

# RE-EDUCATION CAMPS IN XINJIANG PROVINCE: HUMAN RIGHTS VIOLATIONS AGAINST THE UIGHURS

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## ARTÍCULO

### **Abstract**

Since 2017, the Chinese government has created the ‘re-education camps’ in the Xinjiang province which allegedly serve the purpose of re-educating extremist groups and reducing terrorism. However, satellite images have revealed that new camps have been built since the initial discovery, and new levels of security have been included. Testimonies from Uighurs who resided in the province and escaped indicate that the camps in question are used to cleanse the region of the Uighur and muslim ethnic minority, whilst in violation of provisions of the constitution and several international conventions. This article explores the history of the region and its importance for the Chinese economy while examining various articles of the Chinese Constitution and several International Conventions that are violated in the re-education camps.

### **Resumen**

Desde el 2017 el gobierno chino ha establecido lo que hace llamar campamentos de re-educación. Dichos campamentos, alega el gobierno, sirven para re-educar grupos extremistas y terroristas. Sin embargo, imágenes satelitales han revelado que la cantidad de campamentos ha ido en aumento, así como las distintas medidas de seguridad implementadas en los mismos. Declaraciones de Uighurs que han residido en la provincia y escapado, indican que los campamentos se están utilizando como herramienta para la depuración étnica, dichas acciones en violación de artículos constitucionales y convenciones internacionales.

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Este artículo estudia la historia de la región y su importancia económica para China. Mientras que examina varios artículos de la Constitución China y distintas Convenciones Internacionales que se encuentran violentadas por las actividades llevadas a cabo en estos campamentos.

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## I. Introduction

In the far western Chinese region of Xinjiang, we are seeing what would be the “largest mass arbitrary detention since the second world war, with estimates of about 1 million individuals... held against their will.”<sup>1</sup> Multiple reports indicate that in these facilities, people are being mistreated, tortured and are designed to eliminate the ethnic identity of the Uighurs and other Muslim minorities from the region.<sup>2</sup> The people taken to the camps are being held arbitrarily, and the reasons for detainment span from sending text messages with Quranic quotes to having family abroad.<sup>3</sup> Until, December 2020, research from the Australian Strategic Policy Institute (ASPI) revealed that at least 380 detention centers have been established across the region.<sup>4</sup>

<sup>1</sup> Peter Irwin, Op.-Ed., *The world needs to pressure China over the plight of the Uighurs*, THE GUARDIAN, Jul. 05, 2019, <https://www.theguardian.com/commentisfree/2019/jul/05/china-plight-ughurs-xinjiang-beijing-muslim> (last visited, Jun. 12, 2021).

<sup>2</sup> *Id.*

<sup>3</sup> HUMAN RIGHTS WATCH, “ERADICATING IDEOLOGICAL VIRUSES” CHINA’S CAMPAIGN OF REPRESSION AGAINST XINJIANG’S MUSLIMS 75 (2018).

<sup>4</sup> Emma Graham-Harrison, *China has built 380 internment camps in Xinjiang, study finds*, THE GUARDIAN, Sept. 23, 2020, <https://www.theguardian.com/world/2020/sep/24/china-has-built-380-internment-camps-in-xinjiang-study-finds>.

The government has taken a diversity of surveillance options for the citizens of Xinjiang, such as mass DNA collection, and other biometric data, street checkpoints where citizen's phones are inspected, and an app that shares and collects the information of citizens for the immediate knowledge of police offices and detection of unusual patterns in a person's behavior.<sup>5</sup>

These actions started around 2017; however, the problem has been slowly building up to the events of 2017, which alerted the international community of what was happening in the province. This article will analyze the historical background of the province and what led up to the creation of the camps, the testimonies on the functioning of the camps, and an analysis of the situation of children whose parents have been sent to the camps or have had to flee the country. Lastly, the article will analyze the treaties and the Chinese constitution that apply to the violations occurring in the re-education camps in Xinjiang.

## II. Historical Background

Before discussing the current development of mass surveillance, mass incarceration, and the recent allegations of forced labor in the region of Xinjiang, we must first understand how the region has been historically treated, particularly how the Uighur ethnic group is perceived.

Xinjiang is a Chinese province in the far west of the country that fell under Chinese rule in the 18<sup>th</sup> Century.<sup>6</sup> Most of the Uighurs are Muslim, and their language is related to Turkish.<sup>7</sup> They are ethnically close to Central Asian Nations and do not consider themselves Chinese.<sup>8</sup> In the 1990s, with the fall of the Soviet Union and the creation of independent Muslim states in Central Asia, open support for separatist groups increased, but Beijing suppressed the demonstrations.<sup>9</sup> Things escalated in 2009, with "large-scale ethnic rioting in the regional capital, Urumqi," according to officials, around 200 people were killed.<sup>10</sup> Since the riots of 2009 created a shift in the tensions in the region and anti-Chinese attacks increased, Uighurs extremist movements acknowledged making attacks using bombs. As a response to these attacks, the Chinese government deployed their armed forces and sent Chinese settlers who get the best

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<sup>5</sup> See Peter Irwin, *supra* note 1.

<sup>6</sup> BBC, *Why is there tension between China and the Uighurs?*, (Sept. 26, 2014) <https://www.bbc.com/news/world-asia-china-26414014> (last visited, Jun. 12, 2021).

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

lands and jobs.<sup>11</sup> One of the responses was “a year-long campaign against terrorism” that increased security in the region and conducted more military drills.<sup>12</sup> In the 2000 census, Han Chinese made up 40% of the population, excluding a large number of troops stationed in the region and unknown numbers of unregistered migrants. Uighurs were 45% of the population.<sup>13</sup>

### A. Economic importance of the region

The region was once mainly agricultural; however, oil and petrochemicals now account for 60% of its GDP.<sup>14</sup> Ancient oasis towns in this territory were once part of the Silk Road; in modern times, the region also plays a vital role in international trade.<sup>15</sup> Sharing the border with seven countries, it has been identified as a key gateway in the “Belt and Road” initiative by president Xi Jinping.<sup>16</sup> Adrian Zenz, a researcher who specializes in Xinjiang, stated that “[t]he BRI is an important factor behind the central government’s urge to bring the restive region of Xinjiang once and for all under its control.”<sup>17</sup> China continues investments in Central Asia, and the benefiting countries refrain from publicly criticizing the China’s approach with the province.

Due to the region’s importance for this plan, it is crucial for the Chinese government to maintain the region under control. This strategic importance could explain why the strengthening of security and other measures have escalated since the project took off.<sup>18</sup> In the following section, some of the government measures taken in the state will be discussed.

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<sup>11</sup> wocomODOCS, *China’s problems with the Uyghurs (Documentary from 2014 in HD)*, YouTube (Feb. 15, 2018), <https://www.youtube.com/watch?v=sJ3fG-tnzCk> (last visited, Jun. 12, 2021).

<sup>12</sup> BBC, *supra* note 6.

<sup>13</sup> BBC, *Xinjiang profile- full overview*, (Nov. 17, 2016), <https://www.bbc.com/news/world-asia-pacific-16913494> (last visited, Jun. 12, 2021).

<sup>14</sup> *Id.*

<sup>15</sup> Mark Doman, et. al., *China’s frontier of fear*, ABC (Oct. 31, 2018, 03:15pm) <https://www.abc.net.au/news/2018-11-01/satellite-images-expose-chinas-network-of-re-education-camps/10432924?pfmredir=sm>.

