

Addressing Religious Inequalities as a Means of Preventing Atrocity Crimes: The Case of the Uyghur Genocide

Ewelina U. Ochab

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Summary

There is a big distance between religious inequalities and atrocity crimes. Indeed, religious inequalities do not necessarily lead to atrocity crimes; however, in certain cases they can. Examples of cases that portray this progression are those of Yazidis and Christian minorities in Iraq, and the Rohingya community in Myanmar. In certain situations, analysing religious inequalities can help to identify risk factors of genocidal atrocities, so a question that naturally arises is: can addressing religious inequalities help to mitigate and prevent atrocity crimes based on religion or belief?

This paper focuses on the situation of the Uyghur population in China, where they are being persecuted for their religion or belief. It considers the law on freedom of religion or belief and other laws affecting the enjoyment of rights by Uyghurs in China as the foundation of religious inequalities. The paper further considers the deterioration of the Uyghurs' circumstances by analysing some of the recent reported treatment of them against frameworks relevant to atrocity crimes, namely the UN Framework of Analysis for Atrocity Crimes and the Jacob Blaustein Institute for the Advancement of Human Rights Compilation of Risk Factors and Legal Norms for the Prevention of Genocide.

Keywords: Uyghur, genocide, atrocity crimes, religious minorities, persecution, religious inequalities, genocide early warning signs.

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Introduction

Genocide is a process. The Holocaust did not start with the gas chambers. It started with hate speech.

Adama Dieng, former UN Special Adviser on the Prevention of Genocide

There is a big distance between religious inequalities and atrocity crimes. Indeed, religious inequalities do not necessarily lead to atrocity crimes; however, in certain cases they can. For example, after the fall of the former regime in Iraq, religious minorities became the prime target and over the years, the discrimination against, and marginalisation and persecution of them has become more frequent, exacerbated by the growing atmosphere of impunity. In 2011, the UK Border Agency reported that armed groups in Iraq attacked Christian, Yazidi, and Shabak communities, labelling them crusaders, devil-worshippers, and infidels. Then three years later, Daesh unleashed a genocidal campaign against these communities.¹ Similarly, in Myanmar, the genocide against the Rohingya did not just happen; it followed years of discrimination, marginalisation, and persecution of this ethnoreligious community.

Uyghurs in China are being persecuted for their religion or belief. This paper examines the situation of the Uyghurs, focusing on religious inequalities and how they have provided a fertile ground for atrocity crimes. Section 1 explains some of the laws that accommodated religious inequalities. Section 2 explores how these inequalities then progressed towards what we know now as atrocity crimes against the Uyghurs in Xinjiang. Section 3 positions the evidence known against the frameworks for the analysis of atrocity crimes such as genocide.

¹ See for example: UN Human Rights Council (2016).

1 Domestic laws as the foundation of religious inequalities

Religious inequalities in China are deeply rooted in the law. Chinese domestic law, in the Constitution of the People's Republic of China (the Constitution), provides for some protection of the right to freedom of religion or belief for some people in certain prescribed situations. This protection differs significantly from the international legal standards on the right to freedom of religion or belief. Furthermore, this very limited constitutional protection is restricted by a litany of other laws that ultimately deem the constitutional protection inoperative. These are considered below.

1.1 The constitutional protection of freedom of religion or belief

According to Article 36 of the Constitution,² 'citizens' are to enjoy the freedom of religious belief and that 'the state shall protect normal religious activities'. However, it does not define what 'normal religious activities' are, leaving it open for interpretation. The provision protects from coercion, stating that 'no state organ, social organization or individual shall coerce citizens to believe in or not to believe in any religion, nor shall they discriminate against citizens who believe in or do not believe in any religion.' It further states: 'No one shall use religion to engage in activities that disrupt public order, impair the health of citizens or interfere with the state's education system.' Article 36 states that 'religious groups and religious affairs shall not be subject to control by foreign forces', which may be read as limiting their ability to obtain foreign funding or to operate in China if their funding comes from abroad.

The scope of the protection of the right to freedom of religion or belief in the Constitution differs significantly from international law standards.³ Furthermore, the already limited right is further affected by the fact that the Preamble of the Constitution clearly states the document and the nation are to be 'under the leadership of the Communist Party of China and the guidance of Marxism–Leninism, Mao Zedong Thought, Deng Xiaoping Theory...'. However, the reference to Marxism–Leninism is in itself the opposite of religious freedom as Marxism–Leninism advocates atheism.

² Constitution of the People's Republic of China, 4 December 1982.

³ However, it is noteworthy that China is not a state party to the International Covenant on Civil and Political Rights: it signed in 1998, but has never ratified it.

This is as far as the protection of the right to freedom of religion or belief goes.⁴ Other laws and policies further undermine the already limited protections. These are discussed below.

1.2 The laws on religious regulations

Religion is highly regulated in China. For example, all religious groups are required to register with the relevant bodies. Establishing places of worship is subject to burdensome registration processes which may take a very long time. Without such registration, any meeting of an already registered religious organisation would be illegal and would trigger legal consequences, including a fine or even arrest. Furthermore, foreigners are not permitted to run religious organisations. This prohibition also applies to foreign funding. Members of religious groups are required by law to seek approval to travel abroad. Religious texts – including the Bible, Qur'an, and Buddhist and Taoist texts – must only be published if authorisation has been sought and granted. A failure to seek such authorisation may result in confiscation of the printed material and closure of the publishing houses. While religious groups are allowed to engage in charitable work, they are prohibited from proselytising when doing so (US Department of State 2019). According to the US Department of State's International Religious Freedom Report for 2019,

family and friends have the right to meet at home for worship, including prayer and Bible study, without registering with the government. A provision states, however, that religious organizations should report the establishment of a religious site to the government for approval.

(ibid.)

According to the same report, '[I]nmates have the right to believe in a religion and maintain their religious beliefs while in custody' (*ibid.*). However, this does not appear to apply to the Uyghurs in the so-called 're-education' camps.

