Sustainable Development as Freedom: Globalization and Right-Based Approaches to Environmental Governance in China

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I. Background

A. Globalization and Social Inclusion

"The central challenge we face today is to ensure that globalization becomes a positive force for the world's people." So read the statement of the Heads of State and Government to the *United Nations Millennium Summit* held in the year 2000. Referring to the process of creating 'globalization with a human face' former-UN Secretary General Kofi Annan stated "the outcome of this experiment depends increasingly on the foresight and political will of leaders in all sectors of society to find pragmatic solutions that transcend ideologies."

As expressed at the Summit, globalization is now seen as more than a mere consequence of expanding market forces. It is also seen as a process of social, political and cultural change and many of these more contentious aspects of globalization are motivated by highly localized and contextualized values. Balancing expanding foreign trade and investment with protection of local communities interests and rights stands as a priority in this regard. Poor and vulnerable communities, often minority or indigenous communities, inhabit areas with some of the planet's last remaining abundant reserves of natural resources. The last decade has seen a rapid growth in international trade and investments in the extractive sector, with many new investments focused in areas with poor and vulnerable communities—often areas inhabited by minority or indigenous peoples.[1] With the world experiencing an increasing demand for commodities owing to the emergence of a new group of global consumers in emerging large economies like Brazil, Russia, India and China (known as the 'BRIC' countries), the potential exists for poor communities to gain from this expanded world trade, to enter the global market and increase local revenues for poverty reduction, while at the

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[1] See UNDP, *Human Development Report, Cultural Liberty in Today's Diverse World* (New York: UNDP, 2004) at 92.

same time bringing about 'sustainable development dividends' in the form of environmental and cultural protection.[2]

With the risk of an economic downturn in western economies, there is increasing attention being placed on investments in emerging economies as the basis for sustained global growth in the future. Meanwhile, environmental issues in large emerging economies like China and India have also risen to the top of the global agenda in recent years. The challenge is to balance global trade and investment expansion with issues of environmentally sustainability in a way that also addressed issues of local rights and social development needs of vulnerable communities.

Far too often the natural resources such communities host are extracted without adequate sharing of revenues needed for achieving poverty reduction, environmental sustainability and cultural protection goals. The pursuit of an expanded world trading system at the expense of local culture and the environment is driving some communities to rebel against mainstream global development, with a perceived lack of place for their traditions in decision-making processes.

For trade and investment to translate into sustainability requires measures that enlarge people's choices and opportunities. The benefits of poverty reduction can be unsustainable if problems of inequity are not addressed. The challenge is to find ways to ensure the socio-economic inclusion of poor communities based on: recognition of local communities' rights to natural resources, inclusion of communities in decision-making processes over resource use, and empowering communities through equitable benefit-sharing.

As expressed in the current *Doha Round* of the World Trade Organization (WTO) negotiations, a central challenge to address these issues is to find more inclusive form of globalization and local governance so that marginalized communities can become part of decision-making processes and benefit from future development in a way that matches local needs and aspirations while also addressing social and environmental considerations.[3] Tensions between the economic benefits

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[2]   See generally Paul Collier & Anke Hoeffler, *Economic Causes of Civil Conflict & Implications for Policy* (Washington DC: World Bank, 2000).

[3]   See generally UNDP, *Trade & Development: Part 1 Trade and Human Development* (New York: UNDP, 2002).

of trade expansion and the local socio-political ramifications continue in emerging economies. With trade and investment in emerging economies expected to surge in the coming decades to sustain the global economy, some fear that such an expansion may further exacerbate exclusionary issues in communities and damage globally critical ecosystems.

B.   Trade and Local Governance

Parallel to the expansion of market forces in the world economy over the past decade, the world has also witnessed the concurrent rise of participatory forms of governance with increasing space for marginalized communities to have a voice in development decisions. Minority communities in particular have been increasingly vocal in demanding social equity and environmental sustainability, to make trade and growth benefit poverty and sustainability goals.

Central to such processes has been the issue of minority rights and their 'right to development.' The *UN 'Declaration on the Right to Development'* states that "countries should help to fulfill for their citizens not only their economic and social rights, ensuring good standards of health, nutrition and education, but also their civil and political rights, on the basis of their meaningful participation in development and in fair distribution of benefits resulting there from."[4] This includes an increasing sensitivity in the world trade and investment system to rights of communities excluded form mainstream social and economic development and lacking access to the benefits of the trade-development nexus.

Apart from the generation of revenues needed for poverty reduction and social development goals, the world trade and investment system must also encourage policies of inclusion to accommodate a broader vision of development based on the ability of vulnerable communities to have access to participation in decision-making processes. This includes the need to fully consider the diversity of local cultures and the implications this has for global and local trade-development policies.

The 'policy coherence' agenda emerging out of the *Doha Round* of the WTO focuses on this need to match world trade expansion with

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[4]   United Nations Development Programme, *UNDP and Indigenous Peoples: A policy of engagement* (New York: UNDP, 2001).

domestic policies that allow communities the space to participate in the definition of the local boundaries of globalization.[5]   A key way of addressing this challenge in minority communities has been the expanded use of local autonomy regimes in various parts of the world in recent years, including new autonomy measures in Asia, Central America and Latin America.   Autonomy regimes profess greater decision-making powers to local communities, while also seeking to balance increased access of communities to natural resources and greater accommodation of cultural norms and access to justice.   In particular, such autonomy regimes focus on the ability to express cultural identity and protect the local environment through increased access to the decision-making processes.

In attempting such legal reform measures, a key challenge has been to bridge the 'modern' global norms expressed in global trade law and development discourse and the 'traditional' epistemologies used by minority and indigenous communities in making local decisions.   Such communities retain historical systems of resource use, ways of livelihood, and legal systems that encompass unique worldviews and governance systems.   Many such communities continue to adhere to systems of collective rights and traditional systems of resource use that go beyond utilitarian concerns, based on indigenous religious and legal systems.   However, the governance models that serve as the skeleton of the global trade and development process often stand as an affront to customary norms.   "The dominant global system assumes that traditional communities must change to meet modern standards, but indigenous peoples feel the opposite must occur: the international community must begin to recognize and accommodate local diversity."[6]

With their universalistic focus, global frameworks often focus on pre-determined types of behavior separated from any particularized cultural context.[7] Traditional governance systems take identity in positive contrast to this by focusing on very contextualized approaches to

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[5]   See generally World Trade Organization, *World Trade Report 2004: Exploring linkages between domestic policy environment and international trade* (Geneva: WTO, 2004).

[6]   United Nations Environment Programme, *Cultural and Spiritual Values of Biodiversity*, (Nairobi: UNEP, 1999) at 1.

