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Titel:	China: Whether Tibetans who were born in India between 26 January 1950 and 1 July 1987 to former Tibetan residents are considered by Chinese authorities to have acquired foreign nationality at birth, or whether they are considered to be stateless; whether individuals born in this time period in India are eligible for Chinese citizenship; the status in China of Tibetans who left Tibet after 1959, including whether they have any status and whether Chinese authorities consider them to be citizens of China (2017-december 2021)
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10 January 2022

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1. Legislation

The Nationality Law of the People's Republic of China (PRC), adopted on and effective as of 10 September 1980, provides the following:

Article 2 The People's Republic of China is a unitary multinational state; persons belonging to any of the nationalities in China shall have Chinese nationality.

Article 3 The People's Republic of China does not recognize dual nationality for any Chinese national.

...

Article 5 Any person born abroad whose parents are both Chinese nationals or one of whose parents is a Chinese national shall have Chinese nationality. But a person whose parents are both Chinese nationals and have both settled abroad, or one of whose parents is a Chinese national and has settled abroad, and who has acquired foreign nationality at birth shall not have Chinese nationality.

...

Article 7 Foreign nationals or stateless persons who are willing to abide by China's Constitution and other laws and who meet one of the following conditions may be naturalized upon approval of their applications:

1. they are near relatives of Chinese nationals;
2. they have settled in China; or
3. they have other legitimate reasons.

...

Article 9 Any Chinese national who has settled abroad and who has been naturalized as a foreign national or has acquired foreign nationality of his own free will shall automatically lose Chinese nationality.

Article 10 Chinese nationals who meet one of the following conditions may renounce Chinese nationality upon approval of their applications:

1. they are near relatives of foreign nationals;
2. they have settled abroad; or
3. they have other legitimate reasons.

Article 11 Any person who applies for renunciation of Chinese nationality shall lose Chinese nationality upon approval of his application.

...

Article 14 Persons who wish to acquire, renounce or restore Chinese nationality, with the exception of the cases provided for in Article 9, shall go through the formalities of application. Applications of persons under the age of 18 may be filed on their behalf by their parents or other legal representatives. (China 1980)

1.1 Implementation

A 2016 report by Choo Chin Low, a lecturer in the history department of the School of Distance Education at the Universiti Sains Malaysia (USM) who has conducted research on immigrant citizenship and naturalization (Globalcit n.d.), states the following regarding article 5 of the Nationality Law concerning foreign-born children of Chinese nationals acquiring Chinese citizenship at birth:

In 2008, the Ministry of Public Security (MPS) clarified the implementation of Article 5. It restated the criteria of "settling abroad" of one of the parents as the precondition of the automatic loss of citizenship for generations of children born abroad. Such children born abroad that had obtained a foreign citizenship do not have PRC nationality if they fulfil one of the following circumstances: first, both parents are Chinese citizens and settled in a foreign country; second, one of the parents is a foreigner, the other is a Chinese citizen and settled in a foreign country; third, both parents are Chinese citizens, and one of them has settled

abroad. Children of PRC citizens acquiring foreign nationality at birth could apply for naturalisation in accordance with Article 7. (Low Oct. 2016, 9)

On the renunciation of Chinese citizenship, the same report states that the "MPS exercises wide discretionary powers in administering the renunciation procedure" (Low Oct. 2016, 13).

Regarding article 9, concerning automatic loss of nationality, Low's report states that "[a]utomatic expatriation by law (Article 9) is applicable to Chinese nationals settling abroad" (Low Oct. 2016, 14). The same report indicates that article 10, covering renunciation of Chinese nationality, provides that "[w]hile Chinese residing abroad are allowed to divest themselves of nationality without prior approval of the state's apparatus, Chinese nationals residing in the PRC must obtain official approval for renunciation (Article 10)" (Low Oct. 2016, 14). Corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

According to a February 2020 opinion article published in the *Financial Times* (FT), an international business publication, and written by Yuan Yang, the FT deputy Beijing bureau chief (FT n.d.), although other countries also restrict their citizens from holding more than one nationality, "[t]he difference is that China enforces this without the rule of law, and so can weaponize it to cancel other states' claims" (Yuan 27 Feb. 2020). In correspondence with the Research Directorate, an associate professor at the University of British Columbia (UBC), who researches the politics, ethno-national identity, and religious practice of historical and contemporary Tibet, stated that although the Nationality Law provides that a Chinese national becoming the citizen of another country should "cease to be a citizen of China" at that time, "in practice this has been ignored" (Associate Professor 10 Dec. 2021). A February

