HUMAN RIGHTS AND POLITICAL REPRESSION

Human Rights in Asia

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Rohingya refugees in Bangladesh. Photo by EU/ECHO/Pierre Prakash

Asia's importance globally is undeniable. The rise of China as a global player has led to an increase in competitiveness not only with the United States, but also with India and other regional powers. Among the characteristics that make contemporary Asia stand out are the growth of regional conflicts, competition between countries and exclusionary nationalism. The 21st century is becoming a particularly ominous moment for human rights (HR). The main trend is the criminalisation of its defenders, which increases the tension between civil society and the States.

1. Introduction

Without constructing a ranking, the most attacked rights may be freedom of expression, belief, assembly and peaceful association. Unfortunately, these are not the only ones. Governments are unlawfully deploying hate speech as a way to silence dissenting voices. The target of this repression is the general population and, especially, certain minorities, who are demonised, considered disloyal and held responsible for all problems.

Despite the risks, mass protests have characterised this second decade of the century. In recent years, this expression of political disagreement in the public arena has come under particular attack. The danger of being illegally detained, tortured in custody, going missing and in extreme cases, being killed for taking part in a demonstration or publishing criticism against the government has restricted freedom. This criminalisation of protest has been attacked on the narrative level and managed through the courts. Rulers have resorted to

different means (speeches, press, social media), redefining loyal citizens and comparing them to “traitors” and “anti-nationalists” (Pakistan, India) or “rebels” (Indonesia). Thanks to the reinterpretation of current legislation, this difference is being tried in several countries through the criminal systems (Indonesia, Malaysia, Pakistan), through charges of sedition (China, Pakistan) or defamation (Myanmar), or by using counter-terrorism laws (Philippines).

Finally, human rights are being used as a political tool. Their weaponisation is generating a hostile atmosphere that is hindering the work of the few regional organisations for cooperation. The crimes committed against various groups are justified on the basis of injustices against others, while there is silence on crimes perpetrated by allied governments. Traditionally, “Asian values” have been used as a difference to weaken the universality of human rights. The current trend is to consider them as a national issue and treat them as less important than other priorities, such as economic growth. The main criticism made by many Asian countries is the selectivity and depoliticisation of international bodies.

2. Main Rights and Groups Affected

2.1. Institutional overview

Unlike Europe, America and Africa, Asia does not have its own Human Rights treaty. There is a presence by international organisations, some regional institutions and in general, national commissions. Among the international organisations is the Office of the United Nations High Commissioner for Human Rights (OHCHR) in Asia, with its headquarters in Bangkok (Thailand); offices and advisers in Bangladesh, Philippines, Malaysia, Maldives, Mongolia, Nepal, Sri Lanka, Papua New Guinea and Timor-Leste; two regional offices for the Pacific and Southeast Asia (Fiji and Thailand); a human rights service in the United Nations Assistance Mission in Afghanistan (UNAMA); and an office in Seoul to oversee North Korea [1].

Asia has the worst record on treaty ratification globally. However, the main problem is that treaties signed or ratified are not implemented. All the countries have ratified the Conventions on children’s rights, the elimination of all forms of discrimination against women and the rights of people with a disability. In terms of the International Convention on the elimination of all forms of racial discrimination, Malaysia and Myanmar are not part of this and Bhutan did not ratify it. These three countries are also not part of the International Convention on Civil and Political Rights and China has not ratified it. Malaysia and Bhutan do not form part of the International Pact on Economic, Social and Cultural Rights. North Korea, Myanmar, Malaysia and Papua New Guinea are also outside the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and this has not been ratified by India. Only Bangladesh, Philippines, Indonesia and Sri Lanka form part of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. Japan, Mongolia and Sri Lanka ratified the International Convention for the Protection of All Persons from Enforced

Disappearance. It has still to be ratified by Cambodia, India, Indonesia, Laos and Thailand [2].

The United Nations High Commissioner for Refugees (UNHCR) has representation in the five regional Asian subdivisions: Central Asia, East Asia and the Pacific, South-East Asia, South Asia and South-West Asia. The United Nations Office for the Coordination of Humanitarian Affairs (OCHA) also has offices in Bangladesh, Philippines, Japan, Myanmar, Nepal, Papua New Guinea and Sri Lanka, plus the two regional offices in Fiji and Thailand.

2.2. Level of regional cooperation

With regard to multilateralism and cooperation, there are areas where interests converge, such as trade and security. Human rights, on the other hand, are a divisive element. Asia is generally a neighbourhood where countries find it difficult to trust each other and where many of the conflicts involve States that share borders. Without trust, regional organisations, despite being an improvement, end up being dysfunctional.

