

# UYGHUR RACE AS THE ENEMY

*China's Legalized Authoritarian Oppression &  
Mass Imprisonment*

*Written by Rayhan Asat<sup>1</sup> and Min Kim<sup>2</sup>*

**Yale MACMILLAN CENTER**  
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1 Lead author, Rayhan Asat, Human Rights Lawyer & International Law Scholar at Harvard Law School.  
2 Second author, Min Kim, Yale College '24

## EXECUTIVE SUMMARY

While the Chinese government’s oppression of Uyghurs dates back to decades ago, the acceleration started with the inception of the Strike Hard Campaign in 2014 when the People’s Republic of China (PRC) subjected the Uyghur community to severe repressive measures in pursuit of an alleged “People’s War on Terror”.<sup>3</sup> China asserts that the campaign aims to counter extremism and ensure national security. In reality, however, it has endangered the lives and livelihoods of countless innocent Uyghurs and other Turkic ethnic groups in the Xinjiang Uyghur Autonomous Region (XUAR) in violation of international law and China’s domestic laws.

Numerous independent documentation and investigations, including the 2022 United Nations Office of High Commissioner for Human Rights (OHCHR) Assessment of Human Rights Concerns in the Xinjiang Uyghur Autonomous Region (hereinafter referred to as the “OHCHR Assessment”), have substantiated claims that the Chinese government’s War on Terror entailed extensive human rights violations within facilities that were labeled as “Vocational Education and Training Centers” (VETCs)<sup>4</sup> but were, in practice, mass internment camps. Based on their investigation, the OHCHR Assessment concluded that China’s actions in the XUAR may constitute an international crime, in particular, crimes against humanity.<sup>5</sup> The international community has voiced strong outrage and condemnation for years, but China has persisted in surreptitiously infringing upon the rights of the Uyghur and other Turkic people while the world found itself distracted with several other crises. Post-pandemic, China has been attempting to rewrite its image by hiding visible signs of its repression and presenting a “clean” image to Western media and tourists. Militarized checkpoints, surveillance cameras, and rampant police are no longer obvious parts of daily life in Xinjiang as far as tourists and visitors can see. However, China’s oppression is far from gone – it has simply hidden it better by legalizing its mass incarceration of Uyghurs.

In response, this report aims to contribute to the ongoing documentation and efforts by civil society – including the lead author Rayhan Asat’s continued effort to put an end to China’s human rights abuses – by demonstrating that China’s systematic, large-scale imprisonment of Uyghurs not only amounts to a crime against humanity and genocide, but also dangerous lawfare at mass scale. It explains that the imprisonment and sentencing at a scale that the world has not seen since World War II is the maximum reach of what scholars argue is “authoritarian legality,” and that its chilling effect must concern humanity. In addition, it calculates that if the mass imprisonment continues, the Uyghur population is currently set to suffer from **a cumulative total of 4.4 million years of imprisonment**. Furthermore, it assesses that the persecution not only takes away millions of years of life for the current generations of Uyghur people, but also completely eliminates the possibility of a life of dignity, prosperity, and freedom for future generations as well. Importantly, we have not even begun to discuss the damage of the scale of persecution on the future generations of Uyghur people.

3 Beth Van Schaak, Leah Kaplan, and Maya Wang, “Break Their Lineage, Break Their Roots’ - China’s Crimes Against Humanity Targeting Uyghurs and Other Turkic Muslims” (Human Rights Watch, April 19, 2021), <https://www.hrw.org/report/2021/04/19/break-their-lineage-break-their-roots/chinas-crimes-against-humanity-targeting>.

4 Various NGOs, “OHCHR Assessment of Human Rights Concerns in the Uyghur Region Must Spur Action at the Council’s 51st Session,” Human Rights Council (blog), September 15, 2022, <https://www.hrw.org/news/2022/09/15/ohchr-assessment-human-rights-concerns-uyghur-region-must-spur-action-councils-51st>.

5 OHCHR, “OHCHR Assessment of Human Rights Concerns in the Xinjiang Uyghur Autonomous Region, People’s Republic of China” (Office of the United Nations High Commissioner for Human Rights (OHCHR), August 31, 2022), <https://www.ohchr.org/sites/default/files/documents/countries/2022-08-31/22-08-31-final-assesment.pdf>.

First, the report identifies the legal mechanisms by which the Chinese Communist Party (CCP) has adapted its tactics to escape international scrutiny while continuing its persecution of Uyghurs. It focuses on how China has amended its Criminal Law to transition from arbitrary detention in extrajudicial centers – so-called VETCs – to more systematic imprisonment through wielding its pre-existing criminal justice system as its instrument of persecution. As one scholar has argued, “authoritarian regimes like China resort to legality as a tool for strategic purposes,”<sup>6</sup> discussing how China uses bureaucratic cover-ups to create a false impression of imprisonment by law while still subjecting Uyghur and other Turkic populations to totalitarian oppression.

Then, this report shows how, within the context of authoritarian legality, there has been a lack of procedural legality and consistency that still defy both Chinese and international legal standards in China’s practices across all stages of the judicial process. In particular, the report explores violations of international law, including trumped-up grounds for arrests and detention, the lack of due process for the detainees, the disproportionality of the punishment, retroactive persecution, and the abnormality of incarceration rates. These violations are corroborated in both victim testimonies and quantitative analysis of incarceration data.

Afterward, the report quantifies the extent of damage caused to the Uyghurs’ ability to continue existing as a people, a group, and a civilization.

In light of these considerations, the report turns to international law to argue that China’s ethnic incapacitation of Uyghurs not only meets the criteria for crimes against humanity and genocide, but also sets a dangerous precedent to the world where the law can become a tool of oppression and human rights abuses. Provisions of note are clauses 7.1.e. and 7.1.h from the Rome Statute of the International Criminal Court (ICC), as well as clauses 2.b. and 2.c. of the Convention on the Prevention and Punishment of the Crime of Genocide (hereafter the “Genocide Convention”).

Ultimately, the report outlines the need for urgent and resolute action from the international community that is befitting of an “authoritarian legalized genocide,”<sup>7</sup> bearing in mind that the precedence of genocide prevention today will have lasting consequences for the prevention of other genocides tomorrow. Namely, the report urges OHCHR and member states of the United Nations (UN) to use all diplomatic and accountability mechanisms, including missing person mechanisms, to halt Uyghur persecution in China and to immediately release all wrongfully incarcerated Uyghurs. It also demands that China offer transparency, the dismantling of its legalized human rights abuses, the admission of atrocities, and reparations. Only when these actions are taken as quickly as possible will justice and survival for the Uyghurs be ensured.

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6 Jacques deLisle, “Authoritarian Legality in East Asia: What, Why, and Whither?” *Authoritarian Legality in Asia: Formation, Development, and Transition*, January 1, 2019, [https://scholarship.law.upenn.edu/faculty\\_scholarship/2374](https://scholarship.law.upenn.edu/faculty_scholarship/2374).

7 Ibid.

# METHODOLOGY

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The Lowenstein Project Team<sup>8</sup> (hereafter “project team” or “team”) began by conducting an extensive review of existing legal and academic literature and media, inter alia the Chinese Criminal Law, the OHCHR Assessment, the Genocide Convention, various academic papers, Xinjiang official government documents (including leaked documents), news articles, Chinese court judgments, and available testimonies from survivors and families of victims. The review informed the team’s understanding of the structure of China’s authoritarian legality, Chinese criminal law, and their interaction, as well as how China exploits those laws to create an illusion of legal legitimacy, at which point the illusion falters and legalized totalitarianism paves the way for human rights abuses.