⁴ As religion and ethnicity are often intricately connected, it is noteworthy that the Constitution prescribes protections for ethnic groups. For example, Article 4 of the Constitution states that:

All ethnic groups of the People's Republic of China are equal. The state shall protect the lawful rights and interests of all ethnic minorities and uphold and promote relations of equality, unity, mutual assistance and harmony among all ethnic groups. Discrimination against and oppression of any ethnic group are prohibited; any act that undermines the unity of ethnic groups or creates divisions among them is prohibited. The state shall, in light of the characteristics and needs of all ethnic minorities, assist all ethnic minority areas in accelerating their economic and cultural development... All ethnic groups shall have the freedom to use and develop their own spoken and written languages and to preserve or reform their own traditions and customs.

Article 2 of the Religious Affairs Regulations (Regulations) (as amended in 2017)⁵ (hereon the 2017 Regulations) states that citizens can enjoy the freedom of religious belief but that no organisation or individual may compel other citizens to believe in, or not to believe in, any religion. While the provisions appear not to have any practical implication for the enjoyment of the right, the empirical reality suggests otherwise. The concept of 'compelling' others may be abused to include scenarios where religious organisations provide humanitarian assistance, housing, or other support and such support is considered to be forcing or compelling others to convert.

Article 4 of the 2017 Regulations prescribes the limits of religious activities as confined by what fits into a socialist society:

The State, in accordance with the law, protects normal religious activities, actively guides religion to fit in with socialist society, and safeguards the lawful rights and interests of religious groups, religious schools, religious activity sites and religious citizens...

This may ultimately limit religious activities.

Article 63 of the 2017 Regulations prohibits a broad range of engagement in 'extremism', stating that:

Advocating, supporting, or funding religious extremism, or using religion to harm national security or public safety, undermine ethnic unity, divide the nation, or conduct terrorist activities and separatism or terrorist activities, infringing upon citizens' rights in their persons and democratic rights, impeding the administration of public order, or encroaching upon public or private property.

The 2017 Regulations prescribe that religious activity 'must not harm national security' or engage in 'religious extremism', without defining extremism. Article 64 indicates that:

Where there are situations in the course of large scale religious activities that endanger national security or public safety, or seriously undermine public order, the relevant departments are to handle it and give punishments in accordance with laws and regulations; where the primary organizing religious group, temple or church bears responsibility, the registration management organ shall order them to withdraw and change the principle

⁵ Available at: [Religious Affairs Regulations](#).

responsible person, and where circumstances are serious, the registration management organs are to revoke registration certificates.

Where large scale religious activities are organized without authorization, the religious affairs department together with the relevant departments are to order that the activities be stopped, and may give a concurrent fine of between 100,000 and 300,000 yuan; and where there are unlawful gains or illegal assets, confiscate them. Of these, where large scale religious activities are organized without authorization by religious groups or religious activity sites, the registration management organs may also order that religious group or religious activity site to withdraw and change the directly responsible management personnel.

The 2017 Regulations include registration requirements for schools that allow only the five state-sanctioned religious associations or their affiliates to form religious schools. The effect of such restrictive laws is religious inequalities manifested as discrimination, marginalisation, or persecution of religious groups, especially those that are not recognised by the state or considered to be extremists, as in the case of Uyghurs.

1.3 Criminal law limiting freedom of religion or belief

Article 300 of the People's Republic of China (PRC) Criminal Law criminalises 'organising and using cult organisations to obstruct the enforcement of laws'. Furthermore, as per the 2015 Amendment to the law:

Whoever forms or uses superstitious sects or secret societies or cult organizations or uses superstition to undermine the implementation of the laws and administrative rules and regulations of the state shall be sentenced to fixed-term imprisonment of not less than three years but not more than seven years and concurrently sentenced to a fine; if the circumstances are especially serious, he shall be sentenced to fixed-term imprisonment of not less than seven years or life imprisonment and concurrently sentenced to a fine or confiscation of property; if the circumstances are minor, he shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention, public surveillance or deprivation of political rights and concurrently or separately sentenced to a fine.⁶

⁶ Amendment IX to the PRC Criminal Law (adopted by the National People's Congress Standing Committee (NPCSC) on 29 August 2015, para. 33, in [English](#) and [archived in Chinese](#).

According to the joint judgment of China's Supreme People's Court and Supreme People's Procuratorate, for the purposes of the provisions, cults are

such organisations [that] are established under the disguise of religion, qigong or other names; such organisations deify or engage in advocacy propagandas of their ringleaders; and, such organisations enchant or deceive others, develop and control members, and cause social harm by producing or disseminating superstitions and heresies or by other means.⁷

Article 27 of the PRC Law on Penalties for Administration of Public Security states that:

A person who commits one of the following acts shall be detained for not less than 10 days but not more than 15 days and may, in addition, be fined not more than 1,000 yuan; and if the circumstances are relatively minor, he shall be detained for not less than 5 days but not more than 10 days and may, in addition, be fined not more than 500 yuan:

- (1) organising, instigating, coercing, inducing or inciting another person to engage in activities of cults, superstitious sects, or secret societies, or making use of cults, superstitious sects, secret societies, or superstitious activities to disturb social order and harm the health of another person; or
- (2) disturbing social order and harming the health of another person by masquerading under the name of religion or qigong.⁸

The criminal law bans certain religious or spiritual groups with punishment for membership in 'cult organisations' of up to life imprisonment. Similarly, the national security law bans 'cult organisations'. While the government recognises five religions – namely, Buddhism, Catholicism, Daoism, Islam, and Protestantism – and five religious associations that may legally organise worship services – the Buddhist Association of China (BAC), the Chinese Taoist Association, the Islamic Association of China (IAC), the Three Self Patriotic Movement Church (TSPM), and the Chinese Catholic Patriotic Association (CCPA) – the practice of any other faith is formally prohibited and other groups are not permitted to register as legal entities. The government continues to ban Falun Gong, the Guanyin Method religious group, Zhong Gong, as well as several Christian groups that it considers

⁷ Interpretations of the Supreme People's Court and the Supreme People's Procuratorate on Several Issues Concerning the Application of Law in Handling Criminal Cases of Organizing and Using Cult Organizations to Obstruct the Enforcement of Laws (effective 1 February 2017), [archived in Chinese](#).