One example is the Association of Southeast Asian Nations (ASEAN), formed by Brunei, Cambodia, Philippines, Indonesia, Laos, Malaysia, Myanmar, Singapore, Thailand and Vietnam. The Phnom Penh Declaration on the adoption of the ASEAN Human Rights Declaration (AHRD, 2012) laid the foundation for cooperation in this area. In this declaration, the signatory countries committed to respecting human rights, as well as improving the situation of women and implementing the declaration to eliminate violence against women. However, the AHRD is not functional. ASEAN’s fundamental principles of respect for sovereignty and not intervening in the internal affairs of other States prevail over human rights. Another common factor in these countries is the preference for the State to manage rights, instead of allowing the national commissions to be more independent and civil society to participate.

Another regional association is the one that brings together the countries of South Asia, SAARC (South Asian Association for Regional Cooperation). Although its Member States have met regularly, what prevails is mistrust. The association is characterised by the regional dominance of India and its conflict with Pakistan. The areas of cooperation end up being affected by this toxic dynamic that harms the smaller countries (Bangladesh, Bhutan, Maldives, Nepal and Sri Lanka), which tend to suffer from the Indian drag effect. The level of cooperation is considerably lower than seen with ASEAN. Cooperation in trade or security matters is difficult and there is no associated human rights organisation. Three of the longest-running conflicts globally are to be found in South Asia alone: the war in Afghanistan, the Kashmir conflict and the Rohingya refugee crisis.

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East Asia is strongly influenced by the rise of China. The entire continent in general is feeling the changes in the balance of power. Beijing's assertive stance has led to an increased perception of insecurity, especially in the South China Sea region. The clash with the United States has polarised the region between those seeking US approval; the traditional allies, such as Japan and South Korea, who fear reprisals and are upset by the changes in foreign policy under Donald Trump's administration; and those who oppose the presence of North America and see an opportunity in the rise of China to obtain arms and trade advantages, free from the conditions imposed by Western countries.

2.3. Legal instruments that affect the general population

The lack of public trust in some governments encourages these governments to restrict public participation. To limit the involvement of the public, current legislation is usually written using ambiguous language. Governments introduce vaguely defined elements such as "public interest" or "damage to public morality" in order to apply them arbitrarily. Few countries escape this trend:

- Digital Security Act; Information and Communication Technology Act (Bangladesh)
- National Security Act (China)
- Cybercrime Prevention Act (Philippines)
- Right to Information Act; Public Security Act (India)
- Electronic Information and Transactions Act (Indonesia)
- Printing Presses and Publications Act (Malaysia)
- Telecommunications Act; Official Secrets Act (Myanmar)
- Electronic Transactions Act (Nepal)
- Prevention of Electronic Crimes Act (Pakistan)
- Protection from Online Falsehoods and Manipulation Act (Singapore)
- Cybersecurity Act (Vietnam)

As a global power, China is introducing regulatory changes on an international scale and using its economic power to gain supporters. The new National Security Act not only applies to citizens inside the country, but can also be applied extra-territorially. Any Chinese citizen abroad publicly criticising or expressing disapproval of government policy, whether an academic, student, journalist or artist, may end up being convicted under this law.

These measures are even more severe to the extent that China is increasing its presence in international institutions, including the UN Human Rights Council (HRC). The withdrawal of the United States from the HRC in June 2018 was especially concerning for a system it had previously defended. China is filling that void in an attempt to rewrite the rules and manipulate the existing procedures [3].

In March 2018, the HRC approved a resolution submitted by China on “mutually beneficial cooperation”. The resolution proposes the construction of a new style of institutional relations in which human rights are not used to interfere in the internal affairs of other countries. What could “promoting mutually beneficial cooperation in the field of human rights” mean? [4]? In apparently innocent language (“everyone wins”, “universality”, “cooperation and genuine dialogue”), the idea is to promote cooperation mainly between States, marginalising the role of civil society and human rights associations. Violations of rights would become a factor for negotiation between governments, instead of an inalienable universal right, thus avoiding accountability.

2.4. Attacks on minority groups: main groups affected

Human rights violations in Asia affect a large number of groups, mainly: religious and ethnic minorities and indigenous groups; women and children; LGTBI persons; human rights activists, journalists and academics. Without ignoring the oppression to which other groups are subject, we need to highlight some groups that have suffered particular persecution in recent years.

Anti-Blasphemy Laws in Muslim-majority countries such as Afghanistan, Brunei, Indonesia, Malaysia and Pakistan are used as a weapon against religious minorities. These laws bring punishments ranging from life imprisonment to capital punishment. For example, in the Sultanate of Brunei, apostasy is punishable by death. At the same time, in Malaysia there are plans to convert all indigenous animist groups to Islam by 2049 [5] and Shiites commemorating *Ashura* are arrested.

