

**ISSN 2321-9440**

**KARNATAKA STATE LAW UNIVERSITY JOURNAL**

---

**Vol. X, No. 1 & 2**

**2022**

---

**MODE OF CITATION  
(2022) X KSLUJ**



**Published by  
KARNATAKA STATE LAW UNIVERSITY  
Navanagar, Hubballi-580025, Karnataka, India**

**X (1& 2) KARNATAKA STATE LAW UNIVERSITY JOURNAL 2022**

Subscription Details: Karnataka State Law University Journal

© The copyright vests with the Publisher

The Karnataka State Law University does not necessarily subscribe to the views expressed by the authors.

Subscription inquiries should be sent to:

The Librarian  
Karnataka State Law University  
Navanagar, Hubballi 580 025  
Tel : 0836-2222901  
Fax: 0836-2222261

Printed at: Marketing Communication & Advertising  
Limited, Bangalore

## **EDITORIAL BOARD**

### **EDITORIAL IN CHIEF**

**Prof. Dr. C. Basavaraju**

Hon'ble Vice-Chancellor

Karnataka State Law University Navanagar, Hubballi.

### **EDITORIAL ADVISORY BOARD**

**Prof. Dr.V. Vijayakumar**

Hon'ble Vice-Chancellor

National Law University Bhopal.

**Prof. Dr. K.C.Sunny**

Hon'ble Vice-Chancellor

The National University of Advanced Legal Studies. Cochin.

**Prof. Dr. C.S. Patil**

Professor Karnataka State Law University Navanagar, Hubballi.

**Prof. Dr. G. B. Patil**

Dean, Karnataka State Law University Navanagar, Hubballi.

**Prof. Dr. Ratna R Baramgoudar**

Director KSLU's Law School Karnataka State Law University Navanagar,  
Hubballi.

### **STAFF EDITORS**

**Dr. Rajendrakumar. Hittanagi**

Assistant Professor,  
KSLU'S Law School, Hubballi.

**Dr. Dipa. G**

Assistant Professor,  
KSLU'S Law School, Hubballi.

**Dr. Sunil. Bagade**

Assistant Professor,  
KSLU'S Law School, Hubballi.

**Ms. Mahadevi. Kusugal**

Assistant Professor,  
KSLU'S Law School, Hubballi.

## EDITORIAL

---

The year 2022 saw major events having national and international significance. Palpable positive sentiment across sector in India was on full-throttle on the recovery process to sustain the economic growth of the country. Subsequently, India was set as the world's fastest growing major economy as a post-pandemic retail boom and recent bank balance-sheet repairs lure new investment, fueling hot demand for everything from cars to televisions, coal and airliners.

The Government of India, with the view to bring the Indian tribal community in the realm of development brought three essential Constitution (ST) Order Amendment Bills during the Winter Session. In relation to the state of Tamil Nadu, *the Constitution (Scheduled Tribes) Order (Second Amendment) Bill, 2022*, was passed unanimously in Rajya Sabha on 22.12.2022. After the passing of this Bill in the Parliament, by virtue of which *Narikoravan* and *Kurivikkaran* communities were included in the list of Scheduled Tribes in Tamil Nadu. The bill was earlier passed by the Lok Sabha on 15.12.2022. Following this, in relation to the State of Karnataka, *the Constitution (Scheduled Tribes) Order (Fourth Amendment) Bill, 2022*, was also passed unanimously in Rajya Sabha on 22.12.2022. After passing of this Bill in the Parliament, the *Betta-Kuruba* as a synonym for the *Kadu Kuruba* community was included in the list of Scheduled Tribes in Karnataka.

Equally, judiciary remarkably laid down judgments upholding fundamental rights and moral values of Indian Constitution. In the arena of public health, in *Jacob Puliye v. Union of India* (Writ Petition (Civil) No. 607 of 2021) a Writ Petition was filed in the Supreme Court highlighting the adverse consequences of emergency approval of vaccines in India. The petitioner contended that mandates of vaccines in the absence of informed consent as unconstitutional. The Petitioner further stated in the Writ Petition that coercive vaccination would interfere with

the principle of informed self-determination of individuals protected by Article 21 of the Constitution of India. The Court found the vaccination policy of the Union of India is not unreasonable and arbitrary. However, the court held that bodily integrity is protected under Article 21 of the Constitution of India and no individual can be forced to be vaccinated. Further, the Court observed: “Personal autonomy of an individual involves the right of an individual to determine how they should live their own life, which includes the right to refuse to undergo any medical treatment in the sphere of individual health. People who did not wish to get vaccinated can avoid vaccination. However, if there is a likelihood of such individuals spreading the infection to other people or affecting community health at large, the Government can regulate such public health concerns by imposing certain limitations on individual rights that are reasonable and proportionate to the object sought to be fulfilled.” The Court also held the restrictions on unvaccinated individuals is not proportionate, as the Court found both vaccinated and unvaccinated individuals to be equally susceptible to transmission of the virus and thus directed the authorities to review the relevant orders and instructions imposing restrictions on unvaccinated individuals.

In field of Women Empowerment the Indian Judiciary, has been proactive in enforcing and strengthening the constitutional goals towards safeguarding the rights and dignity of women. Likewise, the Supreme Court in the *State of Jharkhand v. Shailendra Kumar Rai @ Pandav Rai* (Criminal Appeal No 1441 of 2022) bench consisting of Justices DY Chandrachud and Hima Kohli, observed that “The two-finger test must not be conducted. The test is based on an incorrect assumption that a sexually active woman cannot be raped. Nothing can be further from the truth, it is patriarchal and sexist to suggest that a woman cannot be believed when she states that she was raped, merely for the reason that she is sexually active” and held that the two finger test has no scientific basis. It instead re-victimises and re-traumatises women. Similarly, Supreme Court in *X v. Principal Secretary, Health and Family Welfare, Govt. of NCT Delhi*, (Special Leave Petition (Civil) No 12612 of 2022) held that “all women are entitled to safe and legal Abortion, and there is no rationale in excluding unmarried women from the ambit of Rule 3B of MTP Rules, which mentions the categories of women who can seek abortion of pregnancy

in the term 20-24 weeks” and further ruled that rape includes ‘marital rape’ for the purpose of MTP Rules.

In *Arunachala Gounder v. Ponnusamy* (Civil Appeal No. 6659 of 2011) In this case, the Court had to determine whether, before the commencement of the *Hindu Succession Act, 1956* the self-acquired property of a Hindu male will devolve onto the daughter upon the death of her father intestate by inheritance or it will devolve on to father’s brother’s son by survivorship. The Court noted that “the legislative intent of enacting Section 14(I) of the Act was to remedy the limitation of a Hindu woman who could not claim an absolute interest in the properties inherited by her but only had a life interest in the estate so inherited.” After analysing Hindu laws, customs and judicial precedents, the Court held that the right of a widow or daughter to inherit the self-acquired property or share received in the partition of a coparcenary property of a Hindu male dying intestate is well recognized not only under the old customary Hindu Law, but also by various judicial pronouncements.

