZE XUE SHE KE BAN) [JOURNAL OF NORTHERN UNIVERSITY FOR NATIONALITIES] (Philosophy and Social Science edition) 3, 2009 (translated by and on file with author). The list of the minority autonomous area regulations also clearly attests to this. See *Min zu qu yu zi zhi zhi du de fa zhan* [The Dev. of the Ethnic Minority Reg’l Autonomous System] 236-284 (Wang Gelieu ed., the Ethnic Publ’g House 2001) (translated by and on file with author).

⁴⁸ Some scholars tried to suggest other reasons for the failure of the autonomy legislation, alleging, “The minority autonomous government and officers themselves lack the consciousness of the autonomy or are not willing to argue for or claim the autonomous powers endowed by the Constitution and the law.” Chen Yunsheng, *supra* note 36, at 736.

The Laws on the Ethnic Minority Autonomous Regions in China

Although the REAL requires that “State organs at higher levels shall guarantee the exercise of the power of autonomy by the organs of self-government of national autonomous areas and shall, in accordance with the characteristics and needs of these areas, strive to help them speed up their socialist construction,”⁴⁹ the State Council and its departments and committees have not promptly drafted enforcement regulations and measures to empower the REAL.⁵⁰ This has further hampered implementation of ethnic minority autonomous laws.⁵¹

C. Behind the Personnel Arrangement: Party Politics and the Ethnic Minority Regional Autonomy

The laws require that the chairman or vice-chairmen of the standing committee of the people’s congress and the government head of an autonomous area be citizens of the ethnic group exercising regional autonomy.⁵² However, the special personnel requirement does not apply to the party system. Due to the lack of meaningful local democracy and local accountability, this privilege has been discounted under party politics. The main principle of the leadership of the Chinese Communist Party (the “CCP”) is enshrined in the preamble of the Constitution thus:

Under the leadership of the Communist Party of China and the guidance of Marxism- Leninism and Mao Zedong Thought, the Chinese people of all nationalities will continue to adhere to the people’s democratic dictatorship and follow the socialist road, steadily improve socialist institutions, develop socialist democracy, improve the socialist legal system and work hard and self-reliantly to modernize industry, agriculture, national defense and science and technology step by step to turn China into a socialist country with a high level of culture and democracy.⁵³

Although the Constitution only generally stipulates the leadership of the CCP, the Party’s branches are always the prime and core leading institutions of any given geo-political unit and are in charge of the main, local policy decisions.⁵⁴

⁴⁹ Zhonghua Renmin Gongheguo Minzu Quyu Zizhifa [Regional Ethnic Autonomy Law] (promulgated by the Standing Comm. of the Nat’l People’s Cong., May 31, 1984, effective Oct. 1, 1984) P.R.C. LAWS of 1984, art. 8 (amended 2011) (available on Lexis Nexis 1984 China Law LEXIS 361).

⁵⁰ Chen Yunsheng, *supra* note 36, at 733. For example, it took twenty years for the State Council to issue its first Regulations on Implementing the Regional Ethnic Autonomy Law after the REAL was promulgated in 1984. See Guowuyuan Shishi Zhonghua Renmin Gongheguo Minzu Quyu Zizhifa Ruo Gan Guiding [State Council Regulations on Implementing the Reg’l Ethnic Autonomy Law] (promulgated on May 19, 2005 through Order of the State Council No. 435) (2005) (China) (on file with author).

⁵¹ Chen Yunsheng, *supra* note 36, at 733.

⁵² Xianfa art. 114 (1982) (China).

⁵³ XIANFA pmb. (1982) (China).

⁵⁴ Constitution of the Communist Party of China (originally adopted by the 12th Nat’l Cong. of the C.P.C. in September 1982, revised and adopted by the 16th Nat’l Cong. of the C.P.C., Nov. 14, 2002, General Program, available at <http://www.china.org.cn/english/features/49109.htm> (stating “Acting on the principle that the Party commands the overall situation and coordinates the efforts of all quarters, the Party must play the role as the core of leadership among all other organizations at the corresponding levels.”).