In addition, the team conducted a quantitative analysis of Uyghurs’ incarceration data to find further evidence of illegal practices. Mentions of “database analysis” made throughout the report refer to this analysis. Data was sourced from the Xinjiang Victims Database (XJVD), which compiles several datasets on victims who have been affected by China’s persecution of Uyghurs and other Turkic Muslims. Data was collected from multiple counties and cities in Xinjiang, such as Urumqi, Qaraqash, and Konasheher. Included in the whole dataset were 62,691 entries that contained information regarding the victims, their status, and details of their alleged crimes. Due to the limited availability of data, measures were taken to ensure the validity of the outcomes of the analysis. For instance, a conservative approach to data selection was employed where only a subset of the data that was sourced from leaked Chinese official documents, such as documents from China’s Public Security Bureau (PSB), was used. The most significant of such documents included the Urumqi PSB Files, collected from the capital of Xinjiang, and the Konasheher Files, collected across the southern county of Konasheher. Certain entries existed across multiple datasets, in which case duplicates were omitted (24,088 entries omitted). Non-Uyghurs comprise a small part of the full dataset, but they have also been excluded from the analysis for the purpose of this paper (334 entries omitted). Such filtering yields a total of 38,269 entries to analyze. Of all these entries, 13,114 include a record of a prison sentence, while the other 25,155 entries do not include such records. Data examined updated version until February 2024 before the database included pre-2014 victims, which we may resort to at a later date. The XJVD is not a comprehensive database due to the difficulty of documentation from overseas, and the actual numbers are far more significant. For more information regarding see Appendix.

Various experts, such as China human rights expert Sophie Richardson, founder of the Xinjiang Victims Database (XJVD) Gene Bunin, and Yale Genocide Studies Program director David Simon were consulted to offer feedback.

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<sup>8</sup> The project team was a comprised of a team of students who took part in the Yale Law School Lowenstein Project. Other than the first and second author, we thank Inbar Pe’er at Yale Law for her contribution. The lead author Rayhan Asat extends a special gratitude to Professor James Silk and Professor Hope Metcaf for offering her a fellowship at Yale Law School during which this project came to fruition.

# 1. CHINA'S POLICY EVOLUTION FROM ARBITRARY DETAINMENT TO "FORMAL" PROSECUTIONS

The Strike Hard Campaign of 2014 initially relied on a burst of imprisonment in the VETCs and brought about what is generally agreed to be the "largest mass internment of an ethnoreligious population since the Second World War."<sup>9</sup> After denying the existence of what were essentially concentration camps, the Chinese government eventually attempted to justify them by claiming that the government was following standard deradicalization protocols to combat "violent extremism" in Uyghur society and that the camps provided impoverished Uyghurs with "vocational training."<sup>10</sup> Numerous independent documentation and investigations, such as the OHCHR Assessment, have revealed that the camps are extrajudicial in nature, in that detainees are subjected to involuntary detention, torture, forced sterilization, starvation, forced labor, sexual violence, and indoctrination.<sup>11</sup> "Training" and education, as revealed in a testimony, took place by beating prisoners, torturing them with so-called "tiger chairs," and keeping them shackled, all the while forcing them to sing patriotic songs until their "faces [became] red and [...] veins appeared on [their faces]."<sup>12</sup> UN experts determined that the so-called deradicalization program violates international laws and fundamental human rights norms, and that these laws must be repealed.

After the guise of "vocational training and re-education" failed to silence international observers, China changed tactics by announcing that all the "trainees" in the camps had "graduated," while pivoting towards the construction of new and more permanent prison centers.<sup>13</sup> Researchers at the Australian Strategic Policy Institute and journalists identified more than 380 suspected camps that were still in operation and were shifting towards institutionalized detention (i.e. prison.)<sup>14</sup> Under the guise of legal prosecution and conviction, China attempted to legitimize its mass imprisonment of Uyghurs.

In addition, the Chinese government has deployed its sophisticated propaganda and disinformation machinery to outwardly deny any wrongdoing. For instance, the OHCHR discovered that prisoners were instructed ahead of foreign delegations and media visits to say that they were free to enter and leave the training centers and that "everything was fine."<sup>15</sup> Meanwhile, cosmetic changes were made to remove some visible signs of repression within Xinjiang, such as militarized checkpoints, surveillance cameras, and rampant police. Censorship was also actively used. Through such efforts, it has hidden its atrocity crimes from its own Han citizens and evades international scrutiny. As such, while the "vocational training" camps led to international outrage, the "formal" imprisonment of Uyghurs has attracted less attention.

Mass imprisonment may have occurred immediately after the individuals were detained in camps and

9 Emma Graham-Harrison and Juliette Garside, "'Allow No Escapes': Leak Exposes Reality of China's Vast Prison Camp Network," *The Guardian*, November 24, 2019, <https://www.theguardian.com/world/2019/nov/24/china-cables-leak-no-escapes-reality-china-uighur-prison-camp>; Jen Kirby, "Concentration Camps and Forced Labor: China's Repression of the Uighurs, Explained," *Vox*, September 25, 2020, <https://www.vox.com/2020/7/28/21333345/uighurs-china-internment-camps-forced-labor-xinjiang>.

10 BBC News, "Xinjiang: China Defends 'Education' Camps," *BBC News*, accessed March 6, 2024, <https://www.bbc.com/news/world-asia-china-54195325>.

11 Amnesty International, "Up To One Million Detained in China's Mass 'Re-Education' Drive" (Amnesty International), accessed March 6, 2024, <https://www.amnesty.org/en/latest/news/2018/09/china-up-to-one-million-detained/>.

12 OHCHR, "OHCHR Assessment of the XUAR."

13 Yanan Wang, "China Claims Everyone in Xinjiang Camps Has 'Graduated,'" *AP News*, December 9, 2019, <https://apnews.com/article/27f00e4feaa2755f25ab514cecd7add>.

14 The Xinjiang Data Project, Map - The Xinjiang Data Project (Australian Strategic Policy Institute), accessed March 6, 2024, <https://xjdp.aspi.org.au/map/>

15 OHCHR, "OHCHR Assessment of the XUAR."

charges were levied, but under legalized authoritarian regimes, it is hard to know what goes on, and the opacity of the system offers limited information. This type of legalized form of repression is profoundly alarming – it is no less widespread nor humane than the former. In fact, one might consider it even more harmful precisely because its veil of legal legitimacy renders it elusive to international scrutiny and legalizes human rights abuses. In the face of such evasive tactics, it is crucial to be fully aware that torture and horrors continue to shape Uyghur lives behind the barbed wires and walls and separate Uyghur families for the unforeseeable future.

## 1A. Legal efforts to legitimize arbitrary Uyghur incarcerations

The narrative put forth by the PRC to justify the new elusive system of oppression was that the incarceration of Uyghurs was to combat “terrorism” and “extremism” in the XUAR. China sought to build on this narrative through a series of legal maneuvers that began in 2015.

One of the most significant of such maneuvers was the National People’s Congress (NPC) Standing Committee’s adoption of the 9th Amendment to the PRC Criminal Law in August 2015, which added several clauses about extremism-related crimes under Article 120 of the Criminal Law governing terrorist crimes.<sup>16</sup> These included broad and vague definitions of terrorist and extremist activities, such as “illegally possessing books, audio-visual materials or other materials [that] one clearly knows advocate terrorism or extremism” and “[compelling] others to wear or adorn themselves with apparel or emblems promoting terrorism or extremism.”<sup>17</sup>

The issue with the vague definitions in the article, as pointed out in the OHCHR Assessment, is that they allow the government to construe matters of personal choice related to legitimate religious practice commonly practiced by Uyghurs – praying, using “Islamic” greetings, and owning a Qur’an, for instance – as extremism and terrorism, thus enabling the arbitrary application of the article. This is reflected in cases documented by Dui Hua, a human rights nonprofit in China, where individuals faced criminal charges for innocuous reasons such as “wearing veils in their own homes.”<sup>18</sup>, as well as in dozens of cases documented by the XJVD.<sup>19</sup>

Then, in December 2015, the Standing Committee also adopted the PRC Counter-Terrorism Law, later adding to it the Xinjiang Implementing Measures for the PRC Counter-Terrorism Law (XIM) in 2018.<sup>20</sup> The OHCHR Assessment noted that the XIM was enacted two years after the establishment of the VETCs in an attempt to retroactively *regularize*<sup>21</sup> and even *illegitimacy legalize* the status of people in them. Both the amended Article 120 and the XIM have served to weave arbitrary Uyghur persecution into the criminal justice system under the justification of combating terrorism or extremism.

