

Human Rights Law and Fourth World Peoples in Asia: Catalysts for Change

By Dr. Narissa Ramsundar, Regina Paulose & Tabitha Nice



Photo credit: Aranka Rohingya National Organization (ARNO)

ABSTRACT

This is a report specifically focusing on the International Covenant on Economic, Social, and Cultural Rights (ICESCR) and questions whether or not these rights have been provided to Fourth World peoples in Asian countries. This report examines five specific peoples with the purpose of determining whether they have been afforded the rights enshrined under the ICESCR. This report aims to highlight the Fourth World peoples in the Asian region that have been severely affected by the implementation or lack of effective implementation of the ICESCR. While the authors acknowledge that the States mentioned in this report may have undertaken to officially consider the implementation of economic, social and cultural rights as prescribed under international law. This report flags violations of the Covenant that require urgent attention to ensure compliance with international law. The report further identifies recommendations that

aim to alert the United Nations and relevant institutions that action to encourage compliance is needed. The States discussed in this report should also take note of the fact that any failure to comply with the Covenant can and should be immediately corrected as a matter of priority.

Keywords: human rights, indigenous, peoples, Fourth World, Martinez Cobo, Tibetans, Uyghurs, Kachin, Sentinelese, civil rights, United Nations. UNDRIP

Eighteen years after the Universal Declaration on Human Rights was adopted by the United Nations in 1948, two treaties were drafted to enshrine the rights contained in that Declaration as new international state law. The first of these was the International Covenant on Civil and Political Rights (ICCPR - 1966) that came into force in March 1976. The ICCPR commits states' governments to respect the civil and political rights of individuals. The second human rights affirming law was the International Covenant on Economic, Social, and Cultural Rights (ICESCR - 1966) that came into force in January 1976. The ICESCR was adopted into law to provide a framework to protect economic, social, and cultural rights to grant economic, social and cultural rights to non-self-governing territories and individuals.

The recognition of economic, social and cultural rights has been identified as one of the core aims outlined in Article 1(3) of the Charter of the United Nations.¹ These aims have been reinforced by the United Nations in its 2030 Agenda for sustainable development.² The Office of the United Nations High Commissioner for Human Rights (OCHR) recognizes these rights as “economic, social and cultural rights are those human rights relating to the workplace, social security, family life, participation in cultural life, and access to housing, food, water, health care and education.”³ The OCHR has listed worker's rights, protection of

and assistance to the family, the right to adequate standard of living, the right to health, the right to education and the right to participate in cultural life and to benefit from scientific advancement as well as the protection of moral and material interests from literary and artistic production as examples of this unique groups of rights.⁴ Economic, social and cultural rights (ESCR) as recognised under the ICESCR⁵ are unique in that they are not automatically granted to individuals, but are realised progressively through State undertakings in a prompt and effective manner. This report identifies clear areas of violation of State obligations in this quest for progressive realisation of economic, social and cultural rights.

Methodology

An informal working group was created in July 2019 and was comprised of Regina Paulose,

¹ Charter of the United Nations (signed 26 June 1945, entered into force 24 October 1945) 1 UNTS XVI.

² Transforming our World: The 2030 Agenda for Sustainable Development available at < <https://sustainabledevelopment.un.org/content/documents/21252030%20Agenda%20for%20Sustainable%20Development%20web.pdf> > last accessed 24 January 2020.

³ OHCHR “Frequently Asked Questions” Fact Sheet 33 available at < <https://www.ohchr.org/Documents/Publications/FactSheet-33en.pdf> > last accessed 24 January 2020.

⁴ Ibid

⁵ International Covenant on Economic, Social and Cultural Rights (New York, 16 December 1966, entered into force 23 March 1976, 999 UNTS 171). Hereinafter, referred to as ICESCR.

International Criminal Law Attorney of the Common Good Foundation, Dr. Narissa Ramsundar of Canterbury Christ Church University, and Ms. Tabitha Nice. The working group aimed to:

- Gather a diverse group of indigenous peoples together from Asian countries to discuss economic, social, and cultural rights in their homeland;
- Learn more about the landscape of these particular rights and celebrate successes, discuss potential violations, and find shared solutions;
- Create a report of the information that has been presented by indigenous groups in Asia and disseminate that report to relevant UN Rapporteurs;
- Present that report at the Human Rights Council session in Geneva, Switzerland in March 2020.

This research group examined whether indigenous peoples living in Asian States can access economic, social, and cultural rights that are guaranteed under the UN treaty framework to which the States are party. The research group proposed to rigorously examine a group of states that have so far not been subject to detailed scrutiny on the question economic, social, and cultural rights regarding indigenous groups. In so doing this report aims to advance the development of human rights compliance by States in Asia.

The working group hosted a workshop at Canterbury Christ Church University from October 26- 27, 2019. Before this event, a

call for participation was sent to indigenous nations in Asia. Leaders from these nations were contacted and invited to attend a two-day workshop. Of those representatives invited, three nations' representatives participated in the workshop at Canterbury Christ Church University: the Uyghurs, the Kachin and the Rohingya. The authors listened to presentations from representatives of the different groups. These narratives were then placed in tables that presented information from the narratives describing infringements preventing attainment and enforcement of ESCR. The findings from the workshop thus informed the preparation and presentation of this report scheduled for the March 2020 Human Rights Council session in Switzerland.

Two further representatives from different indigenous groups, the Tibetans and Sentinelese contacted the working group. Regina Paulose worked to obtain information regarding the Sentinelese, and Tabitha Nice, and Narissa Ramsundar interviewed the Tibetan representative establishing five nations as sources. All of the information presented to the research group was then analyzed and entered into comprehensive table that documented information about infringements of the ESCR committed against the subject indigenous nations.

Once the information was compiled, the research group then analyzed the data and wrote recommendations based on what was presented. The representatives participated anonymously study for this report so they could speak freely

without fear of political repercussions from ruling countries should that arise. This report does not infer that it is a likely result, but notwithstanding, the working group adopted this security measure.

The authors presented recommendations to the United Nations for improvement and further realization of the rights enshrined within the ICESCR after the narratives for each indigenous nation narrative towards the end of the report.

The UN Declaration on Indigenous Peoples Rights

Increasing attention to and protecting the rights of indigenous peoples has been a focus of the United Nations since the 1970s. In 1971 the Sub-Commission on Prevention of Discrimination and Protection of Minorities appointed Special Rapporteur Jose Martinez Cobo. Special Rapporteur Cobo published a report of his study titled “The Study of the Problem of Discrimination against Indigenous Populations.”⁶ After this report was issued, the UN took concerted actions to elevate discourse regarding indigenous issues, with the notable appointment of a Special Rapporteur on Indigenous Rights in 2001 and, in 2007, finally agreed to the creation of the Expert Mechanism on the Rights of the Indigenous Peoples (EMRIP) and adopted the UN Declaration on Indigenous Peoples Rights (UNDRIP). EMRIP is a vital subsidiary body that provides expertise and advice on the rights of indigenous people and promotes and assists states’ parties with protecting the rights espoused under UNDRIP.

The UN General Assembly adopted the UNDRIP on September 13, 2007. It contains 46 articles that proclaims guarantees to protect and

emphasize the individual rights of indigenous peoples. Since it is a Declaration, it is not legally binding on states’ parties. However, there are other treaties and covenants that are recognized to have binding force that complement the UNDRIP articles. In addition to the International Covenant on Economic, Social and Cultural Rights the other treaties and covenants include:

- The International Labour Convention on the Rights of Indigenous and Tribal Peoples in Independent Countries, No. 169 (1989) which replaces The International Labour Convention on the Rights of Indigenous and Tribal, and Semi-Tribal Populations in Independent Countries, No 107.⁷
- The International Covenant on Civil and Political Rights (ICCPR)
- Convention on the Elimination of All Forms of Racial Discrimination (CERD)
- Convention on the Elimination of all Forms of Discrimination against Women (CEDAW)
- Convention on the Rights of the Child (CRC)
- Convention on the Biological Diversity (CBD)

The UNDRIP contains several articles that are also enshrined in the ICESCR. The right to self-determination, protecting children’s rights, right to education, and economic development, joins these included articles.