[7]   P. Fitzpatrick, *The Mythology of Modern Law* (New York: Routledge Press, 1992) at 169.

development, with heavier reliance on the rules and customs of local cultures. [8]   Local autonomy regimes with stronger community participation "profess greater responsibility on individuals and communities" in maintaining social standards and managing conflicts—self-reliance often in opposition to assumptions of state regulation.   The hope is more authentic rules and stronger calibration between global and indigenous cultural and socio-political systems.

Rights-based approaches to development are now seen as critical to this process, addressing substantive rights of local communities to development gains and resource use, as well as effective rights of access to decision-making processes.[9] This includes a focus on the 'three pillars' of access to information, participation and justice seen as critical in the area of sustainable development. [10]   Access to information allows communities access to information concerning proposed trade-development plans and programmes before they are undertaken, in a spirit of prior informed consent.   Access to adequate information is a basis for achieving the second right to participation, through which communities participate in legislative and regulatory processes in a meaningful manner. Finally, while access to information and participation in policy setting and review processes are critical, progress towards more inclusive modes of development are equally dependent on the third pillar—access to justice.

Access to justice is central to manage conflicts over policy choices related to trade and development processes and to do so in a way that accommodates local cultural norms and customary law.   Pluralistic approaches to justice and governance are increasingly being attempted through local autonomy regimes in order to find balance between modern, international norms, and long-standing worldviews and legal precepts inherited over centuries via customary laws and governance systems. This includes design of 'hybrid' systems to more effectively link customary dispute resolution systems of minority and indigenous communities with state judicial systems.

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[8]   *Ibid.* at 173-177.

[9]   See United Nations Development Programme, *Integrating Human Rights with Sustainable Human Development*, (New York: UNDP, 1998).

[10]   See Principle 10 of the *Rio Declaration on Environment and Development, Report of the United Nations Conference on Environment and Development*, U.N. Doc. A/CONF.151/6/Rev.1 (1992), 31 I.L.M. 874.

Recognizing customary laws and norms and their role in decision-making through broad autonomy frameworks can help achieve a more inclusive form of development, a better balance between trade, culture and environmental protection, and better define the local boundaries of globalization. Local autonomy regimes are now a key means of mediating this process, bringing with them more authentic rules to set the local boundaries of trade expansion, and greater local ownership and participation in policy formulation and impact assessment processes related to policy choices.

Impact Assessments serve as a good example of a specific regulatory tool where the link between trade, development and environmental protection can be forged. Comprehensive impact assessments are increasingly being used for both policy level decisions related to trade/investment policies, and for project level actions related to specific investment schemes developing countries. The benefits of impact assessments go beyond consultation on individual projects affecting communities, but also allow for access to information and participation in design of upstream trade and development policies and the prevention of impacts on communities well-being. Rights based regulations and impact assessment processes together serve as key ways by which the goals of the 'right to development' and the three pillars of access can be achieved.

II.   Case Study of Western China

A.   China Shining – Social and Environmental Risks

It was 1992 when the Government of China formally announced its official policy to establish a 'socialist market economy with Chinese characteristics.' This served to be a historic event not just for China, but also for the world. This dramatic shift unleashed a new era of development in China, opening-up an expanded role for the private sector to drive China's growth and setting the stage for China's re-emergence at the center of the world economy.[11] Just fifteen years on, China is now the world's fourth largest economy with per capita GDP over US$1,000 and foreign reserves over US$1 trillion. China's growth rate in 2002

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[11]   M. Hart-Landsberg & P. Burkett, *China and Socialism: Market Reforms and Class Struggles* (New York: Monthly Review Press, 2005) at 52ff.

accounted for 17.5% of world growth in GDP, second only to the US contribution.[12]

China has even surpassed the United States recently to become the world's leading destination for foreign direct investment (FDI).[13] FDI is now central to China's position in the world economy, with foreign-invested enterprises making up about half of all exports from China.[14] The ratio of exports to GDP likewise climbed steadily over the 1990s from 16% in 1990 to over 26% by 2002.[15] Along with its increasing role as a manufacturing base for the world, China has become a major consumer, both in terms of materials needed for the manufacturing of export goods, as well as by the rise in consumption by a growing middle class.   As highlighted in the 2006 State of the World report, China now uses approximately 26% of the world's crude steel, 32% of the rice, 37% of the cotton, and 47% of the cement.[16]

China's dramatic transformation to market-based growth has helped more people out of extreme poverty at a faster rate than at any time in human history. Still, while the impressive nature of China's growth over the past decade has left many in awe, there is now major attention to issues of social equity and the impacts of rapid market transformation on poor and vulnerable communities, including minorities in Western China. In particular, there is now attention to preventing social and environmental impacts of a new surge of foreign and domestic trade and investment flows into Western China under the 'Western Development Strategy.'   This includes issues of equity-growing income disparities between those that benefit from the extraction of local resources and those that bear the local impacts of resource degradation and pollution.

Furthermore, ecosystem services such as clean air and water, productive land and natural resources, still play a critical role in China's

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[12] *Ibid.* at 87.

[13] See World Economic Forum, *China Business Summit 2006, Sustainable Growth through Innovation: China's Creative Imperative*, 10-11 September 2006, online: WEF <http://www.weforum.org/en/events/ArchivedEvents/china/index.htm>.

[14] Y. Zhang, *Globalization and State Transformation in China* (Cambridge: Cambridge University Press, 2004) at 2-4.

[15] See Hart-Landsberg & Burkett, *supra* note 11 at 87.

[16] L. Starke, ed., *State of the World 2006: The Challenge of Global Sustainability* (London: Earthscan, 2006) at 5-7.

economy, and these public goods are increasingly recognized by citizens as being central to long-term social welfare. The signs of stress are evident—the climate is changing, severe storm events are more frequent, deserts are spreading, water security is a growing concern and air and water pollution are taking a toll on public health.
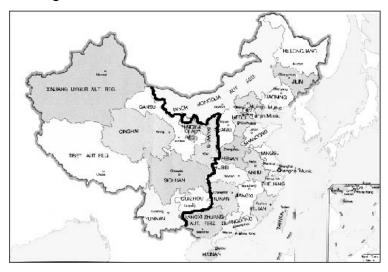
China is at a juncture of increased scarcity of natural resources with declining environmental quality and intensified social pressures related to environmental matters. Recent years have also seen a rise in the number of environment-related protests by communities, increasing use of the courts to challenge decisions that impact the environment and greater emphasis on the need for local governance systems to serve as a force to balance growth and sustainability. In this context, proactive measures are needed that seek to mainstream sustainability into new trade and investment plans to address social and environment concerns of vulnerable communities.

B.   The Western Development Strategy

While China has achieved remarkable progress in combating poverty, large gaps in growth and development results exist between urban and rural areas, and between coastal regions in the east and landlocked regions in the west. While national growth continues at a rapid pace, concern has shifted to make future growth more socially equitable with special concern to extend the benefit of global markets and rapid growth to minority regions in Western China.

