

The Persecution of the Uighurs and Potential Crimes Against Humanity in China

The treatment of Uighurs and other Turkic Muslim minorities in China's Xinjiang Uighur Autonomous Region (XUAR) has increased concerns over the risk of potential atrocity crimes in China. The arrival of Chen Quanguo as Chinese Communist Party Secretary in charge of XUAR in August 2016, along with a 92 percent increase in security spending in Xinjiang from 2016-17, resulted in a dramatic increase in the scale and intensity of social and religious control in the region.¹ China's blunt approach to combatting religious extremism has resulted in large-scale arbitrary detention, severe restrictions on religious practice, and pervasive surveillance and control of the Muslim population of Xinjiang. Such actions may constitute crimes against humanity perpetrated against the Uighurs and other Turkic Muslim minorities.

MASS DETENTION AND 'RE-EDUCATION'

Currently, approximately one million Uighurs and other Turkic Muslim minorities are reportedly being detained in "re-education" or "de-extremification" facilities for minor or seemingly arbitrary infractions without formal charges, due process rights or access to legal representation.² Some former detainees have reported that while in state custody they were subjected to abuse and torture, ill-treatment and forced political indoctrination.³ Family members both within China and overseas also report that they have extremely limited access to information about persons held in detention.⁴

Concern over the widespread nature of the disappearances was recently reinforced by the #MeTooUyghur twitter campaign, which called for "proof of life" videos of missing relatives in Xinjiang after Chinese authorities released a video of the famous Uighur musician Abdurehim Heyit to dispel rumours of his death in detention during February 2019.⁵

According to Adrian Zenz, a leading expert on the issue, "There is virtually no Uighur family without one or more members in such detention, and a rising number of Kazakhs and other Muslim minorities are likewise affected."⁶ Reports suggest that in some cases, all adults of an extended family have been detained.⁷ As a result, children are treated as de-facto orphans and reportedly taken into state-run child "welfare centres" while their parents and extended family members undergo "re-education training" sessions on Mandarin, Chinese law, ethnic and national unity, de-radicalisation and patriotism.⁸

Detention for "re-education training" is reported to last anywhere from three months to two years.⁹ Zenz has characterized the scale and pervasiveness of the program as China's "most intense campaign of coercive social reengineering since the end of the Cultural Revolution."¹⁰

Along with the mass detention program, over the past year China has expanded its already large police presence and sweeping surveillance system in Xinjiang. Chinese authorities have implemented systems that monitor the daily lives of Uighurs, including what they read, the content of their communications, and the people with whom they interact.¹¹ Data is reportedly used to profile persons at risk of extremist thought or violence, which is the basis for people being sent to re-education programs. Authorities also reportedly collect DNA during medical check-ups, install a GPS tracking system on all vehicles, and monitor and control all mobile and online communications.¹²

Due to its "big data" surveillance program, constant police patrols, and grid system of police checkpoints, Xinjiang has been characterised as "one of the most heavily policed places on earth."¹³ The impact of such pervasive surveillance and social control on the local people's basic rights and fundamental freedoms is a grave concern, and if left unchecked, may amount to

widespread or systematic persecution of an entire people on the basis of their religious and cultural identity.

The dramatic expansion of detention and surveillance programs in Xinjiang has occurred against the backdrop of increasing restrictions on religious practice in the region. In March 2017 XUAR authorities passed the Regulation on De-extremification, which prohibits a range of “extreme” behaviors, such as expanding the concept of *halal*; “abnormal” beards; wearing face covering veils in public places; and refusing to engage in state-sponsored cultural or education programs.¹⁴

At a national level, in recent years China has introduced new social and religious regulations under amendments to Criminal Law and the adoption of the National Security Law of 2015, the Counter-Terrorism Law of 2016, the Cybersecurity Law of 2017 and the Revised Regulations on Religious Affairs of 2018. UN human rights experts have expressed concern that amendments to the legal code have “[e]stablished imprecise and too broad definitions on national security offenses related to ‘terrorism’ and ‘extremism’ that enabled abusive, arbitrary and discriminative prosecution and conviction.”¹⁵

POSSIBLE CRIMES AGAINST HUMANITY

Egregious patterns of human rights violations that are directed or tolerated by governing authorities against populations over whom they wield control constitute possible crimes against humanity. Unlike war crimes, crimes against humanity can occur in the absence of armed conflict, in times of peace. Unlike genocide, they do not require evidence of an “intent to destroy in whole or in part” a protected group, but instead pertain to a broader category of “widespread or systematic” attacks against any civilian population.¹⁶ Crimes against humanity are universally prohibited under international law.

