



# Study on the Improvement of Community Conservation Concession Agreement in Ecological Legislation of Qinghai-Tibet Plateau

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**Abstract.** As an innovative ecological conservation model, the community conservation concession agreement (CCCA) focuses on the involvement of social forces compared with traditional conservation mechanisms. It emerges as a feasible environmental conservation system for the Qinghai-Tibet Plateau with fragile ecological environments and important ecological value. However, in practical applications, challenges persist within the CCCA, such as a lack of legislation, ambiguous legal definitions, and inadequate legal guarantees. This paper aims to clarify the internal legal relationship of the CCCA through theoretical analysis and lays a legal foundation for its integration into the ecological legislation of the Qinghai-Tibet Plateau. Furthermore, combined with problems of the CCCA practice in the Qinghai-Tibet Plateau, this paper puts forward corresponding suggestions on the legislation of ecological conservation.

**Keywords:** Community conservation concession agreement; Legislation improvement; Ecological conservation; Jurisprudential basis.

## 1 Introduction

The Qinghai-Tibet Plateau has fragile ecology and significant ecological value, often referred to as the “Third Pole”, the “Roof of the World,” and the “Asian Water Tower”. Strict conservation of the ecological environment in the Qinghai-Tibet Plateau holds immense significance for both China and the rest of the world. Discovering a more effective and feasible conservation path has become the realistic goal of scholars and legislators around the world. China has always attached great importance to the ecological conservation of the Qinghai-Tibet Plateau and officially promulgated the Qinghai-Tibet Plateau Ecological Protection Law of the People’s Republic of China in 2023. Promoting conservation development through legal means and establishing a unified and orderly conservation institution have become the conceptual consensus and the most effective method of ecological conservation in the Qinghai-Tibet Plateau.

In concrete conservation practices, beyond the traditional conservation mode under governmental guidance, the community conservation concession agreement (CCCA)

plays a pivotal role in improving the involvement of social forces and addressing the shortage of environmental conservation ability and funds. This agreement has been greatly developed abroad and achieved favorable results<sup>[1]</sup>. Despite China's early introduction of the CCCA in 2005 and 2006, along with pilot practices in numerous provinces and cities, its basic theoretical connotation, legal norms, and other issues remain ambiguous, and legislative deficiencies persist.

Given the fragility and particularity of the ecology in the Qinghai-Tibet Plateau and the local social context, the CCCA represents a currently more effective mode of conservation that aligns better with the region's reality. Against the background of ongoing supplementation required by the Qinghai-Tibet Plateau Ecological Protection Law, enhancing the legislation of the CCCA stands as a potent and pressing measure to promote the ecological conservation of the Qinghai-Tibet Plateau.

## **2 Status of Ecological Conservation in the Qinghai-Tibet Plateau**

### **2.1 Traditional Mode**

In most areas of the Qinghai-Tibet Plateau, the traditional mode of ecological conservation remains predominant. This mode takes the government as the leading factor, wielding its authority and regulatory rights to mobilize both national and local administrative entities through directives for environmental management and monitoring. In this mode, the government bears the responsibility and authority for safeguarding the environment as the primary actor in conservation efforts, while residents, enterprises, and environmental organizations are confined to compliance with governmental directives.

The government's directive management will indeed make the environmental conservation policy clearer and more efficient. However, challenges often arise in the implementation of protected areas within the Qinghai-Tibet Plateau, leading to potential conflicts between governmental policies and the traditional livelihoods of residents.

### **2.2 CCCA Mode**

Another mode of ecological conservation in the Qinghai-Tibet Plateau is the community conservation concession agreement. Different from the traditional conservation mode, the approach involves the government transferring some authority over ecological resource conservation and management. Community residents (collective committees) serve as the committed protectors, while domestic and foreign environmental non-governmental organizations (ENGOs) act as funders and supervisors to determine the "rights, responsibilities, and interests" relationship of ecological resource conservation of all entities through contractual agreements. In areas where decision-makers are not assumed to act in the public's best interest, community monitoring may provide infor-

mation on rule compliance to better target sanctions, resolve disagreements, and increase transparency of decision-making, thereby promoting user compliance with rules, lowering corruption, and holding authorities accountable [2].