Towards this end, China enacted a 'Western Development Strategy' in 2000 to support achievement of a set of core socio-economic development goals by the year 2015. This is in line with China's national Xiaokang 2020 Goals for a 'Well-Off, Balanced Society' and the 2015 targets for poverty reduction and social development under the UN-sponsored Millennium Development Goals (MDGs).   Western China covers nine provinces and autonomous regions, and dozens of municipalities, altogether covering 60% of the country with a population over 370 million (25% of the national total). The region is also vital to continued growth in the east, hosting 80% of China's total water supplies,

50% of China's mineral reserves and 36%, 12% and 53% of China's coal, oil and natural gas reserves.[17]

During its *first phase* (2000–2005), the Western Development Strategy focused on developing basic infrastructure—roads, highways, airports, urban centers, to connect landlocked areas to more economically developed regions in the East. According to official figures, during this period the Government invested RMB 1 trillion (approximately US $125 billion) to develop over sixty projects in transport, water, energy and telecommunications. According to official figures, during this period the West reported an annual average GDP growth rate over 10%, with the region's combined GDP reaching 3.33 trillion Yuan (US $416.25 billion) by 2006, from 1.66 trillion Yuan at the start of the strategy in 2000. Fixed asset investment grew by 23% annually and local revenue grew by an average of 15.5%.[18]

Based on a foundation of improved infrastructure and increased access to domestic and international finance, the *second phase* (2005–2015) is expected to see an expansion of inter-provincial and international

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[17] PRC, *Development Strategy of Western China*, Permanent Representation of the People's Republic of China to the United Nations Agencies for Food and Agriculture in Rome (2000).

[18] "W. China Development Strategy Bears Fruit" *Xinhua News Agency, Beijing* (31 August 2006).

investment and trade with Western China, increased local GDP and translation into an increase in human development indicators.[19] While increased investment and trade in natural resources and commodities is central to the strategy, emphasis is also placed on translating local growth into public health, education and social services for rural communities towards achievement of social development goals. The *third phase* (2015–2050) is meant to see a consolidation of growth and development trends by mid-century.

Apart from its landlocked nature, a number of other factors have also inhibited the regions achievement of faster increases in development indicators. Western China is home to expansive drylands; fragile ecosystems where expanded development will exacerbate pressures on land degradation and water scarcity and threatened sustainability, unless preventive measures are taken. Indeed, the Western Development Strategy calls on development agents to integrate social and environmental sustainability into investment activities.[20] This seeks to prevent a 'race to the bottom,' risks that provinces in the West may compete for new investment opportunities by easing social and environmental requirements. It also raises issues of 'environmental justice,' the special plight of minority groups whose health and well-being could be disproportionately impacted by impacts of future investments into the area.

At stake is the future of human development in Western China itself, and the sustainability of local ecosystems and natural resources which China as a whole is increasingly dependent on to sustain national growth. As noted further below, rapid changes to the environment present serious risks to the ability of current and future generations to achieve and sustain human development goals—to achieve social and economic rights.

C.   Development Trends in the Qinghai-Tibet Plateau

Within Western China, the Qinghai-Tibet Plateau is a large area of particular attention both for its rich natural resources and important social and environmental issues in the area. A team of Chinese Geological Survey experts recently conducted China's first-ever large-scale Qinghai-

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[19]   PRC, *supra* note 17 at 5.

[20]   *Ibid.* at 10.

Tibet Plateau Geological Survey. According to national media reports, the results published in 2007 showed vast metal reserves deep beneath the surface of the Plateau, identifying 600 potential sites for new mines with estimated reserves of 30–40 million tons of copper, 40 million tons of lead and zinc and several billion tons of iron ore.[21] This is just one example of a new found exuberance for extractive sector trade and investments in the region.

Investments during Phase I of the Western Development Strategy have already been successful. Official figures show that the Province of Tibet generated fiscal revenue of 5.25 billion Yuan (about US$656 million) during the first phase of the Western Development Strategy (2000–2005) and inward investment of 72 billion Yuan (about US$9 billion).[22] This included investment in over one hundred infrastructure projects, including the now famous Qinghai-Tibet Railway, the world's highest elevation railway.

During Phase II of the Western Development Strategy (2006–2010), China seeks to build on the initial infrastructure and research investments during Phase I, by supporting increased levels of domestic and international trade and investment into Western China. An example is the planned Yulong copper mine in the Province of Tibet, a joint venture between Chinese and international investors with registered capital of 625 million Yuan (approximately US$78.1 million) according to national media reports. With construction planned to commence, Yulong would become China's largest copper mine with 6.5 million tons of reserves.[23]

Given the prospects that increased investment and trade holds for local revenues and increased funds for social development goals, the Qinghai-Tibet Plateau Geological Survey calls for a 'gradual development' of mining in the region, warning that rapid exploitation could permanently damage the plateau's fragile ecosystem.[24] It calls for

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[21] "Metal Reserves Found on the Roof of World" *China Daily, Beijing* (13 February 2007).

[22] "State Aid Promotes Tibet's Development" *Xinhua News Agency, Beijing* (14 April 2006).

[23] "Largest Copper Mine to Start Construction in Tibet" *Xinhua News Agency, Beijing*, (7 April 2006).

[24] *Ibid.*

natural restoration plans as a pre-condition to industrial development. Unless such considerations are taken seriously, the Qinghai-Tibet Plateau could face environmental and social risks from rapid development.   The development of resources such as hydropower, mineral extraction, timber, wildlife and livestock and the associated increase in human populations will have significant correlations with ecosystem sustainability of the region.

Several development activities planned for Phase II of the Western Development Strategy could stand vulnerable to environmental degradation trends.   An example is the afore-mentioned Qinghai-Tibet Railway, probably the most symbolic project under the Western Development Strategy. Opened on October 15, 2005, the new railway is expected to reduce the cost of transporting goods between West and East, catalyze increased trade of goods and services, and reduce the cost of basic commodities for local consumption.   However, part of the railway is built on permafrost, and trends of climate change and permafrost melting over the next decades have caused concern.[25]

Over the next decades, geological hazards in other mountain areas of Western China are also expected to increase owing to glacial melting and climate change. Debris flow and landslides could threaten towns and industrial activities in the region. As glacial melting increases over the next decades, water tables will fall, springs and streams could dry up and rivers would have reduced flows. Adequate consideration of ecological risks can help investors and local communities buffer investments from the future impact of ecological change. Lack of integration of such risks into investments could undermine the local ecology and economy, and threaten the sustainability of any development gains made by the Western Development Strategy as a whole.

