The Identification of Minorities in China

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I. INTRODUCTION

It has been argued that China is a unitary multi-ethnic state consisting of fifty-six different groups.¹ Since the Han constitute an absolute majority (more than ninety percent)² of the total population, all

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other groups are generally referred to as minorities ("shaoshuminzu"). According to Chinese law, minorities have the rights to territorial autonomy under the Regional Ethnic Autonomy ("REA") regime, as well as to other preferential policies respecting financial, technical, social, and cultural affairs. The REA regime allows minority groups to set up autonomous agencies, through which they might exercise legislative, financial, and cultural autonomous powers in areas where they live in concentrated communities. Meanwhile, members of minorities can claim favorable treatment in many aspects, such as civil service recruitment, university admission, and family planning. Because the prerequisite to


3 There are different English translations of the Chinese phrase "minzuquyuzizhi." The National People’s Congress translates it as “Regional National Autonomy,” whereas the usage of “Regional Ethnic Autonomy” can also be found in governamental documents, for example, in the White Papers issued by the State Council. The difference lies in the understanding of the Chinese term “minzu.” As far as this article concerns, “Regional Ethnic Autonomy” will be used interchangeably with “Regional National Autonomy.” See also infra notes 6 and 9.

Regional Ethnic Autonomy is defined as “ethnic minorities, under the unified state leadership, practice regional autonomy in areas where they live in concentrated communities and set up autonomous agencies for the exercise of the power of autonomy”. According to the Constitution and the Law on Regional Ethnic Autonomy, autonomous agencies can exercise autonomous powers on the matters of legislation, economic development, fiscal and taxation, security, resource exploitation, border trade, education, culture, literature, arts, publishing, broadcasting, and so forth.


See also COLIN MACKERRAS, CHINA’S MINORITIES: INTEGRATION AND MODERNIZATION IN THE 20TH CENTURY 233-237 (1994); Ao Junmei(敖俊梅), GetiPingdengYihuoQuntiPingdeng: (个体平等，抑或群体平等：少数民族高等教育
enjoy such privileges is to be legally classified as a minority, the issue, then, is who is able to claim such rights in the Chinese context.

The Chinese term “minzu” was reinterpreted in the early twentieth century as the translation of “nation”. Following the Soviet tradition, “minzu” was used as the synonym of “nationality” within the People’s Republic of China (“China”) until the 1990s. After the dissolution of former socialist states, the State Nationality Affairs Commission became the State Ethnic Affairs Commission (“SEAC”) to avoid any possible招 生 政 策 理 论 探 究 | Individual Equality or Groups Equality: Admission Policy for Minority Students in Chinese Higher Education, 06 TSINGHUA J. OF EDUC. 70, 71 (2006).

The phrase “minzu” in Chinese appears as two separate characters. In regard to ethnicity, “min” literally means “people” and “zu” equates to lineage/clan. As early as the Zhou dynasty (ca. 1046–256 B.C.), these two terms were used interchangeably, as both defined a group of people living in certain localities who shared common features—blood, history, way of living, customs, and so forth. For example, “Miao min” and “Fei wo zu lei, qi xin bi yi” (if he is not of our lineage, he is sure to have a different heart). However, it was rare to employ minzu together to refer to ethnicities in Chinese Classic literatures.

After the introduction of the nation concept in 1903, people started to name traditional groups as the Han minzu or Tibetan minzu, alongside the new Chinese nation (trans. zhonghuaminzu). The usage of minzu in this sense is confusing, as it represents the Chinese nation on the one hand and refers to its constituent parts on the other. Therefore, how to accurately translate minzu, the constituent groups of the Chinese nation, has long been debated. Diverse translations, such as nationality, ethnicity, ethnic group, or minzu as it is, have been suggested.


Hao Shiyuan （郝时远）, Zhongwen“Minzu”yu“ShaoshuMinzu” de YingyiWenti (中文民族与少数民族的英译问题) | The English Translation of “Minzu”
political implications deriving from the concept of nationality. In the most recent reports submitted by China to international human rights bodies, “ethnic minorities” and “regional ethnic autonomy” have replaced the old terms “minority nationalities” and “regional national autonomy”. Although the term “nationality” is still being used in practice, the official stance seems to prefer “ethnicity” or “ethnic group” as the translation of “minzu” in relation to Chinese minorities.  

Not all non-Han groups in China, however, are “minorities”. Only those who have been officially recognized by the Central Government as “shaoshuminzu” could claim minority rights. The minority status of certain ethnic groups was confirmed through the Ethnic Identification Project (“the Project”). This identification project took about thirty years to complete, in a period spanning between the 1950s to the 1980s. As a result, groups who identified themselves as a separate ethnicity but failed to acquire the official recognition could not claim minority status and thus were effectively denied minority rights. Generally, “shaoshuminzu” is seen as a legal-political concept in relation to Chinese minorities, which may also have cultural implications.

