

Selected regional developments in human rights and democratisation in the Asia Pacific during 2017: 'Diverse region with divergent stance'

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Abstract: With the human rights situation in the Asia-Pacific region characterised by clashes resulting from religious and ethnic extremism, challenges to free speech, and attacks on women and lesbian, gay, bisexual and transgender persons, the year 2017 in the Asia Pacific remains unchanged from previous years. Incidents ranged from the systematic curtailment of basic freedoms and violent religious, ethnic, and gender-based conflict. Even though most Asia-Pacific nations are democratic in nature, arbitrary anti-democratic actions by government remain common. The major incidents that occurred during 2017 were the ongoing Rohingya crisis in Myanmar and religious extremism in countries such as Afghanistan, India and Malaysia. These setbacks were to some extent offset by the ratification of core human right treaties by countries such as Singapore, Indonesia and Thailand. Regional organisations such as ASEAN, SAARC, and PIF continue to avoid systematically protecting international standards and following up on UN recommendations.

Key words: human rights; ASEAN; SAARC; Rohingya; extremism

1 Introduction

The year 2017 was marked by some key events with regard to human rights violations in the Asia Pacific. Most notable was the attack on Rohingya Muslims in the Rakhine state by members of the Myanmar military which left entire villages torched, women and children raped and killed, resulting in a massive forced migrant into neighbouring Bangladesh. This massive influx of refugees was estimated to be as high as 655 000 people (Amnesty International 2018a). Another key incident was

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the killing of thousands of drug suspects in the name of the 'War on drugs' in the Philippines. Across the region, states continue to exhibit a lack of accountability for rights violations. In Thailand, the military regime that gained power through a *coup*, the National Council for Peace and Order (NCPO), ensured that they were immune from accountability in their newly-promulgated Constitution. The death in custody of Nobel Peace Prize laureate, Liu Xiaobo, in China exemplified the extent of the existing arbitrary rule of law in China and in the region as a whole.¹ The fact that security forces, the police and the military, that are supposed to protect citizens, are found to be abusing and curtailing fundamental freedoms portrays a depressing picture of the lack of equal protection by the law. However, not everything was gloom and doom; there were some key events that symbolically capture the existing hope for progress in the region.

Asia and the Pacific region has much scope for advancement as its diversity has much to offer. At the same time issues of violence, discrimination and impunity are profound. Violence and discrimination are centred on different views towards religion, gender and sexual identity. Apart from this, state-endorsed limitations to human rights are found in the restriction of basic freedoms and freedom of expression. Any expression, such as any form of art, writing, comment or activity that displays dissent with the government, is frequently punished in a number of countries. Against this backdrop, the overview does not only indicate the incidents that took place in the region in the year 2017, but also analyses the pre-conditions that have shaped the foundations upon which these incidents persistently exist. Extremism, fundamentalism and impunity are concepts that can explain the incidents of human rights violations, and these emerge from a long history of discrimination, political bias and misperceptions.

This overview of regional developments in the Asia Pacific consists of four sections. The first section discusses four cases that encapsulate the threats to human rights and democracy in the region: the existence of extremism in the region; the rampant violations of rights to freedom of expression including cyber censorship in the region; the existing plight of refugees in the region; and the status of impunity. The second section provides various new developments in the region, both progressive and regressive. The third section examines the sub-regional organisations, specifically the Association of Southeast Asian Nations (ASEAN), the South Asian Association for Regional Cooperation (SAARC), and the Pacific Islands Forum (PIF) in relation to human rights. Finally, the fourth section discusses the Asia Pacific in relation to the United Nations (UN).

1 The Liu Xiaobo case is one of a number of arbitrary acts of the Chinese government in 2017. Authorities continued the politically-motivated prosecution of human rights activists and lawyers; Lawyer Wang Quanzhang and activist Wu Gan remained in police custody, awaiting trial or verdict on baseless charges. Activist Su Changlan and political commentator Chen Qitang faced charges of 'inciting subversion' and eventually were imprisoned for three and four and a half years respectively. Founders of independent news websites were jailed. Lu YuYu, a citizen journalist, was sentenced to four years' imprisonment in August, for 'picking quarrels and provoking trouble'. Also, in August 2017, the Chinese government blocked approximately 300 articles of the *China Quarterly*, a Cambridge University Press publication (Amnesty International 2018a).

2 Threats to human rights and democracy

2.1 Extremism

Extreme manifestation of ideologies exists in almost every part of the world, yet there is no specific standard or criterion of defining extremism or fundamentalism.² The UN Secretary-General in 2017 made defining extremism a prerogative of member states (Guterres 2017). Extremism is the radical idea of re-establishing an order of society based on ascribed and prescribed qualities, namely, race, class, faith, ethnicity and religion. Most extremists reject diversity, pluralism and the universal notion of human rights, while portraying themselves as threatened due to the differences (Schmid 2014: 21). The mode of doing so, mostly in terms of religion, more often than not is violent. USAID notes that violence is inherent in this process: '[Extremism is] advocating, engaging in, preparing, or otherwise supporting ideologically motivated or justified violence to further social, economic or political objectives' (USAID 2011: 2). The Special Rapporteur on the Right to Freedom of Peaceful Assembly considers that extremism and fundamentalism take on multiple forms, whether it be religious, secular, political, cultural, economic or otherwise. It mainly is a 'mind-set based on intolerance of differences' (A/HRC/32/36). As was outlined in the Report of the Special Rapporteur on Freedom of Religion or Belief, Heiner Bielefeldt, to the Human Rights Council in 2014,

[v]iolence in the name of religion can be in the form of targeted attacks on individuals or communities, communal violence, suicide attacks, terrorism, state repression, discriminative policies or legislation and other types of violent behaviour. It can also be embedded and perpetuated in the *status quo* in various forms of structural violence justified in the name of religion (A/HRC/28/66).

