

CHAPTER FOUR

FINDING AND ANALYSIS

A. Responsibility to Protect (R2P)

A Secretary General, Ban Ki-moon presented three pillars in the 2009 report of the implementation of the responsibility to protect, the three pillars as the concept of Responsibility to Protect (R2P) within the United Nations (UN) system. The first pillar states that every state has a responsibility to protect its populations from any kind of mass atrocity crimes, the second states that international community has a responsibility to assist any states to run the first pillar, and the third pillar states that if any state failed to run the responsibility to protect its populations, appropriate measures must be taken by international community.²⁹

Peace and security are also the pillars of the United Nations where human rights, peace and security are interlinked to be reinforced. R2P has some characteristics, among others are narrow but deep. Narrow means the case in R2P is only restricted to the mass atrocity crimes such as genocide, war crimes, ethnic cleansing, and crimes against humanity. Whereas, deep

²⁹ Jared Genser, Global Centre for the Responsibility To Protect, 2018, “The UN Security Council Implementation of the Responsibility to Protect: A Review of Past Interventions and Recommendations for Improvement”, available at www.responsibilitytoprotect.org, accessed on Sunday, July 21st, 2019 at 10:33 AM.

refers to actions that can be taken by international community through the UN systems and also action by Security Council to solve those violations.³⁰

The implementation of the R2P included 3 actions, namely preventive measures, protective measures, and special measures. Security Council has a duty to make decisions regarding collective action whether peaceful means are inadequate or the state is failed to uphold it. And the last is every pillar is interconnected and is equally important.³¹

All Heads of State and Government adopted the World Summit Outcome in 2005 and the international community has recognized that States have the primary responsibility to protect populations from any mass atrocity crimes. The Security Council also has adopted 50 resolutions about responsibility. States should ensure that those crimes are prohibited in national law by preventing and punishing as atrocity crimes, whereas civil society also have active role by establishing regional networks for prevent the mass atrocity crimes.³²

The international community has an obligation to help and to assist states to exercise the responsibility. Through the UN, the international community may use diplomatic ways, humanitarian, and other peaceful means where the action is in accordance with Chapter VI, VII, and VIII of

³⁰ Jared Genser, 2018, “The United Nations Security Council’s Implementation of the Responsibility to Protect: A Review of Past Interventions and Recommendations for Improvement”, *Chicago Journal of International Law*, Vol. 18, No. 2, Chicago, University of Chicago Law School, p. 10-14.

³¹ *Ibid.*

³² General Assembly Security Council, 2017, “Implementing the responsibility to protect: accountability for prevention”, available at <https://www.un.org/en/genocideprevention/documents/2017%20SG%20report%20on%20RtoP%20Advanced%20copy.pdf>, accessed on Sunday, July 21st, 2019 at 12:41 AM.

the United Nations (UN). And through the Security Council if a state fails to protect their populations.³³ When a state fails to protect its populations and does not respond the peaceful means and diplomatic efforts, the Security Council can give coercive measures based on the Article 53 of the Charter, for example sanctions, arms embargoes, or referrals to the International Criminal Court (ICC).³⁴

B. International Convention on the Elimination of All Forms of Racial Discrimination

During the 17th session of the General Assembly, the topic of racial discrimination had been discussed in the General Assembly. The discussion about racial discrimination happened because of two factors namely Cold War and decolonization process. At the time, United States and the Union of Soviet Socialist Republics (USSR) depended on the new states to support their agendas in the United Nations (UN).³⁵

On the other hand, the topic of racial discrimination came from developing countries where the majority is African and Asian states. As developing countries, African and Asian states need economic assistance to build their countries because of undeveloped economies, regional conflicts,

³³ General Assembly, 2005, “2005 World Summit Outcome”, available at https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_60_1.pdf, accessed on Wednesday, July 17th, 2019 at 02:06 PM.

³⁴ Jared Genser, *Loc. Cit.*

³⁵ Ofra Friesel, 2014, “Race versus Religion in the Making of the International Convention Against Racial Discrimination, 1965”, *Law and History Review*, Vol. 32, No. 2, United States, American Society for Legal History, p. 2-4.

and political instability. This issue was negotiated during the years 1962-1965 in the UN.³⁶ On December 21st, 1965 International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) was adopted and entered into force on January 4th, 1969. This convention consists of 181 state parties and 88 signatories.³⁷

The Convention consists of a preamble and 25 articles that have 3 parts, they are definition and scope of racial discrimination itself, the states parties' obligations, the monitoring body and its duty, and the last is about technical matters. The monitoring body also issued General Recommendations in order to assist state to interpret the Convention.³⁸

ICERD discusses about race which covers color, descent, and national or ethnic origin. The concept of race does not only cover physical elements, but also covers subjective and social components. According to Dr. J. Craig Venter as the Head of the Celera Genomics Corporation, race is not only about the scientific aspect, but also covers social concept.³⁹ Therefore, race cannot be concluded simply as skin color.

