

Addressing Human Rights Violations against Uyghurs in China

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Abbreviations

CERD - International Convention on Eliminating all forms of Racial Discrimination

ICCPR - International Covenant on Civil and Political Rights

ICESCR - International Covenant on Economic, Social and Cultural Rights

CEDAW- Convention on the Elimination of All Forms of Discrimination Against Women

CAT- Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment

CRC - Convention on the Rights of the Child

ICMW - International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

CPED - International Convention for the Protection of All Persons from Enforced Disappearance

CRPD - Convention on the Rights of Persons with Disabilities

ICC - International Criminal Court

OHCHR - Office of the High Commissioner of Human Rights

HRW - Human Rights Watch

WUC - World Uyghur Congress

UN - United Nations

UPR – Universal Periodic Review

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Introduction

The Chinese oppression of Uyghur ethnic minority in Xinjiang region in western China has long been an issue of territoriality as well as ethnic and religious conflict. In the recent years however, the Chinese government has taken punitive and violent actions to suppress Uyghurs and Turkic Muslims by introducing “vocational education camps” to eradicate sentiments of religious extremism for the safekeeping of the nation and sovereignty of China.¹

Uyghurs are an ethnic group in autonomous region Xinjiang (or referred to as East Turkistan by Uyghurs) who share cultural ties to that of Central Asian countries such as Uzbekistan, Kazakhstan, and Kyrgyzstan.² They are one of the ethnic minorities recognized by the State of China. Although the region is autonomous, Chinese Han have continuously colonized the region in attempts assimilate Turkic culture into Chinese Han culture. Under the auspices of combating Islamic radicalism and extremism, China has launched strict policies to end terrorism in the region by specifically targeting Uyghurs and Turkic Muslims in Xinjiang and placing them in internment camps.³ In 2018, after immense international pressure, China finally admitted to having created “educational internment camps” to eradicate religious extremism amongst Uyghurs by forcefully detaining them and teaching them Mandarin language, Chinese culture and history, and obedience to the state.⁴ A significant number of victims have spoken out about the ill-treatment they or their relatives have endured in the camps since 2014. Violations most commonly reported were torture and other forms of ill-treatment in detention, forced sterilization of women, sexual assault, forced labor, and separation of families.

The aim of the research is to examine victim’s statements and detect patterns in testimonies and reports on human rights violations and connect them to the relevant Human Rights treaty provision(s).

¹ Fallon, J. E.’ China’s crime against Uyghurs is a form of genocide’ (2019) Fourth World Journal, 18(1), 76–88. <https://search.informit.org/doi/10.3316/informit.508909415820545> (Original work published December 2019)

² Yitzak Shichor ‘Ethno-Diplomacy: The Uyghur Hitch in Sino-Turkish Relations’ (2009), by East-West Center, link to publication: <https://web.archive.org/web/20110927103523/http://www.eastwestcenter.org/fileadmin/stored/pdfs/ps053.pdf>

³ Kelsey Munro, 'Xinjiang Data Project Website Launch' [2020] Australian Strategic Policy Institute <<https://www.aspi.org.au/news/xinjiang-data-project-website-launch>> accessed 30 June 2021.

⁴ BBC News report ‘China defends education camps’ (2020), article link <https://www.bbc.com/news/world-asia-china-54195325>

Furthermore, by researching China's international legal obligations under international human rights law, the methods by which the state can be held accountable will be examined. China is a signatory state to several international human rights instruments by which it is expected to make the necessary legal amendments in its national legal system and issue policies for their effective and appropriate implementation. Stemming from this, the project will explore China's obligations under ICESCR, CERD, CEDAW, CAT, and CRC. Furthermore, the paper explores the role International Criminal Law can potentially play in preventing and punishing persons who have committed crimes against humanity and genocide.

Key words: Uyghurs, Human Rights violations, China's international law obligations, Turkic Muslims, genocide

Summary of the issue

In 2014 the Chinese government initiated a new campaign by the title “Strike Hard Campaign against Violent Terrorism” to cease all terrorist activities in Xinjiang Autonomous Region. This campaign targeted mainly Turkic Muslims with a few exceptions of Han Chinese human rights activists, politicians, or academicians who opposed their government’s oppressive ways.⁵

Xinjiang is an autonomous region that is populated with 46% Uyghurs, 7% Kazakhs, and other Turkic ethnicities.⁶ Turkic ethnicities, which are spread out in Central Asia and predominantly follow the Islamic religion.⁷ Uyghurs and other Turkic Muslims in China were targeted by the government under the decoy of religious extremism and radicalism.

Court orders provide that the government tracked down and conducted mass arrests of Uyghurs on the basis of them having engaged in religious teaching, worship, spreading of information, fasting and praying in public.⁸ Thus, in 2016, new bans were introduced regarding dress code, family planning policies, and the special education of Uyghurs in China.⁹

Although it is not clear as to exactly when the unlawful persecution and detention of Uyghurs began in China, reports and statistics show that the period following the launch of the Strike Hard Campaign, mainly in 2016 and 2017, is when human rights abuses escalated in Xinjiang, China.¹⁰

According to studies and research, around 380 camps were found in the Xinjiang region alone in China.¹¹ In this article, Graham notes the satellite images of these camps showing the construction of several building within two years 2016-2018.

These camps were built in the course of 2 years and are currently holding more than 1 million Uyghur men and women.¹² According to the Australian Strategic Policy Institute, that has obtained satellite imagery, there are more camps under construction in other regions.¹³

⁵ “Break Their Lineage, Break Their Roots” (HRW 2021) <https://www.hrw.org/report/2021/04/19/break-their-lineage-break-their-roots/chinas-crimes-against-humanity-targeting#_ftn1> accessed 30 June 2021.

⁶ Carl Haub, 'China Releases First 2010 Census Results' (PRB, 2010) <<https://www.prb.org/wp-content/uploads/2011/05/china-2010-census-results-table.pdf>> accessed 30 June 2021.

⁷ Linda Benson, *China's Last Nomads: The History And Culture Of China's Kazaks* (ME Sharpe 1990).