The rise in modes and motivation for extremism in the region has its base in rejections of notions of equality and universality. It requires the alignment of situational, social, cultural and individual factors (Allan 2015), and poses a threat to human rights everywhere. These extreme views often use human rights to justify their differing viewpoints, exploiting the right to freedom of association and expression. Political and religious opponents often target each other through violent means and justify their actions by blaming the other through 'reciprocal radicalisation' (Bartlett & Birdwell 2013). An obvious challenge is justifying human rights when they are exploited to violate the rights of others.

Ethno-religious differences and discrimination based on gender and sexual identity have energised extremist groups and largely shape most conflicts in the Asia-Pacific region. Violent activities are on the rise, and so far the response has been limited. As this regional update notes, many states are unresponsive to extremist violence in their own countries. Their actions often exacerbate and do not reduce the tensions. Regional

2 This article sees extremisms and fundamentalism as basically the same, as can be seen in the similar definition given to fundamentalism: 'political movements of the extreme right, which in a context of globalization manipulate religion, culture or ethnicity, in order to achieve their political aims' (Helie-Lucas 1999: 23-24).

organisations are too weak and unwilling to respond, leaving gross violations to continue unabated.

2.1.1 Ethnic and religious extremism

In India, mob attacks by extremist Hindu groups, claiming themselves to be affiliated with the ruling government, took place against minority communities. The main targets were Muslims who were rumoured to have sold, bought or killed cows for meat. Since November 2017, 38 attacks and 10 killings have been reported. In September, Gauri Lankesh, a renowned editor who vocally criticised the militant Hindu nationalism, was shot dead outside her home in Bengaluru (Forum-Asia 2017). In these instances, even the police were found to have acted against the victims by filing complaints in their names against the minorities, under laws that ban the slaughter of cows instead of prosecuting the attackers. The actions are justified by these groups through the call for *Hindutva*,³ a form of Hindu nationalism, endorsed by leading political and religious figures, and causing extreme animus towards Muslims in India (Alliance for Justice and Accountability 2017).

Blasphemy remains punished by the death penalty in Pakistan and 19 people, most of whom members of religious minorities, have been given this sentence and await trial in 2017 (Amnesty International 2018a). In June 2017, hundreds of houses belonging to indigenous people were burnt down by a mob in Langadu, in the Chittagong Hill Tract area of Bangladesh. The police did not succeed in protecting the villages, and the people were not re-housed (*Daily Star* 2017). Besides South Asia, Southeast Asia also faced violence and conflict arising out of extremism. Two concepts are applicable in terms of religious extremism in Southeast Asia: the concept of jihad (*fard al-ayn*), and the concept of *al-walawa'l-bara*. The former is based on a necessary and obligatory fight to defend fellow Muslims, and the latter is based on a polarisation view of the world between Muslims and non-Muslims (Zeiger 2016: 7). Sometimes these acts are state sanctions, for example in July, the Kelantan state of Malaysia permitted public caning imposed by Shari'a courts through its legislation (Amnesty International 2018a). At other times, they are created by conservative religious groups, for instance the sentencing of the ex-Governor of Jakarta, Nasuki Tjahaka 'Ahok' Purnama, to two years' imprisonment by an Indonesian court for posting a video which allegedly 'insulted Islam'. Ahok, a Christian ethnic Chinese man, claimed that his main opponents in the race for governor (a hard-line Islamic party) were using the Quran to get votes.

3 The beginnings of *Hindutva* can be traced to the 19th century organisations such as the Brahmō Samaj and the Arya Samaj and the ideology today is carried by contemporary *Hindutva* organisations such as the RSS. The first expression of Hindu mobilisation emerged in the 19th century as an ideological reaction to European domination and gave birth to what came to be known as 'neo-Hinduism' (Jaffrelot 2007). The word *Hindutva* was for the first time used by a national leader, Vinayak Damodar Savarkar, in 1923. Savarkar's book *Hindutva: Who is a Hindu?* published in 1923 is considered central to the *Hindutva* ideology which is based on the idea that 'Hindus are those for whom Hindustan, or India, is not only their fatherland, but also their holy land – thus precluding the possibility of Muslims and Christians being true members of the Hindu nation' (Hansen 1999).