In the matter of welfare legislations, taking note of the increased number of cases seeking bail, mainly because of the wrong interpretation of Section 170 of the Code of Criminal Procedure, the Supreme Court laid down guidelines regarding the grant of bail and urged the union government to enact a separate law to streamline the grant of bail in *Satendra Kumar v. CBI* (Miscellaneous Application No.1849 of 2021 in Special Leave Petition (Crl.) No.5191 of 2021. The Apex Court issued guidelines, namely the courts must satisfy themselves on the compliance of Sections 41 and 41A of the Code. Any non-compliance would entitle the accused for grant of bail; while considering the application under Sections 88, 170, 204 and 209 of the Code, a bail application need not be compulsorily filed; the State and Central Governments must comply with the directions issued by SC with respect to the constitution of special courts; the High Courts are directed to look for the undertrial prisoners who are unable to comply with the bail conditions and take appropriate action in light of Section 440 of the Code to facilitate their release; and bail applications ought to be disposed of within a period of two weeks except if the provisions mandate otherwise, with the exception being an intervening application. Applications for anticipatory bail are expected to be disposed of within a period of six weeks, with the exception of any intervening application.

With this note, the Karnataka State Law University is releasing this volume with articles on diverse subjects and intriguing aspects. The riveting article on ‘the Role of Judiciary in Water Quality Management’ by (Dr.) C. Basavaraju, Hon’ble Vice-Chancellor, Karnataka State Law University, Hubballi, critically elucidates the crucial role played by the Judiciary in taking serious note on the problem of environmental degradation in general and water pollution in particular. It is followed by enthralling discussion on ‘Social Media, Democracy and the Right of Women to Engage in Political Discourse’ by Prof (Dr) K. C. Sunny, emphasizing the need of safe online space for women politicians in order to protect the spirit of democracy. Work of Dr. Dilshad Shaik and Arya Abaranji P. S. on ‘Victim Blaming- the Condemnation of the Sufferer Psychology- A Critical Analysis’ is an master piece in understanding how condemning the sufferers of crimes silence other victims and stop them from coming forward. The article by Prof (Dr) G.R. Jagadeesh on ‘Constitutional Morality, Transformative Constitutionalism and Liberalism in Working Model of the Constitution’ illuminates the moral reading of the Constitution of India. Following it is another fascinating article of contemporary relevance by Dr. M.S. Benjamin and Sayed Qudrat Hashimy on ‘the Fourth World Tussle for Recognition of Rights under International Law: A Cursory Glance’ encapsulates the recognition of the Fourth World under International Law (FWIL). Dr. N. Sathish Gowda’s work on ‘Federal Approach in Placing State Laws in the Ninth Schedule of Indian Constitution: An Assessment’ critically evaluates the Ninth Schedule of the Constitution of India as an element to the destruct the federal structure. Dr. Sunil N. Bagade’s work on ‘A Curious Case of Copyright Protection for Sports Moves – An Analysis’ is of great contemporary significance as it explores sports in the arena of Intellectual Property Law due to the fact that Some sports persons out of their creativity have evolved certain unique moves which are distinctive and often mark fine line that separates the excellent sports person from the others. The last article by Jagadish A.T on ‘Domain Names and Menace of Cyber Squatting’ provides the insights regarding the menace of Cyber Squatting and possible solutions to overcome the menace.

We hold the scholarship of these legal luminaries in highest regard and appreciate their sincere efforts and investment of time in contributing their works to our journal.

**-The Editorial Board**

## CONTENTS

### ARTICLES

THE ROLE OF JUDICIARY IN WATER QUALITY MANAGEMENT -Prof. (Dr.) C. Basavaraju	1-17
SOCIAL MEDIA, DEMOCRACY AND THE RIGHT OF WOMEN TO ENGAGE IN POLITICAL DISCOURSE -Prof (Dr) K C Sunny *	18-30
VICTIM BLAMING-THE CONDEMNATION OF THE SUFFERER PSYCHOLOGY- A CRITICAL ANALYSIS - Dr. Dilshad Shaik - Arya Abaranji. P. S.	31-42
CONSTITUTIONAL MORALITY, TRANSFORMATIVE CONSTITUTIONALISM AND LIBERALISM IN WORKING MODEL OF THE CONSTITUTION -Prof. Dr. G. R. Jagadeesh	43-87
THE FOURTH WORLD TUSSLE FOR RECOGNITION OF RIGHTS UNDER INTERNATIONAL LAW: A CURSORY GLANCE - Prof. (Dr.) M.S. Benjamin - Sayed Qudrat Hashimy	88-108
FEDERAL APPROACH IN PLACING STATE LAWS IN THE NINTH SCHEDULE OF INDIAN CONSTITUTION: AN ASSESSMENT - Dr. N. Sathish Gowda	109-129
A CURIOUS CASE OF COPYRIGHT PROTECTION FOR SPORTS MOVES – AN ANALYSIS - Dr. Sunil N. Bagade	130-144
DOMAIN NAMES AND MENACE OF CYBER SQUATTING -Jagadish A.T	145-176



## THE FOURTH WORLD TUSSELE FOR RECOGNITION OF RIGHTS UNDER INTERNATIONAL LAW: A CURSORY GLANCE

---

*M.S. Benjamin<sup>1</sup>*

*Sayed Qudrat Hashimy<sup>2</sup>*

### **Abstract**

*This article examines the recognition of the Fourth World under International Law (FWIL). It is especially appropriate to talk about the role of international law from the context of the Indigenous peoples, where the fourth world literature has strongly expressed ideas like the Fourth World and Indian Reality by George Manuel and Michael Poslums in 1974. The study offers a new perspective on to struggle for freedom. It explores the contour of the social and political path for recognizing indigenous rights for political sovereignty and Independence under International Law. This article outlines the nexus between Fourth-World populations and Third-World nations' experiences, expectations, and legal strategies. Since this piece does not describe a semantic and etymological evolution, the study relies on the literature that has already been written about the Third World. The study ponders a question what are the justifications nations might have for refusing to uphold indigenous people's rights within their borders? How can countries collaborate more effectively to support indigenous people in these*

---

<sup>1</sup> Professor of Law, Department of Studies in Law, University of Mysore, Mysore.  
Prof.msbenjamin@law.uni-mysore.ac.in

<sup>2</sup> Research Scholar (Law), Department of Studies in Law, University of Mysore, Mysore, email:  
Sayedqudrathashimy@law.uni-mysore.ac.in

*circumstances? The study employs a doctrinal method with a normative approach and relies on third-world primary and secondary literature.*

**Keywords: Human Diversity, Indigenous Culture, Indigenous People, the Fourth World and recognizing indigenous rights.**