<sup>16</sup> *Id.*

<sup>17</sup> THE JAPAN TIMES, *Xinjiang crackdown at the heart of China’s ‘Belt and Road’*, (Apr. 28, 2019), <https://www.japantimes.co.jp/news/2019/04/28/asia-pacific/xinjiang-crackdown-heart-chinas-belt-road/#.XR0Od-j0IPY>.

<sup>18</sup> Gavin Fernando, *How China’s trillion-dollar trade initiative helped forge a humanitarian crisis in Xinjiang*, NEWS (Mar. 09, 2019, 12:11PM), <https://www.news.com.au/world/asia/how-chinas-trillion-dollar-trade-initiative-helped-forge-a-humanitarian-crisis-in-xinjiang/news-story/6625849b1d2b948df3645fede5b8b64d>.

### III. Government actions in the region

The government has taken different measures in order to control the province. Most of them deal with technological development, but before delving into that aspect, some of the classification mechanisms will be discussed. The government has created a point system, that labels the families as safe, normal, or unsafe. This is determined by “their age, faith, religion, foreign contacts, and overseas travel.”<sup>19</sup> The government is also demolishing old Uighur buildings to rebuild them in the form of fine brick dueling’s, build by a Han Chinese company.<sup>20</sup> In school, Uighur teachers are ordered to speak in Mandarin and not the Uighur language, nor teach about Uighur history.<sup>21</sup>

It is hard for the media to obtain information on what is happening precisely inside Xinjiang since interviewing people has become difficult, and access to the press is also limited.<sup>22</sup> In 2014, surveillance was “lower-tech,” but authorities could still barge into the citizens’ home, and tour groups could also enter unannounced to the houses.<sup>23</sup> Now the use of technology for surveillance in China has increased; according to human rights watch, the government “imposes pervasive and constant surveillance alongside persistent political indoctrination.”<sup>24</sup>

There are several restrictions on the people’s movements, where they need permission even to leave the area where they reside.<sup>25</sup> The authorities in Xinjiang “arbitrarily restrict the movements of Turkic Muslims’ through a combination of administrative measures, checkpoints, and control over access to passports.”<sup>26</sup> The checkpoints are numerous and are augmented with access to police databases, allowing control of where people can go. In the report by Human Rights Watch, there is a mention of a case where a person was not allowed to go to public

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<sup>19</sup> See *wocomODOCS, China’s problems with the Uyghurs (Documentary from 2014 in HD), YOUTUBE (Feb. 15, 2018)*, <https://www.youtube.com/watch?v=sJ3fG-tnzCk>; Gavin Fernando, *How China’s trillion-dollar trade initiative helped forge a humanitarian crisis in Xinjiang*, *NEWS (Mar. 09, 2019, 12:11PM)*, <https://www.news.com.au/world/asia/how-chinas-trillion-dollar-trade-initiative-helped-forge-a-humanitarian-crisis-in-xinjiang/news-story/6625849b1d2b948df3645fede5b8b64d>.

<sup>20</sup> *wocomODOCS, supra* note 11.

<sup>21</sup> *Id.*

<sup>22</sup> CSIS, *A Different Kind of Prison: Mass Surveillance in Xinjiang and Its Global Implications* (transcript), (Jun. 28, 2019), <https://www.csis.org/analysis/different-kind-prison-mass-surveillance-xinjiang-and-its-global-implications>; See also *wocomODOCS, China’s problems with the Uyghurs (Documentary from 2014 in HD), YOUTUBE (Feb. 15, 2018)*, <https://www.youtube.com/watch?v=sJ3fG-tnzCk>.

<sup>23</sup> *wocomODOCS, supra* note 11.

<sup>24</sup> Human Rights Watch, *supra* note 3, at 57.

<sup>25</sup> *Id.* at 58.

<sup>26</sup> *Id.*

places after he was released from one of the camps. Police warned him that he should stay at home since that was better than being taken to the police station.<sup>27</sup>

There are also severe restrictions and, in some regions, a ban on practicing Islam.<sup>28</sup> The time and severity of the restrictions vary, but besides the detainment of individuals for the practicing of religions, “authorities have torn down mosques while converting others into lay uses, removed Muslim crescents from burial sites, and confiscated religious items; such as prayer mats and Qurans.”<sup>29</sup> People are not allowed to wear headscarves, only older men are allowed to wear long beards, and observance of Ramadan is found to be suspicious behavior and would get the person in trouble.<sup>30</sup> Even the language is regulated, according to Auken in a Human Rights Watch report:

We have also not been allowed to say, ‘As-salaam-alaikum’ [the Islamic greeting] but only ‘nihao’ [the Mandarin greeting]. You also can’t speak freely about Kazakhstan or write in Kazakh or wear Kazakh clothing or wear Kazakh jewelry... Arabic scripts are replaced by Chinese... Kazakh chocolates and candies can no longer be sold, but alcohol ... consumption is encouraged.<sup>31</sup>

Another person who was interviewed also claims that they are not “allowed to put Kazakh or Turkish desserts on the table.”<sup>32</sup> The government also encourages people to spy on each other. A source that is familiar with the government policies stated that:

It is encouraged to report on those who fit the following categories:

- 1) Have welder machines, matches, knives, books, prayer mats, chemical fertilizers, chemicals;
- 2) Have violated the family planning policy;
- 3) Without official approval, teach religion or polices others’ religious expressions;
- 4) Have more than one wife;
- 5) “Two-faced” officials;

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<sup>27</sup> *Id.* at 59.

<sup>28</sup> *Id.* at 71.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.* at 73.

<sup>32</sup> *Id.*

- 6) Influential individuals;
- 7) Tax evaders;
- 8) Do not obey local officials;
- 9) Do not participate in the flag-raising ceremony or other official activities;
- 10) Have families abroad;
- 11) Communicate with others in foreign countries;
- 12) Have downloaded dangerous content or foreign social media software;
- 13) Have mobile phones suspended by the police;
- 14) Have families considered to be “focus personnel”;
- 15) Are recommended by the IJOP;
- 16) Are deemed untrustworthy by the local authorities; and
- 17) Submit petitions complaining about local officials.<sup>33</sup>

From the testimonies and other information gathered by the Human Rights Watch, they have found that the checkpoints that people need to pass in order to move from the residential areas and in between towns are connected with the Integrated Joint Operations Platform (IJOP). This platform is “[a] big data system, which flags a range of “unusual behaviors” along with a focus on people’s relationship networks.”<sup>34</sup> At the beginning of this section, it was mentioned about a classification system for families; this has evolved from doorplates<sup>35</sup> to “smart doorplates,” which are QR codes installed in the residences. These are scanned by police officers when they verify the residence and claim that it allows for population control and service delivery.<sup>36</sup> This is not the only type of technological surveillance employed; there are CCTV cameras installed all around. Authorities have also collected biometric data for “all residents between ages 12-65, including fingerprints, iris scans, blood types, voice samples, and DNA samples.”<sup>37</sup>

One of the security projects being developed is done by Hikvision and is worth \$79 million; this project includes “30,000 security cameras, [...] video analytics hubs, intelligent monitoring systems, big data centers, police checkpoints,

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<sup>33</sup> *Id.* at 75.

<sup>34</sup> *Id.*

<sup>35</sup> WocomoDOCS, *supra* note 11.

<sup>36</sup> Human Rights Watch, *supra* note 3, at 76.