This paper examines the definition of minorities in China. The
term “minority” is used interchangeably with the Chinese term “shaoshuminzu” in this paper. Unless otherwise stated, “minority group(s)” or “minority” refers to a group, which has the constitutional right to regional autonomy in the Chinese context. Firstly, this paper looks at the criteria applied in the minority recognition project and the recognition procedure itself. Then it discusses problems stemming from the recognition project and identifies disparities between the Chinese practice and the international obligations that China has undertaken in the field of minority protection. The paper concludes that a clear and explicit legal definition or identification standard for a minority needs to be applied to all groups without distinction, through which the rights of individuals deemed to identify with one or more groups could be respected.

II. THE ETHNIC IDENTIFICATION PROJECT

A. The First Stage (1950s-1960s)

The 1949 Common Program of the Chinese People’s Political Consultative Conference recognized the equal status of all ethnicities in China and provided for regional autonomy where national minorities were concentrated. The 1952 General Program for the Implementation of Regional Ethnic Autonomy further expanded the ethnic territorial autonomy system. It provided autonomous agencies with a wide range of rights on the matters of local economy, finance, and culture. However, when the ethnic territorial autonomy regimes were first established, there had yet to any accurate records made of minority population statistics. Hence, a number of minority visitation teams were sent to minority areas from 1950 to 1953, including the Southwest, Northwest, Northeast, and Mid-South. The major tasks of the teams were to convey the

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14 It functioned as the provisional constitution of China from 1949 to 1954.


17 The Central Government sent out four ethnic visitation teams (ZhongyangMinzuFangwentuan) and one medical team to minority areas during 1950-1952. Regional teams were also established and sent to visit minorities or to provide medical service in the localities. Little information on the establishment of the teams and their following reports had been made publicly available. It seemed that the main purpose
Chinese Communist Party (“CCP”) greetings and solicitude, to provide a medical and inoculation service, to propagate the Party’s ethnonational policy,\(^{18}\) and to investigate and collect relevant information on minority groups. In the 1953 national census, over 400 self-reported groups were recorded. This number, however, was apparently too many to be a suitable figure for implementing regional autonomy or a manageable figure for the CCP. Further, the forthcoming National People’s Congress (scheduled in September 1954) only reserved 150 seats for minority representatives, “more than twice the number to which they would be entitled on a proportional basis”.\(^{19}\) With these issues in mind, an official project of ethnic identification with distinctive Chinese characteristics commenced nationwide after the self-reported census.

Hundreds of ethnologists, linguists, historians, sociologists, and archaeologists were divided into teams to investigate the claims of self-reported groups. It has been suggested that a group of Soviet linguists were also involved in the process.\(^{20}\) The Ethnic Identification Project (minzushibie), as Mullaney put it, was: a collective term for a series of Communist-era expeditions wherein ethnologists and linguists set out to determine once and for all the precise ethnonational composition of the country, so that these different groups might be integrated into a

\(^{18}\) Id.; ZHONGGUO DE MINZUSHIBIE [CHINA’S NATIONAL IDENTIFICATION: THE ORIGINS OF 56 NATIONALITIES], supra note 6, at 105.


It has been pointed out that 178 minority representatives, from thirty different minority groups, attended the First National People’s Congress in September 1954. The representation ratio reached 14.52 percent. THE EDITORIAL OFFICE OF CHINA’S ETHNIC WORK, supra note 17, at 56.

\(^{20}\) A group of Soviet linguists were sent to China as a part of the Soviet Advisors Program (1949-1960), with the purpose of assisting China’s socialist construction. See ZHOU MINGLANG, MULTILINGUALISM IN CHINA: THE POLITICS OF WRITING REFORMS FOR MINORITY LANGUAGES 1949-2002 170, 171, 177-79, 187-90 (2003); Fu Maoji(傅懋绩), BangzhuShaoshuMinzuChuangli, Gaijin he GaigeWenziGongzuo de Qingkuang he Wenti(帮助少数民族创立、改进和改革文字工作的基本情况和问题) [The Work of Assisting Minorities to Create, Improve, and Reform Their Writing System and the Questions Therein], 02 CHINESE SCIENCE BULLETIN 20, 22-24 (1956).
centralized, territorially stable polity.\textsuperscript{21}

1. The Recognition Criteria

As in many other aspects, the Chinese ethnic practice had been influenced by the Marxist doctrines.\textsuperscript{22} Marxists had developed many theories on nationalities, but the most influential definition of nationality in China came from Stalin.\textsuperscript{23} According to him, nation could be defined as “a historically constituted, stable community of people, formed on the basis of a common language, territory, economic life, and psychological make-up manifested in a common culture”.\textsuperscript{24} He observed that the presence of each of the four elements constituted a nation in the epoch of rising capitalism.\textsuperscript{25}