### **Introduction**

Indigenous peoples are among the most marginalized, underprivileged and vulnerable groups. More than 370 million people are in over 90 different countries, dispersed across the globe from the Arctic to the South Pacific. Indigenous peoples comprise around 5% of the global population.<sup>3</sup> Indigenous peoples have different histories, cultures, languages and legal systems.<sup>4</sup> Most indigenous peoples closely relate to their ancestral lands and territories.<sup>5</sup> They have experienced historic injustice, like the dispossession of land and violation of their human rights, fraught with their cultures.<sup>6</sup> They have endured centuries of non-recognition of their own political and cultural institutions, which has compromised the integrity of their traditions.<sup>7</sup> Development activities also negatively affect indigenous populations, endangering their ability to survive. Indigenous peoples and their groups have urged on a national and international level to protect human and fundamental rights.<sup>8</sup> Despite this, Indigenous peoples are visible and known at international forums. However, the global world saw them with little attention. In 1971, the UNGA formed the Sub-Commission on the Prevention of Discrimination and the Protection of Minorities V. Martinez Cobo was designated as a Special Rapporteur, tasked with conducting a thorough investigation into discrimination against indigenous populations and recommending regional and global levels.<sup>9</sup> Numerous

<sup>3</sup> Armi Beatriz Bayot, 'A Fourth World Critique of the Indigenous Peoples' Right to Free, Prior, and Informed Consent' (2015) 1 SSRN Electronic Journal 1, 4.

<sup>4</sup> Nelson H. H. Graburn, "1, 2, 3, 4... Anthropology and the Fourth World" (1998) 166, 74.

<sup>5</sup> *Supra* n. 2 at 4.

<sup>6</sup> 'Who Are the Indigenous and Tribal Peoples?' (22 July 2016) <[http://www.ilo.org/global/topics/indigenous-tribal/WCMS\\_503321/lang-en/index.htm](http://www.ilo.org/global/topics/indigenous-tribal/WCMS_503321/lang-en/index.htm)> accessed 10 November 2022.

<sup>7</sup> *Supra* n. 2 at 8.

<sup>8</sup> Hiroshi Fukurai, "Fourth World Approaches to International Law (FWAIL) and Asia's Indigenous Struggles and Quests for Recognition under International Law" *Asian Journal of Law and Society* (2018) p. 225.

<sup>9</sup> Katja Göcke, "Protection and Realization of Indigenous Peoples Land Rights at the National and International Level" 5 *Goettingen Journal of International Law*/ (2013) p. 154.

indigenous groups are dispersed throughout several countries. Indigenous people frequently reside in rural locations and deeply bond with the land essential to their survival. How can governments collaborate with indigenous people to join forces in attempts to protect the environment? This article addresses the problems above and demonstrates how, despite its drawbacks, a skillfully crafted Fourth World viewpoint can pave the way for ecological sustainability. For individuals who want to discuss concerns of indigenous nationalism and bioregionalism, the Fourth World theory offers crucial lessons and a post-state global order.

### **The Fourth World**

Fourth World includes Indigenous Americans, Aboriginal Australians, Maoris, Canadians, and Dalits / Tribes of India.<sup>10</sup> The most notable, significant, and respected Indigenous leader in Canada, George Manuel,<sup>11</sup> promoted the political unification of indigenous people worldwide by founding the Fourth World Movement and popularising the idea of the Fourth World.<sup>12</sup> Travelling to Sweden, Nicaragua, Chile, and Guatemala while serving as the World Council of Indigenous Peoples president from 1975 to 1981, Manuel realized that Indigenous people share a lot in common and that their togetherness keeps them together in difficult times.<sup>13</sup> Furthermore, *The Fourth World: An Indian Reality* was published in 1974 by Michael Posluns to spread awareness of the Fourth World viewpoint.<sup>14</sup> Manuel's campaign found resonance in many facets of Indigenous people's lives, from fraternity to nationhood.<sup>15</sup> Manuel makes references to the shared experiences of the indigenous groups around the globe that fight for self-determination and identity throughout this work.<sup>16</sup> Manuel also notes in history and the vocabulary used to categorize the world into different categories that adhere to various empirical

---

<sup>10</sup> N. Sreenivasa Rao and P. Sreenivasulu Reddy, "Fourth World Literature: An Introduction" 9 *International Interdisciplinary Research Journal* (2013) p. 276.

<sup>11</sup> George Manuel and Michael Posluns, "The Indian World and the Fourth World" 67 *Current History* (1974) p. 263.

<sup>12</sup> *Supra* note 9 p. 276.

<sup>13</sup> *Id* at 10.

<sup>14</sup> John W. Bailey, "Reviewed Work(s): *The Fourth World: An Indian Reality* by George Manuel and Michael Posluns" 2 *American Indian Quarterly* (1975) p. 251.

<sup>15</sup> *Ibid*

<sup>16</sup> *Id* at 252.

formulations of economic progress. Considering that it is frequently used to identify any economically and politically marginalized society, this concept of the Fourth World tends to slip into generalizations.<sup>17</sup> The idea of the IV World still seems to have several slightly overlapping applications and interpretations. However, the literature reveals the following indigenous people:<sup>18</sup>

- i. Asian Minorities
- ii. In East and Central Africa
- iii. The African's Predicament in Rhodesia
- iv. The position of Black in Brazilian society
- v. Regions in the Soviet Union, including Jews,
- vi. Muslims and Buddhists, Orthodox and
- vii. Catholic Christians
- viii. The Crimean Tatars and Volga Germans – both displaced peoples
- ix. The Burakumin in Japan

This broad spectrum is not limited to “ethnic groupings,” autochthonous groups (such as Asians in Africa), or minorities (such as Blacks in Rhodesia) (Catholic and Orthodox Russians).<sup>19</sup> However, it is possible to regard these “victims of group oppression” as victims of internal colonialism, considering them as oppressed or disenfranchised groups. Thus, the autochthonous peoples are those whose lands and culture have been colonized by the modern nations of the I, II, and III worlds.<sup>20</sup> Because they still lack political autonomy within contemporary nation-states, indigenous people-typically minorities-are subject to types of internal colonialism.<sup>21</sup> The existence of Asian and African states with Asian and African governments representing the populations of Asia and Africa may be found in both Africa and Asia.<sup>22</sup> The rights to self-determination and recognition as

---

<sup>17</sup> *Id* at 256.

<sup>18</sup> *Supra* n 3 p. 66.

<sup>19</sup> *Supra* n 2 p. 45.

<sup>20</sup> *Supra* n. 13 p. 255.

<sup>21</sup> *Supra* n.3 p.67.

<sup>22</sup> *Supra* n.7 p.68.

independent nations have been struggled for and won by the people of the Third World.<sup>23</sup> For instance, the struggle for recognizing the Dene State by the governments and people. Furthermore, it is now necessary for all people to recognize the presence and rights of those living in the Third World.<sup>24</sup> The time must come when the countries of the Fourth World will be respected and recognized.