⁸ PRC Law on Penalties for Administration of Public Security (adopted by the NPCSC on 28 August 2005, revised 26 October 2012, effective 1 January 2013) arts. 2 and 10, [archived in Chinese](#).

to be cults, including the Shouters, the Church of Almighty God, Society of Disciples, Full Scope Church, Spirit Sect, New Testament Church, Three Grades of Servants, Association of Disciples, Lord God religious group, Established King Church, the Family Federation for World Peace and Unification, Family of Love, and South China Church. However, local governments have the discretion to permit followers of certain unregistered religions to carry out religious practices.

1.4 The law on countering terrorism and ‘religious extremism’

The law on countering terrorism in China is wide-ranging. Among others, the counter-terrorism law on ‘religious extremism’ criminalises ‘distorted religious teachings or other means to incite hatred, or discrimination, or advocate violence.’⁹ Furthermore, certain regions and, especially, the Xinjiang Uyghur Autonomous Region, have their own law on the issue. The Xinjiang Uyghur Autonomous Region law not only aims to address terrorism, but also extremism in an overly broad understanding of the word. This law is discussed here as it has had a significant effect on the enjoyment of rights by religious minority groups, especially the Uyghur.

In October 2018, the Chinese Government introduced a law aimed at addressing extremism that may be seen as legalising the ‘re-education’ camps, the Xinjiang Uyghur Autonomous Region Deradicalisation Regulation (the Xinjiang Regulation).¹⁰ Article 3 of the Xinjiang Regulation defines extremism as the ‘expressions and behaviours that are influenced by extremism, rendering radical religious ideas, and rejecting and intervening in normal production and life’. Furthermore, ‘extremism... refers to the propositions and actions of inciting hatred, inciting discrimination, and advocating violence by distorting religious teachings or other means’. The definition contained in Article 3 is vague and it may incorporate any activities that differ from the ‘normal production and life’ in China. Relying on the concept of extremism has always been challenging, even in countries with decent human rights records. Yet in a country such as China under the Chinese Communist Party (CCP), with a poor human rights record, such laws can only lead to an increase in human rights abuses.

In Article 9, prohibited conduct includes activities to ‘promote and disseminate the idea of extremism’; ‘Intervening in normal cultural and recreational activities, rejecting public goods and services such as radio and television’; ‘Generalising the concept of halal, expanding the concept of halal to other fields outside the field of halal food, and rejecting

⁹ See: New Counter Extremism Law, available at: James Griffiths, ‘[China Mulls New Rules on Foreigners to “Prohibit Religious Extremism”](#)’, CNN, 26 November 2021.

¹⁰ See: [Xinjiang Uyghur Autonomous Region Deradicalisation Regulation](#) (in Chinese).

and interfering with the secular life of others by the name of the truth'; 'Not allowing children to receive national education and hinder the implementation of the national education system'; '[P]ublishing, printing, distributing, selling, producing, downloading, storing, copying, consulting, exchanging, holding articles, publications, audio and video containing extreme content'; 'Deliberately interfering with or undermining the implementation of the family planning policy'; and 'Other extreme speeches and behaviours'.

Even without the vague definition of extremism, the list of prohibited activities in Article 9 sets an incredibly dangerous precedent. However, once combined with the vague definition of extremism, the excessive list may be used to cover all aspects of life and activities that would otherwise be allowed in accordance with basic rights to freedom of expression, freedom of religion or belief, and especially, religious manifestation or the parental right to educate their children in accordance with parents' religious beliefs.

The law dealing with the concept of extremism is excessive. Virtually any activity could fall within the scope of the provisions and be subject to correction procedures. The Xinjiang Regulations have been used to justify the practices at the 're-education' centres.

The law also identifies what 'deradicalisation' may involve. Article 14 of the Xinjiang Regulations refers to the types of centres reported in the media and suggests that to combat extremism, it is crucial to:

combine individual education with vocational skills education and training centre education, combine legal education with helping education activities, ideological education, psychological counselling, behaviour correction and learning of national language, the combination of learning law, learning skills, educational transformation and humanistic care will enhance the effectiveness of educational transformation.

In accordance with Article 33 of the Xinjiang Regulations:

Educational performance training institutions such as vocational skill education and training centres shall carry out national common language writing, laws and regulations, and vocational skills education and training, organise and carry out extremist ideological education, psychological correction, behaviour correction, and promote the thinking of educated and trained personnel. Transform, return to society, return to the family.

However, as it will be shown in subsequent sections, the treatment in the camps went further than the questionable ‘deradicalisation’ practices prescribed under the controversial Xinjiang Regulations.

These laws have been used within the narrative of addressing radicalisation among the Uyghur communities; linked to some civil unrest, however, they have been employed to target all Uyghur populations with no suggestion that any of them have been radicalised or pose a threat. The ‘re-education’ camps are justified through this narrative of countering extremism, while specifically targeting religious practices and beliefs of the predominately Muslim Uyghurs. The camps and the 2018 counter-extremism laws followed the wide-ranging campaign, the ‘Strike Hard Campaign against Violent Terrorism’ introduced by the Chinese Government in Xinjiang in May 2014 (Human Rights Watch 2018b), manifesting a significant progression from the focus on violent terrorism to broadly defined extremism.

2 From religious inequalities to atrocity crimes

Section 1 outlined not only the laws accommodating religious inequalities but also their progressions and abuse to address the issue of ‘religious extremism’ that ultimately have been used to justify the incarceration of over a million people. Apart from the limits on the enjoyment of the right to freedom of religion or belief as per the above-discussed laws, the laws have been abused to subject the Uyghurs to treatment that reaches the threshold of atrocity crimes, including genocide. This section discusses some of the evidence of the atrocities against Uyghur Muslims in China. It is noteworthy that despite several reports on the dire situation in China, there has been no UN inquiry into the atrocities. This section relies on evidence gathered by journalists, researchers, and non-governmental organisations (NGOs) that has been analysed by lawyers and legal experts. There is an urgent need to establish a mechanism to collect and preserve the evidence in a form that would be admissible in courts in the future.