III.   Legal and Policy Responses

In designing new trade and investment activities in Western China, due account should be taken of the social and environmental risks to the sustainability of human development in the region. Ecological

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[25]   See Y Xu, Z.-C. Zhao & D. Li, *Simulations of climate change for the next 50 years over Tibetan Plateau and along the line of Qing-Zang Railway*, Plateau Meteorology, 24(5).698-707 (2005).

change is increasingly seen as a fundamental threat to human development with risks for reversal of hard won development gains.[26] If trends of environmental degradation are not mitigated, ecological change could end up jeopardizing the sustainability of future gains from China's Western Development Strategy and local achievement of social development goals.

There has been growing awareness within Western China itself of the impact of ecological factors on local livelihoods—particularly for rural communities whose livelihoods are dependent on natural resources but lack the capacities to respond to changing ecosystem dynamics.[27] Local communities have traditionally been effective in adapting to changing environments and conditions, but the projected magnitude of change from rising levels of international and domestic trade and investment into the region could stretch this adaptive ability to its outer limits, with consequences for future development.[28] Given the unprecedented scale and consequences of impacts in the area, environmental changes could render the customary knowledge and traditions of minority communities in Western China ineffective.

Current strategies for infrastructure investments and increasing trade and growth are by no means a guarantee for improved development results, once the far-reaching implications of future social and ecological change are factored in. Indeed rapid developments that fail to take social and ecological change into account may well exacerbate risks to human development if they add to pressures in the fragile environment of Western China, particularly in highly vulnerable areas like the Qinghai-Tibet Plateau.

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[26] See J.C. Ribot, A.R. Magalhães & S. Panagides, *Climate variability, climate change, and social vulnerability in the semi-arid tropics* (Cambridge: Cambridge University Press, 1996).

[27] See Environment Canada, *Evaluation Tools to Identify Implications of Climate Change and Economic Development for Sustainability in Lijiang and Yulong Mountain Region of China*, by Yongyuan Yin (2003). See S. Brogaard & J. Seaquist, "An assessment of rural livelihood vulnerability in relation to climate—a case study in agro-pastoral northern China" (Paper presented to the International Workshop on Human Security and Climate Change, Oslo, June 2005).

[28] See M.C. Goldstein *et al*, "Development and Change in Rural Tibet: Problems and Adaptations" (2003) 43:5 Asian Survey 758-779.

A.   Sustainable Development as Freedom

Ecological change calls for a shift in standard development paradigms, in which policy decisions regarding trade and investment flows fully integrate the risks vulnerable communities will face. Using a Human Development Approach goes beyond the reorientation of policies to protect infrastructure and investments projects to focus on human capabilities.   The human capability approach seeks to ensure that communities are able to be agents of change, taking proactive measures to adapt to social and ecological risks to ensure local development, ways of life and livelihoods.

In the 1990's, Nobel economist Professor Amartya Sen articulated the foundation of the Human Development Approach.[29] In his classic work "*Development as Freedom*" Professor Sen argued that development is "not the mere accumulation of goods but the enhanced freedom to choose, to lead the kind of life one values."[30] Beyond being beneficiaries of economic and social development, communities need to be active agents of change to ensure that any local development gains can be sustained by future generations. By focusing on Sen's human capability approach, the attention of ecological impacts in the region shifts from protecting infrastructure and investments, to aspects of community life beyond income, to better understand the aspects of local life and culture for which ecological change poses its greatest risks.[31]

Two principles have historically been applied under the capability approach—(i) that the chosen capability be *universally valued* by people across the world and (ii) that the capability be *basic so that without it, many other capabilities would be foreclosed*.[32] A capability approach allows measures to adapt and accommodate to new challenges in a region of rapid change. Environmental issues now stand at the center of that

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[29] A. Sen, *Development as Freedom* (Oxford: Oxford University Press, 1999).

[30] S.P. Marks, *The Human Rights Framework for Development: Five Approaches*, Submission to the 2nd Global Forum on World Development, (New York: UNDP, 2000), at 4. See also P. Alston, "Making Space for New Human Rights: The Case of the Right to Development" (1988) 1 Harv. Hum. Rts. Y. 3 at 20.

[31] See generally Cheng-Bang An *et al.*, *Climate change and cultural response around 4000 cal yr B.P. in the western part of Chinese Loess Plateau,* (2005) 63 Quaternary Research 347–352.

[32] Fukuda-Parr, *Operationalising Amartya Sen's ideas on capabilities*, UNDP Working Paper 6-7 (New York: UNDP, 2002) [emphasis added].

change. Beyond being a mere 'market externality,' ecological change is now shifting the very foundations of life on earth, with implications for our concept of human development itself.

The ability to achieve and sustain a certain quality of life for current and future generations is now under threat for communities around the world, including those affected by ecological change in Western China. Indeed one could say that the capacity to deal with ecological change is quickly becoming a universal value held by people across the planet, and that without this capacity many other human development goals are in jeopardy.

The purpose of adaptation measures under a human development approach is to improve human capabilities and lives, to ensure communities' abilities to achieve and sustain their development goals in a rapidly changing environment. From this point of view, adaptation should be about removing vulnerabilities to ecological change as obstacles to achievement of future development goals. A human development approach to Western Development would focus adaptation measures on the capability of future generations in Western China to achieve a standard of living and way of life as good as those of the present generation and on the right of future generations to live in a healthy and productive environment.

For communities in ecological fragile areas of Western China, ecological change poses fundamental threats to their ability to sustain standards of living, local ways of life and the exercise of the 'Right to Development.' The UN Declaration on the Right to Development was adopted by the United Nations General Assembly in 1986 by an overwhelming majority. The first article in the Declaration puts forward the concept of the right to development as "an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to and enjoy economic, social, cultural, and political development in which all human rights and fundamental freedoms can be fully realized."[33]

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[33] A. Sengupta, *The Right to Development as a Human Right,* Working Paper, Harvard School of Public Health (1999) at 2.

Ecological change is critical to achieving basic rights.[34] The process of integrating environmental concerns into a broader rights framework started in 1972 with the Stockholm Declaration on the Human Environment stating; "man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being." This was taken forward in Principle 1 of the 1992 Rio Declaration on Environment and Development that stated "human beings are at the center of concern for sustainable development" and that they are "entitled to a healthy and productive life in harmony with nature."[35]

Since then, ecological change has accelerated and has now become a much larger global concern. Ecological change stands to transform the landscape of development and the ability of communities' to achieve a minimum level of socio-economic rights. Many would argue that urgent problems of survival are more crucial in less economically developed areas like Western China than long-term ecological security. However, this reflects a traditional 'need-based approach' to development, which the capability approach includes but goes well beyond.

