

Legal Protection of the Cultures of Ethnic Minorities in China

ZHU Zhiyi^{[a],*}

^[a]LL.M., Research Centre for Government by Law, China University of Political Science and Law, Beijing, China.

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*Corresponding author.

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Abstract

China is a unified multi-ethnic country. The cultures of ethnic minorities play a crucial role in the Chinese civilization. Various cultural heritages, including the tangible cultural heritages and the intangible cultural heritages, are the fundamental components of the cultural protection. The Chinese government has always attached great importance to protecting and developing the cultures of ethnic minorities and has made certain achievements, but there is still room for improvement, especially in the field of the legal protection. In this paper, the author focuses on the legal protection of the cultures of ethnic minorities in China. Based on the empirical analysis for some cases and theory research, he gives a review of the improvement and solution of the relative problems and puts forward his suggestions.

Key words: Cultures of ethnic minorities; Tangible; Intangible; Cultural heritages; Legal protection

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INTRODUCTION

China is a united multi-ethnic country. So far, 56 ethnic groups within the vast territory of China have been identified and recognized by the central government. The Han ethnic group has the largest population, while that of the other 55 ethnic groups is relatively small. These non-

Han ethnic groups, such as the Tibetans, the Mongolians of China, the Hui ethnic group and so on, have a combined population of about 113.79 millions, accounting for 8.49 percent of the total population of China. So they are customarily referred to as “ethnic minorities”. People of all ethnic groups in China have made important contributions to the creation of this country.

Various ethnic groups in China gave birth to their unique cultures, as well as the historical process. All of these cultures had jointly created the splendid Chinese civilization. Culture is an important characteristic of an ethnic group, to some extent, it is the power source of the survival and development of the ethnic group. The cultures of ethnic minorities as a crucial part of the Chinese civilization are intellectual wealth owned by the entire Chinese nation. As a result, constructing a harmonious society in China must rely on protecting and developing the cultures of ethnic minorities.

The Chinese government has always attached great importance to protecting the cultures of ethnic minorities. Since the implementation of the opening and reforming policy in 1980s, in order to promote the development of cultural undertakings in ethnic minorities regions, the state has increased the capital input to these areas constantly. Meanwhile, the Constitution of the People's Republic of China stipulates that the state has an obligation to respect, protect the cultures of ethnic minorities, and help them to accelerate the development of their cultural undertakings according to local characteristics and needs. On the basis of the Constitution, the state had issued a series of laws and administrative regulations concerning the protection and development of the cultures of ethnic minorities during the past 20 years, including “Law on Regional Autonomy of Ethnic Minorities” which was issued in 1984 and amended in 2001, “Regulations on Administrative Work of Ethnic Townships” and “Regulations on Ethnic Work in Urban Areas” which are promulgated in 1993, etc. The relevant legislations provide an effective legal

support for prospering and developing the cultures of ethnic minorities.

However, every bean has its black. Although the Chinese government has made certain achievements in the work of protecting the cultures of ethnic minorities, there is still room for improvement in many aspects. For example, nowadays, besides the Constitution and some basic laws and administrative regulations, the local authorities do not often carry out any special laws and regulations else concerning the protection of the cultures of ethnic minorities. In addition, the laws and policies issued by the state are not implemented fully and effectively in some ethnic minorities regions. Considering the significance of preserving the cultures of ethnic minorities and the existent problems, I plan to work from the perspective on the legal protection, and make an empirical analysis for some cases. Furthermore, I will give a preliminary discussion on the improvement and solution of the related issues.

1. THE MAIN COMPONENTS OF CULTURAL PROTECTION

What is the culture? The famous English Anthropologist, Edward Burnett Tylor, who is usually acknowledged as the originator of the cultural anthropology, proffered a scientific definition to the term “culture”. He said, “The culture is defined as: a completed system including knowledge, faith, art, law, morality, custom, and all the abilities and habitats from which a social member would acquire” (Tylor, 2005, p.1). According to Tylor’s definition, obviously the culture is a deep accumulation of human’s history. It records the past of human society—as the annual rings of trees—and reflects the common way of the lives and productions of social members. Regarding this, not only cannot we ignore the historic feature of the culture in the protection and development, but also we should pay more attention to the ancient cultural remains.

