

Application in Tibet of the Principles on Human Rights and the Environment

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For as long as space endures,
And for as long as living beings remain,
Until then may I, too, abide,
To dispel the misery of the world.

—His Holiness the XIV Dalai Lama,
closing prayer after award of
1989 Nobel Peace Prize¹

I. INTRODUCTION

In a world of increasingly severe and widespread environmental degradation, new tools are needed to respond to environmental harm. Traditional international environmental law has little to offer individuals harmed by such damage. People whose health or livelihood is threatened by exposure to hazardous waste or the pollution of streams and rivers, for example, have little recourse under international environmental laws. In addition, people harmed most by environmental degradation are often ethnic minority groups or indigenous peoples who are effectively excluded from political participation or redress under their nation's laws.

Linking human rights with the environment creates a rights-based approach to environmental protection that places the people harmed by environmental degradation at its center. Articulating the fundamental environ-

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1. H.H. THE DALAI LAMA, *SPEECHES, STATEMENTS, ARTICLES, AND INTERVIEWS: 1987 TO JUNE 1995*, at 81 (Dept. Info. and Int'l Relations, Central Tibetan Administration ed., 1995).

mental rights of peoples creates the opportunity to secure those rights through human rights bodies in an international forum. This has particular force for those groups that are most vulnerable to environmental harm and least able to access political remedies within their own countries. Connecting human rights with the environment reveals that human rights abuses often lead to environmental harm, just as environmental degradation often causes human rights violations.

This Article reveals the connections between human rights standards and environmental protection through examples drawn from the events on the Tibetan plateau over the last fifty years. Reviewing deforestation, nuclear weapons development, and China's food policy in Tibet through the lens of environmental human rights shows the natural synthesis of these two disciplines. It also reveals the conceptual power of linking these two disciplines in a series of articulated principles. As applied to the situation in Tibet, principles of environmental harm lead to a deeper analysis of the situation than viewing either human rights violations or environmental harm alone.

After an introduction to the recent history of Tibet in Part II, this Article describes the development of environmental human rights in international law and explains the environmental dimension of particular human rights in Part III. The most current statement of environmental human rights, the Draft Declaration of Principles on Human Rights and the Environment, is used as a vehicle to analyze current conditions on the Tibetan plateau. In Part IV, the Article applies the Draft Declaration's principles of substantive human rights to specific instances of environmental harm in Tibet. The Article also analyzes violations of procedural human rights and the environmental harm flowing from denial of environmental due process.

Delineating the environmental dimension of well-established human rights provides explicit recognition of the environmental context in which human rights operate and increases the potential for their effective enforcement. The purpose of identifying the human rights components of environmental degradation on the Tibetan plateau is to illustrate the strengths created by bridging these two disciplines.

Both conceptually and practically, the intersection of these two disciplines is more potent than either discipline working in isolation. The objectivity of environmental harm complements one of the greatest weaknesses of human rights law. The worst human rights violations often take place with no accountability or ability to document the events—behind prison doors and in the dark of night—in places where limited foreign access combines with a lack of independent means of communication. Environmental harm, in contrast, is inevitably all too apparent; government authorities cannot easily hide environmental damage such as deforested slopes, rivers choked with sediment, and barren lands. Revealing the connections between environmental degradation and human rights violations adds a concrete and tangible dimension to human rights violations occurring in Tibet.

Environmental human rights also melds one of the greatest strengths of human rights law to one of the weakest areas of environmental law: universal standards. Differing national levels of environmental protection contribute to the exploitation of natural resources in different areas of the globe. While the lack of universal standards is one of the biggest hurdles to environmental protection, this is one of the greatest strengths of human rights law. The global community articulated its notions of fundamental human rights as early as 1948, with the adoption of the Universal Declaration of Human Rights. Viewing environmental damage through the lens of universal human rights permits a quantification of environmental damage that would not otherwise be possible. Environmental human rights use global human rights norms to state a universal standard of minimum environmental protection. This leverages human rights standards to globalize our understanding of unacceptable environmental harm.

II. THE STATUS OF TIBET

The history of Tibet gives testimony to the connections between human rights and the environment: human rights cannot be fully realized within a degraded or polluted environment; conversely, human rights violations often lead to profound environmental harm. The social conditions that exist under China's repression of Tibet are closely linked to the environmental damage occurring there.

The people of Tibet are a distinct Himalayan ethnic group whose language and culture have developed independently on the Tibetan plateau.² Their language, Tibetan, differs from Chinese in both written and spoken form and their religion, Tibetan Buddhism, is likewise separate and distinct.

The unique culture that once flourished and still struggles to survive on the Tibetan plateau has its roots in several centuries of a decentralized demilitarized theocracy. Buddhist monasteries throughout Tibet were coordinated by a lineage of reincarnated lamas. The current highest-ranking reincarnate, His Holiness the XIV Dalai Lama, is the spiritual and secular leader of Tibet.

The People's Liberation Army of the People's Republic of China ("China") entered Tibet in the final months of 1949.³ By 1957, northern Tibet was nearly a wasteland, as the People's Liberation Army retaliated against the guerrilla attacks of the small Tibetan resistance movement by leveling villages and conducting hundreds of horrific public executions.⁴ By 1959, huge

2. WARREN W. SMITH, JR., *TIBETAN NATION: A HISTORY OF TIBETAN NATIONALISM AND SINO-TIBETAN RELATIONS* 17 (1996).

3. JOHN F. AVEDON, *IN EXILE FROM THE LAND OF SNOWS* 28 (Alfred A. Knopf, Inc. 1984) (1979).

4. *Id.* at 47-48. "As attested in two reports (issued in 1959 and 1960) by the International Commission of Jurists, a Geneva-based human rights monitoring group comprised of lawyers and judges from fifty nations, [the People's Liberation Army] let loose a series of atrocities unparalleled in Tibet's history. The obliteration of entire villages was compounded by hundreds of public executions, carried out to intimidate the surviving population. The methods employed included crucifixion, dismemberment,

Tibetan demonstrations erupted against the Chinese military presence in Tibet. The military reprisals against the demonstrations forced His Holiness the XIV Dalai Lama to flee by night on March 17, 1959, travelling south over the Himalayas to seek refuge in India.⁵ The Chinese eventually quelled the uprisings; in the process, 87,000 Tibetans were killed in the Lhasa region alone.⁶

The United Nations (U.N.) General Assembly adopted a series of resolutions on Tibet in 1959, 1961, and 1965. Each of these resolutions condemned the "suppression of the distinctive cultural and religious life" of the Tibetan people and called for the "cessation of practices that deprive the Tibetan people of their fundamental human rights and freedoms, including their right to self-determination."⁷ The next U.N. statement on Chinese practices in Tibet was in 1991, when the Sub-Commission on Prevention of Discrimination and Protection of Minorities adopted Resolution 1991/10, "Situation in Tibet," calling for the People's Republic of China to "respect the fundamental human rights and freedoms of the Tibetan people."⁸

Information compiled by the Tibetan Government-In-Exile in Dharamsala reveals the completeness of Chinese repression and intimidation. Between 1949 and 1979, 173,221 Tibetans were killed after being tortured in prison; 156,758 Tibetans were summarily executed; 432,705 Tibetans were killed in fighting; and 92,731 more "struggled to death."⁹ In all, more than 1.2 million Tibetans have been killed, out of a population of just over 6 million.¹⁰ The typical government reprisal for calling for an independent Tibet, carrying a Tibetan flag, or possessing or distributing books by H.H. the Dalai Lama includes long periods of imprisonment, often accompanied by torture, solitary confinement, and forced labor.¹¹ Over 6,000 Buddhist

vivisection, beheading, burying, burning and scalding alive, dragging the victims to death behind galloping horses and pushing them from airplanes; children were forced to shoot their parents, disciples their religious teachers." *Id.* at 48.

5. MICHAEL VAN WALT VAN PRAAG, *THE LEGAL STATUS OF TIBET: THREE STUDIES BY LEADING JURISTS*, at vi-x (Dep't of Info. & Int'l Relations, Cent. Tibetan Admin. ed., 1989).

6. VAN WALT VAN PRAAG, *supra* note 5, at ix.

7. G.A. Res. 1353 (XIV), U.N. GAOR, 14th Sess., Supp. No. 16, at 61, U.N. Doc. A/4354 (1959); G.A. Res. 1723 (XVI), U.N. GAOR, 16th Sess., Supp. No. 17, Vol. 1 at 66, U.N. Doc. A/5100 (1961); G.A. Res. 2079 (XX), U.N. GAOR, 20th Sess., Supp. No. 14, at 3, U.N. Doc. A/6014 (1965), *reprinted in* DEPT. OF INFO. & INT'L RELATIONS, CENT. TIBETAN ADMIN., *INTERNATIONAL RESOLUTIONS AND RECOGNITIONS ON TIBET (1959-1997)* 4-6, (1997) [hereinafter *INTERNATIONAL RESOLUTIONS AND RECOGNITIONS ON TIBET*].

8. *Situation in Tibet: Note by the Secretary-General submitted pursuant to Sub-Commission on Prevention of Discrimination and Protection of Minorities resolution 1991/10*, U.N. ESCOR Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities, 48th Sess., Agenda Item 12, at 1, U.N. Doc. E/CN.4/1992/37 (1992).

9. DEPT. OF INFO. & INT'L RELATIONS, CENT. TIBETAN ADMIN., *TIBET: PROVING TRUTH FROM FACTS* 48 (1996) [hereinafter *DIIR TIBET FACTS*].

10. *Id.*

11. *Id.* at 48-54; *see also* AMNESTY INT'L, *PEOPLE'S REPUBLIC OF CHINA: AMNESTY INTERNATIONAL'S CONCERNS IN TIBET* (1992).

monasteries have been destroyed, and the monasteries' religious texts, statutes, and artifacts have been burned, broken, or sold abroad.¹²

The European Parliament and the governments of Italy, Switzerland, West Germany, Australia, and the United States each have condemned the denial of Tibet's right to self-determination and the on-going human rights abuses in Tibet.¹³ Moreover, United States Congress Senate Resolution 82, of March 15, 1989, found human rights abuses consisting of "arbitrary arrest and detention, the use of excessive force on peaceful demonstrators, restrictions on religious freedoms, torture, and a systematic pattern of discrimination."¹⁴ The London Statement on Tibet, adopted by the Conference of International Lawyers on Issues Relating to Self-Determination and Independence for Tibet, concluded that:

[T]he Tibetan peoples' right to the exercise of self-determination has been denied. Since the military action of 1949-50, Tibet has been under the alien occupation and domination of the [People's Republic of China] and has been administered with the characteristics of an oppressive colonial administration.¹⁵

China's military and administrative control over Tibet has also resulted in the re-drawing of Tibet's borders, effectively shrinking Tibet's historical size.¹⁶ The historic outline of Tibet largely followed the geophysical boundaries of the Tibetan plateau. The plateau comprised three regions of historic Tibet: U-Tsang (central Tibet), Amdo (northeast Tibet), and Kham (southeast Tibet). Under China's administration, only former U-Tsang is included in the Tibet Autonomous Region (T.A.R.). The northern-most section of U-Tsang is incorporated into China's Xinjiang Province, while China's current Qinghai Province was called Amdo. In addition, the eastern edge of Amdo is included in China's Gansu Province. Finally, Kham has been incorporated into China's Yunnan Province. References to "Tibet" in this paper refer to the combined historic regions of U-Tsang, Amdo, and Kham.

In contrast to China's repressive control of Tibet, India has granted H.H. the XIV Dalai Lama asylum in India on the basis of India and Tibet's common Buddhist history. H.H. the XIV Dalai Lama has established a Tibetan Government-In-Exile in the former hill station of Dharamsala (translated

12. DEPT. OF INFO. & INT'L RELATIONS, CENT. TIBETAN ADMIN., *TIBET: THE FACTS* 6 (1995).

13. INTERNATIONAL RESOLUTIONS AND RECOGNITIONS ON TIBET, *supra* note 7, at 8-109.

14. *Id.* at 38.

15. LONDON STATEMENT ON TIBET, CONFERENCE OF INTERNATIONAL LAWYERS (Jan. 6-10, 1993): "SELF-DETERMINATION AND INDEPENDENCE FOR TIBET" *reprinted in* INTERNATIONAL RESOLUTIONS AND RECOGNITIONS ON TIBET, *supra* note 7, at 131.

16. In 1992, the European Parliament noted with "concern that traditional Tibet has been arbitrarily divided into five parts and that a large part of the former territory and population of Tibet has been incorporated into the adjacent provinces of Sichuan, Yunnan, Gansu, and Qinghai." EUR. PARL. DOC. A3-0369/92 (Dec. 15, 1992) *reprinted in* INTERNATIONAL RESOLUTIONS AND RECOGNITIONS ON TIBET, *supra* note 7, at 14.

from Hindi as "resting place for travelers"). After fleeing Tibet in March of 1959, one of the first institutions established by the Dalai Lama was the Assembly of Tibetan People's Deputies—a representative legislature—in 1960.¹⁷ By 1961, a draft Constitution for a Future Tibet was in place.¹⁸

III. EMERGENCE OF ENVIRONMENTAL HUMAN RIGHTS LAW

The U.N. Stockholm Declaration on the Human Environment in 1972 marks the first link between the environment and human rights in international law.¹⁹ By 1989, the year in which the U.N. Sub-Commission on Prevention of Discrimination and Protection of Minorities ("Sub-Commission") was first called upon to study the relationship between the environment and human rights, a substantial body of international and regional law recognizing the environmental dimension of human rights already existed.²⁰ The U.N. Commission on Human Rights endorsed the appointment of a special rapporteur on human rights and the environment to guide the Sub-Commission's investigation of the area.²¹ The Sub-Commission's four reports progressively established the legal basis and need for environmental human rights.²²

Debate over the existence and definition of environmental human rights flourished during the Sub-Commission's consideration of these issues; it has been the subject of at least five major international conferences.²³ Commentators have explored the precedent in international and regional laws for environmental human rights.²⁴ Some scholars have questioned whether environmental rights should be expressed only through the environmental dimension of established human rights, or whether separate instruments on the subject should be drafted.²⁵ Others have called for measures to create and

17. DEP'T OF INFO. & INT'L REL., CENT. TIBETAN ADMIN., GUIDELINES FOR FUTURE TIBET'S POLITY AND THE BASIC FEATURES OF ITS CONSTITUTION 4 (1992).

18. *Id.*

19. *Report of the U.N. Conference on the Human Environment*, U.N. GAOR, 27th Sess, 21st plen. mtg. at 2-7, U.N. Doc. A/Conf.48/14/Rev. 1 (1973). This is the earliest explicit recognition on an international level of a human right to "adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being." (Principle 1).

20. See *infra* note 36-65 and accompanying text.

21. Neil A.F. Popović, *In Pursuit of Environmental Human Rights: Commentary on the Draft Declaration of Principles on Human Rights and the Environment*, 27 COLUM. HUM. RTS. L. REV. 487, 490-91 (1996).

