

AT THE INTERSECTION OF SEX AND ETHNICITY:  
HOW ATROCITIES AGAINST UYGHUR WOMEN  
SHOW THE NEED FOR STATE ACCOUNTABILITY  
FOR GENOCIDAL ACTS

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\* Author’s Note: As with any academic writing that addresses ongoing atrocities, conditions may have changed or evolved from the time this was originally written to when it is published. Please bear this in mind while grappling with the still very relevant legal theories and discussion herein. The work in this Article is even more relevant now considering the ongoing work of the ICJ in the *South Africa v. Israel* case as our world attempts to address State-led, ethnic violence in the modern era.

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“A change that’s taken place: from human rights as a shield, to international criminal law as a sword.”<sup>1</sup>

ABSTRACT

In recent years, the arrest of minority individuals in Xinjiang has increased by over 300% and the birth rate in Xinjiang, in areas with high populations of Uyghurs, has decreased by nearly 50%. This Article provides a comparative analysis of the international criminal law and human rights law systems. Both legal regimes examine analogous crimes but provide different lenses and objectives to addressing them. Uyghur women have suffered especially shocking violations including, but not limited to, rape, forced sterilization, and forced marriage. This Article demonstrates how those who find themselves at the intersection of both the marginalized ethnicity and marginalized sex are particularly vulnerable to the genocidal acts perpetrated by the Chinese government in Xinjiang. These acts are born out of a history of ethnonationalism and reproductive control that demonstrates an intent to destroy the Uyghurs in whole or in part. It is vital to properly name genocides when they occur to respect the experience of the victims and call on the international community to respond. These genocidal acts are perpetrated with the effective control of the Chinese government. Given this genocide can be attributed to the Chinese State, this Article argues that this is in fact a State Genocide, defining such as, a genocide in which the State has effective control over the entities or actors committing genocide with the intent to destroy the community in whole or in part. A bridge between both international criminal law and human rights law could offer

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<sup>1</sup> Attributed to Her Excellency Judge Christine Van den Wyngaert. *The World Peace Through Law Award*, WASH. UNIV. ST. LOUIS, <https://law.wustl.edu/faculty-and-research/whitney-r-harris-world-law-institute/the-world-peace-through-law-award/> (last visited Jan. 21, 2024).

tools to expose and remedy these violations, but neither alone is an adequate mechanism to address this type of crisis and create lasting peace.

## I. INTRODUCTION

A twenty-year old Uyghur proudly carried the Olympic flame across the “Bird’s Nest” National Stadium during the Beijing 2022 Winter Olympic Opening Ceremonies.<sup>2</sup> This was just less than three months after the United States, Australia, Britain, and Canada all announced a diplomatic boycott of the Olympics citing human rights violations against Uyghurs in China.<sup>3</sup> Moments before the skier, Dinigeer Yilamujiang, walked across the stadium, people dressed to represent all 56 recognized *minzu*<sup>4</sup> in China passed the Chinese flag to one another in a show of ethnic unity.<sup>5</sup> Simultaneously, on the opposite side of China in the Xinjiang province, the genocide of Uyghurs was and is ongoing with the arbitrary detention of thousands of Uyghurs and a myriad of other humans rights violations.<sup>6</sup>

Human Rights Watch has gone as far as to say these are ongoing crimes against humanity<sup>7</sup> but has stopped short of accusing the Chinese Communist Party (CCP) of genocide.<sup>8</sup> Similarly, the U.N. Office of the High Commissioner of Human Rights released a critical report saying conditions in Xinjiang “may constitute . . . crimes against humanity,”<sup>9</sup> but

<sup>2</sup> *Winter Olympics: China Stirs Controversy with Uighur Torchbearer*, AL JAZEERA (Feb. 5, 2022), <https://www.aljazeera.com/news/2022/2/5/beijing-winter-olympics-china-uighur-torchbearer>.

<sup>3</sup> Victor Mather, *The Diplomatic Boycott of the Beijing Winter Olympics, Explained*, N.Y. TIMES (Feb. 6, 2022), <https://www.nytimes.com/article/diplomatic-boycott-olympics.html>.

<sup>4</sup> *Minzu*, U. BRIT. COLUM., <https://xinjiang.sppga.ubc.ca/chinese-sources/chinese-academic-discourse/minzu-%E6%B0%91%E6%97%8F/> (last visited Jan. 28, 2024) (Chinese term for nationality or ethnicity); *Winter Olympics: China Stirs Controversy with Uighur Torchbearer*, *supra* note 2.

<sup>5</sup> *Xi’s Show of Olympic Unity Masks Fight Over Ethnic Assimilation*, BLOOMBERG NEWS (Feb. 8, 2022, 17:00:01), <https://www.bloomberg.com/news/articles/2022-02-08/xi-s-show-of-olympic-unity-masks-fight-over-ethnic-assimilation>.

<sup>6</sup> *Winter Olympics: China Stirs Controversy with Uighur Torchbearer*, *supra* note 2.

<sup>7</sup> *Crimes Against Humanity*, U.N. OFF. OF GENOCIDE PREVENTION & THE RESP. TO PROTECT, <https://www.un.org/en/genocideprevention/crimes-against-humanity.shtml> (last visited Jan. 28, 2024) (defining crimes against humanity as “a widespread or systematic attack directed against any civilian population . . . with knowledge of the attack”).

<sup>8</sup> BETH VAN SCHAACK ET AL., HUM. RTS. WATCH, “BREAK THEIR LINEAGE, BREAK THEIR ROOTS”: CHINA’S CRIMES AGAINST HUMANITY TARGETING UYGHURS AND OTHER TURKIC MUSLIMS (Sophie Richardson et al. eds., 2021) [hereinafter *BREAK THEIR LINEAGE*].

<sup>9</sup> U.N. OFF. OF THE HIGH COMM’R FOR HUM. RTS. (OHCHR), OHCHR ASSESSMENT OF HUMAN RIGHTS CONCERNS IN THE XINJIANG UYGHUR AUTONOMOUS REGION, PEOPLE’S REPUBLIC OF CHINA, ¶ 148 (Aug. 31, 2022); *see also* Maya Wang, *How Governments and Civil*

the impact of the Report was stunted when several countries blocked a motion in the U.N. Human Rights Council to debate the conditions of the Uyghurs.<sup>10</sup> Since the Report and blocked Council vote, there has been little change in the CCP's policies in Xinjiang.<sup>11</sup> The U.S. State Department, on the other hand, has found both ongoing crimes against humanity and genocide.<sup>12</sup> The Convention on the Prevention and Punishment of Genocide (Genocide Convention) 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:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.<sup>13</sup>

This definition outlines the *actus reus* and *mens rea* elements of the crime of genocide. The *actus reus*, or essentially the action of the crime, is any of the enumerated methods of genocide under the definition.<sup>14</sup> The

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*Society Can Help China's Uyghurs*, HUM. RTS. WATCH (May 4, 2023, 2:00 PM), <https://www.hrw.org/news/2023/05/04/how-governments-and-civil-society-can-help-chinas-uyghurs>.

<sup>10</sup> Wang, *supra* note 9.

<sup>11</sup> *China: Unrelenting Crimes Against Humanity Targeting Uyghurs*, HUM. RTS. WATCH (Aug. 31, 2023, 8:00 AM), <https://www.hrw.org/news/2023/08/31/china-unrelenting-crimes-against-humanity-targeting-uyghurs>.

<sup>12</sup> Press Statement, Michael R. Pompeo, Sec'y of State, Determination of the Secretary of State on Atrocities in Xinjiang (Jan. 19, 2021). This act of naming and shaming also makes one wonder why it has not led the United States to take any further action if they have found genocide. Could this be falling short of their obligations under the Genocide Convention as well? Under Article I of the Genocide Convention, the parties agreed to "undertake to prevent and to punish" genocide when it occurs. Convention on the Prevention and Punishment of the Crime of Genocide, art. I, Dec. 9, 1948, S. Exec. Doc. O. 81-1, 78 U.N.T.S. 277 [hereinafter Genocide Convention] (entered into force on January 12, 1951, with China ratifying on April 18, 1983).

<sup>13</sup> Genocide Convention, *supra* note 12, at art. II.

<sup>14</sup> *Id.* *Actus reus* is defined as:

1. The wrongful deed that comprises the physical components of a crime and that generally must be coupled with *mens rea* to establish criminal liability  
 . . . .

*mens rea*, also known as the mental element or state of mind, requires that for someone to be guilty of genocide they must have the intent to destroy a specific group, in whole or in part.<sup>15</sup>

Genocide is considered an international crime and individual alleged genocidaires are generally prosecuted in international courts such as the International Criminal Court (ICC), the International Criminal Tribunal of the Former Yugoslavia (ICTY), or the International Criminal Tribunal for Rwanda (ICTR).<sup>16</sup> This Article analyzes how the ongoing genocide against Uyghurs cannot be addressed by individual criminal liability alone. The CCP is committing this genocide through aggregated human rights violations, contrary to their treaty obligations under the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW),<sup>17</sup> the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Torture Convention),<sup>18</sup>

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2. The voluntary act or omission, the attendant circumstances, and the social harm caused by a criminal act, all of which make up the physical components of a crime.

