

COALITION FOR
GENOCIDE
RESPONSE

Situation of the Uyghurs in Xinjiang

- The Issue of Genocide Determination

Briefing April 2021

About

The Coalition for Genocide Response (CGR) is a human rights coalition-building organisation that works towards a comprehensive response to genocide and other international crimes, engaging the UK, regional and international actors. We are independent of any government, political party, international institution, or faith group. Patrons include the renowned judge, the Hon. Michael Kirby AC, CMG, founder of Genocide Watch, Professor Gregory H Stanton, and Sir Geoffrey Nice QC. Members include the Aegis Trust, All Party Parliamentary Group on North Korea, Burma Campaign UK, European Centre for the Responsibility to Protect, Genocide80Twenty, Genocide Watch, Oxford Human Rights Hub, Queen Mary University of London Law and International State Crime Initiative, Yazda, and others.

Summary

The Coalition for Genocide Response calls upon Parliamentarians to support the motion on genocide that is to be debated on 22 April and recognise the Chinese Government's atrocities against the Uyghurs for what they are – genocide.

By recognising atrocities meeting the legal definition of genocide for what it is, Parliament holds to account the UK Government for its inaction to do so and so paves the way toward fulfilment of international law duties.



www.genocideresponse.org

1. What is Genocide?

Genocide is an international crime laid out in the Genocide Convention and defined as acts ‘committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group.’¹ These acts can include mass killing, bodily or mental harm, deliberately inflicted conditions to bring physical destruction, forcibly reducing the birth rate and transfer of children. To meet the legal definition of genocide, these acts must be perpetrated with the specific intent to destroy a protected group, in whole or in part.

2. Can Parliament Determine Genocide?

Parliament can make a determination. The Genocide Convention binds States and lays responsibility on them; responsibilities that are unlikely to be fulfilled if States do not determine genocide and leave it to the ‘international judicial systems.’ Other legislatures, including the US, Canada and the Netherlands all hold the position that Parliamentarians can make determination of atrocities as genocide. The UK Government, while insisting that only courts can rule on genocide, recently enabled Select Committees to take a view on the issue for the purposes of trade agreements. As such, the UK Government recognised that Parliament can play a role in determining genocide.

3. Should Parliamentarians make such a Determination?

Parliament should make a determination of genocide under the principle of checks and balances. The UK Government has a duty to act to prevent genocide at the point that they learn, or should have learnt, of the serious risk of genocide. This is an obligation under the Genocide Convention as clarified by the International Court of Justice (ICJ).² The UK Government should conduct its own analysis of the serious risk and make relevant determinations: whether of the serious risk or of genocide (depending on the stage of the atrocities). Where the UK Government fails to do so, Parliament must play its role in holding UK Government to account.

4. Should the Question be left to the Courts?

States have the power, separate from judicial systems, to make an interim determination of genocide, based on all available evidence. This determination cannot be delegated without jeopardising its duties under the Genocide Convention. Where the UK Government fails to determine genocide and act upon, Parliament must make this determination. This determination is an important

¹ Article II, UN Convention on the Prevention and Punishment of the Crime of Genocide

² *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Serbia and Montenegro)*, 2007 Judgment, 431.

step in holding the UK Government to account for its failures to fulfil its obligations under the Genocide Convention.

It differs from a determination made by a competent court. There is a place for court decisions: the determination of individual criminal responsibility for genocide can be made only by domestic criminal courts or international tribunals; the determination of state responsibility for genocide can be made by the ICJ. The recently debated Genocide Amendment would have equipped the High Court with the power to make a genocide determination in a limited number of scenarios. However, this proposal was strongly challenged by the UK Government, and ultimately, the UK Government recognised the role of Parliamentary Select Committees to make this determination.

5. Do the Atrocities against the Uyghurs Amount to Genocide?

Genocide is a word that should not be used lightly. However, where all elements of the legal definition are present, the atrocities should be recognised for what they are. The Coalition for Genocide Response, calling on legal opinions, testimony and other documents, believes that the time has now come for the atrocities being perpetrated by the Chinese Government against the Uyghurs to be recognised for what they are: genocide. The below analysis draws heavily on two legal analyses: firstly, by the Essex Court Chambers³ (ECC) and secondly, by a group of over 50 experts on genocide (NI/RW).⁴

1) The Targeted Group

The Genocide Convention protects national, ethnic, racial or religious group. Uyghurs are a Turkic ethnic group, and as such are a protected group under Article II as an ethnic group. ECC and NI/RW considered Uyghurs as an ethnic group. It may be further considered that Uyghurs, a predominately Muslim community, may be protected under Article II as a religious group.

