On the Protection of the Right to Higher Education of Ethnic Groups in China

—— The Implementation of Preferential Policies Similar to Affirmative Action in America

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Ⅰ. Brief introduction to affirmative action

1. The historical background of affirmative action

On June 28, 2007, Chief Justice Roberts announced the judgment of the Federal Supreme Court and delivered the opinion on the case of *Parents Involved in Community Schools v. Seattle School District No. 1* and the case of *Crystal D Meredith, Custodial Parent and Next Friend of Joshua Ryan McDonald v. Jefferson county Board of Education*. According to the judgment of the Court, the school districts in these cases voluntarily adopted student assignment plans that relied upon race to determine which public schools certain children might attend. In the two cases, the Seattle school district classified children as white and nonwhite while the Jefferson County school district classified students as black or other. In Seattle, this racial classification was used to allocate slots in oversubscribed high schools. In Jefferson county, it was used to make certain elementary school assignments and to rule on transfer requests. In each case, the school district relied upon an individual student's race in assigning that student to a particular school so that the racial balance at the school fell within a predetermined range based on the racial composition of the school district as a whole. Parents of students who denied the assignment to a particular school under these plans solely because of their race brought suit, contending that allocating children to different public schools on the basis of race violated the *Fourteenth Amendment* guarantee of equal protection(1). Although the Courts of Appeals upheld the plans of the school districts, the Federal Supreme Court granted certiorari and reversed. By a marginal vote of five to four, it ruled that the school choice plans in Seattle and Jefferson county which aimed at maintaining the diversity of the students were unconstitutional.

(1) Cite as 551 U.S (2007) Opinion of Roberts, C. J. P1-2

Both of the cases have the practical importance as well as the doctrinal importance because they are involved the intersection of two lines of prior decisions: those involving school desegregation and those involving affirmative action(2). As to the former, the Court has endorsed integration in the school as a remedy for the past school segregation for the last three decades. Any voluntary efforts to achieve integration have been explicitly endorsed by the Court. As to the latter, the Court has made it plain that any racial classification, for any purpose, whether benign or malevolent, would trigger strict scrutiny. Although some people have doubted that voluntary school integration is exactly like affirmative action, they became concerned about its significance again.

The term "affirmative action" refers to the policies for a historically socio-politically non-dominant group (typically, minority men or women of all racial groups), which intend to promote its access to education or employment. Motivation for affirmative action is a desire to redress negative effects of actual or perceived, past or current discrimination that is regarded as unfair by relevant legislative bodies. It also serves to encourage pubic institutions such as universities, hospitals and police forces to be more representative of the populations they serve(3). The actual phrase "affirmative action" was first used in President John F. Kennedy's 1961 Executive Order 10925 which required federal contractors to "take affirmative action to ensure that applicants were employed, and that employees were treated during employment, without regard to their race, creed, color, or national origin". In 1964, the Civil Rights Act was issued, which forbade racial discrimination in public accommodations and race and sex discrimination in employment. It also made something called "affirmative action" a remedy which the federal courts could impose on violators of the Act(4). In 1965, President Lyndon B. Johnson argued that the rapidly proceeding elimination of formal legal discrimination against African-American was insufficient: Freedom is not enough....You do not take a person,

(2) Cited from James E. Ryan's Address to the Japanese Legal Society on Voluntary Integration, Affirmative Action, and the Roberts Court, September 28, 2008, Waseda University, Tokyo, Japan

(3) Affirmative action-Wikipedia, the free encyclopedia. http:// en.wikipedia.org / wiki / Affirmative-action

(4) Affirmative Action (Stanford Encyclopedia of Philosophy) http:// plato.stanford.edu / entries / affirmative-action

who, for years, has been hobbled by chains and liberate him, bring him up to the starting line of a race and then say, "you are free to compete with all the others," and still justly believe that you have been completely fair. Thus it is not enough just to open the gates of opportunity(5). In the same year, he issued Executive Order 11246 which required federal contractors to take "affirmative action" to make sure they were not discriminating in employment. The order of 1965 was of great importance because it assigned the job of specifying rules of implementation to the Secretary of Labor. With the Order, the Department of Labor could indirectly pressure the construction industry which could supply the job opportunities for the minorities. In 1967, President Johnson expanded the Executive Order to include affirmative action requirements to benefit women. The government initiative made affirmative action a public concern and stirred some controversy soon. In the autumn of 1972, it became concerned by the public again when the Secretary of Labor's Revised Order No. 4, which fully implemented the Executive Order. With the directives from the Department of Health, Education, and Welfare, some changes became inevitable in a lot of fields. The Revised Order No. 4 imposed goals and timetables on all large and small institutions that had business with the government. These institutions should be more representative of the populations they served, which included hospitals, banks, steel mills, printers, airlines and universities.

