China – Xinjiang Uyghur Autonomous Region Regulation on De-Radicalization: On 新疆维吾尔自治区去极端化条例, promulgated by the Standing Comm. People's Cong. of the Xinjiang Uighur Autonomous Region, China, Mar. 29, 2017, effective Apr. 1, 2017.

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Regulation Summary

In March 2017, Xinjiang, a territory in northwest China, enacted the Xinjiang Uyghur Autonomous Region Regulation on De-Radicalization ("2017 Regulation"), which designated fifteen types of statements and actions as "primary expressions of radicalization" and authorized punishment for nonconformity, including criminal penalties and forced participation in "individual and collective" education programs. Many of these designated statements and actions are not only common practices in Muslim communities but also mandated by traditional Islamic law. The 2017 Regulation, through restricting religious expression, has the effect of further stigmatizing the Islamic faith and dismantling the social infrastructure of Muslim communities in Xinjiang.

Analysis

Background

Xinjiang, officially the Xinjiang Uyghur Autonomous Region, is a region in Central Asia and home to several ethnic groups, including the Uyghur, Kazakhs, Tajiks, Kyrgyz, in addition to a large Han Chinese population. Uighurs have lived in the region for more than 1,000 years since adopting Islam after contact with Muslim traders.[1] Muslim ethnic groups make up more

1 *See* Bethany Allen-Ebrahimian, *Exposed: China's Operating Manuals for Mass Internment and Arrest by Algorithm*, Int'l Consortium of Investigative Journalists (Nov. 24, 2019), https://www.icij.org/investigations/china-cables/exposed-chi-

than half the region's population of 25 million.[2] Even though Uyghurs living in Xinjiang are nominally entitled to rights of autonomy and self-governance under the Chinese constitutional regime,[3] they have long faced economic marginalization and political discrimination as an ethnic minority.[4]

In recent years, the conflict between Uyghurs and the Beijing government has intensified due to the government's policies of mass surveillance, increased arrests, and a system of "re-education camps," which reportedly held more than a million members of Muslim ethnic groups.[5] The 2017 Regulation was introduced to provide legal justifications for the government's mass detention policies on anti-terrorism grounds. It was enacted on March 29, 2017 by the Standing Committee of the People's Congress of the Xinjiang Uighur Autonomous Region, the region's legislature.[6] Article 14 of the 2017 Regulation authorized the government to effectuate "education and transformation" through "individual and collective" education programs.[7] Article 48 further authorized criminal penalties for violation.[8]

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2 *See* Austin Ramzy & Chris Buckley, *'Absolutely No Mercy': Leaked Files Expose How China Organized Mass Detentions of Muslims*, N.Y. Times (Nov. 16, 2019), https://www.nytimes.com/interactive/2019/11/16/world/asia/china-xinjiang-documents.html.

3 *See* P.R.C. Constitution（中华人民共和国宪法）art. 4 (2018) (China). For a discussion on China's lack of robust judicial review, see *Recording & Review: An Introduction to Constitutional Review with Chinese Characteristics*, Nat'l People's Cong. Observer, https://npcobserver.com/2018/01/19/recording-review-an-introduction-to-constitutional-review-with-chinese-characteristics/ (last visited Nov. 29, 2019).

4 *See* Allen-Ebrahimian, *supra* note 1.

5 *See* Ramzy & Buckley, *supra* note 2.

6 *See* Xinjiang Uyghur Autonomous Region Regulation on De-Radicalization（新疆维吾尔自治区去极端化条例）(promulgated by the Standing Comm. People's Cong. of the Xinjiang Uighur Autonomous Region, Mar. 29, 2017, effective Apr. 1, 2017) (China), http://www.xjdrc.gov.cn/info/10465/1396.htm [hereinafter 2017 Regulation]. Chinese national and regional legislatures largely play a rubber-stamping role and act at the direction of the Chinese Community Party. *See generally The NPC and Its Standing Committee*, Nat'l People's Cong. Observer, https://npcobserver.com/about-the-npc-and-the-blog/ (last visited Nov. 29, 2019).

7 *See id.*, art. 14.

8 *See id.*, art. 48.