⁶ Jose Martinez Cobo, “Study of the Problem of Discrimination against Indigenous Populations” Volume V, UN NY 1987, E/CN.4/Sub.2/1983/21/Add.8.

United Nations Special Rapporteur Rodolfo Stavenhagen issued a report in 2007⁸ about indigenous peoples in Asia, specifically discussing human rights: civil, political, economic, and social and cultural rights. Stavenhagen highlighted several important points that are worth noting in this report. First: throughout Asia “states differ in the legal recognition and status that they grant to indigenous peoples in their own countries, and also in the terminology applied to refer to these groups in their domestic policies and legislation.”⁹ Stavenhagen also pointed to the loss of indigenous lands and territories, forced relocation as a result of national development projects or conflict, and violence either from conflict or targeted violence towards women and children through crimes such as human trafficking.

The nations that participated in this study, and we report here, were asked whether they identified as something near or akin to the term “indigenous.” All groups reported that they have a term that they use which is equivalent to the meaning of “indigenous” under UNDRIP framework. This reference to self-identification is based in part on the terminology used by Special Rapporteur Victoria Tauli Corpuz in her 2019 Report on her Mission to Brazil. In her earlier report in 2014 on the Rights of Indigenous Peoples she discussed that the concept of “indigenous peoples” is an elusive one and that definitions can be either over or under inclusive. To this end, Special Rapporteur Corpuz noted that there is no definition of indigenous peoples and a definition of the term does not appear in the UNDRIP.

In discussing the UNDRIP with the participating groups, the groups indicated that all of the articles contained in the UNDRIP did not apply to

the peoples based on the way they were treated in the status quo. As indicated in the following table, when the participants were asked about whether they enjoyed the rights enumerated within the articles in the UNDRIP, their response was straightforward.

UN Declaration on Rights of Indigenous Peoples Assessment by Representatives of Groups

UN Declaration on the Rights of Indigenous People	Uyghurs	Kachin	Tibetans Rohingya	Sentinelese
Article 1: Full rights	•	•	•	Yes*
Article 2: Free and equal— free from discrimination	•	•	•	Yes*
Article 3: Right to self-determination	•	•	•	Yes*
Article 4: Right to autonomy or self-government in matters relating to their internal and local affairs	•	•	•	Yes*
Article 5: Right to maintain distinct e/s/c/p rights	•	•	•	Yes*
Article 6: Right to nationality	•	•	•	Yes*
Article 7: Right to life, collective right to freedom	•	•	•	Yes*

⁷ This report was written prior to the release of the ILO Assessment Report on the status of Indigenous and Tribal People Convention.

⁸ Rodolfo Stavenhagen, Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples, “Promotion and Protection of All Human Rights, Civil, Political, Economic, Social, and Cultural Rights, Including the Right to Development” 1 November 2007, A/HRC/6/15/Add.3.

⁹ Id para 6 and 7

UN Declaration on the Rights of Indigenous People	Uyghurs Kachin Rohingya Tibetans	Sentinelese
Article 8: No forced assimilation or destruction of their culture. Mechanisms of redress.	• • • •	Yes*
Article 9: Right to belong	• • • •	Yes*
Article 10: No forcibly removed from territories or lands	• • • •	Yes*
Article 11: Right to practice cultural traditions, mechanisms to protect culture, religious, and spiritual property	• • • •	N/A cannot return items
Article 12: Right to religion, repatriation of ceremonial objects/remains	• • • •	Yes* repatriation N/A
Article 13: Right to transfer and revitalize language and traditions, states must protect this right	• • • •	Yes*
Article 14: Control over education	• • • •	Yes*
Article 15: Right to dignity	• • • •	No
Article 16: Right to media	• • • •	N/A
Article 17: Right to enjoy full rights	• • • •	N/A
Article 18: Right to participate in decision making matters	• • • •	N/A
Article 19: states to consult	• • • •	N/A
Article 20: Right to maintain political, economic, and social institutions	• • • •	Yes*
Article 21: improvement of economic and social conditions	• • • •	N/A
Article 22: Attention shall be paid to elderly, women, children, and disabled	• • • •	N/A
Article 23: Right to development	• • • •	N/A

UN Declaration on the Rights of Indigenous People	Uyghurs Kachin Rohingya Tibetans	Sentinelese
Article 24: Right to traditional medicines	• • • •	N/A
Article 25: Right to spiritual relationship with the lands	• • • •	Yes*
Article 26: Right to land	• • • •	No
Article 27: Due process	• • • •	N/A
Article 28: Right to redress	• • • •	N/A
Article 29: Right to conservation and protection of the environment	• • • •	N/A
Article 30: No military activities	• • • •	Yes
Article 31: Right to maintain and control cultural heritage	• • • •	Yes
Article 32: Right to development of lands	• • • •	N/A
Article 33: Right to customs and traditions	• • • •	Yes
Article 34: Right to promote customs	• • • •	Yes
Article 35: Right to determine responsibilities	• • • •	Yes
Article 36: Right to maintain and develop across borders	• • • •	N/A
Article 37: Right to recognition of treaties	• • • •	N/A

With regards to the Sentinelese people it was noted that, in some cases, it was difficult to determine whether or not the UNDRIP was followed as they are a non-contacted tribe. Of interest to the research team was that most of these groups were unaware that the UNDRIP contained articles of this nature. When asked in the Working Group Session whether the UNDRIP articles were honored by the states they resided in, the repre-

representatives of the Uyghurs, Rohingya, and Kachin, collectively responded “all of it was violated.” Sadly, it appears that nothing has changed since the last focused UN report on indigenous groups within Asia. Moreover, as this report will continue to show, the ICESCR which is legally binding on state parties is not providing the additional layer of protection it should afford to these communities, regardless of whether or not these groups are legally recognized as such by the state parties discussed in this report.

Key Take-Away

During the course of the Fact-Finding process, it was made clear to the research team by their representatives of these self-identified indigenous nations that almost all articles (where applicable) contained in the UNDRIP are not recognized by the state governments. In fact, participants acknowledged that the laws towards these particular indigenous nations enforced by these state governments do exactly the opposite of what the spirit and intent of UNDRIP promotes.

International Covenant on Economic, Social, and Cultural Rights

The ICESCR establishes a framework for the progressive realisation of core ideals recognised in the United Nations Charter¹⁰ and the Universal Declaration of Human Rights¹¹ regarding economic, social and cultural rights. The Preamble to the Covenant proclaims that the “inherent dignity and ... the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.” It also recognises that these inalienable rights derive from the inherent dignity of the human person.¹² Although

the Treaty recognises that these freedoms and rights represent an ideal, “it identifies that the means for this ideal to be achieved is through the creation of conditions “whereby everyone may enjoy ... economic, social and cultural rights, as well as ... civil and political rights.”¹³ To this end, the Convention emphasizes State obligations towards the creation of conditions for the enjoyment of all rights. The Covenant has articulated ten core rights that relate to the economic, social and cultural life of an individual. These are:

- The right to self-determination¹⁴;
- The right to work¹⁵;
- The right to enjoy just and favourable working conditions¹⁶;
- The right to form and join a trade union of choice¹⁷;
- The right to social security, including social insurance¹⁸;
- Protection to the family¹⁹;
- The right to an adequate standard of living²⁰;
- The right to the highest attainable standard of physical and mental health²¹;

¹⁰ Charter, note 1.