2. The significance and controversy on affirmative action

The implementation of affirmative action promoted the development of education for minority groups in the United States of America. Its motivation was achieved by the following solutions. The first solution was to provide the financial aid for the students of minority groups so as to enable them to complete the study in universities. As to the financial aid, it embraced two means. On the one hand, the federal government provided a large amount of money to encourage the universities to carry out preferential policies in enrolling the students of minority groups. All the utilization of the particular fund was under strict supervision. The special fund would be deprived unless

(5) Johnson, Commencement Address at Howard University, *To fulfill These Rights* (June 4), in 1965 Pres Pub Papers 635,636

the universities were efficient and effective in enrolling the students of minority groups. On the other hand, the government provided scholarships, including both the financial need based aid and non-financial-need based aid to help the students complete their study in public or private universities. The second solution was to provide supplementary education for the students of minority groups so as to improve their abilities to study. Owing to the unfavorable economic status, most of the students of minority groups were lack of adequate ability to study in the universities. With the supplementary education, these students could catch up with other students and performed well in class so as to graduate eligibly. The third solution was the most common and effective one. Through targeted recruitment programs aimed at applicants from socio-politically disadvantaged groups, the significant motivation of affirmative action was achieved as expected. Sometimes, it involved giving preferential treatment to these groups[6]. Take the universities as an example, in the 1970s, the universities in the United States put into effect schemes to increase the presence of minority groups within the student body. At that time, only a small number of African-American and Hispanic high school students possessed test scores and grades good enough to make them eligible for the admission of the very selective universities. In order to increase the representation of the minority groups, these universities chose to give preferential treatment rather than retain their admissions criteria unchanged. A case in point was the Medical School of the University of California at Davis because it reserved sixteen of the one hundred slots in its entering classes for the students of minority groups. Even with the scores lower than the white applicants, the students of minority groups would be admitted in priority by the university. As to the law schools, the racial preferences of affirmative action have been central to maintaining racial diversity.

The preferential policies on the enrollment of the students of minority groups based on affirmative action aroused a lot of controversy in the society. The proponents of affirmative action held that the university slots for women and minorities was a form of compensation for their past exclusion from the workplace and academy. Working as a kind of justice, affirmative action has

(6) Affirmative action-Wikipedia, the free encyclopedia. http:// en.wikipedia.org / wiki / Affirmative-action

been a means to address past discrimination or to enhance representation of racial, ethnic, gender, or another diverse group(7). As to the universities, affirmative action is also essential since the institutions of higher education are inherently biased towards whites. To the opponents, the preferential programs of affirmative action resulted in the reverse discrimination against the whites though they sought to eliminate the discrimination in the society. Owing to the preferential policies, some unqualified applicants of minority groups were admitted in highly demanding educational institutions while the white applicants who were qualified enough were denied unfairly. The implementation caused reverse discrimination against the whites while provided a compensatory justice for the students of minority groups. The controversy turned to be a focus in the society when Allan Bakke, a white applicant, was denied admission by the university although his test scores and grades were better than most or all of those admitted through the preferential program in 1973. He brought the lawsuit and won when the Supreme Court rendered its decision in 1978 that the Medical School's policy was unconstitutional and voted that Bakke must be admitted by the university. Considering the case, it was convinced by the opponents of affirmative action that race-conscious policies violated the Equal Protection Clause and neither race nor ethnic criteria could ever be used to determine the distribution of government benefits and burdens(8). They argued that affirmative action had side-effects and failed to achieve its goals. It increased racial tension and benefited only the minorities of middle- and upper-class at the expense of the poor whites of lower social class.