The large-scale detention program, systematic abuse suffered by detainees, and lack of information regarding the fate of persons in state custody in Xinjiang, could constitute at least three of the eleven acts of crimes against humanity defined under the Rome Statute of the International Criminal Court (ICC), namely - “imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law”; torture; and enforced disappearance of persons.¹⁷ The mental anguish, deprivation and pattern of abuses Turkic Muslims reportedly suffer under the crippling

surveillance system in Xinjiang may also amount to the crime against humanity related to “other inhumane acts... causing great suffering, or serious injury to body or to mental or physical health.”¹⁸

The Rome Statute also identifies persecution on religious or cultural grounds as a crime against humanity, and defines persecution as “the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of a group or collectivity.”¹⁹ Reports from the UN, independent media and various credible NGO sources describe severe restrictions on religious practices that indicate that the crime of persecution may also apply to the treatment of Turkic Muslims in Xinjiang.

The Rome Statute of the ICC sets four criteria or conditions for assessing the commission of crimes against humanity, which occur when: (1) any of the proscribed acts identified as crimes against humanity are committed as part of a “widespread or systematic attack”; (2) against a civilian population; (3) with knowledge of the attack; (4) “pursuant to or in furtherance of a State or organizational policy to commit such an attack.”²⁰

The large-scale nature of the detention program and patterns of reported abuses against Uighurs and other Turkic Muslim civilians suggests that the first three criteria may apply to the situation in Xinjiang. Along with the consistent pattern of reported violations occurring at multiple detention facilities, the fourth criteria may be evident in government policy documents, particularly pertaining to the XUAR March 2017 Regulation on De-Extremification and the amendment thereto passed in October 2018.

For all these reasons, the current treatment of Uighurs in Xinjiang may constitute crimes against humanity under international law. If urgent measures are not implemented to end the current state of systematic persecution, there is a clear and imminent danger of further crimes against humanity occurring.

INTERNATIONAL CRITICISM

Increased media attention and credible evidence of worsening repression in Xinjiang has led to international concern regarding the plight of China’s Turkic Muslims. In August 2018 the UN Committee on the Elimination of Racial Discrimination likened Xinjiang to a “no rights zone,” where Uighurs and other Muslim minority groups are “being treated as enemies of the State based on

nothing more than their ethno-religious identity.”²¹ The European Parliament passed a resolution in early October 2018 that characterised the situation as “the largest mass incarceration of an ethnic minority population in the world today” and urged European Union (EU) officials “to send a strong message to the highest level of the Chinese Government to end the grotesque human rights violations.”²²

During China’s third Universal Periodic Review at the UN Human Rights Council on 6 November 2018, several states issued specific recommendations for remedial action, including abolishing the program of arbitrary detention and cooperating with and providing access to relevant UN bodies.²³ In an unusually coordinated expression of concern among foreign embassies in Beijing, Canada also led an effort in November 2018 with 15 ambassadors jointly requesting a meeting with Chen Quanguo to discuss the situation.²⁴

Meanwhile, hundreds of academic experts from around the world published a statement in late November 2018 that called upon the international community to take action to address the “mass human rights abuses and deliberate attacks on indigenous cultures presently taking place in China’s XUAR.”²⁵ On 17 January 2019 the United States Senate also revived a bill under the Global Magnitsky Act that calls for financial and travel sanctions against Chinese officials overseeing the detention program.²⁶

While international scrutiny of the situation has increased pressure on Chinese authorities to reconsider repressive policies in Xinjiang, condemnation of the situation has largely come from Western countries. Leaders from neighbouring states and influential Muslim-majority countries have been less willing to speak out against the reported abuses and ongoing persecution of the Uighurs.

