Múltiples

Introducción

Elaine Bruer
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Algunos miembros del Grupo de Gobernanza y Justicia hemos tenido la oportunidad de participar directamente o de observar diversas experiencias de administración política descentralizada en países latinoamericanos. En esa región, en la ola de democratización que siguió a la caída de los regímenes autoritarios y/o conflictos armados, hemos observado una tendencia hacia una mayor autonomía municipal y, en algunos casos, descentralización regional después de siglos de toma de decisiones políticas de manera centralizada. Recientemente Kimberly Inksater, con el apoyo de pasantes de investigación del JGG, ha estudiado y trabajado disposiciones administrativas locales en otras regiones del mundo. Cada entidad política administrativa estudiada tiene distintas características y atributos basados en las demandas de la población local y en las necesidades del gobierno nacional. Por ejemplo, la descentralización política puede responder a factores tales como la identidad étnica, las demandas de autogobierno y participación política local.

Expandiendo nuestro enfoque más allá de América Latina, este número de *Múltiples* incluye artículos especializados que describen la administración política en Bolivia, China y en los Territorios Palestinos Ocupados.

Gonzalo Colque, Director Ejecutivo de la Fundación TIERRA en Bolivia, describe la integración de los territorios indígenas autónomos en el panorama político de Bolivia a partir de la promulgación de una nueva Constitución Política del Estado. Kimberly Inksater comparte sus reflexiones sobre la compleja situación de gobernanza que enfrentan los palestinos que viven en los territorios ocupados, y con los aportes de investigación de los ex pasantes del JGG Jan Nitoslawski y Brown Tenille, Kimberly aborda la situación de las Prefecturas Autónomas Tibetanas en el contexto de las minorías étnicas en China.

Introduction

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Members of the Just Governance Group have had opportunities to be directly involved with or observe various decentralized political administration experiences within Latin American countries. In that region, in the wave of democratization that has followed the fall of authoritarian regimes and/or armed conflict, we have observed a trend towards increased municipal autonomy, and in some cases, regional decentralization after centuries of centralized political decision making. More recently Kimberly Inksater, with the support of JGG research interns, has studied and worked in local administrative arrangements in other regions of the world. Each political administrative entity studied has distinct characteristics and attributes based on the demands of the local population and needs of the national government. For example, political decentralization may respond to factors such as ethnic identity, demands for self government, and local political participation.

Expanding our focus beyond Latin America, this issue of *Multiples* includes articles that describe specialized political administration in China and Palestine as well as in Bolivia.

Gonzalo Colque, Executive Director of the Land Foundation in Bolivia, describes the integration of autonomous indigenous territories in the political landscape in Bolivia with the adoption of its new Constitution. Kimberly Inksater shares her reflections on the complex governance situation facing Palestinians living in occupied territories. And, with research by former JGG interns Jan Nitoslawski and Tenille Brown, Kimberly reflects on the situation of the Tibetan Autonomous Prefectures in the context of ethnic minorities in China.

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Rediseño de gobiernos locales indígenas

Gonzalo Colque

En Bolivia actualmente es difícil imaginar nuestra realidad rural sin los gobiernos locales o municipios que existen desde hace 15 años. Hasta la Ley de Participación Popular (LPP) de 1994, las secciones de provincias no habían tenido ningún rol ni poder político, a pesar de formar parte de la organización política administrativa del Estado. Esta situación cambió cuando la LPP convirtió las secciones de provincia en municipios que coparticipan en la administración y ejecución de los recursos del Estado.

Uno de los aportes del municipalismo es haber visibilizado regiones y localidades tradicionalmente inexistentes para el Estado central y los gobiernos departamentales y de gobiernos locales comunitarios e indígenas que habían pervivido al margen del Estado. La LPP incluyó en el diseño municipal formas de control social desde los Comités de Vigilancia (CV) de las "Organizaciones Territoriales de Base" (OTB) en un intento por reconocer el rol de las comunidades indígenas organizadas. Aunque no estaba previsto en la LPP, desde sus inicios se crearon distritos municipales indígenas (DMI) precisamente porque sus impulsores -los pueblos indígenas- aprovecharon la figura jurídica de distritos municipales (DM) que permitía su conformación allá donde existiera unidad geográfica, sociocultural, productiva y económica. El primer distrito municipal indígena fue Isoso en el municipio de Charagua de Santa Cruz.

En muchas regiones, los DMI fueron concebidos como una opción para armonizar la división política administrativa del Estado y la jurisdicción territorial indígena extra estatal (comunidades, ayllus, centrales agrarias, parcialidades, etc.). Según **Municipio indígena: análisis del proceso y perspectivas viables**, de Mario Galindo, hasta el año 2008 se habrían creado al menos 73 DMI y la mitad de los mismos ya contarían con planes de desarrollo distrital indígena. Diríamos que fueron también una forma de descentralización al interior de los municipios o de creación de subgobiernos municipales indígenas evidentemente vinculados a formas de gobiernos indígenas comunitarios.

La Asamblea Constituyente (2006-2008) se encontró con la realidad de municipios parcialmente reformados desde la lógica indígena que, en algunos casos, reclaman su renacimiento como "municipios indígenas" y, en otros, a partir de un proceso de reterritorialización para adecuar la jurisdicción municipal a territorios indígenas. Esta demanda coincide con un movimiento mayor desde los departamentos por crear en Bolivia formas de gobiernos subnacionales autónomos. En consecuencia, la actual Constitución Política del Estado (CPE) reconoce cuatro tipos de gobiernos autónomos: departamental, regional, municipal e indígena (autonomía indígena). Esto significa

que, básicamente, la CPE abre puertas para rediscutir el modelo de descentralización y organización territorial y, a nivel local, el rediseño desde abajo de los gobiernos locales, sea como autonomías municipales o autonomías indígenas.