More than forty years later, the ebb and flow of public controversy surrounding affirmative action continued in America. At present, the heated debate is turning on some positive questions. Is affirmative action to delete positive to the advancement of the minorities in the United States of America? Have the conditions for the minorities to receive higher education been

(7) Richardson, L. Anita. “What is the Constitutional Status of Affirmative Action?: Reading Tea Leaves.” Affirmative Action: a Dialogue on Race, Gender, Equality and Law in America ⅩⅢ. 2 (1998). 16 November 2006
http:// www.abanet.org / pbliced / focue / spr98const.html

(8) Richard A. Posner, *The DeFunis Case and the Constitutionality of Preferential Treatment of Racial Minorities*, 1974 S Ct Rev 1, 25

improved greatly with the preferential policies? With the implementation of affirmative action, the higher education of minority groups has been advancing greatly in America. For instance, in 1965, the African-American students ranging from 14 to 34 years old amounted to 0.274 million, taking up only 4.8 percent of the total number of college students in America. In 1998, the students of African-American increased to 1.64 million, taking up 12.8 percent of the total number of college students in America. The proportion of the African-American students is higher than the proportion of the African-Americans in the United States of America by 0.1 percent. The enrollment of the students of ethnic groups by the law school in America may be more persuasive. According to the estimate of Jesse Rothstein and Albert H. Yoon, nearly two-thirds of black law students would not have attended the law school at all without affirmative action. Preferences are even more important at the most selective law schools, where black enrollment would decline by 90 percent under race-blind admissions[9]. Considering the estimate, racial diversity in universities has been achieved and the equal right for minority groups to receive higher education has been guaranteed in America since affirmative action was put forward and implemented.

Ⅱ. The protection of the right to higher education of ethnic groups in China

Apart from the United States of America, some countries in which the conditions of minority groups are draggling far behind the other social groups also carry out the polices similar to affirmative action. In Canada, the Canadian Employment Equity Act requires employers in federally-regulated industries to give preferential treatment to four designated groups: women, people with disabilities, aboriginal people and visible minorities. Some provinces and territories also have policies of affirmative action. For instance, aboriginal people are given preference for jobs and education in Northwest Territories in the north of Canada. In Finland, certain university education programs, including legal and medical education, are implemented for minority groups. In

(9) Jesse Rothstein and Albert H. Yoon. Affirmative Action in Law School Admissions: What Do Racial Preferences Do? 2008 UNIV. L. CHI. REV. 652

accordance with these programs, there are quotas for Swedish-speaking applicants for the admission of universities. In New Zealand, individuals of Maori or other Polynesian descents are often afforded preferential access to university courses and scholarships(10).

1. The introduction to the historical and present situation of ethnic groups in China

China is a unitary multi-national state with a population of 1.265 billion. Among them, Han nationality amounts to 1.159 billion, taking up 91.59 percent of the overall population while the fifty-five ethnic groups amount to 0.106 billion, taking up 8.41 percent of the overall population(11). Among them, there are fifteen ethnic groups with a population over one million while a few ethnic groups have a small population of several thousands. In accordance with the Law of the People's Republic of China on Regional National Autonomy, the ethnic groups practice regional autonomy in areas where they live in concentrated communities and set up organs of self-government for the exercise of the power of autonomy. In China, national autonomous areas are classified into autonomous regions, autonomous prefectures and autonomous counties (Qi in Chinese). At present, there are five autonomous regions, thirty autonomous prefectures and one hundred and twenty autonomous counties (Qi in Chinese) all over the country, where one or several ethnic groups live in concentrated communities. In the areas where ethnic groups are scattered, more than twelve thousands autonomous communes are set up. These autonomous areas cover an area of 6.47 million square kilometers, which takes up 67.4 percent of the total area of China. When the People's Republic of China was founded in 1949, most of ethnic groups struggled in the hard natural environment and lived in poverty. Some of them who lived in the mountainous regions in Yunnan and Guizhou provinces were even in a stage of primitive society. The social, economic, and cultural development of these ethnic groups were getting far behind that of Han nationality. With the low level of productivity, the ethnic groups could not provide sufficient necessities of life for themselves, not even to mention the opportunity to receive education

(10) Affirmative Action-Wikipedia, the free encyclopedia P2 and P3. http:// en.wikipedia.org / wiki / Affirmative-action

(11) The Report on the Fifth National Census of the People's Republic of China. http:// www.china-embassy.or.jp / chn / zgbk / rkjgc / t62477htm.

systematically. Owing to the lack of necessary education, the illiteracy rate reached more than 90 percent of ethnic groups and only the noblemen of them had access to education. After the founding of the People's Republic of China, the education of ethnic groups has been paid much attention by the governments at all levels. By means of education, more and more ethnic groups could cultivate their own talents and develop culture, language, economy to some extent so that the gap between ethnic groups and Han nationality could be reduced gradually.