*Actus reus*, BLACK'S LAW DICTIONARY (6th Pocket ed. 2021).

<sup>15</sup> Genocide Convention, *supra* note 12, at art. II; *see also mens rea*, BLACK'S LAW DICTIONARY (6th Pocket ed. 2021) (defining *mens rea* as "The state of mind . . . that a defendant had when committing a crime.").

<sup>16</sup> Nicole Hassenstab, *Prosecuting Hate: Genocide and the International Criminal Court*, AM. U. (Sept. 7, 2023), <https://www.american.edu/sis/news/20230907-prosecuting-hate-genocide-and-the-international-criminal-court.cfm>.

<sup>17</sup> Convention on the Elimination of All Forms of Discrimination Against Women art. 16, Dec. 18, 1979, 1249 U.N.T.S. 13 [hereinafter CEDAW] (entered into force on September 3, 1981, with China ratifying on November 4, 1980) (providing that parties must "take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations," and particularly, to ensure the "same right freely to choose a spouse and to enter into marriage only with their free and full consent," as well as the "same rights to decide freely and responsibly on the number and spacing of their children."); *see* Pompeo, *supra* note 12 (finding that China has "conducted forced sterilizations and abortions on Uyghur women, coerced them to marry non-Uyghurs, and separated Uyghur children from their families.").

<sup>18</sup> Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 1, Dec. 10, 1984, 1465 U.N.T.S. 85 [hereinafter Torture Convention] (entered into force on June 26, 1987, with China ratifying on October 4, 1988). The treaty defines torture as:

[A]ny act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.

*Id.* ¶ 1. *See* Press Statement, Michael R. Pompeo, *supra* note 12 (finding that the Chinese regime has systematically tortured a large number of Uyghurs in detention camps).

and the International Convention on Economic Social and Cultural Rights (ICESCR).<sup>19</sup>

The intersectionality<sup>20</sup> of the female victims of these atrocities deserves an intersectional approach. In Xinjiang there is an intersection of human rights violations and international crimes, which additionally intersects as gender-based crimes and/or violations and ethnic based crimes and/or violations.<sup>21</sup> The practices against female Uyghurs in Xinjiang span the line between international crimes and human rights violations. Female Uyghurs are in a particularly vulnerable position for several reasons.<sup>22</sup> First, the history of reproductive control in China has created the necessary infrastructure to control women's bodies.<sup>23</sup> Second, the various means of committing genocide, as outlined above, implicate the specific ability to bear children.<sup>24</sup> Finally, the human rights instruments that China is party to should be protecting Uyghur women from these violations; and not only are they failing to do so, but fellow member countries are failing to hold China accountable.<sup>25</sup>

Alone, any of the practices in Xinjiang would fall under the realm of human rights violations or individual crimes.<sup>26</sup> However, I propose that when these violations are aggregated it is likely they rise to the level of

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<sup>19</sup> International Covenant on Economic, Social and Cultural Rights art. 10, Dec. 16, 1966, 933 U.N.T.S. 3 [hereinafter ICESCR] (entered into force on Jan. 1, 1976) (acknowledging that marriages cannot be coerced and that all children should be protected “without any discrimination for reasons of parentage or other conditions”).

<sup>20</sup> Intersectionality is a term that was first coined by Kimberlé Crenshaw in 1989 to better conceptualize the unique “sum of racism and sexism” experienced by black women. Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 UNIV. CHI. LEGAL F. 139, 140, 150 (1989). Intersectionality addresses the fact that in many instances there are multiple ways individuals are “subordinated.” *Id.*

<sup>21</sup> See, e.g., ADRIAN ZENZ, *STERILIZATIONS, IUDS, AND MANDATORY BIRTH CONTROL: THE CCP'S CAMPAIGN TO SUPPRESS UYGHUR BIRTHRATES IN XINJIANG 20–21* (2020), <https://jamestown.org/wp-content/uploads/2020/06/Zenz-Internment-Sterilizations-and-IUDs-UPDATED-July-21-Rev2.pdf?x26611&> (characterizing China's coercive sex-based surgical birth control methods targeting Uyghur women in order to “dilute Uyghur cultural identity and promote assimilation into the “Chinese Nation-Race” as the crime of genocide under the Genocide Convention).

<sup>22</sup> See Rukiye Turdush & Magnus Fiskesjö, *Dossier: Uyghur Women in China's Genocide*, 15 GENOCIDE STUD. & PREVENTION: INT'L J. 22, 22–25 (2021).

<sup>23</sup> See Kenneth Pletcher, *One-Child Policy*, BRITANNICA, <https://www.britannica.com/topic/one-child-policy> (Jan. 3, 2024) (the one-child policy was a program implemented by the Chinese government which included “forced abortions and sterilizations” in order to systematically reduce the population).

<sup>24</sup> See ZENZ, *supra* note 21.

<sup>25</sup> See *supra* notes 17–19 and accompanying text; *China: Anniversary of UN's Damning Xinjiang Report Must Be ‘Wake-Up Call’ to Action*, AMNESTY INT'L (Aug. 31, 2023), <https://www.amnesty.org/en/latest/news/2023/08/china-anniversary-of-uns-damning-xinjiang-report-must-be-wake-up-call-to-action/>.

<sup>26</sup> See, e.g., CEDAW, *supra* note 17 (describing numerous human rights, many of which have been violated by China's policies).

“State Genocide.” This Article defines “State Genocide” as a genocide in which the State has effective control over the entities or actors committing genocide with the intent to destroy the community in whole or in part. This definition is derived from the Genocide Convention,<sup>27</sup> the Genocide Case of the ICJ,<sup>28</sup> and the *Nicaragua v. U.S.*, effective control test.<sup>29</sup> Given genocide is a criminal offense, liability is generally prescribed on an individual basis; however, the concept of State Genocide calls for accountability beyond an individual level.<sup>30</sup>

Genocide cannot occur without a demonstrable intent;<sup>31</sup> this Article examines how the ethnonationalist practices and goals of the CCP indicate that genocidal intent is in fact present within the policies of the CCP. There is power in the labeling of genocide not only regarding legal implications, but also by properly representing the experience of victims. A “State Genocide” further evokes State accountability for a criminal act which contrasts with individual accountability inherent in criminal law.<sup>32</sup>

In the coming pages, this Article lays out the history of women and ethnonationalism in China. Then it moves to the legal framework created by the human rights regime and international criminal law systems respectively. The current practices in Xinjiang are then described. Finally, the atrocities against Uyghur women are analyzed through the lens of international law with optimistic recommendations for the integration of human rights and criminal law. Primarily, this Article demonstrates how “State Genocide” cannot be addressed by either international law systems alone because the goals and remedial mechanisms of both are needed to serve justice and create peace.

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<sup>27</sup> Cf. Genocide Convention, *supra* note 12, at art. III (“rulers” and “public officials” are punishable for acts of “Genocide,” “Conspiracy to commit genocide,” “Direct and public incitement to commit genocide,” “Attempt to commit genocide,” and “Complicity in genocide”).

<sup>28</sup> Cf. Application of Convention on Prevention and Punishment of Crime of Genocide (*Bosn. & Herz. v. Serb. & Montenegro*), 2007 I.C.J. 43, 199–202, ¶¶ 379, 383, 385 (Feb. 26) (using a three-part test to determine the responsibility of a state for acts of genocide, including whether the acts of officials or state organs were attributable to the state, whether genocide or other associated crimes outlined in the Genocide Convention were committed, and whether the state fulfilled its obligation to prevent and punish genocide).

<sup>29</sup> Cf. *Military and Paramilitary Activities in and Against Nicaragua* (*Nicar. v. U.S.*), Judgment, 1986 I.C.J. 14 ¶ 115 (June 27) (noting that a state that has “effective control of the military or paramilitary operations in the course of which the alleged [human rights] violations were committed” is legally responsible for those violations).

<sup>30</sup> See Paola Gaeta, *On What Conditions Can a State Be Held Responsible for Genocide?*, 18 EUR. J. INT’L L. 631, 633–37 (2007).

<sup>31</sup> See Genocide Convention, *supra* note 12, at art. II.

<sup>32</sup> See Gaeta, *supra* note 30.

## II. HISTORIC CONTEXT

### A. *Women in China*

This Article focuses on violence against women for two reasons. First, those who are physically female have the unique ability to bear children.<sup>33</sup> Under the definition of genocide,<sup>34</sup> women are placed at a heightened risk to be used as a tool to perpetrate genocide specifically by preventing births.<sup>35</sup> Second, China has systematically exerted enormous control over those who are biologically female,<sup>36</sup> despite ratifying several human rights agreements that should protect women.<sup>37</sup>

The position of women in China has improved in certain areas while remaining rather dismal in others. China's roots are in filial piety which dictates the young respect the elderly and women respect men.<sup>38</sup> The first feminist movement in China was May Fourth Feminism which primarily included elite, urban women.<sup>39</sup> Practices from the days of filial piety were maintained through much of the country such as feet binding, despite it being outlawed.<sup>40</sup>

The Chinese Communist Revolution had a farther-reaching impact. In 1950 the Marriage Law was enacted which banned arranged marriages and stated marriage should be "based on love and mutual consent,"<sup>41</sup> which had the effect of a spike in divorces throughout the country.<sup>42</sup> However, when the "murder and suicide of women who sought to terminate their marriages reached such a high level" the government moved to correct this by advocating for harmonious family life and the

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<sup>33</sup> HEALTH & SOCIAL CARE, THE PREGNANCY BOOK 10–11 (2023), <https://www.publichealth.hscni.net/sites/default/files/2023-06/Preg%20book%202023%20complete.pdf>.