ICERD condemn racial separation and obliges states parties to punish any racial hatred or any assistance to racist activities, and to prohibit racist

³⁶ *Ibid.*

³⁷ United Nations Treaty Collection, 2019, "International Convention on the Elimination of All Forms of Racial Discrimination", available at <https://treaties.un.org>, accessed on Thursday, May 23rd, 2019 at 8:35 AM.

³⁸ Daisuke Shirane, The International Movement Against All Forms of Discrimination and Racism (IMADR), 2011, "ICERD & CERD: A Guide for Civil Society Actors", available at <https://issuu.com/dhrpraxis/docs/icerdmanual>, accessed on Thursday, May 23rd, 2019 at 10:09 AM.

³⁹ William F. Felice, 2002, "The UN Committee on the Elimination of All Forms of Racial Discrimination: Race, and Economic and Social Human Rights", *Human Rights Quarterly*, Vol. 24, No. 1, United States, The Johns Hopkins University Press, p. 3.

organizations both of public and private. The strict measure against discrimination can be also applied through the internet.⁴⁰ Articles 5-7 stipulate responsibilities to protect the equal rights, give compensation to the victims, and combat racial biases through education and others.⁴¹

Every states party must take appropriate measures to prohibit and eliminate racial discrimination and guarantee everyone's rights, such as the right to work, equal work will get equal pay, the right to public health, the right to education, medical care, social security, and etc. Also, state must eliminate any laws that create racial discrimination.⁴² Aside of that, every state must ensure the rights of non-citizens through the law and its implementation. It is stated in the General Recommendation No. 30 that state must protect non-citizens from hate speech, racial violence, give access to the citizenship, administration of justice, and economic, social, and cultural rights.⁴³

Actually, ICERD does not focus on the protection of these rights, but it obliges states parties to make sure that there is no discrimination to the enjoyment of these rights. To ensure that each states party carry out its obligations, there must be an institution that serves as a special body to examine the program of each state's parties. In 1970, an independent body

⁴⁰ Nazila Ghanea, 2013, "Intersectionality and the Spectrum of Racist Hate Speech: Proposals to the UN Committee on the Elimination of Racial Discrimination", *Human Rights Quarterly*, Vol. 35, No. 4, United States, The Johns Hopkins University Press, p. 6-9.

⁴¹ Michael Banton, 2018, *What We Know About Race and Ethnicity*, New York, Berghahn Books, p. 54.

⁴² William F. Felice, *Op. Cit*, p. 9.

⁴³ Daisuke Shirane, *Op. Cit*, p. 4-12.

namely the Committee on the Elimination of Racial Discrimination (CERD), started to monitor the implementation of ICERD. CERD is a committee of experts that was established to monitor the ICERD which is composed of 18 independent experts. These experts are elected by secret ballot of those states' parties to the convention.⁴⁴

CERD will meet for two session in a year, every session will be conducted in three weeks. There will be thirty meetings in one session with three hours meeting each day. There will be twenty-two sessions for the consideration of every new states reports, two sessions for the review of the implementation of the convention that the reports are overdue for five years or more, two sessions to review an urgent or early warning procedures regarding the prevention of racial discrimination, and four sessions for other things including individual communications.⁴⁵

States parties are required to submit reports from every levels of government such as legislative, judicial, and administrative within one year after the entry into force of the Racial Discrimination. Based on the Article 9 (1) of the Convention, states parties are mandatory to report every two years or whenever the committee requests because the committee has the right to get further information from states parties. If the report is in five years or more or in other words is overdue, the committee may examine the country's situation in the absence of report. After the committee examine

⁴⁴ *Ibid.*

⁴⁵ William F. Felice, *Op. Cit.*, p.7.

the reports, there will be suggestions and recommendations based on the examination of the reports from each state's party.⁴⁶

However, some states parties claim that it is contrary with their national law to provide data which are requested by the CERD. On March 31st, 2000, there were 430 reports that had been overdue, and when states parties did not fulfill their reporting obligations, CERD will examine the states practices. Since 1988, CERD has appointed one of its members to become a country rapporteur for each report and will evaluate it. Also, the rapporteur will prepare list of questions that will be asked to the representative of the reporting state.⁴⁷

Although CERD has an obligation to examine the states parties regarding the implementation of ICERD, CERD is not a judicial body with the power to determine state violations regarding racial minorities. CERD is only allowed to assist states in their efforts to fulfill their obligations under ICERD.⁴⁸ CERD also invites every states parties to send their delegation to the CERD meetings to have an interactive dialogue. From the interactive dialogue, CERD will conclude the observations regarding the state's parties, or the CERD is allowed to request additional report regarding the specific issue.⁴⁹

⁴⁶ Patrick Thornberry, 2005, "Confronting Racial Discrimination: A CERD Perspective", *Human Rights Law Review*, Vol. 5, No. 2, United Kingdom, Oxford University Press, p. 6-7.

⁴⁷ William F. Felice, *Op. Cit*, p. 9-11.

⁴⁸ *Ibid.*

⁴⁹ Daisuke Shirane, *Op. Cit*, p. 15-16.