Meanwhile, research institutions, enterprises, and other forces participate and support, providing external funding [3]. This disrupts the notion of sole governmental responsibility for environmental conservation, expands ecological conservation to a new mode of multi-entity participation, and makes full use of the conservation rights of society.

In the Qinghai-Tibet Plateau, the CCCA has made great progress and accumulated multiple conservation experience. For example, following the signing of the Conservation Agreement in Maozhuang Township of Yushu, Qinghai Province, over 40 local herdsmen volunteers formed an environmental conservation group to conserve and monitor 800 square kilometers of ecological conservation areas. Additionally, based on agreement conservation, Maozhuang Township actively develops its ecological service economy [4]. While achieving environmental conservation results, residents have also increased their income and lifted out of poverty.

It should be noted that the CCCA is a “cooperative” ecological conservation mode, which is different from the “authorized” conservation. “Authorized” conservation means that the government or environmental management agencies transfer most of the resource conservation and management rights to the community, allowing them to independently decide and implement protection measures. Conversely, the “cooperative” CCCA involves both entities signing a resource conservation agreement, with joint participation in the management of the conserved area [5]. Their key disparity lies in the extent of rights transferred by the government and the level of autonomy granted to the community. The CCCA does not entail the government simply “handing over” responsibilities to the community and environmental organizations to make autonomous decisions. Instead, the government participates in the process of ecological conservation, manages and protects together with the community, and plays the role of supervision and review. CCCA, in which the community shares part of the power, responsibility and benefits of conservation management, is applicable to some nature reserves with strong community protection willingness and ability, and management institutions can mobilize more social and economic resources [6]. From the perspective of China’s social environments and the specific situation of the Qinghai-Tibet Plateau, many environmental conservation efforts still require governmental intervention, and thus the “cooperative” conservation mode aligns more closely with the conservation status of the Qinghai-Tibet Plateau.

### **3 Jurisprudential Basis of the Ccca**

#### **3.1 Environmental Right and Environmental Justice Theory**

The environmental right is a third-generation basic human right developed from the right of life and health and widely recognized by the international community. Notably, the “right to environmental information” and “environmental participation right”

jointly point out that citizens have the right to know the real situation of the environment and actively participate in environmental conservation and governance. Furthermore, citizens' "environmental personality right" also emphasizes the close relationship between human physical and mental health and the quality of environmental resources, and everyone has the right to protect their health by conserving the ecological environment.

According to the definition of environmental justice theory, all entities enjoy the same rights and undertake the same obligations in the development, utilization, and conservation of environmental resources [7]. It can be said that the theory of environmental justice evolves from the foundation of citizens' environmental rights, thereby embodying principles of freedom and equality in its implementation.

Environmental rights and environmental justice theory together explain that citizens have the obligation and basic rights to conserve the environment, serving as legally eligible entities in the CCCA. Qinghai-Tibet Plateau serves as a home for various ethnic minorities in China. The understanding of cultural traditions and natural environments held by local residents is a significant asset that contributes to more effective ecological conservation efforts.

### **3.2 Transfer and Empowerment of Environmental Management Rights**

The state and government have the "environmental management right", encompassing the right and obligation to predict, decide, organize, command, manage, and supervise the ecological environment. This constitutes an active administrative right, enabling proactive intervention in environmental affairs. In the CCCA, the government transfers its environmental management right to community residents and ENGOs and empowers them with both the "conservation right" of ecological environments and the "concession right" of operation for developing a sustainable ecological service economy.

There is a clear definition of the "concession right" in the law. In the CCCA, community residents and ENGOs help the government to carry out certain ecological conservation and management and share the government's environmental administrative pressure. This right belongs to a kind of government compensation and incentive means.

Community residents and ENGOs engage in specific environmental management activities through the partial transfer of the "environmental management right" by the government, which constitutes the "conservation right" and empowers other pluralistic entities. The conservation right is the core of the CCCA, but the current legal framework lacks a defined concept of the "conservation right" and a supporting code of conduct. This paper claims that the "conservation right" constitutes a subset of the government's administrative "management right", which encompasses both the "conservation right" and the "development right" concerning the environment. It cleverly integrates public authority and private rights by transferring the "conservation right", enabling community residents and ENGOs to not only possess environmental conservation rights at the individual level but also wield environmental conservation rights representing governmental administrative power, thereby facilitating their ability to undertake management responsibilities.