2021 opinion article by Kris Cheng, a journalist in Hong Kong, published in *Foreign Policy (FP)*, provides the following information regarding China's approach to nationality in practice:

Beijing presents nationality as an elaborate legal question, but in practice the answer is simple. Only one rule applies: If you have ever held or could have held Chinese citizenship, you are a Chinese national unless Beijing decides you are not. And even if you were born abroad but you're of Chinese descent, Beijing still feels as if it owns you. (Cheng 25 Feb. 2021)

Cheng states that article 9 of the Nationality Law "works as intended in some cases," but "[i]n others, it's spottily enforced at best" and "alarmingly, the law can go out the window at Beijing's discretion" (Cheng 25 Feb. 2021). The same source adds that "[n]ationality has become a tool for authorities to claim jurisdiction" and "total control ... over dissidents and to threaten others who might seek lives elsewhere" (Cheng 25 Feb. 2021). According to the Associate Professor, a Chinese citizen is "whoever the government chooses ... irrespective of the person's legal status" (Associate Professor 10 Dec. 2021).

2. Whether Chinese Authorities Consider Exiled Tibetans to Be Citizens of China

In an interview with the Research Directorate, a cultural anthropologist and historian specializing in contemporary Tibet at the University of Colorado Boulder stated that "Chinese authorities consider Tibetans anywhere in the world to be 'potential' or 'pending' or 'overseas' PRC citizens," and the "discourse" of these authorities states that "Tibetans can return at any time to China and reclaim that citizenship" (Cultural anthropologist 3 Dec. 2021). The same source noted that this is a "prevalent discourse" that is "essential" to China's "denial of Tibetan state sovereignty" (Cultural anthropologist 3 Dec. 2021). According to the Associate Professor, because China claims that "Tibet has been Chinese

territory since ancient times," "Tibetans are citizens of past and present China" (Associate Professor 10 Dec. 2021). The same source added that "[a]ccording to Chinese law, anyone with ancestry from territories claimed by China is a Chinese citizen, even if the person had migrated and settled and acquired another nationality" (Associate Professor 10 Dec. 2021). In a follow-up interview with the Research Directorate, the Associate Professor indicated that Tibetans abroad are considered by Chinese authorities to be "overseas Chinese," which "implies" they are Chinese citizens abroad (Associate Professor 15 Dec. 2021).

The cultural anthropologist noted that the Chinese government recognizes different nationalities but a singular PRC citizenship, which is "available" to Tibetans (Cultural anthropologist 3 Dec. 2021).

The Associate Professor stated that Tibetans born in India between 26 January 1950 and 1 July 1987 should "[i]n theory" be eligible for Chinese citizenship, but identified this as being "practically impossible" (Associate Professor 10 Dec. 2021). In correspondence with the Research Directorate, however, a PhD student at Columbia University who previously worked at Students for a Free Tibet (SFT) [1] and Tibet Action Institute [2] and has written on the Tibetan diaspora, indicated that Tibetans born in India between 26 January 1950 and 1 July 1987 "are not eligible for Chinese citizenship" (PhD student 12 Dec. 2021).

Regarding individuals born in Tibet who then left Tibet and resettled elsewhere, the Associate Professor noted that "[s]ince China claims Tibet has always been part of China from ancient [times] to present, anyone born in Tibet is claimed by China as a citizen of China" (Associate Professor 10 Dec. 2021). According to the cultural anthropologist, Chinese authorities do not "distinguish" between Tibetans born in Tibet, Tibetans born in India or elsewhere, and the children of Tibetan parents born abroad, and instead consider "all" of these Tibetan people to be "'overseas' Chinese as descendants of once-