Marco Constitucional

La CPE reconoce los actuales gobiernos municipales descentralizados como gobiernos autónomos de hecho aunque también señala que deberán aprobar su Carta Orgánica o ley básica para adoptar la cualidad de Autonomía Municipal o, como dice la Federación de Asociaciones Municipales (FAM), autonomía municipal plena entendida como igualdad en la jerarquía constitucional, potestad legislativa y vigencia de un estatuto propio de gobierno (FAM, 2007). Las principales posibilidades de su reforma están relacionadas con su mayor capacidad legislativa y readecuación de las formas de elección, participación, control social y la incorporación de los derechos colectivos de los pueblos y naciones indígenas existentes en su territorio. En ese marco, al menos son tres los elementos de debate que plantea la CPE:

1. **Participación y control social**. Quizá el elemento más visible de la LPP es la "planificación participativa" que principalmente obliga a las autoridades municipales a realizar consultas a las comunidades para la elaboración de planes operativos o de desarrollo y fiscalización de obras. Pero entre otros, Finot (2003) es crítico con el alcance real de la planificación participativa porque estaría limitada a expresar demandas y controlar el gasto municipal.

2. **Sistema de representación en el órgano legislativo**. Básicamente la CPE obliga a los municipios con población indígena a reconocer concejales o representantes indígenas en el concejo municipal. Los pueblos indígenas elegirán sus concejales no sólo en representación de su jurisdicción sino además por procedimientos y normas propios. Una cuestión a estudiar sería si los municipios deberían generalizar en toda su jurisdicción la elección de sus concejales por territorios. También parte de este debate será si, por el principio de igualdad jurídica entre todos los ciudadanos, la representación será proporcional por población.

3. **Elección del ejecutivo municipal en lista separada**. La Constitución introduce esta figura en el artículo 287.II. Dentro de la autonomía municipal su elección será por voto universal pero plantea el reto de integrar el territorio municipal por encima de posibles pugnas que pudiesen surgir entre los pueblos indígenas y el resto del territorio municipal.

Sobre el Autor

Gonzalo Colque, boliviano, es economista con especialidad en desarrollo rural. Actualmente es Director Ejecutivo de Fundación TIERRA (www.ftierra.org). Anteriormente, fue miembro de investigadores jóvenes del Programa de Investigación Estratégica en Bolivia (PIEB), asesor en la formación del municipio indígena de Jesús de Machaca, investigador y director regional de la Fundación TIERRA. Entre varias publicaciones, Gonzalo es autor de *Autonomías indígenas en tierras altas* (2009), *Gestión territorial comunitaria* (2008) y *The Difficult Marriage between Liberal Democracy and Ayllu Democracy* (2007).

Gonzalo en Collagua, Bolivia

En resumen, todo indica que los DMI serán parte de la organización territorial del municipio. El mandato constitucional no es muy claro respecto a que si la redacción de las Cartas Orgánicas debe ser participativa y con obligatoriedad de estudiar el reconocimiento de todos los derechos reconocidos a favor de los pueblos y comunidades indígenas. No tomar en cuenta este aspecto podría generar conflictos y crear inestabilidad política para las nacientes autonomías locales.

Autonomías indígenas

La autonomía indígena está reconocida en la CPE como la respuesta estatal a la demanda histórica de los pueblos y naciones indígenas de autogobierno y libre determinación. En adelante, la CPE, sin que existan antecedentes, permite a los indígenas diseñar sus propias instituciones autónomas y de acuerdo con las formas tradicionales de gobierno indígena para administrar los recursos descentralizados (al igual que los municipios) y proveer bienes y servicios públicos.

En términos teóricos de diseño institucional responde a estudios como el de John Cameron, en su libro de 2009 **Struggles for Local Democracy in the Andes** en el que concluye que para promover la buena gobernanza, las instituciones estatales descentralizadas deben estar diseñadas de acuerdo con las tradiciones locales, sus normas y capacidades. Asimismo Van Cott en su **Radical Democracy in the Andes** de Cambridge University Press, New York. De 2008, indica que los diseños de arriba para abajo -una talla para todos- para las instituciones descentralizadas rara vez son eficaces en contextos culturalmente diversos como los de la región andina.

La autonomía indígena también responde a preocupaciones de autores como Ticona en su artículo *El colonialismo intelectual europeo, sus orígenes y consecuencias*: *Posibilidades de descolonialización en Bolivia*, que conciben a los municipios y las divisiones político administrativas del Estado como imposiciones coloniales que merecen políticas de "descolonización" desde la administración pública. Sin embargo, la evidencia hasta la fecha indica que el proceso de diseño y gestión de la autonomía indígena, que responda a las prioridades de los pueblos indígenas y a su vez a las del Estado, no será una tarea fácil.

Tanto la CPE como la Ley 4021 del 14 de abril de 2009, afirman que el requisito importante para poner en marcha la autonomía indígena son los estatutos autonómicos. Cada entidad territorial sea cual sea, debe organizarse y conformar un consejo o asamblea deliberativa para la redacción del proyecto de estatuto. A diferencia de otras leyes básicas, el estatuto indígena tiene alcances de otra naturaleza y deberá abarcar nuevos campos concernientes a los derechos colectivos de autogobierno y libre determinación de los pueblos indígenas. No es obligación de los pueblos indígenas dejar a un lado el municipio y adoptar la autonomía indígena. La CPE, artículo 284.II, es explícita al señalar que "en los municipios donde existan naciones o pueblos indígena originario campesinos, que no se constituyan en autonomía indígena originaria campesina, éstos podrán elegir sus representantes ante el Concejo Municipal de forma directa mediante normas y procedimientos propios y de acuerdo a la Carta Orgánica Municipal".