Discussion

Article 9 of the 2017 Regulation listed fifteen types of prohibited speeches and actions, which are labeled as "primary expressions of radicalization."[9] This essay focuses on discussing the prohibitions concerning marriage and divorce as well as personal appearance.

1. Marriage and Divorce

Article 9 subparagraph (6) prohibited "marriage and divorce through religious methods without legal procedures."[10] To contextualize this prohibition and the meaning of "legal procedures," it may be helpful to examine the Xinjiang Uyghur Autonomous Region Additional Regulations on Implementing the Marriage Law ("1980 Regulation"), which was enacted by Xinjiang's legislature in 1980 as a key piece of legislation on marriage in the region. The 1980 Regulation provides additional guidance on implementing the national marriage law and outlawed several foundational institutions of the marriage and divorce under traditional Islamic law.[11]

First, the 1980 Regulation prohibited "religious ceremony as a substitute for marriage registration."[12] Second, the law prohibited "purchase or sales of marriage" and "conditioning marriage on money or property."[13] This rule effectively banned the pledge and payment of dower (*mahr*), a key element of the Islamic marriage contract. Under traditional Islamic law, the dower provides the wife with financial security within the mar-

9 *See id.*, art. 9.

10 *See id.*, art. 9(6).

11 *See* Xinjiang Uyghur Autonomous Region Additional Regulation on Implementing the P.R.C. Marriage Law (新疆维吾尔自治区执行中华人民共和国婚姻法的补充规定) (promulgated by the Standing Comm. People's Cong. of the Xinjiang Uighur Autonomous Region, Dec. 14, 1980, effective Jan. 1, 1981) (China) https://www.chinacourt.org/law/detail/1988/10/id/76513.shtml [hereinafter 1980 Regulation].

12 *See id.*, art. 7.

13 *See id.*, art. 5.

riage,[14] whereas the drafters seemed to have regarded such monetization of marriage as undesirable. Third, the law prohibited "unilateral divorce through verbal or written notice."[15] This rule has the effect of banning *ṭalāq* as a mechanism for divorce.

The violation of the 1980 Regulation or the national marriage law would normally lead to only civil consequences, such as nullification of the marriage.[16] However, in the context of the 2017 Regulation, failure to follow the legal requirements for marriage or divorce may fall under subparagraph (6)'s prohibition of "marriage and divorce through religious methods without legal procedures," and be characterized as an "expression of radicalization," leading to much severe consequences such as criminal penalties.[17]

Additionally, Article 9 subparagraph (3) prohibits one's "interference with other people's weddings, funerals, or inheritance."[18] Such broad language has led some commentators to interpret "other people" to include even family members.[19] If that is the case, the prohibition will whittle away the role of a guardian (*walī*) in the marriage because the guardian's activities clearly "interfere with" women's marriage. Under Islamic law, having a guardian, who ordinarily is the woman's father, is required for there to be a valid marriage. The guardian often represents the women's family interest and is responsible for selecting and approving the potential husband.[20]

In sum, the two provisions in Article 9 of the 2017 Regulation prohibited a number of key institutions in a traditional

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14 *See* Asifa Quraishi & Frank E. Vogel, The Islamic Marriage Contract 88 (2008).

15 *See* 1980 Regulation, *supra* note 11, art. 6.

16 *See* P.R.C. Marriage Law (中华人民共和国婚姻法) arts. 43–49 (promulgated by the Standing Comm. Nat'l People's Cong., effective Jan. 1, 1981) (China), http://www.gov.cn/banshi/2005-05/25/content_847.htm.

17 *See* 2017 Regulation, *supra* note 6, art. 48.

18 *See id.*, art. 9(3).

19 *See* Nectar Gan & Mimi Lau, *China Changes Law to Recognise 'Re-Education Camps' in Xinjiang*, S. China Morning Post (Oct. 10, 2018), https://www.scmp.com/news/china/politics/article/2167893/china-legalises-use-re-education-camps-religious-extremists.

20 *See* Wael B. Hallaq, Sharī'a: Theory, Practice, Transformations 274–75 (2009).

Islamic marriage. By designating these practices as "expressions of radicalization" in conjunction with heavy penalties for nonconformity, the 2017 Regulation further stigmatizes the Islamic faith and dismantles the social infrastructure of the Muslim communities in Xinjiang.

