New regulations on ethnic unity officially depart from preferential ethnic policies, threaten Tibetan culture and violate international human rights norms

International Campaign for Tibet, 5 February 2020

Summary

On January 11, 2020, the 11th People's Congress of the Tibet Autonomous Region (TAR) adopted new regulations to establish "model areas for national unity and progress" in the Tibet Autonomous Region. The regulations give government powers to enforce a Han-centric way of life and to cultivate patriotic and vigilant citizens as informants for the Party. The regulations are a legal articulation of long held policy goals that seek to reduce ethnic difference and achieve a stable Han-centric society in the strategically vulnerable border regions. The regulations also reflect the culmination of Xi's policy focus (to consolidate power in the party and eliminate threats) with the second generation of ethnic policy thinkers who advocate for the dilution of ethnic difference, thus enforcing assimilation of the Tibetan culture.

While the regulations refer to non-discrimination in recruitment and the right to criticize discriminatory practices, they, however, impose a top-down Han-centred vision of ethnic unity that is supervised by the ethnic affairs department. Most importantly, and for the first time, the regulations represent an explicit legal departure from the principle of preferential treatment as stipulated in the Regional Ethnic Autonomy Law.

The assertion of a dominant ethnic culture violates international human rights standards, such as the Convention on the Elimination of All Forms of Racial Discrimination (CERD), which China ratified in 1981, and in view of provisions regulating education, the Convention on the Rights of the Child, which China ratified in 1992. The regulations also violate the right to freely pursue social and cultural development, pursuant to Article 1 of the Convention on Economic, Social and Cultural Rights, which China ratified in 2001.

The international community should urge the Chinese government to review its laws on ethnic policies and should streamline them so they are clear, legally consistent and conform with international human rights standards. In particular, the Chinese government and subsidiary governmental bodies should safeguard the principle of self-determination, particularly with regard to the free pursuance of social and cultural development.

Background

On January 11, 2020, the 11th People's Congress of the Tibet Autonomous Region (TAR) adopted new regulations "to establish a model area for national unity and progress in the Tibet Autonomous Region" (**西藏自治区民族**团结进步模范区创建条例).[1] Coming in to effect from May 1, 2020, the new regulations legally institute a Han-centric Chinese identity into all facets of personal, social and professional life.

This latest development in Chinese ethnic policy should be understood within the context of broader leadership priorities and academic debates that advocate for the dilution of ethnic difference.

The regulations in context

All states rely on identity constructions to build the concept of a common nation. However, ethnicity and religion pose challenges to the nation-building exercise because they don't conform to territorial boundaries or political authorities. Particularly in an authoritarian system of governance, they are potentially threatening forces because they can be used to mobilise populations. The Communist Party of China (CPC) has historically used ethnic and religious policy as levers to mark the acceptable boundaries of difference needed to achieve a desired level of social cohesion and stability; in turn striking a balance between tolerance of difference and forced assimilation.

Ethnicity and religion present threats to the survival of the Chinese state because non-Han populations inhabit the borderlands, which function as security buffer zones for the Chinese state. Recognising the looming threat posed by what were perceived as lax ethnic and religious policy, President Xi Jinping has sought to make ethnicity and religion conform to the Communist Party. While the CPC used to tolerate some ethnic, cultural or religious difference for social cohesion, leaders always expected economic development to accelerate assimilation. The realisation that economic development does not sinicise (make more Han Chinese-like) non-Han populations (as expected) has led to a renewed focus on proactive sinicisation.

At the same time, when ethnic policy analysts were exploring the reasons why China's ethnic policies failed to prevent the 2008 and 2009 protests that spread across Tibet and Xinjiang respectively, a few influential ethnic policy commentators such as Ma Rong and Zhu Weiquan began advocating for a new approach to ethnic policy.[2] They called for the depoliticisation of ethnic identity, such that policies that offer differential treatment based on ethnicity are eliminated and replaced by policies based on socio-economic difference. For example, they called for an end to the ethnic autonomy law as well as policies that give minority nationalities preferential

[1] 中国西藏新闻网 (Ch. Zhongguo Xizang xinwen wang, China Tibet News), 15 January 2020, '西藏自治区民族团结进步模范区创建条例' (Ch. Xizang zizhiqu minzu tuanjie jinbu mofan qu chuangjian tiaoli, Regulations on the establishment of a model area for ethnic unity and progress in the Tibet Autonomous Region), http://epaper.chinatibetnews.com/xzrb/202001/15/content_10887.html.

