

Promoting Genuine Autonomy in Tibet: A value-added role for Canada¹

Written Submission:

Parliamentary Subcommittee on International Human Rights
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Summary: This paper provides an overview of China’s current legal and policy framework governing Tibetan autonomy, and describes weaknesses in its implementation. The paper then offers a short description of elements contained within the Central Tibetan Administration’s “Middle Way Approach” proposal for genuine autonomy. The paper cites examples of autonomy in the Canadian experience and argues that they offer a value-added role for Canada in re-energizing the stalled Sino-Tibetan dialogue. Finally, recommendations are made to the Subcommittee on International Human Rights.

¹ The original draft of this submission was prepared by CTC researcher Maxime Honigmann. The version submitted here reflects input received from external readers in Canada and abroad.

Introduction

In an attempt to demonstrate good will and improve social stability, the Government of China has pointed to its suite of laws and policies that ostensibly grant Tibet special rights as an autonomous region of China. In practice, however, many of these special rights have failed to translate into meaningful empowerment for the Tibetan people as the Government of China has imposed its will everywhere from the legislature to the monastery. As a result, unrest continues and Tibet's thousand-year-old culture is under increasing threat.

In order to improve regional stability and protect Tibet's cultural traditions, China must do more to bring meaningful autonomy to Tibet. Canada enjoys a constructive relationship with China and has valued experience in the negotiation of regional and indigenous autonomy. Canada therefore, could play a value-added role in unblocking the impasse in Tibet.

- *Defining "Tibet"*

The word "Tibet" is often used in reference to the Tibet Autonomous Region (TAR) of China. In fact, the TAR – which was established in 1965 - is only one of three provinces in historical Tibet: Kham, now incorporated into the western mountainous region of Sichuan, the northwestern tip of Yunnan and parts of Qinghai; Amdo, now comprising most of Qinghai and a western part of Gansu; and U-Tsang, now primarily the TAR. Outside the TAR, historical Tibetan regions where Tibetans live have, in large part, been designated as "Tibetan Autonomous Prefectures" or "autonomous counties" in accordance with the minority nationality policy of the Government of China. The TAR itself includes only about half of the total number of Tibetans in present-day China. For the purposes of this report, the word "Tibet" will be used in its broader historical sense and TAR will indicate only central Tibet (U-Tsang).

China's Autonomy Promise

China's legal and policy framework includes numerous national, provincial, and county-level provisions that together promise significant autonomy for the Tibetan people. In this paper, we have selected to highlight the foundational *Seventeen Point Agreement*, the *Constitution of the People's Republic of China* (PRC), the *Regional Ethnic Autonomy Law*, and the Government of China's policy-guiding "white papers" on Tibet.²

² For a comprehensive review of China's legal framework for regional autonomy, see Theodore Sorensen and David Phillips "Legal Standards and Autonomy Options for Minorities in China: The Tibetan Case", Belfer Center for Science and International Affairs, John F. Kennedy School of Government, Harvard University, 2004
http://belfercenter.hks.harvard.edu/publication/1940/legal_standards_and_autonomy_options_for_minorities_in_china.html

- *The Seventeen Point Agreement*

China's early assurances of autonomy in Tibet are encapsulated in the *Seventeen Point Agreement for the Peaceful Liberation of Tibet*.³ This document, signed by both Chinese and Tibetan delegates in 1951, was viewed by Chinese authorities at the time as a legitimization of their takeover of Tibet the year prior.⁴

The Agreement unambiguously delineates a vision of deep-running “national regional autonomy” promising that the Chinese government “will not alter the existing political system in Tibet” nor “alter the established status, functions and powers of the Dalai Lama” (Article 4). Notably, the traditional role of the Panchen Lama, the second-highest religious leader in the Gelupa school of Tibetan Buddhism, is recognized in the Agreement (Article 5).