22. See Adriana Fabra Aguilar & Neil A.F. Popović, *Lawmaking in the United Nations: The UN Study on Human Rights and the Environment*, 3 REV. EUR. COM. & INT'L ENVTL. L. 197 (1994).

23. International Human Rights and Environmental Protection Symposium (Kobe, Japan, Nov. 1988); Human Rights and Environmental Protection: The Vital Link (Sydney, Australia, Oct. 1991); Earth Rights and Responsibilities Conference (New Haven, United States, Apr. 1992); Human Rights, Sustainable Development and the Environment (Brasilia, Brazil, Apr. 1992); The Commonwealth Conference on Human Rights and the Environment (India, June 1993).

24. Melissa Thorne, *Establishing Environment as a Human Right*, 19 DEN. J. INT'L L. & POL'Y 310 (1991); James T. McClymonds, Note, *The Human Right to a Healthy Environment: An International Legal Perspective*, 37 N.Y.L. SCH. L. REV. 583 (1992).

25. See Dinah Shelton, *Human Rights, Environmental Rights, and the Right to Environment*, 28 STAN. J. INT'L L. 103 (1991); see also W. PAUL GORMLEY, HUMAN RIGHTS AND ENVIRONMENT: THE NEED FOR

codify environmental rights in new legal instruments,²⁶ while still others have been critical of the new prominence of environmental rights in the human rights discourse.²⁷

This debate over the legal precedent for expansion of human rights to encompass an environmental component is not new in human rights law. Almost twenty years of drafting debates preceded the Convention on Economic, Social, and Cultural Rights.²⁸ The Convention took another ten years to come into effect from the time it was opened for signature.²⁹ Even during the debate over the Universal Declaration of Human Rights of 1948, many commentators at the time “doubted the feasibility of reaching any meaningful consensus and urged that far more modest goals be set.”³⁰ The same observation can just as easily be made now—over forty years later—regarding the development of environmental human rights law.

Under the able leadership of the Sub-Commission’s Special Rapporteur, Mrs. Fatma Zohra Ksentini, the Sub-Commission’s work since 1989 has advanced the discussion of the link between the environment and human rights. First, it established that there is ample precedent for environmental human rights in international, regional, and national law.³¹ Second, it has thoroughly explored the environmental dimension of established human rights.³² Third, it has identified existing environmental laws and human

INTERNATIONAL CO-OPERATION (1976).

26. See, e.g., W. Paul Gormley, *The Legal Obligation of the International Community to Guarantee a Pure and Decent Environment: The Expansion of Human Rights Norms*, 3 GEO. INT’L ENVTL. L. REV. 85 (1990); see also Michelle Leighton Schwartz, *International Legal Protection for Victims of Environmental Abuse*, 18 YALE J. INT’L L. 355 (1993); see also William Andrew Shutkin, Note, *International Human Rights Law and the Earth: The Protection of Indigenous Peoples and the Environment*, 31 VA. J. INT’L L. 479 (1991).

27. See, e.g., Philip Alston, *Conjuring up New Human Rights: A Proposal for Quality Control*, 78 AM. J. INT’L L. 607 (1984).

28. UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS, FACT SHEET NO. 16 (REV. 1)—THE COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS 3 (July 1991).

29. *Id.*

30. Alston, *supra* note 27, at 608.

31. *Review of Further Developments in Fields with Which the Sub-Commission Has Been Concerned, Human Rights and the Environment: Preliminary Report Prepared by Mrs. Fatma Zohra Ksentini, Special Rapporteur, pursuant to Sub-Commission Resolutions 1990/7 and 1990/27*, U.N. ESCOR Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities, 43d Sess., Agenda Item 4 U.N. Doc. E/CN.4/Sub.2/1991/8 (1991) [hereinafter *Sub-Commission Preliminary Report*]; *Review of Further Developments in Fields with Which the Sub-Commission Has Been Concerned, Human Rights and the Environment: Progress Report Prepared by Mrs. Fatma Zohra Ksentini, Special Rapporteur, pursuant to Sub-Commission Resolution 1991/24*, U.N. ESCOR Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities, 44th Sess., Agenda Item 4, U.N. Doc. E/CN.4/Sub.2/1992/7 (1992) [hereinafter *Sub-Commission First Progress Report*].

32. *Review of Further Developments in Fields with Which the Sub-Commission Has Been Concerned, Human Rights and the Environment: Second Progress Report Prepared by Mrs. Fatma Zohra Ksentini, Special Rapporteur*, U.N. ESCOR Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities, 45th Sess., Agenda Item 5, U.N. Doc. E/CN.4/Sub.2/1993/7 (1993) [hereinafter *Sub-Commission Second Progress Report*]; *Review of Further Developments in Fields with Which the Sub-Commission Has Been Concerned, Human Rights and the Environment: Final Report Prepared by Mrs. Fatma Zohra Ksentini, Special Rapporteur*, U.N. ESCOR Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities, 46th Sess., Agenda Item 4, U.N. Doc. E/CN.4/Sub.2/1994/9, (1994) [hereinafter *Sub-Commission Final Report*].

rights instruments that fail to meet the needs of victims of environmental harm.³³ Fourth, and most importantly, the Sub-Commission invited a group of leading experts to prepare the "Draft Declaration of Principles on Human Rights and the Environment."³⁴

The achievements of the Sub-Commission provide a solid foundation for the further refinement of environmental rights and set the stage for the implementation of these rights. In particular, the Draft Declaration of Principles on Human Rights and the Environment articulates the essential elements of environmental human rights and establishes the current benchmark for further development of environmental human rights.³⁵

A. *The Legal Basis for Environmental Human Rights*

The world community paid increasing attention to the impact of environmental problems on human rights in the period from the U.N. Stockholm Declaration in 1972 to the 1992 U.N. Conference on Environment and Development in Rio de Janeiro (the "Earth Summit").³⁶ Reports submitted to the Sub-Commission's Special Rapporteur, the Special Rapporteur's own progress reports, and commentaries by a number of legal scholars have discussed in great detail the legal instruments that support the existence of a human right to the environment.³⁷ These legal instruments include multilateral conventions, international declarations, resolutions of the U.N. General Assembly, statements of principles by international legal expert commissions, regional conventions, national constitutions, national legislation, and cases decided by human rights bodies. A brief survey of some of these landmark instruments follows.

The 1972 Stockholm Declaration has already been noted as a starting point for a human right to the environment.³⁸ Most of the nations of the world attended the 1972 U.N. Conference, one of the first comprehensive attempts to address environmental problems.³⁹ As such, it is significant that

33. *Sub-Commission Second Progress Report*, *supra* note 32, at 41–42.

34. *Sub-Commission Final Report*, *supra* note 32, at Annex I and Annex II; *see also* Aguilar & Popović, *supra* note 22 at 200–02.

35. Popović, *supra* note 21 at 491–92 (describing the Draft Declaration as a "milestone in advancing protection of human rights and the environment").

36. The increasing recognition of the link between environmental protection and realization of human rights can be understood on one level as a natural extension of society's attention to environmental issues. The Sub-Commission noted that there are approximately "350 multilateral environmental treaties, 1,000 bilateral environmental treaties, and a multitude of instruments of intergovernmental organizations" devoted to environmental issues. *Sub-Commission Final Report*, *supra* note 32, at 8.

37. *E.g.*, SIERRA CLUB LEGAL DEFENSE FUND, REPORT TO THE UNITED NATIONS SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES: HUMAN RIGHTS AND THE ENVIRONMENT—THE LEGAL BASIS FOR A HUMAN RIGHT TO THE ENVIRONMENT 1 (1992) [hereinafter SCLDF 1992 REPORT TO THE SUB-COMMISSION]; Shelton, *supra* note 25, at 125–33.

38. *See* Louis B. Sohn, *The Stockholm Declaration on the Human Environment*, 14 HARV. INT'L L.J. 423, 431–32 (1973).

39. SCLDF 1992 REPORT TO THE SUB-COMMISSION, *supra* note 37, at 8 n.21; *See also* McClymonds, *supra* note 24, at 597.

the Declaration's preamble and its first principle speak of a right to a healthy environment that is fundamental to the enjoyment of basic human rights.⁴⁰

Years of study on issues of third world poverty and environmental degradation preceded the U.N. General Assembly's Resolution 41/128, which set forth the Declaration on the Right to Development.⁴¹ The Declaration articulates the Right to Development which includes an individual's right to the benefits of development, equality of access to basic resources, education, health services, food, housing, employment, and a fair distribution of income.⁴²

The African Charter on Human and Peoples' Rights also contains an explicit articulation of a human right to a healthful environment.⁴³ The African Charter is the product of the Organization of African Unity ("OAU"), and has been ratified by forty of the OAU's fifty-one member states.⁴⁴ Article 24 of the African Charter provides that "[a]ll peoples shall have the right to a generally satisfactory environment favorable to their development."⁴⁵ The African Charter underscores the links between human rights, the environment, and sustainable development.

The tension between environmental protection and economic development surfaces repeatedly in any discussion of sustainable development. Some commentators have attempted to dismiss this conflict of interest through the rationalization that sound economic development ultimately depends on maintaining a healthy and ecologically sound environment.⁴⁶ Although true over the long term, current economic incentives and the configuration of international debt and global monetary funds create a significant bias that favors exploitation of the environment.⁴⁷ The world community confronted these issues at the U.N. Conference on the Environment and Development, held in Rio de Janeiro, Brazil in June of 1992.⁴⁸ The Rio Declaration on Environment and Development concluded in Principle 4 that "environ-

40. Paragraph (1) of the preamble states that, "[b]oth aspects of man's environment, the natural and the man-made, are essential to his well-being and to the enjoyment of basic human rights—even the right to life itself." Stockholm Declaration, *supra* note 19.

41. Declaration on the Right to Development, G.A. Res. 41/128, U.N. GAOR, 41st Sess., Supp. No. 53, at 186, U.N. Doc. A/41/53 (1986).

42. Declaration on the Right to Development, *supra* note 41, art. 8, para. 1.

43. Banjul Charter on Human and Peoples' Rights, adopted June 27, 1981, OAU Doc. CAB/LEG/67/3/Rev.5 (1986), 21 I.L.M. 58, 63 (1982).

44. See SCLDF 1992 REPORT TO THE SUB-COMMISSION, *supra* note 37, at 17.

45. Banjul Charter on Human and Peoples' Rights, *supra* note 43.

46. *E.g.*, Thorne, *supra* note 24, at 330–31.

47. *Sub-Commission Preliminary Report*, *supra* note 31, at 10–15.

48. *Principles on General Rights and Obligations: Draft Principles Proposed by the Chairman, Rio Declaration on Environment and Development*, U.N. GAOR Preparatory Comm. for the U.N. Conference on Environment and Development, 4th Sess., Agenda Item 3, U.N. Doc. A/CONF.151/PC/WG/III/L.33/Rev.1 (1992) [hereinafter *Rio Declaration*]. The Rio Conference, often called the "Earth Summit" as a reflection of its ambitious goals, involved a massive planning effort of multiple preparatory conferences held around the world. It stands as a landmark similar to the Stockholm Conference, its predecessor of 20 years, representing an effort by the global community to assess environmental problems, set priorities, and create workable strategies and institutions to address them.

mental protection shall constitute an integral part of the development process and cannot be considered in isolation from it."⁴⁹

The conflict between economic development, environmental protection, and realization of human rights also manifests itself in the lives of indigenous peoples.⁵⁰ For example, the International Labour Organization Convention No. 169 Concerning Indigenous and Tribal Peoples in Independent Countries clearly articulates the need for basic human rights protections for indigenous peoples.⁵¹ The Convention explicitly recognizes the human rights component of protecting the lands and environment of indigenous peoples. For example, the Convention provides that "[g]overnments shall take measures, in co-operation with the peoples concerned, to protect and preserve the environment of the territories they inhabit."⁵²

The Draft Declaration on the Rights of Indigenous Peoples also places environmental protection of peoples' traditional territories at the center of protection of their human rights.⁵³ The Draft Declaration on the Rights of Indigenous Peoples recognizes their "distinctive and profound relationship with their lands" and provides that they have the "collective and individual right to be protected from cultural genocide, including the prevention and redress for . . . dispossession of their lands, territories, or resources."⁵⁴

The San Salvador Protocol of the American Convention on Human Rights provides for economic, social, and cultural rights under the American Convention. Article 11 of the Protocol states that "everyone shall have the right to live in a healthy environment and to have access to basic public services." Paragraph 2 of Article 11 also imposes an affirmative duty of environmental protection: "The State Parties shall promote the protection, preservation, and improvement of the environment."⁵⁵

Global environmental problems have also prompted legal instruments that provide for a right to a healthful environment. In 1989, for example, twenty-four countries signed the Hague Declaration concerning ozone de-

49. *Id.* princ. 4.

50. *Sub-Commission Final Report*, *supra* note 32, at 20.

51. International Labor Organization Convention (No. 169) Concerning Indigenous and Tribal Peoples in Independent Countries, *adopted* June 1989, *entered into force* September 1991, *reprinted* in 28 I.L.M. 1382 (1989) [hereinafter ILO Convention No. 169]. Norway, Mexico, Colombia, and Bolivia are the only members of the Convention (as of 1992). SCLDF 1992 REPORT TO THE SUB-COMMISSION, *supra* note 37, at 5-6.

52. ILO Convention No. 169, *supra* note 51, art. 7, para. 4.

53. Draft Declaration on the Rights of Indigenous Peoples, U.N. ESCOR Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities, 46th Sess., Agenda Item 15, U.N. Doc. E/CN.4/Sub.2/1994/2/Add.1 (1994). This Draft Declaration on the Rights of Indigenous Peoples is the product of the Working Group on Indigenous Populations, formed under the Sub-Commission in 1981. In 1991, after the ninth session of the Working Group, the first draft was produced. It has been subject to several revisions since 1991. SCLDF 1992 REPORT TO THE SUB-COMMISSION, *supra* note 37, at 11.

54. Draft Declaration on the Rights of Indigenous Peoples, *supra* note 53.

55. *See* Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights, *opened for signature* Nov. 14, 1988, 28 I.L.M. 156 (1989) [hereinafter San Salvador Protocol].

pletion and global warming. Most significantly, the Hague Declaration explicitly recognizes the human rights dimension of environmental degradation. Paragraph Five declares that remedies to the problems of the global atmosphere should involve "the right to live in dignity in a viable global environment."⁵⁶

Purposeful environmental destruction through nuclear, chemical, and biological weapons presents additional environmental concerns with significant human rights implications.⁵⁷ The International Law Commission has found that the international community regards protecting the human environment as one of its fundamental interests and any purposeful breach of this obligation constitutes a crime against humanity.⁵⁸ The Commission's draft Code of Crimes Against the Peace and Security of Mankind, codified these findings in Article 26: "An individual who willfully causes or orders the causing of widespread, long-term, and severe damage to the natural environment shall, on conviction thereof, be sentenced . . ."⁵⁹ This explicit recognition of the criminality of intentional environmental destruction elucidates just one more connection through which the environment, human rights, and international peace and security are inextricably linked.⁶⁰

National constitutions comprise a final significant body of law providing for a human right to a healthy environment; "almost no constitution adopted or revised since 1970 ignores this new right."⁶¹ The Sub-Commission's 1992 Progress Report sets out the provisions of forty-nine different national constitutions that create specific duties or rights to a sound environment.⁶² Generally, the constitutional provisions create a duty on the part of the state or its citizens to protect and preserve the environment. In addition, at least fourteen constitutions include a specific individual right to a healthful environment.⁶³ For example, Brazil's Constitution provides, "[e]veryone is entitled to an ecologically balanced environment,"⁶⁴ and Turkey's Constitution similarly states, "[e]veryone has the right to live in a healthy, balanced environment."⁶⁵

56. Declaration of the Hague (1989), reprinted in *Selected International Legal Materials for Global Warming*, 5 AM. U. J. INT'L L. & POL'Y 513, 567 (1990).