Aiming at promoting the development of education of ethnic groups, some preferential policies for ethnic groups have been carried out all over the country. More than fifty years later, the education of ethnic groups in China has been improved greatly, especially the higher education of ethnic groups. According to the estimate in 1950, there were only four institutions of higher educations in the areas where ethnic groups lived and the total number of the college students of ethnic groups amounted to 1,280 all over the country. At present, there are one hundred thousands primary schools, twelve thousands middle schools and more than one hundred universities and colleges in the autonomous areas. The college students of ethnic groups amount to more than one million, which take up six percent of the overall college students in the institutions of higher education. Inner Mongolia Autonomous Region is one of the five autonomous regions with Mongolians as the main body of the population. In 1947, there were only four middle schools and three hundred-seventy-seven primary schools and no institutions of higher education for ethnic groups. The illiteracy rate of the population amounted to more than ninety percent. At present, there are thirty-three institutions of higher education and the students of ethnic groups amount to more than two hundred thousands. In Tibet, there are several institutions of higher education, too. The Tibetan students have access to higher education as the students of Han nationality and the ethnic groups who live in the developed areas.

2. The legal protection of the right to education of ethnic groups in China

(1) The provisions of the Constitution and the laws concerned

The education of ethnic groups is still confronted with difficulties and challenges as a result of historical and economic reasons. For instance, the insufficiency of teachers and educational resources in these areas has made the

students unqualified and lack of ability to compete with the students in the relatively advanced areas in east and south of China where economy is advancing. It is not easy for the students of ethnic groups to pass the entrance examination to receive higher education as their counterparts of Han nationality in the areas where economy is prosperous. They are lack of the equal opportunity to receive higher education and benefit from it to achieve their goals.

As to education, the pursuit of justice is undoubtedly a fundamental goal for all nations in the world. The core of educational justice is the equality for the educational opportunities. As one of the fundamental goal of modern education, the equality for the educational opportunities has a distinguishable orientation for merits, to improve the conditions of the social vulnerable groups who have unfavorable competitive abilities. In other words, the improvement of the educational conditions for the vulnerable groups is essential to the development of the education in a society and to the final realization of educational equality as well. At present, the vulnerable groups of the society embrace the individuals with low income, the women, the disabled, and ethnic groups in China. No one denies the effect of the vulnerable groups because of its lasting restricts to the overall social development. That is why the nations have carried out measures to improve their conditions. Although the conditions of these vulnerable groups have been improved to some extent, they are still confronted with a lot of challenges, such as poverty, low social status, lack of opportunity to success, etc. To most individuals of the vulnerable groups, the access to higher education has already become an important means to improve their economic situation and to acquire the ideal social status.

To meet the demand of ethnic groups and their individuals for the equal opportunity for higher education and get rid of the disparity of the development of all nationalities, both the economic solutions and the legal protection have been carried out in China during the past more than fifty years.

As to the economic solutions, the central government has carried out the policies as follows. One is to increase the investment in education in the areas where some ethnic groups live in concentrated communities, including the five autonomous regions, thirty autonomous prefectures and one hundred and twenty autonomous counties (Qi in Chinese) and other places where ethnic groups are scattered. The allocated funds have been spent in setting up schools,

purchasing educational equipment, training the teacher of ethnic groups, publishing textbooks in the languages of ethnic groups, and the promotion of bilingual education for the students of ethnic groups. The other one is to promote the diversity of the subjects for investment and educational forms, such as the permission to open private schools and the support for the education with information technology or the long-distance education for the ethnic groups living in mountainous areas, pasturing areas and rural areas.