16 China Law Translate, “People’s Republic of China Criminal Law Amendment (9)” (2015), <https://www.chinalawtranslate.com/en/%E4%B8%AD%E5%8D%8E%E4%BA%BA%E6%B0%91%E5%85%B1%E5%92%8C%E5%9B%BD%E5%88%91%E6%B3%95%E4%BF%AE%E6%AD%A3%E6%A1%88%EF%BC%88%E4%B9%9D%EF%BC%89/>.

17 Ibid.

18 Ban on Islamic Clothing in Xinjiang. Dui Hua Journal, <https://www.duihuahrjournal.org/2018/02/ban-on-islamic-clothing-in-xinjiang.html>

19 “Xinjiang Victims Database,” <https://shahit.biz/eng/>.

20 China Law Translate, “Counter-Terrorism Law” (2015), <https://www.chinalawtranslate.com/en/counter-terrorism-law-2015/>.

21 OHCHR, “OHCHR Assessment of the XUAR.”

## 2. DISMANTLING THE GUISE OF LEGITIMACY

Despite the fact that Uyghurs and other non-Han people make up less than 1% of China's overall population, they account for about 34% of China's estimated prison population from 2017 to 2022.<sup>22</sup> Estimates show that Uyghurs and other ethnic minorities in Xinjiang are imprisoned at a rate 47.1 times greater than the rate for Han people across China. Closer examination shows that this disparity does not result from actual increased crime rates by Uyghurs, but rather from unjust criminalization of Uyghur people.

While China may seek to “legalize” and “normalize” Uyghur persecution by incorporating it into the pre-existing criminal justice system, a review of the laws themselves and how the laws are applied in practice according to victim testimonies and data demonstrate that the criminal system that Uyghurs face is characterized by inconsistencies and a lack of both substantive and procedural legality that defy both international and Chinese legal standards.

### 2A. Unlawful arrests on illegal grounds

The vague wording of Article 120 provides a pretext to arrest and detain Uyghurs on flagrantly bizarre, unreasonable, and unjust grounds. Database analysis presented in Table 1 shows that arrests of at least 195 individuals were associated with praying or learning to pray, and at least 94 arrests were associated with keeping or growing a large beard. Other reasons factoring into arrest included being in contact with a pre-trial detainee and providing financial support to children studying abroad, among others.

Even more striking in the database analysis, however, is the sheer opacity of Chinese incarceration data in the context of Xinjiang. Almost 90% of criminal records in Xinjiang are not public, even though legal records in other Chinese regions are, meaning that records of hundreds of thousands of Uyghurs who are known to be imprisoned were unavailable for the context of this particular analysis.<sup>23</sup> Additionally, the limited data available does not provide substantive information on incarcerations. There exist 13,088 entries for which no official reason for arrest or incarceration was made available to anyone, including families and loved ones, with 3,849 of those individuals known to be incarcerated and 9,059 of those individuals whose status remains unclear. 25,155 entries do not even have sentencing data, and most entries provide only unclear reasons for indictment, such as “Flagged by autonomous-region IJOP (一体化推送人员)” or “Four lines (meaning unclear) (四条线).”<sup>24</sup> Unclear entries might be attributed partly to limitations of the XJVD from which data was sourced, but these limitations nonetheless indicate a lack of transparency from China, as well as of the issue that arrests can be conducted on fundamentally arbitrary grounds, with the system flagging people as “suspicious” for completely normal behaviors.

<sup>22</sup> Ben Carrdus, “UHRP Analysis Finds 1 in 26 Uyghurs Imprisoned in Region With World’s Highest Prison Rate”, April 25, 2024, <https://uhrp.org/insights/uhrp-analysis-finds-1-in-26-uyghurs-imprisoned-in-region-with-worlds-highest-prison-rate/>.

<sup>23</sup> “World’s Highest Jailing Rate Found in Uyghur County of China, Data Leak Suggests,” The Guardian, May 17, 2022, sec. World news, <https://www.theguardian.com/world/2022/may/17/worlds-highest-jailing-rate-found-in-uyghur-county-of-china-data-leak-suggests>.

<sup>24</sup> Integrated Joint Operations Platform (IJOP) is a digital surveillance system used by public security agencies in the Uyghur region.

Praying		Keeping a (large) beard		No official reason made available	
<b>Total</b>	<b>188</b>	<b>Total</b>	<b>93</b>	<b>Total</b>	<b>13,088</b>
<b>Incarcerated</b>	<b>185</b>	<b>Incarcerated</b>	<b>88</b>	<b>Incarcerated</b>	<b>3,849</b>
Concentration camp	19	Concentration camp	26	Concentration camp	1,764
Sentenced	166	Sentenced	61	Sentenced	15
In custody	0	In custody	1	In custody	460
<b>Status unknown</b>	<b>3</b>	<b>Status unknown</b>	<b>5</b>	<b>Status unknown</b>	<b>9,059</b>
(Field left blank)	2	(Field left blank)	5	(Field left blank)	6,161
Documents withheld	0	Documents withheld	0	Documents withheld	2
No news for >1 year	0	No news for >1 year	0	No news for >1 year	22
Unclear	1	Unclear	2	Unclear	2,874
<b>Other</b>	<b>0</b>	<b>Other</b>	<b>0</b>	<b>Other</b>	<b>0</b>

Table 1. The reason associated with arrest and status

Due to the lack of access to criminal records in Xinjiang, detailed information specifically on the context surrounding an individual's arrest drew from testimonial evidence.<sup>25</sup> If China were to argue that analysis based on testimonial evidence is not reliable, then disclosure of the missing 90% of Xinjiang's criminal records to back up China's response would be welcomed.

## 2B. Deprivation of due process

After being arrested, Uyghurs continue to be deprived of due process. Countless victim testimonies and UN assessments, as well as other official documents that include notices provided to families for the individuals' transfer to the prison from detention center, demonstrate this.

Evidence indicates that trials, if they happened at all, have been cursory and performative rather than substantive.<sup>26</sup> The XJVD Project has documented countless arrests that were almost immediately followed by formal imprisonment in less than a month. In the particularly drastic case of Mr. Ismayil Sidiq, records show that it took a mere five days after detention to receive a 10-year sentence for "propagating extremism" and nineteen days after that to be transferred to prison. Furthermore, these makeshift sham trials often purportedly did not take place in a courthouse and did not allow for the detainees to be defended by independent lawyers.<sup>27</sup> Some camp detainees were coerced into confessing to their supposed crimes; some weren't granted presence at a trial at all, and instead had an official come to their detention cell and read the court judgment for them; some were simply presented

25 Most of the data, such as sentencing data, still comes from leaked Chinese government documents.

26 Shahit.Biz Team, "Rushed Sentences," accessed March 6, 2024, <https://t.co/o5nRcRYSaW>.

27 Gene Bunin, "The Elephant In The XUAR: III. 'In Accordance With The Law,'" The Art of Life in Chinese Central Asia (blog), April 19, 2021, <https://livingotherwise.com/2021/04/19/the-elephant-in-the-xuar-iii-in-accordance-with-the-law/>.



with a list of crimes and were asked to choose one for themselves<sup>28</sup>, all resulting in similarly lengthy sentences.<sup>29</sup> The detainees had no knowledge of why or on what grounds they were being detained, as well as of any evidence for their accused crime. In the case of Ekpar Asat, Kurban Mamut, and Rushan Abbas, the UN Working Group on Arbitrary Detention (WGAD) was able to confirm that the government has failed to support any evidence against the individuals.<sup>30</sup>