La CPE admite la posibilidad de consolidar la forma de municipios con una parte territorial indígena, antes distritos municipales indígenas y en adelante territorios indígena originario campesinos (TIOC). Aunque no es explícito el modelo inverso de gobiernos locales sobre base indígena es también posible. El primer artículo señala que Bolivia se funda en la pluralidad y el pluralismo político, económico, jurídico, cultural y lingüístico. El artículo 30.II.17 indica que se reconoce la gestión territorial indígena autónoma sin perjuicio de los derechos legítimamente adquiridos por terceros. Este sería el caso de Tierras Comunitarias de Origen (TCO), en cuyo interior se encuentran derechos reconocidos a favor de ciudadanos no indígenas pero que eventualmente pasarían a formar parte de la autonomía indígena. Lo mismo es válido para municipios mayoritariamente indígenas que adopten la autonomía indígena.

Primeros pasos

La autonomía municipal aún no ha llamado la atención de ninguno de los municipios, Sobre todo en el ámbito rural,. Aunque no existe la Ley Marco de Autonomías que ordena la CPE, donde si se produjo avances es en la autonomía indígena por la vía municipal. Se trata de la conversión de los actuales municipios, camino relativamente más rápido por existir un territorio delimitado (sección de provincia) donde además funciona un gobierno local (gobierno municipal).

En agosto de 2009, 19 municipios solicitaron ante el Ministerio de Autonomía su conversión a la autonomía indígena pero finalmente sólo 12 cumplieron con todos los trámites y requisitos establecidos en la CPE, el Régimen electoral transitorio y el Decreto Supremo Nº 231. En el referéndum de conversión 11 municipios aceptaron la propuesta de transitar a la autonomía indígena.

Según la CPE, la conversión no implica renuncia a las competencias asignadas a la autonomía municipal ni a las que actualmente ejercen los municipios en calidad de territorios descentralizados. Básicamente la autonomía indígena añade a las 43 competencias municipales otras 23 competencias exclusivas, pero al combinarlas, al menos 10 serían básicamente iguales.

Existen otros desafíos pendientes en esta tarea. Uno de ellos es la definición de nuevos límites o unidades territoriales cuando la autonomía indígena se constituya sobre la base de territorios indígenas (Tierras Comunitarias de Origen, TCO) que no coinciden con los límites municipales y que en más del 50% son discontinuos.

Conclusiones preliminares

En Bolivia, la CPE permite que los actores locales puedan diseñar sus gobiernos locales a la imagen de los municipios o, caso contrario, autonomías indígenas. En ambos casos esta apertura responde al énfasis que la CPE pone en los derechos colectivos de los pueblos indígenas, derechos que pueden traducirse en el ejercicio del autogobierno indígena, elección de autoridades políticas según normas y procedimientos propios, ejercicio de la justicia indígena y visión de desarrollo propio.

Las primeras experiencias como de Jesús de Machaca advierten que el proceso no será fácil y que esta apuesta tiene dificultades y riesgos. En todo caso, la autonomía municipal y la indígena están obligadas a convivir y serán las dos expresiones del gobierno local, emparentadas pero no iguales. Si tuviéramos que establecer una agenda común podemos señalar cinco puntos:

1. **Rediseño de municipios mediante la autonomía indígena**. Es central que la agenda municipal incluya la discusión de la adopción de la autonomía indígena, especialmente para aquellas regiones eminentemente indígenas. La autonomía indígena se puede entender como una opción de profundización de la LPP al incorporar lógicas comunitarias e indígenas y acercar el municipio a un modelo de gobierno local orientado al desarrollo rural y cultural. Ello está reflejado en las competencias adicionales a la autonomía municipal que nacen de la conversión a la autonomía indígena y que refieren a temas de desarrollo rural y productivo, gestión de recursos naturales y tierra y reconocimiento y ejercicio de la justicia indígena en territorios indígena originario campesinos.

2. **Rediseño de municipios sin autonomía indígena**. La Constitución establece en el artículo 284 que los territorios indígena originario campesinos (TIOC) que son parte del municipio pero que no llegan a convertirse en autonomía indígena, pueden elegir sus representantes de forma directa mediante normas y procedimientos propios. Este es un tema que deberían prever los municipios que tienen poca probabilidad de convertirse en autonomía indígena pero que contienen comunidades indígenas, ayllus o TCO, todos con una organización viva.

3. **Re-territorialización por iniciativa de los pueblos indígenas.** La demanda de autonomías indígenas por parte de las TCO que abarcan parcialmente el territorio municipal, podría inviabilizar su funcionamiento o al menos generar un conflicto local entre municipalistas e indigenistas. De hecho, el nuevo territorio indígena no puede constituirse sin la aprobación del municipio del cual se desprende pero tampoco debe inviabilizar su funcionamiento. Por ejemplo, si el municipio restante se queda con una población inferior a la base demográfica mínima exigida por Ley, los gobiernos locales se atomizarían. Si la creación de un nuevo territorio autónomo no inviabiliza al municipio, éste no debería frenar su creación sino prever cómo adoptar una nueva estructura y funcionamiento sin el componente

indígena que se separa. Son aspectos propios de la elaboración de la carta orgánica municipal.

4. **Discusión previa del modelo de gobierno local**. Será importante que los gobiernos municipales y las organizaciones de base estudien de forma participativa las ventajas de adoptar una u otra figura autonómica antes de asumir la elaboración de sus normas básicas. En realidad ambas figuras de gobierno local son bastantes flexibles en reconocer a la otra.