[2] James Leibold, 31 December 2019, 'Planting the seed: Ethnic policy in Xi Jinping's new era of cultural nationalism, *China Brief*, Vol. 19, Issues 22, https://jamestown.org/program/planting-the-seed-ethnic-policy-in-xi-jinpings-new-era-of-cultural-nationalism/.

treatment in university enrolment, government jobs, and in family planning and poverty reduction programs.[3] Ma Rong, in particular, argues the removal of ethnic difference in policy will reduce ethnic consciousness and create greater ethnic unity.

Putting this all together, President Xi Jinping has sought to eliminate potential threats to the state and Party by consolidating power under the Party. Xi has notably brought the ethnic and religious arms of government (formerly under State administration) under direct Party rule, expanded Party education and discipline, and adopted a strict ethnic assimilation stance. The Party has also begun to roll out policies that nominally erase ethnic difference and promote a national narrative of ethnic unity centred on Han-culture.

While the narrative of a multi-ethnic Chinese nation predated Xi, the language around ethnic unity centred on Han Chinese culture has gained greater currency and regulatory strength under Xi's leadership. In September 2019, Xi Jinping delivered a speech extolling the need to promote ethnic unity and progress for the rejuvenation of China and the realisation of the Chinese dream.[4] His proclamations have since been backed up by new regulations on mandating ethnic unity across China.

According to Xinhua, Qinghai and Yunnan passed similar ordinances on ethnic unity and progress in May 2019.[5] Earlier iterations date back to 2009 when a regulation on ethnic unity in education was passed in Xinjiang on December 20, 2009 (effective from February 1, 2010).[6]

The regulations in detail

The new TAR regulations flesh out the 'ethnic unity' rhetoric and set out responsibilities for incorporating 'ethnic unity' across all levels of society. They reflect a legal articulation of long held policy messages such as the obligation of all people to protect national unity (Article 3), and presumption that Chinese culture is the centre of all culture in Tibet (Article 11). And while, ethnic differences should be reduced, it is notable that the regulation still protects ethnic cultural promotion for commercial enterprises (Article 13).

At the deeper level, the regulation is a combination of aspirational outcomes, systemic rules, and punitive tools for realising China's vision of ethnic unity. For example, like many ambitious government policies, the new regulation is aspirational and requires all educational, academic and research institutes to "strengthen research on the theory, system and practice of national unity and progress, and provide theoretical support and practical guidance for the establishment of national unity and progress model zones (Article 18)."

[3] Masahiro Hoshino, 5 June 2019, 'Preferential policies for China's ethnic minorities at a crossroads', *Journal of Contemporary East Asia Studies*, Vol. 8, 2019, Issue 1, https://www.tandfonline.com/doi/full/10.1080/24761028.2019.1625178.

[4] Xinhua, 27 September 2019, '习近平：在全国民族团结进步表彰大会上的讲话'(Xi Jinping: zai quanguo minzu tuanjie jinbu biaozhang dahui shang de jianghua; Xi Jinping: speech at the National Commendation for National Unity and Progress), http://www.xinhuanet.com/politics/leaders/2019-09/27/c_1125049000.htm.

[5] Xinhua, 1 May 2019, 'China Focus: Provinces adopt regulations to safeguard ethnic unity', *Xinhua*, http://www.xinhuanet.com/english/2019-05/01/c_138026463.htm.

[6] Congressional-executive Commission on China, 24 February 2010, 'Xinjiang "Ethnic Unity" Regulation Imposes Party Policy, Restricts Free Expression', https://www.cecc.gov/publications/commission-analysis/xinjiang-ethnic-unity-regulation-imposes-party-policy-restricts.

The regulations also set out systemic rules that institutionalise ethnic unity and progress (and patriotism) in all levels of society. The systemic rules are applied horizontally and vertically. Horizontally, the regulations require social groups, media, business and enterprises, government departments, schools and institutes, religious groups, and specific sectors like tourism, to internalise ethnic unity principles and practices. This includes the propagation of national unity theory and practice, adherence to national laws on religious practice, equal treatment of all nationalities, and employment of all nationalities without discrimination.

Vertically, the regulations target individuals and groups starting from the individual, and moving up in society to collectives, units, communities, villages, townships and counties. The vertical strategy aims to reach all individuals and levels of government so that all citizens both advocate and supervise the government's agenda.

Finally, the punitive measures (Article 46) target individuals who may be undermining national unity and progress, either through spreading rumours, producing information or holding a stubborn or determined attitude.