<sup>37</sup> Amy K. Lehr, Commentary, *Responding to the Xinjiang Surveillance State- and Its Likely Progeny*, CSIS (Nov. 13, 2018), <https://www.csis.org/analysis/responding-xinjiang-surveillance-state-and-its-likely-progeny>.

and even drones.”<sup>38</sup> Most of the projects are under construction, but some are completed or partially operating.<sup>39</sup> A report by the ethics council for the Norwegian government’s pension fund from January 2020, stated that:

Hikvision signed five security and surveillance contracts in 2017 with the public authorities in Xinjiang worth more than €230 million (\$273 million). They included tenders for surveillance technology at internment camps...[and] it described another contract as providing “a network of around 35,000 cameras to monitor schools, streets and offices” and the “installation of facial recognition cameras at 967 mosques.”<sup>40</sup>

It is not to say that some of the methods of electronic surveillance are unique to the Xinjiang region. In 2005 Beijing began building a nationwide surveillance network, and in 2015 they launched an expansion called Sharp Eyes, which intends to cover the entire country with facial-recognition systems and other technology.<sup>41</sup> Although these programs have been the cause of concerns, they are not nearly as intrusive as the programs and surveillance systems that are in place in Xinjiang. The police use the IJOP, which some researchers managed to find a copy online of the app and reverse engineer it. With this, they found, as previously discussed, that this app is the “central brain of multiple surveillance streams across Xinjiang.”<sup>42</sup> They found that the app gathers information of the person’s daily life, tracking the places where the person has been, what exit they take from their house, and other 36 behavior types that could trigger suspicious behavior and alert the police. The employment of these technologies has helped authorities gather up an estimate of hundreds of thousands of Uighurs and other Muslim minorities to send to the so-called “re-education centers.”<sup>43</sup>

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<sup>38</sup> Charles Rollet, *In China’s Far West, Companies Cash in on Surveillance Program That Targets Muslims*, FP (Jun. 13, 2018), <https://foreignpolicy.com/2018/06/13/in-chinas-far-west-companies-cash-in-on-surveillance-program-that-targets-muslims/>.

<sup>39</sup> *Id.*

<sup>40</sup> James Franey, *Exclusive: EU taps Chinese technology linked to Muslim internment camps in Xinjiang*, DW (Oct. 26, 2020), <https://www.dw.com/en/exclusive-eu-taps-chinese-technology-linked-to-muslim-internment-camps-in-xinjiang/a-55362125>.

<sup>41</sup> Charles Rollet, *supra* note 38.

<sup>42</sup> CSIS, *A Different Kind of Prison: Mass Surveillance in Xinjiang and Its Global Implications* (transcript), (Jun. 28, 2019), <https://www.csis.org/analysis/different-kind-prison-mass-surveillance-xinjiang-and-its-global-implications>.

<sup>43</sup> Rollet, *supra* note 38.



#### IV. Re-education Centers

Around 2017 China started building internment camps in Xinjiang where Uighurs and other Muslim minorities are being sent for “re-education.”<sup>44</sup> In 2019 the ASPI identified and documented the expansion of 28 detention camps in the region. However, estimates of the total amount of camps range between 181 to 1,200.<sup>45</sup> Currently, ASPI has confirmed 385 sites through photographs and satellite images.<sup>46</sup> There is an estimate of two million Uighurs and other Muslims who have been detained in the camps for patriotic training and “de-extremification.”<sup>47</sup>

Initially, the Chinese government denied the existence of the camps, and it was not until documents, satellite images, and other information confirming the existence of such camps was presented by academics and other researchers that China admitted to their existence.<sup>48</sup> Even though China has acknowledged the camps existence, they have claimed it is a highly successful de-radicalization program in Xinjiang.<sup>49</sup> The government has organized visits to some of the facilities, which they call vocational education centers, for a small group of foreign reporters and diplomats of 12 non-Western countries.<sup>50</sup> China claims that with these camps, they reduce extremism by teaching the people about the law and helping them learn Mandarin.<sup>51</sup>

<sup>44</sup> See CSIS, *A Different Kind of Prison: Mass Surveillance in Xinjiang and Its Global Implications* (transcript), (Jun. 28, 2019), <https://www.csis.org/analysis/different-kind-prison-mass-surveillance-xinjiang-and-its-global-implications>; Mark Doman, et. al., *China's frontier of fear*, ABC (Oct. 31, 2018, 03:15pm) <https://www.abc.net.au/news/2018-11-01/satellite-images-expose-chinas-network-of-re-education-camps/10432924?pfmredir=sm>; VICE News, *China's Vanishing Muslims: Undercover In The Most Dystopian Place In The World*, YOUTUBE (Jun. 29, 2019), <https://www.youtube.com/watch?v=v7AYyUqrMuQ>.

<sup>45</sup> *Id.*

<sup>46</sup> ASPI, *The Xinjiang Data Project*, ASPI, <https://xjdp.aspi.org.au/explainers/xinjiang-data-project-1st-quarterly-update/> (last accessed Jun. 12, 2021).

<sup>47</sup> Vox, *China's Secret Internment Camps*, YOUTUBE (May 07, 2019), <https://www.youtube.com/watch?v=cMkHcZ5IwjU>.

<sup>48</sup> *Id.*

<sup>49</sup> Ben Blanchard, *China says pace of Xinjiang 'education' will slow, but defends camps*, REUTERS (Jan. 06, 2019, 6:59 AM), <https://www.reuters.com/article/us-china-xinjiang-insight/china-says-pace-of-xinjiang-education-will-slow-but-defends-camps-idUSKCN1P007W>.

<sup>50</sup> *Id.*

<sup>51</sup> See Ben Blanchard, *China says pace of Xinjiang 'education' will slow, but defends camps*, REUTERS (Jan. 06, 2019, 6:59 AM), <https://www.reuters.com/article/us-china-xinjiang-insight/china-says-pace-of-xinjiang-education-will-slow-but-defends-camps-idUSKCN1P007W>; See also Vox, *China's Secret Internment Camps*, YOUTUBE (May 07, 2019), <https://www.youtube.com/watch?v=cMkHcZ5IwjU>; Angélique Forget & Antoine Vedeilhe, *Surviving China's Uighur camps*, FRANCE 24 (May 05, 2019, 2:46PM), <https://www.france24.com/en/20190510-reporters-plus-surviving-china-uighur-camps-repression>.

However, former detainees and human rights groups have stated that the camps have poor conditions. The inmates are subject to abuse and provide no vocational training. In the visits allowed by the government to the camps, they designated the conditions looked well, and the reporters were also allowed to speak with some of the people briefly. Still, it had to be done in the presence of government officials. The people interviewed stated that they were there of their own will “after learning of the centers from local officials.”<sup>52</sup> According to the interviews of the residents of the camps, they “graduate” when they are judged to have reached a certain level with their Mandarin, de-radicalization, and legal knowledge. They are [also] allowed phone calls with family members, but no cell phones, and are provided halal food.”<sup>53</sup> According to the study conducted by ASPI, they have categorized the detention facilities in four tiers, from the lowest security to the highest.<sup>54</sup> This classification is based on “security features (including high perimeter walls, watchtowers, internal fencing, and other features and usage patterns) visible from satellite imagery analysis.”<sup>55</sup> Based on this data, they classified and defined them as follows:

### **A. Tier 1 sites**

Tier 1 sites are 108 facilities according to the data shared by ASPI.<sup>56</sup> These facilities are the suspected low-security and are detention facilities created by adding fencing and other security features to already existing buildings.<sup>57</sup> These buildings usually are previously existing schools and hospitals. Some have lowered walls and recreational facilities; these camps are the ones more likely to be toured by diplomats.<sup>58</sup> However, while it is suspected that many Tier 1 facilities still house detainees, they are “often directly connected to large factory facilities, suggesting an element of coerced labour.”<sup>59</sup>

### **B. Tier 2 sites**

With slightly more security than Tier 1 facilities, Tier 2 facilities have high barbed-wire fencing, a perimeter wall, and fencing.<sup>60</sup> These facilities still have

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<sup>52</sup> Blanchard, *supra* note 49.