La CPE abre la posibilidad de que los actores locales, la mayoría indígena rural, rediseñen sus instituciones de gobierno local para avanzar hacia una mayor autonomía, políticas interculturales y territorios indígena originario campesinos con cualidad gubernativa.

Reflections on Palestinian Self Government in the West Bank

Kimberly Inksater

I have been very privileged, as a consultant in international development, to have traveled to many countries. In February I had the opportunity to conduct an evaluation of a regional program implemented by McGill University with partners in Palestine, Jordan and Israel. The Canadian International Development Agency has supported the program's national activities with civil society organizations in some of the Palestinian territories (West Bank, East Jerusalem) and Jordan.

This brief article is a personal account of my observations related to political administration and governance issues, especially with reference to East Jerusalem and the West Bank. My personal observations are supplemented with additional research to help describe the historical background to the present day political administration in these occupied areas. I did not travel to Gaza and will not comment here on the special circumstances of that territory, in the aftermath of the Gaza conflict in December 2008.

After my background research and initial briefings in the region I could not imagine, despite Palestinian and international aspirations, how Palestinian self government was possible in the West Bank, (let alone in a unified manner between the West Bank and Gaza). The areas of the West Bank that are under Palestinian control are not physically contiguous, and East Jerusalem is occupied, with Israeli municipal government and security in control. Is statehood or only limited self government possible for Palestine?

East Jerusalem
Upon my arrival in Jerusalem, McGill personnel in coordination with their local partner organization, Jerusalem Community Advocacy Network, arranged a tour of the Old City to help me understand the complexities of the Palestinian population in the Old City and surrounding areas. The major issues that stood out among numerous challenges facing Palestinians living in East Jerusalem, and in the Old City in particular, are housing and property rights, identity rights, and freedom of movement. The political and judicial administration of these issues is based on Israeli systems and institutions, imposed by them as the occupying power.

Housing and property rights in occupied Jerusalem Jewish settlers are evicting and occupying non-

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Jewish-owned buildings, such as Christian churches, as well as homes and shops owned by Palestinians. The settlers have court orders and police enforcement to support their actions. The evicted or displaced owner must demonstrate legal ownership within a 24 hour period or a court order for eviction is initiated. Jerusalemites born and raised in homes in and near the Old City often lack the means to demonstrate ownership through inheritance on such short notice.

The municipality of Jerusalem provides building permits to Jewish settler organizations for renovating or building homes, offices or synagogues, while Arab Jerusalemites are denied permits to renovate or expand their homes. This policy has expanded Jewish control over much of the Arab Quarter in the Old City. I witnessed the crowded and poor living conditions that have resulted for Palestinian families. My tour guide led me through a dimly lit alley, followed by a pitch dark tunnel and into a small common space with numerous staircases leading to homes of Palestinian families. A man leaving his home explained to me that three families were in the home and that they did not have sufficient or regular electricity or water service compared to that the Jewish Quarter.

Official statistics demonstrate the housing crisis. In Silwan, a Palestinian neighbourhood in East Jerusalem only 20 housing permits have been granted to Arab families since 1967. Consequently, apartment buildings and homes have been constructed by Palestinian families without municipal approval and are now under threat of demolition. In East Jerusalem an average of 100 houses are demolished per year. Currently 1,500 have demolition orders pending and approximately 60,000 homes are designated for eventual demolition. On the other hand, the national Ministry of Housing has recently announced thousands of new housing units for settlers in East Jerusalem. Palestinian and progressive Israeli organizations have documented

and denounced the steady Israeli entrenchment and discrimination against Arabs in East Jerusalem in defiance of international law and a peaceful solution to the conflict.

I felt anger at the message of defiance and intimidation as well-armed settlers passed me in the narrow pathways of the Old City, and likewise I felt aggravated at the airport-like security checkpoints established near the Western Wall that prevented Arab Jerusalemites from entering the area around the Al Aqsa mosque. Yet I also know that prior to Jewish control the Old City was controlled by Jordan, and Jewish worshippers were likewise forbidden to enter their holy sites.

At present the Israeli Defence Forces clearly control the Old City and settler organizations have rebuilt much of the Jewish Quarter with modern structures and continue to expand their occupation of adjacent neighbourhoods. The denial of the historical religious significance of each others' holy sites by both Jews and Muslims has resulted in violence and damage to historical treasures. This led me to wonder out loud if the Old City should not be administered by UNESCO or another United Nations trust mandated to preserve and administer the historic city. The inaudible response by my Arab tour guide and subsequent conversations with both Israeli and Palestinian individuals revealed it was not a popular idea. In fact, such a proposal for international administration was contained in United Nations General Assembly Resolution 303 in 1949 and was passed despite opposition from Israel, Jordan and other countries. In my opinion the lack of implementation of this resolution has resulted in increased conflict and also destruction of historic sites in the Old City. The Old City has been included in the UNESCO list of world heritage sites in danger since 1982.

The current situation is the result of Israel's annexation, in the aftermath of the 1967 Six Day War, of land surrounding Jerusalem and actually within the West Bank territory. Israel

expanded municipal boundaries to include surrounding villages and has steadily promoted Jewish settlements in the annexed area. The areas annexed and occupied in 1967 have not been recognized internationally as being under Israeli control. Given that Jerusalem is the designated capital for both Palestinian and Israeli states, the physical transformation of East Jerusalem and the Old City through increased Jewish settlement presents a major obstacle to a politically negotiated two state agreement. At present, Israel exerts de facto control after Jordan's withdrawal.

