**International Campaign for Tibet (ICT) submission to the Questionnaire by Special Rapporteur on the Right to a Safe, Clean, Healthy and Sustainable Environment**

Submitted: Friday 7 June 2019

The International Campaign for Tibet (ICT) is a not-for-profit advocacy group that works to promote human rights and democratic freedoms for the people of Tibet. In this submission, we aim to highlight serious gaps in the protection of rights to a safe, clean, healthy and sustainable environment in Tibet and China, with a particular focus on Tibetans. We note, while various environmental protection laws exist in theory, they are rarely applied in cases where Tibetans have been affected by environmental degradation.

1. **Please provide, in detail, examples of laws, regulations, policies and programmes that specifically incorporate the human right to a safe, clean, healthy and sustainable environment.**

At least four laws and one policy in the People’s Republic of China, in principle, protect an individuals’ right to clean, safe and healthy environments (listed below) All four laws address the responsibilities of individuals, polluting units, and local governments to maintain a safe, clean and healthy environment. They include protections for the right of citizens to transparent information, to report on polluting activities, and to access recourse. Of the four laws, only two highlight the importance of promoting sustainable development: Environmental Protection Law (amended 2014) and the Law on Prevention and Control of Atmospheric Pollution (amended 2015).

1. The Environmental Protection Law of the People’s Republic of China 1979 (amended 2014)[[1]](#footnote-1).

This law, which came into effect on 1 January 2015, seeks to protect and improve the environment, prevent and control pollution and other public hazards, safeguard public health, promote ecological civilization improve and facilitate sustainable economic and social development (article 1).

Two principles shape the law. First, the principle of environmental protection and sustainability, which is reflected in article 30 stating: the utilization of natural resources shall be developed in a rational way that conserves biological diversity and safeguards ecological security. Second, the principle of accountability, which is reflected in the right of citizens to 1) obtain environmental information, participate and supervise activities related to environmental protections (article 53), 2) complain about environmental pollution and ecologically damaging activities (article 57), and 3) increases the accountability of local governments to enforce environmental protection laws (article 68).

1. Law on Prevention and Control of Water Pollution 1984 (amended 2008)[[2]](#footnote-2)

As outlined in article 1, this law serves to prevent and control water pollution, protect and improve the environment, safeguard human health, and ensure effective utilization of water resources. The law requires enterprises to employ clean production techniques (article 22). It also increases the responsibility of all individuals and units to protect the water environment through supervision and reporting mechanisms, and gives wronged individuals or units rights to request elimination of the environmental hazard and appropriate compensation (article 5).

1. Law on Prevention and Control of Atmospheric Pollution 1987 (amended 2015) [[3]](#footnote-3)

As outlined in article 1, this law seeks to prevent and control atmospheric pollution, protect and improve people’s environment and ecological environment, safeguard human health, and promote the sustainable development of the economy and society. The law provides provisions for improved transparency of harmful polluting incidents, (article 20) and increased accountability measures giving citizens the right to inform or lodge charges against units or individuals that cause pollution to the atmospheric environment (article 5).

1. Mineral Resources Law 1986 (amended 1996) [[4]](#footnote-4)

Under this law, all mining enterprises must comply with laws and regulations that require the mining area, design or plan, production and technological conditions and safety and environmental protection measures to be met for approval (article 15)

In addition to these four laws, the overarching policy agenda of ‘Ecological Civilization’ also promotes the principles of the human rights to a safe, clean, healthy and sustainable environment.

The term ‘ecological civilization’ was first introduced in 2007 by former Chinese President Hu Jintao. Hu defined an ecological civilization as “building a resource-saving and environment-friendly society based on the environmental carrying capacity of resources, the laws of nature and sustainable development…”[[5]](#footnote-5) It is a broad reform agenda designed to reconcile contradictions between economic development and the environment. Facing stagnant growth and environmental degradation, the state seeks to establish legal and policy programs that achieve an eco-friendly growth model that can be sustained.[[6]](#footnote-6) Proposed instruments include: the creation of ecological zones and corridors; promoting green development (e.g. renewable energy sources and green financing); controlling air, water and soil pollution; improving waste management; and strengthening regulations and institutions.[[7]](#footnote-7)

