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THE CONSTITUTIONAL IMPERATIVE OF EQUITABLY  
DISTRIBUTING THE PROCEEDS OF MINERAL RESOURCE  
EXTRACTION FROM CHINA'S ETHNIC MINORITY  
AUTONOMOUS AREAS

LIN FENG\* AND JASON BUHI\*\*

I. INTRODUCTION

The natural resources that humans extract from the environment are the fountainhead of development and prosperity. Their depletion, especially the inequitable consumption of local, non-renewable natural resources by foreign consumers, is a primary cause of unrest and conflict around the world, most poignantly for developing nations. While the social injustices associated with resource exploitation across international boundaries are often scrutinized, the transfer of resource wealth within the boundaries of a nation can be equally controversial and problematic, especially between ethnic groups. China experiences this reality and deploys a unique legal matrix designed to address this issue.

Among Beijing's key priorities are developing its inland western territories, alleviating the systemic inequities of China's meteoric economic development, and fostering harmonious relations between the majority Han and fifty-five ethnic minorities. Economic development has been more rapid in the coastal provinces than in the interior, but that gap is beginning to close. Technological advances and infrastructure improvements are now allowing Chinese engineers to access the vast natural riches of China's western interior, and, with proper governance, the subject regions should prosper.

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However, China's geopolitical evolution has created an important policy consideration: its fifty-five recognized ethnic minorities largely inhabit the vast majority of territory where the abundant natural resources remain. In many cases, the ethnic minorities inhabit so-called Ethnic Minority Autonomous Regions (EMARs) wherein they nominally enjoy expanded rights to govern their own affairs. In the interests of social harmony and fundamental fairness, the extraction and exploitation of resources from these areas must be conducted with sensitivity to local conditions.

Indeed, while the central authorities claim exclusive sovereignty over China's natural wealth, the actual pattern of resource distribution between the central and local governments reflects a more nuanced balancing of interests. Examining this relationship exposes the extent of practical autonomy and political dignity enjoyed at each level, and yields the conclusion that the central authorities should continue to seek to provide fair and direct compensation for non-renewable resources extracted from all of the EMARs. Indeed, further compensation reform is imperative under existing Chinese law. Article 122 of the Chinese Constitution, several articles of the Law on Regional Ethnic Autonomy (LREA), the political commitment to socialism, and the Western Development Strategy all provide a strong theoretical foundation for a more equitable distribution pattern. The 2010 resource tax reform promulgated for the benefit of the Xinjiang EMAR provides a promising prototype for tangible policies that should be implemented nationwide.

This article specifically focuses upon the legal regime governing resource extraction from China's EMARs. Section II will provide a brief introduction of the basic geographical overlap between China's valuable, non-renewable natural resources and its ethnic minority population concentrations. This section will also introduce the legal framework for the EMARs. Next, Section III will explore the current legal regime governing mineral rights, beginning with the national Constitution and then tracing the highest laws promulgated by the National People's Congress and State Council. Section III also will discuss the current distribution of proceeds from resource taxes and mineral compensation fees between the central and local governments, and introduce the new Xinjiang resource tax reform. Section IV will assess the status quo vis-à-vis the mandates of the Chinese Constitution, the political commitment to socialism, the LREA, and the decade-old Western Development Strategy (WDS) initiative. As espoused in Section V, this exercise reveals that Beijing has a rare opportunity that any government should welcome—the opportunity to weave together a comprehensive set of policies that can, in concert, achieve many of its developmental priorities.

## II. OVERVIEW OF NATURAL RESOURCES IN AND THE FUTURE DEVELOPMENT OF CHINA: THE OVERLAP OF MINERALS AND MINORITIES

### *A. East v. West: Haves and Have-nots*

China is often divided into eastern and western halves to demonstrate its unbalanced endowments and uneven march toward modernization. In 1933, geographer Hu Huanyong drew a line from Heihe, Heilongjiang, in the northeast, to Tengchong, Yunnan, in the southwest, splitting China into halves—the haves and have-nots.<sup>1</sup> According to contemporary statistics, the region west of the line comprised 57% of China's total land area but was inhabited by only 4% of its total population. Demographic change was marginal over the subsequent seventy-five years despite the great socio-political turbulence. A 2002 update reported that the area west of the Heihe-Tengchong line then contained only 6% of China's total populace.<sup>2</sup>

While the Heihe-Tengchong line remains convenient for simple introductory and visualization purposes, China's modern administrators divide the country into three more nuanced regions—eastern,<sup>3</sup> central,<sup>4</sup> and western.<sup>5</sup> First introduced in the Seventh Five-Year Plan (1986-1990), this delineation classifies Chinese provinces based on their distance from the eastern seaboard and comparative level of development.<sup>6</sup> The western region originally comprised the administrative units of Gansu, Guizhou, Ningxia, Qinghai, Shaanxi, Sichuan, Xinjiang, Xizang (Tibet) and Yunnan.<sup>7</sup> However, the west was expanded to twelve administrative units in 1999 with the announcement of the WDS.<sup>8</sup> Chongqing became China's fourth provincial-level municipality in 1997, and the Inner Mongolian and Guangxi autonomous regions were transferred to benefit from special

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<sup>1</sup> DEVELOPING CHINA'S WEST: A CRITICAL PATH TO BALANCED NATIONAL DEVELOPMENT 4-7 (Y.M. Yeung & Shen Jianfa eds., 2004). That line has become known variably as the Hu Huanyong line or the Heihe-Tengchong Line (黑河-腾冲线, *Hēihé-Téngchōng xiàn*).

<sup>2</sup> Barry Naughton, *The Chinese Economy: Transitions And Growth* 18-19 (2007).

<sup>3</sup> YEUNG & JIANFA, *supra* note 1, at 3-4. ("The eastern region consists of [twelve] provincial units along China's eastern shore, namely, Liaoning, Hebei, Beijing, Tianjin, Shandong, Jiangsu, Shanghai, Zhejiang, Fujian, Guangdong, Guangxi[,] and Hainan.")

<sup>4</sup> *Id.* at 4. ("The central region [originally] consist[ed] of the [nine] provincial units of Heilongjiang, Jilin, Inner Mongolia, Shanxi, Henan, Anhui, Hubei, Hunan[,] and Jiangxi.")

<sup>5</sup> *Id.* ("The western region consists of the [nine] provincial units of Shaanxi, Gansu, Ningxia, Quinhai, Xinjiang, Sichuan (including Chongqing), Yunnan, Guizhou[,] and Tibet.")

<sup>6</sup> *See id.*, at 3.

<sup>7</sup> *Id.* at 4.

<sup>8</sup> YEUNG & JIANFA, *supra* note 1, at 4.

developmental privileges.<sup>9</sup> As such, all five of China's EMARs — Guangxi, Inner Mongolia, Ningxia, Tibet, and Xinjiang — are now classified as part of China's western frontier.<sup>10</sup>

### *B. The Distribution of Resources*

Under that soil (and those people) lays the vast majority of China's remaining mineral resources, including its metallic, coal, petroleum, and natural gas reserves.<sup>11</sup> That concentration is undoubtedly a strong comparative advantage for the west in general, and the large EMARs therein specifically.<sup>12</sup> A 2006 report on China's natural resource distribution notes:

Among the total 159 mineral resources with proven reserves throughout the country, 138 can be found in the western region of China. Among them, over [thirty] mineral resources such as coal, petroleum [,] . . . natural gas, leopoldite, chromite, rare earth minerals, phosphorus, nickel, vanadium, manganese, copper, zinc [,] and so forth are plentiful relative to other regions. Xinjiang's prospective reserves of coal rank first in China. The prospecting potential of petroleum and natural gas resources in the Ordos Basin (Inner Mongolia, Ningxia, Shaanxi, [and] Gansu), Talimu Basin (Xinjiang), Zhunge'er Basin (Xinjiang), Tulufan and Hami Basin (Xinjiang), Chaidamu Basin (Qinghai)[,] and Sichuan Basin are also promising. This region is rich in non-ferrous metal resources and a major reserve area for non-metallic mineral resources including mica, asbestos, gypsum, jade[.]

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<sup>9</sup> *Id.*

<sup>10</sup> *See id.* (noting the western region includes six non-autonomous provinces (Gansu, Guizhou, Qinghai, Shaanxi, Sichuan, and Yunnan), five autonomous regions (Guangxi, Inner Mongolia, Ningxia, Tibet, and Xinjiang) and one municipality (Chongqing)).

<sup>11</sup> *See* CHINA'S POLICY ON MINERAL RESOURCES (2003), available at [http://www.gov.cn/english/official/2005-07/28/content\\_17963.htm](http://www.gov.cn/english/official/2005-07/28/content_17963.htm) (last visited Oct. 1, 2011) ("Mineral resources exploration and exploitation are imbalanced between regions. The western regions and the outlying parts of the central regions abound in resources . . . The comparative advantages of the mineral resources in the western regions are conspicuous, and their distribution is concentrated, thus providing the resources foundation for the formation of dominant pillar industries."). Though this paper focuses on non-renewable oil and mineral resources, it should be noted that China's West also contains the majority of China's available farmland, forest, and water resources; *see* YEUNG & JIANFA, *supra* note 1, at 67-71.