57. *Sub-Commission Final Report*, supra note 32, at 31.

58. The International Law Commission is a prominent group of legal experts whose function is to assist the United Nations in codifying principles of international law. G.A. Res. 174(11), U.N. GAOR, 2d Sess., 122d mtg., U.N. Doc. A/519 (1947); G.A. Res. 177(11), U.N. GAOR, 2d Sess., 123d plen. mtg., U.N. Doc. A/519 (1947).

59. *Draft Code of Crimes Against the Peace and Security of Mankind, Report of the International Law Commission on the work of its 42nd Session*, U.N. GAOR., 45th Sess., Agenda Items 140 and 142, U.N. Doc. A/45/735 (1990).

60. *Sub-Commission Final Report*, supra note 32, at 31.

61. ALEXANDRE KISS & DINAH SHELTON, *INTERNATIONAL ENVIRONMENTAL LAW* 27 (2d ed. 2000).

62. *Sub-Commission First Progress Report*, supra note 31, at 2-17.

63. SCLDF 1992 REPORT TO THE SUB-COMMISSION, supra note 37, at 20-21.

64. BRAZ. CONST. Title VIII, ch. VI, art. 225, (1988), reprinted in *Sub-Commission First Progress Report*, supra note 31, at 3.

65. TURK. CONST. ch. VIII(A), art. 56 (1982), reprinted in *Sub-Commission First Progress Report*, supra note 31, at 16.

B. The U.N. Sub-Commission and the Draft Declaration on Environmental Human Rights

The above overview of legal instruments, which link the realization of human rights and a sound environment, indicates the emergence of environmental rights as an international legal norm. The Sub-Commission conducted an extensive investigation into the legal precedents for environmental human rights and affirmed that the human right to a healthy environment has ample legal precedent and that such a right is a crucial component of human rights and freedoms in general. The Sub-Commission's Final Report concluded unequivocally that "[t]his research has revealed universal acceptance of environmental rights at the national, regional, and international levels."⁶⁶ Such progress has set the stage for moving beyond the identification of a legal right to a healthy environment and to a consideration of the manner in which recognized human rights should apply to environmental issues and how they should be enforced.⁶⁷

The Draft Declaration of Principles on Human Rights and the Environment ("Draft Declaration"), written by leading experts in the fields of human rights and environmental law, provides a vehicle for this next stage of evolution in the law. It sets out the essentials of environmental human rights,⁶⁸ and regardless of whether it ultimately becomes binding international law or merely serves as a model for incorporating environmental rights into human rights law, it will serve to further the development of an environmental human rights corpus. In bringing together in one document an articulation of environmental rights within the broader category of human rights, the Draft Declaration provides a reference point for coordinated interpretation and development of environmental rights as various human rights bodies define them.⁶⁹

Moreover, the Draft Declaration presents environmental human rights in a comprehensive yet succinct statement. In addition to its Preamble, the Draft Declaration has five thematic sections: (1) the universality of human rights, (2) substantive rights, (3) procedural rights, (4) environmental duties, and (5) special considerations in the Declaration's implementation.

The universality, indivisibility, and interdependence of all human rights are some of the defining characteristics of environmental human rights.⁷⁰ The Draft Declaration, which is firmly grounded in human rights law, emphasizes this point by detailing the interplay between the two areas.⁷¹ The

66. *Sub-Commission Final Report*, *supra* note 32, at 58.

67. Popović, *supra* note 21, at 493.

68. See Aguilar & Popović, *supra* note 22 (discussing the creation and effect of the Draft Declaration).

69. See Popović, *supra* note 21, at 491-94 (discussing the development of the Draft Declaration); *see id.* at 498-602 (discussing and explaining the Draft Declaration's principles).

70. See Report of the World Conference on Human Rights, Vienna Declaration and Program of Action, Part I, para. 5, adopted June 25, 1993, U.N. GAOR, U.N. Doc. A/Conf.157/24, Part I (1993) ("All human rights are universal, indivisible and interdependent and interrelated.").

71. *Sub-Commission Final Report*, *supra* note 32, at 42-57.

Preamble further places environmental human rights in context by recognizing their sources in international law and in the universality and interdependence of all human rights. It states that "human rights violations lead to environmental degradation and that environmental degradation leads to human rights violations."⁷²

Part I of the Draft Declaration affirms these ideas as well, and links peace and security with an ecologically sound environment (Principles 1 and 2). It establishes the applicability of the universal norm of non-discrimination to environmental human rights (Principle 3), and places a unique emphasis on protecting intergenerational equity (Principle 4).⁷³

The interdependence of human rights and the environment is nowhere more vivid than the necessity of proper environmental conditions to seek the right to life:

The right to life is the most important of all human rights legally guaranteed and protected by contemporary international law. On the other hand, the right to life is the one which is, most of all, connected to and dependent on proper protection of the human environment . . . we cannot forget that this is an original right from which all other human rights derive.⁷⁴

This right to life is protected in Article 3 of the Universal Declaration of Human Rights⁷⁵ and in Article 6(1) of the International Covenant on Civil and Political Rights.⁷⁶ Principle 5 of the Draft Declaration declares the right of all persons to be free from pollution and environmental degradation that threatens "life, health, livelihood, well-being or sustainable development."⁷⁷ Principle 6 of the Draft Declaration expresses the principle that human survival is grounded in healthy ecosystems and the maintenance of biological diversity.⁷⁸ The realities of human exploitation of the environment make the link between life and environmental protection obvious: more than two million deaths annually can be attributed to pollution.⁷⁹

Similarly, the right to health cannot be fully realized in a degraded or hazardous environment. For example, the thinning ozone layer may cause 300,000 additional cases of skin cancer and 1.7 million cases of cataracts

72. Popović, *supra* note 21, at 499–500.

73. *Id.* at 502–12.

74. *Sub-Commission Final Report*, *supra* note 32, at 45 (quoting comments transmitted to the Special Rapporteur from Professor Glicco of Poland).

75. Universal Declaration of Human Rights, *adopted* Dec. 10, 1948, G. A. Res. 217(A) (III), art. 3, U.N. Doc. A/810 (1948).

76. International Covenant on Civil and Political Rights, *opened for signature* Dec. 16, 1966, G.A. Res. 2200A (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, at 52, U.N. Doc. A/6316 (1966) *reprinted in* 6 I.L.M. 368 (1967).

77. Popović, *supra* note 21, at 514.

78. *Id.* at 522.

79. *Sub-Commission Final Report*, *supra* note 32, at 42.

annually worldwide.⁸⁰ Articles 25(1) and 23(1) of the Universal Declaration of Human Rights, and Articles 12(b) and 7(b) of the International Covenant on Economic, Social, and Cultural Rights firmly enshrine the right to health and to safe and healthy working conditions, respectively, as fundamental human rights.⁸¹ Principles 7 through 11 of the Draft Declaration declare the environmental dimensions of the established human rights to health, food, safe and healthy working conditions, and adequate housing.⁸² Moreover, other human rights bodies, such as the Committee of Experts that reviews compliance with the European Social Charter, have recognized the obvious link between health and the environment.⁸³ The Committee has recognized that the Social Charter's right to health requires special attention to air and water pollution, dangerous radioactive materials, noise pollution, and food contamination.⁸⁴

IV. APPLICATION OF THE DRAFT DECLARATION AND ENVIRONMENTAL HUMAN RIGHTS PRINCIPLES IN TIBET

This Article uses the principles of the Draft Declaration and established tenets of human rights law, as examined in Part II, to analyze environmental human rights violations in Tibet. Described under the Principles of the Draft Declaration, the environmental harm on the Tibetan plateau is cast in terms of its toll on the human population of the region.

A. Substantive Human Rights

1. The Right to Life and Health

Principle 7 of the Draft Declaration provides: "All persons have the right to the highest attainable standard of health free from environmental harm."⁸⁵ China's rapid nuclear weapons development program has created a significant health threat on the Tibetan plateau due to exposure to radioactive waste.

80. *Id.*

81. Universal Declaration of Human Rights, *supra* note 75; International Covenant on Economic, Social, and Cultural Rights, *opened for signature* Dec. 16, 1966, G.A. Res. 2200A (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, at 49, U.N. Doc. A/6316 (1966).

82. Popović, *supra* note 21, at 524-35.

83. EUR. SOC. CHARTER arts. 21, 22, 24, 28 (1961) *reprinted in* COUNCIL OF EUROPE, EUROPEAN SOCIAL CHARTER: THE CHARTER, ITS PROTOCOLS, THE REVISED CHARTER 13 (1999). Article 11 of the Social Charter affirms a duty on the part of states "to remove as far as possible the causes of ill-health." EUR. SOC. CHARTER art. 11 (1961).

84. Despite the Committee's acknowledgment of the threat to health by pollution and environmental degradation, states' obligations to prevent environmental harm, in addition to the threshold of protection, remain ambiguous and, as yet, unenforceable under the Social Charter. *See* Richard Designee, *Integrating Environmental Values Into the European Convention on Human Rights*, 89 AM. J. OF INT'L L. 263, 271 (1995).

85. *Sub-Commission Final Report*, *supra* note 32, at 42.

China entered the nuclear age at a breakneck speed—faster than any other nuclear power. It took only 32 months during the early 1960s, a decade of chaos, failure, and famine in China. This extraordinary achievement required the summoning of enormous intellectual and material resources at a time when intellectuals were being purged and materials scarce. It also required concentrating these people and supplies in an elite, secluded setting. The location was a closely guarded state secret and the security was absolutely top-notch. The place was the Tibetan Plateau, in Haibei Tibetan Autonomous Prefecture, 100 kilometers west of Xining.⁸⁶

The 1993 report by the International Campaign for Tibet, *Nuclear Tibet: Nuclear Weapons and Nuclear Waste on the Tibetan Plateau*, is the first credible body of information regarding China's nuclear program in Tibet. The picture that emerges from this careful documentation is one of rapid weapons development at all costs, bringing with it an almost complete disregard for worker safety and proper nuclear waste disposal techniques.

China's primary nuclear weapons research and design facility, described above, is known as the "Ninth Academy" and is located in northeast Amdo, near the shores of Lake Kokonor, the largest lake on the Tibetan plateau.⁸⁷ From the early 1960s through the mid-1970s, China designed its nuclear weapons at the Ninth Academy, which was fully operational at the height of the Cultural Revolution in the late 1960s.⁸⁸ As late as 1991, the Ninth Academy was still reported to be China's main nuclear weapons research and design facility.⁸⁹ Apparently, most of the Ninth Academy's functions were gradually moved in the 1990s to locations primarily in the Sichuan Province, where they remain today.⁹⁰

Due to the Ninth Academy's single-minded purpose of rapid weapons development, "waste disposal methods were reported to be casual in the extreme."⁹¹ Although the precise nature and quantity of radioactive waste generated by the Ninth Academy is still unknown, the radioactive waste that was initially produced was put in shallow, unlined landfills.⁹² In the former Soviet Union, nuclear waste was often dumped into nearby bodies of water, and because China's early nuclear weapons development was carried out under Soviet advisors, many nuclear experts fear that China utilized similarly dangerous disposal methods.⁹³ A railway line leads directly from the Ninth

86. INT'L CAMPAIGN FOR TIBET, *NUCLEAR TIBET: NUCLEAR WEAPONS AND NUCLEAR WASTE ON THE TIBETAN PLATEAU* 3 (1993) [hereinafter *NUCLEAR TIBET*].

87. "Kokonor" is a Mongolian word meaning blue lake, which is also the meaning of its Tibetan name, "Tso Ngonpo." Although the lake itself has no outlet, it lies in a watershed that drains into the Tsang Chu River, which in turn flows into the Huang River at Xining and finally joins the Yellow River. *Id.* at 13.

88. *Id.* at 6, 10.

89. *Id.* at 9.

90. *Id.* at 12–13.

91. *Id.* at 18.

92. *Id.*

93. *Id.* at 24–25. One of the lakes that was used as a dump site by Soviets in the 1950s and 1960s,

Academy plant to Lake Kokonor and stops at the water's edge, apparently without any other purpose.⁹⁴ In addition, descriptions of the Ninth Academy's facilities suggest that it produced—and probably released—plutonium and uranium in gaseous form. The plant has several tall smokestacks standing 600 feet high, indicating a design intended to disperse gases.⁹⁵

Nuclear contamination of local water sources presents a grave threat to the health of Tibetans. Lake Kokonor is a salt-water lake and has no river outlet. Natural aquifers in the region, replenished by surface waters and underground streams, provide the limited water supplies in this arid region of Tibet, and although the hydrology of the area has not been thoroughly investigated, radioactive contamination of groundwater is a potential threat.⁹⁶ Moreover, the International Campaign for Tibet received numerous reports of military activities around Lake Kokonor. One report came from a Chinese man whose father worked as a nuclear scientist in the 1970s; he recalled an accident involving nuclear contamination of the lake in 1974, after which fishing there was temporarily banned. Many people refrained from eating fish from the lake for many years thereafter.⁹⁷ Tibetans also reported to the International Campaign for Tibet that Chinese authorities, without any explanation, banned stores from selling meat from animals grazed in the area of the lake.⁹⁸

Contamination of the Yellow River down stream from the Ninth Academy has been documented. Approximately 100 tons of liquid mercury, one of the principal waste products from building nuclear weapons, has been dumped directly into the Yellow River.⁹⁹ The mercury is believed to have come from nuclear facilities in Lanzhou, Gansu Province, at the base of the Tibetan plateau.¹⁰⁰ Even official Chinese records on nuclear development admit that their disposal of mercury waste has been "rather poor."¹⁰¹

After more than a decade of public denial that any nuclear weapons development or disposal of nuclear waste was taking place in Tibet, China admitted in a 1995 Xinhua article to a "20 square meter dump for radioactive pollutants" near Lake Kokonor.¹⁰² The article also announced the existence

Lake Karachy, has been called "the most polluted spot on earth." *Id.*

94. *Id.* at 25. In addition to observations and photographs of the railway line by the International Campaign for Tibet fact-finding team in 1992, the railway line was observed by Himalayan photographer Galen Rowell in 1980, who could find no explanation for the peculiar railway line or the unusually heavy truck traffic in the area.

95. *Id.* at 20.

96. *Id.* at 20.

97. *Id.* at 27.

98. *Id.* at 21.