The Palestinian Liberation Organization and subsequently the Palestinian National Authority have boycotted political participation in municipal government since 1967, and while the Palestinian National Authority designates a governor to the Jerusalem governorate district, the separation barrier, or "the Wall," has

Map key
- Full Palestinian control
- Palestinian civil/Israeli security
- Full Israeli control
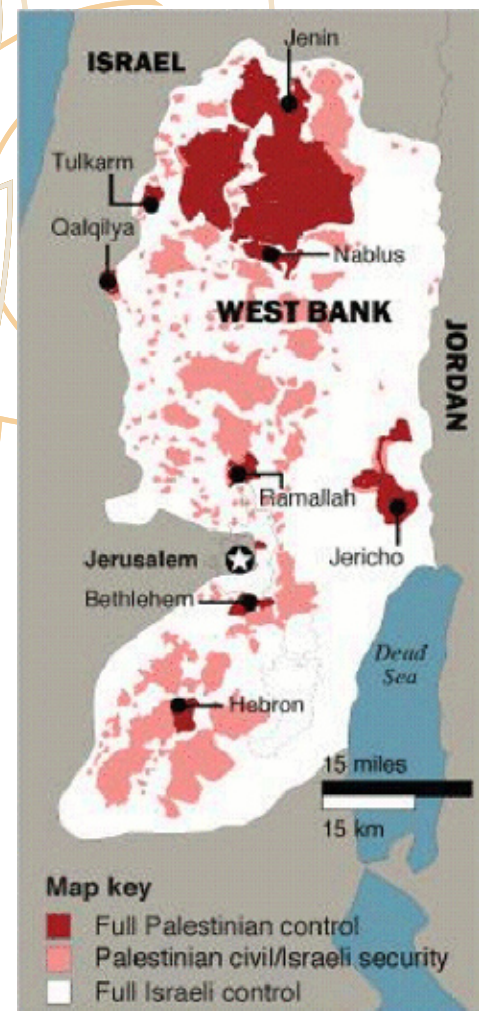
separated the offices of the governor and other villages from East Jerusalem.

Identity and psychological, legal and physical boundaries Palestinians living in East Jerusalem need identity cards from the Israeli Ministry of the Interior to demonstrate residency. However, individuals from the other occupied territories married to Jerusalemites cannot receive such residency status. This has resulted in the separation of families between West Bank cities and villages and East Jerusalem. This special Jerusalem identity card permits those residents to receive the same social and economic rights entitlements conferred on Israeli citizens, and therefore Jerusalem residency status is considered a "privilege" by the Israeli government. However, Jerusalemites with these identity cards must access their rights through any number of administrative or judicial processes, almost exclusively conducted in Hebrew and pursuant to Israeli laws. Due to the Palestinian policy on non-cooperation with the Jerusalem municipality, Arab organizations in East Jerusalem organize advocacy campaigns with "Palestinian friendly" Israeli organizations in West Jerusalem. This is often their only effective means to gain access to social and economic entitlements, including health and education, as Jerusalem residents.

This civil society cooperation across boundaries gave me a glimpse of hope. I was able to visit Israeli organizations in West Jerusalem that promote democracy, respect for human rights and diversity and furthermore have the temerity to challenge the conservative and anti-Arab political discourse of the Israeli government. One organization, affiliated with the McGill program, promotes individual and collective advocacy on social rights in disadvantaged neighbourhoods in three regions of Israel. It also cooperates with similar advocacy organizations in East Jerusalem to seek relief for East Jerusalem residents affected by the same social and economic rights violations. Another organization

I visited was labelled in the media as anti-Israeli and unpatriotic for its cooperation with the Richard Goldstone fact-finding mission mandated by the United Nations to investigate and report on the human rights situation in Gaza as a result of the December 2008 armed conflict. This east-west civil society cooperation on social and economic rights is a delicate process necessitating careful management and facilitation due to the psychological boundaries that have been constructed between Israeli and Palestinians and between East and West Jerusalem. There is a small zone in Jerusalem, near major hotels that provides accessible and safe meeting places for Arab and Jewish Jerusalemites.

The Wall or separation barrier physically divides Israelis from Palestinians. The Wall made the historic psychological and emotional barrier between the populations a concrete reality with the goal of protecting Israelis from terrorist attacks. A Jewish activist told me of her son's fear of taking public transit prior to the construction of the Wall. To live in constant fear of violent terrorists attacks is inhumane. However, the Israeli government's solution of building a physical barrier has had detrimental effects on Palestinians' wellbeing. The Wall was built on a route that favours Israeli interests (land, water sources and roads) while it bisects Palestinian villages and agricultural land. The Wall expands Israeli territory beyond the 1967 armistice lines (the Green Line), with 85% of the barrier inside West Bank territory. The Wall disrupts daily lives and has had negative humanitarian consequences on Palestinians. It is these negative effects that UN agencies focus their attention and not the legality or ethics of the Wall. Likewise, the International Court of Justice did not declare the Wall a violation of international law rather if such a barrier is deemed necessary for Israeli security it must comply with the Green Line.

Palestinians have to spend hours moving through the Wall's security

points to get to medical clinics, employment, school and other places that were previously accessible to them. I traveled to and from Jerusalem and the West Bank by various means of transport due to the fact that drivers from the West Bank are not allowed to pass through the Wall checkpoint into Jerusalem. The frustration felt by Palestinians waiting to pass through the Wall was palpable as, during one my crossings, I stood waiting with a group of women and children for an extended period of time at the control points, in view of Israeli Defence Force personnel who could decide, or not, to allow people to pass individually through the security turnstile and x-ray scanners.

West Bank
On my second day in East Jerusalem I attended a briefing by the United Nations Office for the Coordination of Humanitarian Affairs (OCHA) for staff and consultants of multilateral and national organizations arriving in the region. The rapid fire presentation of statistics on the humanitarian consequences of the decades long occupation and the December 2008 Gaza Conflict left me depressed and frustrated with the enormity of the situation, the obstinacy of Israeli policies, and the lack of international consensus and action to address the consequences of the occupation.

