

## Guest Editorial: Islamophobia and the uneven legal geographies of ethnonationalism

Natalie Koch, Department of Geography, The Maxwell School of Citizenship and Public Affairs, Syracuse University, Syracuse, NY 13244 USA (corresponding author)

Neha Vora, Department of Anthropology and Sociology, Lafayette College, Easton, PA 18042 USA

Activists, academics, and journalists have been troubled by what they see as a recent resurgence in populism around the world—the growing popularity of seemingly grassroots political parties, often with charismatic leaders, who embrace platforms of ethnonationalist exclusion in the name of “the people.” In many countries, the targets of populist rhetoric and policies have been Muslims—either immigrant and refugee groups, or domestic minorities. While Islamophobia is a long-running phenomenon, the present moment is marked by newly virulent expressions of ethnonationalism targeting Muslims. One element of current Islamophobia that has received relatively little attention is how recent exclusionary politics are playing out in courtrooms across the world, and how international law has become a key site for challenging – and at times, upholding – the violence of exclusion. In particular, recent cases of assaults on Muslim minorities through the use and abuse of legal systems in Asia illustrates the starkly uneven legal geographies of ethnonationalism.

In December 2019, for example, the Indian Parliament passed an amendment to its 1955 Citizenship Act, which set out a path to citizenship for certain religious minorities fleeing persecution from neighboring countries – including Hindu, Sikh, Buddhist, Jain, Parsi, and Christian believers—but not Muslims. Pushed through Parliament by Narendra Modi and his Hindu nationalist Bharatiya Janata Party (BJP), the amendment marked the first time that religion was explicitly written into India’s legal code regarding citizenship, and it threatens not only those entering India as migrants and refugees, but Muslim citizens as well. While Modi’s and the BJP’s rhetoric and actions—framed in populist terms—are part of a decades old movement to Hindu-ize India’s past and future and mark a violent escalation of the ongoing marginalization of Muslims in India, recent government strategies like the citizenship amendment and the revocation of Kashmiri sovereignty in August 2019 have operated through India’s secular legal system to legitimize an ethnonationalist vision of India as a Hindu nation (Findlay, 2019).

Like India, China has a long and complicated history of anti-Muslim exclusionary politics, and a complex geography of domestic and international legal strategies that have supported and challenged those politics. Although Muslim groups were incorporated into certain multicultural nationalist storylines under Mao, a “Han-centric” ethnonationalism has always been an important thread in Chinese identity narratives (Friend and Thayer, 2017). Increasing in prominence and virulence since the 1990s, this ethnonationalist thread has culminated most recently with the Chinese government’s internment of at least 1.5 million people, primarily Uighurs and other Muslim minorities in Xinjiang. Breathtaking in scope, the internment campaign has been perpetrated through various legal channels. Domestically, the state has detained citizens based on a diverse array of trumped-up charges or simply out of suspicion of their *potentially* committing a crime. The detentions began somewhat earlier, but by 2017 Chinese officials were exhorting “prosecutors and judges to work hand in hand as part of the ‘strike hard’ campaign to wipe out ethnic attacks and resistance” (Buckley, 2019). Some have

been sent to prisons, others to “re-education camps,” where detainees are subjected to a kind of anti-Muslim conversion therapy – being forced to eat pork, learn Mandarin, and memorize Communist Party songs (Standish, 2019a). Meanwhile, there have been reports of mass rape of Uighur women under the guise of inter-ethnic marriage, effectively amounting to a large-scale ethnic cleansing project (Ma, 2019).

The anti-Muslim campaign in China has targeted Uighurs living abroad, as well as other nominally Muslim minorities living in China, including ethnic Kazakhs, Kyrgyz, Uzbek, and others. Indeed, much of what we know about the Chinese camps and the broader campaign has come to light because of interviews by Human Rights Watch and major news outlets with former detainees who have fled to Kazakhstan or who have family members across the border caught up in the camp system (Putz, 2018).<sup>1</sup> Many ethnic Kazakhs from China moved to Kazakhstan after the end of the Soviet Union (see Diener, 2005), but those with cross-border ties came under suspicion with the expansion of China’s crackdown in Xinjiang and with the growing narrative that Muslim minorities were vulnerable to “extremist propaganda” from abroad. Thousands of families continue to straddle the border, so when foreign connections came to be a punishable offense, countless ethnic Kazakhs were swept up (Grant, 2020; Standish, 2019a). Further, since these communities were accustomed to regularly crossing the border, this ultimately led many Kazakhstani citizens to be jailed in China after being accused of spying, irregular legal status, or more generic claims of “suspicious” activity, similar to those applied to other Muslims targeted by the campaign. These trans-border families were among the first to raise alarm when relatives would go missing.