CERD will publish concluding observations on each state regarding the achievements and challenges which are faced by the state. In the concluding observations there will be recommendations to improve the implementation of ICERD, and the interpretations of the treaty. There are 30 General Recommendations that have been issued by CERD.⁵⁰

C. The History of People's Republic of China in Ratifying the International Convention on the Elimination of All Forms of Racial Discrimination

Since 1980, People's Republic of China (PRC) has joined numerous international human rights treaties and one of them is International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). China has ratified ICERD on December 29th, 1981. Nevertheless, China make a reservation for one of the articles is Article 22 of the Convention and China will not be bound by it.⁵¹

Article 22 regulates the dispute between two or more state parties that can be solved by negotiation and other dispute settlement provided for this Convention. The dispute parties may also refer to the International Court of Justice, or if the dispute parties agreed, they can use another mode of settlement to solve the dispute.⁵² Reservation is a statement which is made

⁵⁰ Richard Lappin, 2016, "Should CERD Repudiate the Notion of Race?", *Peace Review A Journal of Social Justice*, Vol. 28, No. 4, United Kingdom, Routledge Taylor & Francis Group, p. 4.

⁵¹ United Nations Treaty Collection, *Loc. Cit.*

⁵² Article 22 on the International Convention on the Elimination of All Forms of Racial Discrimination

by a state when signing, ratifying, accepting, approving or acceding to a treaty, where a state wants to modify the legal effect of certain provisions on that treaty. Reservation is regulated in the Vienna Convention on the Law of Treaties (VCLT) 1969.⁵³ Procedures regarding reservation is regulated in Article 23, which are:

1. A reservation, an express acceptance of a reservation and an objection to a reservation must be formulated in writing and communicated to the contracting States and other States entitled to become parties to the treaty.
2. If formulated when signing the treaty subject to ratification, acceptance or approval, a reservation must be formally confirmed by the reserving State when expressing its consent to be bound by the treaty. In such a case the reservation shall be considered as having been made on the date of its confirmation.
3. An express acceptance of, or an objection to, a reservation made previously to confirmation of the reservation does not itself require confirmation.
4. The withdrawal of a reservation or of an objection to a reservation must be formulated in writing.⁵⁴

China has three reasons to join international human rights law. First, human rights law is a part of international law, and China has relation to the human rights issues. Second, China accepts the legitimacy of the United Nations and its institutions and laws. Third, international politics has had an indirect impact on Chinese human rights legalization. The United States and other developed democracies put strong pressure on the Chinese government to improve human rights. Besides that, ICERD itself need

⁵³ Eric Neumayer, 2007, "Explaining Reservations to International Human Rights Treaties", *The University of Chicago Press Journals*, Vol. 36, No. 2, Chicago, The University of Chicago The Law School, p. 10.

⁵⁴ Article 23 on the Vienna Convention on the Law of Treaties

special attention because ICERD discusses specific issue, it is completely focused on the prohibition of racial discrimination.

D. The Implementation of International Convention on the Elimination of All Forms of Racial Discrimination in People's Republic of China

1. Adherence to Equality and Unity

China is a multi-ethnic country with 56 ethnic groups consisting of 55 minority groups. Han is the dominant group taking around 92 percent of the total populations. The minority groups which are confirmed by the Central Government namely, *Gelo, Ozbek, Lhoba, Gaoshan, Tajik, Naxi, Jino, Ewenki, Lahu, Jingpo, Xibe, Shui, Tatar, Tibetan, Daur, Qiang, Hezhen, Va, Mulam, Lizu, Kirgiz, Blang, Achang, Zhuang, Yugur, Uyghur, Nu, Dai, Drung, Tu, Pumi, Bai, Russian, Jing, She, Hui, Kazak, Salar, Oroqen, Yi, Yao, Moinba, Miao, Li, Hani, Mongolian, Deang, Tujia, Dong, Manchu, Korean, Bonan, Maonan, Dongxiang, and Bouyei*. Every minority groups have their own languages while *Hui* and *Manchu* speak Mandarin.⁵⁵ Minority groups need special policy to protect their rights with two crucial goals, that is the right to identity and substantive.

The right to identify minorities refer to the various characteristics such as language, culture, race, religion, and ethnicity. The preservation and

⁵⁵ Permanent Missions of the People's Republic of China to the United Nations Office at Geneva and Other International Organizations in Switzerland, 1999, "National Minorities Policy and Its Practice in China", available at <http://www.china-un.ch/eng/bjzl/t176942.htm>, accessed on Wednesday, July 10th, 2019 at 02:46 PM.

promotion of the minority identity is depending on the regulation of education (language in education, religion in education, culture in education, and broader curriculum issues), and also the media where the minority may access their own language through the programs.