<sup>53</sup> *Id.*

<sup>54</sup> ASPI *supra* note 46.

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

external yards and classrooms. According to ASPI, the purpose of these camps appears to be the eventual ‘rehabilitation’ of detainees instead of indefinite imprisonment.<sup>61</sup> The two models displayed in the archive show two Tier 2 facilities that have undergone significant expansion since 2017.

### C. Tier 3 sites

When we reach Tier 3 facilities, the level of security and confinement significantly increases compared to the previous two tiers. In these facilities, “the only access to these high-security sites is typically through a well-guarded main gate and often a single bridge leading up to the perimeter wall and watchtowers.”<sup>62</sup> From what has been observed in many of these facilities, they have up to six layers of barbed wire fencing and perimeter walls, as well as administrative buildings located completely separate from detainee areas.<sup>63</sup> Compared to lower-security facilities, Tier 3 shows a higher degree of confinement and presents characteristics similar to what we would associate with a prison complex. There is also no mention by ASPI whether any recreational areas can be seen in this type of facility.

### D. Tier 4 sites

Tier 4 sites, as cataloged by ASPI, are suspected maximum-security prisons. Many of the Xinjiang prisons’ are old and have been housing inmates from across China for a while now. However, ASPI includes in Tier 4 those prisons that have expanded or been newly built since 2017. According to the agency, the sites “[v]isually they all look very similar with a distinct architecture: high walls, multiple layers of perimeter barriers, watchtowers, dozens of cell blocks, no apparent outside exercise yards for detainees, single bridge entry for guards to the perimeter wall.”<sup>64</sup> ASPI explains that these facilities are usually co-located with lower security facilities, and they suspect that they are likely to still contain convicted criminals from other parts of China.

The report identified that about half the new centers that have opened up are higher security facilities, “which could suggest a shift towards prison-style facilities.”<sup>65</sup> Available evidence suggests that many extra-judicial detainees are now

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<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

<sup>65</sup> BBC NEWS, *Xinjiang: Large numbers of new detention camps uncovered in report*, 24 sept. 2020, <https://www.bbc.com/news/world-asia-china-54277430>.

being formally charged and sent to higher security facilities, which contradicts China's claims that all the trainees from the supposed vocational training facilities had graduated by late 2019.<sup>66</sup> The Chinese government has stated that the "vocational training" was increasing job opportunities and combating poverty in Xinjiang.<sup>67</sup> Although data and testimonies tend to contradict these claims.

### V. Conditions inside the camps

Uighurs that have managed to leave the camps and China have testified that in the camps, they are forced to memorize and recite communist party propaganda every day, such as singing the party's songs; refusal to sing would result in punishment.<sup>68</sup> Vice reporters traveled to the province disguised as tourists but were constantly harassed by the police and asked to delete the recordings and pictures they had taken in the cities they visited.<sup>69</sup> Later on, the reporters interviewed a Uighur woman in Istanbul who had been detained in one of these camps. She testified that in the checkpoints they had to go through daily before she was detained, they collected data on the people where they recorded their faces including the shape of the nose. They conducted urine tests on the women, and if they were pregnant, they terminated the pregnancy.<sup>70</sup> Another testimony is of Mr. Turan, whose father had been detained in these camps; he testified that "[his father] was deprived of food, deprived of sleeping...he was so weak."<sup>71</sup> Jessica Batke, a former State Department research analyst, told the Huffington Post that although "[they] do not know what is happening in each of these facilities, in at least some of these facilities, detainees are subject to waterboarding, being kept in isolation without food and water, and prevented from sleeping."<sup>72</sup>

The arrests are conducted at night; the reasons for arrest vary greatly. Most people in the camps have been charged with crimes and have no legal way to challenge the detentions.<sup>73</sup> The reasons for detainment span from traveling or

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<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> Vox, *supra* note 47.

<sup>69</sup> VICE News, *China's Vanishing Muslims: Undercover In The Most Dystopian Place In The World*, YOUTUBE (Jun. 29, 2019), <https://www.youtube.com/watch?v=v7AYyUqrMuQ>.

<sup>70</sup> *Id.*

<sup>71</sup> Doman, *supra* note 15.

<sup>72</sup> Ryan Grenoble, *Who are the Uighurs? China is Detaining This Muslim Minority by the Million*, HUFFPOST (Aug. 30, 2018), [https://www.huffpost.com/entry/who-are-uighurs-china-muslim-detention-million\\_n\\_5b7195cee4b0ae32af9a085a](https://www.huffpost.com/entry/who-are-uighurs-china-muslim-detention-million_n_5b7195cee4b0ae32af9a085a).

<sup>73</sup> Lindsay Maizland, *China's Crackdown on Uighurs in Xinjiang*, CFR (Apr. 11, 2019), [https://www.cfr.org/backgrounder/chinas-crackdown-uighurs-xinjiang?utm\\_medium=social\\_owned&utm\\_source=fb&utm\\_content=050419&fbclid=IwAR3W6sNvji8cZbWk29oLV-8RwFDQTZVkix7IoCNSJAtGYmujuwqQLOW\\_19c](https://www.cfr.org/backgrounder/chinas-crackdown-uighurs-xinjiang?utm_medium=social_owned&utm_source=fb&utm_content=050419&fbclid=IwAR3W6sNvji8cZbWk29oLV-8RwFDQTZVkix7IoCNSJAtGYmujuwqQLOW_19c).

contacting people or family abroad, attending services at mosques, sending texts containing Quranic verses, wearing a veil or long beard, and often the only crime is being Muslim.<sup>74</sup>

### A. Forced labor in the camps

Since 2009, China has been included on the List of Goods Produced by Child Labor or Forced Labor (TVPRA List). However, in 2020, the Bureau of International Labor Affairs (ILAB) added five goods produced by forced labor by Muslim minorities in China.<sup>75</sup> The Department of Labor of the United States researched the topic utilizing published victim testimonies, media, and think tank reports in order to determine the industries implicated in the system of forced labor.<sup>76</sup> This research has found that forced labor for the Uighurs takes place primarily in Xinjiang, but it is not limited to this region. Recent external reports show that the Uighurs have been sent to work in other provinces through China.<sup>77</sup>

The Muslims in the facilities outside of Xinjiang are segregated from other Han Chinese workers and forced under constant surveillance and isolation, where escape is nearly impossible since the officers confiscate the individuals' identification materials.<sup>78</sup> If allowed to have visitation rights, they are very short, and with heavy monitoring, the roll call is conducted every night, and Muslim workers are guarded by Xinjiang police and not by the law enforcement of the locality.<sup>79</sup>

The Chinese government subsidizes the companies that move to Xinjiang or employs Muslim workers.<sup>80</sup> This further increases the companies' interest to have this type of workers in their facilities, many times under the guise of poverty alleviation as well. In the past three years, the Chinese government has forced hundreds of thousands of Uighur and other Muslim minorities to perform

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<sup>74</sup> See Lindsay Maizland, *China's Crackdown on Uighurs in Xinjiang*, CFR (Apr. 11, 2019), [https://www.cfr.org/backgrounders/chinas-crackdown-uighurs-xinjiang?utm\\_medium=social\\_owned&utm\\_source=fb&utm\\_content=050419&fbclid=IwAR3W6sNvji8cZbWk29oLV-8RwFDQTZVkiX7IoCNSJAtGYmujuwqQLOW\\_19c](https://www.cfr.org/backgrounders/chinas-crackdown-uighurs-xinjiang?utm_medium=social_owned&utm_source=fb&utm_content=050419&fbclid=IwAR3W6sNvji8cZbWk29oLV-8RwFDQTZVkiX7IoCNSJAtGYmujuwqQLOW_19c); VICE News, *China's Vanishing Muslims: Undercover In The Most Dystopian Place In The World*, YOUTUBE (Jun. 29, 2019), <https://www.youtube.com/watch?v=v7AYyUqrMuQ>.