Pakistan is an exceptional case. The degree to which it can consider any comment (especially if it comes from a Christian or an Ahmadi) as blasphemous borders on obsession. The catch is that the offence cannot be repeated, not even in the court trying them for blasphemy. The only proof that a person has committed such a crime is the mere accusation. What is most notable about blasphemy in Pakistan is that it encourages many people to take the law into their own hands.

The recently created political party *Tehrik-e Labaik (Ya-Rasul-Allah)* Pakistan (Here-I-Am Movement, TLP) won over 1.8 million votes in the 2018 elections in Punjab alone. Its leader, Khadim Hussain Rizvi, has made a career of hate speech against Ahmadis and Christians. Rizvi staged demonstrations in condemnation of Punjab Governor Salman Taseer's support for a reform of the law and Asia Bibi. This Christian woman was sentenced to death for blasphemy. She spent nine years in isolation in prison and after being released from prison, had to go into exile. Rizvi and the TLP took to the streets to protest her release and called for her murder. Not surprisingly, Mumtaz Qadri, Tasser's assassin, is venerated by groups like the TLP as a national hero.

Activists who work for the protection of forest areas where indigenous groups live are silenced, go missing or are imprisoned. In China, legislative changes have allowed around two million families to be driven from forest areas. Likewise, India is also restricting the rights of tribes, mainly due to commercial interests. This population is not only losing its homes and livelihood, but is also suffering discrimination. In Indonesia, racism against students from the Papua and West Papua provinces is common. The interest in gold mines has led to the Papuans being driven out of the jungle. The Thai constitution does not recognise the term "indigenous people", so these groups are marginalised and, in the absence of official documents, cannot access basic services.

The province of Baluchistan is rich in minerals and gas. Since the signing of the China–Pakistan Economic Corridor (CPEC) agreement and the construction of Gwadar port, large sectors of the population have been displaced. The crimes committed by nationalist insurgent groups are used by Islamabad to justify the brutal repression of the rest of the Baloch people. Entry to this region is forbidden, it can only be visited with the permission of the military, who are the ones accused of committing the crimes of torture, arbitrary and forced disappearances and summary offences. The Pakistan Human Rights Commission, citing the Baloch activist Mama Qadeer, puts the number of people missing at more than 82,000 (including Baloch and Pashtun people).

The lack of rights of the indigenous population is also linked to the lack of environmental protection. Compared to other countries, Bangladesh, Cambodia, the Philippines and Nepal have been more respectful of the rights of indigenous people. However, the construction of the Lower Sesan II Dam in Cambodia, on one of the tributaries of the Mekong river, caused the displacement of thousands of people. Several environmental groups warned about the negative environmental impact along the entire length of the Mekong river. Diversity would be affected not only in Cambodia, but also in Vietnam, Laos, Thailand and China.

Moreover, India is undoing the current legislation that protects tribal populations (*adivasis*) in pursuit of the economic development of their lands in the states of Chhattisgarh, Odisha and Jharkhand. The 2018 reform of the Forest Rights Act of 2016 grants all powers to state agents and eliminates the participation of the local population in managing and protecting its habitats. India has also handed over the exploitation of these forests to private companies. New Delhi is planning to double coal production in 2020 and to be able to extract this amount it is driving the *adivasis* from their lands. New Delhi committed to improving air quality under the Paris Agreement in 2015, reducing carbon emissions by

2030 and increasing forest area. The government is doing the complete opposite.

By ignoring a pressing problem, Asian governments are ignoring the dangers of pollution. India is home to 14 of the 20 most polluted cities in the world. Moreover, in 2019, 49 of the 50 most polluted cities in the world were in India (26), China (14), Pakistan (6), Bangladesh (1), Indonesia (1) and Mongolia (1) [6]. Poor air quality affects people's health and can be considered a human right related to the right to life, health and a healthy environment. Climate change affects hundreds of thousands of people each year, with deaths and displacements caused by excessive heat, torrential rains, pollution or droughts.

Another prevailing trend in Asia is the model of the war on drugs established by Rodrigo Duterte, president of the Philippines. Since it began in 2016, those affected have been the most disadvantaged classes. The police have carte blanche to detain people and force confessions. Estimates of this war range from more than 12,000 (Human Rights Watch, HRW) to 27,000 (UN) people going missing or being executed, and more than 350,000 detained without legal safeguards. Its media coverage is also persecuted.

> Human rights violations in Asia affect a large number of groups: religious and ethnic minorities, indigenous groups, women and children, LGTBI people, human rights activists, journalists and academics

The journalists Maria Ressa and Reynaldo Santos Jr. were arrested in 2019 for a report in which they exposed a case of corruption in the war on drugs. The article, published in 2012, exposed a network of influence involving a businessman, Wilfredo Keng, a judge and drugs gangs. The introduction of the Cybercrime Prevention Act allowed the state to take the case to court in 2017. In 2020, Ressa and Santos were convicted of cyber libel.