In response to extremism, states in the region have sometimes overreacted. In April 2017, the Malaysian government threatened to withdraw the publishing licence of *Nanyang*, a Chinese-language newspaper, because of a satirical cartoon about the parliamentary debate on Shari'a law. In Vietnam, 10 Montagnards were sentenced for participating in independent religious groups by a people's court. The Chinese government has published a list of names of people that are prohibited on account of being of Islamic origin, and anyone under 16 is required to change if they have one of these names. Also, the Xingjiang province of China has enacted the 'De-Extremification Regulation' which prohibits a number of activities such as having an abnormal beard or wearing *burkas*, as these are categorised as 'extremist behaviour' (Uyghur Human Rights Project 2017). The main instance of ethno-religious extremism in the region is the case of the Rohingya, who are not accepted as citizens in Myanmar. Many link these actions to the rise of radical Buddhist nationalism (Wade 2017). More than 655 000 Rohingya Muslims have fled from Burma to escape the large-scale ethnic cleansing carried out by the military (Amnesty International 2018a).

2.1.2 *Extremism and violence based on gender, sexual orientation and gender identity*

Gender-based violence and discrimination exist in every part of the world, but sometimes it reaches an endemic level. Acts of gender-based violence, such as child marriage, domestic violence and barring girls from education, are normalised in many parts of the Asia Pacific. According to the United Nations Assistance Mission in Afghanistan (UNAMA), armed groups in Afghanistan have attempted to impose restrictions on girls from receiving formal education. In February 2017, several girls' schools were threatened and closed, which prevented approximately 3 500 girls from receiving education (UNAMA 2017). Gender-based extremism in Pakistan, where 'honour killing' of females still exists, is widespread in areas such as Khyber Pakhtunkhwa, where 94 women were killed by close relatives. Most investigations failed to hold the perpetrators accountable. In July 2017, a teenage girl was ordered to be raped by the village council in Multan district as 'revenge' for the crime of rape that her brother had committed upon another girl (Srivastava 2017). Women have less bargaining power as they live with their husbands' families after marriage and are also dependent upon them for economic, social, and physical security. The fact that acts of violence are unprotected means that data on these actions is of a very poor standard as very few women will approach the police to report physical and sexual abuse. Deep-rooted notions of power, dominance and patriarchy tend to blame the victim for the violence inflicted upon them rather than seeking their protection. Thus, psychological, institutional and social factors contribute to this situation.

Violence and extremism motivated by prejudice towards sexual orientation are prevalent in the Asia Pacific. In countries such as Afghanistan, India, Pakistan, Myanmar and Malaysia, same-sex sexual activities are penalised by national laws. Pervasive discrimination against lesbian, gay, bisexual and transgender (LGBT) persons exists in Malaysia, both through law and practice. Sexual relations between same sexes and cross-dressing are both prohibited under Shari'a law (HRW 2017). In Sri Lanka, the Penal Code, according to sections 365 and 365A, prohibits 'carnal intercourse against the order of nature and gross indecency', which

is a relic of colonial rule. Sri Lanka rejected Universal Periodic Review (UPR) recommendations to repeal such laws. In Singapore, any form of positive depiction of LGBT lives is prohibited on radio or television by the Media Development Authority (IAGCI 2017). The promotional advertisement for the 2017 Pink Dot Festival, a pro-LGBT public festival, was removed from a shopping centre by the Advertising Standards Agency to protect 'public sensitivities'. Gay men in Pakistan were targeted for their sexual orientation and arrested for a violation of the Control of Narcotic Substance Act of 1997. China has since 1997 decriminalised homosexuality, but same-sex partnerships still are not recognised by law and thus lack protection from discrimination based on sexual orientation and gender identity.

There are social and sometimes legal sanctions when one identifies oneself as an LGBT person. Violence because of sexual orientation, gender identity and intersex status is the outcome of institutionalised discrimination, criminalisation and social intolerance. Forced marriages, therapies to 'correct' sexual behaviour and orientation, social exclusion, threats and humiliation by family members themselves all contribute to the existing situation of violence. Homosexuality is considered as being against the norms of religion and culture and, thus, orthodox and patriarchal states criminalise this, which in turn encourages homophobic violence. China has shut down lesbian dating applications, banned homosexuality online by regarding it as 'abnormal sexual lifestyle', and cancelled conferences about homosexuality (UNDP 2014; Amnesty International 2018a). Homophobic violence is on the rise in most of the Asia-Pacific region (Human Rights Watch 2018a).

There are some legal movements in this area. While many countries have criminalised homosexuality and cross-dressing with heavy sanctions, the response across the regions differs with South Asian countries and members of the Organisation of Islamic Cooperation (OIC) displaying hostility on this topic, while other countries in the Pacific and East Asia are more tolerant. In September, the Philippines House Bill 4982 against discrimination based on Sexual Orientation and Gender Identity and Expression (SOGIE) was introduced to the House of Representatives. In the 2017 census, *Khwaja Siras* or transgender women were for the first time included in the national census in Pakistan (Pakistan Bureau of Statistics 2017), whereas in India, a parliamentary committee submitted a report examining the draft Transgender Persons (Protection of Rights) Bill, 2016. In the report it was recommended that the Bill should recognise the rights of marriage, divorce and adoption with regard to transgender people.