However, minority groups in China experienced uneven socio-economic development. At the time of identification many of them were still in the pre-capitalist stage, living in a primitive, subservient, or feudal system\textsuperscript{26} and a multitude of minorities were spread over and coexisted on the vast land. A strict application of Stalin’s definition may have ruled out many groups from being classified as shaoshuminzu. Mao Zedong then instructed that politically all minority ethnic groups should be treated as minzu, regardless of the Soviet orthodox classification of ‘clan/tribe/tribal alliance/nation’, since all ethnic groups were equal in the China.\textsuperscript{27} Hence,

\begin{itemize}
  \item \textsuperscript{21} Thomas Mullaney, Coming to Terms With the Nation—Ethnic Classification in Modern China 3 (University of California Press, 2nd ed. 2011).
  \item \textsuperscript{22} See, e.g., Zhongguo de MinzuShibie [China’s National Identification: the Origins of 56 Nationalities], supra note 6, at 76, 78; Fei Xiaotong(费孝通), GuanyuWoguoMinzu de ShibieWenti(关于我国民族的识别问题) [Ethnic Identification in China], 01 Social Science in China 147, 154-55 (1980); Lin Yaohua(林耀华), ZhongguoXinanDiqu de MinzuShibie(中国西南地区的民族识别) [Ethnic Identification in Southwest China], 02 Social Science in Yunnan 1, 2-3 (1984).
  \item \textsuperscript{23} Zhongguo de MinzuShibie [China’s National Identification: the Origins of 56 Nationalities], supra note 6, at 11-25; He Shutao, supra note 6, at 16; Qin Naichang (覃乃昌).MakesiZhuyiMinzuLilunZhongguohua de ZhongdaShijian(马克恩主义民族理论中国化的重大实践) [Ethnic Identification: Great Practice of the Localization of Marxist Ethnic Theory in China], 02 Study of Ethnics in Guangxi 20, 21 (2009).
  \item \textsuperscript{24} Joseph Stalin, Marxism and the National Question 60 (Bruce Franklin ed., Croom Helm London 1973).
  \item \textsuperscript{25} Id. at 65.
  \item \textsuperscript{26} Fei Xiaotong(费孝通) & Lin Yaohua(林耀华), ZhongguoMinzuXueDangqian de Renwu(中国民族学当前的任务) [The current task of Ethnology in China] 14-21 (1957).
  \item \textsuperscript{27} Zhongguo de MinzuShibie [China’s National Identification: the Origins of 56 Nationalities], supra note 6, at 80-81.
\end{itemize}
in terms of the definition and criteria employed in the Chinese identification project, the official statement was that minorities were identified with flexibilities, in accordance with Stalin’s four-element concept of nation and the reality of Chinese ethnonational situation.\textsuperscript{28} In addition, the will of the categorized was also considered in the identification process.

As a result, minorities were classified pursuant to various criteria with contingency.\textsuperscript{29} Some identification was based on language. For example, the ethnic classification in Yunnan province was essentially based on linguistic categorization.\textsuperscript{30} Some identification was made in accordance with history and ancestry origin, such as different Muslim groups in Xinjiang. Groups were also identified on the basis of religious beliefs. The Hui group was simply considered to be the Muslim Han.\textsuperscript{31} Others were recognized on the basis of national consciousness and ancestral heritage. The Manchu, for instance, were typically classified using this perspective. In practice, large groups, geographically or numerically, were very likely to be approved as minorities, whilst small-numbered groups might often be ruled out or incorporated into other minorities.\textsuperscript{32} The selective application of a set of standards left enough space for the communists to control the identification process for political and/or economic considerations.

2. The Identification Procedure

According to Chinese scholars, the basic identification procedure usually followed five steps. First, the proposed minorities identified themselves. Then the provincial government or the Central Government sent out researchers to investigate and analyze the case. The researchers, normally ethnologists, had to consider two questions during the investigation: was the proposed group a part of Han or was it a minority? If the group belonged to minority, was it a separate minority by itself or was it a part of already recognized minorities?\textsuperscript{33} After the completion of

\textsuperscript{28} See, e.g., id. at 87; Fei Xiaotong, supra note 22, at 150; Lin Yaohua, supra note 22, at 2-3.

\textsuperscript{29} See, e.g., Chen Xinlin (陈心林), \textit{ZuqunLilunyuZhongguo de MinzuYanjiu} (\textit{Ethnicity Theory and the Ethnological Studies in China}), 06 GUIZHOU ETHNIC STUDIES 1, 2 (2005).