During the OCHA briefing I learned that, despite having a Palestinian population of 2,350,583 (and approximately 500 settlers scattered sparsely among about 149 settlements), 60% of the West Bank is under Israeli control and administration. Under the Israel-PLO Declaration of Principles on Interim Self-Government Arrangements, commonly known as the 1993 Oslo Agreement, Israel has security and administrative control over that part of the land in the West Bank that is designated as Area C. Meanwhile the Palestinian National Authority has security control and political administration in urban areas designated as Area A. Palestinian police and courts can operate in Area A. The rural villages designated as

Area B are in an ambiguous situation with Israeli security control but Palestinian civilian administration. Palestinians who own land falling into Area C are unable to access or build on their land, including farm land. OCHA estimates that Palestinian farming and construction is prohibited in 70% of Area C (or 44% of the West Bank), with only 1% of Area C designated for Palestinian development. Housing demolitions in Area C average 200 each year and currently 3,000 homes have pending demolition orders.

As I left the OCHA briefing I had a better sense of the complexity of the Israeli – Palestinian conflict and the humanitarian tragedy that has resulted from the Wall, housing demolitions, and Operation Cast Iron in Gaza. Moreover, I felt frustration at the failure of the international community, especially Canada, to invoke international law to broker a sustainable negotiated two state solution.

When I travelled to Ramallah and then Nablus the absence of Israeli military patrols was a welcome relief. Palestinian police officers directed traffic and patrolled the streets in a civilian community model of policing. The city centres of Ramallah and Nablus, under full Palestinian control, gave me a false sense of the normalcy of life in the West Bank. In fact, Nablus, situated in a valley, is surrounded by Jewish settlements in the hills above the city and the settlers live under Israeli protection and have separate buses and even roads in some cases.

I spent three days in the Nablus Governorate or electoral district in the northern region of the West Bank. In Nablus this calm is relatively recent as the city has been under siege by the Israeli military frequently from the time of the Second Intifada in 2000. Nablus city was effectively cut off from the world during each siege. Villagers in the communities surrounding the city were unable to reach their families, employment, health services, schools and universities. Roads out of Nablus were blocked by the Israeli military. So, despite the provisions of the Oslo Agreement, the de facto balance of power remains with the Israeli government due to its ability to unilaterally prevent movement of Palestinians in their own territory.

The combination of periodic Israel military attacks and blockades and the fledgling nature of the Palestinian government, established only in 1996, have resulted in relatively weak public administration and minimal social services for the most disadvantaged in Nablus. International and local civil society associations provide many of the social services in Nablus. The United Nations Relief and Works Agency for Palestinian Refugees in the Near East (UNRWA) continues to provide education, housing and health services to the refugees from the 1948 Arab-Israeli conflict.

Civil society organizations are promoting volunteerism in social services and coordinating with the Directorate of Social Affairs (the decentralized office of the Ministry of Social Affairs) to enhance awareness of rights and improve housing, education and quality of life of Nablusians, especially children with disabilities, widows, divorced women and orphans. Due to the circumstances in the West Bank, and Nablus in particular, members of these groups have been especially isolated.

The Palestinian-controlled Area A currently represents approximately 3% of the total land area in the West Bank. Despite weak decentralized government I observed evidence of policy development at the ministerial level and significant civic participation and volunteerism at the local level. In fact, local civil society-initiated social support programs in Nablus have influenced Palestinian National Authority policy development in areas such as education and health services for individuals with disabilities.

In my visit to Area B villages, in which there is Palestinian civilian administration but Israeli security control, I observed the inferior infrastructure development and public works in the village centers as compared to Area A cities. Furthermore, we were prohibited from entering an area containing historic Roman ruins due to an Israeli Defence Force unit which

Background Information

Organizations

McGill University - http://www.mcgill.ca/mmep/

Office of Coordination of Humanitarian Affairs: http://www.ochaopt.org/

Shatil - http://www.shatil.org.il/english/

Ir Amim – an Israeli non-profit organization dedicated to an equitable and peaceful Jerusalem. http://www.ir-amim.org.il/eng/

Documents

The Basic Law: http://www.palestinianbasiclaw.org/2003-amended-basic-law

Human rights in Palestine and Other Occupied Arab Territories: Report of the UN Fact-finding Mission on the Gaza Conflict (the Goldstone Report): http://www2.ohchr.org/english/bodies/hrcouncil/specialsession/9/FactFindingMission.htm

Israel – PLO Declaration of Principles on Interim Self Government Arrangements (the Oslo Agreement): http://www.mfa.gov.il/MFA/Peace+Process/Guide+to+the+Peace+Process/Declaration+of+Principles.htm

was presumably protecting Israeli tourists or settlers. Again, the support of international cooperation agencies has provided civil society organizations in Area B with buildings for their programs for women and children.

Palestinian Self Government

Despite the lack of final settlement on the question of a Palestinian state, there is evidence of limited self government, with significant international donor support. The Basic Law of Palestine provides a temporary constitutional framework with recognition of all fundamental rights. There are 16 electoral districts (governorates) with 11 governorates in the West Bank (including East Jerusalem) and 5 in Gaza. The first national legislative and presidential elections were held in 1996. The 2006 elections led to a prolonged political crisis. In those elections Hamas won the majority of seats in the Legislative branch and Fatah won the Presidency (Executive branch). Consequently Fatah has political control in the West Bank through the Presidency and Ministries and Hamas controls Gaza. A political stalemate and the international boycott of aid to Gaza has resulted in a divided Palestinian government. Fatah controls the Executive branch, which operates in the West Bank from Ramallah

while Hamas controls Gaza. The Legislative branch is paralyzed with elected members from the West Bank supporting constituents to access government services. Therefore, at the present time the obstacles to full statehood are both external and internal.