⁸ Fergus Ryan, 'Mapping Xinjiang's 'Re-Education' Camps' [2018] Australian Strategic Policy Institute <<https://www.aspi.org.au/report/mapping-xinjiangs-re-education-camps>> accessed 30 June 2021.

⁹ Article by Reuters 2017 “China sets rules on beards, veils to combat extremism in Xinjiang”, link to article <https://www.reuters.com/article/china-xinjiang-int-idUSKBN1710DD>

¹⁰ HRW 2021 Report

¹¹ Article by Emma Graham (2020) China has built 380 internment camps in Xinjiang, study finds, published by the Guardian 2020, link to article <https://www.theguardian.com/world/2020/sep/24/china-has-built-380-internment-camps-in-xinjiang-study-finds>

¹² Kelsey Munro 'Xinjiang Data Project Website Launch' [2020] Australian Strategic Policy Institute <<https://www.aspi.org.au/news/xinjiang-data-project-website-launch>> accessed 30 June 2021.

¹³ Retrieved from the Guardian News channel, “China: time lapse shows expansion of suspected internment camp for Uighurs in Xinjiang”, video link: <https://www.youtube.com/watch?v=0A3v1mUfoFE>

China's Human Rights Obligations

Therefore, to examine the human rights violations in terms of international human rights law, it is essential to look into China's treaty obligations that are derived from signed and ratified human rights instruments. According to the OHCHR¹⁴, there are nine core human rights treaties, which are:

- CERD 1965
- ICCPR 1966
- ICESCR 1966
- CEDAW 1979
- CAT 1984
- CRC 1989
- ICMW 1990
- CPED 2006
- CRPD 2006

They are legally binding, therefore States that have signed and ratified these treaties, are bound to recognize, promote, implement, and protect the rights and obligations stipulated in the relevant treaty provisions. For each of these treaties, there is a Supervisory Committee that performs certain functions in ensuring the implementation of the treaty provisions by State Parties.

The Committees have two main functions. The first is to accept and review complaints from individuals and States. There are three methods of submitting complaints to the Committees on the violations of the provisions of the human rights treaties: individual communications, inter-state complaints, and inquiries. However, only the ICCPR, CERD, CAT, and CEDAW Committees endorse complaint mechanisms.¹⁵

The second function is to monitor through regular reporting of the human rights violations and progress made submitted by State Party governments. Under the treaty obligations, all signatory states are bound to submit these reports to the relevant committees to ensure their active participation and compliance.¹⁶

It is important to highlight that complaint mechanisms are only accessible if the State Party in question has recognized the competence of the respective committee by either declaring so at the time of ratification or acceding to an Optional Protocol of the treaty.¹⁷

China has signed and ratified only some of the human rights treaties, they are: CEDAW, CAT, CERD, CESC, CRC, and CRPD but has not recognized the competence of any of the treaty

¹⁴ 'The Core International Human Rights Instruments And Their Monitoring Bodies' (UNOHCHR)
<<https://www.ohchr.org/en/professionalinterest/pages/coreinstruments.aspx>> accessed 30 June 2021.

¹⁵ OHCHR. (2019). *Leaflet No 4: Human Rights Treaty Bodies and Indigenous Peoples* (pg 2).
<https://www.ohchr.org/Documents/Publications/GuidePleaflet4en.pdf>

¹⁶ Ibid

¹⁷ 'Human Rights Bodies - Complaints Procedures' (UNOHCHR)
<<https://www.ohchr.org/en/hrbodies/tbpetitions/pages/hrtbpetitions.aspx>> accessed 30 June 2021.

Committees.¹⁸ Thus, individuals cannot submit complains to the relevance Supervisory Committee, neither can States lodge inter-state complaints against China for infringing the relevant human rights treaty.

Essentially, the reports center on the information of human rights, how much progress has been made, highlighting the issues and obstacles governments are facing to improve the implementation or protection of rights. After reviewing the reports, the committees adopt Concluding Observations of the reports making recommendations and suggestions on improving further and addressing major area of concern. Even though, in theory the reporting system is expected to improve the treaty application in member States, in reality many States do not submit their reports on time, the committees become overburdened to review reports in a short period, and most problematic of the facts is that some States do not consider the committee's recommendations. Such issues of the reporting system have been subject to criticism on the effectiveness of the work of treaty-body committees.¹⁹

ICESCR

China has generally been a passive actor in the human rights field. In matters concerning human rights abuses or mass violations in other regions, China has used its veto power to either vote against or abstain from taking action against human rights violations and international crimes.²⁰ Especially relating to its own internal affairs, causing human rights violations, infringing international treaty and customary law, China has had a history of denying or simply not addressing the concerns raised by other States and International Organizations.

Using arguments such as cultural relativism, sovereignty principle, and other ways of 'justifying' its actions of violating its treaty obligations under human rights law, China has come to be a State that actively practices impunity.²¹

The ICCPR and ICESCR are binding human rights instruments encompassing the most fundamental rights of all individuals and groups. China has signed but has not yet ratified the ICCPR. This connotes that under its international treaty obligations and the state-sovereignty principle, China is not violating the terms or provisions of the ICCPR when it violates political or civil rights such as freedom of expression, freedom of movement, freedom of association, right to life, freedom from arbitrary arrest and detention, right to fair trial, etc. However, China ratified the ICESCR in 2001, thus it is bound to uphold its obligations to respect and protect rights enclosed in ICESCR.

In the context of the mass detention and cultural genocide occurring in Xinjiang on Uyghurs, provisions of ICESCR have been and continue to be violated by China. Under this covenant, China is expected to abide by its treaty obligations to protect and promote rights such as right to

¹⁸ 'Ratification Status For China' (*UN Treaty Body Database*)

<https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=36&Lang=EN> accessed 30 June 2021.

¹⁹ OHCHR. (2019). *Leaflet No 4: Human Rights Treaty Bodies and Indigenous Peoples* (pg 8).