China is a country with time-honored history. The Chinese civilization, which has undergone a development of more than 5000 years, has endowed the state with extremely rich cultural heritages. Nowadays, these various cultural heritages become the fundamental component of Chinese cultures and the major object of the cultural protection.

1.1 The Tangible Cultural Heritage

1.1.1 Definition of Tangible Cultural Heritage

Cultural heritage includes tangible cultural heritage and intangible cultural heritage. The tangible cultural heritage is also referred to as the traditional concept of cultural heritage. According to the Convention for the Protection of the World Cultural and Natural Heritage which was negotiated in the general conference of the United Nations Educational, Scientific and Cultural Organization (UNESCO) meeting in 1972, the following shall be considered as the “tangible cultural heritage”:

(i) **monuments:** architectural works, works of monumental sculpture and painting, elements or structures of an archaeological nature, inscriptions, cave dwellings and combinations of features, which are of outstanding universal value from the point of view of history, art or science;

(ii) **groups of buildings:** groups of separate or connected buildings which, because of their architecture, their homogeneity or their place in the landscape, are of outstanding universal value from the point of view of history, art or science;

(iii) **sites:** works of man or the combined works of nature and man, and areas including archaeological sites which are of outstanding universal value from the historical, aesthetic, ethnological or anthropological point of view.

(<http://www.ungdo.org/en/index.asp?id=73&aid=2&nid=23&moshi=0&xname=Policies>)

1.1.2 Principles of the Protection to Tangible Cultural Heritage

Considering that deterioration or disappearance of any item of the tangible cultural heritage constitutes a great loss to the cultures of a nation or even the civilization of mankind, the state and the government should take action actively to protect the tangible cultural heritage within their territory. And in order to ensure effective protection against the destruction, the following principles must be observed:

The first one is the principle of holistic protection. It means that the conservation of the tangible cultural heritage, such as a monument, should be coordinated with preserving a setting which is not out of scale.

The second one is the principle of sustainable development. In a word, in any case the exposition of the tangible cultural heritage should presuppose no damage to its essential function.

The third one is the principle of minimum intervention. For instance, when we try to restore a certain tangible cultural heritage, we should preserve and reveal the aesthetic and historic value of it, so we must precede the restoration with an intensive study on the original material and authentic documents. Moreover, any extra work which is indispensable should be distinct from the original.

1.2 The Intangible Cultural Heritage

1.2.1 Definition of Intangible Cultural Heritage

The intangible cultural heritage refers to various representations of conventional cultures as well as cultural spaces that have been passed on through generations after generations and have a close impact on people’s lives. The concept of intangible cultural heritage evolved in the 1990s, as a counterpart to the World Heritage that focuses mainly on tangible respects of culture. In 2001, United Nations Educational, Scientific and Cultural Organization (UNESCO) made a widespread and thorough investigation among countries and non-governmental organizations (NGOs) to try to agree on a definition, and a Convention for the safeguarding of the intangible cultural heritage was adopted in 2003. The Convention defined the intangible cultural heritage as follow:

The intangible cultural heritage means the practices, representations, expressions, knowledge, skills—as well as the instruments, objects, artifacts and cultural spaces associated therewith—that communities, groups and, in some cases, individuals recognize as part of their cultural heritage. This intangible cultural heritage, transmitted from generation to generation, is constantly recreated by communities and groups in response to their environment, their interaction with nature and their history, and provides them with a sense of identity and continuity, thus promoting respect for cultural diversity and human creativity. (<http://unesdoc.unesco.org/images/0013/001325/132540e.pdf>)

Meanwhile, according to the Convention, the intangible cultural heritage is manifested in five domains: (a) oral traditions and expressions including language as a vehicle of the intangible cultural heritage; (b) performing arts (such as traditional music, dance and theatre); (c) social practices, rituals and festive events; (d) knowledge and practices concerning nature and the universe; (e) traditional craftsmanship.