¹¹ Universal Declaration of Human Rights, adopted 10th of Dec. 1948, G.A. Res. 217A (III), U.N. GAOR, 3d Sess. (Resolutions, pt. 1), at 71, U.N. Doc. A/810 (1948).

¹² The Preamble to the International Covenant on Economic, Social and Cultural Rights (New York, 16 December 1966, entered into force 23 March 1976, 999 UNTS 171).

¹³ Ibid.

¹⁴ Article 1 ICESCR

¹⁵ Article 6(1), Article 6(2) ICESCR

¹⁶ Article 7 ICESCR

¹⁷ Article 8 ICESCR

¹⁸ Article 9 ICESCR

¹⁹ Article 10(1) ICESCR

²⁰ Article 11 ICESCR

²¹ Article 12 ICESCR

- The right to education,²²; and
- The inherent right of peoples to utilise their natural wealth and resources.²³

The “concept of progressive realization constitutes a recognition of the fact that full realization of all economic, social and cultural rights will generally not be able to be achieved in a short period of time.”²⁴ Nonetheless, that recognition does not mean ESCR rights are devoid of content. To the contrary, the concept of “progressive realization” demands that while there is a recognition of the realities of the “real world,”²⁵ States, nevertheless, have an obligation to move “expeditiously and effectively” to accomplish that goal.²⁶

Article 2(1) of the ICESCR articulates three undertakings that States must perform, in order to progressively achieve the full realisation of these economic, social and cultural rights. These are:

- To take steps individually and through international cooperation, especially economic and technical;
- To utilize maximum available resources
- To employ all appropriate means, particularly the adoption of legislative measures.

Article 2(2) further provides that States undertake to apply these rights in a non-discriminatory manner, so that all the rights enunciated in the ICESCR will be exercised “without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” Article 3 provides further protection against discrimination by requesting states to undertake that both men and women equally enjoy the rights enshrined in the ICESCR.

The undertaking to “take steps” is not an aspirational one. General Comment No. 3 states that the undertaking is not qualified or limited by other considerations.²⁷ Moreover, steps towards progressive realization of economic, social and cultural rights must be “deliberate, concrete and targeted as clearly as possible” and must be taken relatively quickly after the ICESCR entry into force for the State. “While the full realization of the relevant rights may be achieved progressively, steps towards that goal must nonetheless be taken within a reasonably short time after the Covenant’s entry into force for the States concerned. Such steps should be deliberate, concrete and targeted as clearly as possible towards meeting the obligations recognized in the ICESCR.

The undertaking to “utilise maximum resources” is also not an aspirational one. General Comment No. 3 identifies that there are quantifiable markers to assess this. General Comment suggests that there are minimum essential levels of ESCR that States must provide. States bear an onus of proof regarding this obligation. If they fail to meet at least minimum core obligations, then they must demonstrate that at least every effort must have been made to satisfy these minimum

²² Article 13 ICESCR

²³ Article 15 ICESCR

²⁴ CESR General Comment No.3 “The Nature of States Parties Obligations” (Art 2 para 1) Adopted at the Fifth Session of the Committee Economic, Social and Cultural Rights E/1991/23 (14 December 1990) para 9.

²⁵ Ibid

²⁶ Ibid

²⁷ CESR General Comment No.3 “The Nature of States Parties Obligations” (Art 2 para 1) Adopted at the Fifth Session of the Committee Economic, Social and Cultural Rights E/1991/23 (14 December 1990) para 2.

obligations. While there is not a precise marker, assessments of objective markers such as analyses of fiscal spending, taxation frameworks and benefits from corporate entities can be taken into account.²⁸

Judicial oversight of these ESCR in domestic courts has supported the progressive realization of these rights.²⁹ Beyond this, a further level of protection has been provided under the Optional Protocol³⁰ with the creation of the Committee on Economic, Social and Cultural rights (CESR) to address claims regarding the provision and realisation of ESCR.³¹ Much reliance is thus placed on monitoring mechanisms and the timely reporting or breaches or violations of these obligations. As some authors have opined, “progressive realization” requires a rational devotion of state effort to achieve rights within the maximum of available resources, in the shortest possible time, while pre-

serving a minimum irreducible core of rights and safeguarding the most vulnerable.”³²

States owe compliance with these rights to all peoples. An important aspect of the ICESCR is that the provision of these ESCR rights is addressed holistically across the society so that one group does not benefit at the expense of the other. Special Rapporteur on the rights of Indigenous Groups Corpuz identified indigenous groups as vulnerable in the 2014 report.³³

According to her report, indigenous groups have “nearly disadvantageous social and economic conditions of indigenous peoples as compared to the majority of the population in the societies in which they live present barriers to the full exercise of the population in the societies in which they live...”³⁴ Her report concluded that indigenous persons fared worse than non-indig-

²⁸ Ben Saul, David Kinley and Jacqueline Mowbray ‘Introduction’ in Ben Saul, David Kinley and Jacqueline Mowbray *The International Covenant on Economic, Social and Cultural Rights: Commentary, Cases and Materials* (Oxford Scholarly Authorities on International Law 2014) available at <<https://opil.ouplaw.com/view/10.1093/law/9780199640300.001.0001/law-9780199640300-chapter-1>> last accessed 15 January 2020.

²⁹ There is no dearth of examples of judicial application for enforcement of ESCR in domestic and regional courts. Some examples are for instance European Federation of National Organisations Working with the Homeless (FEANTSA) v France (Complaint No. 39/2006), Merits, 5 December 2007 (European Committee of Social Rights) on the right to housing, and also European Roma Rights Centre v Greece (Complaint No. 15/2003), Merits, 8 December 2004; European Roma Rights Centre v Italy (Complaint No. 27/2004), Merits, 7 December 2005; European Roma Rights Centre v Bulgaria (Complaint No. 31/2005), Merits, 18 October 2006. Cases have also been brought in domestic courts for eg in India see *Shanti Star Builders v Narayan K Totame* (1990) 1 SCC 520, [9]–[11] and in Africa see *Republic of South Africa v Grootboom et al* (Case CCT 11/00), 2000 (11) BCLR 1169 (CC), 4 October 2000. Several cases on the right to self-determination has also arisen before the HRC. See *Chief Bernard Ominayak and Lubicon Lake Band v Canada*, CCPR/C/38/D/167/1984, Human Rights Committee (HRC), 26 March 1990 available at: <https://www.refworld.org/cases>, HRC, 4721c5b42.html [accessed 24 January 2020].

³⁰ The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (New York, 10 December 2008, entered into force 5 March 2013, C.N.869.2009. TREATIES-34)

³¹ Article 1 The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (New York, 10 December 2008, entered into force 5 Mat 2013, C.N.869.2009.TREATIES-34.

³² Ben Saul David Kinley and Jacqueline Mowbray ‘Introduction’ in Ben Saul, David Kinley and Jacqueline Mowbray *The International Covenant on Economic, Social and Cultural Rights: Commentary, Cases and Materials* (Oxford Scholarly Authorities on International Law 2014) available at <<https://opil.ouplaw.com/view/10.1093/law/9780199640300.001.0001/law-9780199640300-chapter-1>> last accessed 15 January 2020.