<https://www.ohchr.org/Documents/Publications/GuideIPleaflet4en.pdf>

²⁰ Wenqi Zhu and Binxin Zhang, *Confronting Genocide* (Springer 2011).

²¹ 'CHINA 2020 HUMAN RIGHTS REPORT' (BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR 2021)

<<https://www.state.gov/reports/2020-country-reports-on-human-rights-practices/china/>> accessed 30 June 2021.

self-determination of people to freely determine their political, economic, social, and cultural development accordingly with the UN Charter.

As stipulated in **Article 1** of ICESCR, Uyghurs as a minority ethnic group having a longstanding history and connection to the land in Xinjiang region, have the right to self-determination, in other words, to determine their ethnic, cultural, political status, and develop economically. The phenomenon coined as ‘cultural genocide’ is precisely the attempt to forcefully erase the ethnic, cultural, and religious identity of the Uyghurs in China alongside committing other human rights atrocities. Furthermore, all Member States of UN are obliged to comply with the Charter of UN, therefore having to implement the provisions of the ICESCR in line with the Charter of UN. Hence, China has directly violated Article 1 of ICESCR by denying Uyghurs the right to self-determination, thus violating the terms of the UN Charter.

Article 2 of the ICESCR states that all rights enunciated in the treaty must be implemented without any discrimination on “*race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status*”.

Furthermore, reports of HRW, WUC, and similar NGOs have pointed to a concerning amount of evidence showing that detainees in internment camps are being forced to work in factories mass producing products for which they receive little to no remuneration. Under **Article 6.1** of ICESCR, the right to work explicitly states that work is based on free choice and acceptance and must be safeguarded by the State in question. Similarly, **Article 7** emphasizes that working conditions must be “just and favorable”, for which employees receive remuneration equivalent to that of their work, in safe and healthy working conditions.

Article 12 outlines the right to the highest possible standards of physical and mental health, especially in **12.2.D** specifies State obligation to provide conditions to ensure all “medical service and medical attention in the event of sickness”.

Whereas **Article 13** stipulates the right to education mainly stating “*education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups...*”

Arbitrary detention of Uyghurs and other Turkic Muslims in internment camps, forced employment, indoctrination tactics to re-educate detainees on Chinese history, culture, and language, investigations on the number of deaths and health related issues suffered by detainees, point to the violation of Articles 2, 6.1, 7, 12, and 13 of the ICESCR,

The “Qaraqash Document”—an official government file exposed by the Uyghur Human Rights Project in 2020—contains the motives for which prisoners in Qaraqash District were incarcerated.²² Authorities imprisoned Turkic Muslims in Qaraqash for harmless religious practices—any individual and personal acts such as fasting, praying, or joining religious seminars or lectures, having a religious feel to their house, covering with a headscarf or growing a beard.²³

²² 'RECORDS OF MASS DETENTION FROM QARAQASH, HOTAN' (UHRP 2020)

<https://docs.uhrp.org/pdf/UHRP_QaraqashDocument.pdf> accessed 30 June 2021.

²³ Ibid page 11, 16

Fifty one court orders revealed that the convictions are not based on legitimate crimes, but on rather vague terminology such as inciting hatred, extremism, and provocation.

- For instance, court order in the case of Nebijan Ghoja Ehmet reads that the main reason for a 10-year imprisonment order is based on inciting hatred by teaching religious terms in his community.²⁴
- Another similar case of Nurlan Pioneer, who is ethnically Kazakh, was convicted for 17 years for teaching religion seen by the court as committing extremism and disturbing public order.²⁵
- Under the conviction of having used the internet to teach Quran on WeChat to people, Huang Shike who is a Hui, received sentence for 2 years.²⁶

Additionally, cultural sites and buildings were also attacked in Xinjiang region. The Chinese government is set on eradicating all forms of religious or specifically Islamic symbols, sites, practices, and scholarship in Xinjiang as well as the rest of China. The destruction of Mosques began before the detention of Uyghurs in internment camps. However, during the years between 2016 and 2018, one sixth of Islamic sites and buildings received major damage or were destroyed. For instance, the tomb of Imam Asim, another tomb in Taklamakan desert, and the shrine of Ali Arslan khan were significant sites to the Uyghur population that were destroyed by Chinese authorities.²⁷

The satellite imagery of mosques before and after their destruction are provided by the Australian Strategy Policy Institute who claim that the Chinese government has destroyed more than 10,000 mosques out of 24,000 in Xinjiang region.²⁸

Article 2 and 13 of ICESCR state that discrimination on the ground of religion is prohibited as well as tolerance, understanding and effective participation shall be promoted among all racial, ethnic or religious groups. Hence, China is directly and indirectly infringing freedom of religion.

CERD

The mass detention of Turkic Muslims in China has led to serious violations of political and civil rights. However, as mentioned before, China is not party to ICCPR. Therefore, to hold China accountable for infringing those rights is unlikely. CERD is a human rights treaty that encompasses political and civil rights on the basis of eliminating all forms of racial discrimination. China ratified CERD in 1981 thus assuming obligations to protect civil and political rights.

²⁴ *Criminal-Case No 121* [2018] Xinjiang Uyghur Autonomous Region Chaqiliq County People's Court, Xinjiang 2824 No 121 (Xinjiang Uyghur Autonomous Region Chaqiliq County People's Court).

²⁵ *Entry 5821: Nurlan Pioneer* (2019)

²⁶ *Criminal Judgment, 2017, No 78* [2017] Xinjiang Uyghur Autonomous Region High People's Court, Xinjiang 40 Criminal Final No 78, (Xinjiang Uyghur Autonomous Region High People's Court).

²⁷ Kuo, Lily (6 May 2019). "Revealed: new evidence of China's mission to raze the mosques of Xinjiang". *The Guardian*., <https://www.theguardian.com/world/2019/may/07/revealed-new-evidence-of-chinas-mission-to-raze-the-mosques-of-xinjiang>

²⁸ Article by Helen Davidson (2020), "Thousands of Xinjiang mosques destroyed or damaged, report finds", link to article <https://www.theguardian.com/world/2020/sep/25/thousands-of-xinjiang-mosques-destroyed-damaged-china-report-finds>

Article 1 of CERD defines racial discrimination as “*any distinction, exclusion, restriction or preference based on race, color, descent, or national or ethnic origin*” preventing the enjoyment of human rights in an equal footing.