One other significant Fourth World concept was published by economists and used by some in the UN.<sup>25</sup> It refers to countries occasionally referred to as “basket cases,” like Afghanistan, where the average per capita income is less than \$50 annually.<sup>26</sup> Accordingly, if we adopt the majority definition of the idea, we may include the Ainu, tribal communities in India, the Indian peoples of Central and South America, the minorities of the USSR, and some of the people of New Guinea in the IV World.<sup>27</sup> The study argues that this is an inappropriate determination for three reasons:

- i. It does not reflect the explicitly political meaning that emerged for the III World;
- ii. It is based on flimsy financial income data, which is highly dubious and may be of little or no significance to the people involved; and
- iii. It ignores the colonized minorities

In the context of India, D.N. Majumdar defined a tribe in the context of India as a social group with a territorial affiliation, endogamous without specialization of functions, governed by tribal officers, hereditary but without caste stigma, adhering to tribal beliefs and customs, and illiberal of naturalizing ideas from foreign sources. He stressed the awareness of homogeneity of ethnic and territorial, which is well-known “tribes in transition.”<sup>28</sup> However, there is no universal

<sup>23</sup> *Supra* n. 13 p. 256.

<sup>24</sup> *Id* at 257.

<sup>25</sup> Kumari Priti, “Fourth World and Its Reflection in Mahasweta Devi’s folkloric Fiction the Book of The Hunter” 3 *AdLitteram: An English Journal of International Literati* (2018) p. 19.

<sup>26</sup> Richard E Bissell, “The ‘Fourth World’ at the United Nations” 31 *Royal Institute of International Affairs* (1975) p. 379.

<sup>27</sup> Olon F. Dotson, “Fourth World Theory: The Evolution of . . .” 4 *Buildings* (2014) p.155.

<sup>28</sup> Patrick Ngulube (ed), *Handbook of Research on Theoretical Perspectives on Indigenous Knowledge Systems in Developing Countries* (IGI Global, 2017) 115 available at <<http://services.igi-global.com/resolvedoi/resolve.aspx?doi=10.4018/978-1-5225-0833-5>> accessed 10 November 2022.

consensus on what constitutes a tribe because some are still in the prehistoric stage, some are still developing, and others have attained mainly a condition that renders them identical to the other groups. Marshall Sahlins describes a tribe as “a divided organization.”<sup>29</sup> A tribe is an assembly of equal kin group blocs, each comprising multiple equivalent unspecialized multifamily groupings that are structurally identical. The PM of India, Jawaharlal Nehru, ordered a program for the oppressed tribals.<sup>30</sup>

- i. People should be allowed to develop their talent.
- ii. It is essential to respect tribal rights
- iii. It is best to avoid integrating too many outsiders into the tribal communities.
- iv. Tribals should be worked on by their institution.
- v. Human character, not financial expenditure, should be used to determine the tribes and indigenous

In India, tribes are comparatively backward and secluded populations. Nevertheless, they have always existed within Indian civilization, society, and culture. Remotely located people have historically been regarded as an integral element of cultural and historical processes, whether in the Sanskrit Epics or the literature from the Middle Ages. It has never been absolute isolation; it has always been relative.<sup>31</sup>

#### **Fourth World Theory**

Without mentioning the Fourth World theory, which originated in Sweden in 1972 at the United Nations Stockholm Environmental Conference, it is impossible to effectively explain the contemporary conflicts between indigenous peoples and industria.<sup>32</sup> First Nations representatives from North America found that they shared significantly more in common with Saami from Finland/Sweden, Bretons from France, and Basques from France/Spain than they did with representatives from the Third World at this conference.<sup>33</sup> These indigenous delegates recognized that

---

<sup>29</sup> *Supra* n. 13 at 43.

<sup>30</sup> *Supra* n. 24 at 20.

<sup>31</sup> *Id* at 108.

<sup>32</sup> *Supra* n. 26 at 156.

<sup>33</sup> *Id* at 157.

they had much in common with one another's self-determination struggles. George Manuel,<sup>34</sup> a Shuswap Chief, went on to lead this movement, which eventually gave rise to the Fourth World hypothesis.<sup>35</sup> Individual citizens of Fourth World countries have a shared heritage, language, and region and frequently feel that the centralized governmental structures of modern states are invading their area.<sup>36</sup> Modern nations emerged simultaneously after industrial civilization got off the ground.<sup>37</sup> The main characteristics of Industria are industrial technology, enlightened philosophy (rational humanism), and state-based (but not necessarily democratic) political organization.<sup>38</sup> Fourth, the World theory offers a comprehensive analysis of international conflicts, concentrating on the historic national groups ruled by states.<sup>39</sup>

### **Marxism and the Fourth World**

Although a Marxist understanding of global capitalism and the Fourth World critique of multi-national businesses are comparable, many neo-Marxists view the Fourth World theory as dangerous.<sup>40</sup> This is due to how it casts both the North and the South as oppressors and thieves debating how to split up the loot taken from Indigenous peoples. There are two reasons for Marxist antagonism to the Fourth World idea.<sup>41</sup> *First*, the conventional Marxist theory holds that indigenous peoples modernize (i.e., industrialize), so they essentially enunciate their cultures to participate in a proletarian revolution.<sup>42</sup> This stance has alienated several indigenous groups, which has led many Fourth World countries to reject Marxist theories. *Second*, Marxists frequently underestimate the significance of indigenous issues, which has led many in the Fourth World to believe that Marxism is only

---

<sup>34</sup> *Supra* n. 13 at 255.

<sup>35</sup> *Supra* n. 26 at 158.

<sup>36</sup> *Id.* at 159.

<sup>37</sup> *Supra* note 10.

<sup>38</sup> *Supra* n. 26 at 160.

<sup>39</sup> *Id.* at 161.

<sup>40</sup> Amanda Cats-Baril, *Indigenous Peoples' Rights in Constitutions Assessment Tool* (International IDEA, Stockholm, 2020) p. 21 available at <<https://www.idea.int/publications/catalogue/indigenous-peoples-rights-constitutions-assessment-tool>> accessed 10 November 2022.

<sup>41</sup> *Id.* at 34.

<sup>42</sup> *Supra* n. 13 at 45.

dedicated to “its own, destructive, vision of modernity.” Marxism and capitalism both display the modern tendencies of dialectical conceptual frameworks, the eradication of local voices, and the ignorance or concealment of difference.<sup>43</sup> The phrase is first used historically in a series of classifications of the world systems, according to the Marxist interpretation of the Fourth World.<sup>44</sup> Karl Marx created a world map based on his study of the monopolistic tendencies of late capitalism’s capitalist organization, which also influenced how imperialism was discussed at the time.<sup>45</sup>

### **The Relations between III World and the IV World**

The 1955 Conférence of Non-aligned Nations in Bandung, which comprised Yugoslavia, Indonesia, China, and other countries, gave rise to the III World or “*Tiers Monde*”.<sup>46</sup> Similar to the IV World, Alfred Sawry in 1956 and Franz Fanon have been given credit for the term’s actual inception.<sup>47</sup> Although the time was first attributed to politically non-aligned countries, it is now frequently used to denote (a) less developed states; (b) former colonial countries, and (c) non-white peoples.