³³ Report of the Special Rapporteur on the Rights of Indigenous Peoples” UN A/HRC/27/52 (Victoria Tauli Corpuz 2014)

³⁴ Ibid para 42

enous persons with regard to poverty, health, education, unemployment, housing conditions, clean water and sanitation.³⁵

In her report she noted that challenges indigenous peoples face with regard to ESCR was related to their history of being denied self-determination, land and resources.³⁶ Their deprivation of land and resources has been to the benefit of other groups and according to Corpuz, for there to be an improvement in the delivery of state obligations on ESCR to them, their unique history must be taken into account. There must be “some restoration of what has been lost including sufficient land to ensure a sufficient basis for development.”³⁷ Further, while most states have organised delivery of ESCR by moving groups to urban areas, the attachment of indigenous groups to their lands require design of programmes to allow access to ESCR in their traditional lands.³⁸ She has advocated increasing input from indigenous groups on economic decision making for growth outcomes³⁹ and as well measure be put in place by States so that indigenous groups do not lose important aspects of their culture, ways of life, access to lands and that their access to ESCR right be taken into this broader context.⁴⁰

Key Takeaway

The ICESCR has outlined obligations on States to create conditions that allow all peoples to have access to the economic, social and cultural rights it defines. States must ensure that indigenous peoples have equal access to their rights under the ICESCR. They must not be disadvantaged in the allocation of resources. Further, ICESCR requires that positive action be taken to ensure that steps

are taken to ensure that all means are exhausted to maximise resources for ESCR, so that there is a progressive realisation of these rights.

This requires detailed State policy that allows for indigenous groups to consult on development issues and further for their unique histories and traditional relationships to the land be factored into all ESCR developments. States are under an obligation further to guard against any type of abuse of these particular rights.

The next sections examine the obligations owed under the ICESCR. This information was presented by representatives of the groups as on-going ECSR violations under the ICESCR.

Indigenous Peoples of Asia

Sentinelese

The Sentinelese tribe resides on North Sentinel Island that is part of the Andaman Islands, considered part of India. The Sentinelese people for the most part have been left alone for centuries,⁴¹ which is why they are labeled a “non-contacted” tribe. They have made it expressly clear the situation should remain this way. India classifies the Sentinelese as “Particularly Vulnerable Tribal Groups” (PVTG). The tribe came into the public’s attention when a young missionary attempted to proselytize the Sentinelese people. A debate

³⁵ Ibid

³⁶ Ibid para 44

³⁷ Ibid

³⁸ Ibid para 45

³⁹ Ibid

⁴⁰ Ibid at 45-46

⁴¹ Adam Goodheart, *The Last Island of the Savages*, *The American Scholar*, Autumn 2000, 69(4):13-44.

ensued whether or not the tribe should be contacted in order to find the missionary—who is likely dead.⁴² Besides the issues relating to missionaries and tourists who may want to come into contact with the Sentinelese, poachers are also now attempting to pillage resources from tribal sanctuaries.⁴³

While the questions presented to researchers regarding the application of the ICESCR appears positive for the Sentinelese, the difficulty in assessing the true application of the ICESCR is that it is an un-contacted tribe. For now, it appears India has acknowledged and continues to preserve the Sentinelese right to self-determination as enshrined in the ICESCR. The UN Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples stated, “one must respect the principle of no contact...”⁴⁴ as this is an expression of self-determination. Absent contrary information at this juncture, the authors work under the assumption that the tribe governs itself according to its own cultural and social norms and laws without undue influence. However, it is clear that the Indian government could cause the extinction of this particular tribe if tourism and other types of contact go unchecked.⁴⁵

⁴² PTI, “Restricted Area permit may be reimposed in North Sentinel Islands” The Hindu, November 28, 2018, <https://www.thehindu.com/news/national/restricted-area-permit-may-be-re-imposed-in-north-sentinel-islands/article25615015.ece>

⁴³ Survival International, “Serial poacher’s arrest exposes failure to protect world’s most isolate tribe” August 3, 2017, <https://survivalinternational.org/news/11764>

⁴⁴ Jose Martinez Cobo, “Study of the Problem of Discrimination against Indigenous Populations” Volume V, UN NY 1987, E/CN.4/Sub.2/1983/21/Add.8

⁴⁵ Scott Wallace, “Death of American missionary could put this indigenous tribe’s survival at risk” National Geographic, November 28, 2019, <https://www.nationalgeographic.com/culture/2018/11/andaman-islands-tribes/#close>

The following table highlights the rights violations of the ICESCR of non-contacted tribes as reported by Survival International, a NGO that works closely to protect the rights of non-contacted tribes. This information was reported to the research team.

ICESCR Application Sentinelese

Article	Content	Violation
Article 1	The right of self-determination.	Yes, their right to remain uncontacted is respected and they are entirely self-governing
Article 2	Undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.	Since the tribe is self-governing unable to measure this
Article 3	Ensure the equal right of men and women.	N/A
Article 6	Right to work.	N/A
Article 7	Right to enjoy just and favorable working conditions. Remuneration, fair wages and equal treatment for work of equal value, decent living for self and family, safe and healthy working conditions, equal opportunity to be promoted, rest and leisure and periodic holidays with remuneration for public holidays.	N/A
Article 8	Right to form and join a trade union of their choice.	N/A

Article	Content	Violation
Article 9	Right to social security, including social insurance.	N/A
Article 10	Protection to the family, particularly while responsible or the care and education of children. Marriage should be entered into with free consent. Special protection to mothers before and after child birth.	N/A
Article 11	Right to an adequate standard of living.	N/A
Article 12	Right to the highest attainable standard of physical and mental health.	N/A
Article 13	Right to education.	N/A
Article 14	If at the time of becoming a state party there is no primary education it will, within two years, adopt a plan of action for progressive implementation.	N/A
Article 15	Right to take part in cultural life.	Yes (there is no interference in their cultural life)
Article 25	Nothing shall be interpreted to impair the inherent right of peoples to utilise their natural wealth and resources.	

The Uyghurs

The Uyghurs identify themselves as an indigenous people native to East Turkestan. This region is commonly referred to and identified as the Xinjiang province of China. The Uyghurs have identified that under the ICESCR, which China ratified in their rights have continued to be

violated. Several states have called upon China to revisit the framework of protection it offered the Uyghurs.⁴⁶

During the Universal Periodic Review (UPR) for 2018 China declared in its submission to the United Nations “the linguistic and educational rights and interests of ethnic minorities are protected.”⁴⁷ China specifically called attention to its success in the Xinjiang region noting that “Year of Building People’s Livelihood” initiatives has allowed for an increase in disposable income, an increase in housing areas, and free education programs have been implemented across Southern Xianjiang.⁴⁸ China stated in this same submission that it aims to “accelerate the development of ethnic minorities and ethnic areas, strive to eliminate gender discrimination...”⁴⁹ No other reference was made regarding the Uyghurs in China’s submission. In March 2019, several countries stated their concerns over the human rights situation in Xinjiang. China responded to the Human Rights Council stating that “Xinjiang and Tibet were valued economic regions, and all ethnic groups lived there in peace. A number of vocational training centers had been built, but only to combat extremism.”⁵⁰

⁴⁶ Human Rights Council, “Report of the Working Group on the Universal Periodic Review” A/HRC/25/5, December 4, 2013.

⁴⁷ Human Rights Council, “National Report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21 CHINA” A/HRC/WG6/31/CHN/1* August 20, 2018, Para 73

⁴⁸ Ibid Para 75

⁴⁹ Ibid Para 89

⁵⁰ UN Geneva, “Human Rights Council Begins General Debate on Human Rights Situations that Require the Council’s Attention” March 12, 2019, https://www.unog.ch/unog/website/news_media.nsf/%28httpNewsByYear_en%29/4FD54EF-0CB531A83C12583BB006969D5?OpenDocument

A month later, the High Commissioner for Human Rights, Michelle Bachelet, specifically asked China to abolish “all forms of arbitrary detention, including extra-legal detention facilities in the Xinjiang Uygur Autonomous Region.” Further, the High Commissioner called upon China to take “urgent steps to respect the rights of persons belonging to ethnic minorities, including the rights to peaceful assembly and to practice religion and culture, in particular in Xinjiang” and to strengthen protection against all forms of discrimination and violence against minorities.⁵¹ Unfortunately, the noted successes highlighted by China in Xinjiang have not translated into any apparent or tangible benefit for the Uyghur population and appear tantamount to violations of nearly all international covenants and treaties.

