

PEOPLE'S REPUBLIC OF CHINA

The People's Republic of China (PRC) does not have structured affirmative action programs as such. There are however a number of laws in place or under consideration that are designed to improve the social and economic status of minority ethnic groups, women, and the handicapped.

Minority ethnic groups

China is a multi-ethnic state. In addition to the five major groups, the Han Chinese, Manchus, Mongolians, Tibetans, and Huis (Uighurs), there are more than fifty other distinct minority nationality groups. The Constitution of the PRC states in article 33 that all citizens are equal before the law. It also specifies in article 4 that all nationalities are equal and that the state protects the rights and interests of minority groups and prohibits discrimination.¹ Under articles 59 and 65, minority nationalities are entitled to appropriate representation in the National People's Congress and on its Standing Committee. The major law embodying PRC administrative policy in relation to these groups is the Law on Regional Autonomy for Minority Nationalities, adopted May 31, 1984.² It establishes autonomous administrative units, at either the provincial or local levels as appropriate, in areas largely inhabited by peoples other than Han Chinese. In addition to general statements on the important place of the various nationalities in the future of the PRC, this law includes several anti-discrimination and affirmative action clauses. Article 9 requires that state organs at higher levels and autonomous region

¹ Constitution of 1982. 1 Laws of the People's Republic of China 1-31 (Beijing, Foreign Languages Press, 1987).

² 2 Laws of the People's Republic of China 87-101 (Beijing, Foreign Languages Press, 1987).

organs should uphold relations of "equality, unity, and mutual assistance among all of China's nationalities. Discrimination against and oppression of any nationality shall be prohibited." Religious practices of minority ethnic groups may vary from that of Han Chinese; the Huis for example are Moslems. The Law therefore includes prohibitions of discrimination based on religious beliefs and activities (art. 11).

The people's congresses of these autonomous areas must include deputies of the nationality for which the region was established, but must also include representation of other ethnic groups in the area, in proportions to be determined by the standing committee of that autonomous region if it is equivalent in status to a province, or of the province in which any lower-level autonomous area is located. At least one of the vice-chairmen or the chairman of the standing committee of the people's congress of an autonomous area shall be of the nationality exercising regional autonomy in that area (art. 16). Furthermore, the chairman of the region, that is the head of the executive organs for the area's government, shall be a citizen of the nationality exercising autonomy, and other posts in the government shall whenever possible be given to people of that nationality or of other minority nationalities in the area concerned (art. 17).

In employment, the law requires that in these autonomous regions, priority be given to hiring the minority nationalities (art. 23). In addition, government organs in the regions are to make training for specialized and technical positions available to local nationality groups, and are to pay attention to opening such programs to women of the minority nationalities. The local government organs may adopt special measures to provide preferential treatment and encouragement for training programs (art. 22).

Women

The Constitution also makes women's rights in China explicit. Article 48 states that women enjoy equal rights "in all spheres of life, in political, economic, cultural, social, and family life." It goes on to guarantee equal pay for equal work. Under the Marriage Law of 1980,³ marriage is to be based on equality between the man and the woman, and the rights of women and children are specially protected (art. 2, 9). For example, a husband may not apply for a divorce when his wife is pregnant or within one year of the birth of a child (art. 27).

The State Council of the PRC adopted regulations on "Labor Protection for Female Staff Members and Workers" in 1988.⁴ These regulations were deemed necessary, according to Li Boyong, Vice-Minister of Labor, because protection of the rights of female workers has recently been neglected. They encounter discrimination in hiring and, he stated, suffered from being expected to do work equal to that of men "regardless of physical weakness."⁵ Li's observations about discrimination were echoed by the All-China Women's Federation in August 1988, which stated that women have a harder time than men in college admissions as well as employment, and that a lack of knowledge of their legal rights is holding women back.⁶

³ Supra note 1, at 184-189.

⁴ Adopted June 28, 1988, effective from Sept. 1, 1988. Translation available in Foreign Broadcast Information Service, Daily Report: China [hereafter cited as FBIS], July 27, 1988, at 42-43.

⁵ Reported by Xinhua news service, July 27, 1988, reprinted in FBIS, July 28, 1988, at 36.

⁶ Xinhua news service, Aug. 30, 1988, reprinted in FBIS, Aug. 31, 1988, at 41.

The new regulations specify that "all those units which can be served by women must not reject the employment of female staff members and workers" (art. 3). Enterprises may not reduce the basic wages of women or cancel their contracts during pregnancy, delivery, and breast-feeding (art. 4). Officials of departments violating these regulations and infringing upon "labor protection rights" of female employees shall be given administrative punishments and ordered to give reasonable economic compensation (art. 13). The regulations include provisions for maternity leave, for antenatal medical examinations on work time, and for breast-feeding breaks in the work day. Furthermore, units having a relatively large number of female staff members are to establish health clinics, resting areas for pregnant employees, child care centers, and facilities for breast-feeding (art. 11). All of the pregnancy-related benefits are valid only, however, for women who follow regulations on family planning, as China continues to push its one-child policy (art. 15). The regulations also include a number of provisions on forbidding the assignment of work deemed to be too strenuous for women, both in general and specifically when pregnant, breast-feeding, or during menstruation (arts. 5, 6, 7, 10).

Some Chinese women's groups have complained that discrimination in employment is likely to continue under these regulations, as enterprises prefer not to hire women when there are benefits that must be provided and restrictions on labor assignments. They also point out that in some localities women are forced to retire earlier than men, that housing is assigned primarily to men, and that there has been a decline in the number of female local government officials.⁷

⁷ See reports reprinted in FBIS, Sept. 7, 1988, at 28-29; FBIS Oct. 25, 1988, at 38.

Handicapped workers

The Constitution of the PRC, enacted in 1982, provides in article 45 that citizens have the right to assistance from the state when they are old, ill, or disabled. Arrangements are to be made by the state for work and education of the handicapped; social programs are to be developed to carry out this goal.

The Minister of Labor has reported to the National People's Congress that 70 per cent of the handicapped citizens in cities who can work are now employed and "some" of those in rural areas are also working. China has been considering ratifying International Labor Organization convention number 159, on vocational rehabilitation and employment of the handicapped.⁸ In addition, a social security law drafted in 1988 contains provisions beneficial to handicapped workers, according to Cui Naifu, the Minister of Civil Affairs. This law was reported in 1988 as due to go into effect in 1989, as part of the United Nations program, the "decade for the handicapped."⁹

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⁸ Xinhua news service, Aug. 28, 1987, reprinted in FBIS, Aug. 28, 1987, at 9.

⁹ Xinhua news service, Jan. 29, 1988, reprinted in FBIS, Feb. 1, 1988, at 21.