1.2.2 Characteristics of Intangible Cultural Heritage

Firstly, compared with the tangible cultural heritage, a distinguishing characteristic of the intangible cultural heritage is the abstraction and immateriality. The intangible cultural heritage exists in human's mind and changes in accordance with the variation of it. So it is often related to something that cannot be perceived by the senses, such as folk traditional knowledge and practices, folk practices like festivals, poems and stories that have been spread orally among people for a long time, etc.

Secondly, another characteristic of the intangible cultural heritage is the collective inheritance. On the one hand, the intangible cultural heritage is transmitted from generation to generation and persistently recreated by communities and groups. On the other hand, the manifestations of the intangible cultural heritage are usually performed collectively because the knowledge and skills of people are usually shared and imparted within a community.

Last but not least, the most prominent characteristic of the intangible cultural heritage is that it is a "living" heritage. The intangible cultural heritage has a close contact with the special modes of people's lives and productions in a group (an ethnic group, for example), and it is mainly transmitted orally. In other words, the intangible cultural heritage is traditional and living at the same time. It is a crystallization of people's spiritual cultures.

1.2.3 Importance of the Protection to Intangible Cultural Heritage in Ethnic Minorities Regions

As a scholar on the cultural study acclaimed, "The intangible cultural heritage is the 'living fossils' of the history of mankind, because it is the mainspring of cultural diversity and the foundation of cultural continuing creativity" (Cui, 2013, pp.120-121). Obviously, the importance of protecting the intangible cultural heritage is no need for suspicion.

In ethnic minorities regions of China, the traditional cultures of an ethnic group are mainly manifested in terms of immateriality, such as the mysterious primitive religion, the ancient medical treatment for some special diseases, etc. In brief, the intangible cultural heritage plays a vital role in the cultures of ethnic minorities. However, many elements of the intangible cultural heritage in these areas are endangered, due to effects of globalization, inappropriate exploitation, and lack of effective protection. Some survey indicated that, in recent years the folk arts and traditional crafts in many ethnic minorities regions are on the verge of extinction. For example, the boat trackers of some ethnic groups lived in south seaside districts of China, liked singing labor songs when they worked in the old days. But nowadays, because of the motorization of the boats, the society does not need the boat trackers any more. Unfortunately, the labor songs of the boat trackers are facing disappearance as well. In view of the above, strengthening the protection of the intangible cultural heritage in ethnic minorities regions is imperative under the circumstances.

2. THE PRESENT SITUATION OF LEGAL PROTECTION OF THE CULTURES OF ETHNIC MINORITIES

2.1 The Present Situation of the Legal Safeguarding of Tangible Cultural Heritage in Ethnic Minorities Regions

2.1.1 Empirical Analysis: The Old Town of Lijiang in Yunnan Province

a. A brief introduction to the Old Town

The Old Town of Lijiang is located in a wide and fertile valley in the northwest of Yunnan Province, bordering the southeastern part of the Tibetan Plateau which is regarded as the "Roof of the World". This old town has a history going back more than 800 years. And it has been a habitation and a political-cultural center of the Naxi people and other local ethnic minorities for centuries. From the Yuan Dynasty (1271-1368) on, the Naxi people, as the local main residents, developed a unique social system of their own and created an all-embracing culture called "Dongba culture", including traditional architecture, clothes, language, foods, customs, handicrafts, and so on. The architecture of the old town is very different from other ancient Chinese cities. All over the town, there are many unique buildings inspired by and in harmony with nature. Moreover, owing to its the special geographical position (it is surrounded by the snow-covered Yulong Mountains), water flows everywhere in the town, the orderly system of waterways and stone bridges also becomes a outstanding scene of it. "The Old Town of Lijiang is the precious historical and cultural heritage and a treasure of the China" (Xia, 2008, p.764).

