



ECOSOC Special Consultative Status (1947)

UNIVERSAL PERIODIC REVIEW – FOURTH CYCLE

**Joint Submission of the International Bar Association’s Human Rights Institute and the
Coalition for Genocide Response to the 45th session of the Human Rights Council’s
Universal Periodic Review Working Group**

Jan - Feb 2024, Geneva, Switzerland

CHINA

Submission by:

Dr Ewelina Ochab

International Bar Association’s Human Rights Institute

Chancery House 53-64 Chancery Lane

London WC2A 1QS United Kingdom

Email: ewelina.ochab@int-bar.org

I. Introduction

1. Established in 1947, the International Bar Association (IBA) is the world's leading international organisation of legal practitioners, bar associations and law societies. The IBA's Human Rights Institute (IBAHRI) works with the global legal community to promote and protect human rights and the independence of the legal profession worldwide.
2. Coalition for Genocide Response is a UK-based charity that works towards a comprehensive response to genocide and other international crimes, engaging the UK, regional and international actors.
3. This report focuses on the situation of ethnic and religious (numeric) minorities in China, with a specific focus on the situation of the Uyghurs and other Turkic minorities, the issue of forced labour in Xinjiang, and the National Security Law.

II. Targeting of Ethnic and Religious Groups

4. The targeting of ethnic and religious groups in Xinjiang meets the legal definition of genocide. The UN Convention on the Prevention and Punishment of the Crime of Genocide (the Genocide Convention) defines genocide in Article II. The below briefly discusses some of the atrocities the community has been subjected to, and as falling within the purview of the Genocide Convention.

Protected groups

5. Genocide is a crime perpetrated against a group, targeting group identity, and not against an individual. Article II identifies four protected groups: national, ethnic, racial or religious group. Uyghurs, as an ethno-religious group, fall within the purview of the Genocide Convention's protected groups.

Actus reus: Prohibited acts

6. Article II of the Genocide Convention lists five prohibited acts. The list is not exhaustive. Killing is the most universally recognised method to bring about genocide. Killing is often erroneously considered to be the ultimate determinant of genocide; it is but one of them. Uyghurs are subjected to a litany of prohibited acts and some of these acts are discussed below.

Causing serious bodily or mental harm to members of the group (Article II b)

7. Causing serious bodily or mental harm to members of the group means ‘*an intentional act or omission which causes serious bodily or mental harm to members of the protected group and requires proof of a result*’¹ and may include torture, inhuman or degrading treatment or punishment, rape and sexual violence, serious injuries to external and internal organs.²
8. Among others, evidence suggests the mistreatment of people in camps and also the use of rape and sexual violence against women in camps. These are discussed below.

Mistreatment in camps

9. While the dire situation of the Uyghurs and other Turkic minorities is long-standing, their treatment deteriorated following the introduction of the Xinjiang Uyghur Autonomous Region Deradicalisation Regulation (the Xinjiang Regulation). As long as the Xinjiang Regulations are in force, the risk of Muslims being placed in camps will continue to be present.
10. The Xinjiang Regulation justifies the placement in the camps as a ‘deradicalisation’ method. Article 14 of the Xinjiang Regulations states that to combat extremism, it is crucial to ‘combine individual education with vocational skills education and training centre education, combine legal education with helping education activities, ideological education, psychological counselling, behaviour correction and learning of national language, the combination of learning law, learning skills, educational transformation and humanistic care will enhance the effectiveness of educational transformation.’
11. In accordance with Article 33 of the Xinjiang Regulations: ‘Educational performance training institutions such as vocational skill education and training centres shall carry out national common language writing, laws and regulations, and vocational skills education and training, organise and carry out extremist ideological education, psychological correction, behaviour correction, and promote the thinking of educated and trained personnel. Transform, return to society, return to the family.’ However, as will be briefly explained below, these ‘deradicalisation’ methods are far from educational.
12. The so-called ‘re-education camps’ are justified through this narrative of countering extremism, while specifically targeting religious practices and beliefs of the predominately Muslim Uyghurs. Article 3 of the Xinjiang Regulation defines extremism as the ‘expressions and behaviours that are influenced by extremism, rendering radical religious ideas, and rejecting and intervening in normal production and life.’ Furthermore, ‘extremism... refers to the propositions and actions of inciting hatred, inciting discrimination, and advocating violence by distorting religious teachings or other

¹ *Prosecutor v Karadžić* (Judgment) IT-95-5/18-T (24 March 2016) 543.