Much controversy surrounds the Agreement as the Tibetan delegation sent to Beijing by the Tibetan government was reportedly not permitted to suggest changes or communicate with authorities in Lhasa during the negotiation. Moreover, the Tibetan delegation was repeatedly threatened with a full-scale military invasion if its members did not sign the Agreement as presented to them despite their lack of authorization to sign any agreement.⁵ These conditions led to subsequent repudiations of the Agreement by the Tibetan government, the Dalai Lama, and leading officials.⁶ Nevertheless, even today China continues to refer the Agreement as the legal foundation of Tibet's incorporation into the People's Republic of China.⁷

- *Constitutional Guarantees*

The Constitution of the People's Republic of China, ratified in 1982 and amended in 2004, guarantees significant political liberties for all citizens of China, whether they are designated as “minority nationalities” or not.⁸ For example, all citizens including minority nationalities have the right to run for elected office, regardless of their religious beliefs (Article 34). Freedom of speech, press, assembly, and demonstration is protected for all (Article 35) and no one may be compelled by anyone else, including the state, to adopt certain religious beliefs or eschew others (Article 36).

³ “The Seventeen-Point Plan for the Peaceful Liberation of Tibet” 23 May 1951. <http://www.cfr.org/tibet/seventeen-point-plan-peaceful-liberation-tibet/p16006>

⁴ Powers, John. “History as Propaganda: Tibetan Exiles versus the People's Republic of China.” New York, NY: *Oxford University Press*. 2004, pp. 116

⁵ IBID pp.114-115

⁶ Goldstein, Melvyn C. “A History of Modern Tibet (Vol 2): A Calm before the Storm: 1951–1959.” Oakland, CA. *University of California Press*, 2007, pp. 106–107

⁷ For example, in “Sixty Years Since Peaceful Liberation of Tibet.” *Chinese Government White Papers*. 12 July 2011. http://www.china.org.cn/government/whitepaper/node_7122743.htm

⁸ “Constitution of the People's Republic of China,” 4 December 1982, <http://china.usc.edu/constitution-peoples-republic-china-1982>

The Constitution also gives specific attention to “autonomous areas” where ethnic minorities live in concentrated communities, such as in present-day TAR (Article 4). It outlines the fundamentals of self-government for autonomous areas, granting them authority over the unique “political, economic and cultural characteristics of the nationality” (Article 116), and full rights to “independently administer educational, scientific, cultural, public health and physical culture affairs in their respective areas” (Article 119).

The Constitution guarantees a policy of non-discrimination towards minority nationalities and is explicit in stating that all have “the freedom to use and develop their own spoken and written languages, and to preserve or reform their own ways and customs” (Article 4). It further states that all functions of self-government are to be conducted in the traditional spoken and written language of the area (Article 121).

- *Regional Ethnic Autonomy Law*

The Government of China’s *Regional Ethnic Autonomy Law*, enacted in 1984 and amended in 2001, is the implementation law for autonomy measures identified in China’s Constitution.⁹ Many of the articles contained within the law restate commitments found in the Constitution, including to freedom of religion, freedom to conduct public affairs in local languages, and the protection of cultural traditions.

The Law affirms that autonomous areas, including the TAR, have the power to plan their own educational programs and establish “various kinds of schools” (Article 36). Responsibility for development and oversight of “literature, art, the press, publishing, radio broadcasting, the film industry, television and other cultural undertaking” is also assigned to autonomous area administrations (Article 38).

In relation to international trade, Article 31 grants preferential treatment to autonomous areas and allows agencies of autonomous areas the right to independently pursue foreign economic activity (although this is conditional on State approval). The law also assigns other areas of economic decision-making to autonomous areas including the management of natural resources and the use of pastures and forests.

In 2000, China’s National Peoples’ Congress sought to clarify ambiguities about the legislative powers of autonomous areas by enacting a new “Legislative Law”. It maintained the power of autonomous administrations to independently modify certain measures for the purposes of

⁹ “Regional Ethnic Autonomy Law of the People’s Republic of China”, 31 May 1984, <http://www.cecc.gov/resources/legal-provisions/regional-ethnic-autonomy-law-of-the-peoples-republic-of-china-amended>

cultural and economic development and other “matters of local concern,” but with the limitation that they may not conflict with other existing laws or the Chinese Constitution.¹⁰

- *White Papers*

Between 1992 and 2015, the Government of China published eleven “white papers” which delineate its policies in Tibet, both actual and intended. For the sake of current relevance, the three released after 2010 are described here.¹¹

The 2011 White Paper, entitled “Sixty Years Since Peaceful Liberation of Tibet” espouses the PRC’s historical perspective and its views about Tibetan independence.¹² Notably, the final section of the White Paper places considerable importance on the Seventeen Point Agreement, affirming its continued relevance in China’s contemporary Tibet policy.