Uyghurs belong to the Turkic ethnic group spread-out in Central Asia. Thus to conduct mass arbitrary arrests and detention of Uyghurs and other Turkic Muslims is discrimination on the grounds of ethnic origin.

Article 3 is a relevant provision to this case prohibiting systematic discrimination. Apartheid, as defined in international law, is a system of institutionalized racial segregation that occurred in South Africa and South West Africa in 1948-1990s.²⁹

Under an apartheid system of governance, discrimination in all levels of society and administration is practiced against one or more minority groups. In Xinjiang, HRW reports that mass surveillance, detention, and travel restrictions placed on Uyghurs are signs of an apartheid system.³⁰

Article 5 of CERD is a vital provision that lists significant civil and political rights that shall be available to every individual’s enjoyment without discrimination:

(a) *The right to equal treatment before the tribunals and all other organs administering justice;*

(b) *The right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution;*

(d) *Other civil rights, in particular*

(i) *The right to freedom of movement and residence within the border of the State;*

(ii) *The right to leave any country, including one's own, and to return to one's country;*

(vii) *The right to freedom of thought, conscience and religion;*

(viii) *The right to freedom of opinion and expression;*

(ix) *The right to freedom of peaceful assembly and association;*

(e) *Economic, social and cultural rights, in particular:*

(i) *The rights to work, to free choice of employment, to just and favorable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favorable remuneration;*

(iv) *The right to public health, medical care, social security and social services;*

(v) *The right to education and training;*

(vi) *The right to equal participation in cultural activities;*

²⁹ Alan Mayne, *From Politics Past To Politics Future: An Integrated Analysis Of Current And Emergent Paradigms*. (Westport 1999).

³⁰ HRW 2021 Report

The arbitrary detention of Uyghurs and ethnic Muslims in internment camps, prisons, and factories is a violation of the right to due process, equal treatment, and fair trial thus violating **Article 5.A**. According to HRW reports, detainees are subject to all forms of ill-treatment, children are separated from their parents, and detainees endure punishment for disobedience and rejection of political indoctrination program.³¹

One of many examples, in 2014 a Professor and economist, Ilham Tohti, was sentenced to life in prison for the crime of separatism. In prison, it has been reported, that he is constantly denied food and water, remains shackled, and does not receive any medical attention for his concerning the state of his health.³² This is a violation of **Article 5.B**, the right to protection against violence or bodily harm. This case is one of many reported and unreported cases of torture and ill-treatment detainees are subject to in these “re-education” camps in China.

As mentioned previously, there are strict regulations in place monitoring every movement of Uyghurs and Turkic Muslims in Xinjiang. Authorities have placed face-detection security cameras in every street and corner in Xinjiang region, leaving no blind spot.³³ Furthermore, in an intensive report published by HRW, detainees after having release are kept under a close watch to see if they will transgress the discipline learnt in camps. Even more so, public authorities have an official live (cadre) with ethnically Turkic families to observe whether or not they use Islamic or Uyghur vernacular in their homes and daily lives.

Uyghurs in Xinjiang cannot travel abroad or within China easily; authorities require Uyghurs to present DNA information or biodata to obtain passports for travel. Often authorities seize Uyghurs’ passports as a form of punishment if they sense Uyghurs are trying to flee or communicate with persons abroad.

Family members (children) living or studying abroad of detained Uyghurs have been contacted by Chinese authorities threatening them to not spread ‘false’ information abroad to news agencies and foreign governments, and persuading them to return to China. If the children of the detainees do not abide by the rules of the Chinese authorities, the period of detention is extended.³⁴

Furthermore, Chinese government has been actively pressuring other States to return Uyghur refugees, asylum seekers, or immigrants living abroad to China. As there are current investigations ongoing on this issue, it has been reported that Tajikistan, Kazakhstan, Kyrgyzstan, Turkey, and Egypt have been collecting Uyghur persons and deporting them to China.³⁵

All of the above-mentioned strict control on Uyghurs’ travel and movement are a violation of Article 5.D.I the right to freedom of movement and residence within the border of the State and 5.D.II the right to leave any country and to return to one's country.

³¹ Ibid

³² '31st Session Of The Universal Periodic Review; 3Rd Cycle' <<https://www.hrw.org/news/2018/03/29/submission-universal-periodic-review-china>> accessed 30 June 2021.

³³ HRW 2021 Report

³⁴ Article by Austin Ramzy (2019) “Absolutely no Mercy, Leaked files expose how China organized mass detentions of Muslims”, by NYtimes, link <https://www.nytimes.com/interactive/2019/11/16/world/asia/china-xinjiang-documents.html>

³⁵ 'Uyghur Mother, Daughters Deported To China From Turkey' (*Radio Free Asia*, 2019) <<https://www.rfa.org/english/news/uyghur/deportation-08092019171834.html>> accessed 30 June 2021.

Lastly, there is a direct stigmatization of religious symbols, practices, and dress codes in China. In 2017, a list of prohibited names were issued by Xinjiang authorities claiming these names encourage religious sentiments.³⁶ Similarly, growing beards for men, wearing a headscarf for women, fasting or praying in public, are all prohibited. Islamic texts, sites, mosques are under strict control and review by the government.³⁷ China has violated the civil rights, freedom of thought and religion, freedom of opinion and expression, and freedom of assembly and association, listed under Article 5.D.