The right to substantive equality means minority should be treated alike. However, minority groups need special measure or different treatment regarding their specific character and needs. Special rights do not mean contradict with equal rights. Actually, special measure for minority groups apply to guarantee the equality and does not allow differential treatment.⁵⁶

The minority groups live in provinces and autonomous regions such as in Inner Mongolia, Xinjiang, Ningxia, Guangxi, Tibet, Yunnan, Guizhou, Qinghai, Sichuan, Gansu, Liaoning, Jilin, Hunan, Hubei, Hainan, and Taiwan, while the rest of minority groups live in municipality which is directly controlled by the Central Government.⁵⁷

In China, equality is related to the number of populations, economic level, social development, equal status, part of Chinese nation, enjoying the same rights, custom, religious beliefs, and have same duties in political aspects also social life according to the law. Whereas unity among ethnic groups is related to the friendship, mutual assistance, and mutual contacts.

To unite various ethnic groups is not an easy thing, to do all of the ethnic

⁵⁶ Kristin Henrard, 2007, "The Protection of Minorities Through the Equality Provisions in the UN Human Rights Treaties: The UN Treaty Bodies", *International Journal on Minority and Group Rights*, Vol. 14, No. 2/3, Netherlands, Brill Publishers, p. 5-6.

⁵⁷ Permanent Missions of the People's Republic of China to the United Nations Office at Geneva and Other International Organizations in Switzerland, *Loc. Cit.*

groups must against any kind of discriminations, and must promote the development and wealth of the nation.

Equality and unity for every ethnic groups are the important policy to resolve any ethnic problems, and they have been defined in the Constitution and Regional Ethnic Autonomy Law 1984. The Constitution of the People's Republic of China stipulates:

“All ethnic groups in the People's Republic of China are equal. The state protects the lawful rights and interests of the ethnic minorities and upholds and develops a relationship of equality, unity, and mutual assistance among all China's ethnic groups. Discrimination against and oppression of any ethnic group are prohibited.”⁵⁸

All of the citizens in China may enjoy equal rights based on the Constitution. Everyone have the rights to vote and to take a part in the election, to get better education, to speak and to develop their own language in speaking and writing, to enjoy freedom of speech, to involve in scientific research, literary, artistic creation, and other cultural pursuits; to get work, obtain material assistance for disability, to criticize and to make suggestion regarding state organ.

The Chinese government has made some policies to ensure that all of the rights can be achieved by all ethnic groups. The total Muslim population was 17.6 million in 1990, including Hui, Uyghur, Kazakh, Dongxiang, Kyrgyz, Salar, Tajik, Uzbek, Bonan, and Tatar. They speak with their own

⁵⁸ Article 4 Constitution of the People's Republic of China

language such as Turkic language, Sino-Tibetans language, Turkic-Mongolians, and also Indo-Persian dialects.⁵⁹

a. Personal Freedom for Ethnic Minorities

Before the founding of the People's Republic of China in 1949, the economic and social development was unbalanced for minority groups. Every area has different system, there were under serf system, slave system, and also the primitive system. It was when the minorities did not have personal freedom, and they can be sold or bought or might be given as a gift for someone by their owner.⁶⁰

However, after the founding of the PRC in the late 1950s, the Chinese government abolished any kind of system regarding exploitation of man by man. In 1959, the democratic reform in Tibet had eradicated the feudal serf system, such as the combination between government and religion and also the dictatorship from noble and monks. Because of that thousands of serfs and slaves got their personal freedom.⁶¹

b. Every Ethnic Groups Have the Rights to Participate in the State Affairs Administration

⁵⁹ Dru C. Gladney, 2003, "Islam in China: Accommodation or Separatism?", *The China Quarterly*, No. 174, United Kingdom, Cambridge University Press, p. 4.

⁶⁰ Permanent Missions of the People's Republic of China to the United Nations Office at Geneva and Other International Organizations in Switzerland, *Op. Cit.*, p. 2-3.

⁶¹ *Ibid.*

The minority and Han equally participate in management of affairs of the state and local governments in any levels. The National People's Congress (NPC) as the highest organ of state power fully respect minority groups. In accordance with the Electoral Law of the National People's Congress and Local People's Congresses of the People's Republic of China, the minority groups must have their own representative in the NPC. The 9th NPC in 1998, consisted of 428 representatives from minority groups which was about five percentage points is higher than the proportion of the total population.⁶²

There are 21 percent from minority groups who become the vice chairpersons in the Standing Committee of the NPC, 9.6 percent from minority groups as members of the State Council, 2 ministers are from minority groups, and about 155 ethnic autonomous regions lead by minority groups, which means they become the head of the government.⁶³

c. Identification of Ethnic Minorities

It never been clear about the percentage of minority groups never been clear in China. After the founding of the People's Republic of China, the state organized large scale to actions implement the policy of equality. In 1954, the Chinese government had identified around 38

⁶² *Ibid.*

⁶³ *Ibid.*

ethnics groups, and in 1964, the Chinese government had identified another 15 ethnic groups, following the *Lhoba* and *Jino* ethnic in 1979.⁶⁴

The minorities can claim their minority status through the Ethnic Identification Project. From this project, the minority will get the official recognition to claim the minority rights. The classification of minorities is divided into some classifications such as the identification based on the language was happened in Yunnan province, in that they were categorized based on the linguistic aspect. Muslim group in Xinjiang was categorized based on the history and religious beliefs. The Manchu was categorized by using national consciousness and ancestral heritage.⁶⁵

