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Legal Reform in China: Quelling Tibetan Unrest?

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Synopsis

With rising incidence of ethnic minority violence, China's incoming leaders are faced with a serious challenge to domestic stability in the Tibetan-dominant south-western provinces. There is an urgent need for genuine legal reform, but will the revised criminal procedure code help quell Tibetan unrest?

Commentary

SINCE MARCH 2011, 22 counts of self-immolations and large-scale protests by Tibetan Buddhist clergy have taken place in China's Tibet Autonomous Region (TAR). When the National People's Congress met recently for the final session before the leadership transition in 2013, security in Tibet and the adjoining Tibetan-populated regions was raised to the highest level.

Beijing sought to check Tibetan unrest with strong statements against "hostile forces" and threats to remove local officials for failure to maintain peace and stability in the region. Although Beijing blames its ethnic woes on external forces bent on splitting China, a closer examination of China's continuing ethnic problems in Tibet reveals that it is more the result of its own doing than by the "Dalai clique", as the followers of the exiled Dalai Lama are referred to by Beijing.

Suppressive rule of law

China is a victim of its own success at deploying paramilitary and police forces to quell social unrest and dissent. Although this aggressive stance is effective in the speedy restoration of stability and order, it hardly alleviates the increasingly strained inter-ethnic trust between the Hans and Tibetans. Human rights activists have pinpointed Beijing's use of force as one of the main factors exacerbating ethnic distrust and further polarising the ethnic divide in the unstable region.

To compound this, China's management of ethnic unrest lacks transparency, while being marked by abduction, arbitrary detention, forced confessions and deprivation of legal representation in courts against broad charges of terrorism and endangering state security. Hence, human rights advocates claim that the Chinese criminal code and justice system offer little hope of justice. The violent riots of 1987-93 and 2008 seemed to have justified the use of force in restoring peace and stability, while Tibetans' basic rights as Chinese citizens to legal representation and just trial became collateral damage.

The collegial bench administering most criminal and civil trials in China is made up of a maximum of three judges and between three to five assessors. As stipulated by the Chinese Constitution, local residents or people's congresses elect assessors who are Chinese citizens with political rights over the age of 23 years. Assessors can also be appointed by the court for their expertise. In the case of the TAR, little information is offered on the appointment of assessors in the criminal trials for Tibetans, especially those who were charged with separatism or incitement of violence during times of unrest.

Although more than 200 local laws, regulations and decisions have been enacted in the TAR since 1965, it is unclear if the right to legal representation and legal aid for Tibetan protesters is being upheld. According to Beijing-based activists, lawyers willing to provide legal advice for Tibetans arrested in the 2008 riots were given specific warnings by the Beijing legal bureau to avoid interfering in Tibetan affairs or representing Tibetans in the TAR courts.

Question of legal enforcement

The Communist Party recognises that reforming China's criminal code to be more in line with international norms is the linchpin of its effort to give a greater role to the rule of law in a harmonious society. The draft amendment proposing reforms to China's criminal procedure law, such as prompt access to legal representation; protection against forced confessions; and outlawing of evidence obtained by torture; was passed by an overwhelming majority of the delegates in the Chinese legislature.

This reflects an increased awareness of the need to protect detainees' rights, but it does little to ensure effective enforcement by Chinese police and prosecutors, who routinely ignore existing provisions protecting detainees' rights and have frequently detained political dissidents under vague charges of endangering national security. Any significant reform which the revised law would bring about is offset by Article 73, which legalises the secret detention of people deemed politically risky under the guise of residential surveillance.

There are concerns that Article 73 may lead to increased instances of miscarriages of justice against Tibetans, and Chinese citizens in general. In the past month alone, two Tibetan personalities – popular writer, Gangkye Drubpa Kyab, and popular advocate of Tibet's traditional culture and language, Dawa Dorje – have been detained without warrants. Other Chinese personalities who have suffered a similar experience include Nobel Peace Prize laureate – Liu Xiaobo, Ai Weiwei and Gao Zhisheng.

Given the prevailing fear of separatism among the Beijing and TAR authorities, it remains to be seen if the more progressive legal reforms will be effectively upheld in the region.

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