The UN Special Rapporteur on Human Rights & the Environment further elaborated the link between the right to development and environmental change, arguing that the right to development would be violated if trends of ecological change continue. The UN Special Rapporteur encapsulated this in the idea of a 'right to prevention of ecological harm' as part and parcel of the right to development, particularly given the clear impacts of global environmental change on poor and vulnerable communities.[36]

Given the stark changes expected in the future, a stable ecosystem should become an essential element of the Right to Development, as part of the 'enabling environment' in which communities—current and future

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[34] See United Nations Development Programme, *Human Rights and the Environment, Proceedings of UNEP Geneva Environment Network Roundtable* (Geneva: UNDP, 2004), online: International Environment House <http://www.environmenthouse.ch/ index.php?page=previous>. See also S. Watt-Cloutier, "Climate Change and Human Rights" in Human Rights Dialogue – Environmental Rights, Series 2, No. 11 (New York: Carnegie Council, 2004) at 10-12.

[35] A. Dias, *Human Rights, Environment and Development,* UNDP Human Development Report 2000 Background Paper (New York: UNDP 2000) at 3.

[36] *Ibid.* at 18-20.

generations—can lead secure and healthy lives. Making this connection lifts ecosystem services from being a subset of other rights, such as water or land related aspects of economic and social rights, and endows the 'emergent' more complex elements of ecosystem change to a higher moral, policy and legal plane for communities and policy makers to better balance against the dominant economic drivers of change. Sustainable human development is "development which meets the needs of the present generation without compromising the ability of future generations to meet their own needs." By integrating ecological change into the right to development, the long-term nature of consequences calls for solutions tailored for today and for future generations.

The human security aspects of ecological change are becoming central to the basic concept of human development, and as such a new paradigm is needed, one which takes us from Sen's original *'Development as Freedom'* model to a new *'Sustainable Development as Freedom'* model with ecological security as a core freedom within broader human development and right to development frameworks. In addition to the 'five freedoms' outlined in Sen's 'Development as Freedom' concept, there is a growing view to ecological security as a 'sixth freedom.' As noted by Professor Sen himself in 2004,

> "To use a medieval distinction, we are not only patients, whose needs demand attention, but also agents, whose freedom to decide what to value and how to pursue it can extend far beyond the fulfillment of our needs. The question can thus be asked whether environmental priorities should be seen in terms also of sustaining our freedoms. Should we not be concerned with preserving—and when possible expanding—the substantive freedoms of people today without compromising the ability of future generations to have similar, or more, freedoms? Focusing on 'sustainable freedoms' may not only be conceptually important (as a part of a general approach of 'development as freedom'), it can also have tangible implications of immediate relevance."[37]

Analyzing policy measures in this context would recognize the fundamental value of a stable ecosystem as a basic condition of life, indispensable to human welfare and to the fulfillment of social and

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[37] A. Sen, "Why We Should Preserve the Spotted Owl" (2004) 26:3 London Review of Books 2.

economic rights. Given the gravity of the situation, actions to address ecological change are more than an academic exercise; they are quickly becoming issues of 'common concern for humanity,' a growing ethical concern for people across the world.

In Western China, concerns over ecosystems align with local cultural norms and traditions regarding our duty to protect the environment. In the sacred *Sutta Nipata*, the Buddha argued that since humanity is far more powerful than other species, we have special responsibilities to the environment linked to this asymmetry of influence. A common sense of urgency among humanity to the growing crisis of ecological change brings forth an opportunity to engage this responsibility to support community-based capacities for environmental governance, based on a sense of the right to a healthy environment, and our moral duty to address ecological change as a 'common concern of humanity.'

B.   Rights-Based Approaches to Environmental Governance

In addition to a policy framework based on the human development approach, there is a need to ensure a responsive legal framework to enforce principles of sustainability into local action. Sustainable development is about making hard trade-offs, between current growth and the ability of future generations to live in a healthy environment, between continued emergence of a vibrant private sector and protection of human health and the public good.

While China has established a clear set of environmental laws and regulations to manage these dichotomies, the ability of the system to deliver has been increasingly challenges by deficiencies in local environmental compliance and enforcement (ECE) capacities. This was summarized as far back as 1994 with the State Council finding that "laws are not complied with, enforcement is weak, and offenses are not prosecuted.   Enforcement should become the core of environmental protection work."[38]

Recognizing this challenge, the Government of China now places increasing attention to strengthening local ECE systems needed to proactively respond to the risks that rapid trade and investment pose for

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[38]   Chen J, Li Y and Otto JM (Eds). *Implementation of Law in the People's Republic of China*. Kluwer Law International, London (2002) at 150-51.

ecological integrity and social development. As described further below, new emphasis is now placed on scientific and participatory approaches to local ECE, to ensure that decisions are based on the science of ecological change and to increase the use of local community participation in decision-making processes. As with the poverty reduction lessons learned from China's transformation over the past decades, the ongoing evolution of China's environmental governance system can also provide important reference points for other countries reinterpreting the struggle between market-based approaches and community welfare approaches to ECE.

In early 2005, China passed a new "Harmonious Society" policy, meant to direct the nation towards a "Harmonious and Well-Off Society" by 2020, including greater attention to participatory forms of governance, promoting equity and justice, and finding a better balance between environment and development. The hope is that sufficient flexibility and adaptability is applied to bring about a rapid enough evolution of ECE systems to manage the social and environmental risks from the expected surge of new investments into Western China in coming years.

The Harmonious Society policy was also followed in October 2005 with passage by the State Council of China's first-ever "White Paper on Democratic Governance" setting a goal to establish a "socialist democracy with Chinese characteristics."[39] This includes a core focus on "scientific and democratic practice in decision-making." In passing this new vision of development, "the Chinese government requires its subordinate departments at all levels to make public their administrative affairs as far as possible, so as to enhance the transparency of government work and guarantee the people's right to know, participate in and supervise the work of the government"[40] echoing the 'three pillars of access to information, participation and remedy' in the rights-based approach. This development has benefits for mitigating the potential environmental impacts of a trade and investment surge in Western China, with growing opportunities to apply rights-based approaches for improved ECE results.

The goal of a rights-based approach would be to ensure "that the wisdom of the masses and the will of the people are embodied in

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[39] China, State Council, *White Paper on Democratic Governance* (Beijing: Information Office, 2005) at 1.

[40] *Ibid.* at 3.

government regulations and decisions" and "exercising powers and functions strictly in line with the legal limits of authority and legal procedures, introduces in an all-round way the responsibility system in administrative enforcement of law."[41]

With increased media coverage of environmental problems, over 10 million Internet users expressing views on a host of issues related to the environment, and the rise of environmental advocacy groups and 'green coalitions,' many citizens increasingly see environmental protection from a rights perspective. For example, about 100,000 administrative lawsuits have been filed annually in recent years, evidence that citizens are increasingly rights-conscious.[42]

In adapting local ECE systems to address emerging challenges from a surge of new trade and investment, opportunities also exist to increase the use of science in decision-making based on the emergence in December 2005 of Decision No. 39 (2005) "Strengthening Environmental Protection under the Scientific Development Concept" issued by the State Council to highlight the importance of taking a scientific approach to improve ECE. The 'scientific development' concept was subsequently integrated into China's 11th Five-Year Plan (2006-2010), passed in early 2006, also serving to guide the implementation of the Western Development Strategy.