While a Third-World perspective on international law is a well-developed and growing issue,<sup>48</sup> Fourth World problems are still not being discussed in great detail regarding the discipline’s philosophical underpinnings.<sup>49</sup> In reality, since TWAIL has become a prominent scholarly paradigm, very few people have argued for an FWAIL.<sup>50</sup> The term “fourth world” refers to the split of the international

<sup>43</sup> *Supra* n. 26 at 165.

<sup>44</sup> *Ibid.*

<sup>45</sup> *Id.* at 170.

<sup>46</sup> Ana Filipa Vrdoljak, “Indigenous Peoples, World Heritage and Human Rights” 25 *International Journal of Cultural Property* (2018) p. 251.

<sup>47</sup> WIPO, *The Protection of Geographical Indications in South Africa- Symposium on the International Protection of Geographical Indications*, WIPO/GEP/CPT/99/3A (September 1, 1999)

<sup>48</sup> SD Muni, “The Third World: Concept and Controversy” 1 *Third World Quarterly* (1979) p. 119.

<sup>49</sup> Abhijeet Singh Rawaley, “Understanding the ‘Fourth-World’ from the Literature on ‘Third-World’ in International Law” *Cambridge International Law Journal* (2018) available at <http://cilj.co.uk/2018/02/03/understanding-the-fourth-world-from-the-literature-on-third-world-in-international-law/>

<sup>50</sup> *Ibid.*



community along economic, political, and ideological lines. It is an etymological extension of the “three-world” paradigm. The term “fourth world” refers to the split of the international community along economic, political, and ideological lines.<sup>51</sup> It is a historical extension of the “three-world” paradigm.<sup>52</sup> Therefore, the term “Fourth World” refers to the indigenous peoples, who are currently recognized as descendants of pre-invasion occupants of the territory now colonized by others.<sup>53</sup> Although TWAIL, by its definition, emphasizes the Third World, it has an expansive definition that includes all peoples excluded by the western legal system.”<sup>54</sup> The first world serves as a “vehicle, vessel, and countenance of global control. There must be some “narrative coherence” when placing states or peoples into various political “worlds” (and thus in international law).<sup>55</sup> Baxi praises the rise of scholars of the Third World on the world stage of law-making. For instance, the drafting of DRIP by UNGA in 2007. The main contention of Professor B.S. Chimni is that international law serves as a justification for maintaining uneven power relations.<sup>56</sup> The Third-World group ideology, according to his criticism, “obscured specificity in its pursuit for generalizability.”<sup>57</sup> Even though DRIP is simply a declarative, non-binding treaty, nations have a lot of leeway in applying it to their indigenous communities’ unique regional struggles. But, this is crucial international legislation concerning the Fourth World. The study found that the Third World’s subjection to international law is unidimensional and that a dualistic framework is necessary to comprehend Fourth World concerns fully.<sup>58</sup> Not only by international and global

---

<sup>51</sup> Martina Guidi, “The Protection of Indigenous Peoples- Concerns in World Bank-Funded Projects” in Giorgio Sacerdoti (ed.), *General Interest of Host in International Investment Law* Cambridge University Press (Cambridge University Press, Cambridge, 2014) p. 240.

<sup>52</sup> United Nations, *The United Nations Declaration on the Rights of Indigenous Peoples and the Development of International Law* (13 September 2007)

<sup>53</sup> Dwayne Mamo, *The Indigenous World 2020* (Eks-Skolen Trykkeri, Copenhagen, 2020) p. 19.

<sup>54</sup> Amar Bhatia, “The South of the North: Building on Critical Approaches to International Law with Lessons from the Fourth World” 14 *Cambridge International Law Journal* (2014) p. 157.

<sup>55</sup> Upendra Baxi, “What May the ‘Third World’ Expect from International Law?” 27 *Third World Quarterly*, (2006) p. 713.

<sup>56</sup> B.S. Chimni, “Third World Approaches to International Law: A Manifesto” 8 *International Community Law Review* (2006) p. 4.

<sup>57</sup> *Id.* at 5.

<sup>58</sup> *Supra* n. 27 at 55.

forces but also by their domestic state apparatuses, populations in the Fourth World are subject to cultural imperialism, intervention, and subordination.<sup>59</sup> Therefore, the inhabitants of the Fourth World must contend with more than just the “integrationist worldview” and “civilizational goals.”<sup>60</sup>

### **The Role of the United Nations**

In 1982, in response to growing international cooperation among indigenous peoples through non-governmental organizations such as the World Council of Indigenous Peoples, the International Indian Treaty Council, and the ECOSOC specialized agency of the UN established a “working group” entrusted with the responsibility of drafting a Declaration on Indigenous “Populations” rights.<sup>61</sup> In 1993, The Working Group on Indigenous Populations agreed on a draft Declaration on the Rights of Indigenous Peoples, moving at the typical “lightning speed” of United Nations bodies.<sup>62</sup> The Working Group members, like the Founders of the United States Constitution, went above and beyond their mandate while farming Declaration on the Rights of Indigenous “Peoples”.<sup>63</sup> The preamble of UNDRIP<sup>64</sup> affirms that Indigenous people are equal to other people. It also demonstrates that the diversity of humankind and common heritage can be achieved only by people’s contribution. Indigenous peoples experienced historic injustice due to land dispossession and natural resources. Indigenous culture contributes to sustainable environmental management. Demilitarization of the land brings peace and economic and social progress to the right of indigenous people; Recognizing and understating the friendly relations of people with indigenous people includes children’s rights. They acknowledge the charter of the UN, UDHR, ICESCR, ICCPR, and Vienna Declaration and Programme action. So indigenous people are entitled to economic, political, social, and cultural freedom without discrimination. Art. 8 Protect the culture of indigenous people against assimilation destruction,

<sup>59</sup> *Supra* n. 55 at 22.

<sup>60</sup> *Supra* n. 54 at 718.

<sup>61</sup> *Supra* n. 51 at 11.

<sup>62</sup> *Id* at 9.

<sup>63</sup> Siegfried Wiessner, “Rights and Status of Indigenous Peoples: A Global Comparative and International Legal Analysis” 2 *Harvard Human Rights Journal* (1983) p.101.

<sup>64</sup> The United Nations Declaration on the Rights of Indigenous Peoples and the Development of International Law (13 September 2007)

and state members shall be bound to prohibit the above acts and provide an effective redressal mechanism. States shall protect their lands and resources.

### **The Tussle of Definition**

Perhaps unexpectedly, it has been challenging to define the term “indigenous people.” Established nation-states did not appear to endorse that terminology out of concern for the potential threat to their territorial integrity posed by claims to external self-determination whose legitimate claimants were identified as “peoples” under Articles 1, 2, 55, 56, and 73 of the U.N. Charter. Nation-states aimed to avoid conflating indigenous peoples legally protected claims with those of colonized communities. Because of this, the “International Decade of the World’s Indigenous People” purposely used the single form of “people.” However, the text of the Draft Declaration by the U.N. Working Group is the most positive intergovernmental response to indigenous peoples’ claims.