<sup>75</sup> US DEPT. OF LABOR, *Against their will: the situation in Xinjiang*, <https://www.dol.gov/agencies/ilab/against-their-will-the-situation-in-xinjiang> (last visited Feb. 22, 2020).

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

seasonal labor. These people are sent as part of their “labor transfer program.”<sup>81</sup> According to the BBC’s investigation, many workers fear that if they do not work in these camps, they would be sent to the detention camps.<sup>82</sup>

### B. Separation of Children from their families

Children of people sent to the camps or who have fled the city and left their children with a guardian are being sent to kindergartens or some other types of boarding schools.<sup>83</sup> A new study has called these events a “systematic campaign of social re-engineering and cultural genocide.”<sup>84</sup> The children are being kept in the custody of the state in what a Uighur mother called “child education camps.”<sup>85</sup> Reporters from Vice News who entered Xinjiang disguised as tourists, managed to film some of these schools, which looked like normal schools, except that upon staying till late hours, no one picked up the children, and there were even kids on weekends in the facilities.<sup>86</sup> From what they managed to film, the children in the school were singing communist party songs, they were able to interview an Uighur girl who said her sister has been in a re-education camp for two years; and in her class, there are around 13 of her classmates that live in school since their parents were sent to one of the camps.<sup>87</sup>

Dr. Adrian Zenz made a report of an unprecedented school expansion drive in Xinjiang, which was based on publicly available official documents.<sup>88</sup> Campuses have been enlarged, new dormitories built, and capacity increased on a massive scale. “Significantly, the state has been growing its ability to care full-time for large numbers of children at precisely the same time as it has been building the detention camps [a]nd it appears to be targeted at precisely the same ethnic groups.”<sup>89</sup> This education expansion appears to be driven by the same purpose of

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<sup>81</sup> John Sudworth, *China’s ‘tainted’ cotton*, BBC (Dec. 2020), <https://www.bbc.co.uk/news/extra/nz0g306v8c/china-tainted-cotton>.

<sup>82</sup> *Id.*

<sup>83</sup> Vice News, *supra* note 69.

<sup>84</sup> Adam Withnall, ‘*Cultural genocide*’: *China separating thousands of Muslim children from parents for ‘thought education’*, INDEPENDENT (Jul. 05, 2019) <https://www.independent.co.uk/news/world/asia/china-muslim-children-uighur-family-separation-thought-education-a8989296.html#Echobox=1562323666>.

<sup>85</sup> John Sudworth, *China Muslims: Xinjiang schools used to separate children from families*, BBC (Jul 04. 2019), <https://www.bbc.com/news/world-asia-china-48825090>.

<sup>86</sup> Vice News, *supra* note 69.

<sup>87</sup> *Id.*

<sup>88</sup> Sudworth, *supra* note 85.

<sup>89</sup> *Id.*

the re-education camps, affecting Uighurs and other minority group's children.<sup>90</sup> Furthermore, Dr. Zenz presents evidence that shows that since the beginning of the re-education camps, there were plans from the government to relocate the children of those who were sent to the camps.<sup>91</sup> This is since these children might be more likely to "lash out" against the state. That is why the government issued orders to the schools to "concentrate on Uighur students' "thought education" — similar to the sort of language used by the state to justify its detention of adults."<sup>92</sup> The government propaganda promotes the boarding schools as "helping maintain social stability and peace with the school taking the place of parents."<sup>93</sup> Dr. Zenz suggests that there is another purpose for the propaganda:

"Boarding schools provide the ideal context for a sustained cultural re-engineering of minority societies," [arguing that] just as with the camps, his research shows that there is now a concerted drive to all but eliminate the use of Uighur and other local languages from school premises. Individual school regulations outline strict, points-based punishments for both students and teachers if they speak anything other than Chinese while in school.<sup>94</sup>

These schools are an extension of the attempt of re-education done by the government to these ethnic minorities. Schools have become a priority for the state where large amounts of funds are being allocated, and children in large quantities are being placed in these schools.<sup>95</sup>

This section has discussed some of the reasons why people are being sent to these camps, and the conditions they are kept in according to the testimony of those who have been able to leave. The placement of children that are separated from their parents because they have been interned at the camps or have had to flee the region, also serves the same purpose for which the camps were created. In the next section, the possible Human Rights violations that these camps present to the rights of the Uighur and other minorities in the region will be discussed.

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<sup>90</sup> *Id.*

<sup>91</sup> Withnall, *supra* note 84.

<sup>92</sup> *Id.*

<sup>93</sup> Sudworth, *supra* note 85.

<sup>94</sup> *Id.*

<sup>95</sup> *Id.*

## VI. Constitutional and International Conventions that would apply

The re-education camps violate Human Rights and China's obligations under international humanitarian law, as well as being contrary to China's constitution. International Human Rights Law applies in this case through treaties ratified by China and through customary law.<sup>96</sup> Currently, China is party to four International Conventions of Human Rights that are not being followed; these are: International Convention on the Elimination of All Forms of Racial Discrimination (ICERD, ratified in 1981); the International Covenant on Economic, Social and Cultural Rights (ICESCR, ratified in 2001); the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT, ratified in 1988); and the Convention on the Rights of the Child (CRC, ratified in 1992)<sup>97</sup>. China signed the International Covenant on Civil and Political Rights (ICCPR), although it did not ratify it. Since it is not ratified, the country is not bound to the specific provisions of the covenant but has the obligation of acting in good faith and not defeat the purpose of the ICCPR.<sup>98</sup>

### A. Constitutional Protections

Upon reading the Chinese Constitution, many of the fundamental rights facing oppression in the Xinjiang province appear to be protected rights by the constitution. Article 4 of the constitution establishes that:

All nationalities in the People's Republic of China are equal. The State protects the lawful rights and interests of the minority nationalities and upholds and develops a relationship of equality, unity and mutual assistance among all of China's nationalities. Discrimination against and oppression of any nationality is prohibited; any act that undermines the unity of the nationalities or instigates division is prohibited...All nationalities have the freedom to use and develop their own spoken and written languages and preserve or reform their own folkways and customs.<sup>99</sup>

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<sup>96</sup> Hillary Hurd, *China's Human Rights Abuses Against Uighurs in Xinjiang*, LAWFARE (Oct. 09, 2018, 8:00 AM), <https://www.lawfareblog.com/chinas-human-rights-abuses-against-uighurs-xinjiang>.

<sup>97</sup> Human Rights in China, *International Covenant on Economic, Social and Cultural Rights (ICESCR)*, <https://www.hrichina.org/en/un-treaty-bodies-and-china> (last visited, Jul. 07, 2019).

<sup>98</sup> *Id.*

<sup>99</sup> XIANFA art. 4, §1 (1982) (China).