As to the legal protection, the right to equally receive education of all nationalities is explicitly protected in the Constitution of the People's Republic of China and other laws concerned. In the preamble of the Constitution, it is prescribed that the People's Republic of China is a unitary multi-national state created jointly by the people of all its nationalities. Socialist relations of equality, unity and mutual assistance have been established among the nationalities and will continue to be strengthened. In the struggle to safeguard the unity of the nationalities, it is necessary to combat big-nation chauvinism, mainly Han chauvinism, and to combat local national chauvinism. The state will do its utmost to promote the common prosperity of all the nationalities. In Article 46 of the Constitution, it is prescribed that citizens of the People's Republic of China have the duty as well as the right to receive education. The state promotes the all-round development of children and young people, morally, intellectually and physically.

Apart from the Constitution, the Law of the People's Republic of China on Regional National Autonomy, which is the basic law for the implementation of the system of regional national autonomy prescribed in the Constitution, plays an important role in protecting the right to receive education of ethnic groups, too. In Article 71 of the Law, it is prescribed that the state shall increase its input to the education in national autonomous areas and take special measures to help them speed up the popularization of nine-year compulsory education and develop other educational undertakings, in order to raise the scientific and cultural levels of the people of local nationalities. In this article, it is also prescribed that the state shall set up institutes of nationalities and, in other institutions of higher education, nationality-oriented classes and preparatory classes that exclusively or mainly enroll students from minority nationalities. Preferred enrollment and preferred assignment of jobs may also be introduced. In enrollment, institutions of higher education and secondary technical schools

shall appropriately set lower standards and requirements for the admission of students from minority nationalities, and special consideration shall be given to the admission of students from minority nationalities with thin populations. People's governments at various levels and schools shall take various measures to help the minority nationality students from families in financial difficulties to accomplish their schooling.

In addition, six laws concerning education have been formulated to protect the right to receive education of all nationalities. They are Education Law of the People's Republic of China, Higher Education Law of the People's Republic of China, Compulsory Education Law of the People's Republic of China, Vocational Education Law of the People's Republic of China, Teachers Law of the People's Republic of China, and Regulations of the People's Republic of China on Academic Degrees.

In Article 9 of the Education Law of the People's Republic of China, it is prescribed that citizens of the People's Republic of China shall have the right and obligation to receive education. All citizens, regardless of ethnic group, race, sex, occupation, property status or religious belief, shall enjoy equal opportunities for education according to law.

In Article 8 of the Higher Education Law of the People's Republic of China, it is prescribed that the state, in light of the characteristics and needs of the ethnic groups, assists and supports the development of higher education in regions inhabited by ethnic peoples for the purpose of training senior specialists among them. In Article 9 of the law, it is prescribed that citizens shall, in accordance with law, enjoy the right to receive higher education and the state takes measures to enable students who come from among ethnic groups and students who have financial difficulties to receive higher education.

In Article 4 of the Compulsory Educational Law of the People's Republic of China, it is prescribed that all children and adolescents who have the nationality of the People's Republic of China and have reached the school age shall have equal right and have the obligation to receive compulsory education, regardless of the gender, nationality, race, status of family property, religion, belief, etc.

In Article 5 of the Vocational Education Law of the People's Republic of China, it is prescribed that citizens shall have the right to receive vocational education according to law. In Article 7, it is prescribed that the state adopts measures to develop vocational education in rural areas and provides support

and assistance to areas inhabited by minority nationalities and outlying and poverty-stricken areas in developing vocational education.

In Article 21 of the Teachers Law of the People's Republic of China, it is prescribed that people's government at various levels shall adopt measures to cultivate and train teachers for regions inhabited by national minorities and for outlying and poverty-stricken areas.

(2) The preferential policies implemented in China

The related provisions in the laws mentioned above constitute the legal protective system for the right to receive education by all ethnic groups in China. Based on these laws, the State Council, the State Ethnic Affair Commission and the Ministry of Education have issued a series of documents to promote the realization of education equality for ethnic groups. Some preferential policies similar to affirmative action have been set up and implemented to promote the advancement of education, especially the higher education of ethnic groups. To be concrete, the preferential policies embrace the followings. Firstly, the government provides scholarship and stipend for the students of ethnic groups all over the country. Before 1980s, the students of ethnic groups needed not pay tuition fee at all and all of them were entitled to the financial aid more than that of the students of Han nationality. In September, 1987, the system of scholarship and loan for students was launched in the institutions of higher education in China. The scholarships were divided into three types, named as the scholarship for excellent students, the scholarship of specialty and the scholarship of orientation. All of the students who are enrolled by the universities in the autonomous areas shall be entitled to the scholarship of specialty while the students of Han nationality compete for the scholarship. For instance, all of the students of Inner Mongolia University who are taught in Mongolian are entitled to the scholarship of specialty. In addition, the students of ethnic groups shall be provided with the stipends and loans in priority. These preferential treatments are positive in guaranteeing the students of ethnic groups to accomplish their study smoothly. Secondly, the scores for passing the college entrance examination are lowered for the students of ethnic groups. This preferential policy aims at increasing the opportunities for the students of ethnic groups to study in the universities so as to guarantee their right to higher education equally. As to the history of this concrete