<sup>12</sup> *Id.* ("The degree of difficulty in looking for mineral resources by geological means in the eastern regions has increased, and the increase range of proved reserves there has slowed down.").

and magnesite. There are also many kinds of metallic and nonmetallic ores of high grade found in the region such as the chromite deposits in Tibet; nickel, copper and zinc deposits in Gansu; mercury deposits in Guizhou; tin, phosphorus, copper, lead [,] and zinc deposits in Yunnan; potassium, aluminum [,] and asbestos deposits in Qinghai, molybdenum deposits in Shaanxi, and rare earth mineral deposits in Baiyun Ebo of Inner Mongolia. The region is also leading in its output of some key mineral products and non-ferrous metals among its major industrial products. The region's output of nickel, mercury accounts for 99%, 84%, and 72% respectively, of China's total output, while that of phosphorus deposits, aluminum [,] and natural gas accounts for nearly 50% of the country's total output.<sup>13</sup>

Indeed, the Xinjiang EMAR's coal deposits are estimated to account for 40% of China's overall reserves, while the oil and gas fields found in its impressive basins account for 25% and 33% of the national totals, respectively.<sup>14</sup> Xinjiang further contains over 130 kinds of mineral deposits, the nation's most abundant reserves of beryllium and mica,<sup>15</sup> and China's largest copper mine.<sup>16</sup> The Tibet EMAR is also believed to contain extensive reserves of copper, while Inner Mongolia EMAR possesses abundant veins of rare earth, chromium, aluminum, pyrite and zinc.<sup>17</sup> The Guangxi EMAR is rich in gallium, indium, manganese and tin,<sup>18</sup> and the Ningxia EMAR – despite its small size – is reported to possess plentiful coal and natural gas.<sup>19</sup> In addition, “due to the complex geological conditions and mountainous landforms in the west, the region is fairly rich in rock ores of important economic value, such as limestone and red earth for making cement, marble [,] and gypsum for construction [:] and

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<sup>13</sup> *Distribution of China's Mineral Resources (2006)*, CHINAMINING.ORG, <http://www.chinamining.org/Investment/2007-06-28/1183013840d5869.html> (last updated June 6, 2007); see also CHINA'S POLICY ON MINERAL RESOURCES, *supra* note 11.

<sup>14</sup> *Profiles of China Provinces, Cities and Industrial Parks: Xinjiang Uyghur Autonomous Region*, HONG KONG TRADE DEV. COUNCIL, <http://www.hktdc.com/info/mi/a/mpcn/en/1X06BVVK/1/Profiles-Of-China-Provinces-Cities-And-Industrial-Parks/XINJIANG-UYGUR-AUTONOMOUS-REGION.htm> (last updated Jan. 31, 2011).

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> Niu Wenyan & David Y.Q. Chen, *Geographical Background and Sustainable Development*, in YEUNG & JIANFA, *supra* note 1, at 51, 70.

<sup>18</sup> *Id.*

<sup>19</sup> CHINA BRIEFING, BUSINESS GUIDE TO WEST CHINA 51, (Asia Briefing Ltd. 2008)(2008)[hereinafter Bus. Guide].

mirabilite, barite [,] and optical crystal for other industrial uses.”<sup>20</sup> Thus, China’s west generally, and the large EMARs therein specifically, hold the keys to China’s future industrial development.

*C. China’s Ethnic Minority Nationalities and the Ethnic Minority Autonomous Regions*

According to 2005 statistics, the population of China’s fifty-five ethnic minority nationalities – while accounting for only 9.44% percent of the total population – numbers 118 million people,<sup>21</sup> which is a figure greater than the entire populations of Australia, Canada, and Spain combined.<sup>22</sup> Approximately eighty percent of that massive ethnic population lives in China’s western region.<sup>23</sup> This fact has never been lost on China’s leaders. At the creation of the New China, Mao Zedong was keenly aware that:

The population of the minority nationalities in our country is small, but the area they inhabit is large. The Han people comprise [ninety-four] per cent [sic] of the total population, an overwhelming majority . . . And who has more land? The minority nationalities, who occupy 50 to 60 [percent] of the territory. We say China is a country vast in territory, rich in resources and large in population; as a matter of fact, it is the Han nationality whose population is large and the minority nationalities whose territory is vast and whose resources are rich, or at least in all probability their resources under the soil are rich.<sup>24</sup>

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<sup>20</sup> Wenyan & Chen, *supra* note 17, at 51, 70.

<sup>21</sup> *China Population Association, Important Population Data for 60 Years of New China (Han and Minority Populations)*, CHINA POPULATION ASS’N, <http://www.cpachn.org.cn/chinese/Teaching/ShowNews.asp?ID=803> (last visited Sept. 12, 2011).

<sup>22</sup> See THE WORLD FACTBOOK, CENT. INTELLIGENCE AGENCY, available at <https://www.cia.gov/library/publications/the-world-factbook/fields/2119.html> (last visited Oct. 1, 2011) (listing, as of July 2011, the populations of Australia, Canada, and Spain as 21,766,711; 34,030,589; and 6,754,784, respectively).

<sup>23</sup> YANG KAIZHONG, ET AL., THE STRATEGY FOR DEVELOPING CHINA’S WEST 4 (2001).

<sup>24</sup> Mao Zedong, On the Ten Relationships, Speech at the meeting of the Political Bureau of the Central Committee of the Chinese Communist Party (Apr. 25, 1956) (*transcript available at* [http://www.marxists.org/reference/archive/mao/selected-works/volume-5/mswv5\\_51.htm](http://www.marxists.org/reference/archive/mao/selected-works/volume-5/mswv5_51.htm) (last visited Oct. 1, 2011) (stressing the importance of unity between China’s various ethnic groups in order to construct a strong, socialist nation).

The peoples inhabiting these lands enjoy identities long coupled with, yet distinct from the majority Han culture.<sup>25</sup> Their population concentrations and shared developmental concerns led to official recognition as minority groups.<sup>26</sup> The Chinese Communist Party (CCP) began nominally bestowing expanded political rights to its concentrated minority nationalities through the EMAR system even before the realization of their state.<sup>27</sup> The Inner Mongolian EMAR was established within Communist-held territory in 1947, two years before the formal establishment of the People's Republic of China (PRC).<sup>28</sup> Xinjiang was transformed from a province to an EMAR in 1955, followed by Guangxi and Ningxia in 1958, and Tibet in 1965.<sup>29</sup> Regional autonomy is recognized in Article 4 of the 1982 PRC Constitution (Constitution):<sup>30</sup>

Regional autonomy is practised in areas where people of minority nationalities live in compact communities; in these areas organs of self-government are established for the exercise of the right of autonomy. All the national autonomous areas are inalienable parts of the [PRC].<sup>31</sup>

Although this article speaks broadly in terms of the EMARs (i.e., the five province-level equivalent administrative divisions), the national autonomous area system is multi-tiered. Below the EMARs are administrative subdivisions known as “autonomous prefectures” and “autonomous counties,” respectively, and many of these entities exist within China’s non-autonomous provinces.<sup>32</sup> The combined breadth of the

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<sup>25</sup> See INFO. OFFICE OF THE STATE COUNCIL OF CHINA, REGIONAL AUTONOMY FOR ETHNIC MINORITIES IN CHINA (2005), available at [http://www.gov.cn/english/official/2005-07/28/content\\_18127.htm](http://www.gov.cn/english/official/2005-07/28/content_18127.htm) (last visited Oct. 1, 2011).

<sup>26</sup> See *id.*

<sup>27</sup> This followed the Soviet practice of recognizing “titular nations” within the Union of Soviet Socialist Republics. For information about Soviet Titular Nations, see GRAHAM SMITH ET AL., NATION-BUILDING IN THE POST-SOVIET BORDERLANDS 138, 149 (1998).

<sup>28</sup> See REGIONAL AUTONOMY FOR ETHNIC MINORITIES IN CHINA (2005), *supra* note 25.

<sup>29</sup> See *id.*

<sup>30</sup> The PRC has had four constitutions, enacted in 1954, 1975, 1978, and 1982 respectively. The 1954 constitution was based heavily upon the Soviet model and was used to legitimize the transformation to socialism; the 1975 and 1978 constitutions were promulgated to legitimize the Cultural Revolution. The fourth and current constitution was adopted in 1982 after the rise of Deng Xiaoping and adoption of several market-based policies. LIN FENG, CONSTITUTIONAL LAW IN CHINA 12-19 (2000).

<sup>31</sup> XIANFA [CONSTITUTION] art. 4 (1982) (China), available at <http://english.peopledaily.com.cn/constitution/constitution.html> (last visited Oct. 1, 2011).

<sup>32</sup> See REGIONAL AUTONOMY FOR ETHNIC MINORITIES IN CHINA (2005), *supra* note 25. By the end of 2003, China had established 155 ethnic autonomous areas. Of these, five are autonomous



EMARs is over 6.1 million square kilometres, accounting for 63.72% of China's total territory.<sup>33</sup> The legal basis for the organization of the autonomous system is codified in Chapter 3, Section 6, Articles 111 to 122 of the Constitution,<sup>34</sup> and explained in much greater detail under the LREA.<sup>35</sup>

Each of the fifty-five ethnic minorities, or "minzu," had to satisfy numerous criteria to achieve official recognition.<sup>36</sup> Population concentration was a major factor for cultural identification, although absolute majorities were not required to establish an autonomous area.<sup>37</sup> Indeed, only the Tibetans are an absolute majority within their EMAR.<sup>38</sup> According to government statistics, Xinjiang contains a plurality of its designated Uyghur ethnic minority, while the three other EMARs have absolute majorities of

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regions, 30 autonomous prefectures and 120 autonomous counties (sometimes called banners). According to the fifth national census, conducted in 2000, of the 55 ethnic minorities, 44 have their own ethnic autonomous areas. The population of ethnic minorities practicing regional autonomy accounts for 71 percent of the total population of ethnic minorities, and the area where such regional autonomy is practiced accounts for 64 percent of the entire territory of China.

<sup>33</sup> Sun Xueguang, *Study on Statistics of National Minority Population in China* 1, 2, <http://www.statssa.gov.za/isi2009/ScientificProgramme/IPMS/0790.pdf> (last visited Oct. 1, 2011).

<sup>34</sup> XIANFA [CONSTITUTION], art. 111-22, §6 (1982) (China) available at <http://english.peopledaily.com.cn/constitution/constitution.html> (last visited Oct. 1, 2011).

<sup>35</sup> See *Zhōnghuá rénmin gònghéguó mínzú qūyù zìzhì fǎ* (Chinese law name) [Law on Regional Ethnic Autonomy] (promulgated by the 2d Session of the 6th Nat'l People's Cong., May 31, 1984, effective Oct. 1, 1984) available at <http://www.cecc.gov/pages/virtualAcad/index.phpd?showsingl=9507&PHPSESSID=2d0f6ffc081d7f377240da5a284f910c> (last visited Oct. 1, 2011) [hereinafter Law on Regional Ethnic Autonomy]. The Law on Regional Ethnic Autonomy (LREA) (中华人民共和国民族区域自治法) is a basic legal document for implementing the system of regional autonomy for ethnic minorities as provided in the Constitution. It defines the relationship between the central government and the ethnic autonomous regions, as well as the relationship between different ethnic groups in ethnic autonomous regions. Its legal effect is not limited to the ethnic autonomous regions only; every individual in China and all state organs must abide by and implement this law.