² *Ibid.*, 545.

means.’ The definition contained in Article 3 is vague and may incorporate any activities that differ from the ‘normal production and life’ in China, as understood by the Chinese Communist Party (CCP). Relying on the concept of extremism has always been challenging, even in countries with decent human rights records. Yet in China, under the CCP, with a poor human rights record, such laws can only lead to an increase in human rights abuses.

13. Article 9 of the Xinjiang Regulations prohibits a wide range of activities, including:

‘promote and disseminate the idea of extremism,’ ‘Intervening in normal cultural and recreational activities, rejecting public goods and services such as radio and television,’ ‘Generalising the concept of halal, expanding the concept of halal to other fields outside the field of halal food, and rejecting and interfering with the secular life of others by the name of the truth,’ ‘Not allowing children to receive national education and hinder the implementation of the national education system,’ ‘publishing, printing, distributing, selling, producing, downloading, storing, copying, consulting, exchanging, holding articles, publications, audio and video containing extreme content,’ ‘Deliberately interfering with or undermining the implementation of the family planning policy,’ and ‘Other extreme speeches and behaviours.’

14. Even without the vague definition of extremism, the list of prohibited activities in Article 9 sets an incredibly dangerous precedent. However, once combined with the vague definition of extremism, the excessive list may be used to cover all aspects of life and activities that would otherwise be within the purview of the rights to freedom of expression and freedom of religion or belief, among others.

15. Subsequent months have shown how the Xinjiang Regulations have been used to incarcerate and indoctrinate thousands of Uyghurs and other Turkic minorities.

16. In April 2018, Senator Marco Rubio and Congressman Chris Smith cited credible reports that between 500,000 and a million people were in or had been detained in the so-called ‘re-education camps’ in China’s Xinjiang Uyghur Autonomous Region.³ According to the statement, this practice of forced indoctrination had become the largest mass incarceration of a minority population in the world:

Thousands are being held for months at a time and subjected to political indoctrination sessions. Many have reportedly been detained for praying, wearing

³ Congressional-Executive Commission on China, ‘Chairs Urge Ambassador Branstad to Prioritize Mass Detention of Uyghurs, Including Family Members of Radio Free Asia Employees’ (3 April 2018). Available at: <https://www.cecc.gov/media-center/press-releases/chairs-urge-ambassador-branstad-to-prioritize-mass-detention-of-uyghurs>.

“Islamic” clothing, or having foreign connections, such as previous travel abroad or relatives living in another country. Reports have emerged of the deaths of detainees in these centres, including the death of a well-known Muslim religious scholar who may have been held in such a facility, and there are reports that torture and other human rights abuses are occurring in overcrowded centres secured by guard towers, barbed wire, and high walls.

17. Initially, the Chinese Government denied the existence of such ‘re-education camps.’ Subsequently, the Chinese Government said that camps did indeed exist but that they were for educational and training purposes. The treatment of over 1 million people in Xinjiang Uyghur Autonomous Region has rendered normal life for Muslims impossible. Over the subsequent months, harrowing testimonies were provided by courageous young Uyghur women about the reality of the camps.
18. Once in camps, the communities have been subjected to torture and other ill-treatment, including sexual violence, and forced labour, among others.
19. In July 2020, lawyers for the East Turkistan Government in Exile (ETGE) and the East Turkistan National Awakening Movement (ETNAM) submitted a communication to the Office of the Prosecutor (OTP) at the International Criminal Court (ICC) asking for an investigation to be opened against senior Chinese leaders for genocide and crimes against humanity allegedly committed against the Uyghur and other communities. The communication incorporated evidence of ‘brutal torture through electrocution, humiliation in the form of being forced to eat pork and drink alcohol, mandatory insertion of IUD birth control for Uyghur women of child-bearing age.’⁴
20. Despite international outcry, the Australian Strategic Policy Institute (ASPI) reported in 2020 that new camps were being built. As they stated, between July 2019 and July 2020, there have been indications that at least 61 new suspected detention facilities are being constructed with satellite imagery suggesting that at least 14 facilities remain under construction.⁵ Approximately 50% are higher security facilities.