The 2013 White Paper, titled “Development and Progress of Tibet,” describes present-day policies.¹³ It refers to the People’s Congress electoral system as one in which Tibetans participate directly by electing municipal-level representatives who go on to elect regional deputies. The White Paper also reaffirms the government’s commitment to religious freedom, promising separation of church and State and the freedom for Tibetans to practice religion in a way that follows “their own traditional customs”.

The most recent 2015 White Paper, titled “Successful Practice of Regional Ethnic Autonomy in Tibet”, largely repeats claims made in the two preceding White Papers, adding that the Government of China’s autonomy policies are working exactly as intended and “Tibetan culture today manifests new vitality.”¹⁴

Autonomy Denied

Despite a legal and policy framework that could in theory bring genuine autonomy to Tibet, in reality the promise has proved illusory. Autonomous areas, including the TAR, have not demonstrated the ability to independently enact modification regulations. In fact, research published in 2010 indicated that no significant modification legislation has ever been passed in

¹⁰ Yash Ghai and Sophia Woodman, “Unused Powers: Contestation over Autonomy Legislation in the PRC”, *Pacific Affairs* 82.1.2009, pp. 33

¹¹ The most recent session of the Sino-Tibetan dialogue was in 2010.

¹² “Sixty Years Since Peaceful Liberation of Tibet.” *Chinese Government White Papers*. 12 July 2011.

http://www.china.org.cn/government/whitepaper/node_7122743.htm

¹³ “Development and Progress in Tibet”, *Chinese Government White Papers*, 22 October 2013.

http://www.china.org.cn/government/whitepaper/node_7192768.htm

¹⁴ “Successful Practice of Regional Ethnic Autonomy in Tibet” *Chinese Government White Papers*, 6 September 2015. http://www.china.org.cn/government/whitepaper/node_7229729.htm

autonomous areas of China, including in the TAR.¹⁵ This may be due to the practical challenge of obtaining required approval by the Standing Committee of the National Peoples' Congress, or simply because any such initiative risks interpretation as an overt political challenge to the central authority. Moreover, although Tibetans commonly hold senior positions within the TAR, no Tibetan has ever held the most senior post of Communist Party leader in the TAR, creating a deficiency in political will at the top level of the local governance structure.

Studies have also highlighted the vulnerability of autonomous regions in terms of their actual designation.¹⁶ There is no inherent entitlement to autonomy; it exists at the will of the National Peoples' Congress.¹⁷ Any significant influx of non-Tibetans into the TAR for example, could theoretically result in a change of its status by reducing the proportion of Tibetans in the area. Such vulnerabilities in combination with ever-increasing limitations on political rights, including free expression, conspire to deny meaningful autonomy to the Tibetan people.

- *The human rights deficit*

A 2016 report by US-based Freedom House ranks Tibet as second worst place in the world for the enjoyment of political rights and civil liberties, below only Syria and marginally above Somalia.¹⁸ The seriousness of the situation is starkly illustrated by the 145 reported self-immolations that have taken place within the region since 2009.¹⁹ Almost all of the self-immolators called for increased freedom and the return of His Holiness the Dalai Lama to Tibet.

The Government of China has signed the *International Covenant on Civil and Political Rights* and ratified the UN's *International Covenant on Economic, Social and Cultural Rights* which impose legal obligations on the State.²⁰ Despite these international commitments, and the Constitutional guarantees and policy statements described above, Tibetans continue to face a wide range of human rights violations including in the areas of cultural rights²¹ and religious

¹⁵ Some legislation has been passed at the level of autonomous prefecture and autonomous county. Yash Ghai and Sophia Woodman, "Unused Powers: contestation over autonomy legislation in the PRC", *Pacific Affairs* Vol.82, 2009, pp 38-43.