President Hu Jintao affirmed this when he stated, "the scientific concept of development is a guiding principle that must be adhered to for a long period in order to promote our country's reform, opening-up and socialist modernization drive."[43] Under these policies, local officials would increase the use of scientific, ecological considerations in development decision-making, including issues of carrying capacity and emerging challenges from ecological change in Western China.

Sustaining the environment in Western China will require hard trade-offs between social, economic and environmental priorities, between the benefits trade and investment bring for higher development indicators and the need to preserve the environment for future

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[41] *Ibid.*

[42] Diamant NJ, Lubman SB and O'Brien KJ (Eds). *Engaging the Law in China*. Stanford University Press, Stanford (2005) at 43-45.

[43] "The Launch of China's Five Year Plan" *China Daily* (6 March 2006) (quoting President Hu Jintao).

generations. Without a healthy environment, a stable climate and ecosystems able to provide natural resources such as arable land and sufficient and clean water, it will be difficult for future generations in the region to sustain high levels of well being.

Trade offs and synergies are about more than results. They are also about the processes used to weigh the pros and cons of a given decision, to ensure wide deliberations among minority communities over policy options and properly calibrate responses to the scientific facts at hand and the values of local communities. The ability of local governance systems to support this calibration between human choice and a rapidly changing environment will increasingly shape prospects for achieving the goal of a "harmonious and well-off society."

C.   Access to Justice

The Constitution serves as the legal and political foundation for China's environmental governance system. Articles 9 and 26 call upon the State to protect the environment and "ensure the rational use of natural resources."[44] As described below, a scientific approach to decision-making would support a more rationale use of resources through increasing reliance on science in making development trade-offs, and increasing local communities' access to information, participation and remedy.

Through revisions in 1989, China's Environmental Protection Law (EPL) establishes a system of decentralized governance, an "environmental responsibility system" (*huanjing baohu mubiao zerenzhi*) decentralizing decision-making and giving broad discretionary decision-making powers to local government and Environmental Protection Bureaus (EPBs).[45] As in most countries, strong incentives often exist for local officials to prioritize economic development and revenue generation over environmental protection.[46] However, increasing levels of

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[44] X. Ma & L. Ortolano, eds., *Environmental Regulation in China*. (Lanham, Md.: Rowman & Littlefield, 2000) at 15.

[45] Chen *et al.*, *supra* note 38 at 150-51.

[46] *Ibid.* at 162-63.

environmental awareness and community action have begun to drive greater emphasis to the environment in recent years.[47]

The downside of this broad discretion to local agencies is that the law is often treated merely as a guideline to set the parameters of administrative discretion, rather than the expression of a broader, objective rule of law framework.[48] Further, many EPBs lack adequate levels of scientific expertise, often basing decisions on socio-economic priorities and a sense of fairness rather than hard scientific rationales.[49] This is all the more the case in Western China, where some EPBs have only recently been established over the past several years.

Rather than civil or criminal actions, the most common ECE actions in China are administrative actions by local EPBs, including judicial actions where necessary.[50] The seven main procedural and substantive rules on administrative sanctions were laid down by SEPA in the 1999 "Measures on Administrative Sanctions." EPBs do not have jurisdiction over the toughest sanctions such as closing down operations, revoking licenses or ordering the stoppage of production. These actions are vested in the local Government.[51] The most frequently used administrative measures include warnings and fines, applied based on agency discretion. Fines generate substantial revenues for EPBs that can then support greater ECE activities, with EPBs retaining 60–100% of fees depending on the type of fee collected. This revenue stream covers anywhere from 60–95% of operational costs in any given EPB.[52]

In China the vast majority of ECE cases are settled by non-coercive negotiation mechanisms. This links to an extensive mediation system in which "over 860,000 people's mediation committees have been established nationwide. Manned by 6.6 million people's mediators, they provide mediation services to about 6 million civil disputes of various kinds, and the rate of success exceeds 95 percent."[53] But many actions

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47   *Ibid.* at 167-68.

48   Ma, *supra* note 44 at 92.

49   *Ibid.* at 92.

50   *Ibid.* at 158-59.

51   *Ibid.* at 160.

52   *Ibid.* at 122-23.

53   State Council, *supra* note 39 at 55.

take place not in this formalized mediation system, but in informal, 'customary' negotiation systems whereby relations, power and subjectivity often hold great influence over 'scientific approaches' based on scientific findings, neutrality and objectivity.[54]

The traditional system of interest negotiation relies heavily on cooperative approaches and the strong pragmatism that is central to Chinese culture. This relies heavily on '*guanxi*' or personal relations between local government and society to evaluate the costs and benefits of ECE actions in relation to other social and economic priorities in what can be called a 'negotiated rule-making' process. The pragmatic decision-making that this involves has strong benefits for achieving ECE goals in many cases, but it is also open to misuse which can result in damage to the public good.[55]

Where disputes arise, a similar process is used where EPBs mediate between enterprises and communities, often using local socio-economic policy and moral values rather than ecological science and coercive sanctions as the basis for setting order and altering behavior.[56] Through this non-confrontational approach EPBs seek to obtain the goal of compliance without doing undue damage to relationships needed for pursuing broader sustainable development goals. Other non-coercive examples include the use of local cooperative programmes to influence enterprises to achieve greater compliance through 'public-private partnership' forums. This is meant to increase understanding and establish a learning mechanism between enterprises that have achieved compliance and those that are challenged.[57] The risk is that over-emphasis on non-coercive negotiation approaches fails to address root causes of non-compliance.

China's strong local system of informal, customary approaches has strong benefits for ECE, acting in cases as an 'invisible hand' in the market to achieve rapid ECE goals where conditions are right. However, given the rapidly growing levels of environmental degradation in many regions, some national authorities and local communities have made

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[54]   Chen *et al.*, *supra* note 38 at 153-55.

[55]   Ma *supra* note 44 at 90-91.

[56]   *Ibid.*

[57]   *Ibid.* at 121-22.

strong calls for a more systematic and scientific approach to decision-making.

Implementing State Council Decision No. 39 (Dec. 2005) on "Strengthening Environmental Protection under the Scientific Development Concept" would see local agency decision-making processes centered on scientific facts, neutrality, and an objective and impartial rule of law. A key to the quest for a more scientific approach to governance will be to match decision-making processes with emerging levels of complexity in local society.