Evidence about China’s internment camps has also come to light through Kazakhstan’s legal system, since a growing number of ethnic Kazakhs from China have been prosecuted for illegal border crossing. In one such case, Sayragul Sauytbay, an ethnic Kazakh Chinese national fled a work camp in Xinjiang. After her arrest, in August 2018, a court in Kazakhstan refused to extradite her back to China – though she was ultimately denied asylum (Bisenov, 2018; Standish and Toleukhanova, 2019). Sauytbay did later receive asylum in Sweden, but her case has been held as a testament to the dilemma that Kazakhstan’s government finds itself in – a dramatic push-and-pull between citizens shocked by the violence and repression of their kin in China, combined with the heavy pressure by Chinese officials on the Kazakh central government to return Chinese citizens for trial (read, punishment) there. Although Sauytbay’s case was heralded as something of a victory, not all judges in Kazakhstan have been so bold in the face of such pressure. Many Chinese citizens have been returned, while others still face trial and potential deportation for illegal border crossing – as a recent Human Rights Watch (2020) report has documented.

In its advocacy efforts, Human Rights Watch has cited Kazakhstan’s obligations under the UN Convention Against Torture, which prohibits countries from expelling, returning, or extraditing a person to a country where they are at risk of torture, as well as the 1951 Refugee Convention and its 1967 Protocol, which prohibits countries from penalizing refugees for illegal entry (HRW, 2020). Prior to Sauytbay’s high-profile case, the Kazakhstani government responded to HRW by citing a *different* set of international legal codes – namely, Article 55 of the 1963 Vienna Convention on Consular Relations, which bars interference in the “internal affairs” of another state (Putz, 2018). Apparently deeming support for victims of the Xinjiang abuse as outside their jurisdiction, the Kazakhstan government nonetheless quietly lobbied to

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<sup>1</sup> See also the Xinjiang Victims Database at: <https://shahit.biz/eng/>

have upwards of 2,500 ethnic Kazakhs released from Chinese camps and returned to Kazakhstan – a deal announced in December 2018, but with few details (Standish and Toleukhanova, 2019).

This moment of solidarity was short-lived, though, and the wavering stance of Kazakhstan's government was again on display after a March 2019 meeting between their foreign minister and his Chinese counterpart in Beijing. The official Chinese statement about the meeting asserted that the Kazakh minister had expressed support for “measures” taken by China in the Xinjiang region to “rein in terrorism, separatism and extremism,” (Arab News, 2019). Indeed, earlier that month, Kazakhstan's government arrested an activist Serikzhan Bilash who had been documenting human rights abuses and publicizing testimonies from people whose relatives had gone missing in Xinjiang. Bilash was released 5 months later, but he was forced to admit his “guilt” in court and to end all activism. Outside the Almaty courthouse following his trial and release, Bilash explained his decision to sign the plea bargain: “I had to end my activism against China. It was that or seven years in jail. I had no choice” (Standish, 2019b). The legal back-and-forth was no doubt harrowing for Bilash, but for some in Kazakhstan his case and others have offered a glimmer of hope that the country's legal system, and its accession to certain international legal frameworks, might actually withstand the tremendous pressure from China to participate in its anti-Muslim crackdown. Some Kazakh judges, it seems, are not willing to let their legal system become a tool for China's ethnonationalist exclusionary politics. But as the push-and-pull between top government officials continues, it is unclear how long they will manage to persist.

Meanwhile, international legal frameworks have also been called into force through the case of anti-Muslim violence in Myanmar. State-sanctioned violence against the country's Rohingya minority has been long-running, but the intensified persecution since August 2017 led the International Court of Justice (ICJ) in The Hague in late January 2020 to impose emergency “provisional measures,” ruling that the country must “prevent genocidal violence” and “preserve any evidence of past crimes” (Bowcott and Ratcliffe, 2020). As the core judicial body of the United Nations, the ICJ only hears cases filed by one state against another. The Myanmar case was thus filed by Gambia, a member of the Organisation of Islamic Cooperation, and supported by a coalition of other Muslim-majority states. The case cited how Myanmar's military had “systematically shot, killed, forcibly disappeared, raped, gang-raped, sexually assaulted, detained, beat and tortured Rohingya civilians, and burned down and destroyed Rohingya homes, mosques, madrassas, shops and Qur'ans” (quoted in Bowcott, 2019). The ICJ's January ruling is binding and requires that Myanmar's government uphold its commitments under the 1948 Genocide Convention, with compliance to be monitored by the UN Security Council. The order cannot undo the violence already committed, but the Gambian case appears to have been successful in harnessing an international legal system to prevent genocidal acts and to preserve evidence of genocidal acts committed against Muslim minorities in Myanmar.

The cases of India, Myanmar, China, and Kazakhstan are just the tip of the iceberg in terms of the entanglement of law, Islamophobia, and ethnonationalism today. Besides showcasing the varied way that legal systems serve both attackers *and* defenders of human rights, they remind us that today's overlapping “sovereignty regimes” (Agnew, 2005) are ultimately *legal regimes* of exclusion and exemption – legacies of colonialism that have been reassembled since the end of the Cold War and the beginning of the “Global War on Terror” (Li, 2010, 2019). While colonial legacies are always lurking, it is essential that political geographers consider how actors in the Global South are working in solidarity with one another and, in many cases, providing relief and support for one another outside the hegemonic, anti-Muslim GWT

frames. Tracing the uneven legal geographies of ethnonationalism, how it touches down in different courtrooms and legal codes, we suggest, offers a less Eurocentric perspective on how exclusionary politics are being enacted – and how they might be contested at multiple scales.

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