

AUTONOMY FOR ETHNIC TIBETANS IN
CHINA:

ASSESSING AND IMPLEMENTING
CHINA'S LAWS ON MINORITY RIGHTS

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The project was initiated in 2004 when Theodore C. Sorensen served as project chairman. Mr. Sorensen was former special counsel and adviser to President John F. Kennedy and a widely published author on foreign affairs. He practiced international law for over 36 years as a senior partner, and is now of counsel at Paul, Weiss, Rifkind, Wharton and Garrison LLP.

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INTRODUCTION

Background

This publication is the companion to *Legal Standards and Autonomy Options for Minorities in China: the Tibetan Case* (Harvard University's Belfer Center for Science in International Affairs, 2004). The publication was provided as a legal resource for strengthening minority rights and autonomy arrangements in the ethnic Tibetan areas of western China. It focused on constitutional and statutory provisions at the national, provincial, county and prefectural levels in Qinghai, Yunnan, Gansu, Szechuan and the Tibetan Autonomous Region (TAR).

The project, which was chaired by Theodore C. Sorensen, is motivated by the belief that autonomy secured through the rule of law is the best and most realistic way to preserve Tibetan culture. We commended the ongoing dialog between Chinese officials and envoys of the Dalai Lama. By implementing its laws on minority rights in a uniform fashion where ethnic Tibetans reside, we maintained that China would affirm that it is a single, sovereign, multiethnic state with a central government that is serious about maintaining unity and devising effective systems of governance to address the needs of its diverse peoples.

Despite the Dalai Lama's adamant pursuit of an arrangement that would strengthen China's territorial integrity, the dialog has recently floundered after 7 rounds spanning almost 8 years. Chinese officials have also renewed their vilification of the Dalai Lama leaving little room for reconciliation. While talks have not been suspended, there are no current plans to resume. The impasse has caused many Tibetans to question the Dalai Lama's "Middle Path" and to raise questions about the way forward. Radicalization and the prospect of violence are on the rise.

Methodology

This report was prepared for the latest round of talks in November 2008. The laws summarized here represent an update to our research in 2004.¹ In order to update previous work, the legal research team methodically reviewed all of the laws summarized in 2004 for any amendments, modifications, and revisions. The team also did a thorough search for any other laws promulgated after 2004 or that may have been missed in 2004. Once the laws were collected, translated, summarized and integrated into the 2004 research. The result is a thorough and reliable list and summary of the laws publicly available through August 2008. (The laws summarized here should be read in conjunction with the summaries and analysis in the 2004 publication.)

While these public laws are an important component of the Chinese political structure in the ethnic Tibetan areas of western China, they represent only one segment of

¹ See LEGAL STANDARDS AND AUTONOMY OPTIONS FOR MINORITIES IN CHINA: THE TIBETAN CASE, Harvard University, 2004.

the laws related to the People's Republic of China's ("PRC") rule. Any observer should assume that there are also directives delivered by the central government and other confidential documents that influence the way ethnic Tibetan areas are governed. Laws that are publicly available are a critical component of the PRC legal and political structure, but not the only component.

Legislative Intent?

Even those close to the development of Chinese law were impressed by the size and scope of the body of laws related to Tibetan autonomy that we documented in 2004. Chinese officials involved in the latest round of talks took similar note. Upon first glance, China's laws are sweeping and thorough. Based on the language found in the Chinese Constitution, national statutes, provincial laws and the corresponding implementing regulations, it appears that the Tibetans already enjoy autonomy in all important facets: religion, education, language, politics, economy and exploitation of natural resources.

In spite of the promulgation of so many laws, the laws promulgated have not led to the rule of law in ethnic Tibetan areas or provided Tibetans with meaningful autonomy. The question then becomes whether the lack of true Tibetan autonomy is the failure of the PRC to implement the good laws already enacted or a result of a deliberate PRC effort to create public laws to mask its political goals in Tibet. Is the goal pacification or meaningful autonomy?

This question is critical to understanding the laws and for future engagement between Chinese officials and the Dalai Lama's envoys. If it is the former, those concerned can work in good faith with the PRC to assist it to better implement the laws currently on the books. If it is the latter, then working to better implement the existing laws will not lead to greater autonomy for Tibet. Flawed intent means that the autonomy laws are a mere smokescreen for the PRC's policies of nationalism, pacification and assimilation of the Tibetans.

The Way Forward

Future work cannot ignore the gap between legislative intent and implementation. China has derogated laws on the books with caveats that actually undermine their impact. Local authorities have considerable leeway to interpret constitutional and national laws so that they may be "adapted to local conditions." There is no system for harmonizing local arrangements with the intentions of law-makers at the national level. With Chinese officials reflexively opposing the notion of a "Greater Tibet," decentralization actually serves to help prevent the emergence of a uniform approach across the vast expanse of ethnic Tibetan areas in western China.

Over the past five years, we have acquired considerable expertise on China's minority rights laws leading us to conclude that the next phase of legal research and analysis should involve:

- Evaluating the gap between legislative intent and implementation to consider the credibility of China's autonomy pledge. The evaluation should be conducted by a credible body led by Tibetan scholars with input from international experts.
- Considering exemplary statutes in different sectors (e.g. governance, economy, and culture) and "cherry-picking" the best laws as the basis for a uniform approach to cultural autonomy.
- Comparing China's exemplary statutes to international minority rights standards drawing upon models for cultural autonomy that work in other settings. China's statutes could be upgraded based on the comparison.

This information would provide the basis for proposing legal arrangements. The proposal could include a recommendation for prototype pilot projects. These prototypes would adhere to the best practices identified through the legal research and analysis described above. Prototypes could also benefit as special economic zones with assistance provided by donors and/or private sector concerns. Prototypes must be regularly evaluated to determine if they serve to strengthen China's territorial integrity or foment separatist ambitions. In the event of the former, the prototypes could be expanded to other areas and ultimately to all ethnic Tibetan areas in western China.

The stakes are high for both China and the Tibetans. After the last round of talks, Tibetans convened in Dharamsala to discuss their approach towards China. Support for the Dalai Lama's "Middle Path" is eroding.

Without prejudice, this report is offered as an informational resource to China and the Tibetans. Recommendations are based on a realistic assessment of current conditions. We are also motivated by the conviction that dialog is essential to moving forward with practical measures that preserve and promote Tibetan culture while strengthening China's sovereignty.

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