2.1 The situation of Uyghurs in Xinjiang

This section discusses some of the evidence of atrocities perpetrated against the Uyghurs, including forced incarceration in the so-called ‘re-education’ camps, modern-day slavery, forced sterilisations and forced abortions, and the destruction of places of worship.

2.1.1 Mass incarcerations in the 're-education' camps

In October 2018, several news outlets reported that Muslims in China were being detained for 're-education' purposes (Denyer 2018). The reports suggested that China was participating in the practice of forced conversion whereby Muslims, among other things, are forced to 'eat pork and drink alcohol' (Shih and Kang 2018). The same year, Marco Rubio and Chris Smith alleged that between 500,000 and a million people are or have been detained in the 're-education' camps in China's Xinjiang Uyghur Autonomous Region (Congressional-Executive Commission on China 2018). They further alleged that this practice of 're-education' is the largest mass incarceration of a minority population in the world today:

Thousands are being held for months at a time and subjected to political indoctrination sessions. Many have reportedly been detained for praying, wearing 'Islamic' clothing, or having foreign connections, such as previous travel abroad or relatives living in another country. Reports have emerged of the deaths of detainees in these centres, including the death of a well-known Muslim religious scholar who may have been held in such a facility, and there are reports that torture and other human rights abuses are occurring in overcrowded centres secured by guard towers, barbed wire, and high walls.

(ibid.)

These allegations were followed by an ever-growing number of reports of torture and inhuman and degrading treatment and punishment in camps (Denyer 2018; Shih 2018; Yeung, Bozorgmir and Yu 2019), as well as the use of rape and sexual violence (Rahim 2019). Indeed, according to a BBC investigation, '[W]omen in China's "re-education" camps for Uyghurs have been systematically raped, sexually abused, and tortured' (Hill, Campanale and Gunter 2021). Hill *et al.*'s reporting included testimonies of victims of gang rape.

Initially, the Chinese Government denied the existence of such 're-education' camps; however, it subsequently confirmed that they do exist and even opened them to a few journalists for scheduled and supervised visits.

Despite Chinese Government claims that all those held in the 're-education' camps have now 'graduated', recent reports suggest that the practice is likely to continue. According to a 2020 report published by the Australian Strategic Policy Institute (ASPI), between July 2019 and July 2020, at least 61 suspected detention facilities have shown signs of new construction (Ruser 2020). The latest satellite imagery suggests that this includes at least 14 facilities that remained under construction in 2020 (*ibid.*). Approximately 50 per cent of

these are higher security facilities. According to the report, this may suggest a shift in the camp's usage from lower-security 're-education' centres to higher-security prison-style facilities. In addition, satellite imagery indicates at least 70 facilities appear to have had internal fencing or perimeter walls removed, and that eight camps have possibly been closed. The report also says that 90 per cent of the desecuritized camps were lower-security facilities (*ibid.*).

These recently published data raise fresh concerns about whether the new suspected detention facilities will be used to incarcerate Uyghur Muslims, a persecuted religious minority group in China. According to recent allegations, an estimated one million (if not more) Uyghur Muslims were detained by China in the 're-education' camps, which are designed to strip individuals of their religious and ethnic identity and to replace it with absolute loyalty to the state.

2.1.2 Human trafficking and forced labour

Allegations of modern-day slavery of Uyghurs span across several years, and especially in relation to those formerly held at the 're-education' camps. In 2018, Ramzy and Buckley reported that 'mounting evidence suggests a system of forced labour is emerging from the camps, a development likely to intensify international condemnation of China's drastic efforts to control and indoctrinate a Muslim ethnic minority population of more than 12 million in Xinjiang' (Ramzy and Buckley 2018). In 2019, the Center for Strategic and International Studies (CSIS) estimated that 'at least 100,000 ex-detainees in Xinjiang would be working potentially in conditions of forced labour' (Lehr and Bechrakis 2019: 8). It added that 'the percentage of ex-detainees in forced labour may have increased since 2018, considering the Chinese Government's July 2019 public announcement that it is releasing more Uyghurs from "re-education centers" into the workforce' (*ibid.*: 8).

According to the *Uyghurs For Sale* report published by ASPI, between 2017 and 2019, the Chinese Government facilitated the transfer of Uyghur Muslims and other ethnic minorities from Xinjiang to factories in various parts of China (Xu *et al.* 2020). The report says that there are strong indications that some 80,000 Uyghurs have been forced to work in factories that form part of the supply chains of at least 82 global brands including: Abercrombie & Fitch, Acer, Adidas, Amazon, Apple, ASUS, BMW, Bosch, Calvin Klein, Carter's, Cerruti 1881, Dell, Electrolux, Fila, Gap, General Electric, General Motors, Google, H&M, Mitsubishi, Mitsumi, Nike, Nintendo, Nokia, The North Face, Panasonic, Polo Ralph Lauren, Puma, Samsung, Sharp, Siemens, Skechers, Sony, Tommy Hilfiger, Toshiba, Uniqlo, Victoria's Secret, Volkswagen, and Zara. Among the International Labour Organization (ILO) forced labour indicators, the report identified the following factors as relevant for the case of the Uyghur Muslims:

- Being subjected to intimidation and threats, such as the threat of arbitrary detention, and being monitored by security personnel and digital surveillance tools;
- Being placed in a position of dependency and vulnerability, such as by threats to family members back in Xinjiang;
- Having the freedom of movement restricted, such as by fenced-in factories and high-tech surveillance;
- Isolation, such as living in segregated dormitories and being transported in dedicated trains;
- Abusive working conditions, such as political indoctrination, police guard posts in factories, 'military-style' management, and a ban on religious practices;
- Excessive hours, such as after-work Mandarin language classes and political indoctrination sessions that are part of job assignments.

(*ibid.*: 6)

The *Uyghurs For Sale* report includes a few case studies, one of which alleges that in January 2020, around 600 ethnic minority workers from Xinjiang were employed at Qingdao Taekwang Shoes Co. Ltd., making Nike sneakers:

At the factory, the Uyghur labourers make Nike shoes during the day. In the evening, they attend a night school where they study Mandarin, sing the Chinese national anthem and receive 'vocational training' and 'patriotic education.' The curriculum closely mirrors that of Xinjiang's 're-education camps.'