<sup>34</sup> Genocide Convention, *supra* note 12, at art. II ("[G]enocide means . . . (d) Imposing measures intended to prevent births within the group."). While this article does not specifically name women, measures intended to prevent births has unique implications on people who are physically able to bear children. *See id.*

<sup>35</sup> *See Women During the Holocaust*, U.S. HOLOCAUST MEM'L MUSEUM, <https://encyclopedia.ushmm.org/content/en/article/women-during-the-holocaust> (last visited Feb. 4, 2024) (noting that during the Holocaust, German authorities forcefully sterilized Jewish women and aborted Jewish children); *see also* ZENZ, *supra* note 21, at 1–3, 10, 16 (revealing how Uyghur women in Xinjiang have been systematically and coercively sterilized by Chinese authorities).

<sup>36</sup> *See, e.g., supra* notes 21–23 and accompanying text.

<sup>37</sup> *See* Genocide Convention, *supra* note 12, at arts. I–II; CEDAW, *supra* note 17, at arts. 15–16; Torture Convention, *supra* note 18, at arts. 1–2.

<sup>38</sup> Yuhui Li, *Women's Movement and Change of Women's Status in China*, 1 J. INT'L WOMEN'S STUD. 30, 30 (2000).

<sup>39</sup> *Id.* at 31.

<sup>40</sup> *Id.* at 30–31.

<sup>41</sup> *Id.* at 31.

<sup>42</sup> *Id.*



domestic responsibilities of women.<sup>43</sup> Throughout the Communist and Cultural Revolutions of the 20<sup>th</sup> century, there was tremendous encouragement for women to join the work force and female work participation was high.<sup>44</sup> Despite high participation, employment opportunities and wages remained lower for women than men.<sup>45</sup>

While economic power for women increased throughout the 20<sup>th</sup> century in China, the government still maintained fierce control over the physical bodies of women, as seen in the so-called one-child policy which limited each couple to one child.<sup>46</sup> “The policy led to sex-selective abortions or infanticide targeting girls, because of a centuries-old social preference for boys.”<sup>47</sup> This policy was in place for over 30 years until it was replaced by a two-child policy in 2016.<sup>48</sup>

The Family Planning Commission administered the policy which stringently policed female bodies.<sup>49</sup> Subsequent children were not permitted to be registered, effectively making them legally nonexistent.<sup>50</sup> The Family Planning Commission utilized women’s workplaces to monitor their reproductive systems including regular pregnancy checks, physical examinations, and issuance of salary only after confirming women were not pregnant.<sup>51</sup> Women who were found to be pregnant with a second child faced extreme fines, the loss of their jobs, and were frequently subjected to forced abortions.<sup>52</sup> One woman described being dragged from her home to an operating room where she was held down and sedated.<sup>53</sup> She woke up to learn an abortion was performed and an IUD inserted without her consent regardless of the fact she was willing to pay the fine and lose her job.<sup>54</sup>

While the one-child policy is no longer in effect, it has overperformed its original goal and decreased the fertility rate to 1.3, below the 2.1

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<sup>43</sup> *Id.* at 32.

<sup>44</sup> Li, *supra* note 38, at 31–32.

<sup>45</sup> *Id.*

<sup>46</sup> Limin Wang & Jeni Klugman, *How Women Have Fared in the Labour Market with China’s Rise as a Global Economic Power*, 7 ASIA & PAC. POL’Y STUD. 43, 44 (2020); Andrew Mullen, *China’s One-Child Policy: What Was It and What Impact Did It Have?*, S. CHINA MORNING POST (June 1, 2021, 12:30 AM), <https://www.scmp.com/economy/china-economy/article/3135510/chinas-one-child-policy-what-was-it-and-what-impact-did-it>.

<sup>47</sup> *Id.*

<sup>48</sup> *Id.* (noting that, as of 2021, China has a three-child policy).

<sup>49</sup> *See id.*

<sup>50</sup> *Id.*

<sup>51</sup> *See China’s One-Child Policy: The Government’s Massive Crime against Women and Unborn Babies: Hearing before the Subcomm. on Afr., Glob. Health, & Hum. Rts. of the H. Comm. on Foreign Affs.*, 112th Cong. 1, 12 (2011). Author’s note: Some perspectives in this subcommittee record are not reflective of this Article or the ideas of the author, but instead it is a good source for the first-hand accounts of Chinese victims.

<sup>52</sup> *Id.* at 6, 12.

<sup>53</sup> *Id.* at 6–7.

<sup>54</sup> *Id.*

replacement rate.<sup>55</sup> While some “gestures” have been made to indicate progressive steps for women’s rights,<sup>56</sup> many women in China remain unconvinced given the detention of feminist activists and dismissal of sexual harassment claims.<sup>57</sup> Furthermore, with China’s low fertility rate there is a push for women to regress into traditional roles, including encouraging childbearing which some fear could “turn coercive.”<sup>58</sup> This is in sharp contrast to the large decrease in birth rates in Uyghur areas that will be addressed later. Through the one-child policy the Chinese regime has mastered the infrastructure needed to strictly control women’s reproductive systems to achieve their policy goals. As these policies evolve, the CCP’s distinct ability to control women’s bodies is a critical piece in the genocide of Uyghurs. Any possible solution must consider both a way to address this systemic violation of women’s rights *and* how that infrastructure is used to perpetrate genocide.

### B. *Ethnonationalism and the Creation of Chinese Identity*

Modern day China has not always existed as it does today.<sup>59</sup> Instead, various Chinese regimes have undertaken the process of nation building, frequently centered on an imagined community defined in ethnic terms.<sup>60</sup> Benedict Anderson defines a nation as “an imagined political community — and imagined as both inherently limited and sovereign.”<sup>61</sup> Imagined communities are imagined because even in the smallest of nations there are members who will never know one another.<sup>62</sup> China is no different, as Anderson states the People’s Republic of China was born out of a revolution defined by “*national* terms.”<sup>63</sup>

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<sup>55</sup> Mullen, *supra* note 46.

<sup>56</sup> Vivian Wang, *China Moves to Overhaul Protections for Women’s Rights, Sort of*, N.Y. TIMES (Jan. 2, 2022), <https://www.nytimes.com/2022/01/02/world/asia/china-womens-rights.html>.

<sup>57</sup> *Id.*; see also *China: Activist Li Qiaochu Unjustly Convicted ‘For Speaking Out About Torture’*, AMNESTY INT’L (Feb. 5, 2024), <https://www.amnesty.org/en/latest/news/2024/02/china-activist-li-qiaochu-unjustly-convicted-for-speaking-out-about-torture/>.

<sup>58</sup> Mullen, *supra* note 46; Wang, *supra* note 56.

<sup>59</sup> See generally Chusei Suzuki et al., *China*, BRITANNICA (Mar. 4, 2024), <https://www.britannica.com/place/China> (describing China’s history, including how, in its earliest stages, China remained isolated and undisturbed by other countries’ influence, which allowed the Han Chinese culture to flourish).

<sup>60</sup> See BENEDICT ANDERSON, *IMAGINED COMMUNITIES* 5–7 (rev. ed. 1991); David Yen-ho Wu, *The Construction of Chinese and Non-Chinese Identities*, 120 DAEDALUS 159, 161 (1991).

<sup>61</sup> ANDERSON, *supra* note 60, at 5–6.

<sup>62</sup> *Id.* at 5–7.

<sup>63</sup> *Id.* at 2.

The Chinese regime works hard to promote a unified Han Chinese ethnic identity as part of their nationalist campaign.<sup>64</sup> This campaign was born out of the CCP's desire to create a national identity for a very vast and diverse country.<sup>65</sup> In the early days of the People's Republic, Zhang Taiyan presented a historical-looking Chinese national identity which placed the Han ancestors at the center of Chinese history.<sup>66</sup> Other scholars elaborated on this and determined that Han could be used interchangeably with Chinese which led the government to "construct a Chinese identity based on his nationalistic view."<sup>67</sup> In the 1960s, the CCP created a policy to establish this idea of nationality which clearly delineated between Han and non-Han.<sup>68</sup>

Today, China is comprised of 56 *minzu* or nationalities.<sup>69</sup> The Han *minzu* is by far the largest, accounting for roughly 1.2 billion of the nation's 1.4 billion population.<sup>70</sup> The Han *minzu* is not a homogenous group by any means, encompassing eight distinct languages and diverse cultures.<sup>71</sup> The Han have a distinct political power which derives "immense support from its association with Chinese State power."<sup>72</sup> The Han identity was created by what some scholars have described as a "snowball" effect in which other groups underwent "sinicization and amalgamation" to form Han.<sup>73</sup> Furthermore, the naming of this group as Han was an "active ingredient in the formation of this community"<sup>74</sup> harkening back to Anderson's imagined communities.