2. Personal Appearance

Article 9 of the 2017 Regulation also sets out two provisions regulating personal appearance. Subparagraph (7) prohibits "wearing, or compelling others to wear burqas with face coverings or symbols of radicalization."[21] Subparagraph (8) prohibits "spreading religious fanaticism through growing abnormal beards or name selection."[22]

First, the 2017 Regulation is not the first law in the region to ban burqas. In December 2014, Xinjiang's capital, the City of Urumqi, enacted a ban on "burqas with face coverings" in all "public spaces."[23] In contrast, the 2017 Regulation has an even broader scope by expanding the ban beyond public spaces;[24] wearing a burqa in one's private home thus is a violation of the 2017 Regulation. Such a restriction can hardly be justified on public safety grounds and can be reasonably characterized only as a deterrent to religious expression. Although covering a woman's face is not explicitly mandated by the Qur'ān, Muslim jurists who believe women are required to cover their face often rely on Qur'ānic verses of 24:30–31, which instruct women not to display their beauty to people other than their husband and close family members; the Qur'ān also directs the men and women to dress and interact in a modest manner.[25] In the modern

21 *See id.*, art. 9(7).

22 *See id.*, art. 9(8).

23 *See* Urumqi Municipal Regulation on Banning Burqa with Face Covering in Public Spaces (乌鲁木齐市公共场所禁止穿戴蒙面罩袍的规定) (promulgated by the Standing Comm. People Cong. of the Xinjiang Uighur Autonomous Region, Jan. 10, 2015, effective Feb. 1, 2015) (China), http://xj.people.com.cn/n/2015/0116/c188514-23571698.html.

24 *See* 2017 Regulation, *supra* note 6, art. 9(7).

25 Qur'ān, 24:30–31, Quran.com, https://quran.com/24/30–31 (last vis-

context, a woman may choose to wear burqa for various reasons. In addition to demonstrating piety or modesty, donning a burqa may reflect a woman's desire for privacy in a male-dominated environment or her participation in political movements.[26] The 2017 Regulation utterly disregarded a Muslim woman's self-expressive interests in choosing to wear a burqa even in her private home.

Second, the ban on "growing an abnormal beard" seems more ambiguous because the meaning of "abnormal" depends on the context.[27] However, in light of the overall purpose of the law to suppress religious expressions, "growing an abnormal beard" may refer to the common practice of non-shaving among Muslim men. Although not explicitly mentioned in the Qur'ān, some jurists believe that growing one's beard is encouraged or mandatory under Islamic law relying on authoritative statements from *ḥadīth* stating that "[C]ut the moustaches short and leave the beard (as it is)."[28] The beard has also been seen as a "symbolic physical identit[y]" and "an indication of religious piety" because it is one way for male Muslims to distinguish themselves from non-Muslims.[29] Notably, in 2015 the United States Supreme Court unanimously struck down a state prison policy that prohibited a Muslim prisoner from growing a beard on religious freedom grounds.[30] Similar to the ban on burqa, the ban on "growing an abnormal beard" could be viewed purely as a restriction on religious expression.

Conclusion

In conclusion, the Xinjiang Uyghur Autonomous Region

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ited Nov. 29, 2019); *see also* Juan Eduardo Campo, Encyclopedia of Islam 119, 702 (2009).

26 *See id.* at 119.

27 *See* 2017 Regulation, *supra* note 6, art. 9(8).

28 *See* Sahih Al-Bukhari ¶ 5893, Sunnah.com, https://sunnah.com/bukhari/77/110 (last visited Nov. 29, 2019).

29 *See* Ahmad Bunyan Wahib, *Being Pious Among Indonesian Salafis*, 55 Al-Jami'ah: J. Islamic Stud. 1, 14 (2017).

30 *See* Holt v. Hobbs, 574 U.S. 352 (2015).

Regulation on De-Radicalization, through designating as "primary expressions of radicalization" a number of statements and actions mandated by Islamic law, severely restricted the right to religious freedom of the Muslim community living in the region. The law has the effect of further stigmatizing the Islamic faith and dismantling the social infrastructure of the Muslim communities in Xinjiang.