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## INTERESTS OF THE *AMICI*

The Notre Dame Law School Religious Liberty Clinic is the principal contributor to this brief. It is part of the University of Notre Dame in the United States of America. The clinic promotes and defends the freedom of religion or belief for all people. It promotes not only the freedom for individuals to hold religious beliefs but also their right to exercise those beliefs and to live according to them. It has represented individuals and organizations from an array of faith traditions in cases to defend the right to religious worship, to preserve sacred lands from destruction, and to prevent discrimination against religious believers. The Religious Liberty Clinic has focused much of its advocacy both internationally and in the United States on the genocide of the Uyghur people in China, and it awarded its inaugural Notre Dame Prize for Religious Liberty to preeminent Uyghur advocate Nury Turkel. It seeks to put an end to religiously based persecution and genocide across the globe.

Lord David Patrick Paul Alton, Baron Alton of Liverpool, is a British politician and human rights advocate. He has served in both Houses of the U.K. Parliament, was a Member of the House of Commons for eighteen years until 1997, and now serves on the House of Lords International Relations and Defense Select Committee. He is known for his human rights work, including co-founding the Jubilee Campaign, serving as chair, patron, or trustee of several voluntary organizations, and pioneering a Genocide Amendment through the U.K. Parliament in 2021. He is the author of several books and reports on human rights and is an experienced speaker on topics related to authoritarian regimes and international law. He recently published *State Responses to Crimes of Genocide: What Went Wrong and How to Change It*, co-authored with Dr. Ewelina U. Ochab. He also recently introduced a bill in the U.K. Parliament to remove

from the U.K. government's supply chain any technology produced by providers involved in modern slavery, genocide, and crimes against humanity.

Sam Brownback served as U.S. Ambassador at Large for International Religious Freedom from February 2018 to January 2021. He served as Governor of Kansas from 2011 to 2018. Prior to that he represented his home state in the United States Senate and the House of Representatives. While a member of the Senate, he worked actively on the issue of religious freedom in multiple countries and was a key sponsor of the International Religious Freedom Act of 1998. Prior to his public service, Ambassador Brownback practiced law and taught agricultural law at Kansas State University. He earned a B.S. from Kansas State University and a J.D. from the University of Kansas. Ambassador Brownback currently serves as co-chair for the International Religious Freedom Summit and as a Senior Fellow at Open Doors USA.

Ambassador Kelley E. Currie is a human rights lawyer who specializes in human rights policy, political reform, and accountability issues, with a focus on the Indo-Pacific region. Ambassador Currie served as U.S. Representative to the UN Economic and Social Council (ECOSOC), and concurrently as Alternative Representative to the UN General Assembly (2017-2018). She also served as the acting head of the Department of State's Office of Global Criminal Justice (GCJ), the U.S. government's lead office for atrocity and accountability, and the U.S. Ambassador-at-Large for Global Women's Issues and the U.S. Representative at the United Nations Commission on the Status of Women (2020-2021), during which time she initiated and led the process for an atrocity determination on the Uyghur genocide and crimes against humanity. Ambassador Currie is currently an Adjunct Senior Fellow at the Center for a New American Security, a Washington D.C. think tank, and a Senior Advisor to the Krach Institute for Tech Diplomacy at Purdue University. She is a member of the board of directors of the

National Endowment for Democracy and the board of governors of the East-West Center. From 2009 until her appointment to the USUN leadership, she was a Senior Fellow with the Project 2049, and has also held senior policy positions with the U.S. Congress, international organizations, and non-governmental organizations. Ambassador Currie received a Juris Doctor from Georgetown University Law Center with a focus on International Human Rights Law, and an undergraduate degree cum laude in Political Science from the University of Georgia's School of Public and International Affairs.

Nury Turkel is a Uyghur American attorney, Uyghur rights spokesperson, and human rights advocate. He is the Chair of the U.S. Commission on International Religious Freedom, co-founder and board chair of the Uyghur Human Rights Project (UHRP), served as President of the Uyghur American Association. He recently published *No Escape: The True Story of China's Genocide of the Uyghurs*, which describes China's systematic persecution and repression of the Uyghur people and their culture, as well as his own experience as a Uyghur Muslim whose family remains in China suffering under the current regime.

Frank Wolf is the author of the International Religious Freedom Act of 1998, which created the U.S. Commission on International Religious Freedom, and is a current Commissioner for USCIRF. He served in the U.S. Congress as a member of the House of Representatives from 1981-2015. He also is the author of the legislation to create a special envoy at the U.S. State Department to advocate for religious minorities in the Near East and South Central Asia. Wolf founded and served as co-chairman of the Tom Lantos Human Rights Commission, a bipartisan organization made up of nearly 200 Members of the U.S. Congress who work together to raise awareness about international human rights issues. He has worked to call attention to the human rights abuses and religious persecution in the People's Republic of China, Tibet, Romania,

Nagorno-Karabakh, Chechnya, Bosnia, Kosovo, East Timor and the Middle East. From 2015-2018 he served at the 21st Century Wilberforce Initiative, a religious freedom group, from which he retired in September 2018 as Distinguished Senior Fellow. He served as the first Susie and Jerry Wilson Chair at Baylor University from 2015-2016. Wolf has been honored by a number of organizations for his work on human rights and religious persecution. He has received the Presidential Eleanor Roosevelt Award for Human Rights; the Christian Legal Society's William Bentley Ball Life and Religious Liberty Defense Award; the Alliance for Defending Freedom's Originalism & Religious Freedom Award; and Prison Fellowship Ministries William Wilberforce Award. He also received the 2014 Democracy Service Medal from the National Endowment for Democracy and the Leadership Award from Freedom House. Wolf was named World Magazine's Daniel of the Year for 2014.

## **INTRODUCTION**

China has committed numerous atrocities against the Uyghur people, whom the Chinese Communist Party views as a threat for their religiosity and distinct way of life. Uyghurs have been forcibly removed from their homes and put into “reeducation camps,” where they are tortured, forced into labor, and cut off from their families. Many Uyghurs do not survive their torture in the camps. Those who remain at home are forced to accept a government agent to live in their home to ensure they do not pray, read the Qur’an, or engage in any of their cultural practices. Uyghurs are surveilled to ensure that they are not keeping their Muslim faith requirements of avoiding alcohol and pork. Uyghur women are often raped, at home and in the detention camps. Government agents forcibly sterilize them so that the Uyghur population will die out. Uyghur children are forcibly removed from families so that they can be Sinicized, assimilated into the majority Han Chinese culture. And the Chinese government monitors

Uyghurs' text messages and phone calls, alienating Uyghurs from their family members who are worried about them. China's systematic actions against the Uyghur people has been recognized as a genocide by the U.S. government, and the United Nations High Commissioner for Human Rights has stated that these actions may constitute crimes against humanity. But because China is not a party of the International Criminal Court, there is no recourse for it to be held accountable in that forum. Furthermore, there is no other international criminal tribunal that could engage on the issue.

China's suppression of the Uyghur population, including through forced detention, torture, killing, systematic annihilation, and forced sterilization clearly are international crimes over which this Court may exercise universal jurisdiction. Argentina Law No. 24.584 implements the United Nations Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity into the National Constitution (the Convention). The Convention ensures that war crimes, crimes against humanity and genocide can be prosecuted and punished for the preservation of international peace and fundamental freedoms. According to No. 24.584, "no statutory limitation shall apply to . . . [w]ar crimes [or] [c]rimes against humanity whether committed in time of war or in time of peace."<sup>1</sup> This Court may exercise extraterritorial jurisdiction under article 118 of the Argentina National Constitution, which states that "when the crime is committed outside the borders of the Nation, in violation of international norms, Congress shall determine by a special law the place where the trial is to be held."<sup>2</sup> Exercising this authority, Argentine criminal courts have previously taken up investigations for the commission of genocide and crimes against humanity committed during the Franco

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<sup>1</sup> Law No. 24.584, Nov. 29, 1995 (Arg.).

<sup>2</sup> Art. 118, Constitución Nacional [Const. Nac.] (Arg.).

dictatorship in Spain from 1936–1977.<sup>3</sup> In 2021, the Court of Appeal of Buenos Aires ordered an investigation into the military’s crimes against humanity and genocide against the Rohingya in Myanmar.<sup>4</sup>

This Court should similarly exercise jurisdiction over the Uyghur genocide and crimes against humanity and open an investigation into China’s crimes committed against the Uyghur people. China has engaged in acts that meet the legal definitions of crimes against humanity and genocide under international law.

## BACKGROUND

China occupies East Turkistan (a land area of 642,800 square miles, constituting approximately one-sixth of the Chinese territory), a strategically important region on the Eurasian continent, an area rich in natural resources, and the homeland of the more than 12 million Uyghur people.<sup>5</sup> Because of their distinct lineage, culture, religion, and customs, the Uyghur people have stood out from and been targeted by the ruling Han Chinese for decades. The Uyghurs have historical, linguistic, and cultural ties to the Eurasian people—including Turks, Kazakhs, and Uzbeks—and the Uyghur language is closely related to other Turkic languages spoken in Uzbekistan and Turkey. Uyghurs are also distinguished physically; many

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<sup>3</sup> Causa Criminal n° 4591/2012 del Juzgado Nacional en lo Criminal y Correccional Federal n°1 de la Ciudad de Buenos Aires; Maria Manuela Marquez Velasquez, *The Argentinian Exercise of Universal Jurisdiction 12 Years After its Opening*, OpinioJuris (Apr. 2, 2022), <http://opiniojuris.org/2022/02/04/the-argentinian-exercise-of-universal-jurisdiction-12-years-after-its-opening/>.