Critical Race Theory<sup>75</sup> has been employed to better understand the relationship between the Han and non-Han *minzu*. In 1956, Mao Zedong

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<sup>64</sup> See Wu, *supra* note 60, at 167–71 (describing China's assimilation of the Bai into the unified Han ethnic identity).

<sup>65</sup> See *id.* at 167–68.

<sup>66</sup> *Id.* at 161–62.

<sup>67</sup> *Id.* at 161.

<sup>68</sup> *Id.* at 166.

<sup>69</sup> Rong Ma, *Reconstructing "Nation" (Minzu) Discourses in China*, 1 INT'L J. ANTHROPOLOGY & ETHNOLOGY 1, 1–2 (2017).

<sup>70</sup> Press Release, Ning Jizhe, Comm'r, Nat'l Bureau of Stats. of China, Main Data of the Seventh National Population Census (May 11, 2021), [https://www.stats.gov.cn/english/PressRelease/202105/t20210510\\_1817185.html](https://www.stats.gov.cn/english/PressRelease/202105/t20210510_1817185.html).

<sup>71</sup> Thomas S. Mullaney, *Critical Han Studies: Introduction and Prolegomenon*, in CRITICAL HAN STUDIES 1, 1–2 (Thomas S. Mullaney et al. eds., 2012).

<sup>72</sup> *Id.* at 8.

<sup>73</sup> *Id.* at 11–12.

<sup>74</sup> *Id.* at 12–13.

<sup>75</sup> See generally Janel George, *A Lesson on Critical Race Theory*, 46 HUM. RTS., no. 2, Jan. 2021, at 1, 1–5, [https://www.americanbar.org/groups/crsj/publications/human\\_rights\\_magazine\\_home/civil-rights-reimagining-policing/a-lesson-on-critical-race-theory/](https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/civil-rights-reimagining-policing/a-lesson-on-critical-race-theory/). Also coined by Crenshaw, critical race theory is a theory that examines how racism is a core feature of American institutions, and at its core is the concept that race is not biological but instead a social construct. *Id.* at 2.

stated, “We say China is a country vast in territory, rich in resources and large in population; as a matter of fact, it is the Han nationality whose population is large and the minority nationalities whose territory is vast and whose resources are rich.”<sup>76</sup> Despite the resource wealth of the minorities, the Han still wield immense power in China.<sup>77</sup> Critical Race Theory provides a similarity between the construction of whiteness and Han-ness, in that both are created from heterogenous groups and other minorities are measured against this imagined community.<sup>78</sup> Therefore, the Han can shape not only their own ethnic identity, but also shape the identities of others through the “simultaneous processes of identification and differentiation.”<sup>79</sup> For example, the “Uyghurs are described and governed in far more aggressive and anxiety-ridden terms” than other groups like the Han.<sup>80</sup>

Education and “population mobility”<sup>81</sup> play a major role in the promotion of this unified national identity. In addition to the mainstream education program, there are education programs that are bilingual and taught in minority languages.<sup>82</sup> However, it is widely known that students in the latter do not do as well as those in the mainstream program.<sup>83</sup> Minority parents are left with the hard choice of picking the “better” education which has the side effect of assimilating their children into the mainstream and away from their ethnic educational opportunity.<sup>84</sup> According to one scholar, “schooling has been an essential means of transmitting, through history, the self-asserted cultural superiority of the Han.”<sup>85</sup> Furthermore, the migration of Han individuals, who make up over 90% of China’s population,<sup>86</sup> into ethnic minority areas dilutes the non-Han communities.<sup>87</sup> “The flow of Han Chinese cadres and masses marginalizes ethnic cultures and languages in minority autonomy areas

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<sup>76</sup> Mullaney, *supra* note 71, at 10.

<sup>77</sup> *See id.* at 8.

<sup>78</sup> *See Critical Race Theory*, BRITANNICA (Mar. 5, 2024), <https://www.britannica.com/topic/critical-race-theory>; *see also supra* notes 69–74 and accompanying text.

<sup>79</sup> Mullaney, *supra* note 71, at 16.

<sup>80</sup> *Id.* at 2–3.

<sup>81</sup> Zhenzhou Zhao, *China’s Ethnic Dilemma: Ethnic Minority Education*, 43 CHINESE EDUC. & SOC’Y 3, 4–5 (2010) (population mobility describes the practice of moving Han Chinese individuals into majority minority areas).

<sup>82</sup> *Id.* at 5.

<sup>83</sup> *See id.* at 5–6 (stating that minority-speaking students are at a disadvantage because they lack the opportunities that Chinese-speaking students have).

<sup>84</sup> *Id.* at 4–6; *see* Xiaoxu Liu, *Ethnic Minority Students’ Access, Participation and Outcomes in Preparatory Classes in China: A Case Study of a School of Minzu Education*, 43 ASIA PAC. J. EDUC. 173, 179 (2023).

<sup>85</sup> Zhao, *supra* note 81, at 3.

<sup>86</sup> Wu, *supra* note 60, at 166–67.

<sup>87</sup> Zhao, *supra* note 81, at 5.

and further disadvantages minority members.”<sup>88</sup> The concentrated effort through modern Chinese history to create a unified ethnic national identity provides the backdrop to analyze the possibility that the CCP as an institution possesses the requisite genocidal intent under the genocide definition. The minimization and marginalization of ethnic minorities, especially the Uyghurs, is occurring simultaneously with increased islamophobia around the world.<sup>89</sup>

### C. Islamophobia in Asia

Islamophobia is rampant throughout the world as evidenced by heightened violence and discrimination against Muslims.<sup>90</sup> The increased attacks and discrimination present a threat to global peace and security.<sup>91</sup> Increased Islamophobia began after the 9/11 attacks in the United States.<sup>92</sup> Today, Islamophobia is a major issue worldwide. However, some of the most heinous attacks have been perpetrated in Asia, where a vast majority of the world’s Muslim population resides.<sup>93</sup> This is evidenced by the ongoing genocide in Myanmar,<sup>94</sup> Islamophobia in Malaysia,<sup>95</sup> and violence against Muslims in India.<sup>96</sup> The violence against Uyghurs in China presents yet another example of the growing and intense Islamophobia throughout the continent and world.

As Muslims, women, and non-Han, the women of Xinjiang are marginalized and vulnerable in multiple intersecting ways. As women living in China, they are subjected to a vast infrastructure of reproductive control that caused a pendulum swing that now encourages births in Han

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<sup>88</sup> *Id.*

<sup>89</sup> See Kazeem Oluwaseun Dauda, *Islamophobia and Religious Intolerance: Threats to Global Peace and Harmonious Co-Existence*, 8 QUDUS INT’L J. ISLAMIC STUD. 257, 257–59 (2020).

<sup>90</sup> *Id.*

<sup>91</sup> *Id.*

<sup>92</sup> *Id.* at 259.

<sup>93</sup> Drew DeSilver & David Masci, *World’s Muslim Population More Widespread Than You Might Think*, PEW RSCH. CTR. (Jan. 31, 2017), <https://www.pewresearch.org/fact-tank/2017/01/31/worlds-muslim-population-more-widespread-than-you-might-think/>.

<sup>94</sup> Antony J. Blinken, U.S. Sec’y of State, Remarks on the Genocide and Crimes Against Humanity in Burma at the Holocaust Memorial Museum (Mar. 21, 2022), <https://www.state.gov/secretary-antony-j-blinken-at-the-united-states-holocaust-memorial-museum/>.

<sup>95</sup> Ahmad Faizuddin Ramli et al., *Identifying Islamophobia in Malaysian Buddhist Context*, 4 AL-ITQAN: J. ISLAMIC SCIS. & COMPAR. STUD. 85, 102–04 (2020).

<sup>96</sup> See Anagha Subhash Nair & Ananta Agarwal, *Hindu Extremists in India Escalate Rhetoric with Calls to Kill Muslims*, NBC NEWS, <https://www.nbcnews.com/news/world/hindu-extremists-india-escalate-rhetoric-calls-kill-muslims-rcna12450> (Jan. 18, 2022, 6:49 AM); see also Meenakshi Ganguly, *India’s Hindu Festivals Bring Increasing Anti-Muslim Violence*, HUM. RTS. WATCH (Apr. 5, 2023, 11:33 AM), <https://www.hrw.org/news/2023/04/05/indias-hindu-festivals-bring-increasing-anti-muslim-violence>.

communities while preventing them in minority communities, like the Uyghurs.<sup>97</sup> As a Muslim minority, these women are marginalized within China's ethnic hierarchy while facing Islamophobia that labels them as extremists or terrorists.<sup>98</sup> These intersecting vulnerabilities implicate both criminal activity and human rights abuses; accordingly, a legal strategy that addresses criminal law and human rights law is needed.