Some of the academics I interviewed as part of the evaluation process suggested that internal differences may be the most complicated but the most important matter to overcome in order to achieve a unified Palestinian state. It is important to remember that the colonial "protectors", Britain and France, divided up the Arab region in the Sykes-Picot Agreement post World War I. Then, at the end of the British Mandate over Palestine in 1948 and the Arab-Israeli war in 1949, residents of the West Bank were under Jordanian jurisdiction while

Palestinians in Gaza were under Egyptian political control. Palestine as a self-governing Arab state is a quite recent political quest.

Conclusion

I witnessed the negative impact of occupation on individuals' living situations and the political aspirations of the Palestinian people, but I also observed intangible "positive" effects of occupation and isolation in East Jerusalem and the West Bank. For example, I observed a strong sense of Palestinian identity, economic self reliance, a highly educated population, mutual support among kin and neighbours, a commitment to social and economic rights especially for the most disadvantaged, willingness of some Palestinians to seek political support from like-minded Israeli organizations, and peaceful co-existence between Muslims, Christians and Samaritans in Palestinian areas.

I believe these positive attributes can propel Palestinians towards effective self government only when two critical obstacles are resolved: first, when contiguous territorial sovereignty is achieved with concerted international effort (and removal of settlers), and secondly, when internal Palestinian tensions between radical and democratic factions with regard to the question of Israel's right to exist are resolved. State building at present is therefore inherently limited and incomplete.

Pedestrian security at Wall

Tibetan Autonomous Prefectures

Kimberly Inksater
with research by Jan Nitoslawski and Tenille Brown

China has a carefully crafted political administration structure in order to govern a multinational but unitary state according to socialist principles and centralized policy making. There are 56 different ethnic groups present in China. The central government, in an effort to balance national central policies and accommodate interests of ethnic populations where they represent a significant percentage of the population, has introduced various administrative levels of autonomy. For example there are autonomous regions, prefectures, counties, and townships. Autonomy, as understood in the Chinese context, is the ability of these local levels of government to adjust the application of policies and laws to meet the needs and customs of the ethnic groups present in the locale.

This article outlines the general attributes of ethnic political administration in a centralized Chinese state with reference to two Tibetan Autonomous Prefectures (or TAPs): Kardze (or Garze) in Sichuan Province and Kanlho (or Gannan) in Gansu Province. According to the 2000 census, in Kardze TAP there are about 890,000 ethnic Tibetans; about 80% of the prefecture's population. In Kanlho TAP approximately half of the population is ethnic Tibetan. The remainder of the population in both prefectures is mostly Han Chinese, along with some Hui and Yi ethnic minorities. In recent years, both TAPs have experienced protests by monks in favour of an independent Tibet.

Political-Legal Framework

While the 1982 Chinese Constitution recognizes self-government and autonomy in National Autonomous Areas, it does so without compromising the centralized structure or power of the state. Article 116 of the Constitution states that "the autonomy regulations and specific regulations of autonomous (prefectures) shall be submitted for approval (…) to the standing committees of the people's congresses of provinces…before they go into effect". This ensures that control remains centralized despite the numerous decentralized levels of government.

The state government apparatus is subdivided into hierarchically ordered geographic administrative areas, each of which is accountable to its respective superior level. Each level of government has a defined set of duties and responsibilities, as defined by the constitution: Central - Provincial - County - District - Township – Village.

Local levels of government (from village to county levels) play a key role in the administration of the Chinese state, although they are largely incapable of diverging from the party line. Local state organs are divided into two

Thangka apprentice painters at the Tibetan Cultural Corporation

parallel streams: the People's Congress and the People's Government. At the local level, members of the People's Congress are elected for three-year terms. The People's Congress in turn appoints members to the People's Government.

The organizational structure of local government in ethnic minority regions in China is identical to that in non-ethnic ones. The six areas of responsibility for governments of all autonomous areas, (based on provisions from Chapter III, Section 6 of the Constitution), are outlined below:

- Enact local statutes according to local conditions. Provisions are made in the constitution to allow local level governments to legislate changes in laws and statutes in light of the particular characteristics of local ethnic minorities. However, any such action must be submitted for approval by the CCP and a superior branch of government.

- Ensure observance and the implementation of the State's constitution, statutes, laws and administrative rules.

- Approve plans for economic development and budgets for the designated area according to local needs and available funds, and under the guidance of state plans.

- Elect and recall governors, mayors and other functionaries for districts and townships, as well as judicial appointments.

- Maintain public order.

- Administer educational, health related, cultural, and scientific affairs.

Based on the above, the county government does not have a significant legislative function, serving more as an administrator and implementer than as an autonomous body of government. The county government does have

some degree of autonomy in appointing local authority figures, but these must first be vetted by the CCP to ensure that they are politically and ideologically acceptable.

Promotion and Protection of Ethnic Identity

The 1982 Constitution includes several articles that offer formal protection to minorities. Among these is Article 4, which guarantees the equality of nationalities within China and prohibits any discrimination or oppression of minorities. Moreover, this provision allows minority nationalities "to reform or preserve their own ways and customs" and grants the freedom to use and develop their languages. Other noteworthy references to minorities in the Constitution are in Article 59 and 65, which ensure that minorities are to be properly represented in the National People's Congress (NPC), and in the Standing Committee of the NPC.

The *Law on Regional Ethnic Autonomy* entered into force in 1984 and was subsequently amended in 2001. The preamble of the law is consistent with international norms on minority rights: "Regional ethnic autonomy reflects the state's full respect for and guarantee of ethnic minorities' right to administer their internal affairs and its adherence to the principle of equality, unity and common prosperity for all nationalities."