Under this article, Uighurs should be protected against discrimination and oppression of their nationality and have the freedom to develop their language and preserve their customs. However, as discussed, teachers have been prohibited from teaching the Uighur language and history.<sup>100</sup> The traditional houses that are representative of Uighur culture and history are also being demolished and rebuilt by a Han Chinese company in a brick style, resulting in cultural erasure.<sup>101</sup>

Furthermore, Article 35 of the constitutions states the people's enjoyment of "freedom of speech, of press, assembly, association, procession and demonstration."<sup>102</sup> Even though the constitution states this, the Uighurs are being detained attending religious meetings or prayers. They are being watched to determine if they are speaking with family abroad, and also some have even stated that they are wary of who they talk to within the streets, being afraid that it will get them in trouble.<sup>103</sup> The Uighur and other minorities in the province are not allowed to provide interviews to foreign journalists, and the police closely watch whom they speak with, both in person and through digital surveillance. Even the interviews conducted in the camps were closely watched by the state.<sup>104</sup>

Article 36 is the one that corresponds to the freedom of religious belief, stating that "[n]o State organ, public organization or individual may compel citizens to believe in, or not believe in, any religion; nor may they discriminate against citizens who believe in, or do not believe in, any religion."<sup>105</sup> Even though the article protects religious beliefs, Uighurs are being persecuted for their religious beliefs to the point that religious symbols such as the veil or long beards are prohibited.<sup>106</sup> Others have been detained for praying, learning the Quran, or sending text messages that contained Quranic verses.<sup>107</sup> Moreover, there are observant

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<sup>100</sup> wocomoDOCS, *supra* note 11.

<sup>101</sup> *Id.*

<sup>102</sup> XIANFA art. 35, §2 (1982) (China).

<sup>103</sup> HUMAN RIGHTS WATCH, "ERADICATING IDEOLOGICAL VIRUSES" CHINA'S CAMPAIGN OF REPRESSION AGAINST XINJIANG'S MUSLIMS 75 (2018); VICE News, *China's Vanishing Muslims: Undercover In The Most Dystopian Place In The World*, YOUTUBE (Jun. 29, 2019), <https://www.youtube.com/watch?v=v7AYyUqrMuQ>.

<sup>104</sup> See VICE News, *China's Vanishing Muslims: Undercover In The Most Dystopian Place In The World*, YOUTUBE (Jun. 29, 2019), <https://www.youtube.com/watch?v=v7AYyUqrMuQ>; Ben Blanchard, *China says pace of Xinjiang 'education' will slow, but defends camps*, REUTERS (Jan. 06, 2019, 6:59 AM), <https://www.reuters.com/article/us-china-xinjiang-insight/china-says-pace-of-xinjiang-education-will-slow-but-defends-camps-idUSKCN1P007W>.

<sup>105</sup> XIANFA, art. 36, §2 (1982) (China).

<sup>106</sup> Doman, *supra* note 15.

<sup>107</sup> Lindsay Maizland, *China's Crackdown on Uighurs in Xinjiang*, CFR (Apr. 11, 2019), [https://www.cfr.org/background/chinas-crackdown-ughurs-xinjiang?utm\\_medium=social\\_owned&utm\\_source=fb&utm\\_content=050419&fbclid=IwAR3W6sNvj8cZbWk29oLV-](https://www.cfr.org/background/chinas-crackdown-ughurs-xinjiang?utm_medium=social_owned&utm_source=fb&utm_content=050419&fbclid=IwAR3W6sNvj8cZbWk29oLV-)

from the government to make sure that Ramadan is not observed, and Muslims are forced to eat pork and drink alcohol.<sup>108</sup>

Most of the debate regarding the government's actions in Xinjiang revolves around the arbitrary detention of Uighurs and other minorities and the surveillance they have in the city with various checkpoints and other intrusive methods. However, the constitution does have protection against these types of intrusions that are not being followed. Article 37 of the constitution concerns the arrests; it states that:

No citizen may be arrested except with the approval or by decision of a people's procuratorate or by decision of a people's court, and arrests must be made by a public security organ. [And] [u]nlawful detention or deprivation or restriction of citizens' freedom of the person by other means is prohibited, and unlawful search of the person of citizens is prohibited.<sup>109</sup>

Article 39 of the constitution further adds that "[t]he residences of citizens of the People's Republic of China are inviolable. Unlawful search of, or intrusion into, a citizen's residence is prohibited."<sup>110</sup> However, as discussed, the arbitrary detention of citizens is being done with no legal ways to argue the charges.<sup>111</sup> The citizens are being forced to submit to constant verifications and searches in their residences with no prior warning; they are even open to tourist programs organized by the government.<sup>112</sup> As it is seen, the aforementioned protections guaranteed in the Chinese constitution are not being upheld. However, article 51 of the constitution states "in exercising their freedoms and rights, may not infringe upon the interests of the State, of society or the collective, or upon the lawful freedoms and rights of other citizens."<sup>113</sup> And article 52, which states that "[i]t is the duty

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8RwFDQTZVkiX7IoCNSJAtGYmujuwqQLOW\_19c; Mark Doman, et. al., *China's frontier of fear*, ABC (Oct. 31, 2018, 03:15pm) <https://www.abc.net.au/news/2018-11-01/satellite-images-expose-chinas-network-of-re-education-camps/10432924?pfmredir=sm>; VICE News, *China's Vanishing Muslims: Undercover In The Most Dystopian Place In The World*, YOUTUBE (Jun. 29, 2019), <https://www.youtube.com/watch?v=v7AYyUqrMuQ>.

<sup>108</sup> Ewelina U. Ochab, *Is China Conducting A Crackdown on Religion?*, FORBES (Apr. 20, 2019, 03:00 AM), <https://www.forbes.com/sites/ewelinaochab/2019/04/20/is-china-conducting-a-crackdown-on-religion/#7b25ce5319d3>.

<sup>109</sup> XIANFA art. 37, §2 (1982) (China).

<sup>110</sup> Xianfa, art. 39, §2 (1982) (China).

<sup>111</sup> Maizland, *supra* note 56.

<sup>112</sup> wocomODOCS, *supra* note 11.

<sup>113</sup> XIANFA, art. 51, §1 (1982) (China).

of citizens of the People's Republic of China to safeguard the unification of the country and the unity of all its nationalities.”<sup>114</sup>

These sections could possibly allow for a justification of the Counter-extremism Regulations that we see in Xinjiang since the goal of these two sections contradicts the previous ones by calling for a unification of the country and its nationalities as well as the interest of the State. As stated in a Human Rights Watch report, “the Chinese government has imposed pervasive and comprehensive restrictions on religion through numerous laws, regulations, and directives... [recognizing as] lawful only those religious activities that are sanctioned and controlled by the government.”<sup>115</sup> As we see, there are some contradicting articles in the constitution being exploited to deprive the Uighur population of their rights.

## **B. International Conventions**

The rights of the Uighur do not stop at the constitution; China has ratified some relevant International Conventions of Human Rights, which are not being upheld in this situation. As previously mentioned, China is part of four International Conventions of human rights, the ICERD, ICESCR, UNCAT, and the CRC. Additionally, they are signatories to the ICCPR.

### **i. ICERD Violations**

The International Convention on the Elimination of all Forms of Racial Discrimination (ICERD)<sup>116</sup> was ratified by China in 1981. However, as expressed in the Human Rights Watch Report, most of the government policies that are in place in Xinjiang are a violation of the country's obligation under the Convention.<sup>117</sup> In the Convention, the governments that are part of it agree to “undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, color, or national or ethnic origin, to equality before the law.”<sup>118</sup> Defining racial discrimination as “any distinction, exclusion, restriction or preference based on race, color, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights

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<sup>114</sup> XIANFA, art. 52, §2 (1982) (China).