The Laws on the Ethnic Minority Autonomous Regions in China

The Party Committee Secretary is the real head and the core leader at the relevant governmental level. The position of an official in the Party generally indicates his power status. Within the Party organization, the official government head generally occupies a deputy position next to the Party Secretary. The Party's control over cadres is an important political principal and a sensitive issue in Chinese society and political life; no one can challenge it in any way without facing serious political consequences. The ethnic minority autonomous areas are no exception in this regard. As a general practice, for all five minority autonomous regions, the Party Committee Secretaries of the Regional CCP Committee have always been majority Hans. As shown in Table 1:

Table 1: List of Party Secretaries and Chairmen of the Ethnic Minority Autonomous Regions⁵⁵

Region	Party Secretary and Nationality	Chairman, Position in the Party Committee, and Nationality
Inner Mongolia Autonomous Region	Hu Chunhua (胡春华), Han Nationality	Ba Teer (巴特尔), Deputy Secretary, Mongolian
Tibet Autonomous Region	Chen Quanguo (陈全国), Han Nationality	Bai Ma Chi Lin (白马赤林), Deputy Secretary, Tibetan
Guang Xi Zhuang Autonomous Region	Guo Shengkun (郭声琨), Han Nationality	Ma Biao (马飏), Deputy Secretary, Zhuang Nationality
Xinjiang Uyghur Autonomous Region	Zhang Chunxian (张春贤), Han Nationality	Nu Er Bai Ke Li (努尔·白克力), Deputy Secretary, Uyghur
Ning Xia Hui Autonomous Region	Zhang Yi (张毅), Han Nationality	Wang Zhengwei (王正伟), Deputy Secretary, Hui Nationality

There is no concept of ethnic minority regional autonomy within the Party organization system or in the Party Constitution.⁵⁶ Party politics operate behind the legal system in a highly centralized manner and with decisive effects. Therefore, the special personnel arrangements in the minority autonomous areas are even less meaningful than they otherwise appear.

⁵⁵ *Di Fang Ling Dao Ren [Local Leaders]*, XINHUA NEWS AGENCY, http://news.xinhuanet.com/ziliao/2002-02/20/content_476046.htm (translated by author, last visited Mar. 4, 2012).

⁵⁶ Constitution of the Communist Party of China, *supra* note 54, art. 10 (stating “The Party is an integral body organized under its program and Constitution on the principle of democratic centralism.”).

The Laws on the Ethnic Minority Autonomous Regions in China

D. The Vulnerable Autonomy

The deficiency of legal and political mechanisms to put the ethnic autonomous laws into force not only resulted in limited exercise of the autonomous power but also, in some extreme cases, threatened the mere existence of the ethnic minority autonomous areas.⁵⁷ During the Cultural Revolution, some established ethnic autonomous regions were arbitrarily split or abolished without any legal process.⁵⁸ The Third East Meng (a prefecture-level autonomous area) and the Third West Qi (a county-level autonomous area) of Inner Mongolia were split and transferred to five neighboring provinces and regions and the Southern Gansu Yugu Ethnic Autonomous Qi was split into several parts and distributed among neighboring counties and cities.⁵⁹ Nujiang, Diqing, Dehong and Xishuang Banna in Yunnan Province were once also merged into neighboring areas.⁶⁰ After being split or merged, an ethnic minority would be dispersed into different regions, and these ethnic autonomous areas could be abolished because there would be no minority-accumulating inhabitant areas in one particular prefecture or county.⁶¹

An official document of the CCP, *Decision on the Historic Issues of the Party Since the Founding of the P.R.C.*, confessed that “on the issue of the ethnic minority, in the past, especially during the ‘Cultural Revolution,’ we made a serious mistake magnifying the class battle, harmed many minority cadres and people, and failed to pay enough respect to the autonomous rights of ethnic minorities. . .”⁶²

During the Great Leap and the Cultural Revolution periods, minority rights were largely ignored. Minority cadres dared not say “our nationality” for fear of accusations of “localism” and “minority mood”; dared not say “the character of the minority regions” to avoid being regarded as having some sort of special status; dared not reference “the drawbacks of the Han cadres” to avoid being seen as “excluding the Han cadres”; and dared not mention “minority autonomous rights” to avoid being regarded as “opposing the leadership of the Party.”⁶³

The system meant to protect minority rights turned out too vulnerable to political movements and party politics. The 1975 Constitution omitted the general principle that “every minority-accumulating inhabitant area practices regional autonomy,” which the 1954 Constitution provided, and reduced the entire six article

⁵⁷ Zhongguo Minzu Quyu Zizhi Falü Fagui Tong Dian, *supra* note 43, at 3.

⁵⁸ Dai Xiaoming, *supra* note 8, at 9.