(*ibid.*: 8)

In December 2020, a report written by Adrian Zenz and published by the Center for Global Policy titled *Coercive Labor in Xinjiang: Labor Transfer and the Mobilization of Ethnic Minorities to Pick Cotton* concluded that:

the evidence shows that in 2018, three Uyghur regions alone mobilised at least 570,000 persons into cotton-picking operations through the government's coercive labour training and transfer scheme. Xinjiang's total labour transfer of ethnic minorities into cotton-picking likely exceeds that figure by several hundred thousand.

(Zenz 2020b: 3)

The Chinese Government's official position was that upon 'graduating' from camps, Uyghurs find 'employment' (*ibid.*). Human trafficking and forced labour were strongly denied by the Chinese Government.

2.1.3 Forced sterilisations and forced abortions

The issue of forced sterilisations and forced abortions was widely reported by media outlets throughout 2020. For example:

[T]he Chinese government is taking draconian measures to slash birth rates among Uyghurs and other minorities as part of a sweeping campaign to curb its Muslim population, even as it encourages some of the country's Han majority to have more children.

(Associated Press 2020)

It added that 'the campaign over the past four years in the far west region of Xinjiang is leading to what some experts are calling a form of "demographic genocide"' (*ibid.*). ITV News reported the testimony of a former doctor who participated 'in at least 500 to 600 operations on Uyghur women including forced contraception, forced abortion, forced sterilisation and forced removal of wombs [...] on at least one occasion a baby was still moving when it was discarded into the rubbish...' (Murphy 2020).

In 2020, a comprehensive report on the issue by China expert Adrian Zenz was published suggesting that Uyghur Muslims women have been subjected to forced sterilisation that has significantly affected births within the persecuted minority group:

Natural population growth in Xinjiang's minority regions declined dramatically since 2017. Growth rates fell by 84 percent in the two largest Uyghur prefectures between 2015 and 2018, and declined further in several minority regions in 2019. For 2020, one Uyghur region set a near-zero birth rate target of 1.05 per mille.

(Zenz 2020d)

The research suggests that

Documents reveal a targeted campaign of promoting 'free' birth prevention surgeries and services in southern Xinjiang's rural minority regions starting in 2019, with two counties publishing targets for sterilizing up to 34 percent of all rural females of reproductive age in 2019 alone.

(*ibid.*)

Furthermore, the report identifies that

By 2019, Xinjiang planned to subject at least 80 percent of women of childbearing age in the rural southern four minority prefectures to intrusive birth prevention surgeries (IUDs or sterilizations). In 2018, 80 percent of all net added IUD placements in China (calculated as placements minus removals) were performed in Xinjiang (the region only makes up 1.8 percent of the nation's population).

(ibid.)

Such practices would have a significant effect upon the group, as they would ultimately reduce and/or prevent births within the group.

2.1.4 The destruction of places of worship

According to ASPI, mosques across Xinjiang are being destroyed:

We located and analysed a sample of 533 mosques across Xinjiang, including 129 from Urumqi. Of those mosques, 170 were destroyed (31.9%), 175 were damaged (32.8%) and 188 remained undamaged (35.3%). Of the 404 mosques we sampled in other parts of Xinjiang, 148 were destroyed (36.6%), 152 were damaged (37.6%) and 104 were undamaged (25.8%). (Ruser, Leibold, Munro and Hoja 2020)

ASPI further indicates that 'across [Xinjiang] approximately 16,000 mosques have been damaged or destroyed and 8,450 have been entirely demolished. The 95% confidence range of our regional findings is $\pm 4\%$ for the estimates of demolished, destroyed and undamaged mosque numbers' *(ibid.)*

APSI suggests that

the Chinese Government's destruction of cultural heritage aims to erase, replace and rewrite what it means to be Uyghur and to live in the [Xinjiang]. The state is intentionally recasting its Turkic and Muslim minorities in the image of the Han centre for the purposes of control, domination and profit.

(ibid.)

This is not the first allegation of this sort. Indeed, in the last few months, media reporting has suggested that state-authorized destruction of churches and other places of worship has taken place across China. The allegations continue to be denied.

The destruction of places of worship is a fundamental violation of human rights that cannot and should not be ignored. Indeed, places of worship are an essential part of the right to freedom of religion or belief, enabling some form of religious manifestation. The new wave of destructions of mosques in China is not irrelevant when we consider the ever-

growing evidence of atrocities against Uyghur Muslims in the country. Whilst Uyghur persecution in detention centres has not been openly carried out and has therefore too often received the benefit of the doubt, the very visible destruction of mosques in China cannot be disregarded.

2.2 The situation of other religious groups

Although the main focus of this paper is the situation of Uyghurs in China, it is noteworthy that other religious or belief minorities in China are also subjected to discrimination, marginalisation, and persecution because of their religion or belief. This section briefly considers the situation of Falun Gong practitioners and some Christian minorities in the country. This adds to the argument that religious inequalities are a significant factor in the atrocities.

In June 2019, the Independent Tribunal into Forced Organ Harvesting from Prisoners of Conscience in China, a people's tribunal and known as the China Tribunal, released a summary of its assessment of the situation of Falun Gong practitioners in China. The China Tribunal was convened by activists in response to worldwide accusations of forced organ harvesting in China. While the judgment has no legal authority, it was the first time that the allegations of organ harvesting were considered by an independent body.

Forced organ harvesting has been committed for years throughout China on a significant scale and that Falun Gong practitioners have been one – and probably the main – source of organ supply. The concerted persecution and medical testing of the Uyghurs is more recent and it may be that evidence of forced organ harvesting of this group may emerge in due course. The Tribunal has had no evidence that the significant infrastructure associated with China's transplantation industry has been dismantled and absent a satisfactory explanation as to the source of readily available organs concludes that forced organ harvesting continues till today.

(China Tribunal 2019)

The Tribunal is also satisfied beyond reasonable doubt that one or more of the following acts have been committed on Falun Gong practitioners and Uyghurs in the PRC: murder; extermination; imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; torture; rape or any other form of sexual violence of comparable gravity; persecution on racial, national, ethnic, cultural or religious grounds that are universally recognised as impermissible under international law; and enforced disappearance.