### III. CONDITIONS IN XINJIANG

The Xinjiang Uyghur Autonomous Region is in Northwestern China, bordering, among other States, Afghanistan and Mongolia.<sup>99</sup> Xinjiang was independent for a short time in the 1940s before being retaken by the CCP in 1949 when they came to power in China.<sup>100</sup> The autonomous region was established in 1955.<sup>101</sup> This region departs from the generally homogenous Han Chinese ethnicity as it is home to mostly Uyghurs and Turkic Muslims.<sup>102</sup> In the 1990s, economic development in the region led to an increase of Han Chinese in the area that highlighted the inequalities between the Han and non-Han.<sup>103</sup> This tension came to a head in 2009 during an uprising when over 100 people died and over 800 were injured.<sup>104</sup> Chinese officials violently cracked down on hundreds of Uyghur protestors who were clashing with the Han Chinese.<sup>105</sup> Some have

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<sup>97</sup> *China Cuts Uighur Births with IUDs, Abortion, Sterilization*, ASSOCIATED PRESS (June 29, 2020, 12:04 AM), <https://apnews.com/article/ap-top-news-international-news-weekend-reads-china-health-269b3de1af34e17c1941a514f78d764c>.

<sup>98</sup> Ali Çaksu, *Islamophobia, Chinese Style: Total Internment of Uyghur Muslims by the People's Republic of China*, 5 ISLAMOPHOBIA STUD. J. 175, 176–78, 184 (2020); see also Tristan Evans, *At the Margins: Uyghur Ethnicity and the Friend/Enemy Dialectic in Xinjiang* (2008) (M.A. Thesis, University of Victoria), <https://dspace.library.uvic.ca/server/api/core/bitstreams/49b1d3ce-f1a0-4eeb-af6d-cf35aa64fee6/content>.

<sup>99</sup> HUM. RTS. WATCH, “WE ARE AFRAID TO EVEN LOOK FOR THEM”: ENFORCED DISAPPEARANCES IN THE WAKE OF XINJIANG’S PROTESTS 8 (2009), <https://www.hrw.org/sites/default/files/reports/xinjiang1009webwcover.pdf>.

<sup>100</sup> *Xinjiang Profile*, BBC NEWS (Aug. 25, 2023), <https://www.bbc.com/news/world-asia-pacific-16860974>.

<sup>101</sup> Victor C. Falkenheim, *History of Xinjiang*, BRITANNICA, <https://www.britannica.com/place/Xinjiang/History> (last visited Jan. 22, 2024).

<sup>102</sup> BREAK THEIR LINEAGE, *supra* note 8, at 2.

<sup>103</sup> Abanti Bhattacharya, *Conceptualising Uyghur Separatism in Chinese Nationalism*, 27 STRATEGIC ANALYSIS, 357, 370 (2003).

<sup>104</sup> HUM. RTS. WATCH, *supra* note 99, at 4–5, 13; see also Aysha Khan, *Uighurs Reflect on 2009 Violence That Set off Chinese Crackdown*, WASH. POST (July 10, 2020, 7:04 PM), [https://www.washingtonpost.com/religion/uighurs-reflect-on-2009-violence-that-set-off-chinese-crackdown/2020/07/10/03ce53ae-c246-11ea-9fdd-b7ac6b051dc8\\_story.html](https://www.washingtonpost.com/religion/uighurs-reflect-on-2009-violence-that-set-off-chinese-crackdown/2020/07/10/03ce53ae-c246-11ea-9fdd-b7ac6b051dc8_story.html).

<sup>105</sup> See HUM. RTS. WATCH, *supra* note 99, at 18–19 (reporting that Chinese authorities “deal[t] decisively” with protestors, by sentencing six Uighur men to death, enforcing disappearances of Uighur men and teenage boys, carrying out unlawful arrests, and beating men to question them about their involvement in the protests against the Han).

called this 2009 uprising the turning point for the CCP policies towards the Uyghurs in Xinjiang.<sup>106</sup>

In mid-2014, the Chinese Communist Party (CCP) launched the Strike Hard Campaign Against Violent Terrorism.<sup>107</sup> This campaign is specifically focused on the Xinjiang region and targets Uyghurs and other Turkic Muslims.<sup>108</sup> As part of this campaign, minority Chinese were forced out of urban areas back to their rural homelands to obtain “the People’s Convenience Card,” a new ID card.<sup>109</sup> Many of these individuals were denied these cards and left stuck in the rural areas.<sup>110</sup> Various human rights abuses have occurred because of the Strike Hard Campaign. Some abuses include arbitrary detention in “political education camps” which have been called an “open-air prison for the Uyghurs in China,”<sup>111</sup> persecution of minority ethnic and religious groups, torture, disappearances, forced labor, control of births, and sexual and reproductive violence.<sup>112</sup> Additionally, outside of the “political education camps,” officials estimate that ordinary arrests in Xinjiang of minority individuals have increased 306% since the beginning of the Strike Hard Campaign.<sup>113</sup>

Of the many atrocities occurring in Xinjiang against the Uyghurs, there are three that stand out: forced sterilization,<sup>114</sup> forced marriage,<sup>115</sup> and rape.<sup>116</sup> On their own each is a violation of human rights. However, when taken as an aggregate the three could be methods of genocide, should the specific intent of destruction of an ethnic community, in whole or in part, be present. Through Strike Hard, a systematic approach of separating Uyghur men and women took place, followed by the control of

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<sup>106</sup> Khan, *supra* note 104.

<sup>107</sup> BREAK THEIR LINEAGE, *supra* note 8, at 1.

<sup>108</sup> *Id.*

<sup>109</sup> *Id.* at 9–10.

<sup>110</sup> *Id.*

<sup>111</sup> *See id.* at 12–13; TIRANA HASSAN, HUM. RTS. WATCH, WORLD REPORT 2023, 1 (2023); *see also Internment Camps*, WORLD UYGHUR CONG. (Aug. 1, 2017), <https://www.uyghurcongress.org/en/political-indoctrination-camps/> (noting that these political indoctrination camps “essentially function as open-air prisons, where detainees are forced to undergo political indoctrination classes aimed at eroding their unique religious, cultural and ethnic identities.”).

<sup>112</sup> BREAK THEIR LINEAGE, *supra* note 8, at 1–2.

<sup>113</sup> *Id.* at 16.

<sup>114</sup> Adrian Zenz, *China’s Own Documents Show Potentially Genocidal Sterilization Plans in Xinjiang*, FOREIGN POL’Y (July 1, 2020, 10:38 AM), <https://foreignpolicy.com/2020/07/01/china-documents-uyghur-genocidal-sterilization-xinjiang/>.

<sup>115</sup> Tasnim Nazeer, *Uyghur Women and Forced Marriages in China*, THE DIPLOMAT (Dec. 10, 2022), <https://thediplomat.com/2022/12/uyghur-women-and-forced-marriages-in-china/>.

<sup>116</sup> Hill et al., *‘Their Goal Is to Destroy Everyone’: Uighur Camp Detainees Allege Systematic Rape*, BBC (Feb. 2, 2021), <https://www.bbc.com/news/world-asia-china-55794071>.

Uyghur women's reproductive systems, and an intense pressure to marry outside of the Uyghur community.<sup>117</sup>

Women have undergone forced sterilization, forced implantation of IUDs, and forced abortions.<sup>118</sup> The CCP “launched a ‘Special Action Plan of the ‘Two Thorough Investigations’ of Illegal Births,’ which required counties to implement intrusive birth control measures, namely IUD implantations and permanent sterilizations.”<sup>119</sup> There is evidence to suggest that these policies and other family planning policies are disproportionately enforced against Uyghur and other minority women.<sup>120</sup> Birth rates in Xinjiang dropped 48.74% between 2017-2019, with the largest decline in areas with high concentrations of Uyghurs.<sup>121</sup>

The only clear motivation of these measures is to prevent Uyghur women from giving birth to fully Uyghur children.<sup>122</sup> In Xinjiang, women who violate the family planning mandates are held in detention<sup>123</sup> where rape is frequently used as a means of controlling and persecuting Uyghur women.<sup>124</sup> Given that the women in Xinjiang are denied their right to mobility due to being detained, they are unable to freely give their consent. Guards of the detention centers have reported that they “experienced or saw evidence of an organized system of mass rape.”<sup>125</sup> A released detainee describes how she, along with others, was forced to watch as a woman was gang raped, and they themselves were punished if they showed a response to the scene.<sup>126</sup> This system of rape has the dual impact of causing serious bodily and mental harm while also potentially

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<sup>117</sup> ZENZ, *supra* note 21, at 2; see ANDRÉA J. WORDEN ET AL., FORCED MARRIAGE OF UYGHUR WOMEN: STATE POLICIES FOR INTERETHNIC MARRIAGES IN EAST TURKISTAN 6, 8–10 (2022); see also Nazeer, *supra* note 115.

<sup>118</sup> ZENZ, *supra* note 21, at 1.

<sup>119</sup> BREAK THEIR LINEAGE, *supra* note 8, at 38.

<sup>120</sup> *China Forcing Birth Control on Uighurs to Suppress Population, Report Says*, BBC (June 29, 2020, 9:38 PM), <https://www.bbc.com/news/world-asia-china-53220713#:~:text=The%20report%20also%20says%20that,coerced%20into%20receiving%20sterilisation%20surgery>.