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ “Regional autonomy is practiced in areas where ethnic minorities live in concentrated communities.” See Zhonghua Renmin Gongheguo Minzu Quyu Zizhifa [Regional Ethnic Autonomy Law] (promulgated by the Standing Comm. of the Nat’l People’s Cong., May 31, 1984, effective Oct. 1, 1984) P.R.C. LAWS of 1984, art. 2 (amended 2011) (available on Lexis Nexis 1984 China Law LEXIS 361).

⁶² San zhong quan hui yi lai zhong yao wen xian xuan bian [The Selected Collection on the Important Documents since the Third Central Committee Conference] 788 (Renmin Press 1982) (translated by and on file with author).

⁶³ See Zhang Xisheng & Lin Liyan, Yun nan min zu qu yu zi zhi de shi jian [The Practice of the Minority Reg’l Autonomy in Yunnan] 79 (Yunnan Univ. Press 2001) (translated by and on file with author).

The Laws on the Ethnic Minority Autonomous Regions in China

section titled “Autonomous Institution of the Minority Autonomous Region” to one article, abolishing all autonomous powers.⁶⁴ It further omitted a former provision that granted minorities “the right to keep and reform their custom and habits.”⁶⁵ These absurd constitutional changes clearly demonstrate the historical shortage of legal guarantees of ethnic minority autonomous powers.

E. The Economic Gap and the Natural Resource Exploitation Issue

Economic and resource issues have had a strong impact on the viability of autonomy. Deng Xiaoping observed in 1950, “When practicing ethnic regional autonomy, if we did not do well economically, the autonomy would be void.”⁶⁶ All the autonomous areas are located in western China. They benefited substantially less from China’s economic reform.

Compared with other regions, especially the eastern developed areas, some minority autonomous areas remain very undeveloped and poor. For instance, “44% of national level poverty supporting counties, 45% of the population who still have problems feeding and clothing themselves, and 68% of poor counties with average income less than 450 Yuan (sixty U.S. dollars) a year came from minority autonomous areas.”⁶⁷ Most autonomous areas have experienced a financial deficit and their special situations and needs have been occasionally ignored.⁶⁸ The tax system reform of 1994, for example, largely and adversely affected the local finances of the minority autonomous areas. According to a record,

Local income of the autonomous regions in 1994 was down 10.12 billion Yuan from 1993. Also, the financial deficit of the minority autonomous regions in 1994 exceeded 1993 levels by 15.585 billion Yuan. . .Further, under the payment transfer system, minority autonomous regions got less than other common provinces, such as Henan and Jiangxi. Tax returns played a limited role in minority autonomous regional finance. On the contrary, the eastern developed areas benefited from the system much more.⁶⁹

Statistics comparing areas in the west and the east coast demonstrate a significant economic imbalance, as explained by Professor Dai Xiaoming:

⁶⁴ Xianfa art. 24 (1975) (China); Xianfa arts. 67-72 (1954) (China).

⁶⁵ Zhang Xisheng & Lin Liyan, *supra* note 63, at 84.

⁶⁶ See Guo ji shi ye zhong de min zu qu yi zi zhi [The Ethnic Minority Regional Autonomy in the International Perspective] 113 (Wang Tiezhi & Sha Boli eds., The Ethnic Publishing House 2002) (translated by and on file with author); see also Deng Xiaoping Wen xuan [selected works of deng xiaoping] 167 (Vol. I, Remin Press 1994) (translated by and on file with author).

⁶⁷ Min zu qu yu zi zhi zhi du de fa zhan [The Dev. of the Ethnic Minority Reg’l Autonomous System], *supra* note 47, at 111.

⁶⁸ Dai Xiaoming, *supra* note 8, at 271.

⁶⁹ Guo ji shi ye zhong de min zu qu yi zi zhi [The Ethnic Minority Regional Autonomy in the International Perspective], *supra* note 66, at 143-44.

The Laws on the Ethnic Minority Autonomous Regions in China

According to relevant studies, in 1978 the difference in GDP per capita between the west and east coast areas was 334.39 Yuan, and the western areas stayed 12.26 years behind the east coast areas. In 1990, before the introduction of the market economy in China, the difference in GDP per capita was 1066.9 Yuan, and the western areas were 11.22 years behind the east coast areas. However, by the end of 1997, along with the deepened reform and universal establishment of the market economic system, the difference had further enlarged. . .the difference in GDP per capita expanding to 5377.43 Yuan. The west trailed fifteen years behind the eastern areas.⁷⁰