The victims' families were left in no better position when it came to transparency and communication of the victims' status, in some cases being left oblivious to their family members' imprisonment for years. Take the case of Mr. Abdurahm Tohti's family, for instance. Mr. Tohti was living in Istanbul when he lost contact with his wife and two kids – the youngest being only five months old.<sup>31</sup> Mr. Tohti's entire family was sentenced to a total of 90 years after their disappearance 7 years ago, but only recently did Mr. Tohti learn of the sentencing through other locals. Mr. Tohti still does not know what his wife or kids were charged with. In another case, Uyghur professor and ethnographer Rahile Dawut's daughter lost contact with her in 2017. Her daughter, who lives in the United States, did not hear any news regarding what had happened to her mother until four years later, in 2023 – only to find out that she had been sentenced to life in prison.<sup>32</sup> She has not spoken to her mother since, and is unable to ask anybody in Xinjiang for more details. This opaqueness has led to immense frustration and caused tremendous pain for Ms. Dawut's daughter. These are merely emblematic examples. Many families have endured a similar fate, not knowing what happened to their loved ones after they disappeared.

Overall, the abnormal speed, imprudence, and opacity at which the judicial process is reportedly carried out points towards Uyghurs' deprivation of rightful access to due process, a claim backed by the UN Working Group on Arbitrary Detention, which communicated with the State Party on dozens of cases.<sup>33</sup>

## 2C. Illegal and disproportionately harsh punishments

The problematic judicial process, from criminal law to sentencing, results in punishments for Uyghurs that are entirely in violation of both international law and Chinese laws. It is notably difficult to argue that China's punishment violates Chinese law, because China's legitimized authoritarianism enables the State to freely use its legal machinery to punish its enemy.<sup>34</sup> The enemy line is often defined as activists, journalists, or critics of the

28 Reeducated - Inside Xinjiang's Secret Detention Camps, Virtual Reality Video Documentary (The New Yorker, 2021), <https://www.newyorker.com/news/video-dept/reeducated-film-xinjiang-prisoners-china-virtual-reality>.

29 Ibid; OHCHR, "OHCHR Assessment of the XUAR."

30 Working Group on Arbitrary Detention, "Opinions Adopted by the Working Group on Arbitrary Detention at Its Ninety-Fifth Session, 14–18 November 2022–Opinion No. 88/2022 Concerning Qurban Mamut, Ekpar Asat and Gulshan Abbas (China)" (United Nations Human Rights Council, March 24, 2023), <https://digitallibrary.un.org/record/4021344?ln=en?ln=en#record-files-collapse-header>.

31 Alexandra Ma, "This Man's Family Vanished in China's Most Oppressed Region. The next Time He Saw His Son Was 2 Years Later, in a Chinese Propaganda Video.," Business Insider, accessed August 1, 2024, <https://www.businessinsider.com/mans-family-vanished-saw-son-2-years-later-in-china-propaganda-video-2019-2>.

32 Tiffany May, "Star Uyghur Scholar Who Vanished Was Sentenced to Life in China," The New York Times, September 24, 2023, sec. World, <https://www.nytimes.com/2023/09/24/world/asia/rahile-dawut-uyghur-china.html>.

33 Working Group on Arbitrary Detention, "WAGD Opinion No. 88.," Working Group on Arbitrary Detention, "Opinions Adopted by the Working Group on Arbitrary Detention at Its Ninety-Fourth Session, 29 August-2 September 2022–Opinion No. 64/2022 Concerning Yalqun Rozi (China)" (United Nations Human Rights Council, September 24, 2022), <https://digitallibrary.un.org/record/4011752>; Shahit.Biz Team, "Rushed Sentences."

34 Weitseng Chen and Hualing Fu, "Authoritarian Legality, the Rule of Law, and Democracy," in *Authoritarian Legality in Asia: Formation, Development and Transition*, ed. Hualing Fu and Weitseng Chen (Cambridge: Cambridge University Press, 2020), 1–14, <https://doi.org/10.1017/9781108634816.001>.

regime, but it can be redefined as the regime continues to interpret new targets as enemies to its survival.<sup>35</sup> The citizens can never know where the line lies, as one day farmers who object to the state expropriating their property can become enemies. In Xinjiang, the Uyghur ethnic-religious identity itself has become the state's enemy and is expanding the enemy definition on an unprecedented scale and size. Nevertheless, China's sentencing against Uyghurs is particularly harsh, even when compared to its sentencing against other enemy groups like activists, and this is where inconsistencies arise.

An investigation into the case of Ms. Zahir Memet reveals an instance of both a cruel and disproportionately harsh punishment. In June 2019, the court in Xinjiang sentenced Ms. Memet to 15 years of imprisonment for wearing long clothes, covering her face, and wearing a hijab between May 2010 and May 2015, against the advice of the village officials.<sup>36</sup> However, even the amended Chinese Criminal Law lacks sufficient provisions to punish Ms. Memet for her clothing. Clause 120-5, which punishes the use of "violence or coercion" to "compel others to wear" apparel that promotes terrorism or extremism, cannot apply to choices regarding one's own apparel; Clause 120-6, which punishes the illegal possession of "materials the one clearly knows advocate terrorism or extremism," could technically be grounds for punishing religious clothing, but the argument is weak and warrants a maximum sentence of three years, not fifteen.<sup>37</sup> Even the directive known as Document No. 11 (自治区党委11号文件), which was released by the XUAR government in 2013 in an attempt to outlaw religious clothing in public spaces, also fails to do so, as the directive is classified as a legally non-binding "opinion" (意见, "yijian").<sup>38</sup> Moreover, even with the assumption that the hijab is outlawed under Article 120 of the Chinese Criminal Law – note once again that it is not – Ms. Memet cannot be punished for it, as the period in which Ms. Memet wore a hijab falls completely before the amendment to Article 120 in August 2015, precluding her from a punishment based on the new Article 120. Her punishment is a violation of the non-retroactivity principle that both international law (e.g. Article 22 of the ICC Statute) and Article 12 of the Chinese Criminal Law recognizes.<sup>39</sup>

The anecdotal case of Ms. Memet reflects a regionwide trend. Human Rights Watch conducted an analysis of 58 available verdicts, which suggested that many convicted during the Strike Hard Campaign may have been sentenced to prison without committing a legally recognizable offense.<sup>40</sup> Official figures from the Xinjiang High People's Court also demonstrate a significant increase in the number of lengthy sentences given since the Strike Hard Campaign came into existence: before 2017, prison sentences that exceeded 5 years constituted around 10.8% of all prison sentences in the XUAR, whereas that figure spiked to 87% by 2017.<sup>41</sup>

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35 Ibid.

36 Xinjiang Uyghur Autonomous Region Koria City People's Court, "Xinjiang Uyghur Autonomous Region Koria City People's Court Criminal Verdict - (2019) XJ 2801 Crim. Init. No. 312" (Xinjiang Victim Database Project), accessed March 6, 2024,

37 China Law Translate, People's Republic of China Criminal Law Amendment (9).

38 Adrian Zenz, "The Karakax List: Dissecting the Anatomy of Beijing's Internment Drive in Xinjiang," *The Journal of Political Risk* 8, no. 2 (February 17, 2020), [https://www.jpolrisk.com/karakax/#\\_ftn26](https://www.jpolrisk.com/karakax/#_ftn26); Peter Howard Corne, "Creation and Application of Law in the PRC," *The American Journal of Comparative Law* 50, no. 2 (2002): 369, <https://doi.org/10.2307/840825>; Rayhan Asat, human rights lawyer and expert, personal communication, March 5, 2024.