\textsuperscript{30} The ethnic classification in Yunnan province, according to Mullaney, was decided on the basis of linguistic categorization. MULLANEY, supra note 21, at 65.


\textsuperscript{32} David Y. H. Wu, \textit{Chinese Minority policy and the meaning of minority culture: the example of Bai in Yunnan}, China, 49:01 HUMAN ORGANIZATION 1, 3 (1990).

\textsuperscript{33} Fei Xiaotong, supra note 22, at 150.
the investigation, the researchers gave ‘scientific’ recommendations, based on their findings. Next, they would present the findings to the proposed group, demonstrating whether their request of being identified as minority was plausible or not. Finally, the claimants would make the final decision of being a Han, a separate minority, or a part or branch of an existing minority.34

However, Mullaney revealed a different approach, using Yunnan province as the paradigm. According to him, scholars and researchers first developed preliminary recommendations on classifying minorities in Yunnan into two dozen groups by linguistic commonality, based on the taxonomic theories of the Republican period.35 Then they analyzed and located plausible communities with ‘ethnic potentials’ from self-reported groups and persuaded them to accept ‘scientific recommendations’.36 Eventually, over 260 self-identified groups in Yunnan were reduced to twenty-six recognized minorities.

By 1954, before the first National People’s Congress, thirty-eight groups received official recognition. Eleven of these groups, the Mongol, Hui, Tibetan, Uyghur, Miao, Yao, Yi, Korean, Manchu, Li, and Gaoshan (in Taiwan), were the so-called “generally accepted minorities” and thus had no need to be assessed in the Ethnic Identification Project.37 Later, 183 self-reported groups in the 1964 census became another fifteen minorities in the so-called “family of nationalities”.38

Alongside the ethnic identification, a nationwide linguistic research expedition started in order to further assist minorities to create and reform their written languages.39 Meanwhile, an intensive

34 ZHONGGUO DE MINZUSHIBIE [CHINA’S NATIONAL IDENTIFICATION: THE ORIGINS OF 56 NATIONALITIES], supra note 6, at 102-03, 169-75; MULLANEY, supra note 21, at 42-119; Lin Yaohua, supra note 22, at 1-5; FEI XIAOTONG & LIN YAOHUA, supra note 26, at 13.

35 MULLANEY, supra note 21, at 42-106.

36 Id.

37 “Generally accepted minorities” were groups that had been repeatedly mentioned in the Chinese Classic literatures or recorded during the Republican period. They were simply considered to “exist” and thus of no need to be further assessed in the ethnic identification. ZHONGGUO DE MINZUSHIBIE [CHINA’S NATIONAL IDENTIFICATION: THE ORIGINS OF 56 NATIONALITIES], supra note 6, at 106.

38 Id. at 109; CASTELLINO & REDONDO, supra note 12, at 115.

39 Under Chinese law, spoken language and written language are addressed separately as language (yuyan) and script (wenzi). It was argued that the campaign on the creation and reform of minority scripts was launched by the Central Government as a response to the pressing request of minorities. Different rules had been applied in the
investigation of minority social history was carried out to make sure that each newly identified minority would have its own concise history (jiānshì/jiānzhǐ) from the official narrative. Hundreds of books on minority history and language were published following the investigation. Those linguistic and historical materials aimed to enhance the state recognized ethnic structure.

B. The Second Stage (1980s)

The Cultural Revolution nearly suspended all ethnological activities. It was not until the late 1970s that the ethnonational work was resumed. Minority individuals who had not expressed their identities (minzúchēngfén) accurately for whatever reasons in the past acquired a second chance to change ethnic identity. Approximately five million people were involved in the wave of recovering or changing minority status from 1981 to 1989. As the ethnic identification was primarily completed in the 1950s and the purpose of the new ethnic campaign was to ‘recover or change’ minority identity, the practice in the 1980s seemed to avoid identifying new minorities. The ethnic campaign during this period attempted to absorb and incorporate the proposed groups into already identified minorities through linguistic, territorial, and/or historical ties as much as possible. Guizhou province, for example, classified 23

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40 MULLANEY, supra note 21, at 124.

41 Zhongguo de MinzuShibie [China’s National Identification: The Origins of 56 Nationalities], supra note 6, at 111, 116.

42 Id. at 116; Dai Xiaoming (戴小明), DangdaiZhongguoShaoshuMinzu de FalüRending(当代中国少数民族的法律认定) [Legal Recognition of Modern China’s Ethnic Minorities], 03 JOURNAL OF THE CENTRAL UNIVERSITY FOR NATIONALITIES (Philosophy and Social Sciences) 48, 52 (2010).

self-reported groups (numbering 900,000) into the Han and other minorities.\textsuperscript{44} Since the Jino group received the official recognition in 1979, no new minority has been identified thereafter.

