

[A Silent Cry - Uyghurs in Xinjiang, China \(Part I of II\)](#)

Par:

[John Doe](#)

Langue Anglais

Le:

13 Août 2020

The first of this two-part blog series explores the current detention of an estimated [eight hundred thousand to two million](#) Uyghur people by the Chinese Communist Party (CCP) government in over 100 detention centers in the northwestern semi-autonomous province of Xinjiang. It examines how this detention fits within the definition of the crime against humanity of persecution under article 7.1(h) of the Rome Statute. It will provide a brief contextual historical overview of the tension between the Uyghur people and the Chinese government and explore the legitimacy of the defence the CCP proffers that these camps serve as a “counter-terrorism” measure.

Background on Xinjiang and the Uyghur population

The present upheaval of the Uyghur population in China is a manifestation of nearly two decades of increasing tension between the CCP and the Uyghur population. The brief periods of independence that the Uyghur people experienced during the [pre-Communist regime](#) has amounted in growing fears by the CCP of revolution by the Uyghurs since the CCP’s assumption of political power in 1949.

This tug-o-war of independence has resulted in the State exercising increasingly oppressive measures and campaigns to [“crack down”](#) on “orchestrated” terrorist movements that seek the region’s independence. After 9/11 and the Bush Administration’s subsequent declaration of “War on Terror”, China has also declared an internal [“war on terror”](#). This “people’s war on terror” marked a nationwide counter-terrorism campaign targeting its own Uyghur population through “de-extremification” campaigns as a means to exert political power over a group that has historically sought autonomy.

The Chinese government has applied these “de-extremification” (*quijiduanhua*) measures to include [“transformation through education”](#) and massive [hi-tech security crackdowns](#). Scholars have indicated that China’s “re-education” measure is now arguably the country’s [“most intense campaign of coercive social re-engineering since the Cultural Revolution”](#) and the epitome of China’s securitization. President Xi Jinping specifically spoke of the need to build [“walls made of copper and steel”](#) when introducing the campaign. The recent leak of over [400 pages of internal Chinese government documentation](#) demonstrate the crackdown on the Uyghur people.

Analysis of the Crime Against Humanity

From [article 7.1 of the Rome Statute](#), a crime against humanity is defined as an act “committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.” For this analysis, I submit that from his appointment in 2017 to present day, the State Party Secretary of the Xinjiang Autonomous Region (XUAR), Chen Quanguo, has implemented a Uyghur-targeted policy and attack to detain an estimate of eight hundred thousand to two million Uyghur Muslims in State-run detention centers, subjecting them to torture and other proscribed acts that meet the threshold of the crime against humanity of persecution.

Contextual Elements

Widespread or Systematic Attack

The current detention of an estimated one million Uyghur civilians by the CCP in these detention centers meets both the requirements of a widespread and systematic attack. On the analysis of “widespread” or “systematic,” the International Criminal Court (ICC) Pre-Trial Chamber has determined in the case [Ruto, Kosgey, and Sang](#) that an attack is widespread by being [“massive, frequent, carried out collectively with considerable seriousness and directed against a large number of civilian victims.”](#) The Chamber also [factored](#)

in the geographical scope of the attack, the amount of burning and destruction of properties, injuries and murders. The Chamber similarly analyzed the role of coordinators of the attack and the implementation of the act.

In analyzing the Uyghur situation, there is much evidence to indicate that the CCP is trying to target as many Uyghur people as possible, indiscriminate of age or sex. The means and methods of systematically building detention centers, whether from the labour of the guards, infrastructure, economic investment or otherwise can hardly be deemed haphazard and is much more indicative of a well-planned and well-executed systematic level of attack. An attack means “[a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack.](#)” Imprisonment is listed as one of the attacks under paragraph one of the definition and would thus constitute an “attack” under the Rome Statute.

Both the widespread and systematic elements of the attack are exemplified in an [article](#) from *Radio Free Asia* where a Chinese official was quoted justifying the widespread detention centers by systematic means through comparing re-education of the Uyghur people to spraying chemicals on crops to kill all the weeds. He [stated](#):

“You can’t uproot all the weeds hidden among the crops in the field one by one — you need to spray chemicals to kill them all. Re-educating these people is like spraying chemicals on the crops. That is why it is a general re-education, not limited to a few people.”