Chinese citizens" (Cultural anthropologist 3 Dec. 2021). In contrast, the PhD student stated that "Tibetans born in Tibet prior to 1959 who have fled Tibet since 1959 and who have not returned are not considered citizens of China, nor are they entitled to Chinese citizenship" (PhD student 12 Dec. 2021). The same source added that there "may be rare cases" in which such a person "received citizenship in China," but these are "exceptions rather than the rule" and are "only as a result of having friends in high places or relying on bribery rather than as a right to citizenship" (PhD student 12 Dec. 2021). The source also noted that any children born abroad to Tibetans born in Tibet who then fled Tibet "have even less right to Chinese citizenship" (PhD student 12 Dec. 2021). However, the Associate Professor stated that because the Chinese government can view any person of Chinese ancestry to be a Chinese citizen, all foreign-born descendants and children of Tibetans who fled Tibet would also be considered Chinese citizens (Associate Professor 15 Dec. 2021).

The cultural anthropologist indicated that Chinese authorities view themselves as a "benevolent power" having come to Tibet in the 1950s "to improve and bring progress" to the region, and they consider "anyone who has left Tibet since 1959" to have done so "mistakenly" (Cultural anthropologist 3 Dec. 2021). The same source indicated that it is "understood in the Tibetan world" that Chinese authorities consider "exiled Tibetans" to have "misunderstood" the PRC project in Tibet (Cultural anthropologist 3 Dec. 2021). Tibetans abroad, the source added, are "nonetheless welcome to come back" to Tibet, according to Chinese authorities, where they can "reclaim their 'potential'" Chinese citizenship (Cultural anthropologist 3 Dec. 2021). The PhD student, however, indicated that "Tibetans who were born in Tibet and left for India for education and then returned home to Tibet do not receive Chinese citizenship upon return" (PhD student 12 Dec. 2021).

The cultural anthropologist noted that the idea of Tibetans abroad as "'potential' or 'pending' or 'overseas' PRC citizens" "effectively" means that Tibetans are "not stateless" in the eyes of Chinese authorities, who "reject" any idea of Tibetan statelessness (Cultural anthropologist 3 Dec. 2021). According to the Associate Professor, because Chinese authorities consider Tibetans abroad to be citizens of China, they would "never" consider them to be stateless (Associate Professor 15 Dec. 2021). The cultural anthropologist stated that any foreign citizenships that Tibetans abroad may hold are "irrelevant" to Chinese authorities, since Tibetans are seen as "'potential'" Chinese citizens (Cultural anthropologist 3 Dec. 2021).

3. Tibetans Returning or Travelling to China

The Associate Professor indicated that "high-profile" Tibetans abroad, including people who are "well-known" or "have commented on the Tibet issue publicly," wishing to travel to China will, "in some cases," be required to apply for an "overseas Chinese travel document," which is a "specialized travel document that effectively deprives them of the protection of any other citizenships they may hold" (Associate Professor 15 Dec. 2021). The same source added that "lower-profile Tibetans may not be forced" to apply for an "overseas Chinese travel document" to travel to China (Associate Professor 15 Dec. 2021).

The Associate Professor stated that from the 1980s until 2008, the Chinese government welcomed and encouraged Tibetans abroad to return to Tibet (Associate Professor 15 Dec. 2021). The same source added that from 2008 to the present, however, it has become "impossible" or "extremely hard" for Tibetans to return, and China "will not accept any returnees" with the exception of older, retired Tibetans who are seeking to return to Tibet to spend their remaining life there (Associate Professor 15 Dec. 2021). The PhD student stated that Tibetans born in Tibet who left for India "for education" and then "returned home to Tibet," "face a vast set of discriminatory policies upon

return that prevent them from being able to get a decent job or pursue other kinds of economic opportunities" (PhD student 12 Dec. 2021). For additional information on the situation and treatment of Tibetans in China, including the treatment of returnees, see Response to Information Request ZZZ200323 of October 2020.