CEDAW

Forced Sterilization:

Cases of forced sterilizations are most common in the camps. Uyghur women are subject to forced and intrusive medical procedures that prevent them from bearing children. Women of child bearing ages, with children and without, are all subject to sterilization program or the family planning policy of the Chinese government.³⁸

Testimony by Zumrat Dawut, a Uyghur woman, explains that she was forced to undertake tubal ligation, surgical procedure tying the fallopian tubes of the uterus preventing the egg from descending, while in detention. Chinese authorities deny having sterilized Zumrat Dawut.³⁹

Furthermore, women and girls (passed the age of puberty) are forced to take medication that prevents them from menstruating. These drugs have reportedly caused women illnesses to lose consciousness frequently.⁴⁰

In another account, a pregnant Uyghur woman was forced to return to China from Kazakhstan in order to cancel her Chinese citizenship but as soon as she arrived to China, her travel documents were seized and she was forced to abort her baby by Chinese authorities threatening to detain her brother if she did not comply.⁴¹

³⁶ '96Th Session Of The Committee On The Elimination Of Racial Discrimination'

<<https://www.hrw.org/news/2018/06/21/submission-cerd-review-china>> accessed 30 June 2021.

³⁷ Ibid

³⁸ Associated Press (2020) "China cuts Uighur births wit IDS, abortion, sterilization", by AP, link

<https://apnews.com/article/269b3de1af34e17c1941a514f78d764c>

³⁹ Matthew Hill, 'Their Goal Is To Destroy Everyone': Uighur Camp Detainees Allege Systematic Rape' (*BBC News*, 2021) <<https://www.bbc.com/news/world-asia-china-55794071>> accessed 30 June 2021.

⁴⁰ Olivia Enos (2019), "China;s forced sterilization of Uighur women is cultural genocide", published by Heritage Foundation, link to article <https://www.heritage.org/asia/commentary/chinas-forced-sterilization-uighur-women-cultural-genocide>

⁴¹ BBC News report (2020), "China forcing birth control on Uighurs to suppress population, report says" link <https://www.bbc.com/news/world-asia-china-53220713>

Sexual Assault:

Several news channels have reported on the mass sexual assaults occurring in the camps in Xinjiang. Women who survived and escaped China, claimed they were subject to sexual assault and torture while in detention. Testimony accounts show that women, typically but not necessarily younger women, are subject to sexual assault by one or group of Chinese male personnel taking turns assaulting young women for hours. Furthermore, women are assaulted using electric batons used for vaginal and anal insertion to electrocute them.⁴²

- A Uyghur woman, Sayragul Sauytbay, forced to work as a teacher in the internment camps has claimed that she witnessed mass rape committed on girls by Chinese guards. Women are threatened, interrogated and forced to testify to crimes they did not commit and as one of the forms of punishment, rape sometimes inflicted in front of other detainees.⁴³
- Another account by Tursunay Ziawudun also confirms that mass sexual assault is a common occurrence in the camps. She has herself been subject to gang rape three times during her detention in camp. She also adds that, although the Chinese guards did not beat her, she experienced other forms of torture and degrading treatment such as interrogation, brainwashing, shaving of her hair, forced to sleep in cold temperatures, and ate food that caused her anemia.⁴⁴
- Another woman who is ethnically Uzbek, has also claimed to have witnessed women taken by Chinese guards to be electrocuted using “the chair, the glove, the helmet, and anal rape with a stick”.⁴⁵
- Rakhima Senbay, who has 4 children and was detained in one of the internment camps, was forced to undergo IUD placement in her uterus.⁴⁶
- Gulzir Mogdyn, a Kazakh woman, witnessed forced abortions while in detention.

Chinese authorities have routinely denied such allegations of rape, torture, and inhuman conditions in the camps.⁴⁷

⁴² Matthew Hill, David Campanale, Joel Gunter (2021), “Their goal is to destroy everyone; Uighur camp detainees allege systematic rape”

⁴³ Megha Rajagopalan (2020), “The factories in the camps”, published by BuzzFeed News, link https://www.buzzfeednews.com/article/alison_killing/xinjiang-camps-china-factories-forced-labor

⁴⁴ Zamira Rahim (2019), “Prisoners in China’s Xinjiang concentration camps subjected to gang rape and medical experiments, former detainee says”, published by Independent, link <https://www.independent.co.uk/news/world/asia/china-xinjiang-uighur-muslim-detention-camps-xi-jinping-persecution-a9165896.html>

⁴⁵ Megha Rajagopalan (2020), “The factories in the camps”, published by BuzzFeed News, link https://www.buzzfeednews.com/article/alison_killing/xinjiang-camps-china-factories-forced-labor

⁴⁶ HRW 2021 Report

⁴⁷ Stephen Dziedzic (2021), “Uyghur advocates speak out after horrifying accounts of rape and torture in Xinjiang camps in China”, published by NEWS, link <https://www.abc.net.au/news/2021-02-03/uyghur-renew-calls-for-action-report-rape-abuse-xinjiang-camp/13118190>

Further evidence:

Adrian Zenz's research on the population fluctuation in Xinjiang region provides further evidence of the sexual and reproductive violence inflicted on Uyghur women.

In his research, Zenz makes a comparative analysis of the population growths of Uyghur and Hans in Xinjiang and other regions. By doing so he illustrates the Chinese government's policy taking effect on population control on majority Uyghur populated areas by forcing women to undergo sterilization. He relies on largely population statistics and witness testimonies to study the government's draconian policies.⁴⁸

Because it is a recent and ongoing issue, no real investigations have been conducted on the number of victims of forced sterilization. China has had a strict one-child policy that was apprehended to two-child policy in 2015 to control the rapid growing population. The issue with this policy was that Uyghur families often tended to have 3 or more children therefore increasing the population in an uncontrollable rate.⁴⁹

Sterilization of women of child-bearing ages was introduced as a voluntary procedure to control to the population. However, in 2016 "intrauterine contraceptive devices, sterilizations, and forced family separations" became mandatory in Xinjiang region.⁵⁰

Zenz's findings point to the growth of Uyghur population in Xinjiang has drastically decreased by 2018 and by 2020 in majority Uyghur populated areas, the birth rate reaching a near-zero. He also found that those who would violate birth control measures would be punished by being taken to the internment camps for "reeducation".⁵¹

The government policy revealed that it aims to perform 80% of sterilizations on Uyghur and Turkic women who were of child-bearing age by IUD⁵² placements even though the population of Uyghurs is barely 2% of the total population of the country. Lastly, the Xinjiang region has been colonized by Han settlers between 2015-2018 as evident by the 860,000 Hans relocating to Xinjiang region fulfilling the government's plans to assimilate the Uyghur population.⁵³

Uyghur women are not asked whether they would prefer to undergo sterilization, rather they are threatened by the authorities that if they do not comply with the government policy they will be taken to the detention centers for an undefined period of time separated from their families.