1. **Please provide specific examples of good practices in the implementation of the human right to a safe, clean, healthy and sustainable environment. These examples may occur at the international, national, sub-national, or local level.**

N/A

1. **Please provide evidence related to the effectiveness of the measures identified in your responses to Questions #2.**

N/A

1. **Please specify any challenges your Government, business, or organization has experienced in fulfilling its obligations relating to the human right to a safe, clean, healthy and sustainable environment.**

Through research, ICT has identified two major challenges to meeting the human right to a safe, clean, healthy and sustainable environment, as protected in China’s environmental laws:

1. Weak implementation of environmental protection laws by local governments

Tibet’s mountainous and remote location makes it difficult for central government authorities to regularly and closely monitor the application of central policy at the local level. Local officials capitalize on this buffer by lowering environmental standards and protections for companies engaged in illegal activities (e.g. mining, poaching, or using toxic substances) to secure alternative streams of income. Local governments therefore contravene the Environmental Protection Law 1979 (amended 2014), The Environmental Impact Assessment Law, the Nature Reserve Law (1994), and the Water Pollution Prevention and Control Law 1984 (amended 2008) [[8]](#footnote-8).

There have also been cases where local officials have sought to suppress opposition to mines that may have not complied with central government environmental protection laws. For example, we have observed several cases of local governments intentionally misrepresenting illegal mining activities as road building or electricity power projects as a means to mask the lack of a mining license and deflect opposition from residents.[[9]](#footnote-9)

1. Lack of transparency and access to justice for individuals directly affected by environmentally damaging activities.

Local residents are rarely informed or consulted about new projects that alter their immediate environment and sources of livelihood. The lack of transparency is reflected in the external media reporting on mines in Tibet or Tibetan areas. Local residents who protest mines know little about the name of the mine, the type or types of mineral extracted, or the responsible company.

In situations when environmental damage has occurred, Tibetans have found no clear process or avenue through which they can raise genuine concerns about the health of residents, livestock and the environment without fear of retribution.

For example, many mines have released dangerous, often poisonous, chemicals into rivers that have caused serious illness and death. The Jiajika lithium mine twice leaked toxic chemicals into the local water supply killing livestock and fish.[[10]](#footnote-10) Between 2005 and 2009 in Tsangsho township, Markham (Ch. Markam) County, 26 residents and 2,441 cattle and sheep died from poisoned drinking water.[[11]](#footnote-11)

Mines have also caused grassland degradation. The open-pit Muli coal mine in Qinghai spread a layer of black coal dust across the pastures, rivers and mountains, causing grassland degradation and the loss of permafrost (layer of frozen soil that stores water for the benefit of surface ecologies).[[12]](#footnote-12) Tibetan pastoral herders in the area of Kurti Ribo (in Maxi Township, Zoige County, Ngawa TAP, Sichuan) also attributed grassland degradation and desertification to the neighbouring gold mine which used rain cloud cannons to prevent rainfall.[[13]](#footnote-13)

Attempts by residents to rightfully refuse consent to environmental destructive activities, submit petitions, or frame environmental concerns within state policies and laws have been unsuccessful.[[14]](#footnote-14) Opposition is silenced by incarcerating protestors, using violence, or enforcing curfews. There is, therefore, no evidence to show Tibetans have access to justice – to use the law to address unfair treatment such as land expropriation, grassland degradation, water pollution and loss of livelihood. It is unclear whether there is an absence of efforts to nurture legal consciousness, or whether Tibetans are intentionally excluded from accessing justice.

Rather than encouraging the application of environmental protection laws, environmental activism is politicized and conflated with ethnic separatism as a means to discredit opponents and dismiss environmental concerns.

1. **How are the rights of those who may be particularly vulnerable to violation of their right to a safe, clean, healthy and sustainable environment, through either environmental degradation or lack of access to environmental amenities, provided with heightened protection?**

The rights of Tibetans, who are particularly vulnerable to violation of their right to a safe, clean, healthy and sustainable environment, are unfortunately not provided for with heightened protection. On the contrary, research shows that many Tibetans are excluded from accessing information either through the dissemination of information only in Mandarin Chinese (and not Tibetan), or through providing intentionally misleading information. Tsering Bum, a researcher examining the implementation of nomad relocation initiatives in Tibetan areas of Qinghai, found herders were given incorrect information so that they would not resist relocation.[[15]](#footnote-15) Some herders were told they needed to move off the grasslands temporarily, and the funds they were receiving from the government was a poverty alleviation fund, and nothing to do with compensation for lost land-use rights.