Rape and sexual violence

21. Rape and sexual violence can amount to the prohibited acts in Articles II b and d, namely:

(b) Causing serious bodily or mental harm to members of the group

⁴ See:

<https://east-turkistan.net/press-release-uyghur-genocide-and-crimes-against-humanity-credible-evidence-submitted-to-icc-for-the-first-time-asking-for-investigation-of-chinese-officials/>.

⁵ Nathan Ruser, ‘Exploring Xinjiang’s Detention System’ (2020). Available at: <https://xjdp.aspi.org.au/explainers/exploring-xinjiangs-detention-facilities/>.

(d) Imposing measures intended to prevent births within the group.

22. Evidence suggests that Uyghur women are subjected to systematic rape and sexual abuse in the camps. According to a BBC investigation, ‘women in China’s “re-education” camps for Uyghurs have been systematically raped, sexually abused, and tortured.’⁶ Their reporting includes testimonies of victims of gang rape, including that, ‘on an everyday basis the policemen took the pretty girls with them. The police had unlimited power. There were also cases of gang rape.’⁷
23. Among the testimonies obtained by the BBC, Tursunay Ziawudun, who fled Xinjiang to the US, stated that ‘women were removed from the cells “every night” and raped by one or more masked Chinese men.’⁸ She added that she was tortured and gang-raped three times in the camp. Torture and physical abuse were also common. She was subjected to abuse as well: ‘They had an electric stick, I didn't know what it was, and it was pushed inside my genital tract, torturing me with an electric shock.’
24. Following the reports of rape and sexual violence by the BBC, the Chinese Government responded by banning the BBC. Furthermore, in March 2021, a spokesperson for the Chinese Government sought to publicly denigrate the women and their testimonies. He impeached their good character, attempting to discredit their testimonies.

Imposing measures intended to prevent births within the group (Article II d)

25. The imposition of measures intended to prevent births within the group not only focuses on the ultimate result (that is, the reduction of births)⁹ but also on acts leading towards such reductions, including ‘*sexual mutilation, the practice of sterilisation, forced birth control, and separation of the sexes and prohibition of marriages.*’¹⁰ Similarly, rape and other forms of sexual violence, as discussed in the sections above, are recognised as methods which may constitute genocide via this method.
26. Evidence suggests that the Chinese Government attempts to stop or severely limit reproduction by observant Muslims in Xinjiang.

⁶ Matthew Hill, David Campanale and Joel Gunter, ““Their goal is to destroy everyone”: Uighur camp detainees allege systematic rape” *BBC News* (2 February 2021). Available at: <https://www.bbc.co.uk/news/world-asia-china-55794071>.

⁷ David Stavrou, ‘A Million People Are Jailed at China's Gulags. I Managed to Escape. Here's What Really Goes on Inside’ *Haaretz* (17 October 2019). Available at: <https://www.haaretz.com/world-news/.premium.MAGAZINE-a-million-people-are-jailed-at-china-s-gulags-i-escape-d-here-s-what-goes-on-inside-1.7994216>.

⁸ Hill, Campanale and Gunter, (Fn 6).

⁹ International Criminal Court, Report of the Preparatory Commission for the International Criminal Court. Addendum. Part II, Finalised draft text of the Elements of Crimes, 2 November 2000, PCNICC/2000/1/Add.2, 7. See also: Raphael Lemkin, ‘Genocide as a Crime under International Law’ (1947) 41 *American Journal of International Law* 145-151.

¹⁰ *Prosecutor v Akayesu* (Judgment) ICTR-96-4-T (2 September 1998) 506.