<sup>4</sup> See *Historic Decision by Argentinian Courts to Take Up Genocide Case Against Myanmar*, Burmese Rohingya Organisation UK (Nov. 28, 2021), <https://www.brouk.org.uk/historic-decision-by-argentinian-courts-to-take-up-genocide-case-against-myanmar/>.

<sup>5</sup> Official Chinese statistics claim the Uyghur population is about 12 million, though it may be much higher, including several million in Central Asia, Europe, Asia, and North America, many of whom are political refugees from China.



Uyghurs have Central Asian or Turkish features than East Asian, whereas some Uyghurs demonstrate East Asian features because of their historical ties to the Mongols.<sup>6</sup>

The Uyghur people have long been targets of institutionalized and systematic harassment and persecution by the Chinese government because of their distinct physical appearance, cultural identity, religious values, and naming traditions. In recent years, the United States State Department, several Parliaments, and experts around the world have recognized that these acts have risen to crimes against humanity and indeed genocide. Numerous human rights organizations and Western government reports document the brutal persecution of Uyghurs in China—and its dramatic rise in recent years.

Since China's annexation of the Uyghurs' homeland in 1949, countless Uyghur intellectuals, dissidents, journalists, and religious leaders have suffered arbitrary detention, imprisonment, and torture at the hands of the Chinese government. Many Uyghurs have been executed on purely political grounds. And China's oppressive rule became even more draconian during and after the unrest in Urumqi on July 5, 2009. Many Uyghurs—some who peacefully protested and others purely for reasons of their Uyghur identity—were subjected to arbitrary detention, forced disappearance, extrajudicial killing, imprisonment, torture, and execution.<sup>7</sup> China has since criminalized simply being Uyghur in order to suppress and indeed destroy their ethnicity, religion, and culture.

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<sup>6</sup> See Lindsay Maizland, *China's Repression of Uyghurs in Xinjiang*, Council on Foreign Relations (2022), <https://www.cfr.org/background/china-xinjiang-uyghurs-muslims-repression-genocide-human-rights>.

<sup>7</sup> See Human Rights Watch, *Break Their Lineage, Break Their Roots: China's Crimes against Humanity Targeting Uyghurs and Other Turkic Muslims* (2021), <https://www.hrw.org/report/2021/04/19/break-their-lineage-break-their-roots/chinas-crimes-against-humanity-targeting>.

China’s egregious human rights abuses have dramatically intensified in the last several years, particularly since Chen Quanguo’s tenure as Communist Party Secretary in Xinjiang. The Chinese government transferred him to Xinjiang after he held the same role in Tibet and committed similar human rights abuses against Tibetan people there. Since Chen assumed leadership in Xinjiang—and continuing under his successors—Uyghurs’ lives have been turned upside down. Ubiquitous surveillance, intolerable privacy invasions, pervasive harassment and intimidation, and mass detention have become a new normal for the Uyghur people in China, resulting in long-lasting damage to the very fabric of Uyghur society.<sup>8</sup> As described in a 2018 article in *The Economist*, the Chinese authorities have turned Uyghurs’ homeland into a police state and built “hundreds or thousands of re-education camps where Uyghurs can be sent for any reasons or none.”<sup>9</sup> These detention centers are explicitly authorized by the Xinjiang Uyghur Autonomous Region Regulation on De-Extremification, implemented in 2017 and amended in 2018, and the Xinjiang Implementing Measures for the P.R.C. Counter-Terrorism Law of 2018 (collectively the “Xinjiang Regulations”), which use the pretext of terrorism and very broadly defined “extremism.”<sup>10</sup>

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<sup>8</sup> See Josh Chin, *Leaked Documents Detail Xi Jinping’s Extensive Role in Xinjiang Crackdown*, The Wall Street Journal (last updated Nov. 30, 2021), <https://www.wsj.com/articles/leaked-documents-detail-xi-jinpings-extensive-role-in-xinjiang-crackdown-11638284709>; Marco Rubio, *China’s Campaign Against Muslim Minorities*, The Wall Street Journal (Aug. 9, 2018), <https://www.wsj.com/articles/chinas-campaign-against-muslim-minorities-1533855077>.

<sup>9</sup> The Economist, *China Has Turned Xinjiang into a Police State Like No Other* (2018), <https://www.economist.com/briefing/2018/05/31/china-has-turned-xinjiang-into-a-police-state-like-no-other>.

<sup>10</sup> Xinjiang Uyghur Autonomous Region Regulation on De-Extremification (amended 2018); Xinjiang Implementing Measures for the P.R.C. Counter-Terrorism Law (2018); see U.N. Rep. at 8 n.50; *id.* at 12.

As under Article 3 of the Xinjiang Uyghur Autonomous Region Regulation on De-Extremification states, “extremification ... refers to speech and actions under the influence of extremism, that spread radical religious ideology, and reject and interfere with normal production and livelihood.” The purpose of the regulation is to “mak[e] religion more Chinese and under law, and actively guide religions to become compatible with socialist society.”<sup>11</sup>

Uyghurs have been detained en masse in these modern-day concentration camps.<sup>12</sup> Indeed, Western media, including the *New York Times*, the *Washington Post*, the *Wall Street Journal*, and the *Economist* have likened the worsening situation in East Turkistan to Stalin’s Gulag, Nazi concentration camps, and South African apartheid.<sup>13</sup> According to U.S. government estimates, hundreds of thousands to millions of Uyghurs and others have been subjected to detention in recent years.<sup>14</sup> According to the Chinese government’s own white paper defending its system of arbitrary internment, the regime has subjected 1.3 million Uyghurs and others

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<sup>11</sup> Xinjiang Uyghur Autonomous Region Regulation on De-Extremification (amended 2018), art. 4.

<sup>12</sup> See, e.g., The Economist, *supra*.

<sup>13</sup> Nicholas Kristof, *One Woman’s Journey Through Chinese Atrocities*, The New York Times (June 12, 2021), <https://www.nytimes.com/2021/06/12/opinion/sunday/china-xinjiang-uyghur-muslims-genocide.html>; Rian Thum, *China Locks Up Ethnic Minorities in Camps. It Says So Itself*, The New York Times (Oct. 25, 2018), <https://www.nytimes.com/2018/10/25/opinion/china-camps-uyghurs-xinjiang.html>; The Economist, *What is Happening to the Uyghurs in Xinjiang?* (2021), <https://www.economist.com/the-economist-explains/2021/07/12/what-is-happening-to-the-uyghurs-in-xinjiang> (comparing Chinese camps to the “gulag”); The Economist, *China Has Turned Xinjiang Into a Police State Like No Other* (May 31, 2018), <https://www.economist.com/briefing/2018/05/31/china-has-turned-xinjiang-into-a-police-state-like-no-other>; Ishaan Tharoor, *The Cone of Silence Around China’s Muslim Gulags*, The Washington Post (Jan. 9, 2019), <https://www.washingtonpost.com/world/2019/01/09/cone-silence-around-chinas-muslim-gulags/> (same).

<sup>14</sup> U.S. Dep’t of State, Ministerial to Advance Religious Freedom Statement on China (July 26, 2018), <https://www.state.gov/ministerial-to-advance-religious-freedom-statement-on-china/>.

yearly to “re-education” since 2015.<sup>15</sup> The actual number is impossible to ascertain. Regardless, this appears to be the largest incarceration of an ethnoreligious group since World War II. In addition to locking up adults, the authorities have exercised cruel methods of child separation, placing the children of detained Uyghurs into state-run orphanages, and in some cases, putting those children up for adoption by Chinese families.<sup>16</sup>

China also targets and suppresses Uyghur religious practices. The “De-Extremification” Regulations, implemented on April 1, 2017, limit religious practices and free speech among the Uyghur people.<sup>17</sup> The law prohibits fifteen activities, including wearing a headscarf, “spreading religious fanaticism through irregular beards” adhering to the dietary concept of halal, following Islamic traditions regarding marriages, funerals, and inheritance, and “deliberately interfering with or undermining the implementation of family planning policies” among others. And the authorities have acted on those discriminatory policies, detaining countless Uyghurs and other Turkic minorities based on the regulation’s broad and dangerous definition of “extremism.”<sup>18</sup>

Today, Uyghurs in China live under constant fear, continuous scrutiny, and terror imposed by the Chinese regime. But despite increasing media scrutiny and condemnation by the international community, the Chinese authorities have neither closed the camps nor loosened

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<sup>15</sup> State Council, People’s Republic of China, Employment and Labor Rights in Xinjiang (2020), [http://english.www.gov.cn/archive/whitepaper/202009/17/content\\_WS5f62cef6c6d0f7257693c192.html](http://english.www.gov.cn/archive/whitepaper/202009/17/content_WS5f62cef6c6d0f7257693c192.html); see also *Xinjiang: China Defends ‘Education’ Camps*, BBC News (Sept. 17 2020), <https://www.bbc.com/news/world-asia-china-54195325>.

<sup>16</sup> *China Sending Children of Exiled Uighur Parents to Orphanages, Says Amnesty*, BBC News (Mar. 19, 2021), <https://www.bbc.com/news/world-asia-china-56454609>; Sigal Samuel, *China’s Jaw-Dropping Family Separation Policy*, The Atlantic (Sept. 4, 2018), <https://www.theatlantic.com/international/archive/2018/09/china-internment-camps-uyghur-muslim-children/569062/>; Human Rights Watch, *supra*.

