

MEMORANDUM ON GENUINE AUTONOMY FOR THE TIBETAN PEOPLE

I INTRODUCTION

Since the renewal of direct contact with the Central Government of the People's Republic of China (PRC) in 2002, extensive discussions have been held between the envoys of His Holiness the 14th Dalai Lama and representatives of the Central Government. In these discussions we have put forth clearly the aspirations of Tibetans. The essence of the Middle Way Approach is to secure genuine autonomy for the Tibetan people within the scope of the Constitution of the PRC. This is of mutual benefit and based on the long-term interest of both the Tibetan and Chinese peoples. We remain firmly committed not to seek separation or independence. We are seeking a solution to the Tibetan problem through genuine autonomy, which is compatible with the principles on autonomy in the Constitution of the People's Republic of China (PRC). The protection and development of the unique Tibetan identity in all its aspects serves the larger interest of humanity in general and those of the Tibetan and Chinese people in particular.

During the seventh round of talks in Beijing on 1 and 2 July 2008, the Vice Chairman of the Chinese People's Political Consultative Conference and the Minister of the Central United Front Work Department, Mr. Du Qinglin, explicitly invited suggestions from His Holiness the Dalai Lama for the stability and development of Tibet. The Executive Vice Minister of the Central United Front Work Department, Mr. Zhu Weiqun, further said they would like to hear our views on the degree or form of autonomy we are seeking as well as on all aspects of regional autonomy within the scope of the Constitution of the PRC.

Accordingly, this memorandum puts forth our position on genuine autonomy and how the specific needs of the Tibetan nationality for autonomy and self-government can be met through application of the principles on autonomy of the Constitution of the People's Republic of China, as we understand them. On this basis, His Holiness the Dalai Lama is confident that the basic needs of the Tibetan nationality can be met through genuine autonomy within the PRC.

The PRC is a multi-national state, and as in many other parts of the world, it seeks to resolve the nationality question through autonomy and the self-government of the minority nationalities. The Constitution of the PRC contains fundamental principles on autonomy and self-government whose objectives are compatible with the needs and aspirations of the Tibetans. Regional national autonomy is aimed at opposing both the oppression and the separation of nationalities by rejecting both Han Chauvinism and local nationalism. It is intended to ensure the protection of the culture and the identity of minority nationalities by powering them to become masters of their own affairs.

To a very considerable extent Tibetan needs can be met within the constitutional principles on autonomy, as we understand them. On several points, the Constitution gives significant discretionary powers to state organs in the decision-making and on the operation of the system of autonomy. These discretionary powers can be exercised to facilitate genuine autonomy for Tibetans in ways that would respond to the uniqueness of the Tibetan situation. In implementing these principles, legislation relevant to autonomy may consequently need to be reviewed or amended to respond to the specific characteristics and needs of the Tibetan nationality. Given good will on both sides, outstanding problems can be resolved within the constitutional principles on autonomy. In this way national unity and stability and harmonious relations between the Tibetan and other nationalities will be established.

II RESPECT FOR THE INTEGRITY OF THE TIBETAN NATIONALITY

Tibetans belong to one minority nationality regardless of the current administrative division. The integrity of the Tibetan nationality must be respected. That is the spirit, the intent and the principle underlying the constitutional concept of national regional autonomy as well as the principle of equality of nationalities.

There is no dispute about the fact that Tibetans share the same language, culture, spiritual tradition, core values and customs, that they belong to the same ethnic group and that they have a strong sense of common identity. Tibetans share a common history and despite periods of political or administrative divisions, Tibetans continuously remained united by their religion, culture, education, language, way of life and by their unique high plateau environment.

The Tibetan nationality lives in one contiguous area on the Tibetan plateau, which they have inhabited for millennia and to which they are therefore indigenous. For purposes of the constitutional principles of national regional autonomy Tibetans in the PRC in fact live as a single nationality all over the Tibetan plateau.

On account of the above reasons, the PRC has recognised the Tibetan nationality as one of the 55 minority nationalities.