99. *Id.* at 24.

100. *Id.*

101. *Id.* (quoting LI JUE ET AL., CONTEMPORARY CHINA'S NUCLEAR INDUSTRY 30 (U.S. Joint Publ'g Research Serv. trans., 1987)).

102. *China Admits to Nuclear Waste on Tibetan Plateau*, XINHUA, July 19, 1995, reprinted in GREEN TIBET, ANN. NEWSL. OF ENV'T & DEV. DESK (1995-1996), at 21-22.

of the Ninth Academy nuclear weapons base, but explained that the 1170-square-kilometer "forbidden zone" was no longer in active use.¹⁰³

Repeated attempts by the Chinese government to import radioactive and hazardous waste into Tibet in exchange for valuable foreign currency has raised additional concerns about China's disposal practices. In 1984, the *Washington Post* reported that China "tentatively agreed to store huge quantities of radioactive waste" from European nuclear reactors, earning up to U.S.\$6 million over sixteen years.¹⁰⁴ After the publicity over these controversial negotiations, the Chinese government remained silent about the execution of the plan.¹⁰⁵ In 1987, reports suggested that Chinese officials had negotiated for the transport of West German nuclear fuel rods into Tibet for storage.¹⁰⁶ Although West German Chancellor Kohl's subsequent visit to Lhasa in August of 1987 aroused suspicion, Germany denied the plans in the face of unfavorable media attention.¹⁰⁷

Controversy erupted again in 1991 upon the publication of plans to ship 1.5 million tons of toxic sludge from Baltimore, Maryland to Tibet.¹⁰⁸ After U.S. government officials from the Environmental Protection Agency ("EPA") commented that they were working "to ensure that the project will not generate an international incident," the deal was apparently cancelled.¹⁰⁹ Most recently, in 1993, Chinese and Taiwanese officials reportedly discussed a plan to dispose of spent nuclear fuel rods from Taiwan's nuclear power plants.¹¹⁰ To date, however, no nuclear waste has been found entering Tibet from Taiwan.

China's use of Tibetan prison labor to build and maintain its nuclear facilities provides a particularly vivid example of the violation of the right to health.¹¹¹ Harry Wu, a leading authority on China's prisons and a former prisoner himself, reports that prison labor camps in the northern Tibetan plateau "use prisoners to excavate radioactive ore, and that they are forced to enter nuclear test sites to perform dangerous work."¹¹² In northern Tibet, huge forced labor camps with an estimated prisoner population of 100,000 are constantly placed adjacent to nuclear missile sites and China's nuclear

103. *Id.*

104. NUCLEAR TIBET, *supra* note 86, at 31 (quoting Michael Weisskopf, *China Reportedly Agrees to Store Western European Nuclear Wastes*, WASH. POST, Feb. 18, 1984, at 14)

105. DEPT. INFO. & INT'L RELATIONS, CENT. TIBETAN ADMIN., TIBET: ENVIRONMENT AND DEVELOPMENT ISSUES 1992 at 60 (1992) [hereinafter DIIR 1992 ENV'T RPT.]. It remains unconfirmed whether the nuclear waste shipments to Tibet were completed.

106. *Id.* (citing Associated Press, *Official Denies Bonn Will Ship Nuclear Waste to China*, July 20, 1987).

107. NUCLEAR TIBET, *supra* note 86, at 32.

108. *Id.* (citing *US City Plans to Ship Toxic Sewage Sludge to Tibet*, GREENPEACE WASTE TRADE UPDATE (Greenpeace USA, Washington, D.C.), Mar. 22, 1991, at 1.)

109. NUCLEAR TIBET, *supra* note 86, at 32-33.

110. *Id.* (citing Yojana Sharma, *China: Working with Taiwan Towards a Nuclear Waste Deal*, INTER PRESS SERVICE, Jan. 16, 1992; *Taiwan, China to Discuss Nuclear Waste Disposal*, REUTERS, Mar. 3, 1993).

111. NUCLEAR TIBET, *supra* note 86, at 38.

112. *Id.* (citing HONGDA HARRY WU, LAOGAI: THE CHINESE GULAG 35 (1992)).

weapons testing sites.¹¹³ China's exploitation of Tibetan forced labor to build and maintain its nuclear weapons program is a violation of the Tibetan prisoners' right to health and to life.

Due to high security surrounding the Ninth Academy and other nuclear weapons facilities in Tibet, medical researchers have not been permitted to study effects on health in these areas.¹¹⁴ Consequently, few of the many stories of unusual and mysterious deaths near Lake Kokonor, which have circulated among Tibetans, can be substantiated.

Dr. Tashi Dolma, a Tibetan doctor who was sent to the Lake Kokonor area in 1984, provided one of the most reliable accounts of the unexplained illnesses in the Lake Kokonor region.¹¹⁵ Tibetans from two villages close to the Ninth Academy reported to Dr. Dolma that there were strange diseases in their villages, but the medical team was not permitted to visit them. While Dr. Dolma was working in a hospital in Chabcha, south of the Ninth Academy, she treated Tibetan nomads who grazed sheep near the Ninth Academy. The children of the nomads had developed "a cancer that caused their white blood cell count to rise uncontrollably," most likely leukemia.¹¹⁶ Seven children, ages seven to fourteen, died during the time Dr. Dolma worked at the hospital.¹¹⁷ Significant exposure to radioactivity results in an increased prevalence of leukemia in the exposed population; this has been well documented among survivors exposed to nuclear fallout from the bomb dropped on Hiroshima, Japan.¹¹⁸

The nine known uranium mines in northern Tibet pose another significant nuclear-related health risk to the Tibetan people.¹¹⁹ Tibetan refugees have complained that the exploitation of the mines has affected the health of villagers living in the vicinity of the uranium mines.¹²⁰ Mine tailings concentrate heavy metals and radioactive material in rainwater percolating through the piles of waste rock, which then leads to the contamination of streams or groundwater. Tibetans who have reached India have reported health problems and deaths in the vicinity of the uranium mines.¹²¹

The most persistent reports of polluted water come from two particular sites in northern Tibet. One mine is located in the Ngaba Tibetan Autonomous Prefecture, under Sichuan Province, and the other is in Gannan Ti-

113. NUCLEAR TIBET, *supra* note 86, at 38-39.

114. NUCLEAR TIBET, *supra* note 86, at 21.

115. *Id.* Dr. Tashi Dolma was sent with other physicians to conduct a blood sample survey among 2000 Tibetans from three countries, as part of an effort by the Chinese government to prove that Tibetans were genetically linked to Chinese.

116. *Id.* at 21.

117. *Id.*

118. THE MERCK MANUAL 1177 (Robert Berkow, M.D., ed., 15th ed. 1987).

119. RESEARCH & ANALYSIS CENTRE, CENT. TIBETAN ADMIN., TIBET: A LAND OF SNOWS RICH IN PRECIOUS STONES AND MINERALS 4 (1991).

120. *Id.*

121. *Id.*

betan Autonomous Prefecture, under the Gansu Province.¹²² Villagers near both these mines have reported sickness and deaths in their villages, and in both cases residents suspected stream water polluted by the nearby uranium mines caused the fatal illness.¹²³ In the early 1990s, over three years time, the Tibetan village near the Ngaba Prefecture uranium mine experienced the deaths of thirty-five villagers who had been drinking polluted stream water (out of a village population of approximately 500).¹²⁴ In the area of the Gannan uranium mine, Tibetan refugees reported more than fifty deaths between 1988 and 1991 from "mysterious illnesses." The refugees also described the deaths of domestic animals whose organs appeared "burnt," and reported that trees and grasses in the area had dried up, and that the river had become "black and foul-smelling."¹²⁵

Through the systematic program of nuclear testing and development, the Chinese government has infringed upon the right to health of the native Tibetan population. The significant health threats from nuclear testing, waste pollution and groundwater contamination are clear violations of the right to be free from environmental harm as expressed in Principle 7 of the Draft Declaration.

2. *The Right To Be Free from Hunger*

Food security as a human right has been recognized in Article 25(1) of the Universal Declaration on Human Rights, and declared in Article 11 of the International Covenant on Economic, Social and Cultural Rights as the "fundamental right of everyone to be free from hunger."¹²⁶ Environmental abuses threaten food security across the globe, affecting affluent and developing nations alike. Environmental degradation endangers the fulfillment of this basic human right through a variety of means, including contamination of food by pesticides or air and water-borne toxins, declining harvests due to desertification, and loss of bio-diversity among food crops. Principle 8 of the Draft Declaration declares that "[a]ll persons have the right to safe and healthy food adequate to their well-being."¹²⁷ China's agricultural policy in Tibet has caused violations of the right to be free from hunger.

One of China's first acts upon its military seizure of Tibet was to institutionalize its agricultural policy. Its aims were twofold: to "modernize" the "backward" Tibetan subsistence farmers and to feed Chinese settlers in Tibet. China imposed far-reaching collectivization programs under which

122. NUCLEAR TIBET, *supra* note 86, at 43.

123. *Id.*

124. *Tibetans Dying from Uranium Mine Waste*, TIBET INFO. NETWORK NEWS UPDATE at 1, Sept. 11, 1992.

125. NUCLEAR TIBET, *supra* 86, at 44.

126. International Covenant on Economic, Social, and Cultural Rights, *supra* note 81, art. 11.

127. *Sub-Commission Final Report*, *supra* note 32, at 42; see also Popović, *supra* note 21, at 526 (quoting Draft Declaration of Principles on Human Rights and the Environment).

stripped farmers and nomads of their lands and their herds, and reorganized Tibetans into communes and brigades.¹²⁸

The Tibetans' traditional crop is barley, which is well suited to the short growing season and the harsh, high-altitude conditions of the Tibetan plateau. China, however, required the communes to grow hybrid wheat varieties, often referred to as "winter wheat," a crop ill-suited to Tibet and dependent on intensive application of artificial fertilizers and pesticides.¹²⁹

The program's results proved disastrous. Tibet experienced two intense periods of widespread famine—the first ever in over 2000 years of recorded Tibetan history—from 1961 to 1964 and again from 1968 to 1973 during the Cultural Revolution.¹³⁰ By 1964, ninety percent of Lhasa valley's rural households were organized into communes in which they had little control over the crops they raised or kept for themselves.¹³¹ In addition, thousands of Tibetan political prisoners, confined in agricultural labor camps, starved while producing food for the Chinese.¹³² In all, over 340,000 Tibetans starved to death.¹³³

The Chinese ultimately abandoned their policy of forced collectivization of agriculture after the historic visit of Communist Party General Secretary Hu Yaobang to Tibet in 1980.¹³⁴ Hu Yaobang made strong recommendations for reform, including exempting Tibetan farmers from compulsory sales to the government and ending the taxation of Tibetan herders.¹³⁵ Although China never fully implemented many of Hu Yaobang's sweeping recommendations, Tibetans did regain more control over their lands.¹³⁶ Sadly, Hu Yaobang was ultimately demoted from his position as General Secretary for his criticism of Chinese policies in Tibet.¹³⁷

In the wake of reforms, Tibetans returned to more traditional subsistence farming methods.¹³⁸ They grew barley again instead of winter wheat, and as

128. See JOHN W. LONGWORTH & GREGORY J. WILLIAMSON, CHINA'S PASTORAL REGION: SHEEP AND WOOL, MINORITY NATIONALITIES, RANGELAND DEGRADATION & SUSTAINABLE DEVELOPMENT 44–45 (1993).

129. TIBETAN WOMEN'S ASSOC., CULTIVATING GENOCIDE: A MESSAGE TO THE WORLD FOOD SUMMIT (1996). The "fei mai" hybrid wheat was introduced in the 1960s and is still being promoted in Tibet by the Chinese. The *fei mai* hybrid requires intensive application of fertilizer and pesticides, and is prone to water stress, disease, and total crop failure on a scale not experienced by traditional highland barley in Tibet. DIIR 1992 ENV'T RPT., *supra* note 105, at 56.

130. DIIR TIBET FACTS, *supra* note 9, at 59.

131. RESISTANCE AND REFORM IN TIBET 68 (Robert Barnett & Shirin Akiner eds., 1996).

132. *Id.*

133. DIIR TIBET FACTS, *supra* note 9, at 48.

134. See Patrick Peatfeld, *Save Our Tsampra! Modernization, International Aid, and the Future of Tibetan Agriculture*, TIBETAN REV., May 1995, at 13.

135. Ronald Schwartz, *The Reforms Revisited: The Implementation of Chinese Economic Policy and the Future of Rural Producers in Tibet*, TIBETAN ENV'T & DEV. NEWS (Int'l Campaign for Tibet, Washington, D.C.), Nov. 1995, at 1, 4–8.

136. *Id.* at 1.

137. TIBETAN YOUTH CONGRESS, DEVELOPMENT FOR WHOM? A REPORT ON THE CHINESE DEVELOPMENT STRATEGIES IN TIBET AND THEIR IMPACTS 19 (prepared for the World Summit for Social Development, Copenhagen, Mar. 2–12, 1995).

138. See Peatfeld, *supra* note 134, at 14.

a result, sales of fertilizer dropped by 74% in central Tibet between 1979 and 1986.¹³⁹ Farmers traded grain for animal products with Tibetan nomads, thus insulating both groups from arbitrary price-fixing and inflation. With the return to traditional farming after Chinese policy reforms, wheat production by Tibetan farmers fell dramatically from a high of 192,959 tons in 1978 to 94,528 tons in 1986.¹⁴⁰ A study of land use in Chushur county in the Lhasa valley found that wheat cropping areas contracted by thirty percent in the three year period following the reforms.¹⁴¹

As a result of China's aggressive population transfer program, an enormous Chinese settler population emigrated to Tibet by the mid-1980s.¹⁴² In the capital city of Lhasa alone, there were between 50,000 and 60,000 Chinese immigrants.¹⁴³ In the eastern areas of the Tibetan plateau, in Kham and Amdo, Chinese immigrants numbered in the millions.¹⁴⁴ One of the greatest obstacles to China's full control of Tibet is the challenge of feeding this immigrant Chinese population.¹⁴⁵

Lack of local production and enormous transportation barriers compound the difficulties faced across China, where China's 1.1 billion inhabitants spend between 60 to 80% of their income on food on average.¹⁴⁶ Grain shipments to Tibet come by truck across thousands of kilometers of winding dirt roads crossing high mountain passes. Grain shipments increased by 12% a year between 1959 and 1983.¹⁴⁷ After 1983, grain shipments increased radically, and by the mid-1980s, grain accounted for over 70% of all goods trucked into Lhasa.¹⁴⁸

The huge increase in grain imports from other parts of China coincided with two events: (1) a return to subsistence agriculture by Tibetan farmers; and, (2) another wave of Chinese immigration. Between 1985 and 1988, the Chinese population of Lhasa doubled, growing to 100,000. Chinese settler populations in Kham and Amdo are currently estimated at 7.4 million.¹⁴⁹

The sheer cost of feeding Chinese settlers in Tibet is staggering. In 1992, China imported between 70,000 and 100,000 tons of wheat and rice into

139. *Id.* (citing Tseten Wangchuk Sharlo, *China's Reforms in Tibet*, 1 J. CONTEMP. CHINA 1 (1992)).