<sup>121</sup> NATHAN RUSER & JAMES LEIBOLD, FAMILY DE-PLANNING: THE COERCIVE CAMPAIGN TO DRIVE DOWN INDIGENOUS BIRTH-RATES IN XINJIANG 4 (2021); see also U.N. OFF. OF THE HIGH COMM'R FOR HUM. RTS. (OHCHR), *supra* note 9, ¶ 108 (reporting on the drastic decrease in birthrate such that “[e]ven taking into account the overall decline in birth rates in China, these figures remain unusual and stark. The same applies to the figures regarding sterilizations and IUD placements” in Xinjiang).

<sup>122</sup> See RUSER & LEIBOLD, *supra* note 121 (explaining that while the Chinese government's intent needs more research, there is “compelling evidence” that these policies are acts of genocide).

<sup>123</sup> ZENZ, *supra* note 21, at 10–12.

<sup>124</sup> Hill et al., *supra* note 116.

<sup>125</sup> *Id.*

<sup>126</sup> David Stavrou, *A Million People are Jailed at China's Gulags. I Managed to Escape. Here's What Really Goes on Inside*, HAARETZ (Oct. 17, 2019), <https://www.haaretz.com/world-news/2019-10-17/ty-article-magazine/.premium/a-million-people-are-jailed-at-chinas-gulags-i-escaped-heres-what-goes-on-inside/0000017f-e216-d804-ad7f-f3fe73670000>.



impregnating Uyghur women with children of mixed ethnicity if their reproductive abilities have not been forcibly stripped from them.<sup>127</sup>

In addition to the physical attacks on women's bodies, there are also implications on a woman's freedom to enter marriage.<sup>128</sup> There is a strong campaign of "encouraging" Turkic and Uyghur women to marry Han Chinese men.<sup>129</sup> This pressure for inter-ethnic marriages goes as far as providing "preferential university entrance for children of mixed families" and media articles which tell Han men how to win the affections of Uyghur girls.<sup>130</sup> Additionally, the CCP itself has implemented a "Becoming Family" homestay policy which places party loyal, Han men into the homes of women and children to encourage mixed ethnic relationships.<sup>131</sup> This policy has also put women and children in danger of sexual violence.<sup>132</sup>

Uyghur women in this system are extremely vulnerable given their place at the intersection of two marginalized classes. The Chinese government has been successful in policing and controlling the bodies of both Uyghurs and women. Additionally, the stark contrast of treatment of Uyghur women and non-Uyghur women must be noted. Throughout the rest of China women are presently being strongly encouraged to have more children<sup>133</sup> in contrast to the forced sterilization of Uyghur women.<sup>134</sup> The Chinese regime has mastered the practice of controlling women's bodies and is now using it to change the ethnic composition of the country.

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<sup>127</sup> See SIMON-SKJODT CTR. FOR THE PREVENTION OF GENOCIDE, "TO MAKE US SLOWLY DISAPPEAR": THE CHINESE GOVERNMENT'S ASSAULT ON THE UYGHURS 39–40 (2021), [https://www.usmm.org/m/pdfs/November\\_2021\\_Uyghur\\_Report.pdf](https://www.usmm.org/m/pdfs/November_2021_Uyghur_Report.pdf) (noting that the 1948 Convention on the Prevention and Punishment of the Crime of Genocide includes rape and sexual violence as acts that can cause serious bodily or mental harm).

<sup>128</sup> Nazeer, *supra* note 115.

<sup>129</sup> See *id.* (noting how Uyghur women are being forced into marriage and the disturbing Chinese Communist Party advertisements seeking beautiful Uyghur Muslim women to become brides); see also Asim Kashgarian, *China Video Ad Calls for 100 Uighur Women to 'Urgently' Marry Han Men*, VOA (Aug. 21, 2020, 8:22 PM), [https://www.voanews.com/a/east-asia-pacific\\_voa-news-china\\_china-video-ad-calls-100-uyghur-women-urgently-marry-han-men/6194806.html](https://www.voanews.com/a/east-asia-pacific_voa-news-china_china-video-ad-calls-100-uyghur-women-urgently-marry-han-men/6194806.html).

<sup>130</sup> BREAK THEIR LINEAGE, *supra* note 8, at 30.

<sup>131</sup> See *id.*; see also *China: Visiting Officials Occupy Homes in Muslim Region: 'Becoming Family' Campaign Intensifies Repression in Xinjiang*, HUM. RTS. WATCH (May 13, 2018, 8:00 PM), <https://www.hrw.org/news/2018/05/14/china-visiting-officials-occupy-homes-muslim-region> (noting that in December of 2017, government authorities dispatched over a million cadres to live in Muslim family homes in efforts toward "fostering ethnic harmony").

<sup>132</sup> BREAK THEIR LINEAGE, *supra* note 8.

<sup>133</sup> Liyan Qi & Shen Lu, *China Is Pressing Women to Have More Babies. Many Are Saying No.*, WALL ST. J. (Jan. 2, 2024, 12:01 AM), <https://www.wsj.com/articles/china-population-births-decline-womens-rights-5af9937b#:~:text=In%202020%2C%20it%20was%201.30,families%20to%20have%20more%20babies.>

<sup>134</sup> See *China Cuts Uighur Births with IUDs, Abortion, Sterilization*, *supra* note 97.

The system of reproductive control was perfected in China through the one-child policy. The pendulum has now swung in the opposite direction to encourage births in only certain parts of the country while Uyghur women have reported nearly identical experiences of forced sterilization and forced abortions to those experiences under China's one-child policy. The stark contrast in this double standard of a reproductive crackdown for only Uyghurs, in the context of other atrocities, seems to point to a calculated, eugenicist<sup>135</sup> attempt to alter the country's demographic composition harkening back to Chinese ethnonationalism. Forced sterilization is not the only means of achieving these demographic goals.<sup>136</sup> The rape and forced marriages have a similar effect of systematically diluting the Uyghur bloodlines with the genetic material of Han men who are loyal to the CCP.<sup>137</sup> Many methods of genocide from the genocide definition could be applicable to the atrocities Uyghurs are facing; however, the method that sticks out the most, given forced sterilization and Uyghur women being pushed to reproduce with Han men, is "imposing measures intended to prevent births within the group."<sup>138</sup> However, genocide only occurs when the special intent to destroy in whole or in part is present.<sup>139</sup>

The discrimination, human rights violations, and cruel treatment of Uyghurs requires a multi-layered legal approach. These atrocities are violations of several human rights agreements.<sup>140</sup> Furthermore, the system of forcibly changing the ethnic composition of the region is potentially genocidal and therefore criminal. These genocidal acts are being perpetrated by organs of the CCP, in accordance with CCP policy, the special intent of which is analyzed below. The human rights system evokes State accountability and financial remedies,<sup>141</sup> whereas the

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<sup>135</sup> *Eugenics and Scientific Racism*, NAT'L HUM. GENOME RSCH. INST. (May 18, 2022), <https://www.genome.gov/about-genomics/fact-sheets/Eugenics-and-Scientific-Racism#:~:text=Eugenics%20is%20the%20scientifically%20erroneous,ills%20through%20genetics%20and%20heredit> (defining eugenics as "the scientifically erroneous and immoral theory of 'racial improvement' and 'planned breeding'").

<sup>136</sup> *China Cuts Uighur Births with IUDs, Abortion, Sterilization*, *supra* note 97.

<sup>137</sup> See WORDEN ET AL., *supra* note 117, at 4, 15–16.

<sup>138</sup> Genocide Convention, *supra* note 12, at art. II.

<sup>139</sup> *Id.*

<sup>140</sup> CEDAW, *supra* note 17, at art. 2 and accompanying text; *supra* notes 18–19 and accompanying text; see also Pompeo, *supra* note 12 (listing genocide as just one of the crimes against humanity that the CCP commits against the Uyghurs).

<sup>141</sup> See Olivia Kirkpatrick, *Femicide in Mexico: The Cotton Field Case and Its Sequels*, LAT. AM. BUREAU (Mar. 27, 2013), <https://lab.org.uk/femicide-in-mexico-the-cotton-field-case-and-its-sequels/#:~:text=In%201993%20young%20women%20from,traveling%20to%20or%20from%20work;ChristinaZampas,VCvSlovakia:AStepTowardJusticeforRomaWomen,OPENSOCIETYFOUNDATIONS>.

(Nov. 17, 2011), <https://www.opensocietyfoundations.org/voices/vc-v>.

criminal system calls for individual accountability and prosecution.<sup>142</sup> In Xinjiang, the Chinese State is engaging in criminal, genocidal acts which must be met with criminal accountability for State and individual actors as well as remedies for the victims of these violations.

#### IV. LEGAL FRAMEWORK

International Law is a large umbrella that encompasses human rights law and international criminal law and other subfields.<sup>143</sup> Both systems have different subjects and different goals. Human rights law is focused on State liability with its foundational pillar being human dignity.<sup>144</sup> It creates positive and negative rights such as freedom of life and speech, but also freedom from arbitrary detention.<sup>145</sup> The human rights system is like a tortious system with similar goals and remedies.<sup>146</sup> States are responsible for remedying human rights violations sometimes through policy change and often through monetary damages.<sup>147</sup> On the other hand, international criminal law focuses on individual criminal accountability for international crimes, which are crimes so heinous they are crimes against the international community.<sup>148</sup> Some such crimes

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slovakia-step-toward-justice-roma-women#:~:text=VC%2C%20a%20Romani%20woman%2C%20was,about%20what%20the%20procedure%20entailed; see also González v. Mexico, Preliminary Objection, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 205, ¶¶ 4–5, 158, 561–601 (Nov. 16, 2009) (calculating and detailing the damages to be paid, including consequential damages, loss of earnings, moral damages, and non-pecuniary damages for the state's failure to protect the lives of three women).