Aware of the inhuman treatment and conditions in the internment camps, Uyghur women accept sterilization procedures without contesting.⁵⁴

⁴⁸ Adrian Zenz, 'Sterilizations, Iuds, And Mandatory Birth Control: The CCP's Campaign To Suppress Uyghur Birthrates In Xinjiang' (The Jamestown Foundation 2020)
<https://www.researchgate.net/publication/343971074_Sterilizations_IUDs_and_Mandatory_Birth_Control_The_CCP%27s_Campaign_to_Suppress_Uyghur_Birthrates_in_Xinjiang> accessed 30 June 2021.

⁴⁹ Ibid page 10

⁵⁰ Ibid page 1

⁵¹ Ibid page 11

⁵² intrauterine contraceptive device or coil, often T-shaped birth control device

⁵³ Ibid page 3

⁵⁴ Ibid page 19

As of 2017, the Chinese State reformed the family planning policy by adding that families that have violated the two-child policy prior to 2017 going back to 1990s will also be punished by law just as severely as the current methods of punishment (coerced to detention centers and education).⁵⁵

The Law:

China ratified CEDAW in 1980. Even though CEDAW is based on equality between men and women, thus eliminating all forms of discrimination against women in all aspects of life, it contains specific provisions that outline the respect for women's bodily integrity and freedom from sexual violence and exploitation, and reproductive rights.

Article 3 of CEDAW stipulates that women shall enjoy all fundamental freedoms and rights guaranteed in national legislation of the relevant State. Therefore, women shall enjoy political, civil, economic, social, and cultural rights.

Furthermore, **Article 6** states that women shall be protected from all forms of traffic and exploitation of prostitution. This indicating that women must be afforded special protection from sexual violence and assault. Chinese authorities inflicting mass or repeated sexual assault and violence on Uyghur and Turkic women in detention is in violation of Article 6 of CEDAW.

Article 12 underlines access to health care for women especially in the line of family planning. States Parties are obliged to provide appropriate services and medical attention to women during “pregnancy, confinement and the post-natal period, as well as adequate nutrition during pregnancy and lactation”. Under the negative obligations of State Parties, this provision indicates that States must not intervene into women's reproductive freedoms or deny women the proper health care during pregnancy. Testimonies from Uyghur and Turkic women indicate that China has not only denied health care services to women during pregnancy, but also forced abortions and prevented women's reproduction by forced sterilization or insertion of IUDs.

This notion is further supported in **Article 16.E** which reads “*decide freely and responsibly on the number and spacing of their children*” implicating to family planning and reproductive freedom, China's policies on the number of children certain groups are legally allowed to have are in violation of this article. In fact, in the leaked document, the Qaraqash Document that lists reasons for detention, shows that violating China's birth policies was one of the common reasons for detaining women in internment camps.⁵⁶

⁵⁵ Ibid

⁵⁶ Uyghur Human Rights Project, “Ideological Transformation,” p. 9

CAT

China ratified CAT in 1988. China has expressed that its criminal law has adopted the definition of torture in CAT constituting crime under Criminal Law of China.⁵⁷

Article 1 of CAT defines torture as “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person....punishing him for an act he or a third person has committed... intimidating or coercing him... any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of.. a public official or other person acting in an official capacity.”

However, the Committee stated that the provisions relating to the crime of torture in China’s criminal law, only refer to physical abuse as torture and are not inclusive of infliction of mental pain and suffering thus indirectly justifying the use of coercive and provocative methods of information extraction during interrogations or infliction of mental pain in China’s Criminal Law.⁵⁸

- **Article 2** obligates State Parties to prevent all acts of torture within its jurisdiction as well as emphasizes that there are no justifications for torture.
- **Article 10** of CAT outlines the obligation to educate, inform, and train official persons- military, civil, medical, and public personnel- of prevention of torture.
- **Article 16** states that all cruel, inhuman and degrading treatment is prohibited as well, stressing on cases of extradition and expulsion.

Mihrigul Tursun, Uyghur woman, stated that she was tortured and held in brutal conditions during her detention in the camp. She claims she was drugged, interrogated by Chinese law enforcement, underwent medical examinations, and was electrocuted in a chair. She explained that the reasons the Chinese forces were interrogating her is because she was under suspicion of inciting hatred and discrimination between Uyghurs and Han Chinese.⁵⁹ Furthermore, during her detention she witnessed 9 deaths⁶⁰ and explained how up to 70 women are taken daily into a small basement cell where they are chained and are kept for days where they are forced to defecate and are denied sunlight or air to breathe.⁶¹

In another testimony of Kayrat Samarkand, similar remarks were made. According to the Kayrat, she was forced to wear 50 pound heavy iron suit as a form of punishment. This suit weighed down her limbs preventing her from being able to move. She explains that this form of torture was a common practice that was used to break the spirits of the detainees.⁶²

⁵⁷ Report by Peking University Law School

⁵⁸ Report by Peking University Law School, pg 6

⁵⁹ U.S. Virtual Embassy Iran. (2018) "A tale of torture in a Chinese internment camp for Uighurs". Link <https://ir.usembassy.gov/a-tale-of-torture-in-a-chinese-internment-camp-for-uighurs/>

⁶⁰ Harry Cockburn, “Muslim woman describes torture and beatings in China detention camp: ‘I begged them to kill me’,” The Independent, November 28, 2018, <https://www.independent.co.uk/news/world/asia/uighur-muslim-china-mihrigul-tursun-torture-reeducation-camps-a8656396.html>.