While the law stipulates that among the chair and vice chairs of the ethnic autonomous areas, one or more must represent the ethnic group exercising regional autonomy, no data on the percentage of Tibetan ethnic minorities in local government in *Kanlho* TAP and *Kardze* TAP was readily accessible. It appears there are numerous Tibetans in various departments of local government but they may occupy low-ranking positions. For example, religious affairs departments at lower administrative levels are staffed mainly by Tibetans, but these are supervised by and report to Han Party cadres.

The *Law on Regional Ethnic Autonomy* permits self-governing regulations in light of the political, economic and cultural characteristics of the autonomous area, although these must be submitted for approval to the National People's Congress. A resolution or order from a higher level state agency may be adjusted to permit more suitable implementation in the ethnic autonomous area. For example, in China's 2000 report to the UN body responsible for monitoring compliance with the Convention on the Elimination of Racial Discrimination (CERD), the government offered examples of amendments by ethnic autonomous prefectures to family planning regulations to take into account ethnic values.

On the matter of language in the public administration,

Workers at a Tibetan tent manufacturing workshop

the *Law on Regional Ethnic Autonomy* stipulates that minorities have the right to develop and use local spoken and written languages in government activity. However, in practice, Mandarin, not Tibetan, is most commonly used in local administration in Tibetan areas in China. Most government offices have Han officials and cadres on staff, few of whom speak Tibetan. Moreover, any communication with superiors in higher levels of government in the provincial capital and in Beijing must be conducted in Mandarin.

The *Law on Regional Ethnic Autonomy* also permits affirmative action in the training of cadres and recruitment of personnel, including women. That is, preferential and differentiated treatment is permissible to prepare "specialized personnel, including scientists, technicians, and managerial executives, as well as skilled workers from among the local nationalities."

Visiting Counties in Kardze and Kanlho TAPs

The coexistence of different cultures and religions was evident in Kanlho TAP where, in one town, a mosque, a church, and a temple were all built in the same block. The town of Kangding in Kardze TAP meanwhile was clearly predominantly Tibetan. The distinct Tibetan characteristics of Buddhism and a pastoral lifestyle are evident in both TAPs.

Herding and a pastoral lifestyle are central to the cultural identity of Tibetans, and it is estimated that 87% of all Tibetans live in rural areas. Indeed, the greater part of Kanlho is pastoral not agricultural, and most Tibetans in the prefecture engage in mixed farming and herding, or pure pastoralism including nomadic herding. In Kardze, it is reported that 18% of the population is fully nomadic.

Religion is perhaps the defining issue of Tibetan identity and is intrinsic to Tibetan culture. After a period of intolerance and the destruction of religious sites in the 1960s and 1970s, many Buddhist monasteries have now been rebuilt. The right to practise

Purchasing Tibetan crafts from the director of the Tibetan Cultural Corporation in Xiahe, Kanlho Autonomous Prefecture

religion was first recognized in 1982 in the initial reform period and again in a 2005 decree by State Council. As of 1990, 79% of religious sites were rebuilt in Kardze, and 60% in Kanlho. An increase in the number of monks was also apparent in the 1980s, although there are still only about half of the pre-1958 numbers. 1958 represents the year when Chinese finally conquered Tibetan resistance fighters in the Tibetan Autonomous Region (Tibet). Some monasteries have begun charging entrance fees for tourists, and monks have opened small shops to generate income. At the same time, certain religious sites have been singled out as tourist destinations and these have received significant funds from various levels of government and donors.

The central government agencies' development plans in these and other regions focus on poverty reduction. Therefore strong central government support for economic development in these TAPs is significant. Some advances have been made in support for small and medium-sized entrepreneurs that promote culturally-specific industries such as animal husbandry, tent making, tourism in religious sites, and traditional food production and crafts. However, with few ethnic Tibetan political officials in county government, larger, non-Tibetan enterprises are often more successful in obtaining significant economic support from the government.

Health care is another area of public administration in which culturally specific policies were visible in the TAPs. For example, in Kanlho TAP there is a Tibetan hospital that provides traditional Tibetan herbal medication in a modern facility, and a Tibetan medical school that trains doctors for this publicly funded hospital.

Conclusion
Despite limited political decision making opportunities, the existence of the Tibetan Autonomous Prefectures provides a legal framework for local implementation of policies that are sensitive to Tibetan culture, offering the opportunity to adjust social and economic policies and regulations to encourage the preservation and promotion of Tibetan culture. The question remains if government officials will promote culturally sensitive implementation in the absence of external pressure.

Just Governance Group News

JGG Human Rights Researcher travelling to Africa

Tenille Brown, an intern associated with the Group for one and a half years, will be traveling to Swaziland with Canadian Crossroads International. She will be monitoring legal advances related to violence against women for the organization Swaziland Action Group Against Abuse - Ingungu Yematsemba (http://www.swagaa.org.sz/). Tenille will continue to be involved with the Just Governance Group by providing information and analysis on rights and justice issues for our website and Multiples.

Evaluations for Sida in Honduras

The Just Governance Group is negotiating a contract with the Swedish International Development Agency after winning a tender process to conduct two complementary evaluations in Honduras. One evaluation will assess Sida's country strategy in Honduras since 2001 and including its exit strategy as the agency leaves Honduras after reducing its countries of focus. The second evaluation is a thematic evaluation of Sida's contribution to Democratic Governance, Human Rights and Gender Equality in Honduras. The JGG team includes Anders Ingelstam (Sweden), Kimberly Inksater (Canada), David Grajeda (Guatemala), Guillermo Roca (Bolivia), Johann Engstrom (Sweden), and Carmen Beatriz Ruiz (Bolivia).

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