<sup>17</sup> XUAR Regulation on De-Extremification (amended in 2018).

<sup>18</sup> XUAR Regulation on De-Extremification (amended in 2018); see Tanner Greer, *48 Ways to Get Sent to a Chinese Concentration Camp*, Foreign Policy (Sept. 13, 2018), <https://foreignpolicy.com/2018/09/13/48-ways-to-get-sent-to-a-chinese-concentration-camp/>.

their oppressive policies. Instead, they continue to commit rampant abuses violating Uyghurs' basic human rights including rights to freedom of expression, religion or belief, privacy, and protection from emotional and physical torture.<sup>19</sup> In recent years, oppression has reached a level that puts this oppression within the purview of the legal definitions of crimes against humanity and even genocide.

Indeed, since the filing of this lawsuit, in August 2022, the United Nations Office of the High Commissioner for Human Rights formally confirmed the ongoing human rights atrocities occurring in China.<sup>20</sup> That report identified China's ongoing "human rights violations" against the Uyghurs as "deeply problematic."<sup>21</sup> Among other abuses, the U.N. report concluded that the Chinese government arbitrarily detained as many as twenty percent of ethnic Uyghurs in reeducation camps where torture, rape, forced sterilization, family separation, and forced labor are pervasive.<sup>22</sup> It also concluded that Uyghurs living in China face an unrelenting surveillance regime that tracks their location, communications, and internet searches, forces travelers to report their fuel consumption and pass onerous checkpoints manned by heavily-armed police, and burdens innocent families with live-in spies sent by the government.<sup>23</sup> The report concluded that these "restrictions and deprivation . . . more generally of fundamental rights . . . may constitute international crimes, in particular crimes against humanity."<sup>24</sup>

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<sup>19</sup> *Who Are the Uyghurs and Why is China Being Accused of Genocide?*, BBC News (May 24, 2022), <https://www.bbc.com/news/world-asia-china-22278037>.

<sup>20</sup> United Nations Human Rights Office of the High Commissioner, *Assessment of Human Rights Concerns in the Xinjiang Uyghur Autonomous Region, People's Republic of China*, (Aug. 31, 2022), <https://www.ohchr.org/sites/default/files/documents/countries/2022-08-31/22-08-31-final-assesment.pdf> [hereinafter "U.N. Rep."].

<sup>21</sup> *Id.* at 43.

<sup>22</sup> *Id.* at 17.

<sup>23</sup> *Id.* at 31-32.

<sup>24</sup> *Id.* at 44.

The United States government has recognized China's actions against the Uyghurs as constituting genocide and crimes against humanity.<sup>25</sup> These crimes include "arbitrary imprisonment or other severe deprivation of physical liberty," "forced sterilization," "torture," and "forced labor."<sup>26</sup> In previous years' human rights reports, the State Department reported on the official repression of the freedoms of speech, religion or belief, association, and assembly of Uyghurs. These reports stated that Uyghurs and other ethnic minorities had been subjected to forced disappearances, systematic torture, and other degrading treatment by law enforcement officers and the penal system.<sup>27</sup> The State Department's 2020 Report on International Religious Freedom specifically labeled these actions "genocide," a determination that Secretary of State Antony Blinken reaffirmed in May 2021, saying, "China broadly criminalizes religious expression and continues to commit crimes against humanity and genocide against Muslim Uyghurs and members of other religious and ethnic minority groups."<sup>28</sup>

## ARGUMENT

### I. China's suppression of the Uyghur community is genocide under international law.

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<sup>25</sup> U.S. Dep't of State, China 2021 Human Rights Report, [https://www.state.gov/wp-content/uploads/2022/03/3136152\\_CHINA-2021-HUMAN-RIGHTS-REPORT.pdf](https://www.state.gov/wp-content/uploads/2022/03/3136152_CHINA-2021-HUMAN-RIGHTS-REPORT.pdf).

<sup>26</sup> Michael R. Pompeo, Press Statement, Determination of the Secretary of State on Atrocities in Xinjiang, U.S. Dep't of State (Jan. 19, 2021), <https://2017-2021.state.gov/determination-of-the-secretary-of-state-on-atrocities-in-xinjiang/index.html>; Rian Thum, *China Locks Up Ethnic Minorities in Camps. It Says So Itself*, The New York Times (Oct. 25, 2018), <https://www.nytimes.com/2018/10/25/opinion/china-camps-uyghurs-xinjiang.html>; James Millward, 'Reeducating' Xinjiang's Muslims, The New York Review (Feb. 7, 2019), <https://www.nybooks.com/articles/2019/02/07/reeducating-xinjiangs-muslims/>.

<sup>27</sup> U.S. Dep't of State, 2019 Report on International Religious Freedom: China – Xinjiang, <https://www.state.gov/reports/2019-report-on-international-religious-freedom/china/xinjiang/>

<sup>28</sup> U.S. Dep't of State, 2020 Report on International Religious Freedom: China – Xinjiang, <https://www.state.gov/reports/2019-report-on-international-religious-freedom/china/xinjiang/>; Matthew Lee, *US Hits China and Others for Repressing Religious Freedom*, AP News (May 12, 2021), <https://apnews.com/article/china-religion-government-and-politics-688d180b0aa0fed541f00ef446af29f1>.

The international community has understood since 1948 that genocide, the most heinous of crimes, merits swift response—no matter where in the world it is perpetrated, and this in accordance to the duty to prevent and punish the crimes under Article I of the U.N. Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention). The Genocide Convention is part of the National Constitution of Argentina and has constitutional status here.<sup>29</sup> The norm against genocide is *jus cogens*, “binding on States, even without any conventional obligation.”<sup>30</sup> The definition of genocide was then later incorporated in the Rome Statute of the International Criminal Court (Rome Statute). Under the Genocide Convention and Rome Statute, genocidal acts are those which specifically undertake to destroy, in whole or in part, an ethnic, religious, national or racial group.<sup>31</sup> The “rights and obligations enshrined by the Convention are rights and obligations *erga omnes*,”<sup>32</sup> A country need not be party to the Convention to be held accountable for genocide.

The crime of genocide has two main elements. A state must (A) commit the prohibited acts against one of the four listed groups (B) with the “intent to destroy, in whole or in part, a national, ethnical, racial, or religious group, as such.”<sup>33</sup> As analyzed below, China’s abuses clearly meet this standard. The government’s regime of concentration camps, pervasive surveillance apparatus, and totalitarian police regulations converge to brutalize Uyghurs on a massive scale. And those methods have worked. Six years since China began covertly expanding its network of camps, untold numbers of Uyghurs have been tortured or killed, many others have

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<sup>29</sup> National Constitution of Argentina, art. 75 inc. 22.

<sup>30</sup> Democratic Republic of Congo v. Rwanda, ICJ, Judgment of Feb. 3, 2006, para. 64.

<sup>31</sup> See Convention on the Prevention and Punishment of the Crime of Genocide, United Nations Gen. Assemb., art. II (1948) [hereinafter “Genocide Convention”]; Rome Statute, Int’l Criminal Ct., art. VI (1998).

<sup>32</sup> Bosnia & Herzegovina v. Yugoslavia, ICJ, Judgment of July 11, 1996, para. 31.

<sup>33</sup> Genocide Convention, art. II.

been forced to suppress their religious beliefs and ethnic identities, and the Xinjiang birthrate portends devastation for Uyghurs' future.

**A. China has committed all five actions that constitute genocide under international law.**

In accordance with the definition of genocide, a state commits genocide when it undertakes any of the following prohibited acts:

(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.<sup>34</sup>

As the International Criminal Tribunal for Rwanda has declared, “[t]he *actus reus* of genocide does not require the actual destruction of a substantial part of the group; the commission of even a single instance of one of the prohibited acts is sufficient, provided that the accused genuinely intends by that act to destroy at least a substantial part of the group.”<sup>35</sup> By committing all prohibited acts against the Uyghur people, China has fulfilled genocide’s *actus reus*.

**a) The Chinese government has killed members of the Uyghur population.**

As the Elements of Crimes of the Rome Statute state, “killing” is synonymous with “caused death.”<sup>36</sup> Even one death with the requisite intent is enough to be a genocide.<sup>37</sup> A court may determine that a killing has taken place without recovery of the decedent’s body, and a state may be held liable even for suicides that it induces.<sup>38</sup>

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<sup>34</sup> Rome Statute, Int’l Criminal Ct., art VI (1998).

<sup>35</sup> Prosecutor v. Mpampara (Case No. ICTR-01-65-T), Judgment, 11 September 2006, para. 8.

<sup>36</sup> Elements of Crimes, ICC-ASP/1/3, p. 2, <https://www.icc-cpi.int/sites/default/files/ElementsOfCrimesEng.pdf>.

<sup>37</sup> See, e.g., Prosecutor v. Mpampara (Case No. ICTR-01-65-T), Judgment, 11 September 2006, para. 8; William A. Schabas, *Genocide in International Law* 178-80 (2d ed. 2009) (describing that genocide has no numerosity requirement).

<sup>38</sup> Schabas, *supra*, at 180.