In Bangladesh, a campaign launched by Prime Minister Sheikh Hasina in May 2018 aims to end the large increase in methamphetamine (yaba) use seen in the past 10 years. More than 3,000 people are thought to have gone missing or been extrajudicially executed by the security forces [7]. Another anti-drugs campaign in Cambodia has led to mass detentions of suspects without safeguards. This began shortly after the Cambodian Prime Minister Hun Sen's visit to the Philippines in January 2017. The wave of arrests has caused overcrowding in prisons and rehabilitation centres, where abuse of prisoners is rife.

3. Most Significant Cases of the Repression of Rights

It is difficult to decide which countries or human rights violations are the most serious, or who are the people being most affected. In Asia, there is certainly no shortage of candidates. Afghanistan is an extreme case. Despite the fact that a peace process has begun in which, for the first time, the Taliban have sat down to negotiate with the US government, and later with the Afghan government, the violence has not stopped. Along

with Syria and Yemen, the Afghan war is a serious case of the violation of international humanitarian law. There is no civil population protection measure that has not been violated by the parties. There is currently a campaign to selectively attack journalists and peace and human rights defenders in order to silence dissenting voices about the way the peace process is being managed and also weaken it. Despite accounting for almost half of the population, only four women were part of one of the two negotiating teams sent to Doha by the Afghan government. Fauzia Kufi, Fatema Gailani, Habiba Sarabi and Sharifa Zurmati accounted for 1.68% of the delegation [8].

The following noteworthy cases are particularly serious. Firstly, the situation of the Uyghurs and other Muslims of Turkic origin in the Chinese province of Xinjiang. Secondly, the situation of the Rohingya minority in Myanmar and Bangladesh. Finally, the treatment of Muslims in India, and more specifically, the population in Kashmir.

3.1. Xinjiang: the Uyghur prison

In 2009, the death of a factory worker in Urumchi sparked a series of riots. The three threats identified by the Communist Party government were “separatism, religious extremism and international terrorism” [9]. Fearful that Islamism as an ideology prevails among its Muslim minorities and to avoid another Tiananmen and make the established order clear, the Chinese government turned to repression. According to Amnesty International, Beijing ordered mass arrests (based on ethnic and religious origin) during the riots and carried out house-to-house raids. Since then, doubts about the whereabouts of thousands of missing people and complaints of torture in custody have not yet been resolved by the authorities [10]. Since 2016, the number of police officers and mass surveillance technology facilities in Xinjiang have been on the rise.

Figures have subsequently been leaked from facilities, revealing that between one and three million Uyghurs, Kazakhs and other Muslims are being held against their will. China calls them “Anti-extremism training” and “re-education” camps. According to HRW, they are subjected to sessions of “forced indoctrination, collective punishment, movement and communication restrictions, restriction of religious freedom and mass surveillance” [11]. China is attempting to eradicate the Uyghur culture. In order to make the Muslims of Xinjiang “more Chinese”, the practice of sending a person from the Han ethnic group to live in the houses of Uyghur families has been adopted. This person has to report on what they talk about, who prays, if they have a beard or wear a veil or if they fast during Ramadan. Indoctrination also extends to the rest of the Uyghur population, under threat of internment. Among other things, Muslims are forced to eat pork or drink alcohol [12], and they must study books on the Communist Party and speak Mandarin.

The abuses committed against Uyghur women are even more serious. The Xinjiang Victims Database estimates that they constitute 27% of all those detained [13]. In addition to “re-education”, forced labour and torture, women suffer rape, sterilisation and forced abortion. Similarly, pregnant Ugyhur women are separated from their children at birth. These children are taken from their families (constituting genocide) and sent to centres where

they are indoctrinated. According to the testimonies of men and women who have managed to escape from these centres, these attacks meet some of the elements set forth in Article 7 of the Rome Statute on Crimes Against Humanity [14].

Several international organisations have attempted to investigate but without success. Among these are the Committee on the Elimination of Racial Discrimination (CERD) and the HRC. However, China is constantly blocking different initiatives, especially if they are proposed by the UN Security Council (SC). In July 2019, instead of addressing the issue directly in a session, as is common, the permanent representatives of 24 Member States at the HRC presented a joint letter. In it, they called for an investigation into the conditions in the detention centres in Xinjiang. They called on China to stop the “arbitrary detention and restrictions on freedom of movement of Uyghurs and other Muslim and minority communities” [15]. The response was another letter in which 37 countries opposed the investigation. In November, 39 countries from the HRC again called for the depoliticisation of rights and an end to abuse in Xinjiang, Tibet and Hong Kong. China responded with another letter signed by another 54 countries, supporting the official version that the centres formed part of the de-radicalisation and counter terrorism policy

This rift between countries exacerbates the dysfunctional nature of the international institutions designed to protect human rights. Six of the signatories supporting China were Asian countries: Cambodia, North Korea, Philippines, Laos, Myanmar and Pakistan. Three trends are revealed here: 1) the interest of some governments in strengthening authoritarianism; 2) the relative treatment of human rights abuses depending on who the victims are, where they live and who commits them; and 3) the complicity of those who negotiate favours in exchange for their silence. One example is Pakistan, an activist for Muslim rights in Palestine and Indian Kashmir. In contrast, the Prime Minister Imran Khan repeatedly stated that he did not know what was happening in Xinjiang. Undoubtedly, the development of the CPEC and the economic crisis are fundamental factors hindering impartiality.