The following table highlights the rights violations of the ICESCR as reported by the Uyghur representatives to the research team.

ICESCR Application Uyghurs

Article	Content	Violation
Article 1	Self-determination and the pursuit of ESCR.	<ul style="list-style-type: none"> • Political participation is not allowed • Self-determination is in the process to be destroyed. Identity is at risk to be lost. China wants Uyghurs to accept the identity as Han Chinese

⁵¹ Michelle Bachelet, “Letter to HE Mr. Wang Yi Minister of Foreign Affairs China” April 29, 2019, <https://lib.ohchr.org/HRBodies/UPR/Documents/Session31/CN/LetterChina.pdf>

Article	Content	Violation
		<ul style="list-style-type: none"> • Uyghurs have to speak their (Han Chinese) language, wear their clothes, practice their religion, and participate in any activities organized by communist party
Article 2	Apply Covenant without discrimination.	<ul style="list-style-type: none"> • Discrimination applied across the whole nation • Uyghurs are not allowed to practice their religion, fast, celebrate religious events, or go to mosque • Every 100 meters Uyghurs are stopped for search ID is required
Article 3	Equal rights to men and women.	<ul style="list-style-type: none"> • Uyghur men and women have no rights that could be equally applied • The majority of people in camps are men (tortured) • Women are taken to camps for either prostitution (rape), organ harvesting or to be used as labour to produce some trade stuff
Article 6	Right to work.	<ul style="list-style-type: none"> • Uyghurs have limited rights to work. The Chinese Government has decided to restructure everything in Xinjiang (East Turkestan) by making transfers • Uyghurs who were at higher positions have been moved from cities to villages or completely taken from the post or detained in camps • The population proportion of Han Chinese increases so all good positions are taken by Chinese officials • Uyghurs are not able to make their choices of work

Article	Content	Violation
		<ul style="list-style-type: none"> • In concentration camps Uyghurs work for free like slaves • Many Long working hours • Allowed to go out once a week or month • Uyghurs are not allowed to move to find job
Article 7	Right to just and favorable conditions of work.	<ul style="list-style-type: none"> • No rights to choose jobs • Government makes sure good posts are taken by Han Chinese • Poor working conditions, lack of facilities • All sharp equipment are chained (for example butchers places have all knives chained due to fear of Uyghurs)
Article 8	Right to form trade unions.	<ul style="list-style-type: none"> • No rights to join any trade unions. If any to exist Chinese government applies its rules
Article 9	Right to social security and insurance/adequate standard of living (food and shelter).	<ul style="list-style-type: none"> • None of the Uyghurs are secured from becoming homeless or end up in concentration camps • Chinese government confiscates properties or demolishes. Including mosques, graveyards (centuries old), squares • No benefits available
Article 10	Wide protection accorded to family, mothers before and after child birth and children.	<ul style="list-style-type: none"> • Uyghur families have been split apart. New born babies allowed to stay with mother until 1 year old. If a mother is considered to attend a concentration camp, she leaves home when her child is 1 • If grandparent is alive, child can stay with them. If not a place arranged at an orphanage

Article	Content	Violation
Article 11	Right to work.	<ul style="list-style-type: none"> • Uyghurs are forced to eat pork, drink alcohol • No access permitted to migrate to other areas for food • Food might not be accessible due to prices • Lots of fields damaged by chemicals using to grow food
Article 12	Right to highest standards of physical and mental health.	<ul style="list-style-type: none"> • Uyghurs are facing difficulties to attend hospitals, clinics • Wrong diagnosis, treatments have been applied. People are dying at young ages • Lack of medication • People unable to buy medicine – too expensive • Organ harvesting (many organs from detained parties)
Article 13 & 14	Right to education. If no system is in place, state party undertakes to plan one within two years.	<ul style="list-style-type: none"> • Uyghur schools are closed • Education performed in Chinese • Uyghurs are not allowed to speak their language • The community party forces Uyghurs to learn all about community Chinese regime • Uyghurs are not considered for any education for qualification • Uyghurs are used as a source of free labour and live in concentration camps.
Article 15	Right to take part in cultural life.	<ul style="list-style-type: none"> • All cultural and traditional events are not happening anymore

Article	Content	Violation
		<ul style="list-style-type: none"> • Uyghur people need to add Chinese culture and traditions to theirs. Therefore- all traditions closed-in order to have a Chinese element in it • Weddings, all sorts of group events happening in Chinese • Forces marriages to Chinese officials under threats. All happening according to Chinese culture
Article 25	Nothing in the Covenant should impair the inherent right of peoples to enjoy and utilise their natural wealth and resources.	<ul style="list-style-type: none"> • Uyghurs land has been taken over by Chinese with all its resources and natural wealth. Oil, drainage controlled by Chinese • All other resources taken too. Chinese government feeds the rest of the country (mainland China) by selling and using all resources in Xinjiang • All officials (Uyghurs) who were in charge of controlling and maintaining these resources have been taken away from their posts or in camps

The Rohingya

The Rohingya identify themselves as an indigenous group that resides in the Arakan state (now known as the Rakhine) in Burma. Burma is now recognized by the international system of states as Myanmar. The Rohingya representatives reported that they were once able to express themselves through their own language, culture and had their own lands. After the military coup basic rights were stripped,

their identity was diminished and an apartheid system was put into place. In 1982 a Citizenship Law was put into place, which rendered the Rohingya “stateless.” They are stripped of basic rights, for instance, they cannot vote since they are not listed as citizens of Burma. The Rohingya representatives reported that there are other laws in place, which prevent them from realizing basic economic, cultural, and social rights. The Marriage Act limits the number of children a Rohingya family can have. There are restrictions in place on social movement, medical care, and education. Although there are built structures for schools, many teachers do not attend lessons thereby making education hard to access, even if it may be available in some areas. The Rohingya representatives stated that young adults also have no access to college and universities.

There is a lack of job opportunities given the apartheid system. Further, restrictions on land for Rohingya who currently live in the Arakan and confiscation of the land from those who left the territory make many of the rights within the ICESR untenable for the Rohingya people. When the authors discussed employment opportunities, the Rohingya representatives continually described how their people were enslaved through forced labor by the Burmese military, which is still occurring today.

Although waves of violence and forced displacement have occurred throughout the history of the Rohingya in Burma, the international community began devoting attention to their plight in 2017 when over 700,000 Rohingya people fled from violence, rape, and murder to become

refugees in Bangladesh.⁵² The Rohingya refugee camps in Bangladesh are overcrowded and sanitation is sparse. There is rampant disease and a lack of social mobility which makes the camps feel like an open-air prison as the Rohingya representative reported. Many of the people attempt to escape by taking the perilous journey out to sea to find a way to escape state sponsored violence in the Arakan. On January 23, 2020 the International Court of Justice in its Order for Provisional Measures indicated that the Rohingya people were an “extremely vulnerable” group.⁵³

The following table highlights the rights violations of the ICESCR as reported by the Rohingya representatives to the research team.