High-level Chinese government officials have made explicit their desire to enact the deaths of Uyghurs. In 2017, the party secretary for Yarkand County, a region where nearly all residents are Uyghur, gave a speech demanding the complete destruction of the Uyghur population.<sup>39</sup> Accordingly, several reports confirm that Chinese authorities and guards within the concentration camps have murdered Uyghurs in their custody.<sup>40</sup> Some Uyghurs, specifically Uyghur community leaders, have been outright executed by camp officials, while others have been killed in custody through other means.<sup>41</sup> Exact numbers are difficult to ascertain given the Chinese government's attempts to suppress public knowledge of its actions. One expert estimates that five to ten percent of those imprisoned in the detention camps die there.<sup>42</sup> And anecdotal reports confirm that large numbers of Uyghurs are dying in China's custody or shortly after being released. One former camp officer reported that around 150 people died from June to December 2018 in just one of the many internment camps.<sup>43</sup> At least 18 Muslim imams have died in detention centers as well.<sup>44</sup> More vulnerable individuals, such as the elderly or religious leaders in Uyghur communities, are the most likely to be killed under increased amounts of torture by guards due to their social standing and inability or unwillingness to conform to the demands of concentration camp officials.<sup>45</sup> Reports of murders are corroborated by evidence of

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<sup>39</sup> Newlines Institute for Strategy and Policy, *The Uyghur Genocide: An Examination of China's Breaches of the 1948 Genocide Convention* 37 (2021).

<sup>40</sup> *Id.* at 26.

<sup>41</sup> *Id.* at 49.

<sup>42</sup> *See Internment Camps in Xinjiang's Aksu Separated by Crematorium*, Radio Free Asia (Nov. 13, 2020), <https://www.rfa.org/english/news/uyghur/crematorium-11132020144027.html>.

<sup>43</sup> *At Least 150 Detainees Have Died in One Xinjiang Internment Camp*, Radio Free Asia (Oct. 29, 2019), <https://www.rfa.org/english/news/uyghur/deaths-10292019181322.html>.

<sup>44</sup> Turkel, *No Escape*, *supra*, at 193.

<sup>45</sup> Newlines Inst. for Strategy & Pol'y, *supra*, at 26.

recently constructed, discreetly located crematoria on the grounds of concentration camps in Xinjiang.<sup>46</sup>

Many reports confirm that the Chinese government has killed Uyghurs held captive in their internment camps through other means as well.<sup>47</sup> Survivors report that Uyghur women have bled to death from violent gynecological treatments given to sterilize them.<sup>48</sup> Moreover, the Chinese government targets Uyghurs for forced organ harvesting.<sup>49</sup> The harsh treatment in the camps has caused many formerly healthy people to die shortly after they have been released from prison as well.<sup>50</sup> Thus, the Chinese government has both actively murdered Uyghurs and caused their deaths through their mistreatment of them in the concentration camps.

**b) The Chinese government has caused serious bodily and mental harm to Uyghurs through systematic detention, torture, surveillance, and suppression of their religious and cultural heritage.**

As the International Criminal Tribunal for Rwanda has held, serious bodily and mental harm rises to the level of genocide when it “threaten[s] [the group’s] destruction in whole or in part.”<sup>51</sup> Courts have recognized as causing mental harm “threats of death and knowledge of

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<sup>46</sup> *Id.*

<sup>47</sup> *Internment Camps in Xinjiang’s Aksu Separated by Crematorium*, Radio Free Asia (Nov. 13, 2020), <https://www.rfa.org/english/news/uyghur/crematorium-11132020144027.html>; see *Retired Uyghur Civil Servant Confirmed to Have Died in Xinjiang Internment Camp*, Radio Free Asia (Dec. 20, 2021), <https://www.rfa.org/english/news/uyghur/died-12202021162340.html>.

<sup>48</sup> Turkel, *No Escape*, *supra*, at 144-45.

<sup>49</sup> U.N. Office of the High Commissioner on Human Rights, *China: UN Human Rights Experts Alarmed by “Organ Harvesting” Allegations* (June 24, 2021), <https://www.ohchr.org/en/press-releases/2021/06/china-un-human-rights-experts-alarmed-organ-harvesting-allegations>.

<sup>50</sup> Nury Turkel, Keynote Address to the 2022 Regional Religious Freedom Forum, An Indo-Pacific Civil Society Dialogue on Religious Freedom in Challenging Times (Taipei, Taiwan) (Aug. 30, 2022);

<sup>51</sup> *Prosecutor v. Seromba* (Case No. ICTR-01-66-A), Judgment, 12 March 2008, para. 46.

impending death; acts causing intense fear or terror; surviving killing operations; forcible displacement; and ‘mental torture.’”<sup>52</sup> China’s actions clearly fall within that standard.

China has caused serious bodily and mental harm to Uyghurs. The regime operates as many as 380 concentration camps across Xinjiang,<sup>53</sup> and it detained as many as twenty percent of the adult ethnic population in 2017 and 2018 alone.<sup>54</sup> As the U.N. report recognized, “it is impossible for an individual . . . to leave [a concentration camp] of their own free will.”<sup>55</sup> Detainees are given sentences “of indefinite nature,” and release requires meeting “undefined criteria as evaluated by the authorities.”<sup>56</sup> Conditions in the camps are horrific: guards routinely subject prisoners to beatings, rape and sexual violence, sleep deprivation, and dangerous drug regimens.<sup>57</sup> During their internment, detainees “ha[ve] no contact with their family and often their families d[o] not know where they [are].”<sup>58</sup> Detainees in the internment camps are kept in small cells which sometimes hold up to forty other detainees.<sup>59</sup> These crowded cells are under constant surveillance, and detainees are frequently disturbed by cameras and lights being turned on at various hours throughout the night.<sup>60</sup> If one cellmate breaks the detention center’s rules,

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<sup>52</sup> Nema Milaninia, *Understanding Serious Bodily or Mental Harm as an Act of Genocide*, 51 Vanderbilt J. of Transnational L. 1381, 1395 (2018) (quoting Prosecutor v. Akayesu, Case No. ICTR-96-4-T, Judgment, ¶ 504 (Sept. 2, 1998); Prosecutor v. Rutaganda, Case No. ICTR-96-3-T, Judgment, T 51 (Dec. 6, 1999)).

<sup>53</sup> Nathan Ruser, Australian Strategic Pol’y Inst., *Documenting Xinjiang’s Detention System* 3 (2020).

<sup>54</sup> U.N. Rep. at 17.

<sup>55</sup> U.N. Rep. at 14, 16.

<sup>56</sup> *Id.* at 14.

<sup>57</sup> *Id.* at 22-23.

<sup>58</sup> *Id.* at 13.

<sup>59</sup> Mihrigul Tursun, *The Xinjiang Papers: An Analysis for the Uyghur Tribunal 2* (2021), <https://uyghurtribunal.com/wp-content/uploads/2021/06/06-1650-JUN-21-UTFW-014-Mihrigul-Tursun-English.pdf>.

<sup>60</sup> U.N. Rep. at 22.

everyone in the cell is punished.<sup>61</sup> This has caused detainees to “take two-hour nightshifts to ensure cellmates were not praying or otherwise breaking rules at night-time.”<sup>62</sup> Detainees also receive insufficient food: the U.N. report found that former detainees described a feeling of “constant hunger” that led to “severe weight loss.”<sup>63</sup>

The camps inflict various forms of other torture on detainees. Chinese officials interrogate detainees for hours at a time. During interrogations, they beat detainees with electric batons, restrain them in agonizing positions in a contraption called a “tiger chair,” and place them in prolonged solitary confinement.<sup>64</sup> During the day, detainees are forced to attend “re-education classes” where they are indoctrinated into Party propaganda in order to renounce their ethnic and religious identities.<sup>65</sup> Some detainees have reported further cultural suppression in the concentration camps by being forced to eat foods, such as pork, that are forbidden in their religion or face punishment.<sup>66</sup>

At various times, detainees are subject to involuntary medical experiments. Almost every detainee that the U.N. Office of the High Commissioner for Human Rights interviewed reported regularly receiving injections and pills and being forced to provide blood samples.<sup>67</sup> These forced medications occur throughout the detainees’ time in the concentration camp and have

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<sup>61</sup> Johana Bhuiyan, *Former Xinjiang Detainee Arrives in US to Testify Over Repeated Torture He Says He Was Subjected To*, *The Guardian* (Apr. 13, 2022), <https://www.theguardian.com/world/2022/apr/13/former-xinjiang-detainee-arrives-in-us-to-testify-over-china-abuses>.

<sup>62</sup> U.N. Rep. at 22.

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

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

<sup>65</sup> *Id.* at 22-23.

<sup>66</sup> Gulzire Awulqanqizi, *The Xinjiang Papers: An Analysis for the Uyghur Tribunal 7* (2021), <https://uyghurtribunal.com/wp-content/uploads/2021/09/UTFW2-080-Gulzire-Aulhan-Updated-12.09.21-18.08.21.pdf>.