140. Schwartz, *supra* note 135, at 5.

141. *Id.*

142. DIIR TIBET FACTS, *supra* note 9, at 85.

143. *Id.*

144. *Id.* at 86. The Chinese government offers a wide variety of benefits to encourage Chinese immigration to Tibet. Annual wages are over eighty percent higher for Chinese in Tibet than in other parts of China. Three-month paid vacations, special access to health care at new Chinese hospitals, and educational opportunities for children are among the enticements. *Id.* at 86-87.

145. See John Ackerly, *Wheat Wars: How Tibet's Fate Is Being Decided Behind the Headlines*, TIBETAN REV., Nov. 1993, at 15.

146. HE BOCHUAN, CHINA ON THE EDGE: THE CRISIS OF ECOLOGY AND DEVELOPMENT 142 (1991).

147. Ackerly, *Wheat Wars*, *supra* note 145, at 15.

148. *Id.*

149. DIIR TIBET FACTS, *supra* note 9, at 85-86.

Lhasa valley and 300,000 tons into Amdo.¹⁵⁰ In 1988, the U.N. World Food Program concluded that Qinghai Province spent almost its entire budget on importing grain; at the same time, over 70% of its budget is composed of subsidies from the central government.¹⁵¹ Although the cost for truck transport into Lhasa valley was calculated at 0.7 *yuan* per kilogram of grain in 1986, one kilogram still only cost 0.45 *yuan* in Lhasa markets that year. Continued government subsidies for grain account for a market price that is only half of the transportation costs alone.¹⁵² By the 1980s, Chinese central government subsidies to the Tibet Autonomous Region (U-Tsang region) had risen to 97% of the total industrial and agricultural output of the region.¹⁵³ Annual subsidies to Chinese urban settlers in Tibet through the 1980s equate to approximately U.S.\$128 per person.¹⁵⁴ Meanwhile, the Chinese government failed to subsidize the price of barley, the staple Tibetan food, making it almost twice as expensive to purchase local barley in Lhasa markets as the grain and rice trucked in from thousands of kilometers away.¹⁵⁵

In order to reduce dependency on imported wheat, in 1991 the Chinese government once again required rural Tibetan farmers to produce wheat instead of barley at pre-reform levels.¹⁵⁶ Consequently, Tibetan subsistence farmers are now dependent on imported materials such as machinery and fertilizer and are exposed to price fluctuations and government regulation.¹⁵⁷ Worse yet, the Chinese require these small farmers to sell a large portion of their wheat to the government, leaving them little for barter or market sales.¹⁵⁸ The government purchases the wheat at its low fixed price and uses the profits to offset losses on grain imports.¹⁵⁹ Many Tibetan farmers never even receive the government's modest cash payments because they receive "payment" in chemical fertilizer or worthless IOU's.¹⁶⁰ It is "impossible" for rural Tibetans to evade the required production quotas,¹⁶¹ a 1998 U.N.

150. Ackerly, *Wheat Wars*, *supra* note 145, at 16.

151. ANN FORBES & CAROLE MCGRAHAN, *DEVELOPING TIBET? A SURVEY OF INTERNATIONAL DEVELOPMENT PROJECTS 23* (1992).

152. Liu Yanhua, *Dynamics of Highland Agriculture in Lhasa District, Tibet* 28 (Occasional Paper No. 22, Oct. 1992, International Centre for Integrated Mountain Development, Kathmandu, Nepal).

153. DIIR 1992 ENV'T RPT., *supra* note 105, at 35, Table 4 (citing WANG XIAOZIANG & BAI NANFENG, *THE POVERTY OF PLENTY* (Angela Knox trans., 1991)).

154. *Id.* The per capita subsidies to Chinese settlers are substantially higher than the total average annual income of U.S.\$80 for Tibetans. DIIR TIBET FACTS, *supra* note 9, at 59. With higher salaries and subsidized food, housing, medical care, and education, Chinese settlers in Tibet enjoy a much higher standard of living than Tibetans.

155. DIIR 1992 ENV'T RPT., *supra* note 105, at 35.

156. Schwartz, *supra* note 135, at 7.

157. See Peatfield, *supra* note 134, at 18.

158. *Id.*

159. *Id.*

160. *Id.*

161. *Id.*

Monitoring team in the Lhasa valley observed widespread malnutrition among Tibetans.¹⁶²

Moreover, China has successfully lobbied international aid organizations to help finance their wheat production scheme.¹⁶³ Under the guise of helping Tibetans advance from subsistence agriculture¹⁶⁴, China receives international funding and expertise in order to overcome ecological barriers in Tibet and trample on Tibetan culture and food-security.¹⁶⁵ The legitimacy of this U.N.-approved and funded agricultural policy provides China with the garb of neutrality that it needs to continue to change Tibetan agriculture. By viewing the effects of these shortsighted international programs through the prism of environmental human rights, future international programs can better assess the human rights impact of intervention before designing programs to increase agricultural production.

One such international project was the U.N. World Food Program's "Project 3357" in the Lhasa Valley.¹⁶⁶ On Project 3357's first five-year funding cycle, from 1989 through 1993, the World Food Program spent U.S.\$6.75 million on the project as matching funds to China's U.S.\$10.9 million.¹⁶⁷ Intended to improve the region's agriculture, the project paid for the construction of over 400 kilometers of cement irrigation canals and the planting of 1184 hectares of fast-growing, non-native trees in "shelter belts" along canals and fields. It also included funding for monitoring, training, health, and education.¹⁶⁸ Unfortunately, Project 3357 officials never seriously questioned the flaws (*previously discussed*) of growing wheat in Tibet as means of reducing grain imports.¹⁶⁹

Worse yet, China effectively prohibited U.N. officials from involving local Tibetans in the planning and monitoring of Project 3357.¹⁷⁰ The circuitous communications route required of U.N. officials exemplifies the extensive degree of Chinese control over the project. In order for the World Food Program office in Beijing to contact on-site project administrators, all communications had to be routed first to the Ministry of Agriculture in Beijing. The office then passed the information to Lhasa Municipality which in turn communicated with the project authorities in Lhasa City, who in turn communicated with each of the four counties.¹⁷¹

As a result of the power that China wields, well-intentioned aspects of the project are derailed long before they reach completion. The project's plan to

162. *Project 3357 Report*, U.N. World Food Program, Committee on Food Aid Policies and Programs, 26th Sess., Agenda Item 2(a), at 1, U.N. Doc. WFP/CFA:26/2-A(ODP)Add. 2 (1988).

163. TIBETAN YOUTH CONGRESS, DEVELOPMENT FOR WHOM?, *supra* note 137, at 28.

164. Schwartz, *supra* note 135, at 4.

165. TIBETAN WOMEN'S ASSOC., *supra* note 129.

166. FORBES & McGRANAHAN, *supra* note 151, at 12.

167. U.N. *World Food Program, Committee on Food Aid, Project 3357 Report*, *supra* note 162.

168. FORBES & McGRANAHAN, *supra* note 151, at 13.

169. TIBETAN YOUTH CONGRESS, DEVELOPMENT FOR WHOM?, *supra* note 137, at 29.

170. *Id.*

171. *Id.*

supply a cash wage and daily rations of wheat and butter to local Tibetan farmers provides a clear example of how the project's goals became subverted.¹⁷² U.N. funds of U.S.\$5,604,800 had been budgeted to supply the wheat and butter.¹⁷³ The U.N.'s decision to supply in-kind payments of food to rural Tibetan laborers was a direct response to the widespread malnutrition and food scarcity observed among Tibetans by the U.N. planning team sent to Lhasa valley in 1988.¹⁷⁴ However, since Chinese settlers have been primarily employed to perform Project 3357's work, the Tibetans that work for the project received only a small fraction of the cash wage and receive no wheat or butter.¹⁷⁵

Despite this and other major shortcomings in the implementation of Project 3357, the World Food Program released a five-year evaluation report in March of 1993 strongly endorsing its continuation.¹⁷⁶ The mid-interim report found only "technical" problems in the project's implementation, relating to the long-term maintenance of the newly constructed cement irrigation systems.¹⁷⁷ Gong Daxi, vice-chairman of the Tibet Autonomous Region, also praised Project 3357 to the visiting U.N. delegation in 1993, stating, "We will build the valley into a new agricultural production base . . . the traditional concepts of locals about agriculture and animal husbandry have been dramatically changed and their cultural awareness has been greatly raised."¹⁷⁸ Investigations in 1993 and 1994 caused the World Food Program to suspend the project for more than a year in order to rectify "technical" problems and review the methods of Chinese project administrators.¹⁷⁹ However, the World Food Program decided to continue the project for another five years.¹⁸⁰ The five-year funding cycle ended in 1999, and Project 3357 received no funding in the year 2000.¹⁸¹

Another aid program, the Panam County Integrated Rural Development Project, also created more problems than it solved. Established by the Euro-

172. FORBES & MCGRAHAN, *supra* note 151, at 18.

173. *Id.* at 20.

174. *Id.* at 15.

175. *Id.*

176. *Mid-Interim Evaluation Summary Report on Project China 3357*, U.N. World Food Program, Committee on Food Aid Policies and Programs, 35th Sess., Agenda Item 3(d), at 10–12, U.N. Doc. CEA/35/SCP:10/3-D Add.C3 (1993).

177. *Id.* at 10.

178. *Project 3357 in Full Swing*, CHINA'S TIBET, Spring 1993, at 27.

179. Letter from Jens Schultes, World Food Program Regional Manager Asia and Pacific Bureau Operations Department, to Ngawang Choepel, Human Rights Officer, The Tibet Bureau (Oct. 18, 1993) ("There have been various technical shortcomings with the project and in several cases a combination of poor design and climatic factors have led to irrigation systems being swept away by flood waters. Upon WFP's investigations the project has been brought to a virtual halt since May of 1993 until the problems relating to technical design and management have been resolved to our satisfaction.") (on file with author); see also *International Aid Backfires in Tibet*, TIBETAN REV., Nov. 1994, at 4.

180. Interview with Gabriel LaFitte, National Resource Officer, Australia Tibet Council, in Dharamsala, India. (Nov. 1996) (notes on file with author).

181. World Food Program, *China: WFP Assisted Projects*, at <http://www.wfp.org/china/projects.htm> (last visited Feb. 15, 2001).

pean Commission (EC) in 1994, it contributed U.S.\$9.1 million to Panam County's agricultural development.¹⁸² An independent investigation and report found "local Tibetans fearful that the project would overwhelm them with Chinese colonizers, destroy their traditional subsistence farming methods and exhaust the soil."¹⁸³ In response, the EC sent a fact-finding mission to the Panam region and substantially altered the project's implementation and monitoring methods. However, the EC did not address the project's long-term impact of facilitating Chinese settlement in Tibet.¹⁸⁴ The revised Panam project proposal was ultimately suspended because Chinese officials and the EC argued over the involvement of non-governmental organizations in the project.¹⁸⁵ In a similar vein, the World Bank's Board of Directors denied financing to a Chinese antipoverty proposal for Qinghai Province on July 8, 2000.¹⁸⁶ The U.S.\$160 million proposal had generated intense controversy because part of the program would have involved resettling 58,000 Chinese farmers in areas largely occupied by nomadic Tibetan herdsmen.¹⁸⁷

Under the added pressure of a new and largely urban Chinese settler population greater than the Tibetan population, China's agricultural policy violates Tibetans' substantive human rights, most obviously the right to adequate amounts of food.¹⁸⁸ China's agricultural policy also violates Principle 5 of the Draft Declaration. Principle 5 provides that "[a]ll persons have the right to freedom from pollution, environmental degradation, and activities that . . . threaten . . . livelihood, well-being, or sustainable development within, across or outside national boundaries."¹⁸⁹ The burden of state procurement imposed on Tibetan farmers, and the coercive policies that require Tibetan farmers to grow wheat crops that are ill-suited to agricultural conditions of the high plateau, together violate Principle 5.

Principle 5 captures the connection between the denial of Tibetans' traditional livelihood of subsistence agriculture and the hunger resulting from these denials. The "fundamental right of everyone to be free from hunger," as recognized in both the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights,¹⁹⁰ is violated when Tibetans are not allowed to provide food for themselves in the manner they have used for centuries. A coercive governmental food policy in Tibet has eroded this fundamental human right.

182. *Tibetans fear EU aid project will strengthen China's grip*, OBSERVER, Dec. 18, 1994, at 1.

183. *Id.* at 11.

184. Telephone Interview with Robert Barnett, Tibet Information Network (Dec. 21, 1996) (notes on file with author).

185. *Id.*

186. Joseph Kahn, *World Bank Rejects China's Proposal to Resettle Farmers*, N.Y. TIMES, July 8, 2000, at A17.

187. *Id.*

188. Principle 8 of the Draft Declaration explicitly provides the right to adequate food. *See* Popović, *supra* note 21, at 526.

189. *See id.* at 514.

190. International Covenant on Economic, Social, and Cultural Rights, *supra* note 81, art. 11.

3. Cultural Human Rights

Cultural rights have roots in environmental protection. This link is especially vivid for indigenous peoples whose relationships with their lands define the essentials of their cultural life. As an Indian leader stated to the U.N. Working Group for Indigenous Affairs, “[o]ur principal and fundamental struggle is for the land, our territory and natural resources Our defense of the land and natural resources is for the cultural and human survival of our children.”¹⁹¹

Article 27 provides ethnic, religious, or linguistic minorities with the right to enjoy their own culture. Additionally, the Universal Declaration of Human Rights supports cultural rights in Article 27(1), which provides for the “right freely to participate in the cultural life of the community.”¹⁹² Article 15(1)(a) of the International Covenant on Economic, Social and Cultural Rights likewise recognizes the right “to take part in cultural life.”¹⁹³

The Draft Declaration includes the principle that all people have the right to sustainable use of natural resources for cultural purposes. Principle 13 grants the “right to benefit equitably from the conservation and sustainable use of nature . . . for cultural . . . and spiritual . . . purposes,” and “the right to preservation of unique sites consistent with the fundamental rights of persons or groups living in the area.”¹⁹⁴ In addition, Principle 14 of the Draft Declaration encompasses the right of indigenous peoples to control their lands and natural resources, and the right to have their territories protected from damage.¹⁹⁵

Tibetan places of religious significance are being desecrated by Chinese “development” projects, thereby effectively denying local people the right to their religious practice. The many sacred forests, lakes, mountains, and rivers in Tibet are places of pilgrimage, sources of religious inspiration, and the focus of many rituals. For example, Mount Kailash, one of Tibet’s most renowned sacred sites, draws thousands of pilgrims each year.¹⁹⁶ These places lose their sacredness when exploited for utilitarian purposes.¹⁹⁷

191. *Sub-Commission Final Report*, *supra* note 32, at 23.