For a long time, minority autonomous areas have been disadvantaged with respect to resource pricing and ownership arrangements. All the mineral resources are owned by the state.⁷¹ The minority autonomous areas have received little benefit from the rich resources in the west. One of the reasons for this was the very low price of herding products and natural resources. However, products made from these resources were very expensive (selling a sheep, for example, yields insufficient income to purchase a pair of shoes).⁷² Inner Mongolia is the product base for cashmere, but the right to export cashmere had belonged to Guangdong Province, which netted profit by buying at a low price and selling for a much higher price.⁷³ Minority autonomous regions are economically sacrificed for other developed areas, explains Professor Shen Xilian, "Inner Mongolia lost 2.6 billion Yuan every year by selling the energy and raw material products at controlled low prices and purchasing processed industrial products for a high price. The relevant amount for Guizhou was 1.5 billion, and Guangxi, 2.0 billion."⁷⁴

Another problem on resource issue in the minority regions could be the practical unequal access to the natural resources as a result of ownership arrangement, resource revenue distribution between central and local governments, education and employment opportunities, etc., leading to ethnic tensions in some areas. Inventory of Conflict & Environment (ICE) observes to some extent the connection between the resource issue and the ethnic relations in Xinjiang:

With the discovery of oil and other natural resources in the region, the Han Chinese are now flooding into the region in an effort to exploit the resources. This influx of people has intensified the already tenuous relationship between the Han Chinese and the Uyghurs over their religious, cultural and social differences. Furthermore, the influx of people has lead to not only the extraction of resources but the over-cultivation of land and

⁷⁰ Dai Xiaoming, *supra* note 8, at 93.

⁷¹ Xianfa art. 9 (1982) (China).

⁷² Shen Xilian, *Gong ping jing zheng he min zu di qu de jing ji fa zhan fu chi* [Fair Competition and the Supporting of the Economic Development of the Minority Regions] in *Ethnic Review*, April 1995 (translated by and on file with author).

⁷³ Guo ji shi ye zhong de min zu qu yi zi zhi [The Ethnic Minority Regional Autonomy in the International Perspective], *supra* note 66, at 143-44.

⁷⁴ Shen Xilian, *supra* note 72.

The Laws on the Ethnic Minority Autonomous Regions in China

over-use of precious water resources in the area. As a result, the Uyghurs have strengthened their own campaign, sometimes resorting to violence, in an effort to reclaim their land, to halt the religious and political persecution and, in extremist cases, to establish their own, independent Uyghur state.⁷⁵

IV. Seeking Legal Guarantees: Improving the Exercise of the Autonomous Powers

One of the critical reasons for the insufficient implementation of the ethnic minority autonomous system is the lack of guarantee mechanisms for autonomous status and powers. Unlike the Hong Kong Basic Law, the REAL is not an entrenched legislation. The NPC can freely and unilaterally amend or abolish it by a simple majority vote.⁷⁶ While the ethnic minority autonomy system is written into the Constitution, the Constitution itself is subject to frequent changes.⁷⁷ Similar to the Chinese Constitution, where judicial enforceability is problematic, the REAL is largely a non-actionable act, which minimizes liability and legal remedies for any violation of the autonomous rights. The protection and exercise of the autonomous powers mainly have to rely on the central and upper level leaders' consciousness on minority works.⁷⁸ Autonomy is much less meaningful than it appears to be in the legal documents, especially given China's political circumstance. As Chen Yunsheng commented:

In China, the unitary system, the one-party leadership of the country, and the consistently stressed political principle of keeping in line with the

⁷⁵ See *Ethnic Conflict and Natural Resources: Xinjiang, China* (ICE Case Studies, Number 183, May 2006), THE INVENTORY OF CONFLICT & ENV'T (ICE), <http://www1.american.edu/ted/ice/xinjiang.htm> (last visited May 5, 2011). The insufficient exercise of the autonomous powers and the natural resources issue were arguably critical reasons leading to the 7.5 incident in Xinjiang. On July 5, 2009, in Urumqi, the capital city of Xinjiang Uyghur Autonomous Region, Uyghurs' demonstration reacting to a group fight leading to the death of two Uyghurs in a toy factory in Shaoguan, Guangdong Province, turned to serious violence against Hans. 192 people died and 1,721 people injured, most of them Hans, during the riot, which "revealed deep-rooted ethnic tension in China and called into question Beijing's ethnic policies." See Shan Wei & Cheng Gang, *The Urumqi Riots and China's Ethnic Policy in Xinjiang*, in E. Asian Pol'y (Vol.1, No 3.) at 14; see also, *Urumqi Riot*, CHINA VIEW, http://news.xinhuanet.com/english/2009-07/07/content_11668075.htm (last visited July 17, 2011). The demonstrations and protests in Inner Mongolia occurred in May 2011 involved also the resource issue where two Mongolian national minority herdsmen died in confronting Chinese Han miners on the coal mine development to cause the pasture and the environment destruction. See generally, Jamie FlorCruz, *Inner Mongolia beset by ethnic conflict*, CNN WORLD, June 2, 2011, http://articles.cnn.com/2011-06-02/world/inner.mongolia.unrest_1_mongolians-mining-nicholas-bequelin?_s=PM:WORLD.