<sup>67</sup> U.N. Rep. at 23.

grave physical effects on the detainees.<sup>68</sup> Many detainees report feeling drowsy after being administered the medication,<sup>69</sup> and some detainees experienced much more extreme side effects such as “pain in their ears, hands and feet,” trouble walking which persisted after detention ended, and yellow fluid leaking out of their ears.<sup>70</sup> And those physical harms have taken their psychological toll: the U.N. report concluded that these conditions can result in “mental suffering that is severe enough to amount to torture.”<sup>71</sup>

In the concentration camps, women are subjected to rape and sexual violence. The U.N. Office of the High Commissioner for Human Rights found many reported instances of guards raping or forcing female detainees to perform “oral sex in the context of an interrogation.”<sup>72</sup> In some cases, detained women were prostituted to local ethnic Han Chinese civilians, taken to a room and forcibly stripped, and tied to a bed in anticipation of rape.<sup>73</sup> In addition to forcible sexual contact, detainees reported various forms of sexual humiliation in detention camps, including forced nudity and invasive gynecological exams, sometimes in a group setting.<sup>74</sup> Even women who are no longer within childbearing age are subjected to forced sterilization.<sup>75</sup>

The Chinese government also inflicts mental harm on Uyghurs not in detention by forcing them to be stripped of their religious and cultural identities. The government has taken draconian actions against peaceful protest, dissent, and genuine religious observance. It will label Uyghurs “extremists” if they possess certain books like the Qur’an and video materials, refuse to

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<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> Bhuiyan, *supra*.

<sup>71</sup> U.N. Rep. at 24.

<sup>72</sup> *Id.*

<sup>73</sup> Awulqanqizi, *supra*, at 7-8.

<sup>74</sup> U.N. Rep. at 35.

<sup>75</sup> Turkel, *No Escape*, at 172-73.

use the radio and television, quit smoking or drinking, or adopt certain manners of dress or personal appearance that reflect their religious and cultural values.<sup>76</sup> The Chinese government subjects those under investigation to a variety of restrictive measures, including house arrest, confinement to a certain geographic area, bans from public transport, passport confiscation, and ultimately detention.<sup>77</sup> Indeed, according to the Chinese government’s own white paper, from 2014 to 2019 the government “punished 30,645 people for illegal religious activities, and confiscated 345,229 copies of illegal religious materials.”<sup>78</sup> And some Uyghurs have been sent to the concentration camps merely for having too many children, being born in certain years, or downloading WhatsApp.<sup>79</sup>

This coordinated oppression is partially accomplished by a repressive regime of in-person surveillance. In 2016, the government initiated the “Becoming Family” campaign through which Uyghurs are forced to have a Chinese government official stationed in their homes to surveil them.<sup>80</sup> It is estimated at least 1.6 million people have had government officials forcibly stationed in their homes through this program.<sup>81</sup> The government officials ask Uyghur children whether the parents secretly pray, use the words “Allah” or “Mohammed,” or say anything negative about the government.<sup>82</sup> They ensure that Uyghurs do not pray or speak their own language in their homes,<sup>83</sup> and they will pressure Uyghurs to drink alcohol and smoke tobacco.<sup>84</sup> Even acts as innocuous as not watching TV programs may render Uyghurs subject to

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<sup>76</sup> U.N. Rep. at 7-8.

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

<sup>78</sup> U.N. Rep. at 5.

<sup>79</sup> *Id.* at 15.

<sup>80</sup> *Id.* at 31.

<sup>81</sup> *Id.*

<sup>82</sup> Turkel, No Escape, *supra*, at 127.

<sup>83</sup> Bhuiyan, *supra*, at 32.

<sup>84</sup> Turkel, No Escape, *supra*, at 135.

suspicion.<sup>85</sup> The data the officials collect is fed into a computer program and may lead to insufficiently compliant Uyghurs' arrest and detention.<sup>86</sup> Some of the "Becoming Family" officials rape and sexually abuse Uyghur women in their homes, even while their husbands are present.<sup>87</sup>

The prohibited act of inflicting physical and psychological harm is also carried out through advanced surveillance technology that monitors individuals constantly, which is used to create a state of constant fear, mistrust and helplessness and as a result, abandon religious and cultural practices even in the safety of their home.<sup>88</sup> Telecommunications and internet providers are compelled to use government provided "content monitoring systems" to surveil their customers communications and internet activity.<sup>89</sup> Additionally, localities use monitoring systems in public places to collect personal and other biometric data on targets movements and whereabouts. The government scans phones for forbidden calls overseas, or for prohibited applications like WhatsApp or Facebook.<sup>90</sup> Uyghurs are required to install a surveillance application called "Clean Internet Security Soldier" that monitors their moves, communications, internet browsing, and online purchases.<sup>91</sup> They must keep their phones on and with them at all times so that they can be GPS tracked.<sup>92</sup> In one representative instance, two weeks after the application was installed on a Uyghur woman's phone, she was reprimanded for using an Arabic greeting and told that if she did not speak exclusively in Mandarin she would face worse

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<sup>85</sup> *Id.* at 128.

<sup>86</sup> *Id.* at 127.

<sup>87</sup> *Id.* at 136.

<sup>88</sup> See, e.g., Kayleigh Rogers, *What Constant Surveillance Does to Your Brain*, Vice (Nov. 14, 2018), <https://www.vice.com/en/article/pa5d9g/what-constant-surveillance-does-to-your-brain>.

<sup>89</sup> Bhuiyan, *supra*, at 10.

<sup>90</sup> Turkel, *No Escape*, *supra*, at 129.

<sup>91</sup> *Id.* at 98.

<sup>92</sup> *Id.* at 129.

consequences.<sup>93</sup> Because of this constant surveillance, Uyghur family members will condemn their children who managed to flee the country over the phone and disown them so as to avoid more punishment themselves.<sup>94</sup> Uyghurs suffer mental trauma from the suppression of family communication and constant privacy intrusion,<sup>95</sup> which aims to “[b]reak their lineage, break their roots, break their connections, and break their origins.”<sup>96</sup>

**c) The Chinese government has deliberately imposed on the Uyghur people conditions of life calculated to destroy them.**

A state can also commit genocide by “deliberately inflicting on a group conditions of life calculated to bring about its physical destruction in whole or in part.”<sup>97</sup> As such, acts that “do not immediately kill the members of the group, but ultimately seek their physical destruction” qualify as genocide.<sup>98</sup> As described above, by way of placing Uyghurs in camps where they would be subjected to a litany of atrocities, which, ultimately, seek their physical destruction. The camps’ unsanitary conditions, starvation rations, dangerous drugs, and rampant assaults are conditions calculated to destroy many of the Uyghurs who face them.<sup>99</sup> The treatment in camps aims to destroy the Uyghur people.

**d) The Chinese government has imposed measures intended to prevent Uyghur births, including through forced sterilization and forced abortion.**

The U.N. Office of the High Commissioner of Human Rights has documented credible accounts of forced sterilization, IUD insertion, and forced abortion among the Uyghur

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<sup>93</sup> *Id.* at 99.

<sup>94</sup> *Id.* at 167.

<sup>95</sup> *See generally id.* at 127-29, 135-36.

<sup>96</sup> Statement of Maisumujiang Maimuer, Chinese religious affairs official (Aug. 10, 2017), *in* Human Rights Watch, *supra*.

<sup>97</sup> Rome Statute, Int’l Criminal Ct., art VI (1998).

<sup>98</sup> *See* Prosecutor v. Tolimir, Case No. IT-05-88/2, Judgement (Appeal), 8 April 2015, para. 255.

<sup>99</sup> U.N. Rep. at 23-25.



population.<sup>100</sup> The Chinese government forces Uyghur women to be sterilized against their and their families' wills.<sup>101</sup> Xinjiang sees seven times more sterilizations than the rest of China—an “unusual,” “stark” figure.<sup>102</sup> In the internment camps, pregnant detainees are forced to have an abortion or otherwise disappear.<sup>103</sup> Officials force women to take unnamed pills and injections that stop them from menstruating.<sup>104</sup> Sometimes, these injections contain the hormonal medication Depo-Provera, which suppresses ovulation and causes headaches and dizziness.<sup>105</sup> As a result, many of the women subjected to these procedures suffer from painful uterine bleeding for years to come.<sup>106</sup> And Uyghur women are coerced into marrying non-Uyghur men for fear of being detained otherwise.<sup>107</sup> Those methods have proven effective: Uyghur birthrates have plummeted by more than 50% in just two years.<sup>108</sup>

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<sup>100</sup> *Id.* at 35; see also Ben Westcott et al., *Women in Xinjiang shine a light on a campaign of abuse and control by Beijing*, CNN (Jul. 31, 2020), <https://www.cnn.com/2020/07/30/asia/xinjiang-sterilization-women-human-rights-intl-hnk/index.html>.

<sup>101</sup> Turkel, *No Escape*, *supra*, at 171-72.

<sup>102</sup> U.N. Rep. at 34.

<sup>103</sup> Turkel, *No Escape*, *supra*, at 231-32.

<sup>104</sup> *Id.* at 231.

<sup>105</sup> *Id.*

<sup>106</sup> *Id.*

<sup>107</sup> U.S. Holocaust Museum, “*To Make Us Slowly Disappear*”: *The Chinese Government’s Assault on the Uyghurs* 11 (Nov. 2021); see also Darren Byler, *Uyghur Love in a Time of Interethnic Marriage* (Aug. 7, 2019), <https://thechinaproject.com/2019/08/07/uyghur-love-in-a-time-of-interethnic-marriage/>; Uyghur Human Rights Project, *Forced Marriage of Uyghur Women: State Policies for Interethnic Marriages in East Turkistan* (Nov. 16, 2022), <https://uhrp.org/report/forced-marriage-of-uyghur-women/>

<sup>108</sup> U.N. Rep. at 34; see also Nathan Ruser & James Leibold, Australian Strategic Pol’y Inst., *Family De-Planning: The Coercive Campaign to Drive Down Indigenous Birth-rates in Xinjiang* 4 (2021).