The Inter-American Human Rights Commission, presenting the Declaration on the Rights of Indigenous Peoples, abandoned an attempt in an original draft at delimiting the term, just as the United Nations Working Group did in its 1993 Draft Declaration by consciously choosing to forego any attempt at a definition. It was not a lack of effort that prevented this project from succeeding. The Definition provided by Martinez Cobo, the first Special Rapporteur of the United Nations on the issue of discrimination against indigenous peoples, is perhaps the most well-known: Because of their historical ties to the pre-invasion and pre-colonial societies that evolved on their territories, “indigenous groups, peoples, and countries are those that consider themselves separate from other sectors of the society now prevailing in those territories or sections of them.”<sup>65</sup> Their ethnic identity and ancestral territories are the foundation for their continued existence as people. They are determined to protect, develop, and pass them down to future generations through cultural norms, social institutions, and legal systems. They currently make up non-dominant sectors of society. Martinez Cobo’s Definition can be viewed as being too narrow:

---

<sup>65</sup> *Supra* n. 62 at 110

- i. By emphasizing “historical continuity with pre-invasion and pre-colonial societies,” a link to the phenomenon of European colonization and invasion may be established, restricting the concept of indigenous communities primarily to peoples in the Americas and Oceania and possibly excluding indigenous peoples in Africa, Asia, and other places who are oppressed by equally “original” inhabitants of neighbouring lands who are now the dominant group.
- ii. The need for the organization to “protect ancestral territories” could be used as a justification for excluding indigenous peoples who were forcibly displaced from their land and are now living in urban areas but still identify as indigenous.
- iii. The emphasis on indigenous peoples as “non-dominant sectors of society” undoubtedly captures the majority of indigenous communities worldwide.

This concept may include separate minority groups that have lived in a nation-state for a considerable time, maybe since the state’s founding, under the umbrella of indigenous peoples. The ethnic minority of Hungarians in Romania is a prime example. It would be too inclusive if it were stretched that far. Some governments, particularly those in Asia, have required a definition before addressing the specific rights enumerated in the Draft United Nations Declaration at the level of the working group formed by the Human Rights Commission.

Governments have called for a definition that exclusively includes indigenous tribes that have endured colonization by people from other parts of the world, not an invasion by the neighbours.<sup>66</sup> Indigenous peoples in the Working Group appear to like the adaptability provided by the lack of a clear definition.<sup>67</sup> They instead emphasize self-identification as a crucial element of description that might be accepted. The claim that a purpose will clear up any ambiguity regarding the proposed declaration’s “*ratione personae*” seems to make some intuitive sense.

They are, therefore, crucial to the legal system. It is harder to argue that a definition of the range of beneficiaries of the United Nations Declaration cannot be achieved, given that both ILO Convention No. 169 and the Proposed American Declaration have been successful in “*ratione personae*,” restricting their extent

---

<sup>66</sup> *Id* at 113.

<sup>67</sup> *Ibid.*

of application. However, the viability of a definition does not preclude it from being relevant to the current problem. The search for definitions is tainted if they exclude communities typically considered indigenous from the protection of international laws. In its assertions on political autonomy, land and resource rights, and self-determination, the draft, in particular, goes beyond ILO Convention No. 169. However, formal definitions might help defend indigenous peoples from governments that reject their existence.

The term's widespread usage may lend credence to Professor Daes' first criterion, priority in time.<sup>68</sup> According to a college dictionary, "indigenous" individuals are "originating in or distinctive of a certain region or country." The Latin word "*indigenae*" means "persons born in a particular location," as opposed to "*advenae*" or "persons who came from elsewhere."

The conflict between the "s" and the "peoples" is still ongoing. The U.N. Working Group on Indigenous Populations has handed the ball to the Commission on Human Rights in the race to the adoption by the UNGA of a Declaration on the Rights of Indigenous "Peoples" by capitalizing on the particular drive and influence of indigenous peoples' movements in its midst. There, nation-state influence will be much more noticeable, and formulations that completely rule out the possibility of political independence may be discussed, not unlike the language of the Proposed American Declaration.

#### **Quests for Self-Determination (Article 4)**

In addition to accord the right to self-determination, it also established several specialized collective rights, such as the freedom of political, economic, social, and cultural identities. They were granted the right to be free from genocide or ethnocide; any action was taken against or affected a group of people's integrity as distinct individuals, cultural values, or identities. Examples of such activities include land confiscation, assimilation or integration, forced relocation, the imposition of foreign lifestyles, propaganda, and forced assimilation. The rights explicitly guaranteed to Indians as groups include the right to observe, teach, and practice tribal spiritual and religious traditions; the right to protect and protect examples of their cultures, archaeological and historical sites, and artifacts; and

<sup>68</sup> *Id* at 114.

the right to establish spiritual property taken without their free and informed consent. The rights to protect and use tribal languages, pass on their oral histories and traditions, receive education in their language, and manage their educational systems are also included. The Draft above Declaration supports the right of indigenous people to own, control, develop and use the lands and territories they have historically owned or otherwise occupied and operated. This includes the right to restitution of lands taken without their free and informed consent through occupation, confiscation, or other means, with the option of providing just and fair compensation in cases where such a return is not feasible.

Nation-states are hesitant, to put it gently, to affirm Indian populations' claims that they are "peoples" with the right to self-determination solemnly outlined in the United Nations Charter, the ICCPR, 1966, and recently proclaimed as an *erga omnes* obligation of all states under customary international law. Secession threatened the "New World" circumstances, primarily established through conquest on paper or in battle. The claim of self-determination by indigenous peoples could imply several things:

- i. "External" self-determination, the right of individuals to freely choose their place in the world, including the choice of declaring political independence;
- ii. Internal self-determination, which is the right to participate in political processes and freely elect a government; and
- iii. Their rights as "minorities" within a given nation-state structure to special rights in the cultural, economic, social, and political spheres (limited autonomy).

Professor James Anaya has proposed a re-conceptualization of self-determination to overcome this conflict and the prevalent opposition between internal and exterior self-determination in the context of indigenous peoples. In his proposal, he combines "ongoing" self-determination, which calls for a "governing order in which individuals and groups can make meaningful decisions affecting all spheres of life continuously," with "constitutive" self-determination, which calls for "minimum levels of participation" in processes of "creation, alteration, or territorial expansion of governmental authority." The recent successful divorces of Eastern European nations, the dissolution of the Soviet Union, the

velvet dissolution of the unhappy marriage between the Czechs and the Slovaks, and the dissolution of Yugoslavia must all be taken into consideration in the debate over the political independence option of self-determination, the right to secede. These significant instances of intra-mainland secession have significantly damaged, if not destroyed, the salt-water idea of self-determination. A claim made by peoples to secede from established nation-states outside and beyond the context of colonialism would seem to be supported in particular by the recent recognition of the unilateral secessions from the Socialist Federal Republic of Yugoslavia by the international community as well as the establishment of Eritrea as an independent state.