39 Doctors Without Borders, "Nonretroactivity - The Practical Guide to Humanitarian Law," Doctors Without Borders (blog), accessed March 6, 2024, <https://guide-humanitarian-law.org/content/article/3/non-retroactivity/>; "Criminal Law of the People's Republic of China," n.d., [http://www.npc.gov.cn/zgrdw/englishnpc/Law/2007-12/13/content\\_1384075.htm#:~:text=Article%203%20For%20acts%20that,anyone%20who%20commits%20a%20crime](http://www.npc.gov.cn/zgrdw/englishnpc/Law/2007-12/13/content_1384075.htm#:~:text=Article%203%20For%20acts%20that,anyone%20who%20commits%20a%20crime); International Committee of the Red Cross, "General Principles of International Criminal Law" (International Committee of the Red Cross), accessed March 6, 2024, <https://www.icrc.org/en/download/file/1070/general-principles-of-criminal-law-icrc-eng.pdf>.

40 Human Rights Watch, "China: Xinjiang Official Figures Reveal Higher Prisoner Count," September 14, 2022, <https://www.hrw.org/news/2022/09/14/china-xinjiang-official-figures-reveal-higher-prisoner-count>.

41 Ibid.

Another case is that of Mr. Ekpar Asat, a prominent tech entrepreneur and philanthropist. Mr. Asat forcibly disappeared after returning from a U.S. State Department-sponsored U.S.-China cultural exchange program in April of 2016. For years, the family was not provided information as to his whereabouts, and only in 2021 did his family learn through congressional inquiry that Mr. Asat is imprisoned on trumped-up grounds of “inciting ethnic discrimination.” Upon investigation, the UN Working Group concluded that his detention of 15 years was arbitrary and amounted to enforced disappearance, calling for China to release him immediately and unconditionally and offer reparations.<sup>42</sup> The Working Group received no response from the Chinese government regarding these allegations.



*Figure 1. A photo of Mr. Ekpar Asat, whose detention was determined by the UN Working Group to have been arbitrary.*

Database analysis corroborates this pattern as well. The crimes listed in Article 120 of the Code have sentence maximums of three, five, or seven years (with the exception of leading or organizing a terrorist organization)—for example, Article 120-6 dictates that possessing any books or audio-visual materials that advocate terrorism or extremism carries a three-year maximum sentence (see Table 2).<sup>43</sup> These sentence maximums are supposed to ensure that the convicted receive punishment that is reasonable, humane, proportionate, and not unnecessarily severe, given the seriousness of the crimes. In practice, however, these sentence caps are rendered effectively null by China’s convenient addition of the phrase, “where circumstances are serious, the sentence is [X] or more years imprisonment,” to many of its clauses in Article 120. This allows China to enforce arbitrary and disproportionately severe sentences while maintaining a presentable image of rationality and appearance of due process, even though sentences can vastly exceed these alleged maximums in actuality.

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42 Working Group on Arbitrary Detention, “Opinions Adopted by the Working Group on Arbitrary Detention at Its Ninety-Fifth Session, 14–18 November 2022–Opinion No. 88/2022 Concerning Qurban Mamut, Ekpar Asat and Gulshan Abbas (China)” (United Nations Human Rights Council, March 24, 2023), <https://digitallibrary.un.org/record/4021344?ln=en?ln=en#record-files-collapse-header>.

43 China Law Translate, People’s Republic of China Criminal Law Amendment (9).

Crime	Sentence
<b>Bracket 1: ≥ 10 year sentence implies terrorist leadership or most active participation</b>	
(Article 120) Organizing or leading a terrorist organization	10 years or more
(Article 120) Actively participating in terrorism	Between 3 to 10 years
(Article 120) Other participants of terrorism	Up to 3 years
<b>Bracket 2: &gt; 7 year sentence implies “especially serious circumstances”</b>	
(Article 120-4) Using extremism to incite or coerce the masses to undermine the implementation of legally established systems	Up to 3 years, or 3 to 7 years if circumstances are serious, or more if circumstances are especially serious
<b>Bracket 3: &gt; 5 year sentence implies “especially serious circumstances”</b>	
(Article 120-1) Funding terrorist organizations or individuals carrying out terrorist activities, or funding training for terrorist activities	Up to 5 years, or more if circumstances are serious
(Article 120-2) Preparing criminal instruments, hazardous materials or other tools for terrorist activities	Up to 5 years, or more if circumstances are serious
(Article 120-2) Organizing or actively participating in terrorist activity training	Up to 5 years, or more if circumstances are serious
(Article 120-2) Connecting with foreign terrorist organizations or personnel to carry out terrorist activities	Up to 5 years, or more if circumstances are serious
(Article 120-2) Planning or making other preparations to carry out terrorist activities	Up to 5 years, or more if circumstances are serious
(Article 120-3) Advocating terrorism or extremism through producing or distributing books, audio-visual materials, or other materials advocating terrorism; or advocating terrorism or extremism by giving instruction or releasing information; or inciting the perpetration of terrorist activity	Up to 5 years, or more if circumstances are serious
<b>Bracket 4: 3 year sentence implies “especially serious circumstances”</b>	
(Article 120-5) Using coercive methods to compel others to adorn themselves with apparel or emblems promoting terrorism or extremism	Up to 3 years
(Article 120-6) Illegally possessing books, audio-visual materials or other materials the one clearly knows advocate terrorism or extremism	Up to 3 years

Table 2. Clauses in Article 120 of the PRC Criminal Law, sorted into brackets by sentence

With these laws in mind, database analysis was conducted to determine how many entries were deemed to be “especially serious” circumstances. First, we examined 4,184 cases with sentencing records that have been given only one official detention reason to control for the fact that multiple detention reasons could compound to justify the long sentences more easily. Then, as seen in Table 2, four brackets were constructed, and the official reasons given for arrest were categorized into these brackets. When an official reason given for arrest was unclear as to which bracket it belonged in, a conservative approach was taken by placing it in the higher bracket of punishment. Two official reasons, “past ‘transgressions’” and “registration issues”, could not be categorized into a bracket due to ambiguity, so 7 cases associated with these two reasons were eliminated from the analysis, bringing the total number of cases down to 4,177. Afterwards, the cases were sorted into the brackets, being included in the column for “especially serious circumstances” when the length of the sentence met or surpassed the threshold length for that bracket. The result was that a total of 2,931 out of 4,117 cases, or 71.19% of cases, were found to have been deemed “especially serious.” Even by an extremely rudimentary and by no means comprehensive method of simply examining the 340 individuals in Bracket 1, database analysis finds at least 136 cases where the sentence received was greater than 10 years, which is much longer than the “maximum” sentence corresponding to most of the official reasons for arrest and implies terrorist leadership.

Bracket (Threshold)	Official reasons given for arrest, as listed in the data	Total # of cases	Cases with “especially serious circumstances”
1 (10 years)	Assisting “criminals” Terrorism Separatism Extremism Endangering state security Revealing state secrets Challenging authority Problematic association	340	136
2 (7+ years)	Using superstition to undermine legal systems Related to religion Violating birth policies	51	22
3 (5+ years)	Contact with outside world Disturbing public order Illegal gathering Inciting ethnic hatred Phone/computer Picking quarrels Related to going abroad Other (incl. past “transgressions” and registration issues)	3,784	2,771
4 (3 years)	Problematic literature	2	2
	<b>Total</b>	<b>4,177</b>	<b>2,931</b>

Table 3. Cases with “especially serious circumstances”, by bracket.

It is difficult to believe that not only were such an overwhelming majority of the XUAR Uyghur population arrested on reasonable ground but that for the clear majority of them, the “circumstances” were also “especially serious” enough to warrant long sentences, especially given the individual testimonies that have been made available. In addition, most individuals receive more than the maximum 10 years. Once again, if China deems these figures flawed due to the official detention reasons being inaccurate, then China could correct this by disclosing criminal records in the XUAR.