<sup>36</sup> See REGIONAL AUTONOMY FOR ETHNIC MINORITIES IN CHINA (2005), *supra* note 25.

<sup>37</sup> The 1952 Implementation Outline of REA took population concentration as the key factor, and sought to fulfill its legal promises of assigning minority ethnic groups appropriate representation in the people's congresses and the people's governments. Party cadres were sent to identify all of the stable ethnic communities with distinct characteristics regarding language, culture, economy and ethnic consciousness. These were entitled to recognition as "shaoshu minzu" regardless of population size, land claims, or cultural development. See The Implementation Outline of REA in the PRC (1952), (*Zhonghua Renmin Gonghe Guo Minzu Zizhi Shishi Gangyao*), art. 4, 5, available at <http://www.wenbao.net/html/whyichan/lsmc/zhenche/zc001.htm> (last visited 12 Dec. 2010); see also Zhu Guobin et al., *Regional Minority Authority in the PRC: A Preliminary Appraisal From a Historical Perspective*, 7 INT'L J. ON MINORITY & GROUP RTS. 39 (2000).

<sup>38</sup> CHINA INTERNET INFO. CTR., CHINA'S TIBET FACTS & FIGURES 2002, <http://www.china.org.cn/english/tibet-english/rkmz.htm> (last visited Oct. 1, 2011) ("By the end of 2001, the Tibet Autonomous Region had a population of 2.63 million, of which 92.2 percent were Tibetans, 5.9 percent were Han people, while other ethnic peoples accounted for 1.9 percent.").

Han Chinese.<sup>39</sup> Some of the ethnic minority nationalities have been largely integrated into mainstream Chinese culture.<sup>40</sup> However, it is well documented that in the distant EMARs of Xinjiang and Tibet this sense of separate dignity can underlie separatist violence.<sup>41</sup> Though the multitude of grievances causing such dissatisfaction are long and historical, one major source is the perception that local resources are being exploited for the benefit of the Han majority largely located in the central and eastern regions.<sup>42</sup> Existing Chinese law addresses this particular grievance, which is detailed later, but further adjustments are needed.

The EMARs differ from regular provinces in many constitutional regards. Politically, the minorities therein are guaranteed appropriate legislative representation in the Regional People's Congress, the National People's Congress, and the Standing Committee of the National People's

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<sup>39</sup> Preeti Bhattacharji, *Uighurs and China's Xinjiang Region*, COUNCIL ON FOREIGN REL. (July 6, 2009), [http://www.cfr.org/publication/16870/uighurs\\_and\\_chinas\\_xinjiang\\_region.html](http://www.cfr.org/publication/16870/uighurs_and_chinas_xinjiang_region.html) (last visited Oct. 1, 2011). ("The Chinese government says Xinjiang is home to thirteen major ethnic groups. The largest of these groups is the Uighurs, who comprise 45 percent of Xinjiang's population, according to a 2003 census.")

<sup>40</sup> *China's Fastest Growing Provinces: The Demographics*, CHINA BRIEFING, (Nov. 8, 2010), available at <http://www.china-briefing.com/news/2010/11/08/chinas-fastest-growing-provinces-the-demographics.html> (last visited Oct. 1, 2011) ("Han Chinese compose 80 percent of the population with around 17 percent being Mongols."); *China Through a Lens*, CHINA.ORG.CN, <http://www.china.org.cn/english/features/49956.htm> (last visited Oct. 1, 2011) ("There are 3.68 million Han people, accounting for 65.47 percent of Ningxia's total population. Ningxia is home to 33 ethnic minority groups which have a total population of 1.94 million."); *Sun Xueguang, Study on Statistics of Minority National Population in China*, National Bureau of Statistics (China) available at <http://www.statssa.gov.za/isi2009/ScientificProgramme/IPMS/0790.pdf> (last visited Nov 2, 2011) (Guangxi has a minority population of 17.21 million, accounting for 38.3% of the total population.)

<sup>41</sup> June Teufel Dreyer, *Assimilation and Accommodation in China*, in GOVERNMENT POLICIES & ETHNIC RELATIONS IN ASIA AND THE PACIFIC 359 (Michael E. Brown et al., eds., 1997) (referring to several Chinese minorities including the Bai, Koreans and Zhuang as "all but completely assimilated.")

<sup>42</sup> Human Rights in China, *China: Minority Exclusion, Marginalization and Rising Tensions* 23-25 (2007), available at <http://hrichina.org/sites/default/files/oldsite/PDFs/MRG-HRIC.China.Report.pdf> (last visited Oct. 1, 2011) ("[R]esource extraction from the periphery for use in China's urban, coastal centres ... can be seen in the disproportionate benefit reaped by those outside the region of resource origin as compared to the minorities living in the areas. For example, lucrative oil and gas extraction from [Inner Mongolia, Tibet and Xinjiang], are fed in pipelines to the coast, rather than being used locally...Mongols, Tibetans and Uyghurs perceive that they are being excluded while their land and resources are exploited to benefit those living in other, more prosperous areas. This 'development' is taking place without an inclusive process of consultation with minorities, due to their exclusion in the political realm. Therefore they have limited control or input into these development and economic policies. Consequently, there is unbalanced investment in sectors and areas that do not meet with local socio-economic conditions, and do not benefit or empower local communities.")

Congress (NPCSC).<sup>43</sup> As well as an administrative head that is a member of the dominant minority ethnic nationality<sup>44</sup> and, the power to enact local regulations in light of the subject nationality's political, economic, and cultural characteristics.<sup>45</sup> Nominally expanded social rights include responsibility for the maintenance of ethnic art, science, and culture;<sup>46</sup> the organization of local police forces;<sup>47</sup> and the use of minority languages.<sup>48</sup> More importantly, for the purposes of this article, the Constitution promises the EMAR leadership important fiscal rights including the rights to administer regional finances in Article 117,<sup>49</sup> and to promote local economic development in Article 118.<sup>50</sup>

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<sup>43</sup> XIANFA [CONSTITUTION] art. 59, 65, 113 (1982) (China) available at <http://english.peopledaily.com.cn/constitution/constitution.html> (last visited Oct. 1, 2011) ("Minority nationalities are entitled to appropriate representation on the Standing Committee of the National People's Congress." . . . "In the people's congress of an autonomous region, prefecture or county, in addition to the deputies of the nationality or nationalities exercising regional autonomy in the administrative area, the other nationalities inhabiting the area are also entitled to appropriate representation . . .").

<sup>44</sup> *Id.* at art. 114 ("The administrative head of an autonomous region, prefecture or county shall be a citizen of the nationality, or of one of the nationalities, exercising regional autonomy in the area concerned."). Also, the name of an ethnic autonomous area normally consists of the name of the place, name of the ethnic group and the word indicating the administrative status, in that order. In the name of the Guangxi Zhuang Autonomous Region, Guangxi is the name of the place, Zhuang is the name of the ethnic group and Autonomous Region indicates its administrative status.

<sup>45</sup> *Id.* at art. 116 ("People's congresses of national autonomous areas have the power to enact autonomy regulations and specific regulations in the light of the political, economic and cultural characteristics of the nationality or nationalities in the areas concerned. The autonomy regulations and specific regulations of autonomous regions shall be submitted to the Standing Committee of the National People's Congress for approval before they go into effect.").

<sup>46</sup> *Id.* at art. 119 ("The organs of self-government of the national autonomous areas independently administer educational, scientific, cultural, public health and physical culture affairs in their respective areas, sort out and protect the cultural legacy of the nationalities and work for the development and prosperity of their cultures.").

<sup>47</sup> *Id.* at art. 120 ("The organs of self-government of the national autonomous areas may, in accordance with the military system of the state and concrete local needs and with the approval of the State Council, organize local public security forces for the maintenance of public order.").

<sup>48</sup> *Id.* at art. 121 ("In performing their functions, the organs of self-government of the national autonomous areas, in accordance with the autonomy regulations of the respective areas, employ the spoken and written language or languages in common use in the locality.").

<sup>49</sup> XIANFA [CONSTITUTION] art. 117 (1982) (China) available at <http://english.peopledaily.com.cn/constitution/constitution.html> (last visited Oct. 1, 2011) ("The organs of self-government of the national autonomous areas have the power of autonomy in administering the finances of their areas. All revenues accruing to the national autonomous areas under the financial system of the state shall be managed and used independently by the organs of self-government of those areas.").

<sup>50</sup> *Id.* at art. 118 ("The organs of self-government of the national autonomous areas independently arrange for and administer local economic development under the guidance of state plans.

However, the practical authority of ethnic minorities in the autonomous regions is often systematically questioned because of the *nomenklatura* system<sup>51</sup> and the constitutional requirement that autonomous authorities, but not non-autonomous provinces, gain prior approval from the NPCSC to pass legislation.<sup>52</sup> For these reasons, it has been contended that the EMARs are in fact “less autonomous.”<sup>53</sup> Nonetheless, the EMARs are entitled to one further outstanding benefit. Under Article 122, “[t]he State gives financial, material and technical assistance to the minority nationalities to accelerate their economic and cultural development.”<sup>54</sup>

### III. THE CURRENT LEGAL REGIME

This section explores the current provisions relating to the administration of non-renewable natural resources in China, beginning with the Chinese Constitution and highest national legislation, and culminating in the exact distribution of mineral resource compensation fees and resource taxes between the mining enterprises, central government, and EMAR.

#### *A. The Chinese Constitution*

Like its Imperial and Republican predecessors,<sup>55</sup> the PRC government separates ownership of the Earth’s surface from sovereignty

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In developing natural resources and building enterprises in the national autonomous areas, the state shall give due consideration to the interests of those areas.”)