Measures such as improved language policies, consultation, or meaningful negotiation are not used. Instead, local officials have resorted to intimidating village heads into providing consent. In cases where consent has not been provided, the village leader has been taken into police custody.[[16]](#footnote-16)

1. **How do you ensure that the rights of environmental human rights defenders are protected? What efforts has your Government, business or organization made to create a safe and enabling environment for them to freely exercise their rights without fear of intimidation, violence or reprisal?**

As a human rights advocacy organization we work to report on the cases of environmental human rights defenders so that their cause and case gains visibility. By increasing their visibility and awareness of their legal rights under environmental protection laws, we hope to discourage a heavy-handed Chinese government response. Instead we aim to promote transparency, participation and accountability in environmental management, in accordance with existing laws.

1. **What are ways in which high-income States should assist low-income States in respecting, protecting, and fulfilling the human right to a safe, clean, healthy and sustainable environment?**

High-income states can provide training and exchange programs with counterparts in low-income states to share proven methods to increasing legal knowledge and access to justice.

Any state, regardless of its economic stature, and the international community should urge the Chinese government to respect the rights of those affected by its economic and social policies, in accordance with the United Nations Sustainable Development Goals and international human rights standards, in particular in Tibet.

ENDS

1. .See Chinese language version: The National People’s Congress of the People’s Republic of China, 25 April 2014, ‘中华人民共和国环境保护法’ (Ch. ‘Zhonghua renmin gongheguo huanjing baohu fa’, ‘Environmental Protection Law of the People’s Republic of China’), <http://www.npc.gov.cn/npc/xinwen/2014-04/25/content_1861279.htm>. For an unofficial English translation see EU-China Environmental Governance Programme, no date provided, ‘Environmental Protection Law of the People’s Republic of China’, <https://www.chinadialogue.net/Environmental-Protection-Law-2014-eversion.pdf>; and Jones Day, January 2016, ‘China Begins Enforcing Newly Amended Environmental Protection Law’, <http://www.jonesday.com/china-begins-enforcing-newly-amended-environmental-protection-law-01-21-2016/>. [↑](#footnote-ref-1)
2. The State Council of the People’s Republic of China, 23 August 2014, ‘Law of the People’s Republic of China on prevention and control of water pollution’, <http://english.gov.cn/archive/laws_regulations/2014/08/23/content_281474983042375.htm>; and Jingyun Li and Jingjing Liu, 7 July 2011, ‘Quest for Clean Water: China’s Newly Amended Water Pollution Control Law’, <https://www.wilsoncenter.org/publication/quest-for-clean-water-chinas-newly-amended-water-pollution-control-law>. [↑](#footnote-ref-2)
3. The Supreme People’s Court of the People’s Republic of China, 15 April 2016, ‘Law of the People’s Republic of China on the Prevention and Control of Atmospheric Pollution’, <http://english.court.gov.cn/2016-04/15/content_24565639.htm>. [↑](#footnote-ref-3)
4. The National People’s Congress of the People’s Republic of China, no date provided, ‘Mineral Resources Law of the People’s Republic of China’, ‘<http://www.npc.gov.cn/englishnpc/Law/2007-12/12/content_1383942.htm>. [↑](#footnote-ref-4)
5. The Climate Group, February 2014, ‘Eco-civilization: China’s blueprint for a new era’, <https://www.theclimategroup.org/sites/default/files/archive/files/China-Ecocivilisation.pdf>, page 3. [↑](#footnote-ref-5)