There are a few exceptions. In October 2018 Malaysia refused on humanitarian grounds to grant China’s request to deport 11 Uighurs back to China. Anwar Ibrahim, who is expected to become Malaysia’s next prime minister, also publicly denounced the lack of freedom of religion in Xinjiang, and during meetings with officials in Beijing in October he encouraged China to embrace principles of “inclusivity” and “humanity” in its policy toward Turkic Muslims.²⁷ On 9 February of this year the Turkish Foreign Ministry issued a statement on the “torture and political brainwashing in internment camps” in Xinjiang, and called upon Chinese authorities to close the detention camps.²⁸ Turkish Foreign Minister Mevlut Cavusoglu subsequently raised concerns about

human rights violations in Xinjiang in a statement to the regular session of the UN Human Rights Council on 25 February, noting that there needs to be a distinction between “terrorists and innocent people.”²⁹

In a meeting with China’s ambassador to Islamabad in September 2018, Pakistan’s religious affairs minister, Noorul Haq Qadri, was the first high-level official from a Muslim-majority country to raise concerns about the situation, cautioning that China’s tight regulations on religious practice “fuel rather than counter extremism.”³⁰ Pakistan offered to send a delegation of scholars to Xinjiang to help “promote religious harmony.”³¹ However, since then senior Pakistani officials and experts have either avoided questions about the situation, denied that there is any repression in Xinjiang, or echoed language from China’s state-run media that international reporting on the human rights situation in Xinjiang is sensationalised, biased and “extreme western propaganda.”³²

There are, however, some signs of mounting pressure for a stronger show of solidarity with Uighurs among political and religious leaders and citizens in Muslim-majority countries. In recent months Muslim groups in India, Bangladesh and Indonesia have held public protests and called for boycotts of Chinese products, while activists, lawyers and family members in Kazakhstan and Pakistan have lobbied their governments to call on China to release people held in detention in Xinjiang.³³

Public protests in cities across Indonesia during December indicated that the treatment of Uighurs may be a rallying cause for populist Islamist groups, raising concerns in Indonesia and elsewhere that the perceived indifference of mainstream political leaders to the persecution of Muslim communities abroad could provoke social unrest at home.³⁴ In mid-December, Indonesia’s powerful Muslim clerical body, the Indonesian Ulema Council, strongly condemned the oppression of Uighur Muslims in Xinjiang and urged the Organization of Islamic Cooperation (OIC) and the international community to take action.³⁵

Although the OIC has not been as outspoken on behalf of Uighurs as it has with regard to attacks on Rohingya Muslims in Myanmar, OIC leaders have publicly expressed concern over the situation in Xinjiang. From 2-6 December 2018 the OIC held the 14th Regular Session of its Independent Permanent Human Rights Commission in Jeddah, Saudi Arabia. Following a briefing on the human rights situation in Xinjiang that affirmed “rising discrimination on the basis of their

religion,” the OIC publicly characterised Chinese regulations in Xinjiang as “excessive in nature,” recognised allegations that Muslims in Xinjiang were subject to “involuntary conversions in detentions camps,” and called upon China to guarantee the right to freedom of religion.³⁶

However, in early March, the Council of Foreign Ministers of the OIC passed a resolution on safeguarding the rights of Muslims in non-OIC countries which “commended” the efforts of China in “providing care to its Muslim citizens.”³⁷ The resolution reduces the pressure on China to safeguard the rights of Turkic Muslims in Xinjiang and may also embolden China to pressure other countries to clamp down on human rights advocates who have assisted Uighurs and documented evidence of repression in Xinjiang. For example, Serikzhan Bilash, who has played a key role in documenting the situation in Xinjiang by recording testimonies of Uighurs arriving in Kazakhstan, was recently detained by Kazakh authorities on charges of “inciting ethnic hatred”—a charge that carries up to 10 years in prison.³⁸

CHINA’S RESPONSE

China’s response to international pressure to ease regulations and release Uighurs detained in Xinjiang has evolved from initially denying the existence of its mass detention program, to broadly defending the practice while making some minor changes to its policy and granting greater international access to these facilities. China’s state-run media has defended policies in Xinjiang on the basis that no terrorist attacks “large or small” have occurred for nearly two years, indicating that China has engineered a successful program for eliminating terrorist threats.³⁹ As one prominent article asserted, China’s policies have “salvaged” Xinjiang from “the verge of massive turmoil” and avoided “the fate of becoming ‘China’s Syria’ or ‘China’s Libya.’”⁴⁰ Shohrat Zakir, the chairman of the government of XUAR, has stated that China has “effectively contained” religious extremism and “laid a good foundation for completely solving the deeply rooted problems that affect the region’s long-term stability.”⁴¹