27. Professor Adrian Zenz, in his report of June 2020, suggested that Uyghur Muslim women have been subjected to forced sterilisation, significantly affecting the number of births within the persecuted minority group.¹¹ According to the findings, ‘natural population growth in Xinjiang has declined dramatically; growth rates fell by 84% in the two largest Uyghur prefectures between 2015 and 2018 and declined further in 2019. For 2020, one Uyghur region set an unprecedented near-zero population growth target.’¹² His research further found that ‘documents from 2019 reveal plans for a campaign of mass female sterilization in rural Uyghur regions, targeting 14 and 34% of all married women of childbearing age in two Uyghur counties that year. This project targeted all of southern Xinjiang, and continued in 2020 with increased funding.’ It also found that ‘by 2019, Xinjiang planned to subject at least 80% of women of childbearing age in the rural southern four minority prefectures to intrusive birth prevention surgery (IUDs or sterilizations). In 2018, 80% of all new IUDs placements in China were performed in Xinjiang, despite the region only consisting of 1.8% of the nation’s population.’¹³

Forcibly transferring children of the group to another group (Article II e)

28. Forcible transfer of children refers to the act of removing children from their families and communities and placing them with other groups. Among others, a submission of the Turkistan Government in Exile (ETGE) and the East Turkistan National Awakening Movement (ETNAM) to the OTP at the ICC indicated that ‘an estimated 500,000 Uyghur children being separated from their families and sent to “orphanage camps” where there have been credible reports of attempted suicide by the children.’¹⁴

Mens rea

29. Not all international crimes amount to genocide. For international crimes to meet the legal definition of genocide they must be carried out with the *specific intent* to destroy a protected group in whole or in part.

30. In 2019, the New York Times published over 400 pages of Chinese Government documents suggesting direct intent to destroy.¹⁵

¹¹ Adrian Zenz, ‘Sterilisations, IUDs, and Mandatory Birth Control: The CCP’s Campaign to Suppress Uyghur Birthrates in Xinjiang’ (2020). Available at: <https://jamestown.org/product/sterilizations-iuds-and-mandatory-birth-control-the-ccps-campaign-to-suppress-uyghur-birthrates-in-xinjiang/>.

¹² Ibid.

¹³ Ibid.

¹⁴ See:

<https://east-turkistan.net/press-release-uyghur-genocide-and-crimes-against-humanity-credible-evidence-submitted-to-icc-for-the-first-time-asking-for-investigation-of-chinese-officials/>.

¹⁵ Austin Ramzy and Chris Buckley, ‘“Absolutely No Mercy”: Leaked Files Expose How China Organized Mass Detentions of Muslims’ *The New York Times* (16 November 2016). Available at: <https://www.nytimes.com/interactive/2019/11/16/world/asia/china-xinjiang-documents.html>

31. Furthermore, when considering the issue of the specific intent, it is crucial to take into account the treatment of the Uyghurs as discussed above, but also all other acts aimed to destroy the signs of the group ever living in the region. Destruction of religious sites is not a genocidal method nor does it in itself suggest genocidal atrocities. However, as it is being used to destroy every sign of the religious group ever living in the region, it adds to the available evidence. According to ASPI, mosques across Xinjiang are also being systematically destroyed. They report that:

We located and analysed a sample of 533 mosques across Xinjiang, including 129 from Urumqi. Of those mosques, 170 were destroyed (31.9%), 175 were damaged (32.8%) and 188 remained undamaged (35.3%). Of the 404 mosques we sampled in other parts of Xinjiang, 148 were destroyed (36.6%), 152 were damaged (37.6%) and 104 were undamaged (25.8%).” ASPI further indicates that “across [Xinjiang] approximately 16,000 mosques have been damaged or destroyed and 8,450 have been entirely demolished. The 95% confidence range of our regional findings is $\pm 4\%$ for the estimates of demolished, destroyed and undamaged mosque numbers.¹⁶

32. The atrocities against the Uyghurs and other Turkic minorities have been recognised to constitute genocide by the US State Department, several parliaments and experts around the world. In August 2022, the then High Commissioner for Human Rights, Michelle Bachelet, published a report finding that ‘The extent of arbitrary and discriminatory detention of members of Uyghur and other predominantly Muslim groups, pursuant to law and policy, in context of restrictions and deprivation more generally of fundamental rights enjoyed individually and collectively, may constitute international crimes, in particular crimes against humanity.’¹⁷ **Despite these findings, the UN has not taken any further steps to investigate the issue and establish a mechanism to collect and preserve the evidence of atrocities.**

Persecution of religious or belief minorities more broadly

33. The case of the Uyghurs received some international attention. However, the fate of several other religious or belief minorities is not given the attention it deserves. Among others, the situation of Falun Gong practitioners requires further investigation. Reports suggest that Falun Gong practitioners are subjected to organ harvesting on a mass scale.