III TIBETAN ASPIRATIONS

Tibetans have a rich and distinct history, culture and spiritual tradition all of which form valuable parts of the heritage of humanity. Not only do Tibetans wish to preserve their own heritage, which they cherish, but equally they wish to further develop their culture and spiritual life and knowledge in ways that are particularly suited to the needs and conditions of humanity in the 21st century.

As a part of the multi-national state of the PRC, Tibetans can benefit greatly from the rapid economic and scientific development the country is experiencing. While wanting to actively participate and contribute to this development, we want to ensure that this happens without the people losing their Tibetan identity, culture and core values and without putting the distinct and fragile environment of the Tibetan plateau, to which Tibetans are indigenous, at risk.

The uniqueness of the Tibetan situation has consistently been recognised within the PRC and has been reflected in the terms of the '17 Point Agreement' and in statements and policies of successive leaders of the PRC since then, and should remain the basis for defining the scope and structure of the specific autonomy to be exercised by the Tibetan nationality within the PRC. The Constitution reflects a fundamental principle of flexibility to accommodate special situations, including the special characteristics and needs of minority nationalities.

His Holiness the Dalai Lama's commitment to seek a solution for the Tibetan people within the PRC is clear and unambiguous. This position is in full compliance and agreement with paramount leader Deng Xiaoping's statement in which he emphasised that except for independence all other issues could be resolved through dialogue. Whereas, we are committed, therefore, to fully respect the territorial integrity of the PRC, we expect the Central Government to recognise and fully respect the integrity of the Tibetan nationality and its right to exercise genuine autonomy within the PRC. We believe that this is the basis for resolving the differences between us and promoting unity, stability and harmony among nationalities.

For Tibetans to advance as a distinct nationality within the PRC, they need to continue to progress and develop economically, socially and politically in ways that correspond to the development of the PRC and the world as a whole while respecting and nurturing the Tibetan characteristics of such development. For this to happen, it is imperative that the right of Tibetans to govern themselves be recognised and implemented throughout the region where they live in compact communities in the PRC, in accordance with the Tibetan nationality's own needs, priorities and characteristics.

The Tibetan people's culture and identity can only be preserved and promoted by the Tibetans themselves and not by any others. Therefore, Tibetans should be capable of self-help, self-development and self-government, and an optimal balance needs to be found between this and the necessary and welcome guidance and assistance for Tibet from the Central Government and other provinces and regions of the PRC.

IV BASIC NEEDS OF TIBETANS **Subject Matters of Self-government**

1) Language

Language is the most important attribute of the Tibetan people's identity. Tibetan is the primary means of communication, the language in which their literature, their spiritual texts and historical as well as scientific works are written. The Tibetan language is not only at the same high level as that of Sanskrit in terms of grammar, but is also the only one that has the capability of translating from Sanskrit without an iota of error. Therefore, Tibetan language has not only the richest and best-translated literatures, many scholars even contend that it has also the richest and largest number of literary compositions. The Constitution of the PRC, in Article 4, guarantees the freedom of all nationalities "to use and develop their own spoken and written languages ...".

In order for Tibetans to use and develop their own language, Tibetan must be respected as the main spoken and written language. Similarly, the principal language of the Tibetan autonomous areas needs to be Tibetan.

This principle is broadly recognised in the Constitution in Article 121, which states, "the organs of self-government of the national autonomous areas employ the spoken and written language or language in common use in the locality." Article 10 of the Law on Regional National Autonomy (LRNA) provides that these organs "shall guarantee the freedom of the nationalities in these areas to use and develop their own spoken and written languages...."

Consistent with the principle of recognition of Tibetan as the main language in Tibetan areas, the LRNA (Article 36) also allows the autonomous government authorities to decide on "the language used in instruction and enrolment procedures" with regard to education. This implies recognition of the principle that the principal medium of education be Tibetan.

2) Culture

The concept of national regional autonomy is primarily for the purpose of preservation of the culture of minority nationalities. Consequently, the constitution of PRC contains references to cultural preservation in Articles 22, 47 and 119 as also in Article 38 of the LRNA. To Tibetans, Tibetan culture is closely connected to our religion, tradition, language and identity, which are facing threats at various levels. Since Tibetans live within the multinational state of the PRC, this distinct Tibetan cultural heritage needs protection through appropriate constitutional provisions.