In addition to claiming that China’s approach has proven effective at stopping terrorist attacks, Chinese state media also defends the surveillance and detention programs as short-term emergency response measures to safeguard secular rights that were under threat in Xinjiang. These media outlets assert that Western

criticism of China’s policy has turned a “blind eye” to the “previous grim reality” of rising extremism in Xinjiang, where “quite a few radical Muslims there believed the money paid by local government was not *halal*, women without head scarves were not real Muslims, all documents issued by the government, such as identity cards, were invalid [and] randomly intercepting and killing Han people on the road was righteous.”⁴² China’s “de-extremification” programs are also portrayed as helping to reverse troubling attempts to curtail women’s rights and personal autonomy, such as increased pressure to wear *burqas*, constraints on working out of home or accessing higher education, and denial of basic sexual and reproductive health rights.⁴³

At a session of the National People’s Congress held on 12 March, Shohrat Zakir likened the detention program to “boarding schools where students eat and live for free.”⁴⁴ Some authorities acknowledge that China’s approach is intense and far-reaching, but nevertheless assert that it is ultimately geared at people’s well-being. As Zark Zurdun, an ethnic-Uighur and deputy party chief in Kashgar, remarked, “stability is the best human right.”⁴⁵ The Xinjiang government contends that China is demonstrating how a preventive strategy that provides “education and assistance” to the majority of people who commit small infractions or crimes can “save” Xinjiang’s population from becoming “victims of terrorism and extremism.”⁴⁶

In addition to defending the merits of China’s policies in Xinjiang, the Chinese media has generally justified China’s repressive policies by framing international criticism as misguided, biased attacks by “the West.” A common line of defence argues that a “minority among Western countries, which hardly represent the world” are criticising China’s policy, while China has “good communication with Islamic countries and the developing world.”⁴⁷ Chinese officials have also targeted their messaging towards Muslim audiences, with the Chinese embassy in Kuala Lumpur purchasing a full-page advertisement in *The Star*, a local English-language daily in Malaysia, to defend China from a “smear campaign” and demonstrate that it protects and guarantees the religious rights of Uighurs.⁴⁸ As a further sign that Chinese authorities rely on the support or silence of non-Western states to deflect international criticism, the first official visit to assess conditions in Xinjiang, in December 2018, included diplomats from Russia and 11 Asian or Muslim-majority countries.⁴⁹

Although China appears particularly sensitive to censure from the Global South and Muslim leaders and communities, Beijing has also sought to allay concerns

raised by UN officials and Western states. China made one of the first policy adjustments amidst international criticism that the systematic detention of Turkic Muslims had no basis under Chinese law. XUAR authorities set in place a firmer legal grounding for mass detention in October 2018 by officially amending the Regulation on De-extremification to allow local governments to “educate and transform” people who are “influenced by extremism” through enrolling them in “vocational skills and education training centres.”⁵⁰ In addition to teaching Mandarin, Chinese law and occupational skills, the new regulation includes a clause that directs centers to deliver “ideological education, psychological rehabilitation and behavior correction.”⁵¹

Similarly, although China has defended its “re-education” program, it has conceded that the program will be phased out and fewer people will be admitted into facilities.⁵² China also granted a request from the EU for human rights experts to visit Xinjiang, and hosted a small delegation for “extensive supervised access” to detention facilities in late January 2019.⁵³ This follows China’s positive response in December to recommendations under the UN Human Rights Council’s Universal Periodic Review process that urged China to grant UN experts access to facilities in Xinjiang.

In January, Foreign Ministry Spokesperson Lu Kang affirmed China’s willingness to host a visit from the UN Office of the High Commissioner for Human Rights (OHCHR) under the proviso that they “abide by Chinese laws and fulfil relevant procedures,” refrain from interfering in China’s internal affairs, and “adopt an objective and unbiased attitude and avoid buying one-sided stories or making preconceptions.”⁵⁴ While the language suggests a defensive posture, Kang signalled that China is concerned with constructively responding to UN requests by adding that China “would like to remain in contact with the relevant UN agency and meet each other halfway.”⁵⁵

Members of the EU delegation’s January visit to Xinjiang reported that even though sites were “carefully selected by authorities to support China’s official narrative,” the visit provided “useful insight” regarding “evidence of major and systematic human rights violations in Xinjiang.”⁵⁶ Legal amendments that provide post-facto justification for the mass detention program have exacerbated concerns that Chinese authorities are intent on expanding the legal framework to allow for even stricter control of minority and religious groups.