Several Asian countries repatriated Uyghurs who had fled. Despite being asylum-seekers, Indonesia, Cambodia, Vietnam and Thailand expelled dozens of them on planes chartered by the Chinese government. By contrast, Malaysia, despite not signing the letter, refused to repatriate 11 Uyghurs who had escaped from a Thai prison. In Japan, refugee Uyghurs report that China is putting pressure on them to spy on the Japanese government, under the threat of reprisals against their relatives in Xinjiang. Japan is one of the 24 signatories in favour of the investigation.

The silence from India is interesting. The government in New Delhi has for a long time been taking in refugees from Xinjiang and Tibet. The presence of the Dalai Lama also strains relations with China. But India did not sign either document. What it is trying to avoid is the “intrusion” of an investigation into Kashmir. China, in fact, is pressing on this issue. In 2019 and 2020, as a member of the Security Council (SC), Beijing brought several motions to address human rights violations in Kashmir, a claim that had not arisen since 1971.

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Finally, it is worth noting that a large number of countries with a Muslim majority appear in the list of signatories supporting China. The Organisation of Islamic Cooperation (OIC), at its 46th session in March 2019, drafted a “Resolution on the fate of Muslim communities outside the OIC”. In it, the organisation urged respect for UN Resolution 16/18, which calls for “combating intolerance, negative stereotyping, stigmatization, discrimination, incitement to violence and violence against persons, based on religion or belief”. In the text, among other countries, India and Sri Lanka are urged to protect their Muslim minorities. Surprisingly, however, in the section dedicated to the situation of the Uyghurs, the People’s Republic of China is congratulated for their “efforts to protect its Muslim citizens; and it looks forward to future collaboration between the OIC and China” [16].

3.2. Rohingya: left to their own fate

During the British decolonisation after World War II, there were clashes between Muslims and Buddhists around the Rakhine region. The Rohingya, an ethnic and religious minority, have lived in this Burmese state for centuries. However, the government refuses to consider them part of the 135 ethnic groups that make up the country and refers to them as “Bengalis”. Bear in mind that Burmese nationalism is rooted in the Buddhist identity. About 1.3 million Rohingya lived in Rakhine. The Burmese government deprived them of their right to nationality, which prevented them from accessing healthcare, education, housing, work and movement in and out of Myanmar [17]. Moreover, after the emergence of democracy in 2014, their exclusion from the census deprived them of the right to vote.

The first Rohingya exoduses began in 2011, after riots instigated by a radical Buddhist group. Over 100,000 crossed the border and the same number were confined internally in makeshift camps. Following attacks on the police in 2017 by Rohingya insurgent groups, retaliation grew. The Burmese army launched an offensive against the civilian population that caused about 725,000 Rohingya to flee. Zeid Ra’ad al-Hussein, HRC commissioner, described the circumstances that led to the mass exodus as “a textbook example of ethnic cleansing” [18].

United Nations Special Rapporteur for Human Rights, the Korean Yanghee Lee, accused the military generals of crimes against humanity and war crimes [19]. Other ethnic minorities (Mro, Daingnet and Chin) are also being persecuted by the Burmese Army. Likewise, in Rakhine and Chin, the escalation of violence in December 2018 between the Burmese Army and the Arakan Army (of Rakhine ethnicity and majority Buddhist) caused more than 29,000 internal displacements of people and probably prevented the return of refugees.

The word Rohingya is taboo in the Burmese press. The current Constitution of Myanmar, which dates from 2008, does not include safeguards for the protection of freedom of expression, media freedom or access to information. In 2018, the journalists Wa Lone and Kyaw Soe Oo from Reuters won the Pulitzer Prize for an investigation into the repression of the Rohingya. The response from the Myanmar government was to sentence them to seven years in prison in 2018. Both served 500 days in prison, after which they were released after receiving a presidential pardon.

Bangladesh runs various camps in which over one million people are crowded together. The cyclical arrival of numbers in excess of the initial tens of thousands led to makeshift camps popping up in different areas. The gradual increase in violence since 2015 led to waves of hundreds of thousands of people without documents crossing the border and settling in various camps, some improvised, in and around the Cox's Bazar district. In addition to having the largest refugee camp in the world (Kutupalong), according to UNHCR, the population density is 8m2 per person, below the standard 45m2 per person to manage an emergency. Conditions are inhuman.