34. In 2018/2019, the issue of organ harvesting was considered by an inquiry, the China Tribunal. On 17 June 2019, the China Tribunal, released a 60-page long summary of its judgment, finding that crimes against humanity had been committed, as defined in Article

¹⁶ Nathan Ruser, Dr James Leibold, Kelsey Munro and Tilla Hoja, ‘Cultural Erasure’ (2020). Available at: <https://www.aspi.org.au/report/cultural-erasure>.

¹⁷ See: <https://www.ohchr.org/sites/default/files/documents/countries/2022-08-31/22-08-31-final-assesment.pdf>.

7 of the Rome Statute. This included murder, extermination, imprisonment or other severe deprivation of physical liberty, torture, rape or any other form of sexual violence, and persecution on racial, national, ethnic, cultural or religious grounds that are universally recognised as impermissible under international law.

35. In June 2021, a group of UN independent experts expressed their concerns at allegations of organ harvesting carried out on minority groups including Falun Gong practitioners, Uyghurs, Tibetans, Muslims and Christians, in detention in China. According to the statement, the experts received ‘credible information that detainees from ethnic, linguistic or religious minorities may be forcibly subjected to blood tests and organ examinations such as ultrasound and x-rays, without their informed consent; while other prisoners are not required to undergo such examinations. The results of the examinations are reportedly registered in a database of living organ sources that facilitates organ allocation.’¹⁸ This is not the first time that the UN has raised the issue of organ harvesting in China. Indeed, similar concerns were raised by the UN with the Chinese Government in 2006 and 2007, however, without any, or any adequate response. In its official response, the Chinese Government denied the allegations and claimed that the witness testimonies are coming from ‘actors’ who ‘repeatedly engage in slander and rumour-mongering on the issue of human rights in China; they have concocted a few so-called witness testimonies falsely alleging repression of ethnic minorities, persecution of Muslims, forced organ harvesting and forced labour in Xinjiang and depicting it as a prison or concentration camp in order to achieve their ulterior motive of dishonestly drawing the attention of international public opinion to themselves and being doomed to failure.’¹⁹

36. Despite the growing evidence on the issue, there has been no further investigation and consideration of the available evidence.

III. Forced Labour

37. Recent years have seen evidence coming to light to suggest that China is using forced labour.

38. Among others, according to a report published by ASPI, between 2017 and 2019, the Chinese Government facilitated the transfer of Uyghur Muslims and other ethnic minorities from Xinjiang to factories in various parts of China.²⁰ According to ASPI, there are strong indications that some 80,000 Uyghurs have been forced to work in factories that form part of the supply chains of at least 83 global brands including:

¹⁸ See:

<https://www.ohchr.org/en/press-releases/2021/06/china-un-human-rights-experts-alarmed-organ-harvesting-allegations?LangID=E&NewsID=27167>.

¹⁹ See: <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=36489>.

²⁰ Vicky Xiuzhong Xu, Danielle Cave, Dr James Leibold, Kelsey Munro and Nathan Ruser, ‘Uyghurs for Sale’ (2020). Available at: <https://www.aspi.org.au/report/uyghurs-sale>.

Abercrombie & Fitch, Acer, Adidas, Amazon, Apple, ASUS, BMW, Bosch, Calvin Klein, Carter's, Cerruti 1881, Dell, Electrolux, Fila, Gap, General Electric, General Motors, Google, H&M, HTC, Huawei, Jack & Jones, Jaguar, Lacoste, Land Rover, Lenovo, LG, Mercedes-Benz, Microso, Mitsubishi, Nike, Nintendo, Nokia, The North Face, Panasonic, Polo Ralph Lauren, Puma, Roewe, Samsung, Sharp, Siemens, Sony, Tommy Hilfiger, Toshiba, Uniqlo, Victoria's Secret, Volkswagen, Zara.²¹

39. In March 2021, Adrian Zenz published a report on the issue of forced labour, entitled 'Coercive Labour and Forced Displacement in Xinjiang's Cross-Regional Labour Transfer Program.'²² The report concluded that:

New evidence from the Nankai Report, other Chinese academic publications and publicly available government documents provide strong proof of the systemically coercive nature of Xinjiang's labour transfer programs and underscores a process-oriented approach towards designating such programs to be forced labour. These sources also show that the primary aims of labour transfers are not economic, but political and demographic.²³

40. The report shed light on the forced displacement aspect of the Chinese Government's forced labour. This program demonstrates how the forced labour scheme is not only economically motivated but has the aim to break up the Uyghur community and reduce its density as a group in Xinjiang.