<sup>51</sup> See DAVID SHAMBAUGH, *CHINA’S COMMUNIST PARTY: ATROPHY AND ADAPTION* 141 (2008) (noting that the *nomenklatura* system was adopted from the Soviet Communist Party and ensures that all key government positions are occupied by loyal Communist Party cadres, regardless of ethnicity, thereby potentially undermining autonomy for the local populations).

<sup>52</sup> XIANFA [CONSTITUTION] art. 116, (1982) (China) available at <http://english.peopledaily.com.cn/constitution/constitution.html> (last visited Oct. 1, 2011) (“The autonomy regulations and specific regulations of autonomous regions shall be submitted to the Standing Committee of the National People’s Congress for approval before they go into effect. . . .”).

<sup>53</sup> See Justin J. Stein, *Taking the Deliberative Turn in China: International Law, Minority Rights, and the Case of Xinjiang*, 14 J. PUB. & INT’L AFF. 1, 13-14 (2003), available at <http://www.princeton.edu/jpia/past-issues-1/2003/8.pdf>; see also LIN FENG, *supra* note 30, at 115-158.

<sup>54</sup> XIANFA [CONSTITUTION] art. 122, (1982) (China), available at <http://english.peopledaily.com.cn/constitution/constitution.html> (last visited Oct. 1, 2011).

<sup>55</sup> Despite changes in government, the Chinese central authorities have always claimed the ownership right to natural resources. A clear expression of this is visible in the 20<sup>th</sup> century history of Chinese mineral extraction laws, an idea used by Xia Chunli in her Ph.D. thesis at the University of Hong Kong. As she noted, the dynastic claim to possess all mineral resources is apparent in the *Great Qing Charter on Mine Affairs* (Daqing Kuangwu Zhangcheng, 1907). Its successor, the early Republican government, the *Mining Regulations of the Republic of China* (Zhonghua Minguo Kuangye Tiaoli, 1914), and the Kuomintang Nationalist government reiterated this claim in its *Law on Mining* (Kuangye Fa, 1930). The early PRC first codified its own authority in the *Interim Regulations on Mining of the PRC* (Zhonghua Renmin Gongheguo Kuangye Zanzheng Tiaoli, 1951). See Xia Chunli,

over its natural resources. China practices socialist public ownership of land, meaning “ownership by the whole people and collective ownership by the working people.”<sup>56</sup> State ownership means that the State Council exercises control of the lands on behalf of the people.<sup>57</sup> However, while both the State and rural economic collectives may own land under the Constitution,<sup>58</sup> the State enjoys exclusive ownership of urban property and most natural resources.<sup>59</sup> Article 9 of the Constitution provides:

Mineral resources, waters, forests, mountains, grassland, unreclaimed land, beaches and other natural resources are owned by the State, that is, by the whole people, with the exception of the forests, mountains, grassland, unreclaimed land and beaches that are owned by collectives in accordance with the law. The State ensures the rational use of natural resources and protects rare animals and plants.<sup>60</sup>

This provision is ideological in that the abolition of property in land and the application of all rents in land to public purposes are fundamental tenants of Communism,<sup>61</sup> and practical in that throughout Chinese history most oil

*Autonomous Legislatures Under China's Regional Ethnic Autonomy: Law, Reality and Potential* (Sep. 2008), available at <http://hub.hku.hk/bitstream/10722/51712/1/FullText.pdf>.

<sup>56</sup> Zhōnghuá rénmín gònghéguó tǔdì guǎnlǐ fǎ (中华人民共和国土地管理法) [The Land Administration Law of the People's Republic of China] (Approved at the 16th Session of the Standing Committee of the Ninth National People's Congress of the PRC on June 25, 1986. Revised in accordance with the Decision on amending Land Administration Law of the PRC. Revised and adopted at the 4th Session of the Standing Committee of the 9th National People's Congress of the People's Republic of China on Aug. 29, 1998, effective January 1, 1999. Revised at the 11th Session of the Standing Committee of the 10<sup>th</sup> National People's Congress on 8/28/04.) art. 2, available at [http://www.mlr.gov.cn/mlrenglish/laws/200710/t20071011\\_656321.htm](http://www.mlr.gov.cn/mlrenglish/laws/200710/t20071011_656321.htm) (last visited 12 Dec. 2010) [hereinafter Land Administration Law].

<sup>57</sup> *Id.*

<sup>58</sup> XIANFA [CONSTITUTION] art. 10, (1982) (China), available at <http://english.peopledaily.com.cn/constitution/constitution.html> (last visited Oct. 1, 2011) (“Land in the cities is owned by the state. Land in the rural and suburban areas is owned by collectives except for those portions which belong to the state in accordance with the law; house sites and private plots of cropland and hilly land are also owned by collectives. The State may, in the public interest and in accordance with the provisions of law, expropriate or requisition land for its use and shall make compensation for the land expropriated or requisitioned. No organization or individual may appropriate, buy, sell or otherwise engage in the transfer of land by unlawful means. The right to the use of land may be transferred according to law. All organizations and individuals who use land must make rational use of the land.”).

<sup>59</sup> *Id.* at art. 9-10.

<sup>60</sup> *Id.* at art. 9.

<sup>61</sup> See KARL MARX & FREDERICK ENGELS, MANIFESTO OF THE COMMUNIST PARTY (1848), available at <http://www.marxistsfr.org/archive/marx/works/download/manifest.pdf>. However, that same document decies the very existence of bourgeois private property at all.

and mineral exploitation would have been impossible without massive State investment.<sup>62</sup> Although stated in absolute terms, in reality there is a more nuanced division of mineral rights between the central government and the local governments than indicated in Article 9 alone.

### *B. National Legislation and the Principle of Unified Planning*

Below the Constitution, several laws passed by the NPCSC direct the administration and use of natural resources,<sup>63</sup> including the Mineral Resources Law of the PRC (1986).<sup>64</sup> The Ministry of Geology and Mineral Resources, a division now incorporated into the broader Ministry of Land and Resources (MLR), drafted the Law.<sup>65</sup> The Mineral Resources Law of

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“[T]he theory of the Communists may be summed up in a single sentence: Abolition of private property,” *Id.* at 14, and, furthermore, states that in developed countries there will be “[a]bolition of all right of inheritance.” *Id.* at 20. The reader is likely aware that China has transitioned from a revolutionary Communist state to a Socialist State, as stated in Article 1 of the 1982 Constitution:

“The People’s Republic of China is a socialist state under the people’s democratic dictatorship led by the working class and based on the alliance of workers and peasants. The socialist system is the basic system of the People’s Republic of China.”

It must also be noted that China has been increasing its constitutional recognition of private property rights for decades. Article 13 of the Constitution reads that: “The State protects the right of citizens to own lawfully earned income, savings, houses and other lawful property. The State protects according to law the right of citizens to inherit private property.”

In 2004, the 10th NPC expanded that provision to: “Citizens’ lawful private property is inviolable. The State, in accordance with law, protects the rights of citizens to private property and to its inheritance. The State may, in the public interest and in accordance with law, expropriate or requisition private property for its use and shall make compensation for the private property expropriated or requisitioned.”

<sup>62</sup> GEOLOGY AND MINERAL RESOURCES ADMINISTRATION 108 (Jiang Chengsong ed., 1998).

<sup>63</sup> The other major laws are: Romanized Chinese law name (Chinese law name) [The Forestry Law of the PRC] (promulgated by the 7th Session of the 6<sup>th</sup> Nat’l People’s Cong., September 20, 1984, effective Jan. 1, 1985, *available at* <http://www.china.org.cn/english/environment/207457.htm>; Romanized Chinese law name (Chinese law name) [The Land Administration Law of the PRC] (promulgated by the 4th Meeting of the Standing Comm. of the 9th Nat’l People’s Cong., Aug. 29, 1998, effective Jan. 1, 1999), *available at* [http://www.mlz.gov.cn/mlrenglish/laws/200710/t20071011\\_656321.htm](http://www.mlz.gov.cn/mlrenglish/laws/200710/t20071011_656321.htm); and Romanized Chinese law name (Chinese law name) [The Marine Environmental Protection Law of the PRC] (promulgated by 13th Meeting of the Standing Comm. of the 9th Nat’l People’s Cong., Dec. 25, 1999, effective Apr. 1, 2000) *available at* [http://www.mlz.gov.cn/mlrenglish/laws/200710/t20071012\\_656329.htm](http://www.mlz.gov.cn/mlrenglish/laws/200710/t20071012_656329.htm). The Forestry Law was drafted by the State Forestry Administration, while the others were drafted by divisions now incorporated into a broad Ministry of Land and Resources [hereinafter MLR].

<sup>64</sup> Romanized Chinese law name (Chinese law name) [The Mineral Resources Law] (promulgated by 15th Meeting of the Standing Comm. of the 6th Nat’l People’s Cong. Standing Comm., Mar. 19, 1986) *available at* <http://www.china.org.cn/english/environment/34342.htm> [hereinafter Mineral Resources Law].

<sup>65</sup> According to the 1998 Structural Reform of the State Council, the Ministry of Land and Resources was established by incorporating the Ministry of Geology and Mineral Resources, the State Land Administration, the State Ocean Administration and the State Bureau of Surveying and Mapping.

the PRC (1986) has been amended and supplemented by volumes of ancillary legislation.<sup>66</sup> Chief among these is the Detailed Rules for the Implementation of the Mineral Resources Law, promulgated in 1994.<sup>67</sup>

The MLR is a large department charged with responsibility for the planning, administration, protection, and rational utilization of China's land, marine and mineral resources.<sup>68</sup> Although charged with responsibility for planning,<sup>69</sup> the State Council retains ultimate control of all mineral resources under a policy known as unified planning.<sup>70</sup> This concept effectively allows the State Council to delegate its duty to oversee the exploitation of mineral wealth to subordinate departments, and it is imbedded in several provisions of the Mineral Resources Law. Article 3 lays a foundation for the concept by reiterating Chinese constitutional law on mineral resources:

All mineral resources are owned by the State, and the State Council shall exercise the State ownership over mineral resources. The State ownership of surface and underground

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*See The Establishment of the Ministry of Land and Resources*, MINISTRY OF LAND AND RESOURCES OF THE PEOPLE'S REPUBLIC OF CHINA (Mar. 08, 2005), available at <http://www.mlr.gov.cn/mlrenglish/about/history/>. For a more detailed evolution of the department, see CHINA'S POLICY ON MINERAL RESOURCES, *supra* note 12.