In Myanmar's incipient democracy, tensions persisted between the civilian government and the military, accustomed to acting with impunity and with a long history of human rights violations. In June 2018, a memorandum of understanding was signed between UNHCR, the UN development agency and the government of Myanmar to facilitate the return of the Rohingya. A report by the UN's independent international mission published in August 2019 says that unfortunately Myanmar is not cooperating. The mission found, among other indications, a relationship between the Army and economic and business interests, and that "conducting joint ventures with foreign companies and sales and transfers of arms have contributed to the country's human rights crisis". With regard to the return of the Rohingya to Rakhine: "the Government has enlisted the assistance of private companies to implement its policies, under the cover of economic development and reconstruction activities, to alter the demographic distribution and prevent the displaced Rohingya population from returning to their land" [20]. Myanmar has rejected the report, calling it unfounded. It has the support of Russia and China.

This conflict is also affecting women. The attacks include "the continued and deliberate committing of serious acts of sexual and gender-based violence, including systematic rapes, gang rapes and forced sexual acts, by the Myanmar military and security forces against Rohingya women, minors and transgender persons, as part of a cleansing campaign designed to terrorise and punish ethnic minorities; that sexual violence is used to divide entire communities and discourage women and girls from returning to their homes; that, in the refugee camps, victims of rape may be subject to social exclusion by their communities" [21].

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In September 2018, it was agreed that Prosecutor Fatou Bensouda of the International Criminal Court (ICC) would initiate proceedings to indict Myanmar. Although it is not a member of the Court, Bangladesh is. In December 2019, Gambia brought a case to the ICC in which it accused Myanmar of genocide. On 23 January 2020, the ICC unanimously approved an order requiring Myanmar to take interim measures to protect the nearly 600,000 Rohingya still in Burmese territory and to not destroy evidence of the crimes committed. Myanmar has accused Gambia of acting as an agent for the OIC and does not accept the ICC's arguments.

3.3. India, Muslims and Kashmir: the geopolitics of collective punishment

India is one of the countries where religious minorities suffer the most persecution. Since Narenda Modi came to power in 2014, tension between Hindu communities and Christian and Muslim communities has been increasing. Modi's party belongs to the Hindu nationalist movement (Bharatija Janata Party, BJP), and his partners are supremacist parties. Hate speech against minorities has increased since then and this is in line with political decisions. Three of these mark the decline in the protection of minorities: the development of a new register of citizens in the state of Assam; the repeal of Article 370 of Jammu and Kashmir (J&K); and the introduction of an amendment to the citizenship law.

In the state of Assam, the renewal of the National Register of Citizens (NRC, 1951) led to the exclusion of some two million people. The main non-Asamese community to be marginalised is Bengali (Hindus and Muslims), considered foreigners by the Asamese and local tribes. In 1983, thousands of Bengali Muslims (who emigrated during the 1940s and 1950s) were executed in the notorious Nellie massacre. After this pogrom, the Prime Minister Rajiv Gandhi signed an agreement through which those who emigrated between 1951-1961 could obtain citizenship and those who arrived after 1971 would be deported.

In the Assam elections, the BJP promised to get rid of the "foreigners" (read this to mean Bengalis). The preparation of the new NRC was aimed at forcing citizens to provide documentary evidence that they were born in Assam and emigrated before 1971. Many of them do not have identity documents, due to poverty and a lack of records. In the first draft of the NRC (June 2019), four million people were excluded. In the later review in August, the total excluded was almost two million, mostly Muslims. India intends to hold them in detention camps until their deportation, but neither Bangladesh nor Pakistan recognise them as their citizens.

The same Assam agenda may be applied in the next national census (April 2020-February 2021). The Citizen Amendment Act (CAA) introduced religion as a factor in obtaining nationality. According to this law, migrants or refugees in India who come from Pakistan, Afghanistan and Bangladesh and do not have documents may request citizenship if they are Christian, Hindus, Buddhists, Sikhs or Parsis. One of the groups affected by this policy is the Rohingya. Being Muslim means that India denies them refugee status. They are considered illegal immigrants by New Delhi and are being involuntarily or forcibly

repatriated to Myanmar.

Kashmir has been at the epicentre of the conflict since the division of India and Pakistan in 1947. The accession of Jammu and Kashmir (J&K) was carried out on the condition of maintaining a certain autonomy of government. The revoking of article 370 of the constitution on 5 August 2019 ended its special status and divided the territory in two. Among other changes, the annulment of the article opens the door to the purchase of land and properties by citizens from other Indian states. Kashmiris believe that this measure is designed to change the composition of the population and overturn the Muslim majority.