¹⁶ For example: "Is their space for "genuine autonomy" for Tibetan Areas in the PRC's system for Nationalities Regional Autonomy?", Yash Ghai, Sophia Woodman, Kelley Loper, *International Journal on Minority and Group Rights*, Vol. 17, 2010

¹⁷ *IBID*, pp 155

¹⁸ Freedom House, "Freedom in the World 2016", <https://freedomhouse.org/report/freedom-world-2016/table-scores>

¹⁹ Self-immolation cases are documented by International Campaign for Tibet at <https://www.savetibet.org/resources/fact-sheets/self-immolations-by-tibetans/>

²⁰ Signing a treaty without ratification does not impose binding obligation but it does require that the state refrain, in good faith, from actions that violate the spirit and purpose of the treaty.

²¹ Tibet Justice Center and Boston University, "Parallel Report Submitted to the UN Committee on Economic, Social and Cultural Rights (CESCR) for Consideration of the Report on China Concerning the Rights of the Tibetan People", 2014, http://www.tibetjustice.org/reports/un/Tibet_Parallel_Report_CESCR_2014.pdf

freedom²². In a current example, thousands of students are in the process of being forcibly evicted from Serta Larung Gar Buddhist Academy in eastern Tibet and the buildings in which they live and study are being demolished under official order.²³

Seeking to Bridge the Gap: The Middle Way Approach

The Central Tibetan Administration (CTA), which is based in India and serves as a government-in-exile, is recognized for its non-violent strategy to resolve the conflict in Tibet. Giving up a legitimate claim to political independence yet rejecting the status quo in Tibet, the MWA – inspired by the vision of His Holiness the Dalai Lama – offers a compromise solution. The MWA seeks genuine autonomy for Tibet within the Chinese state and in accordance with China’s existing framework for regional autonomy.²⁴

The principles of the MWA are well-enunciated in the Tibetan government-in-exile’s “Memorandum on Genuine Autonomy for the Tibetan People” which establishes the paramount goal of the MWA as preservation of the integrity of the Tibetan nationality and its cultural heritage. Following this, the document identifies eleven major policy areas where improvement is needed: language; culture; religion; education; environment protection; utilization of natural resources; economic development and trade; public health; public security; regulation of population migration; and cultural exchanges with other countries. All these are areas in which the Tibetan people should enjoy better autonomy based on Constitutional guarantees and existing national laws and policies.

The Memorandum was presented to Chinese authorities in 2009.²⁵ They rejected the proposal citing numerous reasons including that it did not respect the Chinese Constitution and challenged China’s socialist system; that it disrespected Chinese language by emphasizing the importance of Tibetan language, that it imposed unfair demands on in-migration; and (perhaps most importantly) that the idea of a single administration for all Tibetans in China was equivalent to seeking independence.²⁶

In response to these and other objections, in 2010 envoys of the Dalai Lama formally presented a “Note on the Memorandum on Genuine Autonomy for the Tibetan People” to their Chinese

²² For details about current efforts to curtail religious freedom in Tibet, “Suffocating religious freedom in Tibet: China’s draft regulations on religious affairs”, International Campaign for Tibet, October 2016, <https://www.savetibet.org/suffocating-religious-freedom-in-tibet-chinas-draft-regulations-on-religious-affairs/>

²³ For more information, see http://tibet.ca/en/library/media_releases/402

²⁴ For all documents related to the Middle Way Approach, <http://mwa.tibet.net/>

²⁵ For a timeline of the Sino-Tibetan negotiation process, see - <http://mwa.tibet.net/#/document/6>

²⁶ Yet, both Mongolian and Uighur minority groups fall under a single administration in China

interlocutors.²⁷ Again, the Government of China refused to accept the proposal and the Sino-Tibetan dialogue has not since resumed.