## 2D. Alarming incarceration rates

Along with the length of sentences, incarceration rates have also drastically increased beyond what is normal. This is especially alarming given that there exists an extremely strong correlation between the enactment of the Strike Hard Campaign and the sharp increase in the number of individuals jailed in the XUAR. When the Campaign began in 2014, the figure stood at around 21,000 per year; by 2018, the number neared 133,200 per year.<sup>44</sup> The Xinjiang High People’s Procuratorate has stated that, in total, at least 540,826 people have been prosecuted in the region from 2017 to 2021.<sup>45</sup> Other regions in China, in comparison, have not seen such a dramatic spike in incarceration rates.

Given that China’s conviction rate is above 99.9%, almost all of the Uyghur people arrested in camps for reeducation or being on the lists of suspicious persons are likely to have been convicted, which would rank the XUAR as the region with the highest imprisonment rate in the world at 2,095 per 100,000 citizens.

The situation is particularly dire in Konasheher county, where the Associated Press reports that nearly 1 in 25 citizens (or, in terms of the incarceration rate, 4,000 per 100,000 citizens) have been sentenced on terrorism-related charges – a rate approximately 33 times higher than China’s national average.<sup>46</sup> These alarming disparities point to the targeted persecution of Uyghurs in violation of due process.

## 2E. Damage to the Uyghur population

Database analysis and available figures can be used to quantify an estimate of the damage the PRC’s incarceration of Uyghurs has caused for Uyghurs as a whole. Database analysis reveals that of the 13,114 entries that include a prison sentence (excluding the 25,155 entries that do not), the average prison sentence was approximately 8.80264 years. In February 2022, the Xinjiang High People’s Procuratorate reported that between 2017 to 2021, a total of 540,826 individuals have been prosecuted in the region.<sup>47</sup> The Xiniang court has stopped publishing new data. With the missing data of 2022, 2023 and 2024, the actual numbers are much higher. For the purposes of this paper, we will use a conservative estimate of 500,000 incarcerated individuals. Multiplying these figures together results in a cumulative 4,401,320 years of prison for the Uyghur people.<sup>48</sup> Then, by dividing this number by the Uyghur average life expectancy of 74.7 years (drawn from official Chinese statistics), we

44 Rebecca Wright, Ivan Watson, and Ben Westcott, “Uyghurs in Xinjiang Are Being Given Long Prison Sentences. Their Families Say They Have Done Nothing Wrong,” CNN, August 1, 2021, <https://www.cnn.com/2021/06/24/china/xinjiang-prisons-china-intl-hnk-dst/index.html>.

45 Human Rights Watch, “China: Xinjiang Official Figures Reveal Higher Prisoner Count.”

46 Huizhong Wu and Dake Kang, “Uyghur County in China Has Highest Prison Rate in the World | AP News,” <https://apnews.com/article/china-prisons-uyghurs-religion-0dd1a31f9be29d32c584543af4698955>.

47 “China: Xinjiang Official Figures Reveal Higher Prisoner Count | Human Rights Watch,” September 14, 2022, <https://www.hrw.org/news/2022/09/14/china-xinjiang-official-figures-reveal-higher-prisoner-count>.

48 Huizhong Wu and Dake Kang, “Uyghur County in China Has Highest Prison Rate in the World | AP News.”

calculate that 58,920 entire lifetimes have been stripped from the Uyghur people.<sup>49</sup> Note that because these figures deal strictly with prison sentences, they do not reflect the damages to the quality of life that comes from living under harsh prison environments during and after imprisonment.

To tear an individual away from their life for nearly a decade is already a harmful act, but when hundreds of thousands of people are removed from a community, leaving what little members that remain to live in that vacuum, it can have a truly detrimental effect on the community's ability to preserve its identity and pass it down to future generations.

## 2F. Summary infographic

The findings presented throughout Section 2 are summarized in Figure 1 below:

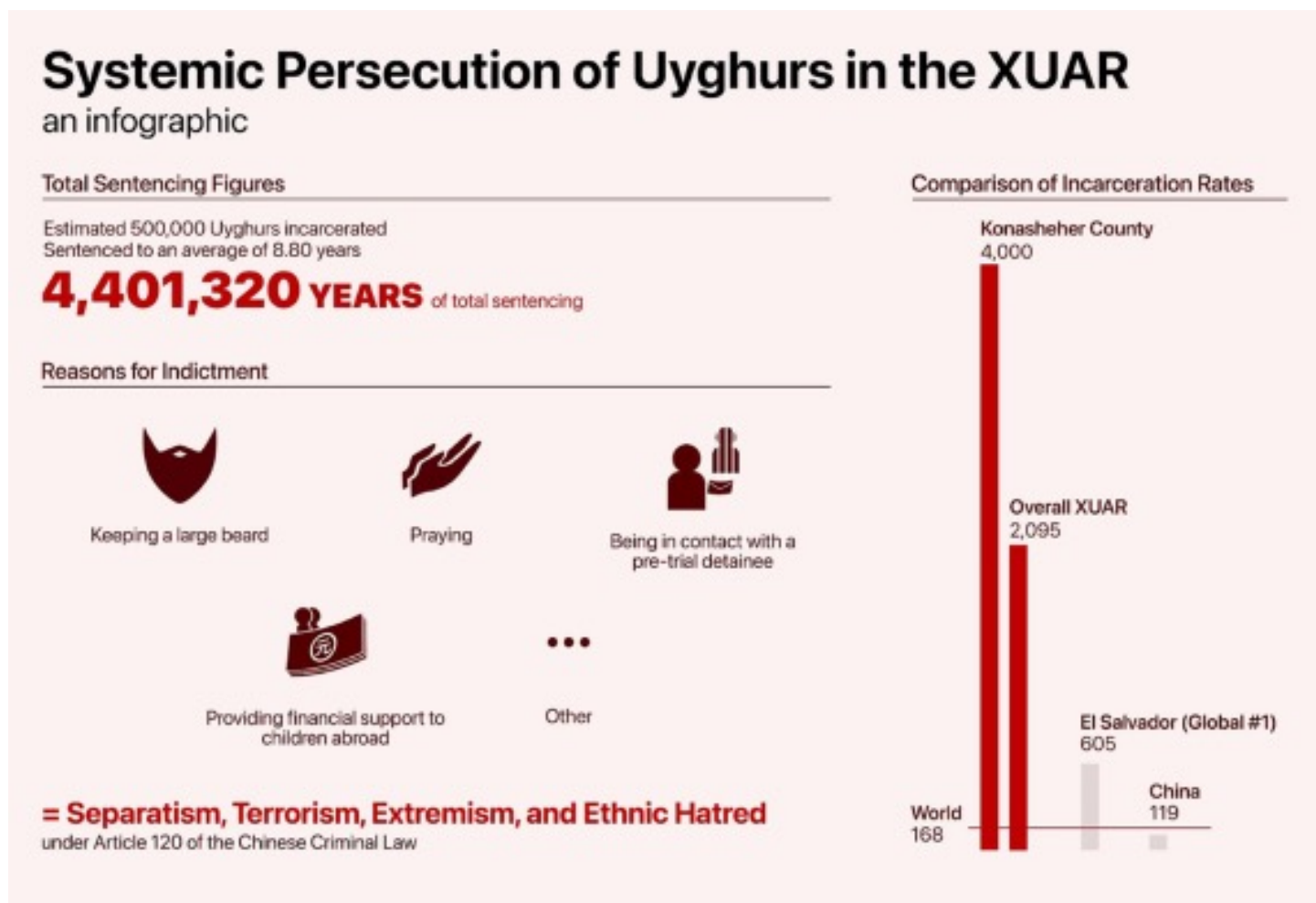


Figure 1. Infographic highlighting the impact and abnormal nature of the persecution of Uyghurs in the XUAR.  
Created by the Lowenstein Project Team.