The dissolution of the USSR and Former Yugoslavia sounded a warning to communist China. The CCP announced the completion of the Ethnic Identification Project to avoid further demands for ethnic identification or alteration, which might cause unrest, though assured that the remaining problems would be handled properly.\textsuperscript{45} The remaining issues could be categorized into two main categories: the unidentified groups and the groups that have been controversially classified into existing ethnic groups.

III. THE CURRENT PRACTICE

Upon the completion of the ethnic identification in the late 1980s, Huang Guangxue, the Vice Director of the SEAC, concluded that the criteria used in the Project to identify a minzu included: 1) whether the proposed group fit the characteristics of the Stalinist definition; 2) the majority will of the group, the advantages and disadvantages of future development, and its influence over other groups in similar situation; and

\begin{itemize}
\item \textsuperscript{44} Among 23 self-reported groups, ethnic status of three groups is still undetermined. The official investigation suggested that the Chuanqing was a part of Han, whilst the Chuanqing group considered themselves as a separate minority. Meanwhile, although the investigation report concluded that the Gejia (Gedou) should be identified as a separate minority, this group did not obtain such a status, as the general guideline was to avoid identifying new minorities. The ethnic belonging of the Caijia group was also contentious. These three groups in Guizhou (numbering 612,780) make up to 95.73 percent of the unidentified population in the 2010 National Census.


\item \textsuperscript{45} See \textit{MinzuShibie he GenggaiMinzuChengfenGongzuoyiJibenWancheng} [The Work of Ethnic Identification and the Alteration of Ethnic Identity Have Completed—An Interview with Huang Guangxue, the Vice Director of the SEAC], 02 \textit{CHINA’S ETHNIC GROUPS} 16, 16 (1987).
\end{itemize}
3) the unity of the [Chinese] nation.\textsuperscript{46} In 2005, the CCP rephrased these criteria and suggested a more flexible definition of minority/\textit{shaoshuminzu}, namely:

“…a historically constituted, stable community of people who, in general, share common characteristics of historical origins, mode of production, language, culture, customs, and a sense of solidarity; for some minorities, religion also plays an important role in their formation and development process.”\textsuperscript{47}

After a group received the official approval of being a minority, the ethnic status of group members would be registered and confirmed in the Family Book or with a citizen ID card. Outside of the ethnic campaign discussed above, which provided a second chance to recover or change ethnic identity nationwide, one can only acquire minority status from his or her parents.\textsuperscript{48} Parents or foster parents should determine ethnic status of a minor before the age of eighteen, after which he or she is entitled to freely choose an identity according to the ethnic status of one parent.\textsuperscript{49} In case of remarriage, the parent and the stepparent also decide ethnic status of the minor from previous marriage.\textsuperscript{50} The remarriage of the parents, however, will not change the ethnic status of the child from a previous marriage that has reached the age of eighteen.\textsuperscript{51} Marriage and adoption between adults would not affect their ethnic status.\textsuperscript{52} No change or alteration of ethnic status is allowed after twenty years of age.\textsuperscript{53}

Hence, the ethnic ‘family’ of the Chinese nation officially comprises fifty-six members. The majority Han and fifty-five minorities, together with a few unidentified groups and some contentious groups,
form the Chinese ethnic structure. This fifty-six ethnic-group structure and
the fixed ethnic identity model were finally stabilized in the 1990s and
founded the basis for the future development of national “knowledge,
policies, sentiments, and actions.”

In theory, the ethnic composition and
the number of minority population in localities should be a key element in
the establishment of autonomous units at different levels. This is despite
the fact that minorities fail to form a population majority in more than
seventy percent of autonomous areas. As such, a confirmed and
registered minority status becomes the prerequisite for persons belonging
to minorities to claim associated rights.

IV. THE PROBLEMS OF THE CHINESE PRACTICE OF MINORITY
IDENTIFICATION

The Ethnic Identification Project is officially described as a
scientific work with academic features. However, it also has a strong
political and administrative nature. This government-led project has
significant legal consequences, as only officially recognized minorities can
claim minority rights under Chinese law. As the only means by which such
rights can be attained, the Project and resultant policies necessitate closer
scrutiny.