⁶¹ HRW 2021 Report

⁶² Article by Durrie Bouscaren (2021) “Uyghur mothers in Turkey walk miles ask politicians for help locating their children in China”, by the World, link <https://www.pri.org/stories/2021-03-24/uyghur-mothers-turkey-walk-miles-ask-politicians-help-locating-their-children>

It has been reported that almost 200 deaths occurred in 2018 as a result of harsh conditions and ill-treatment in detention and others developed health-related problems after release that were not tended to by medical services.⁶³

This number is inexact due to prevention of effective investigation of the conditions in camps, number of detainees, and treatment in internment camps. However, Radio Free Asia also recounted the number of deaths in Aksu Prefecture camp to be at least 150⁶⁴ entailing that numbers in other camps may be just as high.

The forms of torture inflicted on the detainees are described as: staff beatings, hanging from the ceiling, deprivation of sleep, shackling for long periods, strapping to tiger chairs during interrogations.⁶⁵

Medical care is denied to all detainees regardless of age, underlying health conditions, persons with disabilities, or pregnant women.⁶⁶

Victims have also expressed that conditions in internment camps are harsh; issues of overcrowding, sleeping irregularities, and lack of food are common.⁶⁷

Torture is performed in the form of punishment; punishing detainees who resist the education program or speak in other languages other than Chinese⁶⁸, are placed in solitary confinement in a tight cell where they are denied food, water, and sleep for a day.⁶⁹

Therefore, China has violated Article 1, 2, 10 and 16 of CAT.

CRC

China ratified the CRC in 1992. However, Chinese authorities did not exempt Uyghur and Turkic children from their draconian policies. Children were systematically separated from their parents and extended families, placed into special educational institutions, forced to learn Chinese language, history, and culture, subjecting them to cultural engineering.⁷⁰

- **Article 1** of CRC prohibits discrimination on the grounds of race, color, sex, language, religion, political views, national or ethnic origin, disability, ownership status.
- **Article 2** further emphasizes the need to protect children from discrimination and punishment based on their status, family's beliefs, language, or opinions.
- **Article 3** stipulates the significance of and State Parties' obligations to uphold the best interest of the child.

⁶³ HRW 2021 Report

⁶⁴ Ibid; Chapter on Torture and Other Ill-Treatment in Custody

⁶⁵ Ibid

⁶⁶ Ibid

⁶⁷ Ibid

⁶⁸ Ibid

⁶⁹ Ibid

⁷⁰ Dela Rinanda Putri, *PROTECTION OF CHILDREN'S RIGHTS IN CONFLICT AREA BASED ON CHILDREN'S RIGHTS CONVENTION* (Universitas Muhammadiyah Yogyakarta 2021)> accessed 30 June 2021.

- **Article 9** explicitly reads that State Parties must ensure that children are not separated from their parents against their will unless it has been determined it is in the best interest of the child, such as protecting them against domestic abuse, lack of care or other needs.
- **Article 12** outlines that State Parties must respect the opinions of children because children have the right to express their views in all matters concerning them.
- **Article 14** also explains the right of child to freedom of thought and religion. Thus Chinese authorities' indoctrination policies, re-engineering Uyghur and Turkic children to abandon their cultural and religious identities is a violation of these provisions.
- **Article 20** states that even under the States care or foster placement, children's ethnic, religious, cultural and linguistic backgrounds shall be taken into account and protected in adoption proceedings.
- **Article 34** of the CRC, protects children from sexual exploitation and abuse. Therefore when Chinese officials allow Uyghur and Turkic children in the state institutions or in their homes be subject to sexual violence and danger posed by Chinese official personnel, it is in violation of this provision.

As specified previously, the Strike Hard Campaigns brought with it a special monitoring system using cadres stationed in Xinjiang cities and villages. The cadres regularly visit and provide updates on the daily lives of Uyghur and Turkic minorities in the region.⁷¹

Under the “Becoming Family” campaign in 2016, cadres were placed into the homes of Uyghurs residing with them for 5 days every couple of months. While parents were working during the day, children remain at home with cadres often subjecting them to sexual abuse, physical or mental violence.⁷²

Furthermore, under the “Physicals for All” program, Chinese authorities have been collecting DNA and blood samples, and other biometric data from Uyghur and Turkic populations ranging from ages 12 to 70.⁷³ Hence, travel restrictions, medical assistance limitations are also applicable to children.

Separation of families also occurred as a result of travel and communication restrictions with other countries. Uyghurs cannot communicate with their families abroad thus losing touch with their children studying abroad for years.⁷⁴

HRW reported that the children in Xinjiang are placed into state-run institutions denying their families visitation rights or any form of communication. Chinese authorities began to refer to

⁷¹ Human Rights Watch, “China: Visiting Officials Occupy Homes in Muslim Region,” May 13, 2018, <https://www.hrw.org/news/2018/05/13/china-visiting-officials-occupy-homes-muslim-region>

⁷² Ibid

⁷³ Human Rights Watch, China's Algorithms of Repression, p. 15; “China: Minority Region Collects DNA from Millions.”

⁷⁴ 'China: Uyghurs Living Abroad Tell Of Campaign Of Intimidation' (*Amnesty International*, 2020) <<https://www.amnesty.org/en/latest/news/2020/02/china-uyghurs-living-abroad-tell-of-campaign-of-intimidation/>> accessed 30 June 2021.

Uyghur children in the institutions as orphans despite being aware that their parents are held in detention in internment camps.⁷⁵

Thus China has violated Articles 1, 2, 3, 9, 12, 14, 20 and 34 of CRC.

International Criminal Law

The mass arbitrary arrest and detention of Uyghurs and other Turkic Muslims have led to serious human rights violations. As listed above, Turkic Muslims suffered torture and other ill-treatment in detention, many of whom died due to severe infliction of pain and health conditions, children were separated from their parents, and women were subject to many forms of sexual violence and abuse within and outside internment camps. All these violations are the result of the Chinese government's policy to erase the ethnic identity of Turkic Muslims in China, to forcefully assimilate them into Han Chinese society. This by international standards is defined as ethnic cleansing or genocide. Additionally, several western States have spoken up against China for committing genocide on Uyghurs.⁷⁶

Article 2 of the Genocide Convention defines genocide as:

“the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group,

(a) Killing members of the group;

(b) Causing serious bodily or mental harm to members of the group;

(c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;

(d) Imposing measures intended to prevent births within the group;

(e) Forcibly transferring children of the group to another group”

Reports show that all of the above-listed acts have occurred in Xinjiang against Uyghurs and other Turkic Muslims. However, China is not a State Party to the Genocide Convention, there is not bound by its provisions.