<sup>66</sup> First passed at the 15th session of the 6th NPCSC on 19 Mar. 1996, and amended at the 21st session of 8th NPCSC on 29 Aug. 1996. China has supplemented the Mineral Resources Law with numerous rules and regulations including the "Detailed Rules for the Implementation of the Mineral Resources Law," "Regulations on the Exploitation of Offshore Oil Resources in Cooperation with Foreign Enterprises," "Regulations on the Exploitation of Onshore Oil Resources by Foreign Enterprises," "Measures Governing the Registration and Management of Areas for Surveying Mineral Resources," "Measures Governing the Registration and Management of Mineral Resources Exploitation," "Measures Governing Administration of the Transfer of Prospecting and Mining Rights," "Provisions on the Administration of the Collection of Mineral Resources Compensation Fees," "Interim Measures on the Supervision and Control of Mineral Resources," and "Regulations on the Management of Geological Data."

<sup>67</sup> Zhōnghuá rénmín gònghéguó kuàngchǎn zī yuán fǎ shī shī xìzé (中华人民共和国矿产资源法实施细则) [Detailed Rules for the Implementation of the Mineral Resources Law] (promulgated by State Council, Mar. 26, 1994, effective Mar. 26, 1994) Order No. 152, available at [http://www.mlr.gov.cn/zwgk/flfg/kczyflfg/200406/t20040625\\_293.htm](http://www.mlr.gov.cn/zwgk/flfg/kczyflfg/200406/t20040625_293.htm) (last visited 19 Dec. 2010).

<sup>68</sup> Ministry of Land and Resources of the PRC, *China's Management and Legal Systems for Land Resources*, MINISTRY OF LAND RESOURCES OF THE PEOPLE'S REPUBLIC OF CHINA (Oct. 12, 2007), available at [http://www.mlr.gov.cn/mlrenglish/laws/200710/t20071012\\_656323.htm](http://www.mlr.gov.cn/mlrenglish/laws/200710/t20071012_656323.htm). The State Council delegates the task of administering mineral resources under Article 11 of the Mineral Resources Law to the Ministry of Land and Resources: "The competent department of the State Council for geology and mineral resources shall be in charge of the supervision and control of the prospecting and mining of mineral resources in the whole country. Relevant competent departments of the State Council shall assist it in carrying out such supervision and control."

<sup>69</sup> *Id.*

<sup>70</sup> Mineral Resources Law, at art. 3 ("Mineral resources shall be owned by the State. The State's ownership of mineral resources shall be exercised by the State Council...").

mineral resources shall not be not changed by reason of variance in the ownership or the right to the use of the land to which they are attached.<sup>71</sup>

Next, Article 7 establishes the theory of delegation, where the unified planning concept is identified by name:

With regard to the exploration and development of mineral resources, the State shall practise the policy of unified planning, rational distribution, comprehensive exploration, rational mining and comprehensive utilization.<sup>72</sup>

Article 11 details the hierarchical structure through which provincial authorities are responsible for implementing the unified plan:

The departments in charge of geology and mineral resources under the people's governments of provinces, autonomous regions and municipalities directly under the Central Government shall be in charge of supervision and administration of the exploration and mining of the mineral resources within their respective administrative areas. Other relevant departments under the people's governments of provinces, autonomous regions and municipalities directly under the Central Government shall assist the departments in charge of geology and mineral resources at the corresponding levels in supervising and administering the exploration and mining of the mineral resources.<sup>73</sup>

Finally, Article 28 of the LREA nominally provides the autonomous areas with power to administer local natural and mineral resources. The Article states:

In accordance with legal stipulations, autonomous organs shall manage and protect the natural resources of these areas; in accordance with legal stipulations and unified state plans, autonomous organs may give priority to the rational exploitation and utilization of the natural resources that the local authorities are entitled to develop.<sup>74</sup>

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<sup>71</sup> *Id.* at art. 3.

<sup>72</sup> *Id.* at art. 7.

<sup>73</sup> *Id.* at art. 11.

<sup>74</sup> *See* note 35.



Nonetheless, in practice, this statement is but a truism. Local authorities, even autonomous ones, are unable to convert resources addressed by the unified plan. Thus, the State Council, on behalf of the State and the people, delegates its duties to the MLR but retains ultimate authority over the planning, administration, protection, and rational utilization of all mineral resources in the PRC. Nonetheless, LREA Article 28 does serve as an interesting supplement to Article 9 of the Constitution, introducing the principle that ethnic authorities should have some authority over local resources.

*C. Mining Compensation Fees, Resource Taxes, and Special Considerations for the Ethnic Minority Autonomous Regions*

The State Council authorizes mining enterprises—most of them State-owned<sup>75</sup>—to operate on its behalf while seeking gratuity through two primary sources: mineral resource compensation fees and resource taxes.

The State shall adopt the system that exploration and mining rights are to be obtained with compensation, however, the State may also decide to reduce or grant exemption to the compensation for acquiring exploration and mining rights in consideration of specific situation. Detailed measures and implementation procedures shall be formulated by the State Council. *Anyone who mines mineral resources must pay resource tax and mineral resource compensation of relevant provision of the State.*<sup>76</sup>

*1. Mineral Resource Compensation Fees*

The Chinese government first began levying mineral resource compensation fees in 1994,<sup>77</sup> stating:

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<sup>75</sup> Mineral Resources Law, at art. 4 (“The state-owned mining enterprises shall be the principal force in mining mineral resources. The State shall guarantee the consolidation and development of state-owned mineral economy.”).

<sup>76</sup> Mineral Resources Law, at art. 5; *see also* REPORT ON CHINA’S MINERAL RESOURCES 236 (Song Ruixiang ed., 1997) (emphasis added).

<sup>77</sup> CHINA’S POLICY ON MINERAL RESOURCES, *supra* note 11.

The collection of the compensation fees for mineral resources . . . embodies the rights and interests of the State as the owner of the mineral resources, and is conducive to establishing an economic incentive mechanism to promote the protection and rational utilization of mineral resources.<sup>78</sup>

The matrix of compensation fees differs depending on whether the mining is being conducted in a standard province or an autonomous area. Thus, Article 10 of the MLR provides:

In mining mineral resources in nationalities' autonomous areas, the State shall give due consideration to [t]he interests of those areas and make arrangements favorable to the areas' economic development and to the production and livelihood of the local minority nationalities. The autonomous government organization of the nationalities' autonomous areas shall, in accordance with legal provisions and the unified national plan, have priority to develop and utilize those mineral resources that may be developed by local entities.<sup>79</sup>

In 2005, the State Council issued a supplemental document entitled "Several Provisions on the Implementation of the LREA," which further provides:

The nation will set up resource exploitation and processing projects in ethnic autonomous regions with priority to and in accordance with the economic and social development programs and Western Development strategies. Those who exploit oil, natural gas or other resources in the autonomous regions should help to support the local service industries, employment and economic development.

The nation should increase the inputs to the autonomous regions during the allocation of mineral products compensation fees, and make special priority to the areas

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<sup>78</sup> *Id.*

<sup>79</sup> Mineral Resources Law, at art. 10.

of the autonomous regions where the mineral resources are extracted.<sup>80</sup>

Article 5 of the “Provisions on the Administration of Collection of the Mineral Resources Compensation” (Provisions) sets the formula for calculating resource compensation fees, generally, as follows:

Amount of the mineral resources compensation fee to be collected  
=  $a \times b \times c$ ,

Where:

$a$  = sales income of mineral products,

$b$  = compensation rate, and

$c$  = the coefficient of mining recovery rate.<sup>81</sup>

Article 10 of the Provisions also mandates the proportion of compensation fee distribution between the central government and the non-autonomous provinces is 5:5, while the proportion to be shared between the central government and the EMAR is 4:6.<sup>82</sup> Thus, the autonomous areas enjoy an extra ten percent of compensation fees when compared with the non-autonomous provinces.

Despite this special attention, the overall benefit to the EMARs is insignificant. First, the current resources compensation fee ratio ranges between only 0.5% and 4% of the total enterprise profit, depending on the category of resources.<sup>83</sup> More importantly, the application of the compensation fees is narrowly limited. The fees are included in the overall State budget,<sup>84</sup> and the Provisions mandate that the fees be channeled

<sup>80</sup> Zhōnghuá Rénmín Gònghéguó Guówùyuàn Lǐng (中华人民共和国民族区域自治法) [Several Provisions on the Implementation of the LREA] (promulgated at the 89<sup>th</sup> Executive Meeting of the State Council, May 11, 2005, effective May 31, 2005) art. 8:2, 8:3, available at [http://news.xinhuanet.com/zhengfu/2005-05/27/content\\_3091866.htm](http://news.xinhuanet.com/zhengfu/2005-05/27/content_3091866.htm) (last visited 13 Dec. 2010).

<sup>81</sup> See generally Decision of the State Council on Revising the Provisions on the Administration of Collection of the Mineral Resources Compensation (promulgated by Decree No. 222 of the State Council, July 3, 1997, effective July 3, 1997) art. 5, (coefficient of mining recovery rate = approved mining recovery rate / actual mining recovery rate) available at <http://www.chinamining.org/Policies/2006-08-04/1154678391d446.html>.

<sup>82</sup> *Id.* at art. 10.

<sup>83</sup> See Guówùyuàn guānyú xiūgǎi kùnyuán bǔcháng fèi zhēngshōu guǎnlǐ guīdìng de juéding (国务院关于修改<矿产资源补偿费征收管理规定>的决定) [The Collection of Compensation Fees for Mineral Resources: app. Table of Mineral Resources Compensation Rates] (promulgated Bureau of Land and Resources, April 1, 1994, effective April 1, 1994), available at <http://www.yichun.gov.cn/Pub/xxgk/FaGui/2009-02/200902231739361135.html> (last visited 13 Dec. 2010) [hereinafter Collection of Compensation Fees].