<sup>142</sup> See, e.g., S.C. Res. 955, art. 23, ¶ 8 (Nov. 8, 1994) (noting that the purpose of establishing an international tribunal is to prosecute responsible persons and punish by prison sentences, rather than fines).

<sup>143</sup> *International Law*, LEGAL INFO. INST., [https://www.law.cornell.edu/wex/international\\_law](https://www.law.cornell.edu/wex/international_law) (last visited Mar. 19, 2024).

<sup>144</sup> See *International Human Rights Law*, U.N. OFF. OF THE HIGH COMM'R FOR HUM. RTS., <https://www.ohchr.org/en/instruments-and-mechanisms/international-human-rights-law#:~:text=International%20human%20rights%20law%20lays,and%20to%20fulfil%20human%20rights> (last visited Jan. 21, 2024).

<sup>145</sup> See *Human Rights*, U.N., <https://www.un.org/en/global-issues/human-rights#:~:text=Human%20rights%20are%20rights%20inherent,and%20education%2C%20and%20many%20more> (last visited Mar. 11, 2024).

<sup>146</sup> See STEFAN SOMERS, *THE EUROPEAN CONVENTION ON HUMAN RIGHTS AS AN INSTRUMENT OF TORT LAW* 33–44 (2018) (explaining how human rights law influences national tort laws).

<sup>147</sup> G.A. Res. 60/147, *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, arts. III, IX (Dec. 16, 2005).

<sup>148</sup> *International Criminal Law (ICL)*, INT'L ASSOC. OF PROS. IN HUMANITARIAN ASSISTANCE & PROT., <https://phap.org/PHAP/PHAP/Themes/ICL.aspx> (last visited Feb. 21, 2024).

include crimes against humanity,<sup>149</sup> genocide,<sup>150</sup> and torture.<sup>151</sup> Whereas genocide requires a specific intent to destroy a group in whole or in part, a crime against humanity is a knowing, widespread and systematic attack on civilians.<sup>152</sup> Many genocides are crimes against humanity, but crimes against humanity are not necessarily genocide because they lack specific genocidal intent to destroy the community.<sup>153</sup>

Given the events in Xinjiang are ongoing, the legal scholarship is still developing. However, one scholar, Preston Jordan Lim, theorized on the feasibility of various legal terms in potential legal actions both in the human rights and international criminal law systems.<sup>154</sup> Lim proposes that “crimes against humanity” and “forced labor” would provide the maximum legal utility when defining this crisis.<sup>155</sup> Lim argues these two terms are of the highest utility because the acts of the CCP likely fulfil all elements of the two violations and both violate *jus cogens* norms.<sup>156</sup> *Jus cogens* norms are nearly universal norms and are non-derogable, meaning even in times of crisis they shall not be abridged.<sup>157</sup> He argues that because both are *jus cogens* norms, violations of these norms create an “independent cause of action.”<sup>158</sup> In contrast to this analysis,<sup>159</sup> Lim finds genocide to only be a moderately useful term given the high *mens rea*

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<sup>149</sup> Rome Statute of the International Criminal Court, art. 7, July 17, 1998, 2187 U.N.T.S. 90 [hereinafter Rome Statute] (defining Crimes Against Humanity as acts including but not limited to murder, torture, rape, forced sterilization “when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack”).

<sup>150</sup> Genocide Convention, *supra* note 12, at art. III.

<sup>151</sup> Torture Convention, *supra* note 18, at art. 2.

<sup>152</sup> *Genocide*, U.N. OFF. ON GENOCIDE PREVENTION & THE RESP. TO PROTECT, <https://www.un.org/en/genocideprevention/genocide.shtml> (last visited Feb. 25, 2024); INT’L CRIM. L. SERVS., CRIMES AGAINST HUMANITY 7, <https://iici.global/0.5.1/wp-content/uploads/2018/03/icls-training-materials-sec-7-cah1.pdf>.

<sup>153</sup> See U.S. INST. OF PEACE, MODEL CODES FOR POST-CONFLICT CRIMINAL JUSTICE 197 (Vivienne O’Connor et al. eds., 2007).

<sup>154</sup> Preston Jordan Lim, *Applying International Law Solutions to the Xinjiang Crisis*, 22 ASIAN-PACIFIC L. & POL’Y J. 90, 94 (2020).

<sup>155</sup> See *id.* at 111–12. See generally Convention Concerning Forced or Compulsory Labor art. 2(1), June 28, 1930, 39 U.N.T.S. 55 (defining forced labor as “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily”).

<sup>156</sup> Lim, *supra* note 154, at 110–12.

<sup>157</sup> There are several non-derogable rights including the prohibition against torture. See Torture Convention, *supra* note 18, at art. 2, ¶ 2 (stating “no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.”).

<sup>158</sup> Lim, *supra* note 154, at 117–18.

<sup>159</sup> See *infra* notes 270–271 and accompanying text.

requirement of genocidal intent.<sup>160</sup> Given the high and challenging bar of proving the intent to destroy, Lim argues charging these atrocities as genocide would not be the most effective approach.<sup>161</sup> Alongside Lim's perspective, and even though proving genocidal intent is an evidentiary challenge, there are important social implications of labeling something a genocide that go beyond legal feasibility.<sup>162</sup> Furthermore, the implications of labeling acts as a "State Genocide" are even greater. This hybrid idea of "State Genocide" calls for criminal liability from the international criminal justice system while also evoking State accountability from the human rights regime.<sup>163</sup>

Lim's analysis continues by exploring potential avenues for legal action, including a suit before the ICC, one before the ICJ, and one in a national court employing universal jurisdiction.<sup>164</sup> He argues that the ICC would likely be the least effective route.<sup>165</sup> The first and largest hurdle would be establishing jurisdiction. China has not acceded to the Rome Statute which establishes ICC jurisdiction over the crimes within the statute.<sup>166</sup> State Parties to the Rome Statute accept the jurisdiction of the Court for crimes which the Court has jurisdiction.<sup>167</sup> The ICC can exercise its jurisdiction in three ways: first, by referral to the Prosecutor by a state party; second, referral by the UN Security Council;<sup>168</sup> and third, by the ICC Prosecutor initiating an investigation.<sup>169</sup> To properly exercise jurisdiction under the first or third, the conduct in question must have been committed on the territory of a State Party or by a national of a State Party.<sup>170</sup> While China is not a State Party, activists have made creative

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<sup>160</sup> Lim, *supra* note 154, at 100–01. Genocidal intent does in fact create a high bar for proving the elements of this crime. However, this Article will later demonstrate that China's attempts to reshape their demographic composition move the international legal community's journey of proving genocidal intent forward significantly.

<sup>161</sup> *See id.* at 101–02 (describing the requirements to prove genocidal intent).

<sup>162</sup> *See Genocide, supra* note 152; *see also When to Refer to a Situation as "Genocide,"* U.N. OFF. ON GENOCIDE PREVENTION & THE RESP. TO PROTECT, <https://www.un.org/en/genocideprevention/documents/publications-and-resources/GuidanceNote-When%20to%20refer%20to%20a%20situation%20as%20genocide.pdf> (last visited Mar. 18, 2024).

<sup>163</sup> *See* Hilda Rezaee & Sadegh Salimi, *The Overlap of International Responsibility of Individual and State for Genocide*, 9 J. POL. & L. 65, 70 (2016).

<sup>164</sup> Lim, *supra* note 154, at 155–56.

<sup>165</sup> *Id.* at 156.

<sup>166</sup> *The States Parties to the Rome Statute*, INT'L CRIM. CT., <https://asp.icc-cpi.int/states-parties> (last visited Feb. 28, 2022).

<sup>167</sup> Rome Statute, *supra* note 149, at art. 5.

<sup>168</sup> *Id.* at art. 13.

<sup>169</sup> *Id.*

<sup>170</sup> *See id.* arts. 12–13.

jurisdictional arguments that have been unsuccessful.<sup>171</sup> Furthermore, China's position on the UN Security Council makes referral of this conflict unlikely if not impossible.<sup>172</sup> For these reasons, Lim looks beyond the ICC for possible legal action.