While the regulations refer to non-discriminatory recruitment principles, they impose a top-down idea of Han-centred ethnic unity supervised by the ethnic affairs department (see Articles 16, 20, 21, and 22) and represent a departure from the principle of preferential treatment, for example, in recruitment, as stipulated in Article 23 of the Regional Ethnic Autonomy Law. As the new regulations stand in direct contravention to the Regional Ethnic Autonomy Law, the status of the Regional Ethnic Autonomy Law in terms of its applicability thus remains unclear.

Moreover, while Articles 41 and 43 of the regulations protect an individual's right to make criticisms and suggestions and also report or sue for illegal acts that undermine national unity and progress, it is uncertain how such protections stand up against Article 46, which threatens punishment for spreading statements that undermine national security.

Notable provisions contravening international human rights law

Religious groups, religious schools and places of religious activities are urged to adhere to religious policies, and to incorporate the ideological doctrine of the Chinese state into their belief systems and religious practice, as well as identify and promote teachings that are "conducive to national unity" (Article 19). Consistent with this provision, Article 30 affirms the state's authority for oversight of religious groups. Such interference is in contravention of Article 18 of the Universal Declaration of Human Rights (UDHR), which guarantees the right to freedom of religion or belief, in particular the right to manifest one's religion or belief, in pursuance of the 1981 Declaration of the General Assembly and Human Rights Committee general comment 22.

The regulations call on the media, including the press, publications, radio, television, film and online agencies to promote the spirit of national unity and progress (Article 27). In particular with regard to the punitive measures in Articles 44-47, the directive is consistent with state intervention and the absence of independent media in the People's Republic of China and particularly in Tibetan areas.[7]

[7] See. Reporters Without Borders, 2019, 'World Press Freedom Index', https://rsf.org/en/ranking.

Education and propaganda are subject to provisions on education and school curricula. Article 28 not only refers to primary, secondary, vocational and higher education, but also urges pre-school education to incorporate state ideology on national unity. “Preschool classes” are attached to primary schools and are for 5–6 year-old children.[8] Such state intervention, with the aim of promoting ideology and prohibiting dissenting political views, is in contravention of the Convention on the Rights of the Child, in particular of Articles 12-16.

The regulations also target the private sphere. In Article 24, family members are urged to “educate, influence and promote each other with the idea of national unity”, thereby reaching far into protected individual space and personal privacy. Article 34 concretises the state’s ideal of a “model individual” who shall love the motherland and support the leadership of the Communist Party. Such an approach carries elements of totalitarian rule, which aims to permeate all societal life, including the private sphere, with a common ideology. It is therefore in contravention of Article 17 UDHR, as it violates basic principles to the right to privacy.

Article 5 of the Convention for the elimination of all forms of racism and discrimination (CERD) contains the obligation of States parties to guarantee the enjoyment of civil, political, economic, social and cultural rights and freedoms without racial discrimination. Whenever a state imposes restrictions upon of the rights listed in Article 5 of the Convention, it must ensure that the restriction is neither in purpose nor in effect incompatible with Article 1 of the Convention. There is reason for concern that the particular restrictions on a number of rights as stipulated by the regulations on ethnic unity for the Tibetan Autonomous Region are intentionally aimed at Tibetans, and thus are discriminatory.

The overall intention of the regulations is aimed at enforcing Han-centrism. This is best articulated in Article 6 of the regulations, which seeks to establish “a solid sense of the Chinese national community guided by the core values of socialism”, strengthen “the recognition of the great motherland, the Chinese nation, the Chinese culture, the Communist Party of China, and socialism with Chinese characteristics, and promote the harmonious coexistence, harmony, and harmonious development of all ethnic groups.” As Tibetans must adhere to “Chinese values” by, for example, adapting their religious teachings to Party ideology, their space for autonomous cultural and religious practice is reduced significantly, if not entirely. Given this context, the regulations violate the right to freely pursue social and cultural development, pursuant to Article 1 of the Convention on Economic, Social and Cultural Rights, which China ratified in 2001.

In sum, the new regulations on ethnic unity and progress in the TAR expands the government arsenal for enforcing a Han-centric identity and way of life, and creates new channels to cultivate a population of patriotic and vigilant citizens accountable to the Party (Article 34).

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[8] Jiaxiong Zhu, 2009, ‘Early Childhood Education and Relative Policies in China’, International Journal of Child Care and Education Policy, Vol. 3, No. 1, pages 51-60.

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