preferential treatment, it originated from the regulations set up shortly after the founding of the People's Republic of China. In 1950, it was prescribed that the students of ethnic groups were entitled to the admission even with relatively lower scores in the first regulation concerning the enrollment of the students for institutions of higher education. From 1953 to 1961, the provision was revised as the following one that "the students of ethnic groups should have the priority to be enrolled when they have the scores as same as that of the students of Han nationality". In 1962, the preferential treatment for the admission of the students of ethnic groups was emphasized again at the meeting on the work of ethnic groups held by the central government. In August, 1962, the Ministry of Education and the State Ethnic Affairs Committee jointly issued *The Notice on the Preferential Enrollment of the Students of Ethnic Groups for Higher Educational Institutions.* In the notice, it was prescribed specifically as follows: one was that the students of ethnic groups should be enrolled preferentially with the same scores when they applied for the national key universities and colleges as well as the other common universities and colleges; the other one was that the students of ethnic groups should be granted more preferential treatment when they applied for the universities and colleges within their own autonomous regions and they were entitled to the preferential treatment as long as they got the minimum scores for the enrollment of common universities and colleges defined by the Ministry of Education. In the following more than ten years, the admission of the students of ethnic groups by lowering the scores appropriately had been acted on all over the country. Since 1978, the policy that the minimum admission scores can be lowered appropriately for the students of ethnic groups in border areas has been implemented. In 1980, it was emphasized in *The Regulation on the Enrollment of Universities and Colleges* issued by the Ministry of Education as follows: some national key universities should set up classes for the students of ethnic groups living in concentrated communities in the border areas, mountainous areas and pasturing areas by lowering the admission scores appropriately; the other common universities and colleges should appropriately lower the admission scores for enrolling the students mentioned above; the students of ethnic groups who are scattered in many parts of the country should have the priority to be enrolled under the same conditions with the students of Han nationality. In 2004, in accordance with *The Regulation on the 2004's Enrollment for the Universities and Colleges*

issued by the Ministry of Education, the preferential policies concerning the admission of the students of ethnic groups were adjusted and implemented in all provinces. In Shandong Province, the students of ethnic groups were entitled to the access to the admission with the scores lower than the defined entrance scores by 10 points. In Shaanxi Province, the standard of the preferential treatment was defined that the students of ethnic groups were entitled to the access to the admission of the classes of ethnic groups set up specifically with the scores lower than the defined entrance scores by no less than 80 points. In Guangdong Province, the preferential treatment mentioned above for the students of ethnic groups was also implemented effectively. In some autonomous areas, the preferential treatment for the students of ethnic groups is effectuated by means of raising the scores of the examinees rather than lowering the entrance scores for the students of ethnic group. For instance, the students of ethnic groups are entitled to preferential treatment that the final scores of their college entrance examination are to be raised by 10 points. In the autonomous areas of Hunan and Hubei provinces, the preferential treatment is also implemented so as to promote the admission of the students of ethnic groups. With these preferential policies, the students of ethnic groups are not only entitled to the equal right to be enrolled, but also given priority in admission. They can take part in the unitary entrance examination held every year, choose their ideal universities and colleges, and be required with the scores as same as the students of Han nationality. Compared with the students of Han nationality, the students of ethnic groups who live in border areas, mountainous areas, pasturing areas and the areas where some ethnic groups live in concentrated communities, are entitled to the preferential treatment because their final scores shall be raised by no more than 20 points. In Tibet, the scores of the Tibetan students are lowered by more than 150 points for their preferential admission by the universities and colleges. Since 1999, the number of examinees in China has been increasing by more than 0.7 million every year. In 2008, more than ten million students take part in the college entrance examination all over the country. The competition for admission has been very fierce all the time. Therefore, the scores lowered by 10 points on the average for the students of ethnic groups or the scores raised by 10 points are undoubtedly beneficiary for them to be enrolled by the universities and colleges. Since 1997, the number of the students of ethnic groups in the

institutions of higher education has been increasing by more than fifty thousands every year. With the preferential policies on admission, the students of ethnic groups attain the opportunity in receiving higher education equally all over the country.