49 Stephanie Nebehay, "U.N. Says It Has Credible Reports That China Holds Million Uighrs in Secret Camps," Reuters, August 10, 2018, <https://www.reuters.com/article/us-china-rights-un/u-n-says-it-has-credible-reports-that-china-holds-million-uighurs-in-secret-camps-idUSKBN1KV1SU>; Fanka Li, Chunyan Chen, and Liu Wei, "Study on the Life Expectancy of Residents in Xinjiang Production and Construction Group, from 1997 to 1999," *Zhonghua Liu Xing Bing Xue Za Zhi* 23, no. 3 (June 2022): 194–97, <https://doi.org/10.3760/cma.j.issn.0254-6450.2002.03.112>.

## 3. THE CASE FOR CRIMES AGAINST HUMANITY, GENOCIDE & LEGALIZED HUMAN RIGHTS ABUSES

### 3A. Uyghur incarceration as a crime against humanity

Under the Rome Statute of the International Criminal Court (ICC), crimes against humanity are serious, specified offenses that are knowingly committed as part of a widespread or systematic attack against any civilian population. “Widespread” refers to the scale of the acts or the number of victims. A “systematic” attack indicates a pattern or methodical plan. Crimes against humanity can be committed during times of peace as well as during armed conflict, so long as they are directed against a civilian population.

The long-term mass incarceration of Uyghurs in the XUAR falls under two categories of crimes against humanity as defined by the Rome Statute. First, “7.1.e. Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law” applies to Chinese incarceration of Uyghurs, as it violates fundamental rules of international law such as due process<sup>50</sup> and proportionality<sup>51</sup>. “7.1.h. Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender” also applies, as demonstrated by the abnormally high incarceration rate of Uyghurs that disproportionately exceed that of the Han Chinese in other regions. The persecution is both systemic (formal incarceration characterized by lack of due process, disproportionately harsh sentencing, lack of transparency, and all in all violations of international law) and widespread (persecution of Uyghurs in the XUAR specifically), meeting the standards for crimes against humanity, and has been recognized by the UN and leading human rights organizations.

### 3B. Uyghur incarceration as genocide

The Genocide Convention dictates which types of acts committed with intent to physically destroy, in whole or in part, a national, ethnical, racial or religious group, constitute genocide. Under these grounds, even if China may claim otherwise, the formal incarceration of Uyghurs falls under two categories of means of genocide: “2.(b) Causing serious bodily or mental harm to members of the group” and “2.(c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part.”

Clause 2.(b) applies more intuitively, as mass incarceration exposes the victims to adverse prison conditions and risks of torture or ill-treatment, as well as stripping them of their freedom. Repercussions are also dire for the remaining members of the victims’ communities (e.g. families, relatives, neighborhoods, etc.), as the abrupt and lengthy incarceration of a loved one would instill in them feelings of grief, anguish, and terror. This especially holds given the particularly disruptive and malicious manner in which China has enforced Uyghur incarceration on a scale that the world has not since World War II. China’s years-long imprisonment and torture that has caused serious bodily and mental harm to Uyghurs has undoubtedly already met the criteria for Clause 2.(b) and will continue to meet them more intensely so long as China remains undeterred by the international genocide prevention community.

The first component of the second component of Clause 2.(c) that specifies deliberate, calculated intent also clearly applies. China has carried out its inhumane incarceration at such an appalling scale and has pushed

<sup>50</sup> Due process is namely referred to in the Universal Declaration of Human Rights.

<sup>51</sup> Proportionality here refers to proportionality of punishment to crime, as outlined in the Human Rights Committee’s interpretation of the International Covenant on Civil and Political Rights (ICCPR), rather than the proportionality of military attack to civilian harm and anticipated military advantage, as defined in the Additional Protocol I of the Geneva Convention.



genocidal rhetoric, such as “absolutely no mercy” and “breaking their origins, connections, and roots,” all the while aggressively masking its years-long repressive efforts as benevolent. Even when faced with international condemnation nine years into its atrocious campaign, China has doubled down, opting to formalize and legalize its oppression and dehumanization of Uyghurs. Through such committed and sustained acts that resist international pressure, China has clearly demonstrated its intent harm the Uyghur population.

Meanwhile, application of Clause 2.(c), which describes intent specifically to destroy a group in whole or part, is more nuanced. The straightforward argument would be that mass incarceration has the potential to physically damage and destroy a non-negligible part of a group. The death count from 2017 to present currently stands at a few hundred, which may not seem like a large number compared to the number of Uyghurs detained, but one must consider that deaths may be underreported, especially as families of the deceased are pressured by the government to keep silent about them. This was the case with the family of Yalkun Kurban, a victim who died in prison.<sup>52</sup> Moreover, one must recognize that the number will increase as Uyghur incarceration is allowed to continue, and that statistics coming out of China may not be fully accurate.<sup>53</sup> In that sense, mass imprisonment of Uyghurs could constitute “3.(b) Conspiracy to commit genocide” now, and potentially “3.(d) Attempt to commit genocide” later, both of which warrant punishment.<sup>54</sup> In addition, a key element of the Genocide Convention is also genocide prevention. As China’s mass incarceration campaign continues, the total number of victims will grow. It is only a matter of time before such a “conspiracy” or “attempt” to commit genocide becomes a widespread genocide of even more irreversible deaths. Given China’s increasingly genocidal actions, languages, and intent, it is more urgent now than ever for the global community to mobilized to prevent a more horrific genocide from unfolding completely.

This straightforward argument does hold, but the full picture lies beyond looking at a people’s survival merely as a sum of the constituents’ biological survival. A people can only exist when its constituents are allowed to maintain and nurture the community and its identity to be passed down to their descendants. Forcibly displacing hundreds of thousands of Uyghur individuals from the communities of the Uyghur people and stripping from them more than 4.4 million cumulative years will grossly undermine the integrity of their people to continue surviving as a group. Indeed, the UN has previously recognized forced displacement as a key element of genocide in the case of the Rohingya genocide.<sup>55</sup> Rohingya were subject to mass killings and forced displacement into refugee camps by the Myanmar military in 2017. Although by numbers, the Rohingya people survive, their communities have not recovered from the total displacement and ethnic cleansing carried out by the Myanmar military in 2017.<sup>56</sup>

Uyghurs face a similar fate of ethnic incapacitation – individual Uyghurs may survive and manage to dissolve into Chinese society, but the community will collapse, disperse, and lose all substance without a majority of its members to maintain it. One must reach the conclusion that “physical destruction” of a community can take place in other forms than mass deaths, such as the complete tearing apart of a community through completely unjustified mass incarceration and separation from society.

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52 Rayhan Asat, “No One Is Talking About the Plight of Uyghurs with Disabilities in Detention. The World Owes Them More.” ChinaFile, December 12, 2023, <https://www.chinafile.com/reporting-opinion/viewpoint/no-one-talking-about-plight-of-uyghurs-disabilities-detention-world-owes>.

53 Shahit.Biz Team, “Themed List of Victims,” Xinjiang Victims Database (blog), n.d., <https://shahit.biz/eng/#lists>.

54 “Convention on the Prevention and Punishment of the Crime of Genocide” (United Nations, December 9, 1948), [https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.1\\_Convention%20on%20the%20Prevention%20and%20Punishment%20of%20the%20Crime%20of%20Genocide.pdf](https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.1_Convention%20on%20the%20Prevention%20and%20Punishment%20of%20the%20Crime%20of%20Genocide.pdf).

55 “UN Expert Demands Accountability for the Rohingya and an End to ‘Paralysis of Indifference,’” OHCHR, accessed August 1, 2024, <https://www.ohchr.org/en/press-releases/2023/08/un-expert-demands-accountability-rohingya-and-end-paralysis-indifference>.