(China Tribunal 2020: para. 480)

When analysing the crime of genocide, the China Tribunal recognised that Falun Gong and Uyghurs were specifically targeted groups and that the atrocities perpetrated fall within the scope of Article II of the UN Convention on the Prevention and Punishment of the Crime of Genocide (the Genocide Convention). Yet, ultimately, the China Tribunal was not able to establish the specific intent to destroy a protected group in whole or in part (an element required for the crime of genocide). Despite having identified ‘the intention of eliminating the Falun Gong as enunciated by General Secretary Jiang Zemin to the Political Bureau of the Central Committee of the CCP on 7 June 1999’ and the ‘development of the market for organ transplant surgery, with its huge money-making potential’, it was deemed that this was not enough to recognise the specific intent to destroy the protected groups (China Tribunal 2020: para. 474). The judgment records:

some practitioners of Falun Gong, and some Uyghurs who, while having suffered arrest and detention, were nonetheless released notwithstanding that they had made, at least with respect to the Falun Gong, no promise nor given any undertaking to cease the practice of Falun Gong.
(*ibid.*: para. 475)

The China Tribunal noted that ‘the intention to forcefully harvest the organs for the sake of profit is not the same as an intention to forcefully harvest the organs to bring about the physical or biological destruction in part or in whole of a protected group’ (*ibid.*: para. 100). The China Tribunal considered whether the evidence would support the recognition of the specific intent to destroy the group in part, but due to a lack of sufficient evidence, decided against this determination.

It is noteworthy that the head of the China Tribunal, Sir Geoffrey Nice QC, will be leading an inquiry into the situation of Uyghurs and, as such, will obtain further evidence and examine the existing evidence of the atrocities against the Uyghurs.

Christians have also been subjected to various methods of discrimination and persecution in China. The treatment complained of includes the closures of churches, the ban on the sale of Bibles online, the removal of crosses, and the arrest of priests and worshippers. Reportedly, there are plans to ‘contextualise’ the Bible to make it more ‘culturally acceptable’ and Christian preaching is to be adapted to include the core values of socialism (Open Doors 2021). However, the treatment of other religious minorities differs significantly. Nonetheless, their situation may deteriorate. Indeed, in countries where one religious minority is persecuted, it is likely that other religious minorities are or will be persecuted as well. For now, the situation of Christians has not been subject to an independent inquiry, contrary to the situation of Falun Gong practitioners.

Other religious groups are subject to discrimination, harassment, and persecution, for example the Tibetan Buddhists. The situation of all religious minorities requires full and comprehensive review and consideration to ensure that the responses address the issues at stake. The situation of other religious groups is only briefly mentioned here and is not intended to be a comprehensive overview.

3 The risk of genocide

The above-discussed reports on alleged atrocities against the Uyghurs, which derive from and flourishes in religious discrimination, marginalisation, and persecution, can easily translate into the elements of international crimes, including genocide under the UN Convention on the Prevention and Punishment of the Crime of Genocide (the Genocide Convention). Indeed, in early 2021, the Trump Administration determined the atrocities to amount to genocide and crimes against humanity (US Department of State 2021). This was followed by similar formal recognitions made by the Canadian and Dutch parliaments.¹¹ In early 2021, Essex Court Chambers and Newlines Institute for Strategy and Policy published expert legal analyses on the issue, both arguing that the atrocities against Uyghurs amount to genocide (and crimes against humanity).

The crime of genocide has a precise legal definition in Article II of the Genocide Convention:

[G]enocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (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.

For the atrocities to be classified as genocide, the atrocities must not only target a protected group but also aim at the annihilation of the group in whole or in part. Where such specific intent to destroy the protected group in whole or in part is not present, we

¹¹ Canadian Parliament, 23 February 2021; Dutch Parliament, 25 February 2021.

may still be able to talk about crimes against humanity. These would have to be considered against the legal elements identified in Article 7 of the Rome Statute of the International Criminal Court (2011). The analysis of experts from Essex Court Chambers states that the legal definitions of genocide and crimes against humanity are present, while the analysis published by the Newlines Institute for Strategy and Policy, and produced by over 50 legal experts, made a finding of elements of the legal definition of genocide.

While there is a growing body of legal analyses making the argument that the atrocities against the Uyghurs amount to genocide, notably, the duty to prevent genocide, under Article I of the Genocide Convention, is to be triggered much earlier and before genocide is being **committed**. As the International Court of Justice (ICJ) clarified:

a State's obligation to prevent, and the corresponding duty to act, arise at the instant that the State learns of, or should normally have learned of, the existence of a serious risk that genocide will be committed. From that moment onwards, if the State has available to it means likely to have a deterrent effect on those suspected of preparing genocide, or reasonably suspected of harbouring specific intent (*dolus specialis*), it is under a duty to make such use of these means as the circumstances permit.¹²

As such, it is the serious risk of genocide that is the trigger point for the duty to prevent. To assess the risk factors of genocide, the following analysis relies on two frameworks: the UN Framework of Analysis for Atrocity Crimes and the Jacob Blaustein Institute for the Advancement of Human Rights Compilation of Risk Factors and Legal Norms for the Prevention of Genocide. The analysis considers the most important risk factors referring to some of the evidence currently available. It is crucial to emphasise that it considers all the evidence available to date, retrospectively. However, not all this evidence was available at earlier stages to enable the analysis of the serious risk of genocide. As such, apart from the analysis that follows, one would need to consider the earliest time at which one should be able to identify the serious risk of genocide, based on the available evidence.

3.1 The UN Framework of Analysis for Atrocity Crimes

The 2014 UN Framework of Analysis for Atrocity Crimes contains a list of 14 risk factors for atrocity crimes and several indicators for each of the risk factors (United Nations 2014). Among them, two are specific to the crime of genocide: risk factors 9 and 10. While all the

¹² ICJ, *Bosnia and Herzegovina v Serbia and Montenegro*, Judgment, 27 February 2007.

risk factors are of importance and should be analysed accordingly, the following considers only these two risk factors that differentiate genocide from other atrocity crimes.