2.3 Freedom of expression

Rights relating to assembly, association, political activities and culture are all intertwined with the right to the freedom of expression, making this a highly-contested right in the region. Despite international efforts, incidents of systematic violations of freedom of expression are widespread in most Asia-Pacific countries. Even in countries such as South Korea, which is considered to practise freedom of expression (and was ranked as 'free' by Random House in 2017), the Supreme Court rejected the final appeal against the imprisonment of Han Sang-Gyun, President of the Korean Confederation of Trade Unions, despite the opinion of a UN

Working Group on Arbitrary Detention that the detention was arbitrary and the charges against him violated the right to freedom and peaceful assembly (Public Service International 2018). He was imprisoned for leading trade union protests. In China, instances of the curtailment of academic freedom include the banning of staff from Sun Yatsen University, Guangzhou in January 2017 for criticising the Communist government; the dismissal of professors from 14 top universities by the Central Commission for Discipline Inspection for speaking critically of the government; and punishing people involved in the Umbrella Movement with seven years' imprisonment for 'public nuisance'-related offences. Laws limiting expression are commonly abused across the region, for example by section 44 of the Thai Constitution (which allows anyone to be jailed by the military Junta, for any reason), and the Malaysian Seditious Act and the Communication and Multimedia Act which can be enacted by the Malaysian government to harass, detain and prosecute critics of government or any government-related satire.

From the acts of curtailment of expression in countries such as China, South Korea and Pakistan it is evident that freedom of expression is provided more as a privilege by the state and not as a basic human right that is vested in all. Restrictions are imposed upon speech, press, assembly and association. A free and unhindered media ensures freedom of opinion and expression, constituting one of the cornerstones of a democratic society, while media censorship is a distinctive feature of an authoritarian state. However, even democratic nations are found to be censoring the media, especially the 'new media'. The main platform for expressing freedom in today's digitised world is social media. Since the internet was introduced and commercialised in China in 1995, the Chinese government has limited access to information available on the internet that it deemed detrimental or sensitive (Amnesty International 2006: 16). Media outlets in China are required to regulate the publication of content that is seemingly threatening and objectionable. According to the administrative regulations and the legal framework, media outlets will face serious penalties if they do not do so. The content is further edited and censored by the Propaganda Department of China (Chen & Yang 2018). Most social media websites are banned in China, and Chinese internet companies are obligated to censor user contents. Service providers WeChat, Weibo and Tencent have been investigated by the Cyberspace Administration of China because of claims that there were accounts which 'spread information that endangers national security, public security and social order, including violence and terror, false information, rumours and pornography' (Amnesty International 2018b). Users who did not use their real names were barred from posting any content or comments on their profiles. Zhen Jianghua, an activist who founded a website 64tianwang.com,⁴ was detained and accused of 'inciting subversion' (Reed Smith 2017). In January 2017, the Ministry of Industry and Information Technology issued regulations making it unlawful to provide circumvention tools, such as proxy servers, without the ministry's prior approval (Amnesty International 2018b).

4 The website has information about people who have disappeared. Originally set up to combat human trafficking, it now more frequently addresses people who have disappeared at the hands of the Chinese state.

Similar limitations to online freedom of expression are found throughout the region. In 2017 a US-based academic, Li Shenwu, uploaded a post on Facebook suggesting how the courts in Singapore were not independent. He was accused and charged with contempt of court (Human Rights Watch 2018). The Computer-Related Crime Act and provisions relating to sedition in the Criminal Code of Singapore provides broad powers to the government to restrict free speech and to enforce censorship on vague grounds such as 'against public morals' and 'violations of the good morals of people'. In Malaysia, graphic artist Fahmi Reza was sentenced to a month in prison and a fine of RM 30 000 (US \$7 675) for posting an online caricature of Prime Minister Najib wearing clown makeup (Human Rights Watch 2018a). Further, in Vietnam about 21 rights bloggers and activists were arrested for using their civil and political rights in a way that threatened national security. The Bangkok Military Court in Thailand sentenced a man to 35 years' imprisonment solely based on a series of Facebook posts which were considered to be critical of the monarchy (*The Telegraph* 2017).

Cyber censorship also prevails in Pakistan with the use of the Prevention of Electronic Crimes Act, 2016. The Act has been used to harass and detain human rights activists for online content. Blasphemy is regarded as a serious offence and, according to the then Interior Minister, Nisar Ali Khan, blasphemers are to be considered enemies of the state. In March 2017, the Islamabad High Court ordered the removal of all alleged blasphemous content online and to take action against the people who uploaded such content (Human Rights Watch 2018). Following this, in June, Taimoor Razi, who posted an allegedly blasphemous poem on Facebook, was sentenced to death (Bukhari 2017). The same actions were taken in September when Nadeem James, a Christian, shared an allegedly blasphemous poem on WhatsApp. The enforced disappearance of five bloggers who posted anonymous online content criticising the military further substantiates the fact that the right to expression online in Pakistan is restrained and repercussions are serious.