b. Changes of the Old Town in the past decade

On December 4th, 1997, the Old Town of Lijiang was declared by the UNESCO as a world cultural heritage and registered on the world heritage list. Since then, the local government has taken more responsibility and more effective measures for the development and protection of the old town, for example, “establishing the Old Town of Lijiang Preservation and Management Committee; enacting a preservation tax which is reinvested back into the preservation of the historic district; providing more financial assistance for the restoration of built heritage, and so on” (Endresen, 2004, p.7). On October 18th, 2001, in the 5th Annual Conference of “Culture Heritage Management and Tourism”, the government of the Old Town of Lijiang had won UNESCO’s praise for its cultural heritage conservation. Dr. Richard Engelhardt, the UNESCO Regional Advisor for Culture in Asia and the Pacific, considered that the Old Town of Lijiang is a relatively successful example of cultural heritage exploitation and management. He named the cultural protect model of Lijiang to “Lijiang Models of Cooperation for the Development of Sustainable Tourism in Asia and the Pacific”, and encouraged the other countries and regions to make use of the model.

However, the good outcomes are not lasting. After more than a decade, the boom of Lijiang’s tourism and the uncontrolled commercial exploitation caused a succession of negative impact on its tangible cultural heritage. For instance, according to a survey, “from 1997 to 2006, Old Town’s visitor number grew from 1,733,200 tourist arrivals to 4,600,900 arrivals, and the number of incoming visitors in 2007 reached as many as 5.31 million visitors” (Jing & Nishimura, 2008, p.17). Sharp increase of the influx of the visitors has made the old street conditions almost unmanageable in peak season particularly, and traditional activities on the streets have almost been replaced by the tourism-related ones. In July 2007, the World Heritage Committee examined the state of conservation in the Old Town of Lijiang and expressed its concern over the deteriorating condition.

c. The present situation of the legal safeguarding of the Old Town of Lijiang

In fact, several national legislations concerning the conservation and management of the culture heritage had been carried out since 2002, such as “the Law of the People’s Republic of China on the Protection of Cultural Relics” issued in October 2002, “Measures on the Protection and Management of World Cultural Heritage in China” issue in November 2006. Also, a number of statutory instruments for protecting the cultural heritage in the Old Town of Lijiang have been promulgated by Yunnan Province. In especial, the Regulation for the Protection of the Old Town of Lijiang was adopted by the Standing Committee of the People’s Congress of Yunnan Province on December 2nd, 2005. In accordance with the regulation, the Protection and Management Bureau of the Old Town of Lijiang was established in the same year.

Indeed, the legislative protective and administrative system in the old town seems to be adequate to ensure preservation of the site. Unfortunately, this is not the case. The worsening condition of the tangible culture heritage in the Old Town of Lijiang has proved it. But what is the root of this embarrassment? In my opinion, there may be two dominant causes: one is the lack of implementing and observing the laws and regulations strictly and effectively; another is the relative lag of the protective measures stipulated in the laws and regulations compared with the change of the social situations.

2.1.2 Existent Problems Concerning the Legal Safeguarding of Tangible Cultural Heritage in Ethnic Minorities Regions

No doubt, the imbalance between commercialization and protection, the vulgarization of the traditional culture of ethnic minorities, together with the destruction of local primitive setting, have formed three major impacts on the protection of the tangible cultural heritage in ethnic minorities regions. These impacts have absorbed high attention of the governments. Also, the state has taken some countermeasures to solve the problems, but the work still leaves much to be desired in many aspects.

In terms of the legal safeguarding, there are three primary existent problems. Firstly, despite the legal framework being putting into place, the implementation of these rules and regulations is less than satisfactory because of the lack of the overall plan for conservation and management or the negligence of the local government to its duties. Secondly, the scope of the legal safeguarding is not sufficiently extensive. For example, the conservation of the surroundings is not often considered in many rules at all. Thirdly, in some ethnic minorities regions, the Local lawmaking does not respect to the folkways and customs of the people of ethnic minorities completely, so as to its popularization and implementation lacking of wide support.