Risk factor 9 relates to intergroup tensions or patterns of discrimination against protected groups.

9.1 Past or present serious discriminatory, segregational, restrictive or exclusionary practices, policies or legislation against protected groups.

The forcible incarceration of whole Uyghur communities in the ‘re-education’ camps constitutes serious discriminatory, segregational, restrictive, and exclusionary practice. This practice is directed at Uyghur communities only as these communities are considered as extremists requiring deradicalisation.¹³ This practice is also regulated in the Xinjiang Regulations.

9.2 Denial of the existence of protected groups or of recognition of elements of their identity.

The ‘re-education’ camps are designed around the aim of stripping the incarcerated Uyghurs of their religious and ethnic identity.¹⁴

9.3 History of atrocity crimes committed with impunity against protected groups.

There is a history of impunity for atrocity crimes in China. The issue of impunity does not only refer to the recent atrocities but also to historic atrocities.

9.4 Past or present serious tensions or conflicts between protected groups or with the State, with regards [sic.] to access to rights and resources, socioeconomic disparities, participation in decision-making processes, security, expressions of group identity or to perceptions about the targeted group.

There have been some tensions between the state and Uyghurs in the past.¹⁵ This argument has been used to justify restrictive laws and excessive and disproportionate practices targeting whole Uyghur communities in the region.

¹³ See for example: Hoshur (2017, 2018); Haitiwaji and Morgat (2021); Ramzy and Buckley (2019); Shih (2018); Rahim (2019); Yeung, Bozorgmir and Yu (2019).

¹⁴ See: Stubbley (2019); Smith Finley (2019); Zenz (2020c); UHRP (2020).

¹⁵ RFA (2018); Reuters (2019); Ramzy and Buckley (2019).

9.6 Lack of national mechanisms or initiatives to deal with identity-based tensions or conflict.

There are no, or no effective, mechanisms in China that could deal with the issue of identity-based persecution of the Uyghurs. This is of particular concern as the atrocities are said to be authorised by or permitted by the state.

Risk factor 10 deals with signs of an intent to destroy in whole or in part a protected group. These include:

10.1 Official documents, political manifests, media records, or any other documentation through which a direct intent, or incitement, to target a protected group is revealed or can be inferred in a way that the implicit message could reasonably lead to acts of destruction against that group.

In 2019, the *New York Times* published details drawn from over 400 pages of Chinese internal documents that provided inside information about the crackdown on minorities in the Xinjiang region and suggest direct intent to destroy (Ramzy and Buckley 2019). These leaked documents revealed, among others, how Mr Xi envisioned the changes in Xinjiang:

Ensuring stability in Xinjiang would require a sweeping campaign of surveillance and intelligence gathering to root out resistance in Uighur society, Mr. Xi argued.

He said new technology must be part of the solution, foreshadowing the party's deployment of facial recognition, genetic testing and big data in Xinjiang.

The only suggestion in these speeches that Mr. Xi envisioned the internment camps now at the heart of the crackdown was an endorsement of more intense indoctrination programs in Xinjiang's prisons.

'There must be effective educational remolding and transformation of criminals,' he told officials in southern Xinjiang on the second day of his trip. 'And even after these people are released, their education and transformation must continue.'

(ibid.)

10.2 Targeted physical elimination, rapid or gradual, of members of a protected group, including only selected parts of it, which could bring about the destruction of the group.

While there have been some reports of targeted killings, the issue (and especially the scale) would need to be explored further.¹⁶

10.3 Widespread or systematic discriminatory or targeted practices or violence against the lives, freedom or physical and moral integrity of a protected group, even if not yet reaching the level of elimination.

While the evidence of mass killings is yet to be collected, there is clear evidence of widespread or systematic discriminatory or targeted practices or violence against the lives, freedom, or physical and moral integrity of the Uyghurs in Xinjiang. This includes widespread or systematic use of torture (Shih 2018; Denyer 2018; Schmitz 2018; Chao 2019), rape, and sexual violence (Rahim 2019; Perper 2019; Hill *et al.* 2021).

10.4 Development of policies or measures that seriously affect the reproductive rights of women or that contemplate the separation or forcible transfer of children belonging to protected groups.

As the report by Adrian Zenz, discussed above, suggests, the forced sterilisations and forced abortions were imposed upon Uyghur women as a matter of policy (Zenz 2020d).

10.5 Resort to methods or practices of violence that are particularly harmful against or that dehumanize a protected group, that reveal an intention to cause humiliation, fear or terror to fragment the group, or that reveal an intention to change its identity.

The 're-education' camps and the torture, inhuman and degrading treatment, forced labour etc., associated with them constitute methods or practices of violence that are particularly harmful against or that dehumanise the Uyghurs (Buckley 2018; Byler 2021).

This brief analysis suggests that there are factors indicative of genocidal atrocities. Further evidence will need to be collected and analysed to present a more comprehensive picture of the situation.

3.2 The Jacob Blaustein Institute's framework

The 2011 Compilation of Risk Factors and Legal Norms for the Prevention of Genocide (the Compilation), developed by the Jacob Blaustein Institute for the Advancement of Human Rights (JBI) in cooperation with the Office of the Special Adviser for the Prevention of Genocide, United Nations, identifies 22 risk factors specific to genocide under two

¹⁶ See: Hoshur (2019); (Hoja 2018a, 2018b); Sintash and UHRP (2019); Smith Finley (2020).

subgroups: (1) discrimination-related risk factors; and (2) risk factors related to violations of the right to life and personal integrity.

Having examined the available evidence, the following considers the risk factors of genocide.

The relevant **discrimination-related factors** are visible:

- *The existence of a state policy of segregation targeting members of the group.*

Chinese authorities have been separating Uyghurs into the ‘re-education’ camps where they would be segregated from the outside world and their homes, families, and culture.¹⁷

- *The systematic denial of or severe restrictions on access to education.*

While the Uyghurs have not been denied access to education *per se* by way of being incarcerated in the ‘re-education’ camps, they have been forcibly educated in accordance with the specially prepared curriculum, and as such, prevented access to the education of their choice (Jacobs 2014; Byler 2018; Shepherd and Pitel 2020; Roberts 2020; Smith Finley and Klimeš 2020).