The process to carry out the change of status was illegal. The Modi government took the measure without the approval of the institutions and without prior notice. To do this, it evacuated tourists, transferred thousands of police officers and soldiers and subjected the local population to total isolation: internet cuts, telephone cuts, roadblocks and curfews. The internet connection was only restored on 25 January 2020 and even that at a low speed. Three former J&K People's Democratic Party ministers (Farooq, Omar Abdullah and Mehbooba Mufti) were placed under house arrest to prevent them from demanding protests. Protests against it were disproportionately repressed. To suppress the protests, as has become customary in the Kashmir Valley, the security forces used pellet guns. These led to more than 6,000 people being injured and caused eye damage or blindness to thousands of protesters, including children.

> India invokes laws from the colonial era to control the population: the Public Security Act allows suspects to be detained without trial for two years

The UN special rapporteur for freedom of expression considers that the measures taken by the government in Delhi were disproportionate. India invokes laws from the colonial era to control the population. Section 144 of the criminal code allows it to impose curfews, interrupt the internet connection and prevent groups of more than four people from gathering on the street [22]. The Public Security Act allows suspects to be detained without trial for two years. Likewise, the Armed Forces (Special Powers) Act exempts soldiers from any responsibility for their actions. The impediments to monitoring the conflict on the ground mean that many human rights violations go unpunished.

4. Human Rights in Times of Pandemic: Asia and Covid-19

On the positive side, Japan, South Korea and Mongolia are the countries that have best managed the pandemic. In the rest, the COVID-19 crisis has helped governments find excuses to control the media more. A lack of resources has also threatened the collapse of medical services. According to the World Health Organisation, at least 2.3 doctors are required per 1,000 inhabitants for there to be sufficient health coverage. World Bank data shows that Asia has low ratios: Papua New Guinea has the lowest with 0.1 and the Maldives

the highest with 4.8. South Asia has 0.8 on average, East Asia and the Pacific 1.7.

Freedom of expression is one of the most persecuted rights. Not surprisingly, Asia has the most dangerous countries in the world for journalism. According to the Reporters Without Borders ranking, North Korea is the worst (180th out of 180 countries), China is 177th. In other positions are Vietnam (175), Laos (172), Singapore (158), Bangladesh (151), Pakistan (145), Cambodia (144), India (142), Thailand (140), Burma (139), Philippines (136), Sri Lanka (127), Afghanistan (122), Indonesia (119), Nepal (112), Malaysia (101), Hong-Kong (80), East Timor (78), Mongolia (73), Bhutan (67), Japan (66), Mauritius (56), Fiji (52), Papua New Guinea (46), Taiwan (43) and South Korea (42).

According to the International Press Institute, Asia has been the continent with the most obstacles to information during the pandemic: 91 detentions, 29 restrictions on access to information, 10 cases of censorship, 6 of excess “fake news” regulations and 29 physical or verbal attacks against the media. For detentions, the penal code was used in 66% of cases, other laws in almost 30% of cases and those created ad hoc to combat hoaxes, 4% [23]. In Myanmar, access to 221 websites accused of spreading hoaxes was blocked at the government’s discretion [24]. In Singapore, the Protection From Online Falsehoods and Manipulation Act was used against a *State Times Review* after it accused the government of hiding the actual number of victims of the virus [25].

The journalist Chen Quishi disappeared in February after investigating a temporary hospital in Wuhan. Quishi was working on the difficulties faced by doctors and the lack of resources to treat the pandemic. In India, the police used disproportionate force against members of the public who were trying to break the lockdown or were simply on the street on their way to work [26]. The Supreme Court, at the request of the central government, ordered the media to only broadcast the official version of the fight against the virus. The judges of the new order appealed to the Disaster Management Act of 2005, which imposes fines or sentences of up to one year in prison [27]. In the Philippines, criticism of the government during the pandemic has been punishable under the counter-terrorism law, considering them activities that “put public health at risk”.

With regard to the conflict in Kashmir, Amnesty International reports that India has detained more than 70 politicians from different parties, except the ruling party. The lack of 4G internet (the internet has only been brokenly restored at a 2G speed) prevents the courts from operating at their usual rate, students from following their classes, companies and citizens from carrying out administrative procedures, and finally, hospitals and medical centres from accessing data, issuing prescriptions or requesting medications.

Communication has not been effective nor always based on scientific data. Some leaders have resorted to populist speeches to evade responsibility. In Pakistan, Imran Khan addressed the public on different occasions, playing down the scale of the crisis or contradicting the actions of the governments of other parties in the provinces. While other countries closed mosques to prevent contagion, Khan decided that they should remain open during Ramadan. Conspiracy theorists spread the belief that the virus was a plot to shut them down. At the annual *tablighi jamaat* (TJ) event in Lahore, where around 150,000

people gathered, one leader said the virus was the responsibility of the indecency of women [28].