<sup>115</sup> Human Rights Watch, *supra* note 3, at 96.

<sup>116</sup> International Convention on the Elimination of All Forms of Racial Discrimination, Art. 1, Mar. 7, 1966, 660 U.N.T.S. 195

<sup>117</sup> Human Rights Watch, *supra* note 3, at 96.

<sup>118</sup> International Convention on the Elimination of All Forms of Racial Discrimination, *supra* note 91.

and fundamental freedoms.”<sup>119</sup> The policies placed in the region are targeting the ethnic minority of Uighurs and other Muslim minorities. Based on the definition given in article 1 of the Convention, the policies in place are discrimination against the descents and members of the Uighurs and other ethnic minorities in the region. The policies in place are not affecting Han Chinese, on the contrary, the government has presented policies to increase the Han Chinese presence in the region, taking away the jobs and other benefits the Uighurs had in Xinjiang.<sup>120</sup>

In the Convention, among the obligations of the signatories is to combat racial discrimination, for instance, by guaranteeing the enjoyment of the following rights:

- Right to equal treatment before the courts and other tribunals;
- 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; and
- Other basic rights, in particular: freedom of movement within the border of the state; to leave any country, including one’s own; freedom of thought, conscience, and religion; freedom of opinion and expression; freedom of peaceful assembly and association; and access to any place or service intended for use by the general public.

As it has been discussed, the Uighurs and other minorities that are sent to the camps do not have the legal means to dispute the charges. Many times, the charges presented are not even criminal charges and are offenses such as praying.<sup>121</sup> Therefore, these practices violate the peoples right to equal treatment before the courts, right to security of person (since many claim to face violence in the camps), and the basic rights of freedom of thought, conscience, religions, and others mentioned. The Uighurs face various obstacles daily, for example they have to pass through checkpoints to move around the city and need special permission to leave to other parts of the region, they cannot freely practice their religion, and even their digital communications are under surveillance.<sup>122</sup> These

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<sup>119</sup> *Id.*

<sup>120</sup> wocomoDOCS, *supra* note 11.

<sup>121</sup> Maizland, *supra* note 73.

<sup>122</sup> See Lindsay Maizland, *China’s Crackdown on Uighurs in Xinjiang*, CFR (Apr. 11, 2019), [https://www.cfr.org/background/chinas-crackdown-ughurs-xinjiang?utm\\_medium=social\\_owned&utm\\_source=fb&utm\\_content=050419&fbclid=IwAR3W6sNvji8cZbWk29oLV-8RwFDQTZVkix7IoCNSJAtGYmujuwqQLOW\\_19c](https://www.cfr.org/background/chinas-crackdown-ughurs-xinjiang?utm_medium=social_owned&utm_source=fb&utm_content=050419&fbclid=IwAR3W6sNvji8cZbWk29oLV-8RwFDQTZVkix7IoCNSJAtGYmujuwqQLOW_19c); See also CSIS, *A Different Kind of Prison: Mass Surveillance in Xinjiang and Its Global Implications* (transcript), (Jun. 28, 2019), <https://www.csis.org/analysis/different-kind-prison-mass-surveillance-xinjiang-and-its-global-implications>.

series of obstacles constantly violate their individual rights. It is due to this that China is in violation of the ICERD. The problem would be on holding them accountable since the only reservation the country made to the Convention was on article 22, which states that:

Any dispute between two or more State Parties with respect to the interpretation or application of this Convention, which is not settled by negotiation or by the procedures expressly provided for in this Convention, shall, at the request of any of the parties to the dispute, be referred to the International Court of Justice for decision, unless the disputants agree to another mode of settlement.<sup>123</sup>

Therefore, China would not be brought against the International Court of Justice (ICJ) in a dispute regarding the violations of this Convention, which poses a difficulty in holding them accountable for their actions.

## ii. ICESCR

The International Covenant on Economic, Social and Cultural Rights explicitly recognizes that “All peoples have the right of self-determination. By virtue of that right, they freely determine their political status and freely pursue their economic, social, and cultural development.”<sup>124</sup> While other signatories have issued reservations regarding the scope of “peoples” in this article, China did not make such a reservation.<sup>125</sup> With no such reservation, the limitations that the government is giving to the Uighur citizens to communicate with family abroad or even travel abroad is a violation of their right to pursue social development.<sup>126</sup> The economic and cultural development are also being violated since Uighurs are not able to open schools or other businesses that teach Uighur history, language, or other cultural aspects forbidding the expansion and continuity of their culture.<sup>127</sup>

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<sup>123</sup> Human Rights in China, *International Convention on the Elimination of All Forms of Racial Discrimination (CERD)*,

<https://www.hrichina.org/en/international-convention-elimination-all-forms-racial-discrimination-cerd> (last visited, Jul. 07, 2019).

<sup>124</sup> International Covenant on Economic, Social and Cultural Rights, Art. 1, Dec. 16, 1966, S. Treaty Doc. No. 95-19, 6 I.L.M. 360 (1967), 993 U.N.T.S. 3.

<sup>125</sup> *Id.*

<sup>126</sup> Human Rights Watch, *supra* note 3, at 73.

<sup>127</sup> Vice News, *supra* note 69.

### iii. CRC

China is a signatory of the Convention on the Rights of the Child. This Convention seeks to recognize and safeguard the rights of children on an international level. As a signatory and has ratified it, China has bound itself to uphold the Convention; however, with the Uighur re-education camps —the displacing of children into boarding schools— China violates articles of this Convention. Article 8, section 1 of the Convention, states that “States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.”<sup>128</sup> Currently, the teaching of the Uighur language and history is forbidden in Xinjiang, as well as parents naming their children Arabic names such as “Muhammed” or other Muslim names.<sup>129</sup> These prohibitions are deprivation of the nationality and culture for the children of Uighur descent.

Article 9 of the Convention states that

4. Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation, or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned.<sup>130</sup>

The children whose parents are being arbitrarily taken to the camps are being sent to boarding schools and the children whose parents have had to flee the country because of the situation, and being unable to take them left them in the care of

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<sup>128</sup> UN General Assembly, Convention on the Rights of the Child, art 8, Nov. 20, 1989, 1577 U.N.T.S. 3.

<sup>129</sup> VICE News, *China's Vanishing Muslims: Undercover In The Most Dystopian Place In The World*, YOUTUBE (Jun. 29, 2019), <https://www.youtube.com/watch?v=v7AYyUqrMuQ>; Benjamin Haas, *China band religious names for Muslim babies in Xinjiang*, THE GUARDIAN (Apr. 25, 2017, 04:11 BST), <https://www.theguardian.com/world/2017/apr/25/china-bans-religious-names-for-muslims-babies-in-xinjiang>.

<sup>130</sup> UN General Assembly, Convention on the Rights of the Child, art 9, Nov. 20, 1989, 1577 U.N.T.S. 3.

relatives.<sup>131</sup> These parents do not know where their children are being sent, nor do they have any form of contacting them.<sup>132</sup> The State is violating this article of the Convention by denying the parents and relatives of these children to have contact and knowledge of their whereabouts. The parents that have some knowledge that the children were sent to these camps have done so by videos posted by the government in articles where they could identify their children. However, there is no way for the parents and relatives to locate the children or maintain contact with them.<sup>133</sup>

Lastly, the government has denied the right of parents to attend religious services with their children (in the areas where it is still allowed to visit mosques) and to teach them about the culture and history of their family.<sup>134</sup> This would be a violation of article 14 of the Convention, which states that:

1. States Parties shall respect the right of the child to freedom of thought, conscience, and religion.

2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.<sup>135</sup>

The State is disregarding the children's rights by eliminating their opportunity to learn about their culture, language, and history, erasing that heritage to uphold the traditional Han Chinese values. In the boarding schools where the children are being sent with no way of contact from their parents, they are being taught the Mandarin language as well as political indoctrination similar to the one being promoted in the re-education camps where their parents are being sent.<sup>136</sup> These actions violate the CRC.