ICESR Application Rohingya

Article	Content	Violation
Article 1	The right of self-determination.	<ul style="list-style-type: none"> • Considered to be absent • Their identity as an indigenous group is inherently linked with the land. Territory, therefore, forms a critical part of their identity rendering this right existential because they have no territorial integrity • Identity is needed for self-determination but restrictions on marriage and children diminished the identity needed

⁵² Fact Finding Mission, “Report of the detailed findings of the Independent International Fact – Finding Mission on Myanmar” Human Rights Council, September 2018, para 883

⁵³ International Court of Justice, “Order APPLICATION OF THE CONVENTION ON THE PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE” *The Gambia v. Myanmar*, January 23, 2020, para 72

Article	Content	Violation
Article 2	Undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.	All laws are applied in a discriminatory way
Article 3	Ensure the equal right of men and women.	Women are subjected to rape as a weapon of war
Article 6	Right to work.	<ul style="list-style-type: none"> • Forced labour has been present for a long time • Refusal to engage in labour leads to punishment • Farmers were deprived of the right to work
Article 7	Right to enjoy just and favorable working conditions. Remuneration, fair wages and equal treatment for work of equal value, decent living for self and family, safe and healthy working conditions, equal opportunity to be promoted, rest and leisure and periodic holidays with remuneration for public holidays.	Not applicable (not allowed to work)
Article 8	Right to form and join a trade union of their choice.	Not applicable (not allowed to work)
Article 9	Right to social security, including social insurance.	Due to the discrimination suffered there are no such rights

Article	Content	Violation
		The price of produce is artificially increased, then decreased so that the ability to provide is never realized
Article 10	Protection to the family, particularly while responsible or the care and education of children. Marriage should be entered into with free consent. Special protection to mothers before and after child birth.	Marriage Act restricts the number of children within a marriage to two
Article 11	Right to an adequate standard of living.	<ul style="list-style-type: none"> • Imperceptible • Military can be present at all times and the restriction on movement means that standards of living are underdeveloped • They have 100 of their own dishes which they cannot produce
Article 12	Right to the highest attainable standard of physical and mental health.	<ul style="list-style-type: none"> • Those living as refugees suffer PTSD and malnourishment • They are constantly living in fear • The main issue is to find and secure food, so anything beyond that is luxury and the pervasive sense is one of fear which mitigates against mental and physical health
Article 13	Right to education.	They are physically restricted to their village, so secondary school and university are not possible
Article 14	If at the time of becoming a state party there is no primary education it will, within two years, adopt a plan of action for progressive implementation.	They are physically restricted to their village, so secondary school and university are not possible

Article	Content	Violation
Article 15	Right to take part in cultural life.	<ul style="list-style-type: none"> • Rohingya radio program was removed when the military took over • No sharing of cultural and social traditions so intergenerational continuity is threatened
Article 25	Nothing shall be interpreted to impair the inherent right of peoples to utilise their natural wealth and resources.	<ul style="list-style-type: none"> • Lands have been confiscated, burned down and turned into new camps for the military so the demographic has totally changed • The villages are used by external companies. They bring non-locals to the village, like ex criminals, creating “natal villages” • Loss of multi-billion dollar investments with no consent at all

The Kachin

Kachin people identify themselves as an indigenous people from the Kachin state located in North Burma. The Kachin state borders China and India. Most Kachin live in Burma and India. The Kachin people have their own language, are mainly Christian in their religious practices, and have lived on the Northern parts of Burma since before 1885, when British colonisers came to Burma. Independence as the Republic of Burma was achieved in 1948 as the British colonial empire receded. In 1947 the negotiated Panglong Agreement came into effect, which gave the Kachin, Chin, and Shan autonomy in their territories.⁵⁴

⁵⁴ Panglong Agreement, February 12, 1947, available at: https://peacemaker.un.org/sites/peacemaker.un.org/files/MM_470212_Panglong%20Agreement.pdf

The Kachin people enjoyed independence for ten years. However, during that period, they struggled to communicate with the Central Government. In 1960 the Kachin Independence Organisation (KIO) was created by students at Rangoon University (Kachin Independence Army is the military wing of the KIO). Conflict broke out between the Burma and the KIA and lasted for approximately 33 years.⁵⁵ A ceasefire was eventually put into place, but the Burmese government continued to exert its control over Kachin areas. In 2011, conflict broke out between Kachin armed forces and the Burmese military. The Kachin state continues to remain in a precarious and delicate situation as reported by the United Nations Independent International Fact Finding Mission on Myanmar report.⁵⁶

The control imposed by the Burmese government has manifested in various ways to limit economic, social, and cultural rights. Kachin representatives gave some examples of this. They reported that the Burmese government continually exploits natural resources in the area, for projects such as Myitsone Dam, and jade and gold mining, where no benefits are given to the peoples. Kachin representatives also emphasized the destruction of religious institutions such as churches by the Burmese government. They reported the building of Buddhist pagoda's to erase Kachin identity. These examples and more are further detailed in the UN Fact Finding Mission on Myanmar report.⁵⁷ As reported by the United Nations the conflict in the state has left people internally displaced. Kachin representatives reported that while the international community sends aid for internally displaced people, the aid to the vulnerable people is blocked by the Burmese government.

The following chart highlights the rights violations of the ICESCR as reported by the Kachin representatives to the research team.

ICESCR Application Kachin

Article	Content	Violation
Article 1	The right of self-determination.	<ul style="list-style-type: none"> • Group engaged in struggle over the creation of a separate state and bore arms in this struggle • Although there is a Kachin State, there is a strong Burmese military presence in the Kachin State • Kachin do not have strong roles in Burmese Parliament • Group unable to properly identify as a separate state with clear political voice • Cultural identity of the Kachin is not taught at schools • Kachin are Christian and there are land marks that celebrate other religions; for example, a Dragon on the snow-capped mountains and pagodas in their lands which undermine their ability to express their own religious or cultural identity

⁵⁴ Panglong Agreement, February 12, 1947, available at: https://peacemaker.un.org/sites/peacemaker.un.org/files/MM_470212_Panglong%20Agreement.pdf

⁵⁵ Carine Jaquet, *The Kachin Conflict*, July 3, 2018, Occasional Paper – Investigation Series 02, DOI: 10.4000/books.irasec.241

⁵⁶ Fact Finding Mission, “Report of the detailed findings of the Independent International Fact – Finding Mission on Myanmar” Human Rights Council, September 2018, para 106

⁵⁷ *Ibid*, para 111 and 112.

Article	Content	Violation
		<ul style="list-style-type: none"> • Unable to celebrate Kachin heroes but instead must revere Burmese heroes so unable to express Kachin identity properly or teach children of their own heroes • Kachin do not have the ability to articulate their own voice and participate with other groups as equals in the government or have their culture or religion integrated into their lives
Article 2	Undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.	<ul style="list-style-type: none"> • Discriminatory Legislation, specifically enacted - "Race and Religion Laws" • Discriminatory quality of the legislation as it permits required for inter religious or inter racial marriage • Discrimination against students and individuals with Kachin accents
Article 3	Ensure the equal right of men and women.	<ul style="list-style-type: none"> • Discriminatory legislation specifically enacted - "Race and Religion Laws" • Buddhist women cannot marry Muslim or Christian men without approval • Women cannot marry freely • Non Buddhist men cannot marry freely • Kachin men not able to freely marry • Kachin women targeted as "weapons of war" as women are vulnerable, reports of rapes by Burmese military • Kachin women being sex trafficked to China • Men and women not free to exercise own personal choices

Article	Content	Violation
Article 6	Right to work.	<ul style="list-style-type: none"> • Kachin less likely to get work in Burmese military service • Kachin accent mocked • Government policies do not create conditions so that Kachin have access to different kinds of jobs • Access to particular jobs is prevented
Article 7	Right to enjoy just and favorable working conditions. Remuneration, fair wages and equal treatment for work of equal value, decent living for self and family, safe and healthy working conditions, equal opportunity to be promoted, rest and leisure and periodic holidays with remuneration for public holidays.	<ul style="list-style-type: none"> • Not commented on by representatives
Article 8	Right to form and join a trade union of their choice.	<ul style="list-style-type: none"> • No trade unions in the Kachin State
Article 9	Right to social security, including social insurance.	<ul style="list-style-type: none"> • Not commented on by representatives
Article 10	Protection to the family, particularly while responsible or the care and education of children. Marriage should be entered into with free consent. Special protection to mothers before and after child birth.	<ul style="list-style-type: none"> • Representatives commented on early child death rates • High malnutrition rates for children • There is a drug abuse problem among young persons which representatives attribute to low cost of heroin and ease of trafficking into the Kachin State • No social structures in place to rehabilitate or protect against drug abuse and these drug problems negatively impact on the development of good family life