In India, the TJ was also at the epicentre of the crisis. The headquarters in Delhi attracted thousands of followers from all over Asia between 12 and 13 March. When Delhi imposed the lockdown (22 March), one third of all cases had originated at the *tablighi*. This sparked rumours that it was a terrorist virus: the corona-jihad. In the same way, events continued to be held in Sikh and Hindu temples, causing an unnecessary spreading of the virus. Some Hindu nationalist leaders of the ruling party recommended drinking cow urine to strengthen the defences against the virus.

More than 100,000 Afghans, including those who had lost their jobs in Iran and forcibly expelled refugees, were the main focal point of the virus upon their return to Afghanistan. In addition, border closures left groups of workers trapped in appalling conditions. Around 20,000 Nepalese were stuck in India trying to return to Nepal. Tens of thousands of migrants from Cambodia, Myanmar and Laos were held at the Thai border after losing their jobs [29].

The pandemic has shown the extreme vulnerability of the poorest people. In Asia, many workers survive on what they earn each day. The lockdowns have stopped their daily work, widening the gap between those who can work from home or confine themselves to a home and those who cannot. The size of the population and the high demographic density prevent social distancing, both in public spaces and in families (with an average of 6-10 people in substandard housing of a few square metres). It is estimated that in India alone, more than 120 million workers in informal sectors lost their jobs. The exodus of millions of people to their places of origin after the lockdowns in Delhi and Mumbai and the lack of transport forced many to make a journey of hundreds of miles on foot.

> Freedom of expression is one of the most persecuted rights: according to the International Press Institute, Asia has been the continent with the most obstacles to information during the pandemic

The lockdown, as in other regions, increased cases of violence against women. The weak protection structures for victims of male violence were seriously affected. In Bangladesh, the government restricted critical services helping these women and closed the courts that try such cases. In contrast, in Fiji, online services were provided to help victims of abuse. In India, one month after the lockdown there was a 100% increase in reports of abuse and in Singapore an increase of 33% in calls to the women’s helpline. In China, the #AntiDomesticViolenceDuringEpidemic hashtag helped expose cases of abuse [30].

5. The Future of Human Rights in Asia

It is difficult to see any improvement in the protection of human rights. Legislative changes are proving unfavourable. The rise of populism, along with the lure of authoritarianism, puts rights at the bottom of the pecking order. In China, India, Pakistan and the Philippines, those who rule do so in an authoritarian manner and with great disdain for the law.

India is coming increasingly close to being a State in which discrimination against religious and ethnic minorities is official. In Pakistan, the military no long need to carry out coups. Thanks to complacent politicians and a weakened Parliament, they have managed to infiltrate democratic institutions. In the Philippines, Duterte declared that the Constitution is little more than toilet paper. Sheikh Hasina has buried the opposition under so many court cases that he has made Bangladesh a one-party state. The return of the Rajapaksa brothers to the Sri Lankan government puts at jeopardy the peace agreements after the civil war. The countries that most respect human rights, namely Japan, South Korea, Taiwan, and the territory of Hong Kong, see how China can break the rules while the alternative, India, hesitates to pick a side. Without the unequivocal backing of the International Community, those breaking the rules will continue to do so.

However, this international community is sending conflicting messages. During Donald Trump’s time in the White House, the Taliban sat at the peace negotiating table without needing to halt the violence. Trump’s courtship of Kim Jong-un and Narendra Modi (who was denied visas because of his complicity in the 2002 Gujarat pogrom) sent a signal that rights are relative. A former Nobel Peace Prize laureate, Aung San Suu Kyi, denied charges of genocide against the Rohingya at the ICC, despite evidence to the contrary.

The European Union has also failed to contribute to the international rules on migration and asylum, thereby favouring a relative stance that can be used by the governments in the region. For example, the disbursement of more than €2,700 million (since 2014) to manage the Afghan refugee crisis has the fundamental objective of Iran and Pakistan continuing to manage and house millions of refugees.

The increase in religious sensitivities could be tackled by recovering HRC Resolution 16/18 [31]. To avoid laws like the one on Blasphemy producing leaders (like the aforementioned Rizvi) whose objective is to prosper from hatred, the freedom of expression and belief and the non-discrimination of religious minorities must be promoted. Political leaders must stop using hatred towards the weakest as a way to come to power.

The redefinition of citizenship based on belonging to certain religions or ethnic groups causes conflicts that could be avoided by presenting a favourable view of plurality. The fact that some groups were split between different countries after the end of the colonial era in the mid-20th century continues to generate internal and multilateral conflicts. So that these forgotten communities do not feel alone, the so-called “responsible states” of the international community must show no qualms in denouncing human rights violations. Legislative change must be stopped urgently and it is not the time to prioritise economic growth at the cost of protecting people.

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