- *International support for the MWA*

Since 2010, world governments have endorsed the MWA as a reasonable basis upon which to re-establish peace and stability in Tibet. Most recently, in June 2016, the White House issued a statement announcing that President Obama had “expressed support for the Dalai Lama’s Middle Way Approach”.²⁸ In 2012, the European Parliament “endorsed the principles set out in the Memorandum on Genuine Autonomy for the Tibetan People proposed by envoys of the Dalai Lama”.²⁹ Also in 2012, UK Foreign Minister Hugo Swine issued a public statement saying “...a long term solution is best achieved through respect for universal principles of human rights and genuine autonomy for Tibet within the framework of the Chinese Constitution.”³⁰

- *The view from Canada*

The Parliament of Canada has consistently encouraged Canadian involvement in efforts to resolve the Tibet conflict through dialogue and negotiation based on the Middle Way Approach.

In April 2004, 158 Canadian Members of Parliament, including 7 ministers, appealed to Prime Minister Paul Martin urging that Canada actively broker the Sino-Tibetan dialogue.³¹ On February 15, 2007, the Parliament of Canada adopted by unanimous consent, a motion introduced by MP Peggy Nash, urging the Government of Canada to exert pressure on China in support of genuine autonomy in Tibet.³²

In April 2012, more than 60 parliamentarians from 30 countries, including Canada, participated in the *World Parliamentarian Convention on Tibet* hosted in Ottawa by the Canadian Parliamentary Friends of Tibet. In its final “Ottawa Declaration”, the Convention endorsed “the principles set out in the Memorandum on Genuine Autonomy for the Tibetan People, which provide the basis for a realistic and sustainable political solution to the issue of Tibet.”³³

²⁷ “Note on the Memorandum on Genuine Autonomy for the Tibetan People”, 2010

<http://mwa.tibet.net/#/document/10>

²⁸ The White House, “Readout of the President’s Meeting with His Holiness the XIV Dalai Lama, 15 June 2016

<https://www.whitehouse.gov/the-press-office/2016/06/15/readout-presidents-meeting-his-holiness-xiv-dalai-lama>

²⁹ European Parliament resolution, “The human rights situation in Tibet”, 14 June 2012

<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2012-0257+0+DOC+XML+V0//EN>

³⁰ UK Foreign Office, “Concerns about Human Rights in Tibet” 17 December 2012

<https://www.gov.uk/government/news/uk-has-serious-concerns-about-human-rights-in-tibet>

³¹ “PM urged to broker talks on Tibet between China and Dalai Lama”, Michael Valpy, Globe & Mail, April 5, 2004. http://tibet.ca/en/library/wtn/archive/old?y=2004&m=4&p=5_1

³² Motion by Peggy Nash, February 15, 2007, archived at <https://openparliament.ca/politicians/peggy-nash/>

³³ “The Ottawa Declaration”, 6th World Parliamentarians' Convention on Tibet, April 29, 2012

On May 7, 2013, Canada's Parliamentary Subcommittee on International Human Rights issued a statement in follow-up to the Ottawa Declaration urging the Government of China to "end its repressive actions against Tibetan people and to provide real autonomy to the Tibetan people within the People's Republic of China".³⁴

Canadian Experience as Best Practice

Though the contemporary and historical contexts of China and Canada differ starkly, Canada has confronted numerous challenges related to demands for regional and indigenous autonomy. Following years of widespread social discontent and political mobilization, the Province of Quebec now enjoys unique rights within Canada's federal system in relation to the administration of culture, language, education, and immigration policies.³⁵ Importantly, the province has been recognized as a "nation within a united Canada."³⁶ Such achievements are reminiscent of the Tibetan vision of autonomy as described in the MWA.

In Nunavut, a northern Canadian territory, political power has been substantially transferred to the local government with a stated purpose to preserve traditional culture and promote indigenous empowerment. In the *Nunavut Act* and *Nunavut Land Claims Agreement Act*, both passed in 1993, the Government of Canada promised Nunavut the tools necessary for economic development while also establishing autonomous political institutions.³⁷ Indeed, the people of Nunavut are afforded a special court system for environmental and cultural claims,³⁸ and political institutions were designed bottom-up, based on open public consultations.³⁹

Although both Quebec and Nunavut remain integral parts of Canada, they have been able to achieve substantial control and decision-making authority over matters that affect integrity of the nationality and cultural identity. They thereby offer practical examples for the Tibetan people who are seeking similar rights and freedoms within China.