41. In November 2021, the Helena Kennedy Centre for International Justice published a report entitled 'Laundering Cotton: How Xinjiang Cotton is Obscured in International Supply Chains' which indicated that

'in late 2018, news emerged that internment camps were accompanied by a vast system of forced labour that involved not only those people who were interned, but also those who had been released from the camps and, in fact, that regional and local governments had implemented programs that required that at least one person per household be subjected to state-sponsored "labour transfers" in the name of "poverty alleviation." Previous research has provided significant evidence indicating that these programs are indeed tantamount to **forced labour, human trafficking, and modern slavery** and that **this system of repression is particularly deployed in the cotton and textile industries**, which for China are

²¹ Ibid.

²²

Available

at:

<https://jamestown.org/wp-content/uploads/2021/03/Coercive-Labor-and-Forced-Displacement-in-Xinjiangs-Cross-Regional-Labor-Transfers-A-Process-Oriented-Evaluation.pdf?x46096>.

²³ Ibid., 26.

centred in the Uyghur Region. Reports have shown that much of the region's cotton is hand-picked by people who are forced to do so, that textile factories in the Uyghur Region employ forced labour, and that minoritized citizens of the region have been "transferred" thousands of miles into the interior of China to work in factories for major textile and apparel exporters.²⁴

42. In December 2022, the Helena Kennedy Centre for International Justice published further evidence of the use of Uyghur forced labour - this time in the automotive supply chains.²⁵
43. Because of the growing and credible evidence, in July 2023, the Canadian Ombudsperson for Responsible Enterprise (CORE) announced the launch of two separate investigations into allegations of Uyghur forced labour in the supply chains and operations of two Canadian companies. The companies, Nike Canada Corp. (Nike) and Dynasty Gold Corporation (Dynasty Gold) are alleged to have or have had supply chains or operations in the People's Republic of China identified as using or benefitting from the use of Uyghur forced labour.²⁶ The investigations follow the completion of the Initial Assessment reports. According to the Initial Assessment report for Nike Canada Corp., Nike has supply relationships with Chinese companies identified as using or benefitting from the use of Uyghur forced labour. According to the Initial Assessment report the Dynasty Gold Corporation, Dynasty Gold, a Canadian mining company, benefited from the use of Uyghur forced labour at a mine in China in which Dynasty Gold holds a majority interest.

IV. National Security Law

44. The National Security Law (NSL), the Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region, is a highly controversial piece of legislation adopted in 2020.
45. Among others, the NSL criminalised four acts seen by the state as 'crimes against the state', namely, (1) secession (2) subversion, (3) terrorist activities, and (4) collusion with a foreign country or with external elements to endanger national security. All of these offences are very broadly defined, and as such, open the door for far-reaching interpretation that deems any activity that the government does not approve/like as falling within its purview.

²⁴ See:

<https://www.shu.ac.uk/helena-kennedy-centre-international-justice/research-and-projects/all-projects/laundered-cotton>.

²⁵ See:

<https://www.shu.ac.uk/helena-kennedy-centre-international-justice/research-and-projects/all-projects/driving-force>.

²⁶ See:

https://core-ombuds.canada.ca/core_ombuds-ocre_ombuds/news-nouvelles/press-release-communique-2023-07-11.aspx?lang=eng.

46. Article 20 of the NSL, defines secession as follows:

‘A person who organises, plans, commits or participates in any of the following acts, whether or not by force or threat of force, with a view to committing secession or undermining national unification shall be guilty of an offence:

- (1) separating the Hong Kong Special Administrative Region or any other part of the People’s Republic of China from the People’s Republic of China;
- (2) altering by unlawful means the legal status of the Hong Kong Special Administrative Region or of any other part of the People’s Republic of China; or
- (3) surrendering the Hong Kong Special Administrative Region or any other part of the People’s Republic of China to a foreign country.’