The detained Uyghur Muslims are from [all walks of life](#), many of whom who have no overt political stance and are nominally religious at best and bear no resemblance to the potential candidates of extremist groups. When probed about the reason for their detention, officials simply say that “[t]hey are not here because they committed certain crimes, but for a special reason” and provide no further explanation.

As of date, more than [one hundred facilities](#) have been discovered from data and satellite images. Experts measured the growth and expansion of these detention facilities, looking for [watchtowers and security fencing](#) – all indicative of systematic monitoring and control of persons, and noted that from 2017 there was huge surge in the construction of these security facilities. Even before detention, the government’s constant surveillance of the population is well-documented. A Chinese security contractor, [SenseNets](#), logged exact GPS coordinates of over 2.5 million people in Xinjiang, one third of which were Uyghur, and, using facial recognition, associated that data with sensitive personal information, including national ID numbers, home addresses, personal photographs, and places of employment.

The closely linked association of the media and the CCP on the reporting of the situation in these detention centers is also indicative of systematic. President Xi’s announcement that “all news media run by the Party must work to speak for the Party’s will and its propositions and protect the Party’s authority and unity,” further exemplifies the control exerted by the CCP. All the news outlets and journalists reporting on the Uyghur detention have been warned to “[enhance their awareness to align their ideology, political thinking and deeds to those of the CPC Central Committee.](#)” Those who have spoken against China’s repressive policies have been subsequently detained and those remaining are forced to tote the party line and have [no independence in reporting](#).

Directed against any civilian population

For this element, the Rome Statute further elaborated in article 7.2(a) that in order for the attack to be deemed directed against a civilian population that it must be “a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack.”

In the case of the Uyghur people, it is clear that the primary target of the detention are the Uyghur people, a non-contested point even with the CCP. Whereas they deny their mistreatment and the purpose of these detention centers, the fact that the centers were established for the Uyghur Muslims is not disputed. It can be clearly established that the acts of detention are directed against this civilian population.

The definition of “civilian” is based upon [article 50 of Additional Protocol I](#) of the 1949 Geneva Convention, in which a non-combatant, or even a civilian who is not directly participating in hostilities, is considered a

civilian. Many previous ICTY cases, such as [Kunarac](#) and [Kordić](#), use this definition rooted in international humanitarian law.

Though there is not a clear number for what constitutes a “population”, from the estimates of eight hundred thousand to two million detainees, it can be determined as a sizeable group of people possessing a distinctive feature (i.e. geographical, ethnic, religious) according to the ICC Pre-Trial Chamber in the [Muthaura et al. case](#) (paragraph 110).

Nexus: Acts of the perpetrator form part of the attack (Objective Connection)

A finding of crime against humanity requires the existence of an objective nexus between the acts of the perpetrator and the attack against a civilian population. In particular, it must be established that the acts of the alleged perpetrator formed part of the attack, in this case, the detention itself. This nexus [can be analyzed](#) by assessing the liability of the perpetrator to further attacks, if they are sufficiently connected to the detentions, and the strength of that connection.

The closest nexus perpetrator for the detention of the Uyghur people is Chen Quanguo, the Xinjiang Region Party Secretary. Formally the Party Secretary to the Tibetan Autonomous Region (TAR), he assumed his role as Party Secretary of the Xinjiang Uyghur Autonomous Region (XUAR) in 2016 after establishing himself as a hardliner and “[ethnic policy innovator](#)”, pioneering various new methods of securing CCP control over Uyghur, Tibetans and other ethnic minorities in western China.

Under his leadership, he has advertised [90,866 security-related positions](#) to be filled in Xinjiang by police and other security-related postings. This drastic 95% increase in hiring established an estimated [7,500 convenience police stations](#) across Xinjiang.