2.4 Plight of refugees

The Rohingya refugee crisis is the worst refugee situation in the Asia-Pacific region. Over the past few years the Rohingya Muslims in Burma have been the target of a systematic campaign of ethnic cleansing carried out with impunity by the military and non-state actors in the country's Rakhine province (Idris 2018). The anti-Rohingya violence is taking place against a nationwide background of heightened Buddhist and Muslim tensions largely fuelled by nationalist Buddhist groups (Walton & Hayward 2014: 1). The Constitution of Burma explicitly guarantees to every citizen 'the right to freely profess and practise religion' (article 34). Despite this, the government has taken no steps to protect the right to religious freedom and has in no way protected or defended the lives of Rohingya Muslims. Rather, the government has sometimes tacitly, and sometimes overtly, supported these persecutions. Attacks on a massive scale were carried out in 2017 by the Burmese military after the Arkan Rohingya Salvation Army attacked police posts in the northern Rakhine state in August 2017 (*Aljazeera* 2017). The Burmese military carried out armed attacks on Rohingya Muslim villagers, raping and sexually assaulting women and girls, and torching entire villages (Human Rights Watch 2018a). As a repercussion, by late August Bangladesh received an

inflow of over 655 000 Rohingya refugees (Amnesty International 2018a). This crisis has several negative impacts on the local Bangladeshi people. Their economic and educational situation has worsened, prices have increased significantly, and there has been a rise in criminal activities linked with the refugee camps (Mahmud 2017). The Rohingya camps have become unsanitary with no clean water or washrooms, or even the minimum facilities to protect against the weather (White 2017). A health crisis is looming as an increasing number of refugees are suffering from diarrhea and skin diseases.

The governments of Bangladesh and Myanmar in November signed an agreement to facilitate the return of newly-arrived Rohingyas to Myanmar. This reparation agreement violates international standards of voluntary reparation and the principle of *non-refoulement* (Chaudet 2018). Instead of helping to resolve the conflict, many fear it might further extend it. The big powers of Asia, specifically India, China and Japan, have failed to become responsible stakeholders. Rather than condemning the incidents, the Prime Minister of India paid a three-day visit to Myanmar in early September 2017 and showed his support for the Burmese government (Chaudet 2018). At the UN, China, in discussions behind closed doors with the Burmese military, opposed the language recognising the right to return of the Rohingya refugees, and opposed recognising the atrocities committed by the military (Amnesty International, 2018a). The Chinese media further endorsed the situation as being linked with Islamic terrorists, even though senior UN officials described the military campaign as ethnic cleansing (Chaudet 2018). Japan in March stated that it did not support the international fact-finding mission to Burma established by the UN Human Rights Council and abstained from Myanmar Resolutions at the UN General Assembly, which called for an end to violence against Rohingya (UNHRC 2018a). Further, ASEAN countries individually or as a group have maintained silence towards these atrocities and have not taken any concrete steps that could help resolve these issues.

Apart from the Rohingya crisis, other refugee situations account for 3,5 million refugees, 1,9 million internally-displaced persons (IDPs) and 1,4 million stateless people, with the majority of refugees originating from Afghanistan and Myanmar, according to UNHRC (UNHCR 2018b). Up to 96 per cent of all Afghan refugees live in the neighbouring Islamic Republics of Iran and Pakistan where they constantly face discrimination and threats of mass deportation. Approximately 60 000 Afghan refugees were involuntarily returned by Pakistan in 2017 (UNHRC 2017a). Furthermore, more than 180 000 refugees and asylum seekers are hosted by Thailand, Malaysia and Indonesia, all countries that are not parties to the 1951 Refugee Convention (ECHO 2018). Refugees in these countries have no formal legal status and are vulnerable, facing fear of exploitation, persecution, illegal detention and possible repatriation.

2.5 Status of impunity in the region

Several incidents in the region demonstrate that the culture of impunity is still deeply rooted in governance. In the Philippines, thousands of unlawful killings by the government in the name of the 'War on Drugs' continued. According to Human Rights Watch, the highest number of killings on a single day reached 32, with the actual number still unknown but estimated to be as many as 12 000 (Human Rights Watch 2017b). The

government estimates through its Philippines Drug Enforcement Agency that 3 906 ‘suspected drug users’ were killed up to 26 September 2017. The victims almost exclusively are poor Filipinos. No more than a handful of people have been brought to court for these killings, and it is extremely unlikely that anyone will be imprisoned, given that President Duterte has promised pardon to any convicted killer. In Thailand, the Constitution promulgated in 2017 gives absolute power without oversight and accountability to the Prime Minister. It further guarantees that neither the National Council for Peace and Order (NCPO) nor its officials can be held accountable for any rights violations. The NCPO refused to prosecute any member of the security forces, even though persuasive evidence exists for their involvement in the killing and torture of ethnic Malay Muslims in the restive southern provinces. No senior politician has been investigated for corruption, although in one of the more well-known cases, the Deputy Prime Minister was photographed wearing different luxury watches worth around \$1.5 million. His case has been with the National Anti-Corruption Commission for nearly a year, with no action taken.