3) Religion

Religion is fundamental to Tibetans and Buddhism is closely linked to their identity. We recognise the importance of separation of church and state, but this should not affect the freedom and practice of believers. It is impossible for Tibetans to imagine personal or community freedom without the freedom of belief, conscience and religion. The Constitution recognises the importance of religion and protects the right to profess it. Article 36 guarantees all citizens the right to the freedom of religious belief. No one can compel another to believe in or not to believe in any religion. Discrimination on the basis of religion is forbidden.

An interpretation of the constitutional principle in light of international standard would also cover the freedom of the manner of belief or worship. The freedom covers the right of monasteries to be organised and run according to Buddhist monastic tradition, to engage in teachings and studies, and to enroll any number of monks and nuns or age group in accordance with these rules. The normal practice to hold public teachings and the empowerment of large gatherings is covered by this freedom and the state should not interfere in religious practices and traditions, such as the relationship between a teacher and his disciple, management of monastic institutions, and the recognition of reincarnations.

4) Education

The desire of Tibetans to develop and administer their own education system in cooperation and in coordination with the central government's ministry of education is supported by the principles contained in the Constitution with regard to education. So is the aspiration to engage in and contribute to the development of science and technology. We note the increasing recognition in international scientific development of the contribution which Buddhist psychology, metaphysics, cosmology and the understanding of the mind is making to modern science.

Whereas, under Article 19 of the Constitution the state takes on the overall responsibility to provide education for its citizens, Article 119 recognises the principle that "[T]he organs of self-government of the national autonomous areas independently administer educational affairs in their respective areas..." This principle is also reflected in Article 36 of the LRNA.

Since the degree of autonomy in decision-making is unclear, the point to be emphasised is that the Tibetan need to exercise genuine autonomy with regard to its own nationality's education and this is supported by the principles of the constitution on autonomy.

As for the aspiration to engage in and contribute to the development of scientific knowledge and technology, the Constitution (Article 119) and the LRNA (Article 39) clearly recognise the right of autonomous areas to develop scientific knowledge and technology.

5) Environment Protection

Tibet is the prime source of Asia's great rivers. It also has the earth's loftiest mountains as well as the world's most extensive and highest plateau, rich in mineral resources, ancient forests, and many deep valleys untouched by human disturbances.

This environmental protection practice was enhanced by the Tibetan people's traditional respect for all forms of life, which prohibits the harming of all sentient beings, whether human or animal. Tibet used to be an unspoiled wilderness sanctuary in a unique natural environment.

Today, Tibet's traditional environment is suffering irreparable damage. The effects of this are especially notable on the grasslands, the croplands, the forests, the water resources and the wildlife.

In view of this, according to Articles 45 and 66 of the LNRA, the Tibetan people should be given the right over the environment and allow them to follow their traditional conservation practices.

6) Utilisation of Natural Resources

With respect to the protection and management of the natural environment and the utilisation of natural resources the Constitution and the LRNA only acknowledge a limited role for the organs of self-government of the autonomous areas (see LRNA Articles 27, 28, 45, 66, and Article 118 of the Constitution, which pledges that the state "shall give due consideration to the interests of [the national autonomous areas]]". The LRNA recognises the importance for the autonomous areas to protect and develop forests and grasslands (Article 27) and to "give priority to the rational exploitation and utilization of the natural resources that the local authorities are entitled to develop", but only within the limits of state plans and legal stipulations. In fact, the central role of the State in these matters is reflected in the Constitution (Article 9).

The principles of autonomy enunciated in the Constitution cannot, in our view, truly lead to Tibetans becoming masters of their own destiny if they are not sufficiently involved in decision-making on utilisation of natural resources such as mineral resources, waters, forests, mountains, grasslands, etc.

The ownership of land is the foundation on which the development of natural resources, taxes and revenues of an economy are based. Therefore, it is essential that only the nationality of the autonomous region shall have the legal authority to transfer or lease land, except land owned by the state. In the same manner, the autonomous region must have the independent authority to formulate and implement developmental plans concurrent to the state plans.