Perpetrator has requisite *mens rea* for contextual elements

For this element to be met, the accused, in this case, Xinjiang State Party Secretary Chen Quanguo, has to know that there is an attack on the Uyghur population, and his acts form part of the attack. It is [not necessary](#) to know the exact details of the attack or have knowledge of all the characteristics of the attack either. The mental element can be met if the perpetrator intended to further this attack. Considering the spike in more than 90 000 new police and security-related postings in Xinjiang that he implemented as well as his heavy-handed approach to “stabilizing” the area, it is unlikely that Chen can plead ignorance to the detention of the Uyghur people.

Chen’s appointment to his position in August 2016 also corroborates with China’s target of “[all Uyghurs as potential state enemies](#).” Dolkun Isa, president of the Munich-based World Uyghur Congress exile group, has stated that “Chen has initiated an unprecedented region-wide purge of Uyghur intellectuals, religious figures, businessmen, and any Uyghur who is not pleased with Chinese rule as ‘[two-faced](#)’ people” and has compared Chen’s action to those of Nazi Germany and the Holocaust. It is very unlikely for Chen to plead complete ignorance to the detention given corroborative evidence of his active connection to their detention, increase of policing at his request, and his high position of authority and control as State Party Secretary. Furthermore, [Human Rights Watch](#) and other civil societies have vocalized their concerns of the Uyghur detention to Chen in open reports and letters addressed to his office on the matter.

Can the counter-terrorism motive that Chen purports be a legally valid defence?

From analyzing the contextual elements, it is incumbent to evaluate whether the potential defence under article 31 Chen may raise surrounding their counter-terrorism motive would be sufficient as a legally valid defence. Self-defence pursuant to article 31(1)(c) of the Rome Statute would likely be the main argument for protection against the threat of terrorism that the Uyghur population supposedly poses. However, I argue that it would not be a viable defence there seems to exist no reliable evidence of an existing Uyghur terrorist threat. In addition, Chen’s indiscriminate detention of all Uyghur people demonstrates the widespread reach of its attack, and he would likely be unable to sufficiently demonstrate that the entire population of Uyghurs meets the requisite suspicions of terrorism. Thus, I argue that Chen cannot use the defence of motive for the acts of detention.

CONCLUSION

As of date, based on the data gathered by civil society, other States and news outlets, there is a strong case in the making for a crime against humanity of persecution currently being committed against the Uyghur people in China. The international community has [decried](#) its disapproval of China, though silent in this discourse is the majority of the [Muslim world](#) who are [recipients of Chinese loans](#). Furthermore, the looming question of jurisdiction to rule on this crime is an obstacle that is hard to overcome. China's political power and capacity cannot be overlooked in this analysis. As Deputy Director of the Mercator Institute for China Studies in Berlin, [Mikko Huotari](#) aptly explains the inaction and [silence](#) of these countries: "Not wanting to do this alone... There's a general fear of deterioration of relations with China." If Chinese officials are to be held to account for their actions, it requires the collective collaboration of the international community of sanctions, political dissonance, and even national prosecutions based on universal jurisdiction.

Les réflexions contenues dans ce billet n'appartiennent qu'à leur(s) auteur(s) et ne peuvent entraîner ni la responsabilité de la Clinique de droit international pénal et humanitaire, de la Chaire de recherche du Canada sur la justice pénale internationale et les droits fondamentaux, de la Faculté de droit de l'Université Laval, de l'Université Laval ou de leur personnel respectif, ni des personnes qui ont révisé et édité ces billets, qui ne constituent pas des avis ou conseils juridiques.

The pseudonym "John Doe" was used to protect the author's identity for security reasons.

This blogpost was supported by the Canadian Partnership for International Justice and the Social Sciences and Humanities Research Council of Canada.



CPIJ
PCJI

CANADIAN PARTNERSHIP
FOR INTERNATIONAL JUSTICE
PARTENARIAT CANADIEN
POUR LA JUSTICE INTERNATIONALE



Social Sciences and Humanities
Research Council of Canada

Conseil de recherches en
sciences humaines du Canada

Canada 

Image: By [Otebig](#) - Self-photographed, CC BY 3.0,

Sujet:
[Uyghurs](#)