⁷⁶ The Constitution is the only legislation requires an absolute majority for approval and amendment. Simple majority will be sufficient for any other legislations and amendments. See Xianfa art. 64 (1982) (China) (stating "Amendments to the Constitution are to be proposed by the Standing Committee of the National People's Congress or by more than one-fifth of the deputies to the National People's Congress and adopted by a majority vote of more than two-thirds of all the deputies to the Congress. Statutes and resolutions are adopted by a majority vote of more than one half of all the deputies to the National People's Congress.").

⁷⁷ Four amendments have occurred to the current Constitution of China, namely the 1988, 1993, 1999, and 2004 amendments. See Xianfa amends. I-IV (1982) (China).

⁷⁸ Pan Hongxiang, *supra* note 47.

The Laws on the Ethnic Minority Autonomous Regions in China

central government lead to unified enforcement of party policy, law and regulations at every level of government. Also, the consistent emphasis on unification, obedience, and discipline makes governmental institutions and the whole society often neglect the important status and functions, and even sometimes existence, of ethnic regional autonomy.⁷⁹

Some legal scholars have proposed different ways to solve these problems. Unfortunately, most such proposals are superficial and ineffective. Suggestions include strengthening propaganda and education in favor of minority regional autonomy, improving the minority autonomous legislation plan and the construction of the Minority Regional Autonomous Legislatures, stressing education and training of professional legislators, and emphasizing the study of the theory of minority autonomous legislation.⁸⁰ Such proposals mostly do not address the core issue—the missing of legal guarantees. The problems in the ethnic autonomous system cannot be solved simply through education or propaganda. Systematic legal and political solutions are essential.

Elevating the REAL to the status of an entrenched constitutional document (like the Hong Kong Basic Law), restricting its amendment procedures, and giving the minority areas special weight in the legislating and amendment process could be effective reforms to set up legal protections. China could employ the necessary constitutional specific division of powers to regulate the ethnic minority autonomy system and ensure that autonomous powers cannot be ignored or destroyed by a common national legislation, a central administrative department rule, or a local party policy. Liability and legal remedy issues should be addressed and a court arbiter role could also be implemented as a key part of the guarantee mechanisms to make the law judicially enforceable.

Another possible breakthrough point in legalizing China's central-ethnic autonomous region relations is to seriously promote the regional autonomy regulation legislation. This is a task that cannot be achieved by the autonomous regions alone, as evidenced by repetitive failing efforts. The autonomy regulation would inevitably design central-ethnic autonomous regions' division of powers, define the scope of the autonomous internal affairs and could serve as a mini-constitution for autonomous regions. The Central Government should take the leading responsibility in this process, rather than simply waiting to approve or deny proposed regulations. The relevant legislation could be raised to a national basic law level, through a comprehensive minority autonomous basic law or separate basic law for each individual autonomous region, and shall include autonomous region involved amendment procedures, specific division of powers, and dispute resolution arrangements. Through introducing these basic mechanisms in the legislation, the ethnic minority autonomy basic law(s) shall be able to provide well-founded legal bases for effective exercising of the autonomous powers.

⁷⁹ Chen Yunsheng, *supra* note 36, at 735.

⁸⁰ Dai Xiaoming, *supra* note 8, at 305.

V. Conclusion

China established the ethnic minority autonomous system and granted extensive autonomous powers to ethnic minority areas by law. Nonetheless, due to the deficient enforceability and the dearth of local democracy, the exercise of the power is not legally or politically well protected. From the legal perspective, the absence of efficient legal guarantees is critical. Further, unique circumstances in minority areas such as Xinjiang and Inner Mongolia have not been fully considered under the current system, leading to sometimes-severe ethnic tensions. The most significant loophole in the minority autonomous legislation is the absence of regional autonomy regulations. The central government should take initiative and assume a major role in the autonomy regulation legislation, substantially legalizing the operation of China's central-ethnic autonomous region relations.