7) Economic Development and Trade

Economic Development in Tibet is welcome and much needed. The Tibetan people remain one of the most economically backward regions within the PRC.

The Constitution recognises the principle that the autonomous authorities have an important role to play in the economic development of their areas in view of local characteristics and needs (Article 118 of the Constitution, also reflected in LRNA Article 25). The Constitution also recognises the principle of autonomy in the administration and management of finances (Article 117, and LRNA Article 32). At the same time, the Constitution also recognises the importance of providing State funding and assistance to the autonomous areas to accelerate development (Article 122, LRNA Article 22).

Similarly, Article 31 of the LRNA recognises the competence of autonomous areas, especially those such as Tibet, adjoining foreign countries, to conduct border trade as well as trade with foreign countries. The recognition of these principles is important to the Tibetan nationality given the

region's proximity to foreign countries with which the people have cultural, religious, ethnic and economic affinities.

The assistance rendered by the Central Government and the provinces has temporary benefits, but in the long run if the Tibetan people are not self-reliant and become dependent on others it has greater harm. Therefore, an important objective of autonomy is to make the Tibetan people economically self-reliant.

8) Public health

The Constitution enunciates the responsibility of the State to provide health and medical services (Article 21). Article 119 recognises that this is an area of responsibility of the autonomous areas. The LRNA (Article 40) also recognises the right of organs of self-government of the autonomous areas to "make independent decisions on plans for developing local medical and health services and for advancing both modern and the traditional medicine of the nationalities."

The existing health system fails to adequately cover the needs of the rural Tibetan population. According to the principles of the above-mentioned laws, the regional autonomous organs need to have the competencies and resources to cover the health need of the entire Tibetan population. They also need the competencies to promote the traditional Tibetan medical and astro system strictly according to traditional practice.

9) Public Security

In matters of public security it is important that the majority of security personnel consists of members of the local nationality who understand and respect local customs and traditions.

What is lacking in Tibetan areas is absence of decision-making authority in the hands of local Tibetan officials.

An important aspect of autonomy and self-government is the responsibility for the internal public order and security of the autonomous areas. The Constitution (Article 120) and LRNA (Article 24) recognise the importance of local involvement and authorise autonomous areas to organise their security within "the military system of the State and practical needs and with the approval of the State Council."

10) Regulation on population migration

The fundamental objective of national regional autonomy and self-government is the preservation of the identity, culture, language and so forth of the minority nationality and to ensure that it is the master of its own affairs. When applied to a particular territory in which the minority nationality lives in a concentrated community or communities, the very principle and purpose of national regional autonomy is disregarded if large scale migration and settlement of the majority Han nationality and other nationalities is encouraged and allowed. Major demographic changes that result from such migration will have the effect of assimilating rather than integrating the Tibetan nationality into the Han nationality and gradually extinguishing the distinct culture and identity of the Tibetan nationality. Also, the influx of large numbers of Han and other nationalities into Tibetan areas will fundamentally change the conditions necessary for the exercise of regional autonomy since the constitutional criteria for the exercise of autonomy, namely that the minority nationality "live in compact communities" in a particular territory is changed and undermined by the population movements and transfers. If such migrations and settlements continue uncontrolled, Tibetans will no longer live in a compact community or communities and will consequently no longer be entitled, under the Constitution, to national regional autonomy. This would effectively violate the very principles of the Constitution in its approach to the nationalities issue.

There is precedent in the PRC for restriction on the movement or residence of citizens. There is only a very limited recognition of the right of autonomous areas to work out measures to control "the transient population" in those areas. To us it would be vital that the autonomous organs of self-government have the authority to regulate the residence, settlement and employment or economic activities of persons who wish to move to Tibetan areas from other parts of the PRC in order to ensure respect for and the realisation of the objectives of the principle of autonomy.