<sup>84</sup> CHINA'S POLICY ON MINERAL RESOURCES, *supra* note 11.

completely into further mineral drilling and exploration.<sup>85</sup> Thus, the tangible benefit that the EMARs realize from the compensation fees is minor, earmarked exclusively for further mineral extraction.

## 2. Resource Taxes

Taxes also provide a minimal benefit to the local authorities. Historically, business income taxes often eluded collection. When China still practiced centralized economic planning, its governmental patron levied taxes on enterprises. The tax burden imposed on locally owned enterprises belonged to local governments, while the tax revenue collected from centrally owned enterprises belonged to the central authorities.<sup>86</sup> This was highly unjust in regions dominated by centrally owned enterprises. For example, Xinjiang received little economic benefit for decades because almost every notable mining enterprise operating in the EMAR was centrally owned.<sup>87</sup>

A major reform came when the State Council promulgated the “Scheme on Income Taxes Revenue Sharing Reform” in 2001.<sup>88</sup> With exceptions for national industries such as the railroads, postal service, and state-owned banking institutions, all business and individual income taxes became sources of revenue shared between the central and local governments.<sup>89</sup> The exact ratio of that distribution is renegotiated annually. For example, the ratio in 2002 between the central government and the provincial governments was 5:5, increasing to 6:4 in 2003, with future proportions “to be determined according to the specific circumstances” thereafter.<sup>90</sup> Unfortunately, this also is not a primary source of finance for local authorities. Resources taxes provide only 0.5% of China’s total tax revenue.<sup>91</sup> According to Xia Chunli, the total resources taxes (including

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<sup>85</sup> See Collection of Compensation Fees, *supra* note 83, at art. 11.

<sup>86</sup> See David Bachman, *Making Xinjiang Safe for the Han?*, in GOVERNING CHINA’S MULTIETHNIC FRONTIERS 155, 167-68 (Morris Rossabi ed., 2004).

<sup>87</sup> *Id.*

<sup>88</sup> Guānyú yìnfā suǒdeshuì shòurù fēnxiǎng gǎigé fōng‘àn de tōngzhī (关于印发所得税收入分享改革方案的通知) [Scheme on Income Tax Revenue Sharing Reform] (promulgated by the State Council, Jan. 1, 2002, effective Jan.1, 2002) available at <http://www.zttax.com/Basic/s23/200608/2434.html>.

<sup>89</sup> *Id.* at §3:1.

<sup>90</sup> *Id.* at §3:2; see also Xinhua News Agency, *Income Tax Revenue Sharing Scheme Aims at Common Prosperity*, HIGHBEAM RES., <http://www.highbeam.com/doc/1P2-13275098.html> (last visited Oct. 1, 2011).

<sup>91</sup> Wang Ziwu, *Resource Tax Reform Will Boost Local Government Revenue*, CAIJING (June, 15 2010), <http://english.caijing.com.cn/2009-06-15/110184693.html> (“Resources tax plays a tiny role in China’s overall taxation system . . . Local governments currently receive revenue from resources taxes,

taxes collected from offshore petroleum enterprises, which exclusively benefit the central government) collected in 2002, 2003 and 2004 totaled ¥7.51, ¥8.31 and ¥9.91 billion respectively, accounting for only 0.44%, 0.41% and 0.39% of the overall taxes collected in those years.<sup>92</sup>

China's central authorities sought to remedy this inequity in 2010 when they announced a new reform of natural resources taxes focused on Xinjiang.<sup>93</sup> According to An Tifu, an economist at Renmin University in Beijing, proceeds from oil and gas extraction accounted for only 1.6% of Xinjiang's 2007 tax revenue despite massive investment in new cultivation.<sup>94</sup> The new ad-valorem tax levies a simple five percent surcharge on crude oil and natural gas extraction.<sup>95</sup> These are estimated to increase Xinjiang's natural resource extraction revenue to five times their previous level.<sup>96</sup> The measure was supposed to raise more than ¥2 billion (USD \$293 million) for the EMAR in 2010.<sup>97</sup> Han Wenke, director of China's Energy Research Institute, confirmed the policy impetus for the reform is the "development of the western region, allowing the funds received from the west to stay in the west and support local development in Xinjiang."<sup>98</sup> There is an expectation that after introducing the pilot program in Xinjiang, this model of natural resources tax reform could be implemented nationwide.<sup>99</sup>

except for those levied on offshore oil resources. According to the Ministry of Finance, annual revenue collected from resources tax currently stands at 30 billion *yuan*, or just 0.5 percent of total tax revenue.".)

<sup>92</sup> Chunli, *supra* note 55, at 281.

<sup>93</sup> *Provisions for Xinjiang Oil and Natural Gas Tax Reform*, XINHUA NET (June 2, 2010), [http://news.xinhuanet.com/politics/2010-06/02/c\\_12170647.htm](http://news.xinhuanet.com/politics/2010-06/02/c_12170647.htm); *China Levies Resource Tax in Xinjiang*, CHINA DAILY (June 2, 2010), [http://www.chinadaily.com.cn/china/2010-06/02/content\\_9923284.htm](http://www.chinadaily.com.cn/china/2010-06/02/content_9923284.htm).

<sup>94</sup> Shai Oster, *China Launches Energy Tax in Xinjiang*, WALL ST. J. ASIA (June 2, 2010), <http://online.wsj.com/article/SB10001424052748703561604575282181792884798.html> (last visited Oct. 1, 2011).

<sup>95</sup> See *Provisions for Xinjiang Oil and Natural Gas Tax Reform*, *supra* note 93 (stating that the equation is "Tax payable = Sales × tax rate," although there are exceptions to this rate for special activities.); *Resource Tax to be Levied in Xinjiang*, PEOPLE'S DAILY ONLINE (May 28, 2010), <http://english.peopledaily.com.cn/90001/90778/90862/7004420.html> (last visited Oct. 1, 2011).

<sup>96</sup> Oster, *supra* note 94.

<sup>97</sup> *Resource Tax to be Levied in Xinjiang*, *supra* note 96.

<sup>98</sup> *The Development and Reform Commission Said that Resource Tax Reform Will Promote Development*, XINJIANG GOV'T PORTAL, <http://www.xinjiang.gov.cn/10013/10036/10120/10004/2010/66163.htm> (last visited 19 Dec. 2010).

<sup>99</sup> Oster, *supra* note 94; see also Lin Zhi, *China Introduces Resource Tax in Xinjiang*, CHINESE GOV'T'S OFFICIAL WEB PORTAL (June 3, 2010), [http://www.gov.cn/english/2010-06/03/content\\_1619581.htm](http://www.gov.cn/english/2010-06/03/content_1619581.htm).

#### IV. THE IMPERATIVE FOR MORE EQUITABLE DISTRIBUTION

Whereas Section III focused on the letter of the law managing China's natural resource extraction from the EMARs, Section IV delves deeper into the Constitution, national laws and political pronouncements to extract competing and/or guiding principles that should be applied. Indeed, the right to fair compensation for non-renewable resource extraction from the EMARs is clear within the existing constructs of Chinese law, when the imperatives of the Chinese Constitution (including the principle of adherence to socialism), the LREA and major policy initiatives are juxtaposed. This section makes the case that increased compensation is a constitutional, legal, and moral imperative for China.

##### *A. The Imperatives of the Chinese Constitution and the Principle of Adherence to Socialism*

As discussed in Section III, the Chinese government separates ownership of the Earth's surface from sovereignty over its natural resources, practices socialist public ownership of land, and ensures the rational use of natural resources.<sup>100</sup> In short, Article 9 of the Constitution provides that China's natural resources are the exclusive property of the central authorities, under their guided administration. Although that provision seems absolute, Section III outlined a more nuanced, pragmatic relationship where the central authorities remand a very limited amount of resource extraction proceeds back to the EMAR authorities, albeit for narrow purposes.

However, Section II introduced the legal basis for the organization of the autonomous system, codified in Articles 111-122.<sup>101</sup> Restated, the Constitution promises the EMAR leadership important fiscal rights including the rights to administer regional finances in Article 117,<sup>102</sup> and to promote local economic development in Article 118.<sup>103</sup> Furthermore, Article 122 mandates that the "State gives financial, material and technical

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<sup>100</sup> XIANFA [CONSTITUTION], art. 9, (1982) (China) available at <http://english.peopledaily.com.cn/constitution/constitution.html> (last visited Oct. 1, 2011).

<sup>101</sup> *Id.* at art. 112-22, §6 (1982) (China).

<sup>102</sup> *Id.* at art. 117 ("The organs of self-government of the national autonomous areas have the power of autonomy in administering the finances of their areas. All revenues accruing to the national autonomous areas under the financial system of the state shall be managed and used independently by the organs of self-government of those areas.").

<sup>103</sup> *Id.* at art. 118 ("The organs of self-government of the national autonomous areas independently arrange for and administer local economic development under the guidance of state plans. In developing natural resources and building enterprises in the national autonomous areas, the state shall give due consideration to the interests of those areas.").

assistance to the minority nationalities to accelerate their economic and cultural development.”<sup>104</sup> Thus, China’s central authorities have a constitutional duty to grant the EMAR a large degree of economic autonomy and developmental aid. When the exclusive authority over resources, the mandate to provide developmental aid to the EMAR, and the fact that some resource extraction proceeds are remanded to local authorities albeit for narrow purposes are juxtaposed against each other it seems evident that a more direct, transparent, and equitable distribution of proceeds would be constitutional.

Additionally, the Constitution contains a general principle of adherence to socialism, which is highly relevant. Codified in Article 1, Clause 2, it mandates that “the socialist system is the basic system of the [PRC].”<sup>105</sup> This principle defines both the economic and social superstructure that China shall have.<sup>106</sup> In the early years of the CCP, this meant State ownership of the means of production,<sup>107</sup> but the 1978 economic reforms brought many progressive changes, eventually granting constitutional protection to the ownership of private property.<sup>108</sup> The official mantra is that China still adheres to socialism, albeit “socialism with Chinese characteristics.”<sup>109</sup> This means China shall continue to pursue the establishment of a healthy, market-oriented economy while incorporating social welfare components as conditions allow.<sup>110</sup> Although defining a common ideal of socialism is the subject of voluminous tomes, a recent text simplified its essence as:

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<sup>104</sup> *Id.* at art. 122.