In order to cultivate the talents of ethnic groups in the institutions of higher education, the preferential policy on the admission of postgraduates is also implemented in China. Owing to the historical and economic reasons, most of the institutions of higher education are located in the eastern and southern part of China. The teachers of high quality and abundant educational resources have made them attractive to the students who take part in the unitary postgraduate entrance examination. Owing to this, the administrative regions of China are divided into three groups in order to guarantee the equal opportunity for the students of ethnic groups in admission. The first group is composed of fifteen developed provinces and three municipalities directly ruled under the Central Government, such as Beijing, Tianjin, Hebei, Shanxi, Liaoning, and Shanghai, etc. The second group includes Chongqing, Sichuan, and Shaanxi, which lie in the middle of China. The third group embraces ten provinces and autonomous regions, such as Inner Mongolia, Guangxi, Guizhou, Yunnan, Tibet, Qinghai and Xinjiang where ethnic groups live in concentrated communities. To the examinees who apply for the universities and colleges which are located in the provinces and autonomous areas of the second and third group, the preferential policy is carried out. The scores for admission by the universities and colleges in the second groups and the third group shall be lowered by 5 points and 10 points respectively. As to the undergraduate examinees who apply for the universities and colleges in the areas of the second and third groups as well as the examinees who are working in the five autonomous regions, thirty autonomous prefectures and one hundred and twenty autonomous counties (Qi in Chinese) are entitled to the preferential treatment that their admission scores shall be lowered by 30 points on the average. As to the specialty of law, the admission scores for the examinees of ethnic groups are lower than that of students of Han nationality by 60 points on the average.

Year	2000	2001	2002	2003	2004	2005	2006	2007
Number of enrollment (thousand)	65	91	159	196	275	325	403	424
Number of examinees (thousand)	392	460	624	797	945	1172	1271	1282
Proportion of enrollment (percent)	16.6	19.8	25.5	24.6	29.1	27.7	31.4	33.1

In China, the competition for being a postgraduate student is much fiercer than being an undergraduate student. According to the table above, the number of examinees for the unitary postgraduate entrance examination is increased by 110 thousands every year while the rate of admission is raised slowly from 2000 to 2007. However, with the preferential policy, the students of ethnic groups have attained more opportunities to be enrolled by the universities and colleges. Take the enrollment of the postgraduates in Inner Mongolia University as an example, the enrollment of postgraduates examinees who applied for Inner Mongolia University had been increasing from 276 to 937 from 2001 to 2007, with an average increase of 100 examinees every year. The enrollment of the examinees of ethnic groups had been increasing from 58 to 225, with an average increase of 24 applicants every year. During these years, the overall enrollment amounted to 4509 while the students of ethnic groups amounted to 971.

3. The development of the higher education of ethnic groups in China

These preferential policies meet the demand of ethnic groups in pursuit of educational equality. More and more students of ethnic groups who live in the underdeveloped areas have benefited from them and become the useful talents for their own ethnic group. After graduation, most of them choose to work in the autonomous areas and have made much contribution to the local development and prosperity. The unique language, arts and culture of ethnic groups have been inherited and promoted to some extent.

Ⅲ. The remaining issues on the protection of the right to higher education of ethnic groups

During the past fifty years, the preferential policies have played an important role in improving the higher education of ethnic groups. However, a lot of controversy surrounding them continued. Opponents of these preferential policies asserted that the lowering or raising the scores of the students of ethnic groups caused practical unfairness to the students of Han Nationality. The students of Han nationality were deprived of the equal opportunity to receive higher education as a result of the guarantee of the right to higher education of