On 12 November 2018 some of the UN’s top human rights experts and Special Mandate holders conveyed a letter to

China expressing their concern that the revised Regulation on De-extremification include provisions that are in contravention of China’s obligations under international law and pose a grave risk to fundamental human rights of people in Xinjiang.⁵⁷

In conclusion, although recent steps taken by China to grant access to Xinjiang are welcome and should be encouraged, they have not alleviated concerns that Turkic Muslims in Xinjiang continue to suffer grave, systematic and widespread human rights violations and abuses that could amount to crimes against humanity.

RECOMMENDATIONS

The government of China should:

1. Immediately halt widespread violations of basic human rights and fundamental freedoms in XUAR, including arbitrarily depriving Turkic Muslims of their liberties. China must uphold its primary responsibility to protect all its populations, regardless of religious belief or ethnic identity.
2. Repeal the Regulation on De-extremification, as called for by the UN Working Group on Arbitrary Detention, Working Group on Enforced or Involuntary Disappearances, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on minority issues, the Special Rapporteur on freedom of religion or belief, and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism.
3. Respond favourably to the requests of the above UN special procedures mandate holders to undertake an official visit to China, and accept technical assistance and advice to ensure that China’s national security, counter-terrorism or counter-extremism laws and practices adhere to China’s obligations under international law, including the defendant’s right to due process, legal counsel of choice, timely notification of families, and fair and public trials by an independent court.
4. Ensure an impartial and credible investigation of allegations of abuse, torture and ill-treatment of persons held in detention in Xinjiang and implement appropriate measures to ensure justice and compensation for victims.

The international community:

1. Should urge Chinese authorities to take immediate action to uphold universal human rights and fundamental freedoms in Xinjiang. Specifically:
 - OHCHR and special procedures mandate holders should continue to call for the immediate release of persons involuntarily held in detention without due process, and closely monitor the situation in Xinjiang.
 - The Human Rights Council should continue to urge China to uphold the human rights of all Turkic Muslims and accept independent UN observers in Xinjiang.
 - The UN Office on Genocide Prevention and the Responsibility to Protect should closely monitor the situation in Xinjiang and alert the UN Secretary-General regarding the commission of potential crimes against humanity.
2. Recognising the important diplomatic influence they wield, Muslim-majority countries, as well as neighbouring states, should urge China to respect the right of all Turkic Muslims to freedom of religious observance and cultural expression, and call for an end to the mass detention and “re-education” programs.
3. UN member states and international civil society organizations should continue to raise awareness and visibility of the treatment of Turkic Muslims in Xinjiang and advocate for an end to all violations of their universal human rights and fundamental freedoms.

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¹⁰ Adrian Zenz, “New Evidence for China’s Political Re-Education Campaign in Xinjiang,” *China Brief*, Vol 18, issue 10, 15 May 2018, available at: <https://jamestown.org/program/evidence-for-chinas-political-re-education-campaign-in-xinjiang/>

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¹⁷ The Rome Statute of the International Criminal Court, Article 7.2(e) defines tortures as "the intentional infliction of severe pain and suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions." Article 7.2(i) defines enforced disappearances as "arrest, detention of abduction of persons by, or with the authorization, support or acquiescence of, a State or political organization, followed by the refusal to acknowledge that deprivation of freedom or give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time."

¹⁸ Rome Statute of the International Criminal Court, Article 7.1(k).

¹⁹ The Rome Statute of the International Criminal Court, Article 7.1(h) outlaws persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender grounds, or on "other grounds that are universally recognized as impermissible under international law."

²⁰ Rome Statute of the International Criminal Court, Article 7.1(a). Attacks are defined as "a course of conduct involving multiple commission of acts" identified as crimes against humanity. "Knowledge of attacks" is understood to mean that perpetrators are aware that crimes are being committed as part of a widespread or systematic attacks and can be determined by patterns of attacks. This idea of "four conditions" that constitute crimes against humanity comes from Leila Nadya Sadat, "Crimes Against Humanity in the Modern Age," *The American Journal of International Law*, Vol. 107, p.352.

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