47. Article 22 defines subversion as follows:

‘A person who organises, plans, commits or participates in any of the following acts by force or threat of force or other unlawful means with a view to subverting the State power shall be guilty of an offence:

- (1) overthrowing or undermining the basic system of the People’s Republic of China established by the Constitution of the People’s Republic of China;
- (2) overthrowing the body of central power of the People’s Republic of China or the body of power of the Hong Kong Special Administrative Region;
- (3) seriously interfering in, disrupting, or undermining the performance of duties and functions in accordance with the law by the body of central power of the People’s Republic of China or the body of power of the Hong Kong Special Administrative Region; or
- (4) attacking or damaging the premises and facilities used by the body of power of the Hong Kong Special Administrative Region to perform its duties and functions, rendering it incapable of performing its normal duties and functions.’

48. Article 24 defines terrorist activities as follows:

‘A person who organises, plans, commits, participates in or threatens to commit any of the following terrorist activities causing or intended to cause grave harm to the society with a view to coercing the Central People’s Government, the Government of the Hong Kong Special Administrative Region or an international organisation or intimidating the public in order to pursue political agenda shall be guilty of an offence:

- (1) serious violence against a person or persons;

- (2) explosion, arson, or dissemination of poisonous or radioactive substances, pathogens of infectious diseases or other substances;
- (3) sabotage of means of transport, transport facilities, electric power or gas facilities, or other combustible or explosible facilities;
- (4) serious interruption or sabotage of electronic control systems for providing and managing public services such as water, electric power, gas, transport, telecommunications and the internet; or
- (5) other dangerous activities which seriously jeopardise public health, safety or security.'

49. These three provisions are overly broad, and as such, invite an interpretation that, for example, pro-democracy protests, as seen in 2019 and 2020, could fall within their purview and be subject to criminal sanctions as a result.

50. Article 29 defines collusion with a foreign country or with external elements to endanger national security:

'A person who steals, spies, obtains with payment, or unlawfully provides State secrets or intelligence concerning national security for a foreign country or an institution, organisation or individual outside the mainland, Hong Kong, and Macao of the People's Republic of China shall be guilty of an offence; a person who requests a foreign country or an institution, organisation or individual outside the mainland, Hong Kong, and Macao of the People's Republic of China, or conspires with a foreign country or an institution, organisation or individual outside the mainland, Hong Kong, and Macao of the People's Republic of China, or directly or indirectly receives instructions, control, funding or other kinds of support from a foreign country or an institution, organisation or individual outside the mainland, Hong Kong, and Macao of the People's Republic of China, to commit any of the following acts shall be guilty of an offence:

- (1) waging a war against the People's Republic of China, or using or threatening to use force to seriously undermine the sovereignty, unification and territorial integrity of the People's Republic of China;
- (2) seriously disrupting the formulation and implementation of laws or policies by the Government of the Hong Kong Special Administrative Region or by the Central People's Government, which is likely to cause serious consequences;
- (3) rigging or undermining an election in the Hong Kong Special Administrative Region, which is likely to cause serious consequences;

(4) imposing sanctions or blockade, or engaging in other hostile activities against the Hong Kong Special Administrative Region or the People's Republic of China; or

(5) provoking by unlawful means hatred among Hong Kong residents towards the Central People's Government or the Government of the Region, which is likely to cause serious consequences.'

51. The broad wording of the provision means that a person seeking assistance from the international community to speak in support of the pro-democracy movement could be deemed 'colluding with foreign forces.'

52. Conviction on these charges carries a maximum penalty of life imprisonment.

53. The NSL further criminalises the acts of inciting, assisting in, abetting or providing pecuniary or other financial assistance or property for the commission of these offences.

54. Furthermore, the law applies extraterritorially, and as such, can target anyone anywhere in the world. The law was met with criticism from governments, international organisations, experts and civil society organisations.

