

# Why the U.S. Should Issue an Atrocity Determination for Uighurs

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## KEY TAKEAWAYS

Given mounting evidence that China may be perpetrating genocide and crimes against humanity against Uighurs, consideration of an atrocity determination is merited.

An atrocity determination would highlight the severe human rights violations Uighurs are enduring, and galvanize much-needed global focus, attention, and action.

The U.S. should make an official, public atrocity determination, grant P-2 refugee status to Uighurs, and identify additional Chinese officials for sanctions.

The U.S. government is contemplating issuing an atrocity determination for Uighur Muslims.<sup>1</sup> Given the mounting evidence that the Chinese Communist Party (CCP) may be perpetrating genocide and crimes against humanity against Uighurs, earnest consideration is merited.

Serious concerns about genocide were raised after Adrian Zenz, a researcher with the Victims of Communism Memorial Foundation, released his report for the Jamestown Foundation on the CCP's draconian family planning measures directed at Uighurs.<sup>2</sup> The report detailed the CCP's coercive family planning policies—including forced sterilizations and implantation of intra-uterine devices (IUDs) in Uighur women and forced abortions of Uighur babies. The fact patterns Zenz documents demonstrate the CCP's intent of significantly reducing, if not eliminating, the Uighur population.

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Corroborating reports have since emerged detailing accounts of Uighur mothers subjected to forced late-term abortions—and even infanticide—for failure to comply with the CCP’s arbitrary birth-spacing requirements.<sup>3</sup> The CCP’s birth control measures are a part of a broader strategy of collectivizing and interning Uighur Muslims: Zenz’s report, citing the “Karakax List,”<sup>4</sup> noted that failure to comply with family planning requirements was the number one reason given for internment in political reeducation camps.<sup>5</sup> These camps currently hold at least 1.8 million Uighurs.<sup>6</sup>

Zenz’s report elicited a flood of condemnations for the CCP’s egregious actions, including from some of the highest levels of the U.S. government. Shortly after the report’s release, Members of Congress from the Congressional-Executive Commission on China called on Secretary of State Mike Pompeo to issue a determination detailing atrocity crimes committed against Uighurs.<sup>7</sup>

An atrocity determination would reflect the realities of what the Uighur community in China is facing, highlight the growing severity of the human rights violations they face, and galvanize much-needed focus and attention on a situation that may amount to some of the worst human rights violations committed in the 21st century.

## Evidence for Genocide and Crimes Against Humanity

The United Nations Convention on the Prevention and Punishment of the Crime of Genocide defines genocide as “any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- Killing members of the group;
- Causing serious bodily or mental harm to members of the group;
- Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- Imposing measures intended to prevent births within the group;
- Forcibly transferring children of the group to another group.”<sup>8</sup>

The U.S., as a signatory to the Convention, is required to have its own definition of genocide. The U.S. defines genocide as taking actions “whether in time of peace or in time of war and with the specific intent to destroy, in whole or in substantial part, a national, ethnic, racial, or religious group as such,”<sup>9</sup> including:

- Killing;
- Causing bodily harm, including permanent mental impairment from torture, drugs, etc.;
- Subjecting the group to conditions that would result in elimination of that group;
- Preventing births; or
- Transferring by force children of the persecuted group to another group.”<sup>10</sup>

The critical components of both the U.N. and U.S. definitions of genocide relate to “genocidal intent.” Regardless of the outcome, if there is intent to destroy, in whole or in part, a particular group on the basis of any of the following—nationality, ethnicity, race, or religion—then it meets the definition of genocide. The CCP arguably intends to target Uighurs on both ethnic and religious grounds.<sup>11</sup> Their status as members of a minority Muslim religious group in China, as well as a marginalized ethnic group, qualifies under both definitions of genocide.

It is becoming increasingly difficult to deny the CCP’s genocidal intent against Uighurs. A cursory look at open-source data provides evidence that appears to meet several of the conditions for genocide. To be clear, only one of the elements needs to be met for it to be considered genocide, but it seems that the situation Uighurs face may meet more than one of the conditions.

**Killing.** There is no single, authoritative estimate on the number of deaths in the camps.<sup>12</sup> However, the Congressional-Executive Commission on China, a bipartisan congressional commission that tracks and documents human rights conditions in China, has chronicled some of the known instances of Uighurs who died in detention.<sup>13</sup> In October 2019, Radio Free Asia confirmed through testimony from a Chinese government official who worked in the camps that at least 150 people had died in the largest camp in Yengisher district.<sup>14</sup> Since estimates are piecemeal, it is hard to

know the exact number of individuals who have died while in detention, but the number of deaths is not relevant to a genocide determination, although popular conceptions of genocide usually assume mass deaths and killings.