### **The Issue of Collective Rights**

Individual human beings have rights that they can use in their name. In contrast, collective rights belong to groups of people and can only be used by the collective entity and its authorized representatives. Based on a fictitious, mythical idea of the social contract, the individual is pitted against the state. Indian thought is considerably different, at least in their old stateless society. According to them, people are born into a tightly knit network of family, kinship, and social and political ties. Rights and obligations only exist within these networks; clan, kinship, and family identities are fundamental components of one's identity. Since Indian society is made up of a web of interpersonal relationships, it is horizontal rather than vertical.

Unlike Western nation-states, Indigenous people do not view their "nations" as having distinct Hegelian existences separate and independent from their constituent parts. In a web of incredibly devoted horizontal interactions, tribal community members are existentially bound to one another.

The group of collective rights of indigenous peoples is intended to safeguard this decision-making process and its surrounding cultural, geographic, social, and economic context. Thus, in contrast to the wholly individualistic viewpoint, certain collective entitlements are recognized by the United Nations and the IACHR draught declaration on indigenous rights. The pertinent group rights defend internal decision-making, culture, land usage, and control. A functional system for conserving indigenous traditions and ways of life cannot be implemented without

this recognition. These rights' goals would be defeated if they were "individualized." Collective phenomena, culture. It covers the tribal lifestyles and the physical and spiritual settings where these traditions are upheld and nurtured. Prescriptions meant to protect such phenomena must necessarily take on a group aspect. The community will operate as such in creating and executing its culture, possibly overriding the preferences of individual members. Of course, these "overrides" are constrained by genuinely individual interests within the confines of international human rights legislation, much like state governments' political authorities.

Furthermore, Western constitutional practice does not entirely exclude the granting and defining rights to collectivities. Like Fiji, New Zealand also allows a fixed number of seats in Parliament to its indigenous population. Many other countries offer racial and ethnic minorities constitutional protection, as stated in article 27 of the ICCPR. Canada officially recognizes "aboriginal rights" in its 1982 Charter of Rights and Freedoms. Even though it was ultimately breached, the 1835 United States Treaty with the Cherokee Nation gave the tribe, after moving from Georgia to Oklahoma's purported "Indian Country," shelter and the right to self-government. For instance, the "*Delaware*" and other tribes were expected to join forces with the United States, form a state, and send a representative to Congress, according to Article VI of the US treaty with *Delaware*, the country's first agreement with an Indian nation. Thus, group rights are essential complements to the member's rights in the context of indigenous peoples. The idea of a Permanent Venue for Indigenous People is laudable since it offers a critical forum for communication between indigenous peoples and governments and among themselves. However, to depart from its sphere of influence at this point would not exceed the influence and power of current institutions. In a limited sense, the Working Group on Indigenous Populations has already filled that role.

### **Territory in the Fourth World**

What constitutes a physical "territory" and how it might be defined are closely related to the ethical position adopted toward the land. At the time of the first continuous encounter between European civilization and North America, epistemology and ontology predominated, but those of indigenous cultures



demanded a moral perspective. Territorial use, concepts of ownership, and the feasibility of boundaries have all been causally impacted by this. The fact that the Nuxalk lives outside the “Treaty boundary” indicates that they have never sold or relinquished any of their lands to colonial authorities.

The nation-based study of modern geopolitics is called Fourth World Theory. Additionally, its actualization in indigenous nationalist movements significantly impacts the state system’s territorial presumptions. Fourth, world territoriality resembles eco-geographical or bioregional imaginings of post-state territorial forms and differs considerably from the static boundaries that constitute states.<sup>69</sup> The Nuxalk nation, which occupies traditional, unceded territory on Bella Coola, Turtle Island (or “North America”), has been one of the most outspoken international supporters of the Fourth World political philosophy.<sup>70</sup> However, the Nuxalk and other Fourth World countries face significant obstacles in gaining some degree of sovereignty over ancestral lands, including inadequate theorizing about the position of non-indigenous residents in contested territories and states’ reliance on the exploitation of resources from indigenous territories.

Geographical and geopolitical factors are essential to efforts to bind the biosphere, the industrial state’s complicated relationship with economic development, and environmental Protection.”<sup>71</sup> The modern state has inscribed sustainable borders, allowing for a reformulation of the global biosphere with little to no current concepts of territorial structure.

The Fourth World or indigenous bioregions and Fourth World or indigenous another mutation of the nation-state are considered (biological or Eco World approach to territory is not a justification for yet geographical regions). On the other hand, Territories in the Fourth World typically follow bioregional boundaries. In this article, the study contends that countries in the Fourth World, especially those in what is now known as “Canada,” embrace concepts of land ethics and territoriality. Under the guise of a neo-territorial, human rights Arguments are seen as sovereign in this relationship since it is so tense.

---

<sup>69</sup> William TL Hipwell, “Industria-The Fourth World, And The Question Of Territory” p.10.

<sup>70</sup> *Ibid.*

<sup>71</sup> *Id* at 2.

### **The Birth of Modern States**

The Treaty of Westphalia marked the start of the modern state system. The Treaty of Westphalia provides one crucial distinction. By the 1960s, the final remnants of empires had vanished, and nearly every square centimetre of the Earth had been divided among the 192 nations that currently comprise the state system.<sup>72</sup> The European powers' colonial actions facilitated this state system expansion. Industrial technology has long been accepted as a critical element of modern society. Industrial man no longer joins any connection to his natural environment and only interacts with organized technical intermediaries. Man discovers that once he is enclosed in this artificial invention, there is "no exit;" He cannot break through the technological barrier and return to the prehistoric environment to which he has evolved for hundreds of thousands of years. The notion of industrial control over remote places is supported by the old cartography approach of uniformly shading state territories.<sup>73</sup> The interests of trans-state corporations are intertwined throughout industrial states. However, no environmentalist who has studied the destruction of ecosystems in the socialist countries of eastern Europe holds capitalism to a higher standard of ecological collapse. Regardless of who controls the means of industrial production, for the nations of the Fourth World, the issue is with the industry itself.<sup>74</sup> Thus, when alarmists warn about "the approaching anarchy," a breakdown into "lawlessness," and the end of "rational" governance in areas like Afghanistan, they are not being entirely accurate. Their main worry is that Fourth World nationalism threatens industrial state-based hegemony. Such prophets of doom ignore that "anarchy" would probably be a welcome change for citizens in Fourth World countries like the Ogoni from the state terror tactics used to ensure Shell Oil's access to their resources.

### **Fourth World Tussle for Recognition**

National sovereignty is still a topic of debate. The ability of the Fourth World to reach amicable agreements with their non-indigenous neighbours will determine

---

<sup>72</sup> *Supra* n. 46 at p. 115.