6. Xinhua, 4 November 2017, ‘Full Text of Xi Jinping’s report at 19th CPC National Congress’, <http://www.chinadaily.com.cn/china/19thcpcnationalcongress/2017-11/04/content_34115212.htm>; and Zhang Chun, 30 September 2015, ‘China’s New Blueprint for an ‘Ecological Civilization’, *The Diplomat*, <https://thediplomat.com/2015/09/chinas-new-blueprint-for-an-ecological-civilization/>. [↑](#footnote-ref-6)
7. Ibid., Xinhua, 4 November 2017, ‘Full Text of Xi Jinping’s report at 19th CPC National Congress’; and Op. Cit., The Climate Group, February 2014, ‘Eco-civilization: China’s blueprint for a new era’; and [↑](#footnote-ref-7)
8. Wilson Center, January 2009, ‘Quest for Clean water: China’s newly amended Water Pollution Control Law’, <https://www.wilsoncenter.org/publication/quest-for-clean-water-chinas-newly-amended-water-pollution-control-law>. [↑](#footnote-ref-8)
9. See the case of Driru (Ch. Biru) county protests in 2010 and 2013 at Tibet Watch, January 2015, ‘Environmental Protests on the Tibetan Plateau’, pages 7-9; the case of a mine in upper Dechung, Yushu Prefecture, Radio Free Asia, 11 July 2018, ‘Tibetan Villagers Tear-Gassed, Beaten for Mine Protest’, <https://www.rfa.org/english/news/tibet/beaten-07112018161718.html>; Radio Free Asia, 1 October 2014, ‘Thirteen wounded as Chinese police open fire on Tibetan anti-mine protesters’, <https://www.rfa.org/english/news/tibet/wounded-10012014142936.html>; and Radio Free Asia, 20 March 2018, ‘Tibetan Man Detained after Villagers Protest Chinese Mine Plans’, <https://www.rfa.org/english/news/tibet/mine-03202018170709.html>. [↑](#footnote-ref-9)
10. Simon Denyer, 26 December 2016, ‘Tibetans in anguish as Chinese mines pollute their sacred grasslands’, *The Washington Post*, <https://www.washingtonpost.com/world/asia_pacific/tibetans-in-anguish-as-chinese-mines-pollute-their-sacred-grasslands/2016/12/25/bb6aad06-63bc-11e6-b4d8-33e931b5a26d_story.html?utm_term=.51e047cde146>; and Tibet Watch Report, January 2015: ‘Environmental Protests on the Tibetan Plateau’, <http://www.tibetwatch.org/uploads/2/4/3/4/24348968/environmental_protests_on_the_tibetan_plateau.pdf>; 2 June 2017: ‘Jiajika Mine’, <https://www.mindat.org/loc-146947.html>; Behre Dolbear Australia Minerals Industry Consultants, ‘Competent Person’s Report’, page IV-90. [↑](#footnote-ref-10)
11. See page 160-161 in Michael Buckley, 2014: ‘Meltdown in Tibet’, St. Martin’s Press; and page 166 in Emily T. Yeh, 2016, ‘Environmental Issues and Conflict with Tibet’ in Ben Hillman and Gray Tuttle (eds), 2016, *Ethnic Conflict and Protest in Tibet and Xinjiang*’, Columbia University Press. [↑](#footnote-ref-11)
12. Jonathan Kaiman, 7 August 2014: ‘Illegal coalmine encroaching on nature reserve in north-west China’, *The Guardian*, <https://www.theguardian.com/environment/2014/aug/07/illegal-coal-mine-nature-reserve-china>; Christine Ottery, 27 August 2014, ‘Exposed: Coal mining at the source of China’s Yellow River’, *Greenpeace*, <http://www.greenpeace.org/eastasia/news/blog/exposed-coal-mining-at-the-source-of-chinas-y/blog/50394/>. [↑](#footnote-ref-12)
13. Huatse Gyal, 2019, ‘“I am concerned with the future of my children”: the project economy and shifting views of education in a Tibetan pastoral community’, *Critical Asian Studies*, Vol. 51, No. 1, pages 12-30, page 15. [↑](#footnote-ref-13)
14. Op. cit., Tibet Watch Report, January 2015: ‘Environmental Protests on the Tibetan Plateau’, page 17. [↑](#footnote-ref-14)
15. Tsering Bum, 2018, ‘Translating ecological migration policy: A conjunctural analysis of Tibetan pastoralist resettlement in China’, *Critical Asian Studies*, Vol. 50, No. 4, pages 518-536 [↑](#footnote-ref-15)
16. Radio Free Asia, 20 March 2018, ‘Tibetan Man Detained after Villagers Protest Chinese Mine Plans’, <https://www.rfa.org/english/news/tibet/mine-03202018170709.html>. [↑](#footnote-ref-16)