A. The Selective Application of Identification Standard

Firstly, the identification criteria were not unequivocally and
consistently applied in the process. The application of the Stalinist
definition was very selective in practice. The Project took a wide range of
factors into consideration, including language, culture, customs, mode of
production, religion, history, origins, consciousness, and so forth.
However, the recognition of a group might result from the emphasis of one
or two of these features, whilst the denial could be justified by the lack of

54 Mullaney, supra note 21, at 134.
55 L.R.E.A., supra note 3, art. 12.
56 Maria Lundberg and Yong Zhou, Regional National Autonomy under
Challenge: Law, Practice and Recommendations, 16 INT’L JOURNAL ON MINORITY AND
GROUP RIGHTS 269, 304 (2009).
57 See, e.g., Zhongguo de Minzu Shibie [China’s National Identification:
The Origins of 56 Nationalities], supra note 6, at 113; Wang Wenguang (王文光) &
You Weiqiong (尤伟琼), Xinzongguo Chengli Yilai Yunnan Minzu Shibie de
Renshi yu Fansi (新旧中国成立以来云南民族识别的记得与反思) [The Identification of
Yunnan’s Ethnic Groups Since the Founding of the PRC and Its
Enlightenment], 03 JOURNAL OF YUNNAN NATIONALITIES UNIVERSITY (Social Sciences)10, 10
(2010).
58 See id.; Gladney, supra note 13.
59 Chen Xinlin, supra note 29, at 2.
any. Many minorities were identified as ‘existing’ simply because the government determined it should. By doing so, the communists could exert a macro-control of the number of minorities, and more importantly, they could divide minority population in a way that fits its political interests in terms of territorial integrity and regional stability. Considering the extensive rights that minorities are entitled to under the regional autonomy regime, the selective application of identification criteria was determined by political reasons.

Second, after a short training program, scholars and researchers were divided into several teams and sent to various areas to work with local governments. The provincial government retained the jurisdiction to report to the Central Government with regard to the ethnic situation within its administrative division. Without any accurate identification standards, the ethnic categorization in reality illustrated a distinctive regional feature. For example, the self-reported ‘Nari’ group that inhabited the shores of the Lugu Lake was identified as the Naxi in Yunnan province, while those in Sichuan province were considered to be the Mongols. The only difference between the Zhuang in northern Guangxi province and the Buyi in southern Guizhou was the provincial boundary. Even within one provincial unit, the recognition varied because of the different application of identification criteria in various localities. One ethnic group in Yunnan, who named themselves as the ‘Buyi’ and shared similar modes of production, language, culture, customs, and religion, was classified into three minorities: the Shui, Buyi, and Zhuang. A number of cases in the recovery and alteration project of ethnic identity in the 1980s may have revealed such issues.

**B. Creating Internal Divisions inside the Nation**

The fifty-six ethnic-group model and its supporting measures

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60 See id.; CASTELLINO & REDONDO, supra note 12, at 139.


62 STEVAN HARRELL, FIELD STUDIES OF ETHNIC IDENTITY: YI COMMUNITIES OF SOUTHWEST CHINA 268 (BamoAyi & QumoTiexi trans. 2008); Huang Ze(黄泽), Yunnan WeishibieQuntiYanjiu de ZuqunLilunYiyi(云南未识别群体研究的族群理论意义)[The Significance of the Research about the Unidentified Ethnic Groups in Yunnan], 23:02 JOURNAL OF GUANGXI UNIVERSITY FOR NATIONALITIES (Philosophy and Social Science) 26, 28 (2001).

63 See HARRELL, id. at 268; see also MULLANEY, supra note 21, at 88.

64 Han Zhongtai, supra note 61, at 5-8.
indeed appear to be effective in regard to incorporating minorities in borderlands into the multiethnic state as the CCP had expected. Nevertheless, the categorization of fifty-six groups also consciously creates group divisions inside the nation in the sense that a minority identity is decided at birth, which is not optional. Once registered and confirmed by the Family Book or citizen ID card, minority identity becomes the evidence for the entitlement to all minority privileges. The status of being a minority member might foster a sense of difference among the population, since minority division motivates an ethnic distinction. This imbues a sense of belonging, which seems to be in existence relative to other groups rather than to the specific group itself. Cohen argues that “contemporary ethnicity is the result of intensive interaction between ethnic groupings.” Gladney also notes that dialogical interactions between groups might lead to the invention of some identities. The current ethnic divisions potentially create and harden differences among minorities and in some cases within one minority group. Apart from the Han, the remaining fifty-five groups are distinguishable from each other. An internal ethnic balance would then be achieved.

Without the right to freely identify with one or more groups, the current practice of fixed ethnic identity at birth in a way emphasizes individual connection to a particular group. The consciousness as a group, thus, is enhanced. For those who had little knowledge of minzu or group identity in the 1950s, they now identify themselves with minority communities after years of practice. For instance, many minority members in Yunnan had claimed to be of Han descent and denied their affinity with a minority status due to the discrimination against minorities in the history. Now they adhere to their recognized minority identity to acquire

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65 Although a change of ethnic status is possible under certain circumstances, ethnic status of an individual in principle can only be determined according to that of the parents or foster parents.