2) *Actus Reus: Genocidal Methods*

The evidence suggests that the Chinese Government is using the following genocidal methods:

(a) Killing members of the group

³ Alison Macdonald QC, Jackie McArthur, Naomi Hart, Lorraine Aboagye, 'International Criminal Responsibility for Crimes Against Humanity and Genocide against Uyghur Population in the Xinjiang Uyghur Autonomous Region' (26 January 2021).

⁴ Newlines Institute for Strategy and Policy and Raoul Wallenberg Centre for Human Rights, 'The Uyghur Genocide: An Examination of China's Breaches of the 1948 Genocide Convention' (March 2021).

NI/RW: ‘there are reports of **mass death and deaths of prominent Uyghur leaders** selectively sentenced to death by execution or, for elders in particular, by long-term imprisonment.’

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

ECC: ‘There is evidence of the **infliction of bodily and mental harm on Uyghurs in detention**, much of which would plainly rise to the level of being “serious.”’

NI/RW: ‘Uyghurs are suffering **serious bodily and mental harm from systematic torture and cruel treatment, including rape, sexual abuse, exploitation, and public humiliation**, at the hands of camp officials and Han cadres assigned to Uyghur homes under Government-mandated programs.’

(c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part

NI/RW: ‘The authorities **systematically target Uyghurs of childbearing years**, household heads, and community leaders for detention in unliveable conditions, impose birth-prevention measures on Uyghur women, separate Uyghur children from their parents, and transfer Uyghurs on a mass scale into **forced hard labour schemes** in a manner that parallels the mass internment. In sum, China is **deliberately inflicting collective conditions calculated to terminate the survival of the Uyghurs as a group.**’

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

ECC: ‘There is prolific credible evidence of **Uyghur women being subject to measures that prevent them from reproducing, either temporarily or permanently** (such as by having IUDs non-consensually implanted or through forced removal of their wombs), as well as forced abortions.’

NI/RW: ‘The systematic birth prevention campaign in Uyghur-concentrated areas is reinforced by the mass internment drive. In the camps, **Uyghur women are subjected to forced IUD insertions, abortions, and injections or medication halting their menstrual cycles, while Uyghur men of childbearing age are targeted for internment, depriving the Uyghur population of the ability to reproduce.** As a result of these interconnected policies, growth rates in Uyghur-concentrated areas are **increasingly approaching zero.**’

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

ECC: ‘There is evidence of **Uyghur children being forcibly removed from their parents.** This includes their **non-consensual placement in orphanages** when one or both parents are in detention, and their mandatory placement in boarding schools.’

NI/RW: ‘Where detentions and forced labour schemes are leaving Uyghur children bereft of both parents, they are being sent to **State-run orphanages and raised in Chinese-language environments with standard Han child-rearing methods.**’

3) *Mens Rea: Specific Intent*

ECC: ‘It is not clear from the evidence to date that there is evidence of an intention to physically exterminate living Uyghurs; indeed, Chinese authorities which reap economic advantages from Uyghur forced labourers have some incentive to keep the majority alive. However, in our view, **an intention to destroy the Uyghur population of XUAR as a group —that is, as a cohesive social and cultural entity —is more readily made out.** This evidence includes that relating to the infliction of bodily and mental harm in detention, the forcible removal of Uyghur children from the Uyghur population, and efforts to prevent births within the Uyghur population (see paragraphs 37 to 40 above).’

NI/RW: Several statements ‘**lay out China’s explicit high-level orders, policies, destructive campaigns, and pattern of acts, which evince and demonstrate the intent to destroy the Uyghurs as a group as such.**’

The analyses in the two legal opinions make a clear case that the atrocities against the Uyghurs amount to the legal definition of genocide, even if there are some differences between the opinion in terms of the genocidal methods deployed by the Chinese Government.

For further information, see briefing on *Genocide and the Situation of the Uyghurs (April 2021)*.

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