The identification procedures comprise five steps in which the minorities proposed themselves to be identified. The provincial government will send the researchers to investigate them. After that, the researchers will present the result whether their request is accepted to be identified as minority or not.⁶⁶

d. Opposing Any Ethnic Discrimination

Under the oppression system in old China, many ethnic minorities did not have proper names, and the minorities names were as an implication of ethnic discrimination. And in 1951, the Central People's Government enforced the directive on dealing with the appellations,

⁶⁴ *Ibid.*

⁶⁵ Wang Linzhu, 2015, "The Identification of Minorities in China", *Asian Pacific Law & Policy Journal*, Vol. 16, No. 2, Hawaii, University of Hawai'i at Manoa, p. 4-8.

⁶⁶ *Ibid.*

place names, monuments, and inscriptions bearing contents of discrimination or insult ethnic minorities, and such names were abolished. Every word or acts that was provocative and discriminative against any ethnic groups or was sabotaging the equality and unity among people was regarded as violating the law. Every minority groups has the rights to complain to the judicial institution in any level, that has duty to supervise the complaint regarding discrimination, oppression, or insult.⁶⁷

e. Upholding and Promoting the Unity of All Ethnic Groups

The Constitution combats group of Chauvinism from local and Han ethnic. This action is done for keeping the equality and unity for all ethnic groups. Also, the department from Chinese government has regulated strict prohibition to prevent and eliminate the Chauvinism. The prohibition is regarding a content that can affect ethnic unity in media, publications, literary, and etc.

However, in practice PRC also oppresses the practice of Islam and categorizes it as separatism. The government is also criminalizing the wearing of veils and other Islam styles such as beard styles, and are

⁶⁷ Permanent Missions of the People's Republic of China to the United Nations Office at Geneva and Other International Organizations in Switzerland, *Loc. Cit.*

using religious ceremony in weddings. The implementation of halal food become one of illegal activities.⁶⁸

f. Respecting and Protecting the Freedom of Religious Belief of Ethnic Minorities

The majority of the population in China comes from minority groups with various religions, namely Buddhism, Taoism, Islam, and Christianity. According to the Constitution's provisions on freedom of religious belief of the citizens, the Chinese government has made specific policies to ensure freedom of religious belief for minority groups and guarantee all normal religious activities of minority groups. There are around 30.000 mosques in China, mostly located in the Xinjiang Autonomous Region, and more than 1.700 places for Tibetan-Buddhism.⁶⁹

Muslims in China belong to several ethnic minority groups. The largest group is Hui who speak Chinese and the next larger group is Uyghurs and followed by Kazakh people, Dongxiang, Kyrgyz, Salar, Tajik, Uzbeks, Bao'an, and Tatars. Different from other Muslim ethnic groups, Hui is more open to Han Chinese culture.⁷⁰

⁶⁸ Sean R. Roberts, 2018, "The Biopolitics of China's "war on terror" and the exclusion of the Uyghurs", *Critical Asian Studies*, Vol. 50, No. 2, United Kingdom, Routledge Taylor & Francis Group, p. 18.

⁶⁹ Permanent Missions of the People's Republic of China to the United Nations Office at Geneva and Other International Organizations in Switzerland, *Op. Cit.*, p. 4.

⁷⁰ Max Deeg, Bernhard Scheid, 2015, *Religion in China: Major Concepts and Minority Positions*, Vienna, Austrian Academy of Sciences Press, p. 149.

g. Rights of Spoken and Written Languages of Ethnic Minorities

Every minority groups in China has the right to develop their language both in speaking and writing. The Chinese government has conducted an investigation and established an institution to research these languages. There are 55 minority languages except Hui and Manchu. In 1956, The Chinese Communist Party (CCP) Central Committee stated that the minority groups have the right to use their own language and Mandarin is only be mandated for the Han. In the 1984, The PRC Regional Autonomy Law for Minority Nationalities had enacted six articles about minority groups.⁷¹

One of the articles emphasize that every schools that recruits the minority group students should allow use their own language. It is an obligation for primary school students of higher grades and secondary schools' student to learn Chinese language. In fact, the Chinese language is nationally promoted because the majority speaks Chinese. Also, speaking Chinese makes it easy for the society to get job and by doing assimilation the ethnicity in China will be stable. There is a large poster in Urumchi with the slogan "Chinese spirit, Chinese image, Chinese culture, Chinese expression".⁷²

⁷¹ Permanent Missions of the People's Republic of China to the United Nations Office at Geneva and Other International Organizations in Switzerland, *Loc. Cit.*

⁷² Joanne Smith Finley, 2019, "Securitization, Insecurity and Conflict in Contemporary Xinjiang: Has PRC Counter-Terrorism Evolved into State Terror?", *Central Asian Survey*, Vol. 38, No. 1, United Kingdom, Routledge Taylor & Francis Group, p. 11.