### **3.3 Ecological Compensation Mechanism**

The legal institution of “ecological compensation” operates not based on the actual damage caused by the compensator, but rather on benefits derived from ecological services. In this institution, the compensator pays a “service fee” rather than “compensation”, with the compensator entity potentially being an enterprise, social organization, or government agency. This expands the scope of expropriation objects, reflects the economic value of ecological environments, and promotes the rational and sustainable utilization of resources, which is an important development of environmental law.

The ecological compensation mechanism provides theoretical support for the external funding part of the CCCA, indicating that the entities benefiting from the governance of the Qinghai-Tibet Plateau bear the obligation to support its ecological conservation to make the funding sources more diversified and sufficient.

## **4 Challenges and Dilemmas of the Ccca in the Qinghai-Tibet Plateau**

### **4.1 Inconsistent Regulations Across Various Statutes Without the Guidance Of High-Level Legislation**

Given the fragile ecological environment and important ecological value in the Qinghai-Tibet Plateau, the strictest conservation measures should be implemented. In the Qinghai-Tibet Plateau Ecological Protection Law, although the laws of overall conservation, systematic conservation, and coordinated protection are embodied through special legislation of special regional space <sup>[8]</sup>, there remains a lack of standardized regulations regarding the selection of specific conservation mechanisms. In the CCCA, the rights and interests of the community lack legal protection, and the rights and interests of the community and stakeholders are mostly bound by contracts, agreements, village rules and conventions, which lack the legal effect to resist internal and external conflicts <sup>[9]</sup>.

The CCCA is widely employed in ecological conservation practices across the Qinghai-Tibet Plateau, but it is difficult to unify the norms and regulations in various places without the guidance of high-level legislation. The Qinghai-Tibet Plateau spans six provinces, and each province and administrative region has its local laws and regulations on environmental conservation, as well as numerous regulations governing the CCCA. This often leads to similar conservation cases being adjusted by different regulations simultaneously and diverse institutional provisions, resulting in conflicts and fragmentation in legal effects. It hampers comprehensive management efforts, undermines the promotion of the CCCA, and hinders the wider adoption of conservation standards.

#### **4.2 Risk of Legal Compliance Due to the Vague Legal Relationship Among the Agreement Entities**

The CCCA is an ecological conservation mode involving collaborative participation from the government, community residents, and ENGOs, while also receiving external funding support from enterprises, research institutions, and relevant organizations. With the addition of multiple entities, their legal relationship becomes more complicated, so the risk of legal compliance is increasing.

At present, Chinese law has not made a clear definition of the CCCA, resulting in the ambiguity of the legal relationship between the agreement entities during practical applications. Moreover, many contents are still stipulated based on simple values and urgent real-life needs, which are prone to crises of legitimacy and the risk of compliance.

#### **4.3 The Lack Of Specific Legal Institutional Norms Leads to Vague and Ambiguous Agreement Content**

The CCCA requires the basis of signing the “conservation agreement”. However, the absence of specific legal provisions often results in these agreements being ambiguous, vague, and sometimes biased. The “government”, as the main entity of the conservation agreement, has a strong dominant position compared with other agreement entities (community residents, ENGOs, etc.). Additionally, the community residents in the Qinghai-Tibet Plateau have limited legal knowledge, placing them in a disadvantaged agreement position. In this case, the rights and interests of community residents lack clear legal conservation, and the “rights, responsibilities, and interests” of communities, ENGOs, enterprises, and stakeholders are only bound by agreements, which lack the legal effect of resisting internal and external conflicts<sup>[10]</sup>.

The absence of specific legal institutional norms not only impedes the clarity of the conservation agreement’s content but also increases the likelihood of bias towards the dominant “government” entity. Consequently, the equitable interests of other involved entities may remain unguaranteed and unmitigated by relevant laws and regulations, undermining the fairness of the conservation agreement.