**Subjecting the group to conditions that would result in elimination of that group and/or preventing births.** There is strong evidence indicating the CCP's intent to eliminate, in whole or in part, future generations of Uighurs. Succinctly, Zenz's report finds several concerning trends that suggest an intent to prevent births, first through forced sterilizations and the forced implantation of IUDs, and second through forced abortions of Uyghur pre-born children.<sup>15</sup> Other studies even document the use of infanticide against Uighur post-born children.

According to Chinese government documents, the CCP has the intent of subjecting at least *80 percent* of Uighur women of child-bearing age in four southern rural prefectures in Xinjiang to either forced sterilizations or mandatory IUD placement.<sup>16</sup> Zenz further finds that the CCP has begun a policy of Han colonization—where persons of Han descent move into historically Uighur regions—to erode their cultural heritage and shift the make-up of the Xinjiang region.<sup>17</sup> Beyond this, women in the camps report being injected with unknown substances that cause them to lose their menstrual cycles. Some report being forced to take drugs that prematurely put them into menopause and had other deleterious health impacts, including memory loss.<sup>18</sup> Some women who were eventually released from the camps later report their doctors informed them that they are now sterile.<sup>19</sup>

One Associated Press report noted that official Chinese statistics for Hotan and Kashgar (Uighur-predominant regions) document a 60 percent decline in birth rates between 2015 and 2018.<sup>20</sup> This is unprecedented and unnatural—a testament to the great lengths the CCP will go to in order to reduce population size. The patterns illuminated by Zenz and other open-source materials seem to suggest that the CCP is undertaking a massive effort to either completely eradicate, or at least significantly reduce, the population size of the next generation of Uighurs.

**Transferring by force children of the persecuted group to another group.** There can be no question that children have been separated from their families during arbitrary detention. The CCP claims that while parents are being reeducated in political reeducation camps, children are being reeducated in other facilities; some are so-called kindergartens or preschools with boarding school-like live-in accommodations; others are called orphanages.<sup>21</sup> All are a form of “centralized care” whereby the CCP indoctrinates children in the ways of the Party, separated from their biological families.<sup>22</sup>

Conditions inside these facilities are not like schools, however. Many open-source reports indicate that these facilities are fortified with iron-clad surveillance systems and surrounded by barbed wire and electric fences.<sup>23</sup>

**Crimes Against Humanity.** In addition to genocide, others have suggested that Uighurs are enduring crimes against humanity. The concept of crimes against humanity has a long lineage in international law, being developed and applied through the Nuremberg trials, the International Criminal Tribunal for the former Yugoslavia, and the International Criminal Tribunal for Rwanda. The most recent and detailed definition is expressed in the Rome Statute of the International Criminal Court which defined in a crime against humanity 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,”<sup>24</sup> including but not limited to: murder; extermination; enslavement; deportation or forcible transfer of population; imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; torture; rape, sexual slavery, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity; persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender, or other grounds that are universally recognized as impermissible under international law; and enforced disappearance of persons.<sup>25</sup>

Evidence for genocide (as outlined above) can be cross-applied to make the case that Uighurs are also facing crimes against humanity. Uighurs are unquestionably enduring widespread, systematic attack at the hands of the CCP. The sheer magnitude of their detentions (at least 1.8 million—possibly as many as 3 million in political reeducation camps)<sup>26</sup> and the extensive network of camps (new reports identified more than 260 locations that bear the hallmarks of detention facilities, some of which can hold up to 10,000 persons per facility),<sup>27</sup> underscores the intentional persecution of this minority ethnic and religious group. There is no lack of documentation substantiating claims that Uighurs are subject to enslavement and forced labor, including forcible transfer of populations (collectivization);<sup>28</sup> reports of torture abound;<sup>29</sup> as well as reports of women facing sexual violence<sup>30</sup>—just to name a few violations.

The U.S. Holocaust Memorial Museum announced in March 2020 that “there is reasonable basis to believe that...the Chinese government is... committing crimes against humanity of persecution and imprisonment or other severe deprivation of physical liberty.”<sup>31</sup> This view was espoused earlier in 2020 in the Congressional-Executive Commission on China’s 2019 Annual Report.<sup>32</sup>

The evidence cataloged above is, in no way, an exhaustive list of the myriad evidence that Uighurs may be facing both genocide and crimes against humanity. Additional firsthand testimony from Uighurs, satellite imagery testifying to the existence of camps, and much more already exists, and further work can and should be done to systematically document their plight.

Furthermore, there is no hierarchy of atrocity crimes, meaning that it is not better or worse for the U.S. to determine that Uighurs only face *either* crimes against humanity or genocide. Neither is it impossible for the U.S. or the U.N. to determine that *both* genocide and crimes against humanity have been committed. What is more important is that a determination is made and publicly issued.

## Responding to Atrocities Committed Against Uighurs

The Secretary of State has the authority to issue an atrocity determination at any point in time. There are no restrictions limiting the Secretary's authority to do so.