2. Regional Autonomy for Ethnic Minorities

Regional autonomy is a basic policy which is adopted by the Chinese government, and it also becomes an important part of the political system in China. Autonomous areas for minority groups in China include autonomous regions, autonomous prefectures, and autonomous counties. There were 30 autonomous prefectures, 5 autonomous regions, and 120 autonomous regions that had been established since 1998. There are some reasons why the Chinese government implement regional autonomy system for minority groups. First, it is in accordance with traditions in China, where China has been united for a long period. Second, some of the China's ethnic group have been living together in a large area and others live in small area. Third, all of the ethnics in China are against imperialism and feudalism after the break of the Opium War.⁷³

Regional autonomy must ensure the political rights of minority groups and fulfilled the rights of minority groups to take a part in political field. In the regional autonomy principle, an ethnic group may establish autonomous area in a region where they are living, also may establish several autonomous areas in different administrative levels. Regional autonomy guarantees the rights of minorities, and also upholds the unity of the state. Actually, there are two systems of regional

⁷³ Permanent Missions of the People's Republic of China to the United Nations Office at Geneva and Other International Organizations in Switzerland, *Op. Cit.*, p. 5-8.

autonomy in China. First, the regional autonomy is under the unified leadership of the state and cannot be separated from China. Every condition in minority areas must get assistance also support from the state organs in high level. Second, regional autonomy which is also the integration between political and economic factors.⁷⁴

In 1954, the Constitution of the People's Republic of China was adopted. And in 1984, the Law of the People's Republic of China on Ethnic Regional Autonomy was established. This law discussed systematic provisions on the political, economic, and cultural rights and also duties of minority groups in autonomous areas. There are four autonomous regions that were established consecutively after the founding the People's Republic of China, they are: the Xinjiang Uyghur Autonomous Region (October 1955), the Guangxi Zhuang Autonomous Region (March 1958), the Ningxia Hui Autonomous Region (October 1958), and the Tibet Autonomous Region (September 1965).⁷⁵

3. Promoting the Common Development for All Ethnic Groups

Since the founding of the People's Republic of China, the state promotes the common development and progress for all ethnic groups by adopting numerous policies to assist these areas in developing economic. The Law of the People's Republic of China on Ethnic

⁷⁴ *Ibid.*

⁷⁵ *Ibid.*

Regional Autonomy consists of 13 articles to set the duty of the state organs in higher level to help the ethnic autonomous areas. The state always arranges some important projects in the national minority areas, such as developing diversified industries, improving the economic strength.⁷⁶

a. Strengthening the Construction of Infrastructure Facilities and Promoting the Development of Basic Industries in Minority Areas

In recent years, Xinjiang has completed a number of industrial projects. For example, the Urumqi General Petrochemicals Factory and the ethylene project of the Dushanzi General Petrochemicals Factory. Another communication facility such as the Southern Xinjiang Railway, the Tacheng Airport and the Turpan-Urumqi-Dahuangshan Highway. There are 50.000 projects in Xinjiang with total fix assets of 190 billion yuan. Xinjiang becomes the 4th biggest oil producing in China, it also produces cotton and woolen textile.⁷⁷

The Chinese government regulates a Regulations on the Administrative Work of Ethnic Townships in 1993 to accelerate the development of the townships. The government in the higher level must make a policy and take special measure regarding finance, taxation,

⁷⁶ Xiaogang Wu, Gyuangye He, 2018, "Ethnic Autonomy and Ethnic Inequality: An Empirical Assessment of Ethnic Policy in Urban China", *China Review*, Vol. 18, No. 2, Hong Kong, Chinese University Press, p. 3-4.

⁷⁷ Permanent Missions of the People's Republic of China to the United Nations Office at Geneva and Other International Organizations in Switzerland, *Loc. Cit.*

infrastructure facilities, and etc. The Chinese Government also does petroleum exploration through the West-East Natural Gas Transmission Project and the Project for Comprehensive Improvement of the Environment of the Tarim Basin.

When the Chinese government adopted some presential policies, such as spreading financial subsidies and establishing development funds to minority areas, the state also encourages the minority areas to start foreign investment, develop frontier trade based on the local situation, and cooperation in domestic technology. It has given a chance for minority areas to promote the readjustment of their social economic structure, and also strengthen self-development ability through active and stable reform measure.

However, the purpose of those projects is contrary in practical. Han dominate higher position in every project comparing to Uyghurs. Most manager in the state sector in Xinjiang are Han Chinese.⁷⁸ In addition, the territory of the minority is rich in natural resources. Because of that, the political leaders have reason to maintain good relationship with residents in minority areas. In fact, more than 80 percent of ethnic minority is suffering from poverty.⁷⁹

⁷⁸ Xiaowei Zang, 2012, "Age and the Cost of Being Uyghurs in Urumchi", *The China Quarterly*, Vol. 210, United Kingdom, Cambridge University Press, p. 5-6.