<sup>105</sup> *Id.* at art. 1, cl. 2.

<sup>106</sup> LIN FENG, CONSTITUTIONAL LAW IN CHINA 33 (2000); *see also* XIANFA [CONSTITUTION] art. 6-8, (1982) (China) available at <http://english.peopledaily.com.cn/constitution/constitution.html> (last visited Oct. 1, 2011).

<sup>107</sup> XU CHONGDE, CHINESE CONSTITUTIONAL LAW 120 (*Zhongguo Xianfa*), (People’s Univ. Press, 1996).

<sup>108</sup> XIANFA [CONSTITUTION], amend. IV § 6, (Dec, 4, 1982) (China) (expanding art. 13 to “citizens’ lawful private property is inviolable...”).

<sup>109</sup> *Id.* at amend. II. (“China is at the primary stage of socialism. The basic task of the nation is, according to the theory of building socialism with Chinese characteristics, to concentrate its effort on socialist modernization. Under the leadership of the Communist Party of China and the guidance of Marxism-Leninism and Mao Zedong Thought, the Chinese people of all nationalities will continue to adhere to the people’s democratic dictatorship and follow the socialist road, persevere in reform and opening to the outside, steadily improve socialist institutions, develop socialist democracy, improve the socialist legal system and work hard and self-reliantly to modernize industry, agriculture, national defense and science and technology step by step to turn China into a socialist country with prosperity and power, democracy and culture.”) (emphasis added).

<sup>110</sup> *See* XIANFA [CONSTITUTION], art. 45 (1982) (China); LIN, *supra* note 106 at 33-34; Liu Jianwu, *What is Socialism with Chinese Characteristics?*, available at [actuelmarx.u-paris10.fr/cm5/com/M15\\_Contr\\_liujianwu.rtf](http://actuelmarx.u-paris10.fr/cm5/com/M15_Contr_liujianwu.rtf) (last visited Oct. 1, 2011).

[T]he most fundamental characteristic of socialism is its commitment to the creation of an egalitarian society. Socialists may not have agreed about the extent to which inequality can be eradicated or the means by which change can be effected, but no socialist would defend the current inequalities of wealth and power.<sup>111</sup>

While even socialist egalitarian authors acknowledge the pragmatic realities of uneven resource distribution,<sup>112</sup> it can hardly be argued that China's former policy of favoring the east at the expense of the west honored this commitment. In China, where the adherence to socialism has been incorporated into the Constitution, a moral duty to pursue balanced socioeconomic development is an imperative. As this article suggests, one way to promote socialist development would be to guarantee a more direct, equitable distribution of the proceeds of non-renewable natural resource extraction from the EMAR.

### *B. The Law on Regional Ethnic Autonomy*

The autonomous area system has been introduced herein. Established in the Constitution, it is elaborated in much greater detail under the LREA.<sup>113</sup> The Preamble of the LREA restates the principle of ethnic autonomy in broad terms:

Regional ethnic autonomy is the basic policy adopted by the Communist Party of China for resolving the ethnic issue in China through its application of Marxism-Leninism. It . . . means that the ethnic minorities, under unified state leadership, practice regional autonomy in areas where they live in concentrated communities and set up autonomous agencies for the exercise of the power of autonomy. Regional ethnic autonomy reflects the State's full respect for and guarantee of ethnic minorities' right to

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<sup>111</sup> MICHAEL NEWMAN, *SOCIALISM: A VERY SHORT INTRODUCTION* 1-3 (2005) ("Socialists may not have agreed about the extent to which inequality can be eradicated or the means by which change can be effected, but no socialist would defend the current inequalities of wealth and power.").

<sup>112</sup> Kai Nielson, *Liberal and Socialist Egalitarianism*, ERUDIT.ORG <http://www.erudit.org/revue/LTP/1990/v46/n1/400511ar.pdf> (last visited Oct. 1, 2011). ("Resources should not be exactly equal because people's needs (to understate it) are not exactly the same. The thing to aim at is an equal satisfaction of needs or, more accurately, providing social conditions which make the equal satisfaction of needs possible as far as human nature allows for it.")

<sup>113</sup> Law on Regional Ethnic Autonomy.



administer their internal affairs and its adherence to the principle of equality, unity and common prosperity for all nationalities.<sup>114</sup>

In pursuit of this aim, the LREA includes several provisions for redistributive economic assistance to the EMARs. Article 59 mandates the State to set aside special funds to help ethnic autonomous areas develop their economies and cultures.<sup>115</sup> Article 60 requires higher-level state organs to give financial and tax support to develop commerce in the ethnic autonomous areas.<sup>116</sup> Article 62 states that as national revenues increase, the higher-level financial organs shall gradually increase financial transfer payments to the autonomous areas to gradually decrease disparities “between the minority areas and more developed regions.”<sup>117</sup> Finally, Article 65 of the LREA specifically promises:

While exploiting resources and undertaking construction in ethnic autonomous areas, the State shall give consideration to the interests of these areas, make arrangements favorable to economic construction there and pay proper attention to the productive pursuits and the life of the minority nationalities there. *When exporting natural resources out of the autonomous areas, the state should give them a certain amount of compensation.*<sup>118</sup>

This final statement creates a solid legal basis upon which to reform the current regime and more equitably distribute the revenue from non-renewable natural resources extraction from the EMARs.

### *C. The Western Development Strategy*

A major 1999 policy initiative is in harmony with these laws and provisions. Given that all five EMARs and most other autonomous subdivisions are located in China’s west, developing the west amounts to developing the lives of minorities. The region received renewed attention in 1999 when President Jiang Zemin and the CCP announced a policy

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<sup>114</sup> *Id.* at Preamble.

<sup>115</sup> *Id.* at art. 59.

<sup>116</sup> *Id.* at art. 60.

<sup>117</sup> *Id.* at art. 62.

<sup>118</sup> *Id.* at art. 65, (emphasis added).

campaign to “Open Up the West” (*xibu da kaifa*),<sup>119</sup> which shifted the focus of national development to the western region from the eastern and southern regions for the first time since 1978.<sup>120</sup> According to a 2000 policy paper published by the State Council,<sup>121</sup> many preferential policies would be offered to the western regions to facilitate the rapid development of a prosperous economy, increase living standards, modernize infrastructure, improve the environment, enhance border security, and develop a more civil society featuring harmonious relations between ethnic nationalities.<sup>122</sup> Priority would be given to new fiscal transfers, tax reforms, foreign investment and trade initiatives, resource exploitation and conservation programs, and special consideration for several specific developmental projects and zones, including the EMARs.<sup>123</sup>

According to official statistics provided by the National Development and Reform Commission (NDRC), the central government poured over ¥ 3.5 trillion (USD \$512.4 billion) into the WDS work projects in the first decade (through 2009). The NDRC further claims that the GDP of the western region jumped from ¥ 1.66 trillion to ¥ 5.82 trillion at an annual average growth rate of 11.7% during that time, allowing more than 9.54 million residents to escape poverty.<sup>124</sup> Although it is difficult to locate precise statistics on oil and mineral mining operations

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<sup>119</sup> Heike Holbig, *The Emergence of the Campaign to Open Up the West: Ideological Formation, Central-Decision Making and the Role of the Provinces* 21, in *CHINA'S CAMPAIGN TO "OPEN UP THE WEST": NATIONAL, PROVINCIAL, AND LOCAL PERSPECTIVES*, (David S.G. Goodman ed., 2004).

<sup>120</sup> *Id.* (explaining that previously, Mao had focused on western development through the Third Front strategy to industrialize inland China for protection if a foreign invasion would come, but Deng Xiaoping's reforms shifted developmental priority to China's east and south “largely building on its perceived comparative advantage of proximity to the wider East Asian economies and the outside world.”); see also Fan Jie, *Western Development Policy: Changes, Effects and Evaluation*, in *DEVELOPING CHINA'S WEST*, *supra* note 1, at 85-88.

<sup>121</sup> Guowuyuan guanyu shishi xibu dakaifa ruogan zhengce cuoshi de tongzhi (国务院关于实施西部大开发若干政策措施的同志) [Circular of the State Council Concerning Several Policies on Carrying out the Development of China's Vast Western Regions] (promulgated by the State Council, Oct. 26, 2000, effective January 1, 2001), No. 2000-33, available at <http://www.asianlii.org/cn/legis/cen/laws/cotscspocotdocvwr1122/>

<sup>122</sup> *Id.*; see also Li Xiaojian et al., *Historical Legacy and Future Challenges*, in *DEVELOPING CHINA'S WEST*, *supra* note 1, at 38; see also GUO RONGXING, *HOW THE CHINESE ECONOMY WORKS*, 203, (Ch. 8: Spatial Economics and Development Strategy)(Palgrave Macmillian, 3d ed., 2009).

<sup>123</sup> *Id.*; see also Shiwu xibu kaifa zongti guihua (十五西部开发总体规划) [The Tenth Comprehensive Five-Year Plan for Development of the West] (promulgated July 10, 2002, effective July 10, 2002), available at [http://www.moc.gov.cn/zhuzhan/jiaotongguihua/guojiaoguihua/guojiaxiangguan\\_ZHGH/200709/t20070927\\_420871.html](http://www.moc.gov.cn/zhuzhan/jiaotongguihua/guojiaoguihua/guojiaxiangguan_ZHGH/200709/t20070927_420871.html).