Doing so builds on growing U.S. efforts to hold the CCP accountable for its severe human rights violations in Xinjiang. Sanctioning Chen Quanguo, the Xinjiang Party Secretary, and other known rights-violating CCP officials and entities sent a clear message to the Chinese government that the U.S. will not tolerate its abuses.<sup>33</sup> A determination also augments U.S. strategy to target forced labor in Xinjiang.<sup>34</sup>

Given the gravity of human rights conditions in Xinjiang, the U.S. should take the following next steps:

- **Make an official, public atrocity determination on crimes committed against Uighurs.** The Secretary of State can issue an atrocity determination at any point in time. However, if the Secretary refuses to do so, Congress can force the Administration's hand, as it did in the case of the ISIS atrocity determination on March 15, 2016.<sup>35</sup> The unanimously approved House resolution put pressure on the Obama Administration to say whether atrocities did or did not take place by a previously codified March 17, 2016, deadline. Then-Secretary of State John Kerry said that what took place was genocide.<sup>36</sup>

A determination can be as simple as the Secretary of State saying that it is genocide and/or crimes against humanity or it can involve a more rigorous internal legal deliberation at the State Department, even though a legal determination and all that entails is not technically required. Either way, open-source evidence supports an atrocity

determination for Uighurs, so it is best for the Administration to call a spade a spade. The follow-on impacts of the ISIS atrocity determination were significant, especially since Congress created additional aid provisions for survivors of ISIS genocide.<sup>37</sup> The Trump Administration took up the mantle, creating the Genocide Prevention and Persecution Response program that has so far administered \$350 million in aid to communities getting back on their feet after enduring atrocities.<sup>38</sup>

- **Grant Priority-2 (P-2) refugee status to Uighur refugees.** P-2 refugees are individuals the U.S. has identified as “groups of special humanitarian concern.”<sup>39</sup> The special status enables would-be candidates to bypass referral from other entities (like the United Nations Refugee Agency, an embassy, or a non-governmental agency) and allows refugees to apply directly to U.S. authorities for resettlement whether they are inside or outside their country of origin.<sup>40</sup>

The same stringent vetting required by the U.S. for other refugee categories would still apply to Uighurs. Categories of persons already eligible for P-2 status include certain religious minorities, Burmese refugees in Thailand, and other vulnerable groups.<sup>41</sup> Uighurs have already faced challenges to resettlement, including extrajudicial imprisonment in Thailand<sup>42</sup> and the threat of deportation to China (at the behest of Beijing)—even after being granted asylum by the Turkish government.<sup>43</sup>

- **Identify additional government officials, other individuals, and entities in China eligible for sanctioning for their human rights violations committed against Uighurs.** Global Magnitsky sanctions authorities enable the U.S. Treasury Department to target individuals and entities on human rights and corruption grounds.<sup>44</sup> Being sanctioned under Global Magnitsky lands individuals or entities on the Specially Designated Nationals list—resulting in the freezing of assets, as well as visa restrictions.
- **Create and appoint a Special Coordinator for Xinjiang at the State Department.** Similar to the Special Coordinator for Tibet, the Special Coordinator for Xinjiang would be tasked with coordinating the policy and response of the U.S. government on a day-to-day basis and would signify the priority the U.S. places on responding to the crisis in Xinjiang. Job priorities could include identifying individuals to be sanctioned, determining how to respond to the CCP’s rapid

exportation of surveillance technology, and ensuring that Xinjiang is raised at key diplomatic moments with China. This coordinator could also be responsible for pressing China for access to the political reeducation facilities, among other tasks.<sup>45</sup>

- **Reiterate in diplomatic negotiations with Chinese officials Secretary of State Mike Pompeo’s request that all arbitrarily detained persons in China be released.**<sup>80</sup> These calls need not be limited to individuals interred in Xinjiang but can extend to other religious minorities, human rights advocates, lawyers, and activists—among others—who continue to be arbitrarily detained by Chinese authorities. In addition to this request, the U.S. should continue to press for the closure of all political reeducation facilities in China.
- **Faithfully implement the Uyghur Human Rights Policy Act signed into law in 2020.**<sup>46</sup>
- **Consider alternative legal and judicial mechanisms to the International Criminal Court to deliver justice for Uighurs.**
- **Publicly request the International Olympic Committee review of China’s suitability to host the 2022 Olympics.** China cares deeply about its image. Publicly calling into question the People’s Republic of China’s ability to host the Olympics sends a strong message that China cannot hold a position of preeminence for an international sporting event—a prized role that should only be given to countries that respect their citizens’ rights.

## Conclusion

Given the gravity of the situation facing Uighurs in China, the U.S. should act swiftly to issue an atrocity determination. In addition to raising the profile of the human rights violations taking place, such a determination sends a clear message to the Uighur people that the U.S. government cares and will take action to preserve their fundamental rights even, and especially, when the Chinese government refuses to do so.

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