**e) China is forcibly transferring Uyghur children to another group.**

China forcibly separates Uyghur children from their parents and sends them to boarding schools and orphanages where they are subjected to forced indoctrination.<sup>109</sup> Between 800,000 and one million Uyghur children have been separated from their families,<sup>110</sup> some as young as months old.<sup>111</sup> Many of these children are placed in state-run institutions without parental consent, where they are indoctrinated to reject Uyghur cultural norms and values.<sup>112</sup> The government has taken a “concerted drive to all but eliminate the use of Uighur and other local languages from school premises.”<sup>113</sup> Those institutions—surrounded with barbed wire and surveillance cameras—more closely resemble prisons than schools.<sup>114</sup> The Chinese government has been massively expanding its boarding school capacity at the same time that they have been expanding detention centers, and government data shows that many children are placed in

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<sup>109</sup> See generally Amnesty Int’l, *Hearts & Lives Broken: The Nightmare of Uyghur Families Separated by Repression 3* (2020), <https://www.amnesty.org/en/latest/research/2021/03/the-nightmare-of-uyghur-families-separated-by-repression/>; Adrian Zenz, *Break Their Roots: Evidence for China’s Parent-Child Separation Campaign in Xinjiang*, J. of Political Risk, vol. 7, no. 7, July 2019, <https://www.jpolrisk.com/break-their-roots-evidence-for-chinas-parent-child-separation-campaign-in-xinjiang/>; *China: Xinjiang Children Separated from Families*, Hum. Rts. Watch (Sept. 15, 2019), <https://www.hrw.org/news/2019/09/15/china-xinjiang-children-separated-families>; see John Sudworth, *China Muslims: Xinjiang Schools Used to Separate Children from Families*, BBC News (July 4, 2019), <https://www.bbc.com/news/world-asia-china-48825090>.

<sup>110</sup> *The Slow Motion Genocide: Nury Turkel on the Plight of the Uyghurs*, Octavian Report (Jun. 10, 2022), <https://octavian.substack.com/p/the-slow-motion-genocide-nury-turkel>; Nury Turkel & Beth Van Shaack, *What America Owes the Uyghurs: A Plan for Stopping China’s Genocide*, Foreign Affairs (July 16, 2021), <https://www.hudson.org/human-rights/what-america-owes-the-uyghurs-a-plan-for-stopping-china-s-genocide>.

<sup>111</sup> Adrian Zenz, *Break Their Roots: Evidence for China’s Parent-Child Separation Campaign in Xinjiang*, J. of Political Risk, vol. 7, no. 7, July 2019, <https://www.jpolrisk.com/break-their-roots-evidence-for-chinas-parent-child-separation-campaign-in-xinjiang/>.

<sup>112</sup> *China: Xinjiang Children Separated from Families*, Hum. Rts. Watch (Sept. 15, 2019), <https://www.hrw.org/news/2019/09/15/china-xinjiang-children-separated-families>; see John Sudworth, *China Muslims: Xinjiang Schools Used to Separate Children from Families*, BBC News (July 4, 2019), <https://www.bbc.com/news/world-asia-china-48825090>.

<sup>113</sup> Sudworth, *supra*.

<sup>114</sup> *Id.*

boarding schools because one or both parents are in the concentration camps.<sup>115</sup> This separation is “very likely a deliberate strategy and crucial element in the state’s systematic campaign of social re-engineering and cultural genocide in Xinjiang.”<sup>116</sup> Indeed, experts maintain that “such separations may constitute a genocidal method to bring about the destruction of the group in whole or in part, as forcibly transferring children of the group to another group.”<sup>117</sup>

**B. In taking these actions, China “intends to destroy, in whole or in part, a national, ethnical, racial, or religious group, as such.”**

All that is necessary to transform any of the prohibited acts into genocide is the specific intent to destroy a protected group in whole or in part. This specific intent may be express or inferred. Genocidal regimes seldom call their acts what they are, but their “*dolus specialis*” may be inferred from “a pattern of conduct.”<sup>118</sup>

The Chinese government’s official statements confirm China’s specific intent to destroy. For example, President Xi Jinping has ordered that “[t]he weapons of the people’s democratic dictatorship must be wielded without any hesitation or wavering” against the Uyghur population, and that the government should “show absolutely no mercy” in taking action against them.<sup>119</sup> That message has been received and relayed at all levels of the Party hierarchy. In 2017, Yarkand’s Party Secretary gave a public speech commanding loyal Han to “wipe [Uyghurs] out completely [and] [d]estroy them root and branch.”<sup>120</sup> Even lower officials have been transparent about their aims: one likened Uyghurs to an infestation and maintained that “you can’t uproot all

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<sup>115</sup> *Id.*; Zenz, *supra*.

<sup>116</sup> Zenz, *supra*.

<sup>117</sup> Ewelina U. Ochab, *Amnesty calls on China to Release All Uyghur Children Held in Orphanages Without Their Families’ Consent*, *Forbes* (Mar. 19, 2021), <https://www.forbes.com/sites/ewelinaochab/2021/03/19/amnesty-calls-on-china-to-release-all-uyghur-children-held-in-orphanages-without-their-families-consent/?sh=15edada78978>.

<sup>118</sup> *Croatia v. Serbia*, ICJ, Judgment of Feb. 3, 2015, para. 148.

<sup>119</sup> Newlines Inst. for Strategy & Pol’y, *supra*, at 37 (internal quotation marks omitted).

<sup>120</sup> *Id.* (internal quotation marks omitted).

the weeds hidden among the crops in the field one by one—you need to spray chemicals to kill them all.”<sup>121</sup> Accordingly, camp guards have reported that they were ordered to maintain the system “until all Muslim nationalities would be extinct.”<sup>122</sup>

Those statements correspond with official policy. The regime’s “Strike Hard Campaign” commands Party faithful to deploy brutal policing tactics against Uyghurs, targeting Uyghur neighborhoods with raids and shootings.<sup>123</sup> The system of concentration camps was similarly well-planned. Since 2014, President Xi Jinping’s official statements “prepared the ground for the subsequent campaign of preventative extralegal internment.”<sup>124</sup> And from 2017 onward, Xinjiang officials were instructed to “carry out a campaign of indiscriminately interning masses of people . . . to contain the spread of the ‘poison.’”<sup>125</sup>

The Chinese government’s intent is also manifested in its strategic destruction of Uyghur religious and cultural places. Satellite imagery analysis reveals that the Chinese government has destroyed many of the 20,000 mosques and other Islamic religious sites in Xinjiang.<sup>126</sup> In addition, it has systematically demolished or altered various other Xinjiang Islamic religious sites, cemeteries, and shrines.<sup>127</sup> Cemeteries have been destroyed to force Uyghurs to adopt cremation, a process that is contrary to their religious belief, and which they find profoundly immoral and degrading.<sup>128</sup> This destruction of physical religious cultural sites further coincides

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<sup>121</sup> *Id.* at 37-38 (internal quotation marks omitted).

<sup>122</sup> *Id.* at 37 (internal quotation marks omitted).

<sup>123</sup> Connor W. Dooley, Note, *Silencing Xinjiang: The Chinese Government’s Campaign Against the Uyghurs*, 48 *Georgia J. Int’l & Compar. L.* 233, 247-48 (2021).

<sup>124</sup> Adrian Zenz, *The Xinjiang Papers: An Analysis of Key Findings and Implications for the Uyghur Tribunal in London* 14 (2021).

<sup>125</sup> *Id.* at 15.

<sup>126</sup> U.N. Rep. at 26-27.

<sup>127</sup> *Id.* at 27-28.

<sup>128</sup> *See Internment Camps in Xinjiang’s Aksu Separated by Crematorium*, Radio Free Asia (Nov. 13, 2020), <https://www.rfa.org/english/news/uyghur/crematorium-11132020144027.html>;

with a concerted effort to suppress the use and exercise of ethnic Uyghur and Kazakh religious practices, languages and other aspects of their cultures. Schools are required to only teach the national common language, Mandarin Chinese.<sup>129</sup> Since 2014, teachers that teach bilingually, using Kazakh or Uyghur, have been systematically removed from their positions and schools that allow such instruction have been closed.<sup>130</sup>

Furthermore, as confirmed by experts analyzing the situation on Uyghurs, intent to destroy the Uyghurs—in whole or in part—is “the only inference that could reasonably be drawn from the acts in question.”<sup>131</sup> China’s oppression targets Uyghurs in particular. Xinjiang’s birthrate is far lower than the rest of the country’s, Uyghurs disproportionately fill concentration camps, and Uyghurs are disproportionately targeted for surveillance, search, and arrest based on their ethnicity and religious conduct. That abuse poses an existential threat. As many as twenty percent of Xinjiang’s Uyghurs have already faced terms in the camps, and those who have not are forced to live with government spies who sexually abuse them, indoctrinate their children, and report their conduct to the State. It is only a matter of time before those measures eradicate the Uyghurs altogether.

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The Chinese government’s targeted actions against the Uyghur people clearly constitute genocide as defined under international law.

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*Xinjiang Authorities Use “Burial Management Centers” to Subvert Uyghur Funeral Traditions*, Radio Free Asia (Apr. 19, 2018), <https://www.rfa.org/english/news/uyghur/burials-04192018141100.html>; *Demolishing Faith: The Destruction and Desecration of Uyghur Mosques and Shrines*, Uyghur Human Rights Project (Oct. 28, 2019), <https://uhrp.org/report/demolishing-faith-the-destruction-and-desecration-of-uyghur-mosques-and-shrines/>.