55. According to the All Party Parliamentary Group (APPG) on Hong Kong report, 'Since its enactment in 2020, the NSL has reportedly led to the arrests of over 200 people, including 12 children.'²⁷

56. Among others, Jimmy Lai, a British citizen, a prominent businessman, and the founder of Next Digital Limited (parent company of Next magazine and Apple Daily) has been arbitrarily detained in Hong Kong since December 2020, on various charges, including under the NSL. As the APPG on Hong Kong concluded, 'The case of Jimmy Lai and the shutting down of Apple Daily are emblematic of the wider issues in Hong Kong of the erosion of media freedom and the Rule of Law. His arrest, detention, convictions and sentencing, have all been made possible by the PRC exercising excessive power over Hong Kong, the decline of the Rule of Law in Hong Kong, and ultimately, the passing of the National Security Law.'²⁸ The APPG report further added that 'As it is clear from the charges brought against Jimmy Lai, he is targeted not only by the NSL. He is facing systematised and coordinated "legal warfare" for his promulgation of pro-democracy views. Indeed, Jimmy Lai's International Legal Team submitted that [this is a] "campaign of prosecutorial harassment through multiple sets of legal proceedings which, whilst ostensibly unconnected, are in fact designed to target him for his pro-democracy views and campaigns".'²⁹

²⁷ See: <https://www.hkinquiry.org/mediafreedominhongkongreport>.

²⁸ Ibid.

²⁹ Ibid.

57. More broadly, the inquiry of the APPG on Hong Kong found that ‘the NSL has been used to stifle free media and to target individual journalists, which has crushed freedom of expression and media pluralism in Hong Kong. Whilst there is still some independent media operating in Hong Kong, the majority has been purged, and those still working, are unable to report freely on topics related to politics and democracy due to fear of reprisal.’³⁰
58. In July 2023, the Hong Kong police issued arrest warrants for eight overseas-based Hong Kong human rights defenders accusing them of serious offences including under the NSL. The eight accused of foreign collusion and incitement to secession are human rights defenders Nathan Law, Anna Kwok, Finn Lau, Dennis Kwok, Ted Hui, Kevin Yam, Mung Siu-tat and Yuan Gong-yi. Among others, Nathan Law is one of the most prominent figures in the pro-democracy movement in Hong Kong. Kevin Yam is a Hong Kong solicitor and the co-founder of the Progressive Lawyers Group in Hong Kong, a civil society group set up to champion the rule of law, democracy, and human rights. Dennis Kwok is a barrister and former Hong Kong lawmaker who was elected as the sole representative of the Hong Kong legal profession in the Hong Kong Legislative Council from 2012 to 2020.
59. The Hong Kong police further put a bounty on the eight with rewards of HK\$1 million (circa \$128,000) each for any information that may lead to their arrest. The assets of the eight are to be frozen, where possible, and the public has been warned not to provide financial support to the eight or face the risk of violating the law themselves. The announcement has been met with international condemnation.
60. The case of the eight shows how the law can be used to persecute human rights defenders and anyone the Government of China considers a threat.

V. Recommendations

61. In view of the above, IBAHRI and the Coalition for Genocide Response recommend the following to the Government of China:
- To abstain from any practices targeting the Uyghurs and other Turkic minorities.
 - To protect the communities from genocide as per the obligation in Article I of the Genocide Convention and from any other atrocity crimes and human rights violations.
 - To conduct a full review of the legal framework governing national security, counter-terrorism and minority rights in Xinjiang, and repeal any law and policies that are

³⁰ Ibid.

being used to justify the mistreatment of the communities, such as the Xinjiang Regulations.

- To promptly investigate allegations of human rights violations in camps and other detention facilities, including allegations of torture, sexual violence, ill-treatment, forced medical treatment, as well as forced labour and other mistreatment.
- To prosecute anyone responsible for the atrocities and human rights violations against the communities.
- To investigate the issue of organ harvesting and ensure that those responsible are brought to account.
- To end the arbitrary internment and imprisonment of Uyghur and other Turkic and/or Muslim people.
- To immediately end the use of forced or compulsory labour of Uyghur and other Turkic and/or Muslim people.
- To dismantle the extensive surveillance apparatus in Xinjiang, which is instrumental in the continued exaction of forced or compulsory labour
- To repeal the National Security Law;
- To ensure that all those arrested and detained under the National Security Law are released and no further steps are taken to investigate and prosecute them.
- To end transnational repression of human rights defenders shining light on human rights violations.