In August in the Papua province of Indonesia, the police arbitrarily used force and opened fire on a crowd without giving warnings to the protesters, wounding 10 people, among them children. In Malaysia, the custodial death of S Balamurugan while being interrogated by the police caused an outrage but no police investigation into his death took place (*Malay Mail* 2017).⁵ The continued killing of environment defenders, especially in the Philippines, Cambodia and India, is a reminder of impunity that prevails in Asia and the Pacific region. *The Guardian* has listed the Philippines as the second most dangerous place for environment defenders with 102 deaths up to 2017 (*The Guardian* 2017). According to Reporters without Borders, after Syria and Iraq, India is the third least safe country for journalists. Journalists Gauri Lankesh, Santanu Bhowmik and Sudip Datta Bhaumik were killed in India in 2017, and their killings were not investigated (*Outlook India* 2017). In the Philippines, broadcaster Rudy Alicaway and columnist Leo Diaz, who reported on corruption, illegal gambling and drugs, were shot dead (*ABS CBN News* 2017). These incidents illustrate the failure by the government to bring perpetrators to account and the arbitrariness of government security.

However, some major incidents during in the year 2017 could pave the way for breaking this culture of impunity. Examples of these changes are the upholding of the parliamentary vote of impeachment of the then South Korean President, Park Geun Hye, by the Constitutional Court for charges including bribery and abuse of power (McCurry 2017); the disqualification of Prime Minister Nawaz Sharif from office in July by the Pakistan Supreme Court for failing to disclose a source of income; and the conviction of a former Member of Parliament of Nepal, Bal Krishna Dhungel, for a 1998 murder in connection with which he for a long time evaded prosecution due to political protection (*The Himalayan Times* 2018). In 2010, the Supreme Court of Nepal found former Member of Parliament Dhungel guilty of the 1998 murder of Ujjan Kumar Shrestha and ordered life imprisonment coupled with the confiscation of property.

5 However, in 2018 charges were recommended by the Enforcement Agency Integrity Commission (EAIC). Given the significant changes in Malaysia’s political system, charges are more likely to be filed (Surach 2018).

However, the judicial decision was not enforced, largely due to political protection he received. In a writ petition against the Inspector-General of Police, Prakash, on 12 April 2017 for disregarding the order of the Supreme Court to arrest Dhungel, the police chief was ordered to deploy personnel to arrest him. While he was finally arrested in October 2017, his premature release puts hopes that the culture of impunity has been broken on hold. However, the above examples illustrate the retreat of impunity that has for decades been a hindrance to justice for the victim.

3 New domestic developments – Progress and regression

3.1 Progress

Some notable progress in the region includes the amendment of the Afghanistan Penal Code, which now incorporates provisions of the ICC Statute, and removes the death penalty as punishment for several offences, reducing this to life imprisonment. The Penal Code also criminalised *Bacha Baazi*,⁶ which was a medium for sexually abusing young boys. In Nepal, *Chaupadi*⁷ was criminalised in August (Criminal Code 2074), after a long advocacy campaign for women's rights. Another advance for women's rights includes the Supreme Court of India banning the practice of *Triple Talaq*⁸ as it was considered arbitrary and unconstitutional. The Supreme Court of India in a ruling in August provided privacy as a fundamental right and stated that section 377 of Indian Penal Code, which criminalises same-sex relationships, had a 'chilling effect on the unhindered fulfilment of one's sexual orientation, as an element of privacy and dignity'. In China, a court of first instance in April declared that the refusal to extend work benefits to the same-sex husband of a civil servant was discrimination based on sexual orientation. This is one of a number of progressive steps that protect human rights and freedoms of LGBT persons. Other steps include the recognition by Pakistan of transgenderism for the first time in the 2017 census, and the introduction of Bill 4982, the SOGIE Equality Bill, by the Philippines.

Other advances are the extension for a year of the mandate in Nepal of the Truth and Reconciliation Commission (TRC) and the Commission of Investigation on Enforced Disappeared Persons. The TRC began its preliminary investigations into approximately 60 298 complaints mainly resulting from the civil war (Informal Sector Service Centre 2018). In the area of workers' rights, the Sri-Lankan government, in order to protect its migrant workers (and especially its migrant domestic workers), called on Middle Eastern states to end the *Kafala* system, an action that is mirrored in the progressive step in the protection of domestic workers by the Technical Training Act in Japan which criminalises the abuse of workers.

6 *Bacha Baazi* directly translates into 'boy play'. It is practised in Afghanistan where young boys are dressed as women and made to perform for older men. They are then abused by men for sexual gratification. The boys engaging in *Bacha Baazi* can be as young as 10 years of age.

7 This traditional practice forces menstruating women and girls to stay outside their homes in makeshift huts or in cattle sheds.

8 *Triple Talaq* is the practice of instant divorce in the Muslim community. According to this practice, a Muslim man can divorce his wife by simply uttering the word *talaq* three times.

However, these progressive steps might be overshadowed by a number of regressive advancements.