the students of ethnic groups. To be concrete, the students of Han nationality who live in the autonomous areas where the preferential policies are implemented are disadvantageous in comparison with the students of ethnic groups. In these areas, the students are relatively unqualified owing to the unfavorable conditions, such as the lack of teachers, the insufficiency of educational resources and useful information. Both the students of Han nationality and the students of ethnic groups have to compete with the students who live in the developed areas in the unitary entrance examination. The scores of the students of Han nationality in the autonomous areas are not as high as that of the students who live in the developed areas. It is not easy for them to pass the entrance examination and be enrolled by the universities and colleges. In comparison, the students of ethnic groups in these areas are entitled to the preferential treatment and their opportunity to pass the entrance examination and be enrolled is guaranteed. To the students of Han nationality who live in the developed areas, the preferential treatment of the students of ethnic groups in these areas is unfair, too. The students of ethnic groups enjoy the favorable educational resources and become qualified as same as the students of Han nationality. However, the students of ethnic groups are entitled to the preferential treatment by lowering or raising the scores for admission. In the same educational conditions and with the same ability, the students of all nationalities should be selected in accordance with the same entrance scores. With the preferential treatment, the students of ethnic groups would attain more opportunities to be enrolled by the ideal universities and colleges. In the enrollment of postgraduates, some qualified students of Han nationality with high academic ability are denied while the students of ethnic groups with unfavorable academic ability are enrolled as a result of the preferential policies. Taking the practical unfairness into consideration, the opponents argued that the preferential policies should be adjusted so as to guarantee the right to higher education of the students of ethnic groups and the students of Han nationality as well. Some of the opponents even asserted that the preferential policies should be eliminated because the conditions of ethnic groups have been improved dramatically in all aspects. With the social changes and economic development, some autonomous areas have already attained the same level with the developed areas and the disparity between Han nationality and ethnic groups has been reduced greatly. The ethnic groups in these areas are not

vulnerable as before and the students of these ethnic groups should not be treated preferentially. With the social changes, some opponents have become skeptical of the function of the preferential policies. To them, these preferential policies are counter-productive with side-effects. The continued implementation of the preferential policies would cause the resentment between nationalities which is very dangerous to social stability and development.

To the individual student of Han nationality living in the autonomous areas or in the developed areas, the preferential polices seem unfair and reduce his opportunity to receive higher education. To the overall students of ethnic groups, the preferential policies are undoubtedly essential and fair. Owing to the historical and economic reasons, the ethnic groups are faced with unfavorable conditions and there is still disparity between Han nationality and most of ethnic groups which can not be eliminated within a short time. Without the preferential policies, it is very hard for them to achieve the social and economic development because education is vital to any social group. In this sense, the implementation of preferential policies for the students of ethnic groups guarantees the right of ethnic groups rather than the right of individual of Han nationality. The implementation of the preferential policies aims at eliminating the disparity between nationalities so as to realize the equality of individuals of all nationalities. How to balance the right of individual student of Han nationality and the right of ethnic groups as a whole by means of preferential policies has been focused on in the society.

Although there are more and more inquiries addressed to the function of the preferential policies, their significance should not be neglected. With the implementation of the preferential polices, the right to higher education of the students of ethnic groups has been guaranteed effectively. In contrast to the huge population of Han nationality, the ethnic groups amount to only 8.41 percent of the total population. Without the preferential treatment, they would have to face the fierce competition in enrollment all the time and most of them would have no opportunity to receive higher education at all. The guarantee of their right to higher education is positive to the individuals of ethnic groups and their ethnic groups as a whole. The preferential policies should be adjusted rather than be eliminated. For instance, the preferential policies should be implemented to the students of ethnic groups in accordance with their living places rather than their identity as a student of ethnic groups. If necessary, the

examination of the language of their ethnic groups shall be added to testify the ability of the students so as to decide the certification for enjoying the preferential treatment. As to the students of Han nationality who live in the autonomous area, they should be treated preferentially as their counterparts of ethnic groups in enrollment of universities and colleges as undergraduate or postgraduate students so as to attain the equality for educational opportunity.

In comparison with the implementation of affirmative action in America, the implementation of preferential policies in China seems more complex owing to the distribution of ethnic groups and disparity in development. At present, the existing legal protective system of the right to higher education of ethnic groups is not effective enough in practice because of the abstract and ambiguous regulations. It was suggested that the Law on the Education of Ethnic Groups and other regulations concerning the feasible solutions to the practical problems be enacted. In addition, more preferential policies should be worked out and implemented so as to guarantee the right to higher education of ethnic groups in China effectively.