66 Naran Bilik (纳日碧力戈), MinzuyuMinzuGainianBianzheng(民族与民族概念辨正) [Dialectic of Minzu and the Minzu Concept], 05 ETHNO-NATIONAL STUDIES 11, 13, 15-16 (1990). Naran Bilik notes that, when many groups coexist, a sense of belonging to one specific group would persist as long as other groups maintain their identities.

67 ABNER COHEN, CUSTOM AND POLITICS IN URBAN AFRICA 198 (1969).

68 GLADNEY, supra note 13, at 78.

69 See id. at 93.

70 See, e.g., David Y. H. Wu, supra note 32, at 3, 7-11. Bai in Yunnan, as
minority privileges. Another situation involves groups that have already been assimilated at the time of categorization. The fixed ethnic identity constantly highlighted ethnic distinction, and they sought to reconstruct their identities. The recent revival and reconstruction of the Manchu culture serves as a good example of this reality.

It has been argued that “minority groups in contemporary China really do seem to identify themselves more or less in accordance with the minzu designations”. Although the fifty-six ethnic-group model may operate to maintain the ethnic balance inside the nation, the overemphasis of group distinction from each other might lead to an extreme outcome: as minorities are so conscious of the distinctions from the Han and each other, they may seek to secede and establish a state of their own. This would be contrary to the communist conception of national integration and the building of one unified Chinese nation.

C. Differing Treatment Among Ethnic Groups

As the formal recognition by the state is the only way to claim minority rights in China, unidentified groups and some groups that have been controversially classified as a part of the Han are excluded from the minority protection regime. The population of unidentified groups is 640,101, 0.048 percent of the total population, according to the 2010 National Census. Even among the fifty-five recognized minorities, autonomous rights guaranteed by the REA regime are only available to groups who manage to establish autonomous areas. Those who are scattered outside autonomous areas or throughout the country have no means of realizing such autonomous rights. As for other fundamental rights guaranteed by the Constitution, for example, the right of everyone to culture, unidentified groups and certain communities of the recognized groups that reside outside autonomous areas may not effectively exercise this right, as the Constitution is not directly enforceable in the courts, unless there is ordinary legislation through which the Constitution is implemented.
V. INTERNATIONAL OBLIGATIONS OF CHINA IN RELATION TO MINORITY RECOGNITION

Suggestions might be made that official identification and fixed ethnic status are necessary in order to avoid abuse of minority privileges and allow the establishment of autonomous units and agencies, through which minorities could pursue political, legislative, and financial autonomy. However, neither official identification nor fixed minority status seems reasonable concerning cultural rights, as culture is not a static concept. Individual cultural preference and identity may change with circumstances. In addition, although the collective rights of Chinese minorities on legislative and financial affairs under the REA may exclusively derive from the provisions of Chinese law, both domestic law and international law regulate the exercise of the cultural rights. China has undertaken international obligations to protect and promote cultural rights.

There is no international consensus on the definition of minorities. Almost all the attempts to define a minority encompass objective and subjective criteria: the existence of the group with distinct identity and a sense of solidarity. Nor does international law have explicit provisions autonomous areas, and unidentified groups may not be able to claim the constitutional right to culture before the court, considering the nature and applicability of the L.R.E.A.


77 With certain collective nature, in terms of the right to culture, language, and religion, minority rights in international law are generally formulated from an individualistic perspective.


78 China has ratified, or acceded to, the following instruments on human rights: ICESCR, International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), Convention on the Elimination of All Forms of Discrimination against Women, Convention on the Rights of the Child and two Optional Protocols, Convention on the Rights of Persons with Disabilities, and Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment. China signed the ICCPR in 1998, which has yet to be ratified by the legislature.

on minority identification. The existence of minorities does not depend upon the decision of the state but should be established by objective criteria or sufficient elements, as the existence of minorities is “a question of fact”, not “a question of law”.\textsuperscript{80} Persons belonging to minorities should also retain the right to choose their own identity.\textsuperscript{81} On the other hand, it has been pointed out that the official identification of a minority by the state is essential, as it would facilitate the application of their rights and give the members of the minority a solid basis for effective protection.\textsuperscript{82}

Amongst the international conventions that China has ratified or acceded to, International Covenant on Economic, Social and Cultural Rights (“ICESCR”)\textsuperscript{83} and International Convention on the Elimination of All Forms of Racial Discrimination (“ICERD”)\textsuperscript{84} are of particular relevance to minority identification.

A. \textit{ICESCR}

Article 2 of the ICESCR requires the State Parties to ensure that the rights guaranteed in the Covenant “will be exercised without discrimination of any kind as to race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”\textsuperscript{85} The enjoyment of economic, social and cultural rights (“ESCR”) without discrimination entails an immediate obligation to eliminate all forms of discrimination.\textsuperscript{86} In China, the exclusion of unidentified groups from exercising minority rights and different treatment between minorities with autonomous agencies and minorities without them contravene this

\textsuperscript{80} Greco-Bulgarian Communities, Advisory Opinion, 1930 P.C.I.J. (ser. B) No.17, at 22; HRC, General Comment 23, ¶ 5.2; Capotorti Report, id. ¶ 61.