Even with a shift in approach by EPBs, local custom will likely continue to serve as the norm for the foreseeable future, but a shift to more scientific approaches in a welcome development and will improve the nature of trade-offs and consideration of ecological issues. Greater attention to science in decision-making can help reduce levels of arbitrary decisions and help align development choices with increasingly felt ecological drivers of change.

Key to this will be developing new procedures that can effectively manage local discretion in a way that ensures compliance with the national call for "rational use" of the environment for the public good, and with local customs in Western China. One of the most important ways to check broad discretionary powers in implementation of the EPL and related laws is to ensure effective judicial processes to review citizen claims of arbitrary decisions, excessive use of discretionary powers or lack of consideration of scientific and ecological issues relative to other trade and investment concerns.

Many view the emergence of the scientific development concept as key to improved ECE in China. While China has a strong substantive framework of environmental regulations, many feel the weakness in the ECE system has been its lack of a solid procedural framework to ensure adequate checks on agency decisions. In 1989, the same year that the EPL revisions decentralized environmental management functions and gave large discretionary powers to agency officials, China also passed the *Administrative Litigation Law (ALL)*.

The ALL was passed to protect citizen interests against discretionary decisions by authorities that did not comply with the law, at

the time a milestone in China's goals for a stronger rule of law system.[58] Under the ALL, citizens are able to bring claims to administrative courts against specific executive actions, not abstract policies, regulations or decisions.[59] Before bringing ALL cases, citizens must first have claims reviewed under the *Administrative Reconsideration Law (ARL)*. The ARL establishes technical review bodies within agencies to consider appropriateness of administrative decisions. Parties may challenge not only specific actions as under the ALL, but also policies, regulations and decisions issued by the agency.

ARL panels afford agencies a pre-trial opportunity to resolve environmental disputes, thereby reducing the costly burdens on ALL judicial processes. However ARL processes have not been a very effective means of managing local agency discretion and caseloads have decreased in recent years. ARL review bodies are organizationally part of the agency being challenged, although attempts are being made to give them greater independence by having external adjudicators sit on panels.[60] In comparison, ALL cases have increased with upwards of 40% of cases now resulting in some form of relief.[61]

Although holding many challenges, the ARL-ALL system contains in it the potential to advocate for greater use of scientific, ecological concerns in making trade-offs with socio-economic priorities. Incorporation of rights-based approaches and related improvements in the ARL-ALL system can also help to infuse greater use of science in local decision-making and bring in a diverse set of interests.

This two layer process of adjudication can provide review of both scientific and substantive issues, at the ARL stage, and a check on adequate use of procedural and rights-based approaches by local agencies at the ALL stage. This uses the comparative advantages of technical nature of ARL bodies and the more legalistic-oriented nature of the administrative court system. The goal of these processes is to ensure that

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[58] Peerenboom R. *China's Long March toward Rule of Law*. Cambridge University Press, Cambridge (2002) at 398-99 and 404.

[59] Diamant NJ, Lubman SB and O'Brien KJ (Eds). *Engaging the Law in China*. Stanford University Press, Stanford (2005) at 35.

[60] Peerenboom, *supra* note 58 at 417-18.

[61] Diamant *supra* note 59 at 31-33.

local agencies use neutrality and objectivity as the basis for making trade-offs between economic, social and ecological impacts.

The new emphasis on increased use of science in decision-making and increased local citizen access to decision-making and remedy processes now provide an opportunity to further improve the ECE system and address some of the environmental risks in Western China expected in coming years.

After the launch of the ALL system in 1989, administrative courts have been set up at all levels to hear cases, including ECE claims. There was a substantial growth in caseload nationally during the first decade, with a ten-fold increase from 9,934 cases in 1989 to 97,569 cases by 1999.[62] However, while there has been a significant growth in the number and diversity of cases, many concerns arose over the ability of the system to achieve a significant check on use of discretionary powers given the far-reaching nature of the challenge. In a vast country like China, some estimate that ALL cases represent less than 1% of all administrative actions taken by local agencies.

Furthermore, concerns have been expressed about the quality of review processes. Citizen use of ARL or ALL in less-developed areas of Western China would be constrained by less understanding of the science behind environmental change, and the need for greater knowledge of the nature and requirements of judicial review processes. Additionally, compared to ARL claims, citizen claims under ALL involve high costs and risks, and lower success rates.[63] Furthermore, besides the problems of strong connections between ALL-linked administrative courts and local governments, judges adjudicating ECE cases are often not sufficiently trained in the scientific aspects of the underlying ECE claims making it difficult to analyze the rationality of trade-offs made in local actions. This results in a high degree of deference to ARL panels and the trade-offs and balances achieved in local government decision-making.

Broad deference to ARL review findings is supported by good levels of scientific expertise in select ARL review units. However, the strong co-dependence of ARL review bodies with the agency under

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[62]   A. Cheung, *Administrative Litigation in the PRC: The First Ten Years of Implementation*, Working Paper Series Department of Public and Social Administration, City University of Hong Kong (2002) at 1-2 (Unpublished).

[63]   *Ibid.*

review brings forth perceptions regarding neutrality. Indeed, ARL caseloads have declined nationally over the years. As to its benefits over ALL processes, ARL cases have lower costs, quicker results, less procedures, fewer formalities, larger scope of review (policies and regulations), and more powerful jurisdiction (ordering direct changes to administrative policies and regulations).

Overall, improvements to administrative ECE pathways would offer the benefit of improving community access to decision-making, correcting arbitrary decisions and increasingly serving as a deterrent to ensure adequate consideration of scientific, ecological concerns in decision-making under the EPL and related frameworks. Resolving environmental matters through institutionalized procedures like the ALL and ARL can help resolve conflicts in an orderly manner, thereby avoided public confrontations.

In summary, ensuring greater scientific expertise in ALL adjudication and improving the neutrality of ARL review systems will be two key elements for a more scientific and rights-based approach to ECE in the future. An improved system can help protect the interests of minority communities in places like Western China, correct discretionary errors, enhance the rule of law, and ensure that trade-offs have a rational, scientifically sound basis.

D.   Access to Participation

One of the most promising hopes for improving ECE in coming years will be the growth of local community organizations and a stronger civil society voice in decision-making.[64] The Government of China's recognition of increased access to public participation stems from an appreciation that there are mutually beneficial areas of cooperation between environmental non-governmental organizations (ENGOs) and national authorities that can be harnessed towards achieving sustainable development targets. Together with a general shift towards more open public debate through the media and other channels, the Government is now enacting measures to deepen public participation processes, with special attention to improving ECE.

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[64]   Starke, *supra* note 16 at 71.