<sup>124</sup> *Western Development Strategy*, CHINA DAILY (Dec. 22, 2009), [http://www.chinadaily.com.cn/china/westdevelopment/2009-12/22/content\\_9215054.htm](http://www.chinadaily.com.cn/china/westdevelopment/2009-12/22/content_9215054.htm).

opened in the EMARs since WDS implementation,<sup>125</sup> there is every reason to believe that such expansion is taking place. Not only has the development of the west's mineral resources been tied to the WDS,<sup>126</sup> but also national investment in these resources grew at an exponential rate even in the pre-WDS period. The PRC had "just over 300 properly developed mines" in 1949, increasing to 489 "large mines," 1,025 "medium-sized" mines, and "well over 140,000 small ones" in 2002 for a combined industrial output sum of ¥ 454.2 billion.<sup>127</sup> Furthermore, China's top energy companies, China National Petroleum Corporation and Sinopec, recently invested ¥ 14.6 billion to double the oil output from Xinjiang.<sup>128</sup> Given the overlap of natural resources and minority ethnic nationality population concentrations, there is little doubt that the expansion of mining since 1999 has and will continue to be a comparative advantage for the region. In concert with the government's policies to develop the west generally and EMARs specifically, a key component of regional ethnic autonomy should be the ability of the indigenous ethnic minorities to directly benefit from the non-renewable resources extracted from the region.

#### *D. Current Shortcomings and Suggestions for Reform*

It is vital to note again that the central authorities allocate trillions of yuan (¥) into the development of the western region through an advanced transfer payment system and other grants—all investments that deserve great praise. However, the linkage between non-renewable resource extraction and regional development is indirect, and therefore, often appears attenuated under the current redistribution policies. That is causing a distortion of perception. As outlined above, the tax proceeds directly benefiting the EMAR authorities—be it through business income or resources taxes—are quite low. Furthermore, the current mineral compensation fee regime invites criticism, as it is apparent that the current ratio—only 60% of between 0.5% to 4% of the mine's total profits, all of which must be reinvested in further mining operations—is inadequate.

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<sup>125</sup> BUS. GUIDE at 19, ("China is developing fast and this information can sometimes be unreliable or difficult to obtain.").

<sup>126</sup> CHINA'S POLICY ON MINERAL RESOURCES (2003), *supra* note 11 ("With the implementation of the western development strategy, the accelerated construction of infrastructure facilities and ecological protection will help to connect quickly the resources and the resource-related products of the western regions with the domestic and international markets, thereby greatly improving the conditions for the exploitation of mineral resources and the entry of mineral commodities into the market.").

<sup>127</sup> *Id.*

<sup>128</sup> BUS. GUIDE, *supra* note 19, at 131.

Multiple outlets record and amplify the local belief that regional resources are being exploited for the benefit of distant Han majorities.<sup>129</sup> Foreign activists decry the famous Qinghai-Tibet Railway project as a front for ever more insatiable extraction,<sup>130</sup> while resource investors chomp at the bit to advertise new business opportunities.<sup>131</sup> Fear of sabotage partially underlies the necessity for Beijing to adopt and invest in a new Oil Pipeline Protection Law as massive new pipelines from Xinjiang come online.<sup>132</sup> That perception can be changed, and more harmonious relations may indeed develop, if the local ethnic minority authorities are allowed to *directly* channel a fair portion of the extraction profits into tangible and beneficial local investments, such as schools, hospitals, and roads.

Beijing should implement its new Xinjiang resource tax policy nationwide and amend its mineral resources compensation fee distribution scheme in order to demonstrate a direct linkage between mineral extraction and economic benefits to the EMARs. The authors of this article are not expert enough to suggest what that exact ratio should be under ever-changing national circumstances, but the current ratio (when considered alone) distorts Beijing's commitment to invest in the western region. Furthermore, due to the special consideration provisions established under Article 122 of the Constitution<sup>133</sup> and developed under Articles 59, 60, 61, and 62 of the LREA,<sup>134</sup> preferential rates for the EMARs are a legal imperative.

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<sup>129</sup> *China: Minority Exclusion, Marginalization and Rising Tensions*, *supra* note 42, at 23-25.

<sup>130</sup> See *Tracking the Steel Dragon: How China's Economic Policies and the Railroad are Transforming Tibet*, INT'L CAMPAIGN FOR TIBET, (Feb. 28, 2008), <http://www.savetibet.org/media-center/ict-press-releases/tracking-steel-dragon-how-chinas-economic-policies-and-railroad-are-transforming-tibet> ; see also *Railroad to Ruin*, U.S.-TIBET COMMITTEE, <http://www.ustibetcommittee.org/campaigns/railroad.html> (last visited Oct. 1, 2011).

<sup>131</sup> Resource Investor, Tibet Railway Opens the Gates for Mining, Interfax-China, Jul. 28, 2006, available at <http://www.resourceinvestor.com/News/2006/7/Pages/Tibet-Railway-Opens-the-Gates-for-Mining.aspx> (last visited Sept. 12, 2011) ("With the opening of the new Qinghai-Tibet railway earlier this summer, could come a rampage of exploitation by many mining companies chasing the expansive mineral resources hidden in the mountain province.").

<sup>132</sup> Romanized Chinese name (Chinese law name) [Law of the People's Republic of China on the Protection of Petroleum and Natural Gas Pipelines] (promulgated by Order of the President of the People's Republic of China, Jun. 25, 2010, effective Oct. 1, 2010) No. 30, available at [http://www.lexisn.com/law/content.php?provider\\_id=1&origin\\_id=1322077&isEnglish=Y&fromMail=true](http://www.lexisn.com/law/content.php?provider_id=1&origin_id=1322077&isEnglish=Y&fromMail=true) (last visited Oct. 1, 2011).

<sup>133</sup> XIANFA [CONSTITUTION] art.122, (1982) (China) available at <http://english.peopledaily.com.cn/constitution/constitution.html> (last visited Oct. 11, 2011) ("The State gives financial, material and technical assistance to the minority nationalities to accelerate their economic and cultural development.").

<sup>134</sup> Law on Regional Ethnic Autonomy, at art. 59-62,

The Chinese authorities have detailed an expansive, yet overlapping and complimentary set of commitments in their Constitution, highest national laws, and major policy initiatives. They want to increase the standard of living for all Chinese citizens by improving national economic performance. They seek to address growing regional disparity by shifting macroeconomic priority from the southeastern seaboard to the neglected western regions where inequity is outstanding, but natural resources are a great comparative advantage. They aspire to a more harmonious relationship between the Han majority and its minority denizens who largely inhabit that western region. Honoring these mutually reinforcing commitments by drawing a more direct and transparent link between resource extraction and developmental aid would be both logical and beneficial to all.<sup>135</sup>

Luckily, this swirling kaleidoscope of ethnic and fiscal policy considerations can focus on a clear picture if Beijing takes the time to coordinate its initiatives into one clear, coherent policy. The WDS provides that umbrella, and the fiscal reform of natural resources mining proceeds to

("Article 59: The state sets aside special funds to help ethnic autonomous areas develop their economy and culture ...

Article 60: In accordance with the state's trade policy for minority nationalities and the needs of the regional autonomous area, state organs at higher levels give investment, financial, and tax support to help commercial, supply and marketing, and medical and pharmaceutical enterprises in ethnic autonomous areas.

Article 61: The state shall develop preferential policies to increase border trade, develop regional autonomous areas' international trade, encourage the development of locally superior products and exports, and increase the autonomous areas' independent management of international dealings in the manufacturing sector.

Article 62: As the national economy develops and national revenues increase, the higher level financial organs shall gradually increase financial transfer payments to autonomous areas. State organs at higher levels use regular transfer payments, earmarked funds, preferential transfer payment policies for minorities, or other methods determined by the state to increase investment funds to autonomous areas. In this way, the state will speed up economic development and social progress, gradually decreasing disparities between minority areas and more developed regions.").

<sup>135</sup> These policy considerations are linked together in CHINA'S POLICY ON MINERAL RESOURCES (2003), *supra* note 11, ("[We shall persist] in balanced development between regional mineral resources prospecting and exploitation and environmental protection. We shall work out unified plans and correctly handle the relations between eastern and western regions, between well-developed and less-developed regions, between prospecting and exploitation, between state-owned mining enterprises and non-state-owned mining enterprises, and between scale exploitation and excavation by small mines. We shall further implement the strategy of large-scale development of the western regions, accelerate exploration and exploitation of mineral resources in the western regions, especially the dominant minerals and minerals in short supply at home, support mining towns and old mines in their search for substitute resources, and promote the balanced development of regional economies and the healthy development of mineral resources prospecting and exploitation. *We shall persist in combining mineral resources exploitation with attention to the interests of the regions inhabited by ethnic minorities*, and strengthen the protection, restoration and control of the mining environment on the principle of putting prevention first and combining prevention with control.") (emphasis added).

ethnic minority areas should be a paramount priority under it. As the Chinese say, in an uncannily similar expression as their English-speaking counterparts, “一石二鸟” or “一箭双雕,” it is possible to “kill two birds with one stone.”

## V. CONCLUSION

Although many Chinese ethnic minorities have indirectly benefited from China’s macroeconomic policies, their greater socioeconomic development was neglected until the CCP announced the WDS in 1999. The majority of China’s ethnic minorities inhabit the vast western region, where most of China’s natural resource wealth remains. Therefore, non-renewable resource exploitation must be conducted with compassion for local interests, which in the past has not been done. Extraction must be directly tied to tangible local benefits such as industrial development, the construction of new infrastructure, and observable increases in local quality of life. At present, local resources continue to flow out of the western region and into the east with an inadequate link between that extraction and Beijing’s reinvestment, although the 2010 Xinjiang Resource Tax Reform is a promising development. Beijing should implement its new Xinjiang resource tax policy nationwide and amend its mineral resources compensation fee distribution scheme in order to demonstrate a direct linkage between mineral extraction and economic benefits to the EMARs. Doing so is imperative under the Chinese Constitution and meaningful national legislation, and will help China continue to build its economic prosperity and social unity. The father of modern China, former Chairman Mao Zedong, once spoke words linking the ethnic minorities and their mineral wealth that remain as true today as they were when he pronounced them fifty-five years ago:

We must sincerely and actively help the ethnic minorities to develop their economy and culture . . . The air in the atmosphere, the forests on the earth and the riches under the soil are all important factors needed for the building of socialism, but no material factor can be exploited and utilized without the human factor. We must foster good relations between the Han nationality and the minority nationalities and strengthen the unity of all the nationalities in the common endeavour to build our great socialist motherland.<sup>136</sup>

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<sup>136</sup> Zedong, *supra* note 24.