It is not our intention to expel the non-Tibetans who have permanently settled in Tibet and have lived there and grown up there for a considerable time. Our concern is the induced massive movement of primarily Han but also some other nationalities into many areas of Tibet, upsetting

existing communities, marginalising the Tibetan population there and threatening the fragile natural environment.

11) Cultural, educational and religious exchanges with other countries

Besides the importance of exchanges and cooperation between the Tibetan nationality and other nationalities, provinces, and regions of the PRC in the subject matters of autonomy, such as culture, art, education, science, public health, sports, religion, environment, economy and so forth, the power of autonomous areas to conduct such exchanges with foreign countries in these areas is also recognised in the LRNA (Article 42).

V APPLICATION OF A SINGLE ADMINISTRATION FOR THE TIBETAN NATIONALITY IN THE PRC

In order for the Tibetan nationality to develop and flourish with its distinct identity, culture and spiritual tradition through the exercise of self-government on the above mentioned basic Tibetan needs, the entire community, comprising all the areas currently designated by the PRC as Tibetan autonomous areas, should be under one single administrative entity. The current administrative divisions, by which Tibetan communities are ruled and administered under different provinces and regions of the PRC, foments fragmentation, promotes unequal development, and weakens the ability of the Tibetan nationality to protect and promote its common cultural, spiritual and ethnic identity. Rather than respecting the integrity of the nationality, this policy promotes its fragmentation and disregards the spirit of autonomy. Whereas the other major minority nationalities such as the Uighurs and Mongols govern themselves almost entirely within their respective single autonomous regions, Tibetans remain as if they were several minority nationalities instead of one.

Bringing all the Tibetans currently living in designated Tibetan autonomous areas within a single autonomous administrative unit is entirely in accordance with the constitutional principle contained in Article 4, also reflected in the LRNA (Article 2), that “regional autonomy is practiced in areas where people of minority nationalities live in concentrated communities.” The LRNA describes regional national autonomy as the “basic policy adopted by the Communist Party of China for the solution of the national question in China” and explains its meaning and intent in its Preface:

the minority nationalities, under unified state leadership, 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. Regional national autonomy embodies the state’s full respect for and guarantee of the right of the minority nationalities to administer their internal affairs and its adherence to the principle of equality, unity and common prosperity of all nationalities.

It is clear that the Tibetan nationality within the PRC will be able to exercise its right to govern itself and administer its internal affairs effectively only once it can do so through an organ of self-government that has jurisdiction over the Tibetan nationality as a whole.

The LRNA recognises the principle that boundaries of national autonomous areas may need to be modified. The need for the application of the fundamental principles of the Constitution on regional autonomy through respect of the integrity of the Tibetan nationality is not only totally legitimate, but the administrative changes that may be required to achieve this in no way violate constitutional principles. There are several precedents where this has been actually done.

VI THE NATURE AND STRUCTURE OF THE AUTONOMY

The extent to which the right to self-government and self-administration can be exercised on the preceding subject matters largely determines the genuine character of Tibetan autonomy. The task at hand is therefore to look into the manner in which autonomy can be regulated and exercised for it to effectively respond to the unique situation and basic needs of the Tibetan nationality.

The exercise of genuine autonomy would include the right of Tibetans to create their own regional government and government institutions and processes that are best suited to their needs and characteristics. It would require that the People’s Congress of the autonomous region have the

power to legislate on all matters within the competencies of the region (that is the subject matters referred to above) and that other organs of the autonomous government have the power to execute and administer decisions autonomously. Autonomy also entails representation and meaningful participation in national decision-making in the Central Government. Processes for effective consultation and close cooperation or joint decision-making between the Central Government and the regional government on areas of common interest also need to be in place for the autonomy to be effective.

A crucial element of genuine autonomy is the guarantee the Constitution or other laws provide that powers and responsibilities allocated to the autonomous region cannot be unilaterally abrogated or changed. This means that neither the Central Government nor the autonomous region's government should be able, without the consent of the other, to change the basic features of the autonomy.