### **5 Suggestions On Improving the Ccca in Ecological Legislation of the Qinghai-Tibet Plateau**

#### **5.1 Establishing High-level Legal Guarantees to Avoid Conflicts Between Different Laws**

The further standardization of the CCCA needs the guidance of a high-level law to resolve the possible legal conflicts in different low-level laws and regulations. Therefore, one of the present legislative tasks is to accelerate the ecological legislation in the Qinghai-Tibet Plateau and fully integrate and improve the CCCA.

The issuance of the Qinghai-Tibet Plateau Ecological Protection Law marks a new stage of China’s ecological environment legislation, but it is necessary to supplement

and revise it based on practice. In the process of legislative improvement, the Qinghai-Tibet Plateau Ecological Protection Law should avoid duplication, and integrate with other existing relevant laws while respecting regional particularities, so as to ensure a coordinated, consistent and well-structured environmental legal system <sup>[11]</sup>. Under the background of actively promoting the improvement of ecological conservation legislation on the Qinghai-Tibet Plateau, incorporating the CCCA into legislation stands as a potent measure and pressing necessity to foster ecological conservation across the region.

## **5.2 Clarifying the Legal Relationship Among Multiple Entities to Avoid Legal Risks**

The CCCA involves three primary entities: the government, community residents, and ENGOs. To prevent the legitimacy risk, it is particularly important to clarify the legal relationship among the multiple entities.

The government has the right and obligation to conserve the ecological environment. It has transferred its right of environmental conservation and management to community residents and ENGOs by signing the CCCA, thereby producing the concept of the “conservation right”. Meanwhile, because community residents and ENGOs share part of the government’s environmental conservation obligations, the government should compensate and motivate them.

There are two ways of compensation and motivation: injecting support and self-motivation. The injecting support compensation mainly includes financial assistance from the government, as well as administrative compensation in the form of direct monetary payments. However, self-motivation encompasses diverse approaches aimed at fostering sustainable local economic development, such as preferential policies, tax relief, and the establishment of ecological conservation funds, thereby satisfying the interests of protectors without direct monetary compensation and achieving compensation and motivation. Community residents can be either the main destroyer or the protector of ecological protection. When their livelihood development is restricted by protected areas, they are victims of ecological protection and thus become ecological vandals. However, when their livelihood development is little affected by ecological protection policies, and they can even obtain higher benefits from the good ecology of the protected area, they will become the beneficiaries of ecological protection, and then become ecological protectors <sup>[12]</sup>.

At present, it is imperative to strike a balance between environmental conservation and economic development and implement ecological environmental conservation measures, while residents in conserved areas have the right to pursue economic and livelihood development. Because of the fragile ecological environment and important ecological value in the Qinghai-Tibet Plateau, fostering a sustainable ecological service economy is an inevitable choice for the region. The government bears the responsibility to promote economic development and people’s livelihoods, so it is obligated to guide, support, and manage the development of the ecological service economy. Meanwhile,

NGOs can also play a positive role in developing a sustainable economy to some extent. Accordingly, the government should allocate certain compensation funds for such supportive efforts.

Another crucial aspect of the CCCA is external support, whose primary sources can include, but are not limited to, enterprises directly benefiting from the ecological environment management of the Qinghai-Tibet Plateau, governments from various regions, domestic and foreign environmental organizations and other social organizations that have not signed conservation agreements directly but have the conserving willingness. The methods of external support are also diversified, encompassing government financial transfers, ecological compensation mechanisms, and international carbon financing, among others. As for the amount standard of external support, in private law, the principle of autonomy of will between civil subjects can be used for equal consultation. In public law, the principle of autonomy of will in private law can be fully utilized to resolve the complicated technical problems in public law, and the complicated power-right relationship can be reduced to the interest relationship between civil subjects [13].