192. International Covenant on Civil and Political Rights, *supra* note 76, art. 27 (“minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.”). In a precedent-setting case for cultural rights under the Covenant, the Lubicon Lake Band (a Native American Tribe in Canada) showed that Article 27 would be violated by proposed oil and gas development in the Lubicon Lake Band’s traditional hunting grounds. *Ominayak v. Canada*, Communication No. 167/1984, Annex IX.A, at 27, U.N. Doc. A/45/40 (1990).

193. International Covenant on Economic, Social, and Cultural Rights, *supra* note 81, art. 15.

194. Popović, *supra* note 21, at 537.

195. *Id.* at 541–44 (discussing examples where resource exploitation threatens indigenous people’s physical health, economic self-sufficiency, and survival).

196. *See, e.g.*, ROBERT THURMAN & TAD WISE, *CIRCLING THE SACRED MOUNTAIN: A SPIRITUAL ADVENTURE THROUGH THE HIMALAYAS* (1999).

197. Interview with Geshe Sonam Rinchen, including oral commentary on a 12th-century text by Geshe Chekawa, Dharamsala, India (Ruth Sonam trans., Dec. 30, 1996) (notes on file with author).

The introduction of commercial mining in Tibet under Chinese administration has led to numerous conflicts between the Tibetans' use of natural sites for cultural and religious purposes and the Chinese government's natural resource exploitation. For example, the Chinese have previously mined for uranium under a sacred Tibetan hill near the town of Riwoche, in the Kongpo region of U-Tsang.¹⁹⁸ At one point villagers protested against the Chinese authorities.¹⁹⁹ A report states that a "tense incident ensued, in which three surveyors' jeeps were set on fire . . . Chinese soldiers occupied the town and rounded up villagers for interrogation."²⁰⁰

The increasingly complete exploitation of the Tibetan plateau's natural resources has a distinct cultural component. The pollution of Lake Kokonor, the clear-cutting of once virgin forests, and the choking of rivers with sediment all violate the Tibetans' belief in a sacred natural landscape. Principle 13 of the Draft Declaration, which provides for sustainable use of nature for cultural purposes has been consistently violated through this systematic environmental degradation.

4. *The Right to Self-Determination*

Denial of the human right to self-determination is tightly linked to environmental degradation. Article 1 of the International Covenant on Civil and Political Rights states that "[a]ll peoples have the right of self-determination," a component of which is the right to "freely dispose of their natural wealth and resources."²⁰¹ Principle 1 of the Draft Declaration also recognizes the importance of environmental rights to the free exercise of one's right to self-determination, stating, "[h]uman rights, an ecologically sound environment, sustainable development, and peace are interdependent and indivisible."²⁰²

The Sub-Commission's Special Rapporteur found that the political and economic subjugation in occupied territories creates social conditions which lead to unchecked environmental degradation.²⁰³ In particular, the Sub-Commission's study raised concerns about "intensive exploitation of raw materials and products that upsets the ecological balance, wastage of non-renewable energy sources, establishment of polluting and high-risk industries, [and] pauperization of rural areas."²⁰⁴

Both the United States and Europe have noted China's economic exploitation of Tibet's environment and its effects on Tibetans' right to self-

198. John Ackerly, *Mining Tibet's Sacred Sites*, GREENPEACE MAG., Mar.-Apr. 1990, at 9.

199. *Id.*

200. *Id.*

201. International Covenant on Civil and Political Rights, *supra* note 81, art. 1, para. 2. The identical right to self-determination is repeated as article 1 of the International Covenant on Economic, Social, and Cultural Rights.

202. Popović, *supra* note 21, at 502.

203. *Sub-Commission Final Report*, *supra* note 32, at 42.

204. *Id.* at 43.

determination. The United States Congress found that "the exploitation of Tibet's vast mineral, forest, and animal reserves has occurred with limited benefit to the Tibetan people."²⁰⁵ The European Parliament found that "natural resources are exploited with insufficient regard to the needs and priorities of the Tibetan people."²⁰⁶ Without the ability to control the disposition of their natural resources, native Tibetans find their resources exploited by the Chinese, and through this exploitation, their rights to self-determination are defiled.

In particular, China, in its push for economic development, has been exploiting Tibet's forests, which had never before been commercially logged.²⁰⁷ The old-growth forests—located in the southeast in southern Amdo and Kham—have been their primary targets.²⁰⁸ These forests are valuable to the entire region's ecology; they contain the headwaters of five of Asia's major rivers—Brahmaputra, Salween, Mekong, Yangtze, and Huangho—that flow into other downstream countries such as India, Bangladesh, Burma, Laos, Thailand, Cambodia, and Vietnam. Further, they contain at least twenty-four varieties of several hundred year-old pine and fir trees that measure two to three feet in diameter.²⁰⁹ Large numbers of endemic species comprise the forests' "exceptionally rich flora,"²¹⁰ and the area is famous for its over two thousand species of medicinal plants.²¹¹

In 1960, the Chinese government began developing the logging industry in Amdo and Kham, transforming the region into one of the largest timber-production bases in all of China's territories—second only to the logging in the minority area of northeast China.²¹² China's approximately 301 million acres of forested land, as a proportion of China's total size, is only one-quarter of the percentage of forested area in the United States, and only one-third of that of India.²¹³ Due to its relatively low supply of forested land, China takes timber from Tibet without compensation in order to meet their

205. Foreign Relations Authorization Act for Fiscal Years 1988 and 1989, § 1243(A)(8), Pub. L. No. 100-204 (1987), *reprinted in* INTERNATIONAL RESOLUTIONS AND RECOGNITIONS ON TIBET, *supra* note 7, at 64.

206. EUR. PARL. DOC. A3-0369/92 (Dec. 15, 1992) *reprinted in* INTERNATIONAL RESOLUTIONS AND RECOGNITIONS ON TIBET, *supra* note 7, at 15.

207. DIIR 1992 ENV'T. RPT., *supra* note 105, at 21.

208. CHI-WU WANG, THE FORESTS OF CHINA WITH A SURVEY OF GRASSLAND AND DESERT VEGETATION 49 (1961).

209. *Id.*

210. *Id.*

211. LI WENHUA, FORESTS OF THE HIMALAYAN-HENGDUAN MOUNTAINS OF CHINA AND STRATEGIES FOR THEIR SUSTAINABLE DEVELOPMENT 46 (1993). Dr. Li Wenhua's research on the forests of the Tibetan plateau was a rare scientific examination of the forest conditions permitted during the flowering of liberalism in Chinese government policies during the early 1980s. See Gabriel LaFitte, *A Chinese Report on Deforestation in Tibet*, TIBETAN REV., Mar. 1990, at 7-9. Dr. Li Wenhua himself notes in the introduction to his book that its publication in English is an effort to make some of the Chinese research available to readers outside of China.

212. LI WENHUA, *supra* note 211, at 94.

213. Measured on a per capita basis, China's forested area is relatively low with only 0.3 acres per capita as compared with a global average of 2.5 acres per capita. See HE BOCHUAN, *supra* note 146, at 29.

paper and wood shortages.²¹⁴ As a consequence, China's timber shortage has shifted to Tibet and has caused the price of one cubic meter of fuel wood in Lhasa to rise above the average annual income.²¹⁵ Tibetans have no control over these Chinese logging policies and have been stripped of control over their native forests.

China's demand for wood has been exacerbated by wasteful practices and exports to Japan. On the Tibetan plateau in the upper reaches of the Yangtze River, 900,000 tons of logs are burned annually to fuel inefficient industrial furnaces.²¹⁶ Poor coordination between Chinese government departments also leads to wasted wood. One department may be responsible for logging while another is responsible for transporting the cut logs. Consequently, a large proportion of the cut timber is left in clear-cut areas or collects in rivers, resulting in losses of over U.S.\$2 billion each year.²¹⁷

China also exports Tibet's valuable old-growth logs to Japan at premium prices.²¹⁸ In the Kongpo region of U-Tsang "thousand year-old cypress and cedar forests are indiscriminately logged and sold for a profit."²¹⁹ Locally, the Chinese government pays ethnic Chinese U.S.\$22 per cubic meter for these old-growth logs, and then sells them in Japan for U.S.\$1,204 per cubic meter.²²⁰ Illegal logging for export may exert the greatest pressure on Tibet's remaining old-growth forests.²²¹ Because the ethnic Chinese carry out the logging of Tibet, Tibetans have no choice in the decisions to harvest and export timber. Moreover, the Tibetans reap none of the economic rewards from the international resale of the harvested lumber.

As a result of more than thirty years of intensive exploitation, many Tibetan forests have been razed. In 1985, Tibet's forest coverage was one half of what it had been prior to China's military build-up.²²² In the easternmost part of Tibet, 68% of the forest cover has been removed.²²³ Travelers in Kham observed a "ceaseless stream of filled lumber trucks . . . passing miles of now barren land as they head for lowland China . . . [and] rivers so

214. See generally TIBETAN ENV'T & DEV. NEWS (Int'l Campaign for Tibet, Washington, D.C.), Dec. 1991–Sept. 1993.

215. S.D. Richardson, *The Forest Economy of Tibet*, 67 COMMONWEALTH FORESTRY REV. 256 (1988).

216. HE BOCHUAN, *supra* note 146, at 27.

217. DIIR 1992 ENV'T RPT., *supra* note 105, at 52.

218. *Id.* at 53.

219. *6th Tibet People's Political Consultative Conference, Lhasa*, CONF. NEWSLETTERS Nos. 7 and 14, reprinted in GREEN TIBET, ANNUAL NEWSLETTER OF THE ENV'T & DEV. DESK (Dept. Info. & Int'l Relations, Cent. Tibetan Admin.), 1995-1996, at 20.

220. *Id.*

221. DIIR 1992 ENV'T RPT., *supra* note 105, at 52.

222. LI WENHUA, *supra* note 211, at 95. Another author notes that although it is very difficult to find reliable figures quantifying deforestation (a review of Chinese government statistics showed that the same numbers were used for the amount of forest cover in Tibet between 1973 and 1988), government figures, academic studies, and eyewitness observations together show that there was a 50% reduction of forest cover on the Tibetan plateau between 1950 and 1985. Daniel Winkler, *The Forests of the Tibetan Plateau: Human Impact and Deforestation in the Past and Present*, Proceedings of the 7th Seminar of the International Association for Tibetan Studies (Austria, June 1995).

223. LI WENHUA, *supra* note 211, at 95.

jammed with logs that the water is barely visible."²²⁴ Two others counted 467 logging trucks headed towards Chengdu, China along the main road during a ten-hour period.²²⁵ They further reported that "many trucks carried no more than three to five massive logs . . . one giant log filled an entire truck—it would have taken three people to encircle its circumference."²²⁶ Another observer on the main road out of Kham reported being passed by a logging truck every three minutes carrying logs between two to four feet in diameter and twenty to thirty feet long.²²⁷ Tibetans have no right to control the rate at which their native lands are logged, and lack input into which areas are harvested.

If deforestation continues at its current rate, Tibet's forests will be completely eliminated within fifteen years.²²⁸ Low seedling survival rates compounded by slow growth rates have made reforestation efforts largely unsuccessful.²²⁹ As one researcher noted, Tibet's old-growth forests are a "non-renewable resource" because clear-cutting prevents regeneration of seedlings in the climate extremes of the high plateau.²³⁰ Moreover, non-native, quick-growing species such as poplar and willows are used in reforestation efforts, so the bio-diversity of Tibet's native forests will not be replaced.²³¹

The ecological consequences of the rapid deforestation of Tibet's old-growth forests are just beginning to be understood. Deforestation of the steep slopes along the river valleys has caused rapid and severe soil erosion, siltation of streams and rivers, and flooding. Chinese forestry officials now classify one-third of the river valleys logged in this area as semi-desert due to soil erosion.²³² "It is nearly impossible to find a big tract of forest along the sides of the four main streams in the Tibetan area," notes one Chinese researcher.²³³

Deforestation is also responsible for the inability of the previously forested areas to retain moisture.²³⁴ Rain and snow, once stored by and gradually re-

224. Nicholas Meysztowicz, *Chinese Settlers of Tibet Bring Concrete In and Take Timber Out*, GUARDIAN (London), Apr. 24, 1990, reprinted in INT'L CAMPAIGN FOR TIBET, ESSENTIAL ENVIRONMENTAL MATERIALS ON TIBET 13 (1991).

225. *Chinese Furiously Plundering Tibetan Timber*, GREEN TIBET, ANNUAL NEWSLETTER OF THE ENV'T & DEV. DESK (Dept. Info. & Int'l Relations, Cent. Tibetan Admin.), 1995-1996, at 14.

226. *Id.*

227. VANYA KEWLEY, TIBET: BEHIND THE ICE CURTAIN 286 (1990).

228. LI WENHUA, *supra* note 211, at 94.

229. *See Id.* at 4.

230. S.D. Richardson, *supra* note 212 at 254 (1988). Richardson cites the high diurnal temperature changes, high soil surface temperatures, and early frost as some of the conditions that make regeneration difficult.

231. DIIR 1992 ENV'T RPT., *supra* note 105, at 51.

232. Dong Zhiyong, Ministry of Forestry, People's Republic of China, *Present Situation of Forest Administration in South-West Region of China and its Role in River Basin Management*, Proceedings of the International Workshop on Watershed Management (Oct. 1985), reprinted in INT'L CAMPAIGN FOR TIBET, ESSENTIAL ENVIRONMENTAL MATERIALS ON TIBET 10-13 (1991).

233. *Id.*

234. Jiang Youxu, *Ecological Consequences of Overharvesting of Subalpine Coniferous Forest, Sichuan Province, China*, in HUMAN IMPACTS AND MGMT. OF MOUNTAIN FORESTS 59-65 (T. Fujimori & M. Kimura eds.,

leased from dense old-growth forests, now quickly runs down denuded slopes. Flood damage is greater and more frequent; flood stages are higher; and the flood peak appears faster after storms.²³⁵ The frequency of flood disasters in the Tibetan areas of Western Sichuan province has risen from one in fifteen years to one in five years.²³⁶

Likewise, during the dry season, stream flow has been decreasing. The winter flow measured in the Min River in Kham, for example, is 1/42 of its 1930s level.²³⁷ The lack of water during the dry season has caused serious changes in relative humidity, increased daily temperature range, and heightened frost frequency.²³⁸ Consequently, agricultural production in the region has been stifled.²³⁹

Chinese forestry practices in Tibet violate the grounding principle of environmental human rights that people have the right to self-determination. Tibetans lack control over where logging takes place. They have no input into the rate at which logging occurs, and cannot prevent the export of lumber to foreign nations. Moreover, Tibetans possess no control over the disposition and re-planting of their denuded forests. All of these instances implicate the broader denial of the right to self-determination, as well as the corresponding right to the use of natural resources that "does not impair the rights of future generations to meet equitably their needs" as provided in Principle 4 of the Draft Declaration.²⁴⁰

Woser Tulku Tenzin Gelek reported that after opposing the exploitation of Kham's natural resources, he received the following warning from the Chinese District Officer:

No matter what you say, whether you protest or not, we have decided to exploit it [the land and its resources]. Even if Tibet gets independence, that day it will become empty. And on that day we will return to our country.²⁴¹

B. Procedural Human Rights: Environmental Due Process

Procedural rights are a necessary complement to the substantive environmental human rights discussed above. These procedural rights provide an essential link to substantive rights because they enable the enforcement of

1987).