The parameters and specifics of such genuine autonomy for Tibet that respond to the unique needs and conditions of the Tibetan people and region should be set out in some detail in regulations on the exercise of autonomy, as provided for in Article 116 of the Constitution (enacted in LRNA Article 19) or, if it is found to be more appropriate, in a separate set of laws or regulations adopted for that purpose. The Constitution, including Article 31, provides the flexibility to adopt special laws to respond to unique situations such as the Tibetan one, while respecting the established social, economic and political system of the country.

The Constitution in Section VI provides for organs of self-government of national autonomous regions and acknowledges their power to legislate. Thus Article 116 (enacted in Article 19 of the LRNA) refers to their power to enact "separate regulations in light of the political, economic and cultural characteristics of the nationality or nationalities in the areas concerned." Similarly, the Constitution recognises the power of autonomous administration in a number of areas (Article 117-120) as well as the power of autonomous governments to apply flexibility in implementing the laws and policies of the Central Government and higher state organs to suit the conditions of the autonomous area concerned (Article 115).

The above-mentioned legal provisions do contain significant limitations to the decision-making authority of the autonomous organs of government. But the Constitution nevertheless recognises the principle that organs of self-government make laws and policy decisions that address local needs and that these may be different from those adopted elsewhere, including by the Central Government.

Although the needs of the Tibetans are broadly consistent with the principles on autonomy contained in the Constitution, as we have shown, their realisation is impeded because of the existence of a number of problems, which makes the implementation of those principles today difficult or ineffective.

Implementation of genuine autonomy, for example, requires clear divisions of powers and responsibilities between the Central Government and the government of the autonomous region with respect to subject matter competency. Currently there is no such clarity and the scope of legislative powers of autonomous regions is both uncertain and severely restricted. Thus, whereas the Constitution intends to recognise the special need for autonomous regions to legislate on many matters that affect them, the requirements of Article 116 for prior approval at the highest level of the Central Government - by the Standing Committee of National People's Congress (NPC) - inhibit the implementation of this principle of autonomy. In reality, it is only autonomous regional congresses that expressly require such approval, while the congresses of ordinary (not autonomous) provinces of the PRC do not need prior permission and merely report the passage of regulations to the Standing Committee of the NPC "for the record" (Article 100).

The exercise of autonomy is further subject to a considerable number of laws and regulations, according to Article 115 of the Constitution. Certain laws effectively restrict the autonomy of the autonomous region, while others are not always consistent with one another. The result is that the exact scope of the autonomy is unclear and is not fixed, since it is unilaterally changed with the enactment of laws and regulations at higher levels of the state, and even by changes in policy. There is also no adequate process for consultation or for settling differences that arise between the organs of the Central Government and of the regional government with respect to the scope

and exercise of autonomy. In practice, the resulting uncertainty limits the initiative of regional authorities and impedes the exercise of genuine autonomy by Tibetans today.

We do not at this stage wish to enter into details regarding these and other impediments to the exercise of genuine autonomy today by Tibetans, but mention them by way of example so that these may be addressed in the appropriate manner in our dialogue in the future. We will continue to study the Constitution and other relevant legal provisions and, when appropriate, will be pleased to provide further analysis of these issues, as we understand them.

VII THE WAY FORWARD

As stated at the beginning of this memorandum, our intention is to explore how the needs of the Tibetan nationality can be met within the framework of PRC since we believe these needs are consistent with the principles of the Constitution on autonomy. As His Holiness the Dalai Lama stated on a number of occasions, we have no hidden agenda. We have no intention at all of using any agreement on genuine autonomy as stepping stone for separation from the PRC.

The objective of the Tibetan Government in Exile is to represent the interests of the Tibetan people and to speak on their behalf. Therefore, it will no longer be needed and will be dissolved once an agreement is reached between us. In fact, His Holiness has reiterated his decision not to accept any political office in Tibet at any time in the future. His Holiness the Dalai Lama, nevertheless, plans to use all his personal influence to ensure such an agreement would have the legitimacy necessary to obtain the support of the Tibetan people.

Given these strong commitments, we propose that the next step in this process be the agreement to start serious discussions on the points raised in this memorandum. For this purpose we propose that we discuss and agree on a mutually agreeable mechanism or mechanisms and a timetable to do so effectively.