The international legal body that oversees cases of genocide, crimes against humanity, war crimes, and crimes of aggression, is the International Criminal Court. The Rome Statute established the ICC in 2002 outlining the primary functions of the ICC and its jurisdiction. However, China is not a State Party to the Rome Statute thus has not recognized the competence of the ICC.

Despite this fact, in international customary law, genocide is considered a crime and warrants an erga omnes nature, in other words, the punishment for the crime of genocide is obligatory on

⁷⁵ Human Rights Watch, “China: Xinjiang Children Separated from Families,” September 15, 2019, <https://www.hrw.org/news/2019/09/15/china-xinjiang-children-separated-families>

⁷⁶ 'Uyghurs: Mps State Genocide Is Taking Place In China' (BBC News, 2021) <<https://www.bbc.com/news/uk-politics-56843368>> accessed 30 June 2021.

every State on the basis of universal jurisdiction.⁷⁷ Furthermore, punishment for the crime of genocide is *jus cogens* rule. The 1069 Vienna Convention on the Law of Treaties gave legal effect to *jus cogens* norms placing them at the top of the hierarchy of norms.⁷⁸

Why is it then not possible to try Chinese officials for the crime of genocide under the Genocide Convention?

Article 6 of the Genocide Convention provides that there are two fora establishing jurisdiction. One is to try persons charged with the crime of genocide by a competent tribunal in the territory where the crime occurred or by an international tribunal that is given competence by contracting State Parties to the Genocide Convention. In fact, in the Rome Conference, Germany stated that States had legitimate reason to establish universal jurisdiction over crimes listed in Article 5 of Genocide Convention, which includes genocide.⁷⁹

Since China's Criminal Law does not define genocide as a crime and does not outline the process of trying this crime, under the principle of *nulla poena sine lege*, there can be no punishment for the act that at the time it was committed did not constitute a criminal offence.

Additionally, the China Communist Party claims they are not bound by the Genocide Convention since they did not sign or ratify it, rather it was the Taiwanese State that signed the convention not representing the interests of all of Republic of China.⁸⁰

Although China is not party to the Rome Statute, there is a way it can be held criminally liable for the crime of genocide under the Rome Statute. News channels and journalists have raised this issue recently that countries such as Tajikistan, Turkey, Kazakhstan, Kyrgyzstan and others have been deporting Uyghurs who have fled China seeking refuge and protection in these countries. Refoulement, deportation of refugees to their home countries, is a crime under the Rome Statute Article 7 listing crimes against humanity. Especially since Uyghurs forced to return to China will face ill-treatment and torture while in confinement. As Uyghur Rights groups submitted this case to the ICC, the Court having review the initial application deemed it insufficient in terms of evidentiary material and requested further evidence to proceed with the case. Currently, there are NGOs and other civil society groups working to collect evidence on the deportation of Uyghurs to China from Tajikistan.⁸¹

⁷⁷ Wenqi Zhu and Binxin Zhang, *Confronting Genocide* (Springer 2011) pg 12 and 186

⁷⁸ Ibid: Wenqi Zhu and Binxin Zhang, *Confronting Genocide* (Springer 2011) pg 176

⁷⁹ Ibid pg 178

⁸⁰ 'Status Of Genocide Convention' (*UN Treaty Collection*)

<https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-1&chapter=4&clang=_en> accessed 30 June 2021.

⁸¹ Tajikistan has signed and ratified the Rome Statute in 2000 Source: 'Signatory State' (*International Criminal Court*, 2021) <https://asp.icc.cpi.int/en_menus/asp/states%20parties/asian%20states/Pages/tajikistan.aspx> accessed 30 June 2021.

Conclusion

As a world power economically and politically, China's influence and role in international law is essential. It currently holds a seat in the UN Human Rights Council and is a permanent member of UN Security Council. In its vision to economically dominate the world, China has violated many of its international law obligations and denied doing so.

But as political tensions grow between China and the west, more attention is brought to China's gross human rights violations.

Despite China's position in the UN, world leaders and States have urged UN to take effective action to hold China accountable for its actions. Some critics went as far as to say to remove China's veto power in the Security Council. Others are calling on the Human Rights Council to send a special rapporteur to conduct investigation in Xinjiang.⁸²

Although, it has not recognized the competence of any of the Supervisory Committees of human rights treaties, China is still subject to UPR. Under the UPR, Member States of UN can comment, urge action, and criticize each other's human rights laws, issues, and progress. Therefore, China has received criticism from many States for its mass human rights violations.⁸³ However, UPR merely generates recommendations to improve human rights and call action to certain issues. Recommendations are not legally binding on the States, therefore States like China often disregard them.

Despite this, recently US and European States have imposed sanctions on specific Chinese Officials in Xinjiang, freezing their assets abroad and restricting travel. This is an effective means to begin holding China accountable; by sanctioning China economically via trade embargoes; China's vision of world dominance will become impossible if its economy is restrained. Ordinary individuals can also take action against China by boycotting Chinese products, spreading awareness online, and pressuring their governments to take action.

Most importantly, ICC should review the case of Uyghur Genocide and try perpetrators for committing genocide and crimes against humanity.

⁸² OHCHR, 'China: UN Experts Deeply Concerned By Alleged Detention, Forced Labour Of Uyghurs' (2021) <<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26957&LangID=E>> accessed 30 June 2021.

⁸³ 'Universal Periodic Review - China Third Cycle' (*UN Human Rights Council*, 2018) <<https://www.ohchr.org/EN/HRBodies/UPR/Pages/CNindex.aspx>> accessed 30 June 2021.

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