According to the cultural anthropologist, it is "widely known" that Tibetans who return to China from India via Nepal's Kodari border town, the "only" place where such crossings can occur, will be "arrested at the crossing and subsequently jailed" (Cultural anthropologist 3 Dec. 2021). The same source added that "[e]ven" Tibetans with "other citizenships," including from the US, "who go to Tibet" are, "upon their arrival," "required" (along with their families) to "go to 'tea' [3] with [Chinese] authorities at the local police station" for an interview, and they will be "monitored" while in China (Cultural anthropologist 3 Dec. 2021). The Associate Professor stated that Tibetans cannot "easily cross the border into China" at Kodari, and would instead need to apply for an "overseas Chinese travel document" at the Chinese embassy in Kathmandu or Delhi (Associate Professor 15 Dec. 2021). The same source added that there are regularly "long lines" of Tibetans at these embassies seeking to apply to return, but the border has been "virtually closed" for the past two years because of the COVID-19 pandemic (Associate Professor 15 Dec. 2021). In an interview with the Research Directorate, a doctoral researcher at the Institute of Development Studies of the University of Sussex in the UK, who has conducted research on Tibetan refugees in India, indicated that the "ability" of Tibetans in India to return to China could "depend" on the type of "activities" they were "involved in" during their time in India, as well as the "duration" of their stay (Doctoral researcher 8 Dec. 2021). According to a March 2019 blog post in Firstpost, an Indian news website, by Tshering Chonzom Bhutia, a visiting associate fellow at the Institute of Chinese Studies (ICS) in Delhi who has conducted comparative research on the ethnic minorities policies of the Indian and Chinese governments (ICS n.d.), while the

"majority" of the "[h]undreds of thousands of Tibetans" who have left Tibet since 1959 still live in India, Nepal, and Bhutan, "quite a few have made the journey home" to Tibet and "[m]ost" of those "returnees have set up small businesses," including restaurants, hotels, and travel agencies (Bhutia 18 Mar. 2019).

This Response was prepared after researching publicly accessible information currently available to the Research Directorate within time constraints. This Response is not, and does not purport to be, conclusive as to the merit of any particular claim for refugee protection. Please find below the list of sources consulted in researching this Information Request.

Notes

[1] According to its website, Students for a Free Tibet (SFT) "campaign[s] for Tibetans' fundamental right to political freedom" through "education, grassroots organizing, and nonviolent direct action" (SFT n.d.).

[2] According to its website, Tibet Action Institute is an advocacy organization whose mission is to "advance the Tibetan freedom movement" through "the power of digital communication" and "strategic nonviolent action" (Tibet Action Institute n.d.).

[3] Sources report that to being summoned by the authorities in China [to be "cautioned" (AFP 11 Jan. 2013) or "interrogated" (Advox 13 Feb. 2013) or "questioned" (BBC 17 Jan. 2013)] (Advox 13 Feb. 2013; BBC 17 Jan. 2013; AFP 11 Jan. 2013) is known as "'drink[ing] tea'" (AFP 11 Jan. 2013), or to "'be invited to tea'" (BBC 17 Jan. 2013), or to be "'forced to drink tea'" (Advox 13 Feb. 2013).

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Oral sources: Canada Tibet Committee; Central Tibetan Administration – The Office of Tibet in Washington, DC; historian of Chinese foreign relations at a university in Atlanta; historian of Tibet at a university in New York; historian of Tibet at a university in Ohio; International Campaign for Tibet; scholar in New Delhi; specialist of Chinese diaspora studies at a university in British Columbia; specialist of Chinese ethnicity studies at a university in Illinois; specialist of Chinese law at a university in British Columbia; specialist of Tibetan diaspora studies at a university in New Hampshire; specialist of Tibetan political history at a research institute in Delhi; specialist of Tibetan refugees at a university in Gujarat; specialist of Tibetan studies at a university in Birmingham; specialist of Tibetan studies at a university in London; specialist of Tibetan studies at a university in New York; specialist of Tibetan studies at a university in Oxford; Tibet Justice Center; Tibet Policy Institute.

Internet sites, including: Al Jazeera; Asian Polyglot View; Australian Himalaya Research Network; Chinese Academy of Social Sciences – Institute of International Law; CNN; *Global Times*; *The Guardian*; *The Hindu*; Human Rights Watch; Institute on Statelessness and Inclusion; International Campaign for Tibet; The Jamestown Foundation; *The Journal of Asian Studies*; Macau News Agency; *The New Yorker*; Observer Research Foundation; Phayul; Reuters; *South China Morning Post*; *Southeast Asian Affairs*; Tibetan Political Review; Tibet Justice Center; Tibet Policy Institute; The Tibet Post; US – Congressional-Executive Committee on China, Department of State, Bureau of Consular Affairs; *The Washington Post*; Xinhua News Agency.

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