<sup>129</sup> U.N. Rep. at 28-29.

<sup>130</sup> *Id.* at 29.

<sup>131</sup> *Croatia v. Serbia*, ICJ, Judgment of Feb. 3, 2015, para. 148.

## **II. China has committed crimes against humanity under international law against the Uyghur population.**

As the U.N. Office of the High Commissioner for Human Rights has suggested, the Chinese government is committing “crimes against humanity” against the Uyghur population.<sup>132</sup> Under the Rome Statute, crimes against humanity are defined as “any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

a) murder b) extermination c) enslavement d) deportation or forcible transfer of population e) imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law f) torture g) rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity; h) persecution . . . on political, racial, national, ethnic, cultural, religious, gender . . . , or other grounds that are universally recognized as impermissible under international law; i) enforced disappearance of persons; j) the crime of apartheid; [and] k) other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.<sup>133</sup>

The Chinese government has intentionally committed each of the mentioned acts against the Uyghur people to suppress and ultimately eliminate them.

### **A. The Chinese government has engaged in each act that constitutes crimes against humanity against the Uyghur people.**

#### **a-b) The Chinese government is murdering and exterminating the Uyghur people.**

As described above, there is significant evidence showing that Chinese officials have murdered Uyghurs both through active killings and as a result of their treatment in China’s concentration camps.<sup>134</sup> Moreover, Uyghur women are subjected to forced sterilization procedures, compulsory IUD insertions, and even forced abortions, eliminating the future

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<sup>132</sup> U.N. Rep. at 44.

<sup>133</sup> Rome Statute, Int’l Criminal Ct., art VII (1998).

<sup>134</sup> Newlines Inst. for Strategy & Pol’y, *supra*, at 26.

generation of Uyghurs.<sup>135</sup> These actions are intentionally taken to eliminate the Uyghur population.<sup>136</sup> Through this aggressive depopulation campaign, the Chinese government is taking sweeping steps towards the elimination of the Uyghur population.

**c) The Chinese government has enslaved Uyghurs in internment camps and through forced labor.**

The Chinese government has enslaved Uyghurs in internment camps and forced them into a compulsive labor scheme that forces Uyghurs to take jobs for miniscule pay in regions where Uyghurs are a minority.<sup>137</sup>

As described in Part I, the Chinese government has enslaved the Uyghur people through use of internment camps. Researchers have determined that at least 135 camps have factories either inside them or in close proximity.<sup>138</sup> Those imprisoned in the concentration camps are forced to work while there.<sup>139</sup> If work assignments are refused, they may suffer extended detainment or harsh physical retribution.<sup>140</sup>

Further, through China's "surplus labor" scheme, Uyghur adults living in predominantly Uyghur communities are forced, under threat of punishment, to disperse across the country in compulsory work programs.<sup>141</sup> Many of these workers are taken directly from concentration camps upon their release and deployed across China to fulfill industrial labor needs.<sup>142</sup> Many with otherwise marketable skills, like nurses, are forced to work in textile factories and live on the factory premises.<sup>143</sup> In one factory alone, 660 were brought to a factory shackled and

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<sup>135</sup> *Id.* at 29-33.

<sup>136</sup> *Id.* at 37-45.

<sup>137</sup> *See* Turkel, No Escape, *supra*, at 255-63.

<sup>138</sup> *Id.* at 257.

<sup>139</sup> Newlines Inst. for Strategy & Pol'y, *supra*, at 25-26.

<sup>140</sup> *See id.* at 25-26; U.N. Rep. at 38.

<sup>141</sup> U.N. Rep. at 36-37; *see* Turkel, No Escape, *supra*, at 257.

<sup>142</sup> *See* U.N. Rep. at 36-37; Turkel, No Escape, *supra*, at 257.

<sup>143</sup> Turkel, No Escape, *supra*, at 255-68.

handcuffed and forced into work.<sup>144</sup> Currently, forced Uyghur labor contributes to the supply chains of at least 82 international companies, including household names such as Apple, Nike, and Sony.<sup>145</sup> Official documents show that these workers are managed by a point system under which points are deducted if such individuals fail to sufficiently participate in training, fail to find approved employment, or continue to hold “old-fashioned and stubborn ideas.”<sup>146</sup> They live under “military-style management,” where they are forced to live in segregated dormitories, are watched by government agents, and are surrounded by barbed wire.<sup>147</sup> One of the punishments for resisting this program is detention in a concentration camp.

**d) The Chinese government has forcibly transferred the Uyghur population.**

The Chinese government forcibly transfers Uyghurs by imprisoning them in internment camps and enslaving them through the “surplus labor” scheme.<sup>148</sup> As described above, enrollment in the “surplus labor” scheme is involuntary and coerced, with the threat of punishment hanging over individuals who fail to adequately cooperate with the program. Once enrolled in this scheme and trained by government officials, companies put in “orders” for labor and the government sends batches of individuals from the targeted Uyghur population to meet this demand.<sup>149</sup> Local governments and private brokers are paid by the head for each worker that they place into slavery.<sup>150</sup> A 2018 initiative aimed to coercively transfer over 200,000 individuals from Xinjiang to regions outside of their home province, including directing these

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<sup>144</sup> *Id.* at 256.

<sup>145</sup> Vicky Xiuzhong Xu et al., *Uyghurs for Sale: ‘Re-education,’ Forced Labour and Surveillance Beyond Xinjiang* 3 (2020).

<sup>146</sup> U.N. Rep. at 38.

<sup>147</sup> Turkel, No Escape, *supra*, at 258.

<sup>148</sup> Adrian Zenz, Coercive Labor and Forced Displacement in Xinjiang’s Cross-Regional Labor Transfer Program: A Process-Oriented Evaluation 9 (The Jamestown Foundation ed., 2021).

<sup>149</sup> *Id.* at 12.

<sup>150</sup> Turkel, No Escape, *supra*, at 258.



individuals towards inner China.<sup>151</sup> An internal report revealed that the primary goal of that program was to “reduce Uyghur population density in Xinjiang.”<sup>152</sup> The surplus labor scheme exists to forcibly remove Uyghurs from their homes and dilute their cultural affiliations by coercively transporting them throughout China.

**e) The Chinese government has imprisoned and severely deprived Uyghurs of their liberty.**

“A deprivation of liberty, within the meaning of international human rights law, can occur in any type of location and does not need to be officially labeled as such.”<sup>153</sup> As described above in Part I.A.b, the Chinese government also deprives Uyghurs of their liberty through physical detention in concentration camps, forced labor, and constant surveillance. The U.N. Office of the High Commissioner for Human Rights found that “the grounds on which individuals can be placed” into the concentration camps “encompass conduct that is *prima facie* lawful, including as an expression or manifestation of the exercise of fundamental rights and freedoms.”<sup>154</sup> It further found that China’s actions in the camp constituted “violations of the fundamental obligation to treat individuals deprived of their liberty humanely and with dignity, and of the absolute prohibition of torture and other forms of cruel, inhuman, or degrading treatment and punishment.”<sup>155</sup> Detention in the concentration camps is not grounded in any legal basis or process, outside of the sweeping and vague Xinjiang Implementing Measures for the P.R.C. Counter-Terrorism Law and Xinjiang Regulation on De-extremification.<sup>156</sup> Those imprisoned are denied basic safeguards and protections under the human rights law.<sup>157</sup> There is

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<sup>151</sup> Zenz, *supra*, at 13.

<sup>152</sup> *Id.* at 14.

<sup>153</sup> U.N. Rep. at 13.

<sup>154</sup> *Id.* at 15.

<sup>155</sup> *Id.* at 23.

<sup>156</sup> *Id.* at 14-15.

<sup>157</sup> *Id.* at 15.

no access to attorneys, nor is there disclosure of duration of detention or criteria for release.<sup>158</sup> And even Uyghurs who are not in detention camps have their liberty to worship and engage in cultural practices stripped from them through a high-tech surveillance scheme employing constant monitoring of their phone and location activity.<sup>159</sup>

**f) The Chinese government has tortured Uyghurs.**

As discussed in Part I, and as the U.N. report has recognized, Chinese government has engaged in systematic torture of Uyghurs in the camps.<sup>160</sup> Examples of such mistreatment include vicious beatings with batons or electric batons, prolonged solitary confinement, forced placement in a “tiger chair” chair for hours on end, and waterboarding.<sup>161</sup> Women are often raped, sexually assaulted, and subjected to non-consensual medical experimentation.<sup>162</sup> Mistreatment extends beyond physical abuse as well to include “psychological torture.”<sup>163</sup> Detainees report instances of sleep deprivation and denial of adequate meals.<sup>164</sup> Uyghur detainees suffer from a lack of knowledge of why they were being detained, length of their detention, the detention conditions, the denial of communication with outsiders, and constant surveillance.<sup>165</sup>

**g) Chinese officials have engaged in rape, enforced sterilization, abortion, and other comparable forms of sexual violence.**

As described in Part I, the Chinese government has engaged in forced sterilization, abortion, and other forms of sexual and gender-based violence. The Chinese government has

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<sup>158</sup> *Id.*

<sup>159</sup> See *supra* Part I.