56 Ibid.

### 3C. Uyghur incarceration as legalized human rights abuses

Under legalized authoritarianism, laws serve a strategic purpose to extend the reach and survival of the authoritarian state.<sup>57</sup> For instance, the state can weaponize its legal system against those innocent individuals who are critical of state policies, as was the case with 709 Chinese human rights lawyers.<sup>58</sup> In the context of Xinjiang, the state has effectively identified the Uyghur identity as its enemy, instituting laws like Article 120, the Counter-Terrorism Law, and the Xinjiang Implementing Measures to legitimize human rights abuses. The involvement of laws as a means of carrying human rights abuses sufficiently characterizes Uyghur incarceration as a legalized human rights abuse. This dangerous system is uniquely horrific and difficult to combat, because it is embedded into the state's framework. Thus, it is imperative that the international community take decisive action to properly defend the human rights of the Uyghur people.

All in all, the essence of the argument is that the PRC has defied countless legal principles and standards, from the national level all the way up to the Genocide Convention and its obligations under international treaties, while persecuting Uyghurs for nearly a decade and even before the relentless campaign began. The PRC will have to realize that a continuation of such egregious violations of human rights will inevitably trigger an international backlash that it will not be able to disregard, no matter its economic power, propaganda machinery, and coercion.

## 4. RECOMMENDATIONS

Through its attempt to mask its genocidal persecution under the false guise of “formal” incarceration, it is clear that China hopes to distance its acts from the international community's impressions of what constitutes atrocity crimes. However, the world must recognize that precedence of genocide prevention today will inform the prevention of genocide tomorrow. If the world witnesses a powerful government systematically, subtly, and slowly whittling away the Uyghur population's ability to exist as a people – robbing the community of millions of years of life and confining them in prisons and detention camps – and still chooses not to view it as a genocide and act with the urgency it calls for, then the consequences will undoubtedly be irreversible. This does not only impact the Uyghur people, but also the international community that will grapple with ongoing and future genocides that systematically oppress entire populations. This is why the United Nations must act accordingly, irrespective of the perpetrator's economic and political power. A lack of action sends the message that powerful and would-be perpetrators can get away with such atrocities. No amount of legal maneuvering should allow a state to maintain an industrial person complex that punishes an entire Ethno-religious population.

To start, the current High Commissioner Volker Türk, the OHCHR, and the member states of the UN must activate all accountability mechanisms to compel China to free all innocent individuals. The UPR review of last November saw that while many Western democracies and members less dependent on China managed to put forward recommendations to China to end its atrocity crimes, many others failed to do so to appease China. This report should serve as a strong reminder that all member states, especially African states that live with the legacies of colonialism and racialized oppression, have an individual obligation to voice strong opinions. They must side with the victims and be the champions of justice as they have been in other contexts.<sup>59</sup> A priority objective to collectively pursue is the immediate release of all unjustly imprisoned Uyghurs using all diplomatic tools. Other than that, individual states can affirm their unwillingness to conduct business with a genocidal regime, imposing

57 Tom Ginsburg, “Authoritarian International Law?,” *American Journal of International Law* 114, no. 2 (April 2020): 221–60, <https://doi.org/10.1017/ajil.2020.3>.

58 Weitseng Chen and Hualing Fu, “Authoritarian Legality, the Rule of Law, and Democracy,” in *Authoritarian Legality in Asia: Formation, Development and Transition*, ed. Hualing Fu and Weitseng Chen (Cambridge: Cambridge University Press, 2020), 1–14, <https://doi.org/10.1017/9781108634816.001>.

59 For instance, exemplary action was taken by Gambia, which took up the cause of Rohingya, and South Africa, which filed a claim with the International Court of Justice on behalf of Palestinians.

targeted sanctions like those of the US, the UK, the EU, and Canada and other economic costs.

In addition, the UN Human Rights Council (HRC) and OHCHR must take a collective stance against Uyghur persecution by condemning China's actions and establishing a Commission of Inquiry on China to investigate the atrocity crimes. Correspondingly, the UN mandate holders must demand that China allow these site investigations to take place.

Meanwhile, if the Chinese government is to claim that the incarceration of Uyghurs is undertaken with due process, and if it hopes the international community will believe it treats Uyghurs fairly, then it must acknowledge that this issue is beyond one of national sovereignty. It must expend the bare minimum effort in demonstrating to the world that Uyghurs are receiving just and humane treatment – the bare minimum being publishing verdicts and legal records for all cases in the XUAR so that the victims' families are not left completely in the dark and allowing the OHCHR and UN experts inside its borders for independent site investigations. It will need to show compliance with international standards via greater transparency.

The persecution of the Uyghur community in XUAR is a racialized atrocity crime. Despite the fact that it has been going on for nearly a decade, the need to respond is time-sensitive. With every additional day of Uyghur incarceration, ethnic incapacitation progressively becomes more of a reality. If the Uyghur population continues to be barred from maintaining their communities, it is only a matter of time before full ethnic incapacitation is realized and the damage is irreversible. Therefore, this report demands that the United Nations and the rest of the world not fall into complacency but rather take immediate action.

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## Appendix. Additional Information on Database Analysis

**Data Source:** Xinjiang Victims Database

**Datasets compiled:**

6 datasets were selected in total. They are all from files leaked from official Chinese documents.

Dataset	Observations (total)	Observations (after removing duplicates)	Description
Konasheher Prisoners File	10,297	10,297	Leaked document believed to have originated from police or government offices in Konasheher County. Obtained anonymously.
Urumqi Public Security Bureau Files	18,761	14,872	Internal database from the Urumqi City PSB and the XUAR PSB. Obtained anonymously and released by news website The Intercept.
Xinjiang Police Files	15,397	4,499	Set of leaked internal files from the PSB networks in Konasheher and Tekes counties. Obtained anonymously and released by Adrian Zenz.
QQ Files	9,332	8,103	Set of leaked internal files from local governments of several counties in Xinjiang. Obtained by German anthropologist Adrian Zenz.
Leaked IJOP Files	8,321	35	Data leaked by reverse engineering the mobile app connected to the Integrated Joint Operations Platform (IJOP, 体化联合作战平台). The app collects sensitive personal data about individuals and flags “suspicious” activity to government officials. Released by the Times and the International Consortium of Investigative Journalists (ICIJ).
Qaraqash List	583	463	Leaked local government document from Qaraqash county in mid-2019. Obtained anonymously and released by Uyghur exile Asiye Abdulaheb.

**Observations:** 38,269 in total

**Variables:** 38 in total

Variables	Description
entry	Entry Number
name_en	Victim's English Name
name_zh	Victim's Chinese Name
id	ID No.
testif_bio	About the Testifier
testif_bio_t	About the Testifier (Translated/Edited)
testif_rel	Relation
testif_rel_t	Relation (Translated/Edited)
victim_bio	About the Victim
victim_bio_t	About the Victim (Translated/Edited)
loca_assumed	Assumed Location
loca_assumed_t	Assumed Location (Translated/Edited)
loca_likely	Likely Current Location
loca_lat	Locality (latitude)
loca_long	Locality (longitude)
det_when	When Detention Took Place
det_when_t	When Detention Took Place (Translated/Edited)
prob_when	When Problems Started
det_reason	Detention Reason
det_reason_long	Detention Reason (Long)
det_reason_long_t	Detention Reason (Long) (Translated/Edited)
det_offreason_1	Official Detention Reason 1
det_offreason_2	Official Detention Reason 2
det_offreason_3	Official Detention Reason 3
stat	Victim's Status
stat_long	Victim's Status (Long)
stat_long_t	Victim's Status (Long) (Translated/Edited)
testif_stathow	How Testifier Learned of Victim's Status
testif_stathow_t	How Testifier Learned of Victim's Status (Translated/Edited)
addlinf	Additional Info
addlinf_t	Additional Info (Translated/Edited)
sentence	Prison Term (Years)
age	Age
gender	Gender
ethnicity	Ethnicity
health	Health Status
prof	Profession

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Yale MACMILLAN CENTER  
*Genocide Studies Program*

*Written by Rayhan Asat and Min Kim  
Design by Eunice Oh (Yale College '26)*