³⁴ Parliament of Canada, Minutes of Proceedings, 7 May 2013,

<http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=6166868&Mode=1&Parl=41&Ses=1%3E:&Language=E>

³⁵ Rocher, Francois, "The Evolving Parameters of Quebec Nationalism" *International Journal on Multicultural Societies* 4.1. 2002, pp. 17

³⁶ <http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=2544166&File=0&Language=E&Mode=1&Parl=39&Pub=hansard&Ses=1#Int-1798655>

³⁷ The Nunavut Act, 1993, last amended 2015. <http://laws-lois.justice.gc.ca/eng/acts/N-28.6/> Nunavut Land Claims Agreement Act, 1993, last amended 2004. <http://laws-lois.justice.gc.ca/eng/acts/n-28.7/>

³⁸ Jull, Peter. "Indigenous Autonomy in Nunavut: Canada's Present & Australia's Possibilities." Discussion Paper. *Department of Government, University of Queensland*. 29 June 1998, pp. 19

https://espace.library.uq.edu.au/view/UQ:10404/pj_uq_nunavut_98.pdf

³⁹ Légaré, André. "An Assessment of Recent Political Development in Nunavut: The Challenges and Dilemmas of Inuit Self-Government." *The Canadian Journal of Native Studies* 18.2. 1998

http://www3.brandonusu.ca/Library/cjns/18.2/cjns18no2_pg271-299.pdf

Conclusion

National polls conducted in 2016 revealed that 76% of Canadians hold a negative view of China and most oppose a free trade agreement with its government.⁴⁰ Concerns about human rights are at the core of Canadian unease. A more engaged and proactive approach by the Government of Canada to resolve the conflict in Tibet would likely find broad support among Canadians.

There are, no doubt, numerous challenges. Ambiguities within China's actual autonomy framework coupled with recent demands in Hong Kong for greater autonomy - and even for independence - have cast the very idea of "one country, two systems" into disfavor. The life sentence given to Illam Tothi, a Uighur intellectual who rejected independence and worked in China for two decades to foster dialogue with the Chinese people, is another indicator that demands for genuine autonomy generate significant sensitivity in Beijing.

Such challenges may discourage Canada's willingness to proactively engage China on behalf of the Tibetan people; but the challenges should not be viewed as insurmountable. A pragmatic step-by-step approach from Canada, based on shared experience, could re-establish trust between stakeholders and open new doors of communication within the Sino-Tibetan dialogue.

Recommendations

To the Subcommittee on International Human Rights:

1. A Subcommittee delegation should visit Dharamsala, India, seat of the Central Tibetan Administration, for the purpose of exchanging experiences and pursuing discussion about the development of regional autonomy with Tibetan parliamentarians and officials.
2. The Subcommittee should issue a public statement endorsing the Middle Way Approach as a reasonable basis for renewed Sino-Tibetan dialogue.
3. The Subcommittee should request an annual report from the Government of Canada on the status of the Sino-Tibetan dialogue and efforts by Canada to encourage the dialogue.
4. The Subcommittee should encourage the Government of Canada to:
 - a. endorse the *Middle Way Approach* as a reasonable and constructive basis for a renewed Sino-Tibetan dialogue;

⁴⁰ Hannay, Chris. "Canadians have dim view of Chinese trade deal: poll." *The Globe and Mail*. 10 February 2016. <http://www.theglobeandmail.com/news/politics/canadians-have-dim-view-of-chinese-trade-deal-poll/article28694218/>

- b. demonstrate its diplomatic commitment to human rights in China and stability in Tibet by actively facilitating renewal of the Sino-Tibetan dialogue based on the Middle Way Approach;
- c. provide technical assistance in the form of academic research and exchange programs designed to advance understanding and set benchmarks for genuine autonomy in Tibet;
- d. establish a diplomatic presence in Tibet.

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*The **CANADA TIBET COMMITTEE** is a federally-registered not-for-profit organization created in 1987. The CTC defends and promotes human rights and democratic freedoms of the Tibetan people. The CTC monitors developments inside Tibet and builds public awareness in Canada through its outreach activities. The CTC encourages support for Tibet from the Government of Canada. www.tibet.ca*