<sup>160</sup> U.N. Rep. at 21.

<sup>161</sup> *Id.* at 22.

<sup>162</sup> *Id.* at 23-25.

<sup>163</sup> *Id.* at 23.

<sup>164</sup> *Id.* at 22.

<sup>165</sup> *Id.* at 23.

forcibly sterilized Uyghur women and forcibly aborted their unborn children. Uyghur women are subjected to forcible insertion of IUD birth control devices, forcible sterilization, and forced abortions.<sup>166</sup> Officials both in the camps and as part of the “Becoming Family” program rape women, force women to perform oral sex, and make them suffer various forms of sexual humiliation, including forcible nudity.<sup>167</sup> In the internment camps, women are subjected to arbitrary and painful gynecological “examinations” with no medical justification. These are often held in front of other detainees.<sup>168</sup> The Chinese government has demanded that Uyghur women have “long-term birth control measures.”<sup>169</sup> Uyghurs found in violation of the Chinese government’s stringent family planning policies are sent to the camps.<sup>170</sup>

**h) The Chinese government has persecuted Uyghurs for their religion and ethnicity.**

China’s persecution of the Uyghurs is based on the government’s hostility towards their religious and ethnic diversity from Han Chinese. As Part I.A.b describes, the Chinese government labels as “extremist” standard worship practices, arrests those who engage in faith practices like growing beards, separates families so that the children can be indoctrinated away from their cultural and religious heritage, forces Uyghurs to denounce Allah and pledge allegiance to the government, and is destroying Muslim sacred sites and cemeteries. Ordinary exercise of religious belief by Muslim Uyghurs, such as wearing hijabs, growing beards, closing restaurants during Ramadan, or giving one’s child an Islamic name are considered acts of extremism. In practice, these restrictions on extremist activity encapsulate virtually all religious practice associated with Islamic belief, placing the practice of Islam under penalty of criminal

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<sup>166</sup> *Id.* at 34-35.

<sup>167</sup> *Id.* at 32; Turkel, No Escape, *supra*, at 135-36.

<sup>168</sup> U.N. Rep. at 23.

<sup>169</sup> *Id.* at 35.

<sup>170</sup> *Id.*

sanction or detainment in a concentration camp.<sup>171</sup> Moreover, the Chinese government forces assimilation on the Uyghur people, prohibiting the use of the Uyghur language in texts, slogans, pictures, collective activities, public activities, and management work.<sup>172</sup> Uyghurs are required to speak Mandarin in their homes and face punishment for using Arabic in private communications.<sup>173</sup> All this is done to eradicate the Uyghur ethnic group and assimilate it into the dominant Han Chinese identity.

**k) The Chinese government has engaged in the enforced disappearance of Uyghurs.**

The Chinese government has also engaged in a massive campaign of forced disappearances of Uyghurs. The Chinese government itself acknowledged the existence of 10,708 people labeled “missing,” although it refused to provide specific documentation on those persons.<sup>174</sup> In many cases, detainees taken to camp facilities do not have their family members notified about their location, reasons for their detainment, or length of time which they would be detained.<sup>175</sup> Additionally, those incarcerated are prohibited from having contact with their loved ones.<sup>176</sup> Even though family members actively reach out to authorities to learn of their loved ones’ whereabouts, they are often met with silence or baseless claims from the government that missing persons are “living normal lives” in Xinjiang.<sup>177</sup> When offering these explanations, the Chinese government puts forth no evidence as to the whereabouts of the missing Uyghurs in question and makes no follow-up inquiries as to their locations.<sup>178</sup> In the rare instances where

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<sup>171</sup> *Id.* at 26.

<sup>172</sup> *Id.* at 29.

<sup>173</sup> *See supra* Part I.A.b.

<sup>174</sup> U.N. Rep. at 41.

<sup>175</sup> *Id.* at 40-41.

<sup>176</sup> *Id.* at 41.

<sup>177</sup> *Id.*

<sup>178</sup> *Id.*

accurate information is given to family members, such disclosure is made on an *ad hoc* basis following persistent inquiries, rather than any systematic or policy-driven disclosure system.<sup>179</sup>

**l) The Chinese government has engaged in other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.**

The Chinese government, through implementing sweeping security laws and outfitting local police with high-tech surveillance equipment, has completely locked down Uyghur communities in Xinjiang and maintains a constant state of surveillance over the local populace.<sup>180</sup> As described in Part I.A.b, monitoring is done via in-person or digital means, including the collection and use of biometric data through a growing network of surveillance cameras, police stations, and police checkpoints.<sup>181</sup> Local law enforcement also leverages unfettered access to individual communications devices and financial histories through the analytical use of big data technologies.<sup>182</sup> This invasive surveillance network closely follows the activities of local Uyghurs and notifies local police to action when the subjects of surveillance exhibit religious behaviors deemed to be characteristic of extremist belief.<sup>183</sup>

In addition to these other crimes, the Chinese government maintains a prolonged campaign of harassment and intimidation against victims of concentration camps and their relatives who dare to speak out about their experiences.<sup>184</sup> Former detainees, upon their release, are forced to sign documents pledging nondisclosure of their experiences in the camps; otherwise, their detention would be prolonged and their families would face punishment as

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<sup>179</sup> *Id.*

<sup>180</sup> *Id.* at 30-32.

<sup>181</sup> *Id.*

<sup>182</sup> *Id.*

<sup>183</sup> *Id.* at 31.

<sup>184</sup> *Id.* at 42-43.

well.<sup>185</sup> Survivors of the camps have reported receiving various forms of threats and harassment by the Chinese government, mostly in the form of threatening phone calls made by officials or family members acting at the behest of the government, when they give public statements of the conditions in these concentration camps.<sup>186</sup> Family members in China often are subjected to punishment when their relatives in other countries speak out about the government's actions, and many Uyghur refugees face intimidation and harassment themselves for speaking out about China's atrocities.<sup>187</sup>

**B. These actions are part of a “widespread and systematic attack directed against a civilian population, with knowledge of the attack.”**

Under the Rome Statute, acts constitute crimes against humanity when they are (1) directed against a civilian population, (2) widespread and systematic, and (3) committed knowingly.<sup>188</sup> China's actions constitute crimes against humanity under that standard. First, the Chinese government directly targets its attacks against a civilian population.<sup>189</sup> Uyghur civilians are not “incidental target[s]” of an otherwise valid campaign, but are rather the very targets of China's regime of oppression.<sup>190</sup> Second, the government's course of attack against the Uyghurs is both widespread and systematic under international law. The government's actions are

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<sup>185</sup> *Id.*

<sup>186</sup> *Id.*

<sup>187</sup> *Id.*; see *China Detains Family Members of Radio Free Asia Uyghur Editor Eset Sulaiman*, Committee to Protect Journalists (Mar. 8, 2021), <https://cpj.org/2021/03/china-detains-family-members-of-radio-free-asia-uyghur-editor-eset-sulaiman/>; *Five Individuals Charged Variously with Stalking, Harassing, and Spying on U.S. Residents on Behalf of the PRC Secret Police*, U.S. Department of Justice (Mar. 16, 2022), <https://www.justice.gov/opa/pr/five-individuals-charged-variously-stalking-harassing-and-spying-us-residents-behalf-prc-0>.

<sup>188</sup> Rome Statute, Int'l Criminal Ct., art. VII (1998); Prosecutor v. Radovan Karadžić, Case No. IT-95-5/18-T, Public Redacted Version of Judgement Issued on 24 March 2016 – Volume I of IV (TC), 24 March 2016, para. 472.

<sup>189</sup> See Prosecutor v. Jovica Stanišić and Franko Simatović, Case No. IT-03-69-T, Judgement (TC), 30 May 2013, para. 964.

<sup>190</sup> Prosecutor v. Radovan Karadžić, Case No. IT-95-5/18-T, Public Redacted Version of Judgement Issued on 24 March 2016 – Volume I of IV (TC), 24 March 2016, para. 475.

widespread, conducted on a broad scale impacting millions of Uyghurs.<sup>191</sup> They are also systematic, part of an organized scheme<sup>192</sup> implemented by the government rather than one-off undertakings of rogue actors.<sup>193</sup> Third, the actions are undertaken knowingly, as part of official government policy under the “Strike Hard” campaign.<sup>194</sup> As such, there can be no doubt that China has perpetuated crimes against humanity against the Uyghur people.

## CONCLUSION

China’s atrocities against the Uyghur people, amounting to the legal definitions of crimes against humanity and genocide, are well-documented and encompasses every aspect of a Uyghur’s life.

China has intentionally engaged in all prohibited acts that constitute genocide under international law and done so with the requisite intent to destroy the Uyghurs as a group in whole or in part. China has also engaged in a widespread and systematic manner in all eleven acts that constitute crimes against humanity under international law, and it has done so as part of a widespread and systemic attack against a civilian population, with knowledge that it is doing so. This Court should exercise jurisdiction over the case and rule that China is guilty of these dire crimes.

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<sup>191</sup> Prosecutor v. Jovica Stanišić and Franko Simatović, Case No. IT-03-69-T, Judgement (TC), 30 May 2013, para. 963.

<sup>192</sup> *Id.*; see Jovica Stanišić and Franko Simatović, *supra*, para. 963.

<sup>193</sup> Karadžić, *supra*.

<sup>194</sup> Prosecutor v. Nikola Sainovic, Case No. IT-05-87-A, Judgement (AC), 23 January 2014, para. 277.