Article	Content	Violation
		<ul style="list-style-type: none"> • The Race and Religion Laws compromise the ability for individuals to marry freely as a permit is required for marriage to Burmese individuals by other groups • Conditions are not supporting protection of family life
Article 11	Right to an adequate standard of living.	<ul style="list-style-type: none"> • Low income among the Kachin group • Low income would impact on the ability to maintain an adequate standard of life
Article 12	Right to the highest attainable standard of physical and mental health.	<ul style="list-style-type: none"> • High early child death rates • Lack of adequate medical supplies in State Hospitals • No systems in place to address mental health resulting from drug abuse • Right violated as conditions not created to support progressive development of health care, both physical and mental
Article 13	Right to Right to education.	<ul style="list-style-type: none"> • Kachin accent is mocked in schools • Curriculum does not reflect Kachin histories • Rural schools • Lack of Kachin teachers • Very hard for Kachin to acquire qualifications for Higher Education or even complete education • Much indoctrination on Burmese life in schools • Full access to all levels of education not achievable and conditions for indigenous education not facilitated

Article	Content	Violation
Article 14	If at the time of becoming a state party there is no primary education it will, within two years, adopt a plan of action for progressive implementation.	<ul style="list-style-type: none"> • Not commented on by representatives
Article 15	Right to take part in cultural life.	<ul style="list-style-type: none"> • Unable to organize cultural activities • Unable to celebrate Kachin heroes, must instead revere Burmese heroes • Conditions prevent the free celebration of cultural practices and identities
Article 25	Nothing shall be interpreted to impair the inherent right of peoples to utilise their natural wealth and resources.	<ul style="list-style-type: none"> • There is massive exploitation of jade and timber on Kachin lands • The extent of mining has rendered mountainous regions hollow as the speed of exploitation is destructive • Historic lands used to grow crops to export to China and India • An economic zone has been set up without the consent of the Kachin people on Kachin lands • Inherent right of the Kachin to use and develop their own natural resources has been prevented by large scale exploitation

The Tibetans

Tibetans originated from a nomadic clan originally occupying the current Tibetan territory more than 2000 years before the present. Until 1959 the Tibetans had their own language, culture, tradition, script, national flag, currency

and postal service. After what the Tibetans refer to as the invasion of their country⁵⁸ the lifestyle of Tibetans was significantly changed. According to the Tibetan representative, population numbers affected are disputed; Tibetans say there are six million Tibetans, China says there are three million.

The representative who described Tibetan history with the working group considers Tibetans to be those who live in Tibet but since the invasion, the territory has been divided into 5 divisions. Some Tibetans are in Gansu province, and there are Tibetans in Qinghai province, Sichuan province, and Yuan province. Tibet's autonomous region ("TAR") is the only one that China does not claim. This is why the People's Republic of China claims there are 54 nationalities inside China; some come from Tibet itself and are Tibetan, but other Tibetan people live in areas that are claimed by China. They are indigenous in the area bordering with Burma. The term indigenous is not necessarily political but it means that they have been there since time immemorial. They are native to the land. They have been there since well before the invasion from China.

Originally, the population was monastic (made up of monks and nuns) and 70% were nomads. They moved to places to pasture their animals, with life depending on their herds. After the invasion, the Tibetan lifestyle was affected. Religion is crucial to the Tibetan identity. Tibetans have a reincarnation system, which is part of Tibetan Buddhism. When someone dies, they leave marks or indications/prediction letters, omens and signs saying where they will be reborn. There are three

main Dali Lamas who reincarnate. Sun (Dali Lama), Moon (Panchen Lama) and Star (Karma pa lama). The Karma pa Lama is the 17th incarnation. The Dali Lama chose him at the same time endorsed by the Chinese Communist Party (CCP), so this posed no problems for the Tibetans. However, the Representative stated that the Karma Pa Lama was "wanted as a puppet," so he did not remain but instead "managed to escape." The Panchen Lama was abducted as a child and is nowhere to be seen; April 25, 2019 was his 30th birthday. The CCP say he is safe and leading a normal life. The current Dalai Lama is also in exile. Tibetan lifestyles center on religion and are organized around religious structures. The key religious leaders are not able to lead them and this strikes at the heart of their way of life.

The following chart highlights the rights violations of the ICESCR as reported by the Tibetan representative to the research team.

ICESR Application Tibetans

Article	Content	Violation
Article 1	Self-determination and the pursuit of ESCR.	<ul style="list-style-type: none"> Genuine autonomy within China is hard to practice because you can't be autonomous without being free. The Dali Lama identifies that they don't have genuine autonomy at the moment The Dalai Lama says that autonomy within China is acceptable but there is disagreement with this view among some Tibetans.

⁵⁸ The Chinese Communist Party (CCP) refers to this as a peaceful liberation.

Article	Content	Violation
Article 1		<ul style="list-style-type: none"> • Buddhism is an important aspect of Tibetan identity. The religion is monastery dependent so if you destroy monasteries, you destroy the religion. • Monasteries were destroyed in 1959 so that aspect of identity is only now being rebuilt. • There is a weakening of the authority of the Lamas and the issues surrounding the abduction of the Karma Pa lama further attacks the expression of self through religion. • Tibetans have their own script and language which is 2500 years old. The language is now banned. It is not taught so it is becoming useless. Government has Mandarin or Cantonese policy, so that all government jobs are in one of those languages. • There group's identity is inextricably linked to religion and there are attacks on religious institutions, individuals and ways of life. • The "guides" that tour guides deliver to tourists are scripted by China. There is no allowance to deviate from the script and much of it is written by China with little cultural accuracy for <p>Tibetan history, and for instance says that Tibet has been part of China for hundreds of years. If they choose to talk about the actual history they will have their license revoked.</p>

Article	Content	Violation
		<p>Tibetan history, and for instance says that Tibet has been part of China for hundreds of years. If they choose to talk about the actual history they will have their license revoked.</p> <ul style="list-style-type: none"> • Ancestral link to lands destroyed. No access to pastoral land, animals automatically go to the government and group must accept their conditional settlement. • Group cannot exercise expertise in husbandry.
Article 2	Apply Covenant without discrimination.	<ul style="list-style-type: none"> • Discrimination is embedded in teaching practices • Demeaning references that "Tibetans live in tents" because they don't know how to build houses, it prevents an understanding of the identity of the people. They lived in tents because they are a nomadic population, not because they are unable to learn • Conditions are being created to stereotype Tibetans and misunderstand them
Article 3	Equal rights to men and women.	<ul style="list-style-type: none"> • Access to jobs depend on the ability to communicate in Chinese languages • Although traditional Tibetan society engages a separation based on gender, in relation to roles within a nomadic community fewer exiled women have access to Chinese language lessons and so they are unable to learn the language and obtain employment. For instance, in 2018 three women passed the tests needed to be a tour guide but 40 men did

Article	Content	Violation
Article 6	Right to work.	<ul style="list-style-type: none"> • There is a prohibition on native language, and the requirement for Chinese languages to be spoken • This prohibits access to government jobs, and most jobs are government controlled • In order to secure jobs you have to be cadre, a comrade and to denounce the Dali Lama as a separatist, and you have to denounce Buddhism “as a poison to society” • Some are very restricted. Sale of Buddhist photos or objects are limited to particular areas
Article 7	Right to just and favorable conditions of work.	<ul style="list-style-type: none"> • The policy of denouncement of the Dalai Lama is required. You do it by producing a booklet explaining why the Dali Lama and Buddhism is “poison to society” • Tibetans have their own script and language which is 2500 years old. However, government has Mandarin or Cantonese policy, and government jobs are in one of those languages • If someone gets a job, however, they have to work under the same conditions as the Han Chinese
Article 8	Right to form trade unions.	<ul style="list-style-type: none"> • There are TUs in China but there are none in Tibet. The structure exists in China but not in Tibet or Chinese occupied areas with Tibetan communities • You can join a trade union if you are a member of the CCP