This took root in 1994 when the National People's Congress (NPC) enacted the "*Rules for Social Organization,*" granting legal status to NGOs for the first time in Chinese history. Environmental NGOs (ENGOs) were the first to register under the new law, and now form the single largest sector of civil society groups across China.[65] This push towards public participation was officially mainstreamed into the environmental governance system in 1996 with the State Council "*Decision Concerning Environmental Protection*" calling for establishment of a mechanism to "encourage the public to participate in the work of environmental protection and to report and expose various actions that violate environmental laws and regulations." This signaled a turning point in encouraging both media and citizens to participate in local decisions that impact the environment.[66]

However, the effective inclusion of ENGOs in decision-making remained at an embryonic stage over the past decade, with no clear procedural mechanisms to implement such policies. This changed in 2003 when the NPC enacted the *Environmental Impact Assessment (EIA) Law*, specifically requiring public consultations to be held in relation to the passage of EIAs for development projects, with EIA reports to be published and open for comment prior to the endorsement of projects. This was followed in 2004 when the State Environmental Protection Administration (SEPA) issued the *"Measures for Environmental Protection Administration Permission,"* allowing parties adversely affected by development projects to request a hearing to express their concerns over compliance with EIAs.[67]

The participation policy embedded in the EIA Law was a major step in the recent evolution of China's ECE system, acknowledging more participatory means of environmental governance and the positive role of local communities as a check on local agency discretion. National commitment to this policy has been shown by SEPA's increasing engagement with ENGOs in policy-making. It was seen for example in early 2005 when SEPA suspended thirty local construction projects owing to a lack of meaningful participation in EIA processes.

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[65] *Ibid.* at 152-53.

[66] Ma & Ortolano, *supra* note 44 at 74.

[67] Starke, *supra* note 16 at 154-55.

To further elaborate the nature of process required to achieve the goal of public participation and scrutiny of decision-making, in March 2006 SEPA published *"Measures for Public Participation in Environmental Impact Assessment"* setting the procedures governing the participatory approach called for by the 2003 EIA Law.[68] This includes a "notice and comment" process whereby potentially affected citizens are afforded to opportunity to provide inputs during the drafting of an EIA. Depending on its success, the use of participatory processes in EIA may well serve as a stepping-stone to the further expansion of the practice in broader environmental governance.

The coming years could serve as a transformational moment in the evolution of ECE regimes in China. If effectively supported by new strategic partnerships between national and local Government, local community groups and the business community, this new form of decision-making can help correct some of the challenges experienced in ECE in recent years, and help bring about greater compliance of new trade and investment schemes in Western China with national targets and local customs. If implemented, this process can also imbue local decision-making with debates over choices and trade-offs. This supports a more pluralistic approach to environmental governance, with new measures for increased participation also supportive of social inclusion and equity goals.

Conclusion

There is an urgent need to develop both human development and right-based approaches to environmental governance towards improving ECE results to manage the risks associated with an expected surge of trade and investment flows in the ecologically fragile and socially vulnerable area of Western China, with particular emphasis on the fragile ecosystems of the Qinghai-Tibet Plateau. In stressing the importance of ecological security and local culture in planning, designing and implementing Western Development strategies and trade/investment activities, two overarching issues should be reviewed.

The first is a *macro strategy* focused on policy level responses to broaden the overarching strategies for trade and investment beyond

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[68] *Ibid.* at 87.

economic growth and development paradigms towards a broader sustainable development paradigm. This would involve integration of human development approaches and ecological risks into the trade and investment policies and programmes stemming from the Western Development Strategy. This would include efforts to ensure that future generations can sustain social development gains against trends of ecological change. This could be undertaken in line with a new Strategic Environmental Assessment (SEA) law recently launched in China, Asia's first SEA legislation, meant to integrate social and environmental concerns into 'upstream' policy and planning decisions. It could also be undertaken with international partners and investors in line with the new SEA Guidelines issued in 2007 by the OECD Development Assistance Committee (DAC) meant to guide the application of SEA for activities in developing countries.

An SEA framework can be used to integrate ecological change scenarios, socio-economic scenarios, vulnerability identification, impact assessment, sustainability indicator specification, adaptation option evaluation, and multi-stakeholder participation. The SEA approach provides an effective means for the synthetic assessment of ecological vulnerabilities and evaluation of the general performance levels of a set of ECE options through a multi-criteria and multi-stakeholder decision making process. A rights-based approach within SEA brings attention to the opportunities for enhancing human capabilities as agents of change to improve ECE and prevent the risks that ecosystem change brings to the Western Development Strategy and to social and economic rights for current and future generations.

By focusing on the connections between ecological risks and minority community rights, such activities would provide an opportunity to bring synergies between environmental and cultural spheres to reduce vulnerabilities to trade and investment expansion. Such activities could focus on marginalized communities, those who will suffer the largest consequences since they have the fewest resources and the least capacity to manage social and ecological change. Those at the forefront of ecological change require new adaptive environmental governance and ECE capacities if future risks are to be managed.

SEAs can serve as a basis for elaboration of future scenarios of socio-cultural and ecological change resulting from trade and investment plans. Such a scenario generation exercise can serve as the basis for design of local environmental governance strategies—Provincial

Sustainable Development Action Plans—to chart the policy direction, operational systems and financial budgets for achieving long-term 2020 "Harmonious and Well-Off Society" targets of human development and equity. Implementation of the plan could be supported by a new funds, capitalized from revenues of new trade and investment activities.

The second strategy is a *micro strategy* involving a focus on building capacities for ECE in key sectors and geographic areas within Western China most sensitive to ecological and social change. Of top priority is the Qinghai-Tibet Plateau ecosystem in terms of fragility and potential risks. This involves developing new institutional and individual capacities for implementing ARL and ALL systems in China to promote links between ecological change and human development, and address right-based approaches through improving local communities' access to information, participation and remedy within investment project review processes. It also involves modifying trade/investment projects in line with Environmental Impact Assessment (EIA) findings and to explore the use of rights-based indicators and tools to address cultural and social risks.

Actions should also be tailored to varying communities within the plateau. The scale of future impacts, livelihood risks and vulnerabilities all vary both between and within areas. If improved ECE measures are to have real effect in coming years, an urgent need exists to develop the local policies, partnerships and capacities to take action. A need also exists to increase synergy among national and local agencies involved in social and environmental protection efforts, and to enable a common ECE framework among local agencies for planning, monitoring and responses given that impacts from trade/investment will reach across districts.

Ensuring local community participation in designing SEAs, EIAs and participation in the implementation of these measures, ensures greater correlation with local adaptive capacities and definition of local needs. Finally, creating stronger mechanisms to address remedy and compensation for impacts through ARL and ALL judicial means will become increasing important as communities deal with enforcement of SEA and EIAs of trade and investment projects.