2.2 The Present Situation of the Legal Safeguarding of Intangible Cultural Heritage in Ethnic Minorities Regions

2.2.1 Empirical Analysis: The Handicraft of Fish-Skin Clothes of Hezhe People

a. A brief introduction to the traditional handicraft

The Hezhe people residing at the confluent point of three rivers—Heilongjiang, Songhuajiang and Wusulijiang—in Heilongjiang Province, is the only ethnic group in North China that lives by hunting and fishing. Although this ethnic group makes up one of Chinese smallest ethnic minorities (it only has a population of over 5300), the Hezhe people has also created a unique culture of theirs. The fish-skin clothing is representative of Hezhe culture. The Hezhe women are very skilled in making beautiful clothes out of fish skins and the ethnic group has a history of over 1,000 years in making various fish-skin clothing. An investigation showed that “several

minority ethnic groups historically used fish skins in making various goods, but only the Hezhe people still use fish skins today” (http://www.chinaculture.org/gb/en_why/2006-10/31/content_88043.htm).

The process of making fish-skin clothing is very interesting. As the material revealed, the procedure is as follows:

First, the full skin of a silver carp or salmon is removed and dried. Then, the scales are eliminated and the skin is hammered down with a wooden mallet to make it as soft as cotton cloth. The fish skin is then sewn together with threads made of fish skin and decorated before finally being fashioned into clothes. (http://www.chinaculture.org/gb/en_why/2006-10/31/content_88043.htm)

b. The present situation of the handicraft of fish-skin clothes of Hezhe people

However, nowadays the handicraft of making fish-skin clothing as an old trade is in danger of extinction for a variety of reasons. First of all, with the improvement of living conditions and the impact of external cultures, the lifestyle of the Hezhe people has changed a lot. Nowadays, they no longer wear the traditional fish-skin clothes instead of the clothes made from cotton or linen. In addition, the making process of this traditional handicraft is so complicated and skilled that it is difficult to accomplish for any fabricants without specialized training. And this will hinder the inheritance of the trade to a certain extent. Furthermore, the change of the local natural resources and environment is also a reason that we shall never forget it. In the past, most of the processed fish skins are from salmon which is special to the Heilongjiang River. But this fish is gradually diminishing in quantity because of the pollution and overfishing in recent years. Results from all the reasons above, the famous fish-skin handicrafts of Hezhe people have almost been disappeared. Luckily, the local government and some people with foresight have tried to rescue the old trade before its extinction. In June 2006, the traditional handicraft of fish-skin clothing was among the first listed of the intangible cultural heritages of China.

2.2.2 Existent Problems Concerning the Legal Safeguarding of Intangible Cultural Heritage in Ethnic Minorities Regions

As indicated in the above case of the Hezhe people, the present situation of the conservation of the intangible cultural heritage in ethnic minorities regions is far from optimistic. Especially, there are still a few problems on the legal protection of the intangible cultural heritage which are not allowed to be neglected. The first existent problem is the incompleteness of the legislative system. For instance, the local government has never enacted any special rules concerning the protecting of the traditional handicraft in the compact communities of the Hezhe ethnic group. The second existent problem is the flimsy legal protective consciousness of the people living in the ethnic minorities regions. As the Professor Tian said, “The

intangible cultural heritage is one manifestation of implicit culture; as a result, the unlawful infringements for it are usually ignored by the owners of cultural rights owing to the concealment” (Tian, 2008, p.91). This phenomenon appears among the members of ethnic minorities much more frequently, because their enthusiasm for learning and using the laws is very low. The third existent problem is the bad executing and supervising of the national laws and regulations in the ethnic minorities regions. In August 2004, the China formally acceded to the Convention for the safeguarding of the intangible cultural heritage. And then, the central government formulated a series of laws (such as “Intangible Cultural Heritage Law of the People’s Republic of China” issued in February 2011) and regulations for the conservation of the intangible cultural heritage. However, these unified rules enacted by the state are not functioning adequately in some ethnic minorities regions. The competent authorities at a higher level do not perform their duties of supervision fully would be a direct reason.