#### **iv. Customary law and ICCPR**

In regards to Customary Law that could apply the Universal Declaration of Human Rights (UDHR)<sup>137</sup> prohibits arbitrary detention, as well as

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<sup>131</sup> Vice News, *supra* note 69.

<sup>132</sup> Sudworth, *supra* note 85.

<sup>133</sup> *Id.*

<sup>134</sup> wocomODOCS, *supra* note 11.

<sup>135</sup> UN General Assembly, Convention on the Rights of the Child, art 14, Nov. 20, 1989, 1577 U.N.T.S. 3.

<sup>136</sup> Sudworth, *supra* note 85.

<sup>137</sup> Universal Declaration of Human Rights (UDHR), G.A. res. 217A (III), U.N. Doc A/810 at 71 (1948).

the ICCPR<sup>138</sup>, which although it has not been ratified, China must act in order to uphold the purpose of the Convention. However, it is not bound to the specific provisions of it. This Convention recognizes, in accordance with the UDHR, “the ideal of free human beings enjoying civil and political freedom and freedom from fear and what can only be achieved if conditions are created whereby everyone may enjoy their civil and political rights, as well as their economic, social and cultural rights”<sup>139</sup>. The measures, that were taken against the Uighurs constrict their civil rights, such as the rights to freedom of thought, belief, and religion that are protected by both the UDHR and the ICCPR. The Uighurs and other Muslim minorities are not free to practice their religion, nor are they free to study the Quran or observe religious practices. This is a violation of rights that, under customary law, should also be protected.

### VII. ICC decision not to pursue an investigation

In December 2020, the ICC decided not to open a full-scale investigation on China’s mass detention of the Uighur population.<sup>140</sup> The report presented by the prosecutor’s office stated that there was “no basis to proceed at this time.”<sup>141</sup> This is based on their findings that they did not have enough evidence to show that the Chinese officials committed crimes in an area where the court had jurisdiction. Even though evidence shows that there has been forcible removal of Uighurs and other Muslim minorities from areas where the court does have jurisdiction, such as Cambodia and Tajikistan,<sup>142</sup> the prosecutor stated that he needed “further and concrete evidence from Cambodia and Tajikistan to establish jurisdiction.”<sup>143</sup>

The court had decided in 2018 and 2019 that they could have jurisdiction over international crimes when part of the criminal conduct takes place on a territory that acknowledges the court’s jurisdiction.<sup>144</sup> This was the case of the Rohingya

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<sup>138</sup> UN General Assembly, International Covenant on Civil and Political Rights, art. 1, Dec. 16, 1966, T.I.A.S. No. 92-908; 999 U.N.T.S. 717.; UN General Assembly, *supra* note 41 at 2; Organization of American States, American Convention on Human Rights, art. 1, Nov. 22, 1969, 1144 U.N.T.S. 123.

<sup>139</sup> *Id.*

<sup>140</sup> Javier C. Hernandez, *I.C.C. Won't Investigate China's Detention of Muslims*, N.Y. TIMES (Dec. 15, 2020), <https://www.nytimes.com/2020/12/15/world/asia/icc-china-uighur-muslim.html>

<sup>141</sup> *Id.*

<sup>142</sup> Ivana Stradner & Bill Drexel, Opinion, *The ICC's failure to investigate China on genocide is a vast moral failure*, THE WASHINGTON POST (Dec. 28, 2020), <https://www.washingtonpost.com/opinions/2020/12/28/iccs-failure-investigate-china-genocide-is-vast-moral-failure/>

<sup>143</sup> Javier C. Hernandez, *supra* at note 140.

<sup>144</sup> Patrick Wintour, *ICC asks for more evidence on Uighur genocide claims*, THE GUARDIAN (Dec. 11, 2020), <https://www.theguardian.com/world/2020/dec/11/international-criminal-icc-china-uighur-genocide-claims>



people in Bangladesh and Myanmar, where although Myanmar is not a signatory member, the crimes against the Rohingya were committed in Bangladesh, who acknowledges the court's jurisdiction. Similarly, Cambodia and Tajikistan both acknowledge the court's jurisdiction and are signatories of the Rome Statute. Based on this fact, the lawyers in representation of the Uighurs at the ICC have requested the court to reconsider "on the basis of new facts or evidence."<sup>145</sup> Although the court seems to have left the door open for the Uighurs to present more evidence in order to start an investigation, the courts track record, as presented in Javier C. Hernandez, leaves "little room for optimism," as the court has spent millions for only eight convictions which are all located in Africa and are currently facing accusations of corruption.

### VIII. Conclusion

International bodies, as well as researchers, have demonstrated the existence of these re-education camps that were initially denied by the Chinese government. The situation has been slowly escalating, and now it is finally under the international eye. However, not much has been done in order to uphold the *fundamental human rights* of the Uighur population and other minorities in the region that are being targeted and sent for re-education, forced sterilization, and forced labor. The people in the region are being persecuted, and their biometric data is being used to track and maintain a record of their behavior, as well as labeling and classifying the families for the police to verify this information daily and disrupt unannounced and with no reason in their living space.<sup>146</sup> In just a few years, the region has rapidly become the most advanced surveillance state. The Uighurs who live in Xinjiang face political indoctrination, and those who have been able to leave the camps have testified for being tortured and forced to sing political propaganda songs daily. These actions are in violation of the international treaties China is a part of, as it has been discussed through this article and the International Declaration of Human Rights. The violations do not only stop at the internment of the Uighur population, but it also separates the children whose parents are sent to the camps or whose parents have left the country to boarding schools with no way for the parents to locate the children. In these boarding schools, the children are faced with the same political propaganda and indoctrination that those in the internment camps face.<sup>147</sup>

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<sup>145</sup> AL JAZEERA, *ICC prosecutor rejects Uighur genocide complaint against China*, (Dec. 15, 2020), <https://www.aljazeera.com/news/2020/12/15/icc-rejects-ughur-genocide-complaint-against-china>.

<sup>146</sup> wocomoDOCS, *supra* note 11.

<sup>147</sup> Sudworth, *supra* note 85.

The actions conducted by China in Xinjiang constitute a violation of human rights and what has been labeled as cultural genocide.<sup>148</sup> Action should be taken, however, there is a difficulty of holding them accountable in the international sphere since the country is not known for abiding by international law decisions and also holds a position of power in the United Nations. However, some countries are calling for their own governments to take action, such as economic deals or other forms of sanctions. The actions of the Chinese government against the Uighur population have extended beyond the borders of the country and have sought the forced deportation of Uighurs from other countries, some of who are members of the ICC jurisdiction. This should allow the court to exercise the jurisdiction. Still, despite the overwhelming evidence that displays the genocide being committed against the Uighurs, the court has stated that there is not enough evidence to exercise their jurisdiction. The court has failed to act to protect this population against acts that are the very reason the court was formed. There should be more active action in order to finally bring accountability against the atrocities being committed in Xinjiang.

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<sup>148</sup> Withnall, *supra* note 84.