3.2 Regression

One area where there has been constant regression concerns freedom of expression and the media. In 2017 the Bangladeshi government stated its intention to introduce the Digital Security Act, which would restrict some rights to freedom of expression online. Similarly, in China, the National Intelligence Law was adopted on 1 June, which had vague concepts of national security and also granted unchecked power to national intelligence institutions allowing for arbitrary detention and violations of the right of privacy (Amnesty International 2018b). As mentioned previously, the state of Kelantan in Malaysia passed legislation that permitted public caning imposed by Shari'a courts. The government of the Maldives declared that it would reinstate the death penalty by the end of September. Despite the repeated requests by the UN Human Rights Committee to stop executions in compliance with the Optional Protocol to the ICCPR, there were no positive responses from the Maldivian government (UNHRC 2017). In June, an Act which incorporated broad surveillance power and which could threaten freedom of expression and privacy was adopted in Japan (*The Japan Times* 2017). The commitments made by Sri Lanka in 2015 to establish the truth, justice and reparation mechanisms as part of the post-civil war reconciliation were not implemented. In Pakistan, a Bill that would have equalised the age of consent to marriage for men by raising the minimum age of marriage for girls from 16 to 18, was blocked by the upper house of Parliament. In the region, positive developments are overshadowed by laws that allow for human rights to be violated and fundamental freedoms not to be realised.

4 Regional organisations and human rights

Unlike most other major regions, the Asia Pacific does not have a region-wide inter-governmental system. There are no treaties, institutions or courts that protect human rights, although most regional organisations claim to promote human rights. Some steps have been taken to address some human rights violations on a sub-regional level, for instance, work on protecting women, children and victims of trafficking, but there still is little protection.

4.1 Association of Southeast Asian Nations

Weaknesses in Asian-Pacific regional responses are clearly seen in the Rohingya crisis, with both ASEAN and SAARC passing off this problem to the national level. Rather than taking concrete measures for the protection of human rights, ASEAN maintained a deafening silence on the issue of Rohingya expulsion. It also did not comment on Duterte's 'War on Drugs'. This is evidenced by the statement given by the ASEAN Chairperson in September 2017 that failed to even mention the incident of Rohingya expulsion (Gavilan 2017). The silence was rooted in the principle of non-interference, enshrined in the Treaty of Amity and Cooperation of 1976. Although the ASEAN Intergovernmental Commission on Human Rights (AICHR) was established in 2009, the Commission has not taken any substantial measures for the protection of human rights in the region.

AICHR operates mainly through consultation and consensus of the ten representatives of member countries. The fact that individual states can enjoy veto power because of the consensus rule makes solutions to the situation improbable. This leaves violence in the ASEAN region unchecked even if it is against the ASEAN Declaration of Human Rights.

4.2 South Asian Association for Regional Cooperation

SAARC has no human rights mechanisms to tackle violations as a regional organisation. Despite the challenges to human rights in the region, such as extremism and the influx of Rohingya refugees, SAARC has not adopted any specific steps or mechanisms to address these issues. The main reason for this, as in the case of ASEAN, is the principle of non-interference and the exclusion of contentious issues enshrined in the SAARC Charter (article 2). Until these terms are amended or alternative ways are found to raise human rights issues in SAARC, there is little possibility that any concrete steps will be taken to solve the persisting issues. Disharmony in the region is another contributing factor, the tense relationship between India and Pakistan being a major problem within SAARC.

4.3 Pacific Islands Forum

The PIF is the major regional organisation for the Pacific with 18 members and six observing states, made up of the Pacific Islands, Australia and New Zealand. This regional forum does not have a specific human rights programme or mechanism, but human rights form part of the governance programme, and some specific human rights issues have been given prominence in PIF work. PIF is not recognised as a strong supporter of human rights, neither is it seen as being opposed. The ambivalence is due to a number of factors. There is the role of Fiji, which is an important state in the PIF, but faces criticism for its lack of democracy and rights violations. In order to escape these criticisms (mainly from Australia and New Zealand), Fiji has increased its diplomatic efforts in competing regional groups, such as the Fiji-led Pacific Island Development Forum (PIDF), the Pacific Community and the Melanesian Spearhead Group (MSG). The MSG was recently involved in rights and self-determination for West Papuans, although accepting the Indonesian government as an associate member in 2015 undercut support to the Papuan independence movement. Competing regional forums can weaken the PIF's role in the region (Moyle 2018). The limited impact on human rights by the regional organisation has its consequences. The region has a poor record in terms of ratifying human rights treaties, with important treaties such as ICCPR recognised by only three Pacific Island states and ICESCR by four. Similarly, the individual complaints mechanisms are ignored, with no states recognising the Optional Protocols to ICCPR and ICESCR; only one state making the optional declaration under the Convention Against Torture (CAT) and the Convention on the Rights of Children (CRC) accepting the submission of individual complaints; two states accepting the Optional Protocol to the Convention on the Rights of Persons with Disabilities (CRPD); and three states accepting the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

Another explanation for the marginalisation of human rights is the fact that the PIF attaches importance to the environment, ocean management

and climate change. The theme of the 48th 2017 PIF Forum was ‘The Blue Pacific – Our Sea of Islands – Our Security through Sustainable Development, Management and Conservation’. While the theme is primarily environmental, it does involve some human rights issues, particularly around gender, such as women and climate change, and the role of the ocean in economic opportunities, health and livelihoods of women. The recognition is that more emphasis on gender equality is needed around women’s economic empowerment, their participation rates in the labour force, and violence against women and girls. A regional level response has been the first human rights and gender peer review in Nauru, followed by Vanuatu and Palau later in the year (Pacific Islands Forum Secretariat 2017).