Article	Content	Violation
		<ul style="list-style-type: none"> • If you are offered membership in the CCP you cannot decline it • No right to join a TU. Membership in a TU is hinged on political factors such as the relationship to the CCP
Article 9	Right to social security and insurance/adequate standard of living (food and shelter).	<ul style="list-style-type: none"> • The standard of living seems to be adequate as conditions are created to support appropriate housing. They are a nomadic community who has been forced to work but in order to make money they have built houses and in the main city they upgraded their houses and rented them to Chinese to gain income • Social security was not commented on
Article 10	Wide protection accorded to family, mothers before and after child birth and children.	<ul style="list-style-type: none"> • Improvements since 1959 • Communities have village based trained nurse who is likely to be Chinese
Article 11	Right to adequate standard of living (food).	<ul style="list-style-type: none"> • The standard of living and access to food seems to be adequate • Tibetans have stable food, barley, and out of that they make tsampa which is roasted barley flour, they have wool, hide, etc., and they trade with other Tibetans who are farming wheat, barley, peas, tropical fruit like apricots and fruit. It was a simple life • Use of identity cards to access health care • Distinction between Tibetan And Chinese medicine, and access to Tibetan medicine is limited • Suspected organ harvesting

Article	Content	Violation
Article 12	Right to highest standards of physical and mental health.	<ul style="list-style-type: none"> • Groups speak of forced sterilization • Family planning is heavily promoted and embedded in the media • There is a violation of the right here as forced sterilization, suspected organ harvesting and reliance on family planning as opposed to good maternal care is not achieving high health standards
Articles 13 & 14	Right to education. If no system is in place, state party undertakes to plan one within two years.	<ul style="list-style-type: none"> • Discrimination to women in Higher education (HEA) as the centers for this learning are not in the communities • Fear of living in a Chinese community alone prevents HEA learning among women • Schools use Chinese languages • Tibetans are allowed one spouse only, notwithstanding it is a polygamous group. Further there is a one child policy as well. The CCP does not impose the one child policy on Tibetans, but when children get to school age the CCP only allow one child to be educated. Education for the second child is either a huge fee or they are sent to a monastery or they get adopted. This applies to Tibet and all of the provinces as well • Boys are favored in the education system • There is a violation of this right as access to education is difficult and discriminatory
Article 15	Right to take part in cultural life.	<ul style="list-style-type: none"> • Buddhism and social organization around Buddhism is critical to cultural identity of this group

Article	Content	Violation
		<ul style="list-style-type: none"> • Buddhism is banned. Pictures of the Dali Lama are prohibited in homes and monasteries. Whereas in the past they were allowed alongside the Buddha • After 1959 the social structures changed. Religion was considered “poison” and not allowed • Monastic communities were not allowed to share power and take roles in government. The Buddhist society is a theocratic one, and this powerlessness of these institutions affect cultural life • Tibetans are also nomadic. Substantial parts of Tibetan population used to be nomadic. Now there are geographical limits with boundaries made in barbed wire so animals are unable cross boundaries and move freely
Article 25	Nothing in the Covenant should impair the inherent right of peoples to enjoy and utilise their natural wealth and resources.	<ul style="list-style-type: none"> • Hydro power projects have compromised access to ancestral lands; • Hydro power projects have also resulted in nomadic resettlement programme • Mining/logging projects initiated by China; sulphur, gold copper, lithium • Confrontation where the nomads resist mining and they are killed
		<ul style="list-style-type: none"> • Chinese do not need visas to travel around but Tibetans do

Article	Content	Violation
		<ul style="list-style-type: none"> • The Chinese first had an incentive to move to Tibetan land such as being given loans and help setting up a restaurant. The Chinese/Tibetan population it is now 50/50 in all major cities in Tibet • These incentives have destroyed cultural links to the land • There is much displacement and hardship caused on the group by logging, mining and hydro power projects

Recommendations to parties

Based on the information contained within this report and as presented to the research group, the following recommendations are made. The most important recommendation that can be made at this juncture by the research group is the immediate cessation of all hostilities towards these and all other Asian indigenous groups that were not highlighted in this report. The remaining recommendations fall within three categories; UN recommendations, national recommendations, and regional recommendations.

Recommendations to the United Nations

- Treaty bodies within the United Nations should coordinate information and responses to violations of ESCR as these rights are enshrined in multiple treaties.
- The United Nations should do targeted education campaigns through social media and other methods to educate civil society on what ESCR are and entail.

- The CESR should be strengthened so as to encourage stronger investigations and reporting on violations of ESCR.

- UN should continue to monitor human rights on the Asian continent by initiating a regular reporting requirement to the UN by Asian States and further establish regular visits by UN observer missions.

- The UN should continue to work to resolve and dismantle all forms of discriminatory legislation, particularly those that are aimed at those groups which identify as indigenous.

Recommendations to the States

- State parties should ensure that their national and local legislations are aligned with their ratification of treaties.

- State parties should assess, given their history with colonialism, whether their current structures duplicate the same oppressive mechanisms that were created by colonial entities on their nationals, specifically indigenous peoples.

- State parties should ensure the protection of natural resources and natural resource heritage which in most cases are identified as belonging to the indigenous groups.

- State parties should call for the immediate cessation of all religious discrimination and destruction of religious buildings, artifacts, and freedom to worship, per indigenous cultural beliefs.

- State parties should integrate the history of indigenous groups and education on unique cultures on all educational curriculum so that students learn all cultures and histories in their States.
- State parties should use social media and other methods to educate civil society on indigenous peoples and work on raising awareness to their heritage.
- State parties should enable indigenous persons to access all jobs by ensuring they can access all levels of education and training by setting up scholarships and job opportunities where necessary.
- State parties should ensure that rural areas have access to all levels of scholarship. Where provisions of teachers are not possible, use of remote blended methods such as virtual learning should be used.
- Where multiple languages are needed for employment, systemized language lessons need to be provided in all areas so all persons can qualify.
- State parties should support indigenous theatres, street theatres, artists, performers in a systemized manner so that indigenous culture is given a platform.
- State parties should review all discriminatory legislation and put an end to use of the law to embed and entrench discriminatory practices.

Regional Recommendations

- The Association of South East Asian Nations (ASEAN) and related regional entities should create human rights-based courts so that rights are enforced through regional methods, similar to the African Union Court of Human Rights and the Inter-American Commission on Human Rights.
- ASEAN should collectively enforce reporting by its state parties on a regional level of progress and realization made on the twin treaties, the ICESCR and ICCPR.
- ASEAN should create a mechanism to identify and monitor risks, for example, an Early Warning System, to prevent gross human rights violations from escalating into mass atrocities for peoples within Asia, with a particular focus on indigenous groups, who are at risk of cultural extinction.
- ASEAN should create a monitoring mechanism that reviews discriminatory legislation and work with States to put an end to these laws.
- ASEAN should work with State parties to reform discriminatory legislation and ensure that legislative frameworks address progressive realization of ESCR and Human rights in general.

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ABOUT THE AUTHORS

Narissa Kashivi Ramsundar

PhD (2017) Queen Mary University of London, is a Senior lecturer at Canterbury Christ Church University.
www.canterbury.ac.uk

Regina M. Paulose

International Criminal Law Attorney (US), Executive Director, The Common Good Foundation, Inc.
www.acontrarioicl.com

Tabitha Nice

Lawyer and mediator practicing in London (participated in this project in a pro-bono, non legal capacity)