\textsuperscript{82} Capotorti Report, supra note 79, ¶ 62.

\textsuperscript{83} China ratified the ICESCR in 2001.

\textsuperscript{84} China acceded to the ICERD in 1981.


Article 15 states that “the States Parties to the present Covenant recognize the right of everyone...to take part in cultural life...”\(^\text{87}\) Despite the fact that this Article recognizes the right of ‘everyone’ to culture, it is relevant in the Chinese context for minority protection as it provides minorities the basis to claim the rights guaranteed by international law. Culture, according to the Committee on ESCR, is a broad, inclusive, and evolving concept, which encompasses almost every aspect of life.\(^\text{88}\) ‘To take part in’ or ‘participate’ in cultural life includes, in particular, the right of everyone, including minorities, “to choose his or her own identity, to identify or not with one or several communities’.\(^\text{89}\) The minimum core obligations entailed in the Article also require the State Parties to respect the right of everyone to self-identification.\(^\text{90}\) Thus, besides the right “to conserve, promote and develop their own culture,”\(^\text{91}\) minorities should also have the right to identify or not to identify themselves with one or more communities and to change that choice.\(^\text{92}\) The Chinese provisions on the determination of ethnic status may constitute a breach.

B. ICERD

Under the core principle of non-discrimination, the Convention concerning Racial Discrimination requires the uniform application of legislation and governmental actions to all groups, regardless of the racial or ethnic groupings within the territory.\(^\text{93}\) The selective application of identification criteria, which leads to the recognition of some and refusal to recognize others, may breach this prohibition.\(^\text{94}\) In particular, the identification of an individual as belonging to a minority group, and thus the beneficiary of special measures, “should be based on self-identification by the individual concerned”, unless a significant justification exists to permit action to the contrary.\(^\text{95}\)

Therefore, the Chinese practice of minority identification discussed above would not conform to its obligations under the ICESR and ICERD. The authoritative practice of identifying minorities in China needs to be

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\(^\text{87}\) ICESCR, art. 15.

\(^\text{88}\) See, e.g., CESCR, General Comment 21, ¶¶ 11-13.

\(^\text{89}\) Id. ¶ 15.

\(^\text{90}\) Id. ¶ 55(b).

\(^\text{91}\) Id. ¶ 32.

\(^\text{92}\) Id. ¶¶ 15, 55(b).


\(^\text{94}\) Id. ¶ 3.

\(^\text{95}\) CERD, General Recommendation 08; General Recommendation 32, ¶ 34.
changed and reformed to equally protect and promote the rights of all ethnic groups without distinction. Even though the communists might prefer a minority definition based on objective criteria, the application of such criteria should be unequivocal and declaratory, and the right of the individuals to identify themselves with one or more groups upheld.

VI. CONCLUSION

Through the Ethnic Identification Project, over 400 self-reported groups were officially classified into fifty-five minorities, a comparatively manageable number. The Project, in essence, is a political and authoritative activity, dividing the minority population in a way that fits the political interests of the CCP. This government-led Project, however, has significant legal consequences: recognizing which group is entitled to minority rights under Chinese law.

The flexible and inconsistent application of a number of identification standards has led to differing treatment of ethnic groups, with some self-identified groups being recognized and others not. The nature of the implementation regime under the REA also causes disparities between minorities with autonomous agencies and minorities that have yet to establish their own autonomous areas. Meanwhile, the fixed-ethnic-identity imposed creates internal divisions among ethnic groups and fosters ethnic consciousness of minorities as distinguishable from the Han, although this minority consciousness does not necessarily imply worse relations with them.\textsuperscript{96} This practice does not facilitate the integration of minorities into a unified multiethnic nation,\textsuperscript{97} nor does it fulfill China’s obligations under international human rights conventions.

Measures should be undertaken, in the light of cultural rights, to ensure all minorities are subject to the equal protection of the law. A clear and explicit legal definition of minorities is necessary if the Chinese Government insists on maintaining the identification criteria, and it must in turn be applied to all groups equally. Individual members concerned should have the liberty to identify themselves with one or several groups, and more importantly are able to access effective remedies in the form of

\textsuperscript{96}MACKERRAS, \textit{supra} note 5, at 267.

\textsuperscript{97}The Chinese Government has repeatedly argued that China is the state of the Chinese nation, a unified multiethnic nation and it is the Chinese people who enjoy the right to self-determination.

legal and administrative procedures in order to maintain the validity of any system imposed.