Other human rights-related issues in the PIF include labour rights concerns, because of the growth of labour mobility and the number of Pacific Islanders working as migrant labourers. However, this was not reflected in any country ratifying the Convention on Migrant Workers and Their Families. There are some highlights for peace and democracy in the region with the completion in June of the successful Regional Assistance Mission to the Solomon Islands (RAMSI), which brought peace and the rule of law to a region threatening to descend into civil war. With the assistance of many Pacific Island states, the predominantly Australian forces entered the Solomon Islands in 2003, and over 15 years have successfully undertaken a state-building project, with the Solomon Islands acknowledging its success (Wyeth 2017). Finally, in 2017 there was a PIF Forum Election Observer Team for the 2017 Tonga national parliamentary elections held in November.

5 Asia Pacific and the United Nations system

In the year 2017 Nepal, Afghanistan and Pakistan were elected into the Human Rights Council for three-year terms expiring in 2020. Several countries were assessed under the UN Universal Periodic Review (UPR) process. In May, India, the Philippines and Indonesia went through the UPR process. In November, the 28th session reviewed South Korea, Japan, Pakistan and Sri Lanka. Indonesia accepted 167 out of 225 recommendations. It rejected the recommendations to investigate past human rights violations and to repeal blasphemy laws. In response to the UPR of May 2017, the Philippines rejected nearly every recommendation. It did not accept any of the 44 recommendations related to extra-judicial executions, 23 recommendations regarding the abolition of the death penalty, and 13 recommendations to protect human rights defenders and journalists. Countries such as France, Ghana and Germany requested a visit by the Special Rapporteur to examine the status of extra-judicial and arbitrary executions, which Indonesia also did not permit (Universal Periodic Review 2017). This rejection underlines President Duterte’s resistance to international human rights standards. If the Philippines continues to avoid its international obligations, the Human Rights Council could take steps to demand accountability for all unlawful killings (Human Rights Watch 2017). In early 2018, this task was taken on by the International Criminal Court when it initiated a preliminary investigation of events in the ‘War on Drugs’. India was urged during the UPR to ratify the Convention against Torture and its Protocol, to enact comprehensive reforms to address violence against women, and to define the forensic

procedures adopted for rape cases. Similarly, several recommendations were made to Sri Lanka, including the investigation and prosecution of all allegations of extra-judicial or arbitrary killings, the elimination of torture in prisons and detention centres, and the investigation of violations of children's rights. Pakistan was recommended to remove restrictions on freedom of religion and belief and to amend legislation that discriminates against persons belonging to minorities. Further, Pakistan was recommended to repeal the provisions of the *Haddood* Ordinance that criminalises non-marital consensual sex and does not recognise marital rape. The efficacy of these recommendations remains to be seen. At least, the UPR process requires states to publicly defend – or admit – the errors in their human rights conduct.

Several ratifications of international conventions and their protocols took place in 2017. The Optional Protocol to the Convention against Torture was ratified by Indonesia, Thailand, Australia and Sri Lanka. Myanmar ratified ICESCR in October; Singapore ratified the International Convention on the Elimination of all forms of Racial Discrimination (CERD); and Fiji ratified the Convention on the Rights of Persons with Disabilities. Furthermore, India ratified two core ILO Conventions, namely, the Minimum Age Convention (1973) and the Worst Forms of Child Labour Convention (1999).

In other areas there was active monitoring of rights in the Asia-Pacific region with the visit in November of the UN Special Rapporteur on the Human Rights to Safe Drinking Water and Sanitation, Leo Heller, to India. The Special Rapporteur called on the Indian government to incorporate the human rights perspective on water and sanitation into its national programmes. The Special Rapporteur on the Rights of Persons with Disabilities conducted an official visit to North Korea in May. This was the first visit by an expert from the Human Rights Council to North Korea. The CRC Committee started the review of North Korea's treaty obligations under the CRC, and in its list of issues noted concern about child labour, forced labour, and children in conflict with the law.⁹

6 Conclusion

The year 2017 will be remembered primarily for issues relating to refugees, continuing impunity, the rise of extremism, and the curtailment of freedom of expression. Treaty ratifications and acceptance of recommendations by some states in the region may be regarded as positive signs for human rights protection, leaving aside the question of future implementation. The fact that regional organisations such as ASEAN, SAARC and PIF have maintained their silence shows that they have done little for the protection and promotion of human rights. States are yet to demonstrate that they view the importance of 'humanness' by recognising that all humans deserve rights and protection, not only citizens or other special groups. Communities are yet to protect women, children and sexual minorities. Security agencies are yet to act to protect the citizens, but they rather exploit their power and abuse the fundamental freedoms of

9 See the list of issues in relation to the 5th periodic report of the Democratic People's Republic of Korea (CRC/C/PRK/Q/5).

the people they are supposed to protect. The small advances made in the Asia-Pacific region towards greater human rights protection is overshadowed by the overwhelming tragedy surrounding some unprotected groups such as refugees, LGBT persons, women, and political opposition figures.

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