3. COUNTERMEASURES TO DEAL WITH THE PROBLEMS OF THE LEGAL PROTECTION OF THE CULTURES OF ETHNIC MINORITY

Based on the above analysis, I venture to give three suggestions for solving the existent problems as follow:

3.1 Improving Legislation on the Safeguarding of the Culture of Ethnic Minorities

On the one hand, it is very important and necessary to perfect the current system of legislation. Some scholars used to consider that “preserving the cultural heritage is the duty to the state, so the conservation mainly relies on the unitary laws and regulations formulated by the National People’s Congress and the central government” (Niu, 2007, pp.43-44). But now, this view is being doubted by more and more scholars. “The local lawmaking should play a greater role in the protection of the cultural heritage in ethnic minorities regions, because the legislators may be acquainted with more about what the local people truly require” (Bai, 2009, pp.91-93). I am in favor of the second viewpoint. Obviously, the local lawmaking is crucial to protect and manage the cultural heritages in accordance with the local concrete conditions, especially in the conservation of the intangible cultural heritage, so we should attach importance to it as well as the national unitary legislations.

On the other hand, the scope and content of the legal protection is in need of further enriching and improving. Further expansion is required in particular in terms of setting a broad vision for the protection of both tangible and intangible cultural heritages with the development of the society. Meanwhile, that is helpful to coordinate the enforcement of different rules.

3.2 Guaranteeing Cultural Rights of Minorities Through the System of Regional Autonomy for Ethnic Minorities

Regional autonomy for ethnic minorities is a basic policy China adopts to handle problems among its ethnic groups and a fundamental political system for the state. In general, regional autonomy for ethnic minorities in China means that, “under the unified leadership of the state, regional autonomy is practiced in areas where people of ethnic minorities live in compact communities. In these areas, organs of self-government are established for the exercise of autonomy” (Information Office of the State Council of the PRC, 2005). The implementation of this policy is vital to enhancing the relationship of equality, unity and mutual assistance among different ethnic groups, and to accelerating the development of areas where regional autonomy is practiced and promoting their progress. Moreover, this system is the important guarantee for the members of ethnic minorities to exercise their cultural rights. As the article 119 of the Constitution stipulated, “The organs of self-government of the regional autonomous areas independently administer educational, scientific, cultural, public health and physical culture affairs in their respective areas, sort out and protect the cultural heritages of ethnic group and work for the development and prosperity of their cultures.” Therefore, the governments in ethnic minorities regions should implement this policy strictly according to the Constitution and the Law on Regional Autonomy of Ethnic Minorities, and create favorable conditions actively for the local people to realize their cultural rights.

3.3 Strengthening the Administrative Protection of the Cultures of Ethnic Minorities

First, the governments at all levels should continue to increase capital investments for protecting and managing the traditional cultures of ethnic minorities. In particular, more supports shall be given for the conservation of the intangible cultural heritages (such as the special spoken and written languages, performing arts, and traditional handicrafts) to ensure their inheritance. Second, the governments should further improve the administrative protective system of the cultures for ethnic minorities through a variety of means. For example, the governments should carry out censuses of the cultural heritages in ethnic minorities regions actively and establish some databases, archives, and museums for preserving the endangered cultural heritages. Finally, the governments should perfect the administrative regulations on the safeguarding of the cultures of ethnic minorities and work out some detailed and targeted conservation master plans to avoid unnecessary imbalance between cultural exploitation and heritage conservation.

CONCLUSION

As a vital part of the Chinese civilization, the full and effective protection of the cultures of ethnic minorities is a prerequisite of increasing the cohesion of Chinese various ethnic groups and an assurance of constructing a harmonious society in China. The state has always attached great importance to protecting the cultures of ethnic minorities and has made some achievements. But there are still some works remained to be improved further and some existent problems required to be solved, especially in the field of the legal protection. Therefore, based on the pervious analysis, it is of great practical significance to strengthen the legal protection of the cultures of ethnic minorities from many aspects—including the legislation and some institutionalized or administrative measures. As far as I am concerned, some improvements for this must be enforced today.

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