⁷⁹ Rebecca Clothey, 2005, "China's Policy for Minority Nationalities in Higher Education: Negotiating National Values and Ethnic Identities", *Comparative Education Review*, Vol. 49, No. 3, Chicago, The University of Chicago Press Journals, p. 8.

b. Helping Minority Areas to Eliminate Poverty

Although China has great improvement in many sectors, many minority areas are still undeveloped such as bad production conditions, a low social development level, technological and cultural knowledge, lack of scientific, it happened in the western part of China where the minorities live in concentrated communities. In some minority areas, the people's basic needs are not guaranteed, and production and living condition are difficult.

Therefore, the Chinese government mad some policies to help the minorities who lived in some parts of China and whose needs have not been ensured their needs. The things that become the goal of new policies, are:⁸⁰

- 1) Expending the scope for helping minority areas
- 2) Giving priority help to the minority areas in terms of distribution of capital and aid material for the poor. The Chinese government also puts five autonomous regions in equal position with West China, and put them on the priority list.
- 3) Actively collaborating with international organizations in decreasing poverty and in ensuring development in minority areas which faced poverty matter.
- 4) Organizing provinces and municipalities in east China to help the poor in minority areas.

⁸⁰Permanent Missions of the People's Republic of China to the United Nations Office at Geneva and Other International Organizations in Switzerland, *Op. Cit.*, p. 10-12.

c. Helping the Minority Areas to Develop Education

The China government also consider the education for minority groups. The development of education for all of the element of society in China is very important regarding the improvement of minority groups quality, the promotion of economic in minority areas, and also the cultural development in ethnic minority. The government provides educational aid for minority groups in accordance with the need of modernization and educational development policies.

Therefore, China has adopted various policies and measure to support the improvement of education towards minority groups. For example, the state allows the autonomous region to develop their own ethnic education, where the teacher must be able to teach in bilingual in order to learn Chinese language and keep the minority language, it is also strengthening the ranks of minority teachers. However, the policy of bilingual education is failed because in Uyghurs monolingual Chinese education is still implemented.⁸¹

Mandarin Chinese becomes the official language since the Cultural Revolution in the late 1950s, it is implemented in the school as the instruction in minority regions, and the purpose of this language is assimilation. It is contradicted with the Constitution of PRC and the PRC Regional Autonomy Law for Minority that protect the minority rights to use their own language.⁸²

⁸¹ Xiaowei Zang, *Loc. Cit.*

⁸² Yuxiang Wang, JoAnn Phillion, 2009, "Minority Language Policy and Practice in China: The Need for Multicultural Education", *International Journal of Multicultural Education*, Vol. 11, No. 1, Indiana, Purdue University, p. 3-4.

Other obstacle is the poverty, the lack of qualified bilingual teachers and also the lack of infrastructure. Based on the State Education Department Research Center in 2003, it can be that 37.8% of the schools do not have enough desks, 22.3% have unsafe classrooms, and 32.5% did not have enough funds to buy teaching aids.⁸³

4. Preservation and Development of the Cultures of Ethnic Minorities

The Chinese Government actions in China are contrary to China's constitution and also violate its obligations under international law. The existence of re-education camp in Xinjiang is violating the right to liberty, because the minority will be detained without reasonable accusation. It is also violating the freedom of thought, expression, and religion. People are forced to go to political indoctrination, and when they are in that camp, they are not allowed to perform their religion.⁸⁴

China's constitution also guarantees the non-discrimination for national minority groups and prohibitions against torture and other ill-treatment. But those minority rights are violated by the Chinese government through the existence of re-education in Xinjiang.⁸⁵ Because of that, the Chinese government has accepted various criticism regarding the re-education camp. In October 2019, the XUAR

⁸³ *Ibid.*

⁸⁴ Human Rights Watch, *Op. Cit.*, p.94-101.

⁸⁵ *Ibid.*

government launched a vocational education and training program according to law. However, the Chinese government still not allowed foreign reporters or scholars to access the camps or to do interview section with those who are interned.⁸⁶

The training in re-education camp included military action, patriotic singing and videos watching, writing personal statement that they will become a new person. They are taught to replace their burkas with modern Uyghur ethnic dress and to have a secular lifestyle. The re-education methods are divided into four groups. Group A is strike hard detainees who will receive 20 days of training. Group B is the stubborn of thinking group who will get 15 days of training, group C receives 7 days training, and Group D receives 4 days training.⁸⁷

The detainees live not in accordance with their religion beliefs. They could shower only once in a week and together with men and women. They are required to learn Chinese language, and they are forced to eat pork, and to drink alcohol as the punishment. They are also forced to replace their loyalty from God to the Chinese state, the reason is that only the government and the party will take care of them.⁸⁸

The ethnic violence in the XUAR cannot be shown to foreign correspondent because the internet access is controlled by the

⁸⁶ Gerry Groot, 2019, *Power*, Australia, Australian National University Press, p. 106-107.

⁸⁷ Adrian Zenz, 2019, "Thoroughly Reforming Them Towards A Healthy Heart Attitude: China's Political Re-education Campaign in Xinjiang", *Central Asian Survey*, Vol. 38, No. 1, United Kingdom, Routledge Taylor & Francis Group, p.113-115.