This paper further clarifies the legal relationship among the entities of the CCCA, as shown in Fig. 1:

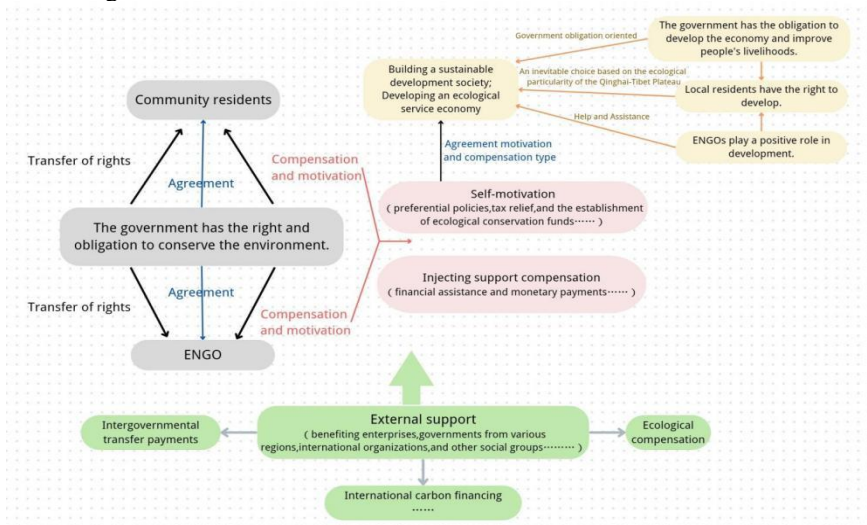


Fig. 1. Legal relationship among multiple entities of the CCCA

### 5.3 Establishing Specific Legal Institutional Norms and Clarifying the Allocation of “Rights, Responsibilities, and Interests”

As a practical and effective means of ecological conservation in the Qinghai-Tibet Plateau, the CCCA still has some problems, such as a lack of specific legal institutions and ambiguity in the agreement. Therefore, to further improve the CCCA, it is necessary to establish specific legal institutional norms, clarify the allocation of “rights, responsibilities, and interests” among the agreement entities, and provide legal guarantees for conflicts of internal and external rights and responsibilities.



Next, this paper focuses on the “rights, responsibilities, and interests” of the three direct entities (the government, community residents, and ENGOs), and makes legislative suggestions by listing specific contents.

### 5.3.1 “Rights, Responsibilities, and Interests” of the Government

(1) Rights exercised by the government in the CCCA include:

(a) Granting the conservation commitment entity the “conservation right” of the conserved area;

(b) Participating in the conservation and management tasks of conserved areas;

(c) Supervising and evaluating the conservation results;

(d) Investigating the liability for breach of contract and terminating the agreement when the other entity fails to fulfill its obligations as required.

(2) Responsibilities held by the government in the CCCA include:

(a) Demonstrating and formulating specific protection schemes;

(b) Providing necessary help for the conservation commitment entity;

(c) Assisting the community to develop an ecological service economy and providing policy, capital, and technical support;

(d) Offering corresponding compensation and motivation for the conservation commitment entity.

(3) Interests obtained by the government in the CCCA include:

(a) Sharing the administrative pressure of environmental conservation;

(b) Broadening the funding sources of environmental conservation;

(c) Promoting the comprehensive and sustainable development of local ecology and economy;

(d) Attaining support from public forces and introducing talents and technology.

### 5.3.2 “Rights, Responsibilities, and Interests” of Community Residents

(1) Rights exercised by community residents in the CCCA encompass:

(a) Obtaining the environmental “conservation right” of conserved areas;

(b) Gaining the “concession right” of developing sustainable economic industries in conserved areas;

(c) Demanding the government to fulfill the compensation and motivation policies stipulated in the agreement, otherwise investigating for breach of contract and terminating the agreement;

(d) Requiring appropriate compensation when the government unilaterally changes the agreement without reasonable reasons.

(2) Responsibilities taken by community residents in the CCCA encompass:

(a) Formulating relevant community “conventions” for the conserved areas to restrict their use of natural resources and reduce damage to the ecological environment;

(b) Protecting and regularly monitoring the conserved areas;

(c) Reporting to the relevant government departments within 24 hours after discovering serious damage.

(3) Interests obtained by community residents in the CCCA encompass:

- (a) Protecting the natural environment for their survival and promoting their healthy development;
- (b) Getting compensation, motivation, and various preferential policies and resources from the government on environmental management;
- (c) Developing the local eco-friendly industries and increasing the income of community residents.

