

Scotland Exercises Self-determination in Historic Referendum: Lessons for China and Tibet

On September 18, 2014, Scottish citizens voted in a historic referendum to determine whether Scotland would remain part of the United Kingdom or become an independent country. Scotland's voters decided, by a margin of about 10%, to remain part of the United Kingdom. Tibet Justice Center (TJC) congratulates Scotland on its peaceful exercise of self-determination and commends the United Kingdom for recognizing that the Scottish people enjoy a right to self-determination under international law. That Scotland exercised this right by voting on its preferred status in a free and fair referendum, and that the United Kingdom, adhering to its legal obligation, respected this right and honored the wishes of the Scottish people is an example to the world.

Scotland became part of the United Kingdom in 1707 by virtue of the Act of Union. Since then, and especially since 1999, when Scotland formed its own devolved parliament, Scotland has enjoyed a measure of genuine autonomy within the United Kingdom. In 2011, the Scottish National Party (SNP), which favors full independence, secured a majority in the Scottish Parliament. In October 2012, the SNP, currently led by First Minister Alex Salmond, entered into an agreement with Prime Minister David Cameron's Conservative-led British government, which opposes independence, to hold a referendum to determine Scotland's status.

Scotland's referendum is a model of how peoples may exercise their right to self-determination peacefully, and the United Kingdom's response to Scotland's initiative is equally exemplary of how a metropolitan or former colonial state should enable peoples to exercise that right. This right is based in a number of treaties. In 1945, the U.N. Charter extended the right to self-determination to all non-self-governing territories. Article 73 sets forth the obligations of metropolitan states such as the United Kingdom in some detail. These include their responsibilities:

- to ensure, with due respect for the culture of the peoples concerned, their political, economic, social, and educational advancement, their just treatment, and their protection against abuses;
- to develop self-government, to take due account of the political aspirations of the peoples, and to assist them in the progressive development of their free political institutions, according to the particular circumstances of each territory and its peoples and their varying stages of advancement;
- to further international peace and security; [. . .]

Since 1945, the U.N. General Assembly, the Security Council, and the International Court of Justice have all affirmed the right to self-determination on numerous occasions. Among the most critical General Assembly resolutions are 1514 (1960), 1541 (1960), 1654 (1961), and 2625 (1970). Principle VI of G.A. The three options that non-self-governing territories may choose in a free and fair referendum are set forth in Resolution 1541, and these are:

- Emergence as a sovereign independent State;
- Free association with an independent State; or
- Integration with an independent State.

All three models of self-determination have been chosen by diverse peoples since 1945 in accordance with G.A. Resolution 2625, which provides in part that “[b]y virtue of the principle of equal rights and self-determination of peoples enshrined in the Charter of the United Nations, all peoples have the right freely to determine, without external interference, their political status and to pursue their economic, social and cultural development, and every State has the duty to respect this right in accordance with the provisions of the Charter.”

In 1966, the General Assembly enshrined the right of self determination at the heart of its human rights documents, when it adopted the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights. The first article of both treaties affirms the right to self-determination, as it is the foundation of every other human right: Article 1, paragraph 1, proclaims, “All peoples have the right of self-determination. By virtue of that right they

freely determine their political status and freely pursue their economic, social and cultural development.” Article 1, paragraph 3, sets out the obligations of other nations: “The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.” Scotland and the United Kingdom observed these rights and obligations, respectively, in a peaceful and mutually respectful manner that should become a model for instantiating the right to self-determination in other non-self-governing territories throughout the world.

As TJC established in [The Case Concerning Tibet](#), a legal and historical study (updated in February 2013 in light of additional evidence), Tibet enjoyed independence as a sovereign state prior to its occupation by the People’s Liberation Army of China in 1950, and the Tibetan people, in light of both this history and their common ethnic, linguistic, religious, cultural, sociopolitical, and other shared characteristics, have the right to self-determination under international law. In fact, in Resolution 1723 (XVI) the U.N. General Assembly explicitly recognized the Tibetan people’s “right to self-determination”. The People’s Republic of China (PRC) has an obligation to enable them to exercise that right in a free and fair referendum, just as the United Kingdom respected this right with respect to Scotland and its people. Tibetans too should be allowed to choose their form of self-governance from among the three options set forth in Principle VI of G.A. Resolution 1541.

The PRC authorities claim that Tibetans wish to remain a part of the PRC, however their continuing refusal to even consider a free and fair referendum in which Tibetans could peacefully express their wishes under Principle VI of G.A. Resolution 1541 belies this claim. The so-called “ethnic minority regional autonomy” by which China claims to afford Tibetans autonomy is no more than a name. In reality, the Tibetan people have no control over their political, economic, social or cultural life and development. China also systematically violates the human rights of Tibetans, including their right to freedom of speech, assembly, and religious belief. Research and reports by among others TJC, Human Rights Watch, the International Commission of Jurists, and foreign ministries or state departments of other countries have also shown that Tibetans have been and continue to be arbitrarily arrested, tortured, and denied due process of law. Since 2009, more than 130 Tibetans have self-immolated to protest China’s repressive policies and refusal to respect their right to self-determination.

Scotland’s referendum shows that self-determination can and should be afforded to all peoples to exercise peacefully. TJC calls upon the Government of the PRC to allow the Tibetan people to similarly exercise their right to self-determination. This is a legal as well as moral obligation. Only by allowing Tibetans to “freely determine their political status and freely pursue their economic, social and cultural development” can the PRC respect its international legal obligations and can the most fundamental freedoms and aspirations of the Tibetan people be realized.

Tibet Justice Center staff and board, September 2014