- *The systematic denial of or severe restrictions on access to health care.*

Again, the Uyghurs may not be denied access to health care *per se*; they have been granted access to health care but only as far as allowed by the Chinese authorities. This includes being subjected to forced medical procedures, including forced abortions, forced sterilisations, etc.¹⁸

- *The systematic denial of or severe restrictions on the right to freedom of movement.*

Placing the Uyghurs in detention centres means that they are ultimately severely limited in their right to movement. Uyghurs are not allowed to leave detention centres.¹⁹

- *Compulsory identification of members of a particular group against their will.*

Chen Quanguo, the current party chairman in Xinjiang, has been implementing this digital policing of the people of Xinjiang using the integrated joint operations platform (IJOP). The IJOP is a centralised data system that stores data about all residents of Xinjiang. People in

¹⁷ See: Risk factor 9.1 (above).

¹⁸ See: Risk factor 10.4 (above).

¹⁹ See: Risk factor 9.1 (above).

Xinjiang are asked to use an app connected to the IJOP and provide not only personal information such as their political views and communications with individuals abroad, but also their height, blood type, and whether they use birth control.²⁰

- *The severe and systematic demonization of a particular group by the state or nonstate actors with a view to inciting persecution and violence.*

This demonisation is done by branding the whole population of Uyghurs as extremists requiring incarceration and strict 're-education' before they can live within society. Calling them terrorists, separatists, and extremists is a means to demonise them (Smith Finley 2020; Roberts 2020).

- *The systematic denial or severe restrictions against members of a particular group on the right to enjoy their own culture, to profess and practice their own religion, or to use their own language.*

The 're-education' camps aim to strip the Uyghurs of their culture and religion and replace them with the undivided loyalty to the CCP at the exclusion of religion and culture (Ramzy 2019).

- *The systematic destruction of cultural, religious, and sacred sites.*

Reports suggest that Chinese authorities have been closing and destroying mosques in Xinjiang (Ruser *et al.* 2020).

- *Documentary evidence of a state policy demonstrating intent to destroy in whole or in part a particular group.*

As explained above, there is evidence to suggest the specific intent to destroy.²¹

Among the risk factors related to **violations of the right to life and personal integrity**:

- *The systematic subjection of members of a particular group to forced labour.*

Reports suggest that many Uyghur Muslims have been transferred from the 're-education' camps to factories where they would be subjected to forced labour.²²

- *The systematic forcible transfer of children of a particular group from their families.*

²⁰ See for example: Harris (2019).

²¹ See for example: Ramzy and Buckley (2019).

²² See: Section 3.1.ii (above).

There is some evidence of such forcible transfer of Uyghur children (Associated Press 2018; Human Rights Watch 2018a, 2019; Qin 2019; Smith Finley and Klimeš 2020).

- *The systematic forced marriage of women, enforced sterilization, forced pregnancy, the prevention of births of children from a particular group.*

As discussed above, there is evidence of enforced sterilisation and forced abortions of Uyghur women.

- *The systematic arbitrary detention of members of a particular group.*

Uyghur Muslims have been detained in the 're-education' camps. As there is evidence to suggest that Chinese authorities are building further camps, this practice will likely continue and on an even larger scale.

- *Systematic torture of members of a particular group on the basis of their membership in such a group.*

There is evidence to suggest that Uyghurs in the 're-education' camps have been subjected to torture and abuse.

- *The systematic use of rape and sexual violence, including the incitement thereof, targeting members of a particular group.*

There is some evidence on the issue, but further proof would need to be obtained.²³

- *The systematic forcible transfer from their habitual place of residence of members of a particular group.*

The very act of moving whole Uyghur communities to the 're-education' camps constitutes an act of systematic forcible transfer from their habitual place of residence.²⁴

- *The systematic killing of members of a particular group.*

There is some evidence of such killings. Further evidence may need to be collected.²⁵

The above shows that even based on the evidence currently available it is possible to identify some risk factors of genocide. This should trigger the duty to prevent and instigate relevant actions from the international community. Most importantly, based on the

²³ See for example: Hill *et al.* (2021).

²⁴ See for example: Ramzy and Buckley (2019).

²⁵ See: Risk factor 10.2 (above).

available evidence, it would be crucial to analyse when was the earliest time that states knew or should have known of the serious risk of genocide. This is because once genocide occurs, states that knew of or should have known of the serious risk of genocide, will be deemed to be in breach of their duties under the Genocide Convention and could be held to account.

4 Conclusion

This paper highlights the elements of religious inequalities, whether in the form of discrimination, marginalisation, or persecution, as visible in the law and how they have progressed to atrocities that manifest as clear risk factors or indeed elements of genocide under Article II of the Genocide Convention.

The same risk factors that have been used to identify the probability or possibility of genocide to occur should be used to identify situations where such religious inequalities can turn atrocity crimes into genocide.

The question that needs to be asked is: **How should religious inequalities and risk factors be used to mitigate any risk and ultimately prevent genocide?** The following recommendations should help with this endeavour:

- 1) Introduce comprehensive mechanisms for the monitoring of early warning signs, with a specific focus on risk factors of genocide (against the two frameworks discussed in this paper – see Section 3).
- 2) Analyse the serious risk of genocide that should be used to trigger the duty to prevent.
- 3) Determine the atrocities for what they are, reflective of their nature and severity.
- 4) Introduce informed comprehensive responses to the atrocities, in line with the duty to prevent genocide.

Disclaimer

This paper was written at the end of 2020, briefly updated in early 2021, and subsequently there has been more and more evidence coming to light. Furthermore, several Parliaments have recognised the atrocities as amounting to genocide. The analysis of early warning

signs should be the bare minimum that states undertake to assess the risk of genocide and trigger their duty to prevent, as per the 2007 judgment of the International Court of Justice. Understanding early warning signs and their co-relation with religious inequalities could be used to identify situations where atrocity crimes such as genocide can be perpetrated.

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