### 5.3.3 “Rights, Responsibilities, and Interests” of ENGOs

- (1) Rights exercised by ENGOs in the CCCA include:
  - (a) Obtaining the environmental “conservation right” of conserved areas;
  - (b) Gaining the “concession right” of developing sustainable economic industries in conserved areas;
  - (c) Demanding the government to fulfill the compensation and motivation policies stipulated in the agreement, otherwise investigating for breach of contract and terminating the agreement;
  - (d) Requiring appropriate compensation based on the upfront investment when the government unilaterally changes the agreement without reasonable reasons.
- (2) Responsibilities held by ENGOs in the CCCA include:
  - (a) Supervising the conservation status of the government and community residents;
  - (b) Providing financial and technical support to the conserved areas;
  - (c) Inviting relevant environmental conservation experts to guide and help the residents;
  - (d) Assisting the local development of the ecological service economy.
- (3) Interests obtained by ENGOs in the CCCA include:
  - (a) Attaining compensation, motivation, and various preferential policies and resources from the government on environmental management;
  - (b) Realizing the goal of “conserving ecological environment and resources” of the organization;
  - (c) Providing a good paradigm for the organization to cooperate with the government and the public in ecological conservation projects in the future.

It should be noted that the above legislative improvement suggestions provide a basic legal guarantee for the CCCA and clarify the least contents that should be stipulated in agreements, rather than proposing the only stipulation contents for all agreements. Given the diverse ecological and social environments in the Qinghai-Tibet Plateau, specific conservation agreements should be adapted to local conditions, to flexibly address the actual problems.

In addition, it is necessary to regulate the rights of the government, especially the unilateral change right of the government, so as to balance the interests between public and private subjects and achieve better cooperative governance results<sup>[14]</sup>. And to enhance and promote the CCCA, providing platforms for individual expression, like inviting community members to share their views and fostering group discussions, can empower other communities and broaden the scope of awareness<sup>[15]</sup>.

#### 5.4 Screening the Contents of Legislative Provisions and Abolishing the “Elitism” Idea

Legislation is not a jumbled and meaningless pile of legal provisions. In the improvement of ecological legislation on the Qinghai-Tibet Plateau, the relevant provisions of the CCCA should be screened reasonably and carefully.

First, it should be clear that the Qinghai-Tibet Plateau Ecological Protection Law is a legislative task of environmental law nature. The environmental law mainly adjusts the social relationship between humans and nature and formulates detailed regulations on how to conserve the ecological environment. Therefore, “specific conservation institutions” and “effective motivation and protection” are the main contents of integrating the CCCA into the conservation legislation of the Qinghai-Tibet Plateau, and the specific provisions should focus on the above themes.

Second, the legislation content cannot be divorced from practice, or it will become a “rootless tree”. We should actively learn from the essence of existing specific cases and transform them into universal legal provisions that can play a guiding and guaranteeing role in the construction of CCCA in the future.

Third, in the specific legislation, we should abolish the “elitism” idea. Environmental legislators should neither use the authority of their legislative right to replace the wisdom of experts and scholars in the fields of economy, administration, and science, nor fall into the trap of “legal totalitarianism”. When the ecological legislation of the Qinghai-Tibet Plateau regulates the CCCA mode, except for the institutions of environmental conservation and public participation, other relevant regulations should be directional and guiding. In other words, only principled and guiding methods are proposed, while the specific schemes are designed and selected by laws and regulations in various fields such as economy, administration, and science, jumping out of the legislative “elitism” idea.

## 6 Conclusions

The Qinghai-Tibet Plateau is an important ecological region, with its conservation task being heavy and arduous. With the continuous exploration of various forces, the ecological conservation of the Qinghai-Tibet Plateau has made significant progress, stepping closer to the dream of “harmonious coexistence between humans and nature”. Laws are the most powerful means of human society at present. As conserving the environment is an inevitable mission for everyone, and environmental problems are often complex, improvement through the legislation means is necessary no matter for the traditional conservation mode, the CCCA, or the enhanced conservation mode appearing in the future. The CCCA is one of the major trends in the future ecological conservation mode, and its legislative integration and improvement are unavoidable propositions.

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