235. Wilhelm Wohlke et al., *Agriculture, Soil Erosion, and Fluvial Processes in the Basin of the Jialing Jiang, Sichuan Province, China*, 17(1) *GEOJOURNAL* 103–15 (1988).

236. Zhao Ang, *The Crisis of the Forest Industry in the Tibetan Area of Sichuan and Ways Towards Positive Development*, 12(1) *JINJI DILI (ECONOMIC GEOGRAPHY)* 55–61 (Bai Linhan trans., 1992).

237. *Id.*

238. Jiang Youxu, *supra* note 234.

239. *Id.*

240. Popović, *supra* note 21, at 512.

241. Transcript of Public Hearing on Tibet's Environment, Kashag Hall, Gangchen Kyishong, Dharamsala, India (Nov. 6, 1991) reprinted in *DIIR 1992 ENV'T RPT.*, *supra* note 105, at 88.

those substantive rights. The procedural rights to be informed of and participate in decisions that effect the environment have come to be known as "environmental due process."²⁴²

The Universal Declaration of Human Rights recognizes that environmental due process rights are as important to the full realization of human rights as substantive protections. Denial of these fundamental rights of freedom of association, of opinion and of expression, and of the right to take part in government, endangers the protection of substantive human rights.

The Universal Declaration of Human Rights codifies these procedural rights in Article 8 (effective remedy); Article 19 (freedom of opinion and expression); Article 20 (freedom of association); Article 21 (right to take part in government); and Article 26 (right to education).²⁴³ Articles 2(3), 19, 21, 22, and 25 of the International Covenant on Civil and Political Rights set forth these same procedural guarantees as fundamental human rights.²⁴⁴ Similarly, Part III of the Draft Declaration sets out the procedural aspects of human rights necessary for the full realization of environmental rights.²⁴⁵ These rights are enabling rights; they make it possible for people to contribute actively to the protection of their environment.²⁴⁶ Likewise, the absence of respect for these rights not only increases the likelihood of environmental degradation, but also increases the chances that such damage will be irreversible.

Three of the major rights embodied in environmental due process are the right to receive information, the right to impart information (freedom of expression), and the right to participate in environmental decision-making.²⁴⁷ The right to participate in decision making is a basic human right that applies to all substantive areas, including the environment. Meaningful participation in environmental decision-making also requires being informed of actions with environmental effects, having a basic understanding of environmental issues, and having the right to express one's opinion regarding environmental affairs. It also requires that an effective means of redress be available to the victims of both environmental harm and violations of procedural rights.

Access to impart and receive environmental information, as well as the right to participate in environmental decision-making, have increasingly been regarded as international and national legal norms.²⁴⁸ Principle 23 of the World Charter for Nature exemplifies this trend: "all persons, in accordance with their national legislation, shall have the opportunity to partici-

242. SCLDF 1992 REPORT TO THE SUB-COMMISSION, *supra* note 37, at 45.

243. Universal Declaration of Human Rights, *supra* note 75.

244. International Covenant on Civil and Political Rights, *supra* note 76.

245. Popović, *supra* note 21, at 544-64.

246. *Id.* at 544.

247. Shelton, *supra* note 25, at 117.

248. See Neil A.F. Popović, *The Right to Participate in Decisions That Affect the Environment*, 10 PACE ENV'T L. REV. 683 (1993).

pate, individually or with others, in the formulation of decisions of direct concern to their environment and shall have access to means of redress when their environment has suffered damage or degradation."²⁴⁹ The Right to Development also contains a procedural component, which provides for the right to popular participation in the process of development, and requires respect for human rights and fundamental freedoms as part of the development process.²⁵⁰ Similarly, the Rio Declaration declares that "[e]nvironmental issues are best handled with the participation of all concerned citizens, at the relevant level."²⁵¹

In its study, the U.N. Sub-Commission on Prevention of Discrimination and Protection of Minorities found that the rights to information, education, popular participation, and freedom of association are indispensable elements of a human right to the environment.²⁵² The Sub-Commission's Special Rapporteur found that these rights are essential to the protection and enforcement of the substantive rights to environmental protection.²⁵³ Only when procedural rights are honored is collective action in support of environmental protection possible.²⁵⁴ For example, in order to influence the program of timber harvesting, Tibetans require a full range of procedural rights. Such influence requires access to information about proposed logging, education about the environmental harms that result from such logging, and the ability to influence decision-making through the exercise of association and participation in government. Likewise, procedural guarantees of information and political participation, without being linked to substantive international environmental standards, will not effectively guarantee environmental protection.²⁵⁵

The environmental dimension of these procedural human rights constitutes the foundation of environmental protection because without these procedural protections, no protection of substantive environmental rights is possible. The following examples provide a striking illustration of the degree to which substantive environmental human rights violations follow in the wake of violations of these environmental due process guarantees.

1. *The Right to Access to Environmental Information*

Principle 15 of the Draft Declaration guarantees the right to environmental information.²⁵⁶ China has banned the foreign press from Tibet, and

249. World Charter for Nature, G.A. Res. 37/7, U.N. GAOR, 37th Sess., Supp. No. 51, at 18, U.N. Doc. A/37/51 (1982).

250. *Declaration of the Right to Development*, *supra* note 41, art. 8, para. 2, and art. 6.

251. *Rio Declaration*, *supra* note 48, princ. 10.

252. *Sub-Commission Final Report*, *supra* note 32, at 50–55.

253. *Id.*

254. *Id.* at 55.

255. E.g., Shelton, *supra* note 25 at 120; Popović, *supra* note 248, at 685 ("maximizing participation does not necessarily maximize environmental protection").

256. Popović, *supra* note 21, at 544.

significantly restricts the travel of Westerners in the region. These conditions, compounded by reprisals against Tibetans observed speaking to any Westerner on such subjects, make it exceedingly difficult to obtain accurate information about conditions in Tibet.²⁵⁷ As a result, some of the best information available comes from Tibetans who fled Tibet and now live in exile in India and Nepal.

Dolmakyap, a Tibetan nomad recently arrived in India from Amdo, described how large groups—sometimes as many as 1700 people at a time—of Chinese-Muslims from a Chinese city “far away and over a high pass,” would come several times each year to cut trees in a forest known as “Kagya.”²⁵⁸ Dolmakyap did not know why the Chinese-Muslims were allowed to cut the trees and take them back to China.²⁵⁹ He then described how the People’s Liberation Army that “guards” the forest, and whose members “would shoot and kill a Tibetan who cut down a tree,” also cut and loaded the trees onto trucks headed east towards China.²⁶⁰ “We are all very worried about the forests being finished,” he said, “but when we see the Chinese people cutting the forest we can do nothing.” He explained that, “[i]f we fight, they shoot us. If we were to tell the Government officials about the Chinese-Muslims coming to cut the trees, they would do nothing.”²⁶¹ He continued, “My father remembers the Chinese-Muslim people coming each year since 1958 My grandfather has said that when he was young, every place in Kagya was covered with growing trees; now there are no trees left in places that used to be thick forest.”²⁶²

Dolmakyap’s story exemplifies both the substantive and procedural aspects of the lack of the right to environmental information in Tibet. Tibetans do not know why their forests are being cut down, nor do they know where the logged timber is going. Likewise, very few people outside these remote regions of Tibet know of this widespread logging or the environmental damage it generates. This lack of information prevents Tibetans and the international community from taking protective action against such exploitation.

Tibetans’ lack of information regarding China’s nuclear program has exacerbated the substantive environmental human rights violations. For example, when International Campaign for Tibet observers interviewed Tibetans

257. See EUR. PARL. DOC. A3-0369/92 (Dec. 15, 1992) reprinted in INTERNATIONAL RESOLUTIONS AND RECOGNITIONS ON TIBET, *supra* note 7, at 14 (stating that it “[a]bhors the censorship of communications and the limitations imposed on journalists, including denial of entry and expulsion, and the confiscation of documents and films from Western travelers and journalists.”); see also KEWLEY, *supra* note 220 (eye-witness account by BBC correspondent working under-cover to collect testimonies and footage for a documentary film, “Tibet: A Case to Answer,” which was aired on Nov. 9, 1988 by the BBC).

258. Interview by Department of Information and International Relations, Central Tibetan Administration of Dolmakyap, Dharamsala, India. (Oct. 20, 1996) (notes on file with author).

259. *Id.*

260. *Id.*

261. *Id.*

262. *Id.*

from villages near Lake Kokonor, the villagers expressed unhappiness about the military complexes, but they knew nothing about the complex's use as a nuclear weapons development facility.²⁶³ The inability to get information on health and living conditions out of Tibet prevents any thorough investigation of China's practices. In July of 1991, for example, a small protest was reported that took place in Xining by thirty Tibetans who had traveled from the area near Lake Kokonor. Their slogans read: "Return our snowlands. Give us back our grasslands. We are dying of hunger."²⁶⁴ The conditions that sparked the protest remain unknown.²⁶⁵ The fact that no information exists about the root cause of these protests speaks volumes about the difficulty of getting accurate information out of Tibet.

Article 8 of the Universal Declaration of Human Rights guarantees the right to an effective remedy against human rights violations.²⁶⁶ Principle 20 of the Draft Declaration likewise provides for the "right to effective remedies and redress in administrative or judicial proceedings for environmental harm or the threat of such harm."²⁶⁷ In Tibet, however, this right to effective remedy does not exist, as displayed by the following examples. Jamyang, a Tibetan villager imprisoned by the Chinese after objecting to the arrest of his brother, fled Tibet and was interviewed in Dharamsala, India. He explained that in his home region in Kham, "there are thousands of [Chinese] people who cut down trees. The trees were very good, really tall and big. Now, if a Tibetan cuts a tree, he will be imprisoned."²⁶⁸ A Western observer travelling in Kham and passing through miles of clear-cuts, saw notices attached to the few trees left standing along side the road stating simply: "Tibetans not allowed to cut trees."²⁶⁹ Tibetans not only have no input into the development of the laws that limit the use of their own forests, but they also lack any means to gather information on why such policies exist.

Tibetans lack an effective remedy for violation of their environmental due process rights. A clear illustration of this lack of effective remedy can be found in reports—confirmed by surviving prisoners—that over 1000 political prisoners from the notorious prison of Powo Tamo in U-Tsang were forced to cut down old-growth trees.²⁷⁰ Once again, Tibetans have no recourse to prevent this forced prison camp logging; as a result, a once heavily forested landscape has become "completely barren and bleak."²⁷¹ Without effective remedies for these sorts of violations of civil and environmental

263. *Id.* at 34.

264. *Id.* (citing TIBET INFORMATION NETWORK NEWS UPDATE, Sept. 20, 1991 at 1.)

265. *Id.*

266. Universal Declaration of Human Rights, *supra* note 75, art. 8.

267. Popović, *supra* note 21, at 560.

268. Interview by Department of Information and International Relations, Central Tibetan Administration with Jamyang, Dharamsala, India (1995) (notes on file with author).

269. KEWLEY, *supra* note 227, at 205.

270. *Id.* at 283. See also DIIR 1992 ENV'T RPT., *supra* note 105, at 49.

271. KEWLEY, *supra* note 227, at 283.

rights, Tibetans have no mechanism to prevent the deforestation they have witnessed.

2. *The Right To Impart Environmental Information: Freedom of Expression*

Article 19 of the Universal Declaration of Human Rights guarantees the right to freedom of opinion and expression.²⁷² Principle 16 of the Draft Declaration guarantees the "right to hold and express opinions, and disseminate ideas and information regarding the environment."²⁷³ The denial of this enabling right to the freedom of expression occurs frequently in Tibet, as exemplified by the testimony of Phuntsok Chosang, a Tibetan who protested mining near his village.

Phuntsok Chosang pasted wall posters in his village in 1990 protesting China's plans to build roads for a new mine in Gyamo Shang in central Tibet, 73 km east of Lhasa.²⁷⁴ Over the next year, Phuntsok put up posters on two other occasions that were openly critical of China's mining operation; One poster declared that "Chinese cannot exploit our natural resources."²⁷⁵ Within three months, Phuntsok was taken from his home, arrested, placed in solitary confinement, and beaten; he also had iron rods jammed into his mouth during daily interrogations.²⁷⁶ Such vicious reprisals severely compromise the right to freedom of expression, not only by silencing the speaker, but also by intimidating those who would speak out on environmental issues.

The fundamental freedom to associate peacefully with others coincides with the right to express opinions regarding environmental harm. The Chinese have restricted this right, just as they have with freedom of expression, as exemplified by the events at "Lop Nor," a site located west and north of the Ninth Academy in Xinjiang Province. China has conducted nearly all of its nuclear tests for the past thirty years at Lop Nor.²⁷⁷ Between 1964 and 1993, the detonation of thirty-nine nuclear devices at Lop Nor has been well documented;²⁷⁸ four more nuclear tests were reported during 1994 and 1995.²⁷⁹ According to the *Voice of East Turkestan*, a newspaper published in Kazakhstan, thousands of people were imprisoned for demonstrating against

272. Universal Declaration of Human Rights, *supra* note 75, art. 19.

273. Popović, *supra* note 21, at 548.

274. Interview by Tibetan Center for Human Rights and Democracy with Phuntsok Chosang, Dharamsala, India (Apr. 8, 1997), reprinted in *Testimony of Phuntsok Chosang, Environmental Activist and Prisoner of Conscience*, TIBETAN ENV'T & DEVELOPMENT NEWS, Aug. 1997, at 5.

275. *Id.*

276. *Id.* Phuntsok was released from prison after 14 months. He sustained permanent injuries in prison and ultimately made his way out of Tibet into the refugee community of Dharamsala, India.

277. Richard Fieldhouse, *China's Mixed Signals on Nuclear Weapons*, BULLETIN OF ATOMIC SCIENTISTS, May 1991, at 40 (May 1991).

278. Robert Norris et al., *British, French and Chinese Nuclear Weapons*, 5 NUCLEAR WEAPONS DATA-BOOK 421 (1993).

279. *China Snubs the World with Nuclear Tests*, GREEN TIBET, ANNUAL NEWSLETTER OF ENV'T & DEV. DESK, (Dept. Info. & Int'l Relations, Cent. Tibetan Admin.), 1995-1996, at 22.

nuclear testing at Lop Nor in 1989.²⁸⁰ Such severe reprisals for the mere exercise of free association effectively silences any expressions of a difference of opinion on environmental issues. Faced with imprisonment or torture for speaking out, few individuals will give voice to their concerns. Without the ability to speak out, Tibetans have little means to communicate the destruction they witness and no method to protect the substantive rights that are being violated.

3. *The Right to Participation in Decision-Making*

Principle 18 of the Draft Declaration provides for the right to “active, free, and meaningful participation in planning and decision-making activities and processes that may have an impact on the environment.”²⁸¹ The systematic exclusion of Tibetans from self-governance or environmental decision-making has played a decisive role in allowing deforestation at the pace and scope that has occurred in Tibet.