<sup>73</sup> *Supra* n. 13.

<sup>74</sup> *Supra* n. 48.

the political success of their aspirations for recognition and territorial sovereignty.<sup>75</sup> One possibility is for Fourth World countries to grant non-native residents “citizenship” in their countries. This would enable the development of a new geographical identity.<sup>76</sup> Politics practicality requires that Fourth World countries like the Nuxalk strive for territorial sovereignty in addition to the intrinsic connection to the land that is treasured by indigenous cultures and which indeed deepens territorial bonds.<sup>77</sup>

The issue of state sovereignty, which is not that of a nation but rather a legal-political framework for international cooperation, is now on the table. In this light, it is instructive to think about the evolution of the European Union.<sup>78</sup> While European states have shown a “willingness to cede sovereignty over health and environmental protection standards to a higher level of government, they tenaciously hold on to “Cultural sovereignty,” for instance, over education, language and “territorial sovereignty” in the sense of control over natural resources.<sup>79</sup>

The Fourth World’s nations can in no way afford the Industrial indulgence of problematizing territoriality.<sup>80</sup> This argument for land rights recognition shows how important the land is to indigenous political goals.<sup>81</sup> There are still countless indigenous conflicts throughout Asia, from the east to the southwest.

Today, Asia has endured a variety of warfare and Indigenous peoples’ quests for independence in their ancestral territories in many different regions. These conflicts have their origins in the history of European colonialism and Asian imperialism. As a result of the “ethnic cleansing” and genocide committed by Myanmar’s armed forces in December 2017, more than 600,000 native Rohingya

---

<sup>75</sup> Rfidiger Wolfrum, ‘The Protection of Indigenous Peoples in International Law’ 2 *Max-Planck-Institut für ausländisches öffentliches Recht und Völkerrecht* (1999) p.16.

<sup>76</sup> *Supra* n. 8 at 375.

<sup>77</sup> *Supra* n. 68 at 6.

<sup>78</sup> *Supra* n. 8 at 92.

<sup>79</sup> *Id* at 96.

<sup>80</sup> *Supra* n. 68 at 8.

<sup>81</sup> *Supra* n. 62 at 60.

people in the Rakhine State of Myanmar fled to Bangladesh.<sup>82</sup> Ethnic conflicts began in the nineteenth century in the Arakan State of British-controlled Bengal.<sup>83</sup> British policies caused long-lasting religious hostility between the Rakhine Buddhist majority and the Rohingya Muslim minority, who have long been subjected to government persecution.<sup>84</sup> Despite the extreme violence used by Indian police and paramilitary forces in the Kashmir Valley of the Indian-administered Jammu and Kashmir, the indigenous struggle for independence in Kashmir continues today. Indigenous people in Kashmir fought for the right to self-determination after the British-imposed border of 1947 split Kashmir between India and Pakistan.<sup>85</sup> In Afghanistan, local Pashtuns who crossed the national border were labelled “terrorists” and attacked by US drone strikes and Special Forces.<sup>86</sup>

The “Durand Line,” imposed by the British on the Pashtunian region in 1896, divided the local population into the states of Afghanistan and Pakistan, while the Pashtuns and the Afghan government continued to reject the externally imposed, “artificially” drawn border.<sup>87</sup> The Republic of Iraq has been enforcing genocidal policies against Kurds, including the so-called Anfal genocidal campaign in northern Iraq between 1986 and 1988 that resulted in the deaths of tens of thousands of Kurds.<sup>88</sup> In September, over 90% of Iraqi Kurds voted in favor of the independent Iraqi Kurdistan state, trying to secede from the Republic of Iraq.<sup>89</sup>

The Mandate System, dominated by Britain and France after the First World War, partitioned the native Kurds’ homeland, incorporating their severed homelands into the current borders of Iraq, Iran, Syria, and Turkey.<sup>90</sup> On the island of New

---

<sup>82</sup> Azeem Ibrahim, *The Rohingyas Inside Myanmar’s Hidden Genocide* (Hurst, London, 2016) p. 27.

<sup>83</sup> *Id* at 28.

<sup>84</sup> *Id* at 25.

<sup>85</sup> *Supra* n. 7 at 222.

<sup>86</sup> Amnesty International Report on the State of the World’s Human Rights 2017/2018 p. 66.

<sup>87</sup> Various, *Routledge Library Editions: War and Security in the Middle East* available at <<https://www.taylorfrancis.com/books/9781134891269>> accessed 10 October 2022.s

<sup>88</sup> Dylan Evans, “The Kurdish Quest for Independence and the Legality of Secession under International Law” 12 *Washington University Global Studies Law Review* (2003) 22, 291.

<sup>89</sup> Amnesty International Report, *supra* n. 86 at 203.

<sup>90</sup> *Routledge Library Editions: War and Security in the Middle East*, *supra* n. 87 291.

Guinea, in September, the 1.8 million-signature West Papua independence petition—officially outlawed by the Indonesian government was “smuggled” out of West Papua and delivered to the UN’s decolonization committee, which has been keeping track of the progress of former colonies toward independence.<sup>91</sup> Since 1963, West Papua has been militarily occupied by Indonesian state security forces, which are blamed for flagrant abuses of human rights and the ruthless repression of the region’s independence struggle.<sup>92</sup> President Rodrigo Duterte imposed martial law in Mindanao, the second-largest island in the Philippines, in May 2017.<sup>93</sup> He also sent his security forces there to deal with radical Muslim Moro populations, who have been engaged in their own long-running de-colonial struggles for independence for the past four centuries.<sup>94</sup>

### **Conclusion**

Indigenous people are more likely to experience social issues (poor health, access to education, access to water, and drug addiction). The term “Fourth World”, which is an augmentation of the three-world model (i.e., the First, Second, and Third World classification), typically refers to the group of indigenous people descended from a typical nation of aboriginal populations who have been denied their own territory and political rights, such as the numerous indigenous people currently battling for their independence in various parts of Asia. Nevertheless, tribal communities have hierarchical structures and a process by which a common will develops. There is evidence to support the claim that complicity is still present today due to the continued reification of the state system in contemporary geography, where states are used as the focus of analysis and nation peoples are frequently referred to as “ethnic” or “minority” groups (in their territories). These urban-based states can all be distinguished from Fourth World countries by their shared cultural, political, and economic characteristics. Although states on other continents have now embraced this global culture’s intellectual and political orientation, it is European in origin.

<sup>91</sup> Amnesty International Report, *supra* n. 86 at 295.

<sup>92</sup> *Id* at 296.

<sup>93</sup> Felipe Villamor, “Philippines Extends Martial Law in South for Another Year” *The New York Times* (13 December 2017) available at <<https://www.nytimes.com/2017/12/13/world/asia/philippines-martial-law-duterte.html>> accessed 15 November 2022.

<sup>94</sup> *Ibid.*