⁸⁸ Joanne Smith Finley, *Op. Cit.*, p. 6-9.

government such as, blocking certain sites and monitoring individual activities online.⁸⁹ The Xinjiang authorities also collect biometrics data such as DNA samples, fingerprints, the blood types of residents in the age of 12 to 65. These biometrics will be used in passport application process.⁹⁰

Biometrics data is not enough for the government, and police can monitor a further thing such as households via QR codes where it is attached on the door of every home.⁹¹ There are four kinds of discrimination that happened towards Uyghurs, they are prohibition of Uyghur language use, Uyghur students who are studying abroad must come back to China, the political criminal camp named as re-education center, forced labor and transfer of young Uyghur women to main land China.

Racial discrimination also happened towards Mongolian Autonomous Region in People's Republic of China and in Inner Tibet Autonomous Region of People's Republic of China. In Mongolian Autonomous Region, all the textbook is standardized where the student is rarely finding history of Mongolia. In fact, the Mongolian middle schools have been merged into Han schools, where they are forced to learn Chinese language that makes them difficult to speak Mongolian. One of the policies of the Chinese government regarding language is

⁸⁹ Amnesty International, *Op. Cit.*, p. 16.

⁹⁰ Human Rights Watch, *Op. Cit.*, p. 18.

⁹¹ Gerry Groot, *Op. Cit.*, p. 104.

that ethnic minority is allowed to use their language in daily life including in school and political event. However, there is no more translators that is provided in government offices and public service agencies.⁹²

Uyghurs is not the only ethnic minority who are put in re-education camps, Tibetans and Mongolians are also put in the re-education camps. A historian and author Lhamjab A. Borjigin is prosecuted in the case of separatism and sabotaging national unity after writing his book about cultural revolution.⁹³ In 2017, there were two videos showing that Tibetan nuns singing and dancing about loyalty to China. The videos are humiliating and embarrassing them as the nuns.⁹⁴ The CERD has issued General Recommendation to China regarding discrimination to Mongolians ethnic and Tibetans.⁹⁵

The Tibetans are also controlled by the government regarding their freedom of movement. In China, there are two systems of passports that is quick and straightforward and another is extremely slow. The quick

⁹² Southern Mongolian Human Rights Center, 2018, "Submission to the Committee on the Elimination of Racial Discrimination (CERD) for the Consideration of the Review of the People's Republic of China During the 96th Session", available at https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/CHN/INT_CERD_NGO_CHN_31909_E.docx, accessed on Thursday, July 25th, 2019 at 3:56 PM.

⁹³ Qiao Long, Radio Free Asia, 2018, "Group Slams China's Record on Ethnic Mongolians Amid Calls for Writers Release", available at <https://www.rfa.org/english/news/china/mongolians/-0726201840229.html>, accessed on Friday, July 26th, 2019 at 2:18 PM.

⁹⁴ Human Rights Watch, 2018, "Submission to the CERD Review of China", available at <https://www.hrw.org/news/2018/06/21/submission-cerd-review-china>, accessed on Friday, July 26th, 2019 at 12:01 PM.

⁹⁵ Committee on the Elimination of Racial Discrimination, 2018, "Concluding Observations on the Combined Fourteenth to Seventeenth Periodic Reports of China (Including Hong Kong, China and Macao, China)", available at https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/CHN/CERD_C_CHN_CO_14-17_32237_E.pdf, accessed on Monday, July 15th, 2019 at 8:00 AM.

one, can only be accessed by Han majority, and the slow one is imposed in areas populated mainly by Tibetans and other religious minorities. In 2016, there was expulsions in Larung Gar toward Tibetan Buddhist community. The Chinese government implement new administrative control, about 200 Communist Party has taken over all management, finances, security, admissions, also the textbooks.⁹⁶

United Nations Committee on the Elimination of Racial Discrimination has given conclusion regarding racial discrimination in China, in that China is doing wrong action in implementing the policy regarding racial discrimination. The policies for each ethnic group such as Uyghur, Mongolian, and Tibetan are different in practice. The Chinese government should immediately release all detainees in re-education camp and close all political education center. The government should also allow the investigator to visit both Tibet and Xinjiang regions to evaluate the condition.

People's Republic of China has not been successfully implemented International Convention on the Elimination of All Forms of Racial Discrimination because in the practice China still violate this Convention by detaining Uyghurs without proper legal procedures, aside of others cases that happened in Tibetans Autonomous Region and to ethnic Mongolians. Uyghurs are forced to learn China Communist Party speech and they are forbidden to pray. Also, Uyghurs are difficult

⁹⁶ *Ibid.*

to compete with Han Chinese to get jobs because Uyghurs use their own language to speak.

By doing racial discrimination towards ethnic minorities, China does not run the obligation of R2P, where every state must be responsible and must protect its citizens from various crimes against humanity. China violates ethnic minorities rights by detaining them in re-education camp without proper legal procedures in Xinjiang. Other than that, China also does racial discrimination toward other ethnics in Tibet and ethnic Mongolians.