Denial of this fundamental freedom means that Tibetans are denied a voice in how Tibet’s forests are logged. Tibetans have no mechanism to challenge the Chinese practice of clear-cutting Tibet’s native old-growth forests. One Tibetan environmentalist was reportedly imprisoned for two and one-half years for speaking out against deforestation.²⁸² A non-governmental organization collecting information in Kham reported a “pervasive fear” among local Tibetans when talking with them about the deforestation of their lands.²⁸³

Similarly, China’s repressive agriculture policy in Tibet causes violations of environmental due process. Without respect for the fundamental freedom of civil participation, adequate levels of subsistence are rarely guaranteed.²⁸⁴ A review of the implementation of the U.N.-funded World Food Program (Project 3357) in Lhasa valley illustrates how failing to involve Tibetans in the development of the program has undermined the food security of the entire region.

The U.N. World Food Program’s plan called for most of the project labor to be supplied by Tibetans living within Lhasa valley.²⁸⁵ The project planners intended to “improve the local social and economic conditions with

280. NUCLEAR TIBET, *supra* note 86, at 34. A Chinese academic formerly involved in nuclear tests there and now living in the United States, reported that 400,000 people live around the test area, some within 150 kilometers, and that these people have been experiencing notable ill health effects. *Id.*, (citing S.L. Law, *Xinjiang Residents Sick from N-Tests: Report*, SOUTH CHINA MORNING POST, Nov. 4, 1991).

281. Popović, *supra* note 21, at 554.

282. TIBETAN ENV’T & DEV. NEWS (Int’l Campaign for Tibet, Washington, D.C.), Dec. 1991–Sept. 1993.

283. DIIR 1992 ENV’T RPT., *supra* note 105, at 38.

284. *See generally* HUMAN RIGHTS WATCH, *INDIVISIBLE HUMAN RIGHTS: THE RELATIONSHIP OF POLITICAL AND CIVIL RIGHTS TO SURVIVAL, SUBSISTENCE, AND POVERTY* (1992) (providing an analysis of the historical relationship between famine and denial of civil and political rights).

285. FORBES & MCGRAHANAN, *supra* note 151, at 17.

little interference with traditional lifestyles.”²⁸⁶ But because Tibetans lack political self-determinacy, however, China imported large numbers of Chinese settlers—many from the distant Gansu Province on the eastern border of Tibet — to build Project 3357’s irrigation channels.²⁸⁷ These Chinese settlers were paid 20 to 30 *yuan* per day.²⁸⁸ These Chinese laborers often hired local Tibetans for four to five *yuan* a day to do their work for them.²⁸⁹ Tibetans who have reached Tibetan refugee camps in India have recounted their experiences with the U.N. Project. Among them is Tempa, a villager from Lhasa valley:

A monthly salary working for World Food Program is a sack of flour (equivalent to 100 *Yuan* although the official rate is 50 *Yuan*), 2 kg of butter, and 150 *yuan*. To get the salary I and other Tibetans had to pay a huge bribe to the concerned officials. The majority of flour is rotten and the Chinese blame the U.N. for this.

In 1991, 1,000 *pakungtu* [Chinese word for contract workers] were brought in to do the Project work instead of Tibetans in Medro Rinchenling. In Meldro Drigund, 3,000 *pakungtus* were brought in to work on the project. Many Tibetans were employed by the *pakungtus* to do their work at 5 *yuan* a day.²⁹⁰

Dawa, a farmer from an area just east of Lhasa, recounted a similar experience:

Participation in the 3357 work was compulsory—each household was assigned a number of work-days to be completed. We were told that we would be paid with money, butter and wheat. After the first period of work was finished, nobody got paid more than a small sum of money. We were issued with certificates listing the payment that we were supposed to receive—but nobody ever got what was listed in them.²⁹¹

286. *Id.*

287. ENV’T & DEV. DESK, DEPT. OF INFO. & INT’L RELATIONS, CENT. TIBETAN ADMIN., REPORT OF ANDERS HOJMARK ANDERSON ON LHASA AND SHIGATSE (OCT.-DEC. 1993) (1993) [hereinafter ANDERSON REPORT].

288. *Id.*

289. *Id.*

290. Interview by Department of Information and International Relations, Central Tibetan Administration with Tempa, Dharamsala, India (Jan. 1994) (notes on file with author) [hereinafter Interview with Tempa]. Tenzin from Lhasa valley had a similar account: “My brother worked on the U.N. Project in its first year. My brother was promised money, butter and wheat as payment for his work planting seedlings and constructing water channels. When his work was finished, however, he was given only 3 *yuan* per day, and no wheat or butter as promised. No one else was given any wheat or butter either.” Interview by Department of Information and International Relations, Central Tibetan Administration with Tenzin, Dharamsala, India (Jan. 1994) (notes on file with author) [hereinafter Interview with Tenzin].

291. Interview by Department of Information and International Relations, Central Tibetan Admini-

The lack of a right to participate in the planning and implementation of the project was exacerbated by the local Chinese project administrators, who were well-prepared for the regular monitoring and evaluation visits by U.N. officials from the World Food Program. Lobsang Ngodup, a monk formerly from the Meldro-Gonkar region within the Project 3357 area, described one of their visits:

When U.N. officials came to inspect the project, all the *pakungtus* were made to run up into the mountains and hide there while Tibetans were brought to the work-site and made to look like they were employed on the project. On that day, Tibetans were paid a high wage of 12–15 *yuan*. When the visiting UN officials left, the *pakungtus* returned and carried on as before.

When the local government officials came to inspect the work, they warned the Tibetans that they should say they get 20–30 *yuan* per day and in addition that they get rice and flour. In case they did not respond, they [the Chinese officials] would imprison them for 2–3 years and even threatened them with execution.²⁹²

Tenzin, another Tibetan villager in exile, described his brother's experience of the U.N. delegation's visit:

One day a local government official arrived. He brought small booklets to each of the persons who had worked for 3357. The booklets, "*lag-deb*," (payment book), listed how much each of them should have received as payment for their work and all included butter and wheat although nobody had actually received it. The official told the workers that if officials from the U.N. came to the village, they should show them the booklets. He said that nobody was allowed to say they didn't receive the butter or wheat. None of the workers complained because they were afraid of what might happen to them.²⁹³

Dawa recounted his memory of the U.N. visit:

Fifteen families were hand-picked by the local authorities to attend a meeting just one day before a U.N. delegation came. This was just after the Tibetan New Year in February of 1992. At the meeting, representatives of each of the fifteen families were told by officials that the U.N. delegation would be visiting them on their

stration with Dawa, Dharamsala, India (Jan. 1994) (notes on file with author) [hereinafter Interview with Dawa].

292. Interview by Department of Information and International Relations, Central Tibetan Administration with Lobsang Ngodup, Dharamsala, India (1993) (notes on file with author) [hereinafter Interview with Lobsang Ngodup].

293. Interview with Tenzin, *supra* note 290.

tour. They were not allowed to say all kinds of things to the delegation members, only what they had been told to say. The families had been given one empty and one full tin of butter. People at the meeting were told that they should tell the U.N. inspectors that they had already eaten the butter from the empty tin and still had the full one left. The officials told them they were not allowed to eat the tin of butter that they had been given, unless they paid for it. They were also told that they should tell the U.N. delegation that the wheat they had received from the U.N. had been used for making the traditional Tibetan New Year breads.²⁹⁴

By duping the U.N. observers into believing that Tibetans had participated in the project, the Chinese supervisors succeeded in preventing the actual conditions from being disseminated, thereby preventing any chance for Tibetans to gain a measure of control in the project.

Unable to communicate privately to U.N. officials due to the absence of a Tibetan translator, and threatened with imprisonment and execution for failing to act their scripted part before the U.N. delegation, it is not surprising that the U.N. officials saw only what Chinese officials intended them to see.²⁹⁵ With no meaningful oversight by the U.N. and no mechanisms available to Tibetans to participate in decision-making, abuse of Project 3357's goals and funds was inevitable. Villager Lobsang Ngodup remembered that the "*Meldrogongkar* government [one of the counties in the Project area] collected healthy yaks, goats, and sheep from the Tibetans living in the area for the expense of Project 3357 . . . [then] the government slaughtered the yaks to feed the '3357' officials."²⁹⁶ Lobsang recounted the impunity with which Chinese settlers act towards Tibetans:

The *pakungtus* rode their vehicles straight into the standing crops of Tibetan farmers and openly plucked the crops that were ready for harvest for their consumption. Many losses were there as a result of these acts of plundering and vandalism. They rode their vehicles through the fields of farmers as some kind of entertainment. When the Tibetan farmers pleaded them to take their vehicles off the field, they were beaten up. It was not possible for them to report their complaints to the Chinese officials.²⁹⁷

International funding of agricultural development projects in Tibet lent legitimacy to the Chinese policies that undercut Tibetans' right to self-determination. Due to the strict conditions placed on project design by the Chinese, funders could not hold their Chinese counter-parts accountable for

294. Interview with Dawa, *supra* note 291.

295. Dawa, a Tibetan villager in exile, reported that, "When the U.N. delegation came, they did not speak Tibetan and did not bring their own interpreters." Interview with Dawa, *supra* note 291.

296. Interview with Lobsang Ngodup, *supra* note 289.

297. *Id.*

their actions, and were not able to include Tibetans in the design and implementation of the project. China's repressive administration prevented a Tibetan voice from emerging that could have told of the blatant discriminatory practices to the international funding community. This illustrates the ultimate harm that can result from elevating subsistence concerns over the due process right to participate in environmental decision-making.

Despite its laudable goals, the U.N. World Food Program Project in Lhasa valley failed in many respects. Instead, the project was subverted to support China's broader agricultural policy goals of absorbing Tibet into modern China. One of the problems with the program's design and implementation was its failure to involve Tibetans at every stage. Not only did this contribute to silencing Tibetans affected by the development project, but it also precluded utilization of the local knowledge of Tibetan agriculturalists, accumulated over many generations of subsistence farmers.

The Project planner's faith in the superiority of cement irrigation channels over traditional earthen channels illustrates how the project failed to take advantage of local knowledge and thereby compromised the effectiveness of the entire project. A researcher working in Nyemo County of central Tibet found that:

traditional agricultural-pastoral system is a result of long-term adaptations practiced by the Tibetan people in the specific situation of a highland environment . . . [i]t must be treated as a sound background for any kind of economic development initiative rather than simply presuming that it is backward Many of the experiences of inner China and its conventional models have limited reference here.²⁹⁸

Although cement irrigation channels leak less water, little thought was given to their drawbacks under the conditions on the Tibetan plateau. Unlike earthen irrigation channels, Tibetan farmers cannot repair cement channels without cement. Cement must be imported from afar, and therefore Tibetan farmers cannot afford to purchase it.²⁹⁹ In addition, cement channels are static, and cannot be changed spontaneously to respond to changes in the water level and needs of the fields.³⁰⁰ An independent western observer in the Project area reported that, "Tibetans complained that the project people never asked them how to build the channels, and that they were doing it wrong."³⁰¹ Villagers from the region have commented on the lack of success with cement irrigation channels:

298. Zhang Rongzu, *A Case Study on Mountain Environmental Management, Nyemo County (Tibet)*, (Occasional Paper No. 13, Aug. 1989, International Centre for Integrated Mountain Development (ICIMOD), Kathmandu, Nepal).

299. ANDERSON REPORT, *supra* note 287, at 3.

300. *Id.*

301. *Id.*

After completing the project in Maldro Rinchenling, the *pakungtus* in our area went to Maldro Drigung to work on a similar project. However, the project they completed was of no use to the Tibetans in the area. Soon after, the irrigation system burst out, destroying many standing crops. This was in the sixth Tibetan month (about August) in 1992. More than 12 *kehel* (about 300 lbs.) of grain worth of standing crop were destroyed. My family lost 3 *kehel* (about 90 lbs.). No one dared to try to stop the torrent of water flooding their fields while their standing crop was destroyed before their own eyes. The irrigation system was rebuilt with the same Chinese workers as before. There is still nothing to show for all the U.N. projects that have been going on in our area.³⁰²

Instead of assisting Tibetan farmers' self-sufficient practices, the U.N.'s millions of dollars in aid were successfully channeled to Chinese settlers, with Tibetans bearing the brunt of the costs. By excluding Tibetans from participation in the design, implementation and construction of the project, the Chinese once again succeeded in subverting the Tibetan population's right to participate in environmental decision-making, and thereby turned the development project into a source of environmental concern.

V. CONCLUSION

In Tibet, Chinese violations of environmental due process have allowed widespread environmental degradation. China's repressive administration is able to exploit Tibet's native forests on a massive scale for its own benefit. Industrial clear-cutting has already claimed over half of Tibet's virgin forests to feed China's demand for wood and paper. China has capitalized on several centuries of uninterrupted forest growth, pocketing an estimated U.S.\$54 billion between 1959 and 1985. Denial of the Tibetan peoples' right of self-determination through prolonged military repression has given China free reign over the once-abundant native forests of the Tibetan plateau.

China's use of Tibet for nuclear weapons development, nuclear waste disposal, and uranium mining has violated Tibetans' rights to life, health, and traditional livelihood. The fate of environmental activists such as Phuntsok Chosang, who was imprisoned and tortured for over a year for putting up posters protesting China's plans to mine near his village, demonstrates China's enforcement of silence regarding decisions affecting the environment. China's use of Tibet for its nuclear program illustrates again the connection between substantive human rights violations, environmental degradation, and the violation of Tibetans' civil and political rights.

Food security on the Tibetan plateau is also an environmental human rights issue. Agricultural policy in Tibet is an important component of China's strategy to absorb Tibet into modern China. The goals and imple-

302. Interview with Lobsang Ngodup, *supra* note 292.

mentation of China's agricultural policy violates Tibetans' right to be free from discrimination in decisions that affect the environment. The roots of the discriminatory practices can be traced to the denial of Tibetans' civil and political rights and the denial of their right to self-determination. The violations of the basic human rights to adequate food and traditional livelihood that resulted from international aid projects intended to improve the agricultural productivity of the Tibetan plateau are testimony to the inter-relatedness of substantive human rights and environmental due process rights. These human rights violations demonstrate the error of elevating subsistence concerns over concerns for observance of basic civil rights.

The Principles of the Draft Declaration capture the essential elements of the human rights violations stemming from environmental degradation on the Tibetan plateau during the nearly fifty years of China's military repression of Tibet. The Draft Declaration provides a useful tool for understanding the relationship between denial of basic civil rights and freedoms and the resulting substantive violations of fundamental human rights to life, health, traditional livelihood, and adequate food. This universal language of human rights standards helps describe the impact of environmental degradation in Tibet.

The visibility of massive deforestation, nuclear proliferation and testing, and large-scale crop failures also sheds light on the human rights violations that would otherwise be difficult to assess. The Principles of the Draft Declaration describe in the universal language of human rights measurable limits on environmental degradation in an area that is otherwise devoid of any environmental protection standards. Drawing the connection between human rights violations and environmental harm provides another tool for responding to the dynamic nature of human rights and maintaining the relevance of human rights law in a rapidly changing world.