Lim contends that focusing more specifically on an ICJ advisory opinion or the exercise of universal criminal jurisdiction by a State court would produce better results.<sup>173</sup> While China has submitted reservations to several treaty provisions that give the ICJ jurisdiction, like the Genocide Convention,<sup>174</sup> the UN General Assembly (UNGA) would still be able to request an advisory opinion from the ICJ under Article 65 of the ICJ Statute.<sup>175</sup> Lim recommends the UNGA request an advisory opinion for the ICJ to answer the questions of (1) whether Chinese actions in Xinjiang constitute *jus cogens* violations and (2) what are the possible legal consequences?<sup>176</sup> He also proposes the very creative idea that individual nations exercise universal jurisdiction<sup>177</sup> in their domestic courts to prosecute *jus cogens* violations over low-ranking Chinese officials responsible for these atrocities.<sup>178</sup> Based on their history of universal jurisdiction prosecutions, Lim believes Germany and the Netherlands would be the most ideal forums for such cases.<sup>179</sup>

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<sup>171</sup> Lim, *supra* note 154, at 129–31. Lim looks to a recent ICC investigation to point out the slim chance that this strategy would work. *Id.* at 129. In 2020, the East Turkistan Government in Exile and the East Turkistan National Awakening Movement brought a suit to the ICC claiming Uyghurs had been illegally deported from ICC member territory into China. *Id.* at 129–30. In its “Report on Preliminary Examination Activities” the ICC Office of the Prosecutor determined there was “no basis to proceed” because the alleged crimes had “been committed solely by nationals of China within the territory of China.” *Id.* at 129, 131.

<sup>172</sup> Given that China is a Permanent Five member of the UNSC it is extremely unlikely that a resolution to refer crimes in Xinjiang to the ICC would be adopted by the UNSC as China could easily veto any such resolution. *See infra* notes 396–398 and accompanying text. Furthermore, the ICC has shown a hesitancy to take on cases that are too politically charged which was demonstrated by the ICC investigation into crimes committed by the U.S. on the territory of Afghanistan. *Id.*

<sup>173</sup> *See* Lim, *supra* note 154, at 156 (explaining that an ICJ advisory opinion would likely be seen as unbiased and provide interpretation of the law while the universal jurisdiction would push for punishment of people who abuse Chinese rights).

<sup>174</sup> *Status of Treaties: - 1. Convention on the Prevention and Punishment of the Crime of Genocide*, U.N. TREATY COLLECTION, [https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg\\_no=IV-1&chapter=4&clang=\\_en#top](https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-1&chapter=4&clang=_en#top) (last visited Apr. 4, 2024).

<sup>175</sup> Statute of the International Court of Justice art. 65, Apr. 18, 1946, 33 U.N.T.S. 993.

<sup>176</sup> Lim, *supra* note 154, at 156.

<sup>177</sup> *Id.* at 156; *see also* *Universal Jurisdiction*, INT'L JUST. RES. CTR., <https://ijrcenter.org/cases-before-national-courts/domestic-exercise-of-universal-jurisdiction/> (last visited Mar. 4, 2023). Universal jurisdiction is the idea that some crimes like genocide or crimes against humanity are so egregious that they are an affront to the international community and international order, therefore, jurisdiction to prosecute these crimes transcends State boundaries. *Id.*

<sup>178</sup> Lim, *supra* note 154, at 146–47.

<sup>179</sup> *Id.* at 155.

Lim's analysis points out the various avenues within human rights law and criminal law that are relevant to this crisis. However, this Article proposes that neither system alone is enough to address and remedy the actions in Xinjiang. The ensuing sections focus on the available legal frameworks. First, it starts with an exploration of various relevant human rights instruments as well as pertinent, persuasive human rights case law. This is followed by an examination of the elements of various international crimes and selected cases that analyze crimes which are analogous to alleged crimes in Xinjiang. The final subsection explores the relationship between these two legal regimes and how the marriage of both systems is needed to address the concept of "State Genocide."

### A. *International Human Rights Law*

China is a State Party to several human rights instruments relevant to the crisis in Xinjiang.<sup>180</sup> These include the ICESCR,<sup>181</sup> CEDAW,<sup>182</sup> the Torture Convention,<sup>183</sup> and finally the Genocide Convention.<sup>184</sup> Each agreement establishes a set of rights that China has agreed their citizens possess.<sup>185</sup> Some of the most relevant rights are women's right to family planning healthcare,<sup>186</sup> the freedom from torture,<sup>187</sup> the freedom to willingly enter into marriage,<sup>188</sup> and the right to fully participate in cultural life.<sup>189</sup>

A defining characteristic of human rights law is that the subjects are States.<sup>190</sup> Generally, States are the actors consenting to be bound by human rights treaties and have an obligation to uphold the agreements.<sup>191</sup> One example is seen in Article 2 of the ICESCR, stating "States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any

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<sup>180</sup> Giavanna O'Connell, *How China is Violating Human Rights Treaties and Its Own Constitution in Xinjiang*, JUST SEC. (Aug. 19, 2020), <https://www.justsecurity.org/72074/how-china-is-violating-human-rights-treaties-and-its-own-constitution-in-xinjiang/>.

<sup>181</sup> ICESCR, *supra* note 19.

<sup>182</sup> CEDAW, *supra* note 17.

<sup>183</sup> Torture Convention, *supra* note 18.

<sup>184</sup> Genocide Convention, *supra* note 12.

<sup>185</sup> See ICESCR, *supra* note 19, at art. 1 (ratified with reservations by China in 1988); see also CEDAW, *supra* note 17, at 14, art. 2; Torture Convention, *supra* note 18, at art. 2; Genocide Convention, *supra* note 12.

<sup>186</sup> CEDAW, *supra* note 17, at art. 12.

<sup>187</sup> Torture Convention, *supra* note 18, at art. 2.

<sup>188</sup> ICESCR, *supra* note 19, at art. 10; CEDAW, *supra* note 17, at art. 16.

<sup>189</sup> ICESCR, *supra* note 19, at arts. 1, 15.

<sup>190</sup> See *International Human Rights Law*, *supra* note 144 (noting that states assume obligations and duties under international human rights law); ICESCR, *supra* note 19, at art. 1, ¶ 3, art. 2, ¶¶ 1–2.

<sup>191</sup> *International Human Rights Law*, *supra* note 144.

kind.”<sup>192</sup> Each treaty outlines the obligation of the States differently. Some say States “shall take effective . . . measures”<sup>193</sup> while others use softer language like “undertake to respect.”<sup>194</sup> The “*Cotton Field Case*” demonstrates how human rights law places the burden on the State to prevent or deter some human rights violations, like the targeted killing of women.<sup>195</sup> It also illustrates how financial reparations are utilized as a remedy for human rights violations.

Many scholars have theorized on the relationship between tort law and human rights law or, more specifically, the use of tort law to address human rights violations.<sup>196</sup> One should consider the similarities in goals between human rights law and tort law. Tort law has the main goals of deterrence, punishment, and compensation.<sup>197</sup> The cases below, the “*Cotton Field Case*” and *V.C. v. Slovakia*, demonstrate that human rights law has similar objectives.<sup>198</sup> *V.C. v. Slovakia* addresses the human rights implications of forced sterilization, like the forced sterilization of Uyghurs.<sup>199</sup> Both cases show how compensation for human rights violations often comes in the form of financial reparations.<sup>200</sup> These financial reparations can be viewed as monetary punishment for the human rights violator, as well as a remedy or compensation to make victims whole. The following case law demonstrates the overlap in tort law and human rights law while also showing jurisprudence for violations analogous to violations in Xinjiang.

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<sup>192</sup> ICESCR, *supra* note 19, at art. 2.

<sup>193</sup> Torture Convention, *supra* note 18, at art. 2.

<sup>194</sup> ICESCR, *supra* note 19, at art. 15.

<sup>195</sup> See *infra* text accompanying notes 201–229.

<sup>196</sup> See, e.g., Uglješa Grušić, *Tort Law and State Accountability for Overseas Violations of International Human Rights Law and International Humanitarian Law: The UK Perspective*, 36 UTRECHT J. INT’L & EUR. L. 152, 152–53 (2021) (arguing that tort law plays a role in holding the British government accountable for overseas violations of international human rights law); see generally SOMERS, *supra* note 146 (explaining how human rights law influences national tort laws).

<sup>197</sup> Tort, LEGAL INFO. INST., <https://www.law.cornell.edu/wex/tort#:~:text=The%20primary%20aims%20of%20tort,other%20from%20committing%20harmful%20acts> (last visited Feb. 4, 2024).

<sup>198</sup> See *infra* text accompanying notes 222–223, 235–240.

<sup>199</sup> *V.C. v. Slovakia*, 2011-V Eur. Ct. H.R. 381, 406–07 (2011).

<sup>200</sup> *González v. Mexico*, Preliminary Objection, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 205, ¶¶ 565–66, 577–78, 586, 596 (Nov. 16, 2009); *Slovakia*, 2011-V Eur. Ct. H.R. at 418.



### 1. “Cotton Field Case”

In the “*Cotton Field Case*”, the Inter-American Commission on Human Rights and Inter-American Court on Human Rights<sup>201</sup> addressed femicide in Mexico.<sup>202</sup> In Juarez, three young women went missing, and their concerned families were dismissed by local authorities.<sup>203</sup> The bodies of these women, along with others, were found in cotton fields.<sup>204</sup> Despite finding the bodies, the investigation into these murders was drastically flawed.<sup>205</sup> The families received threats from authorities to withdraw complaints.<sup>206</sup> The families of the three victims petitioned the Commission.<sup>207</sup> The Commission first found Mexico in violation of the American Convention on Human Rights and referred the case against Mexico to the Inter-American Court of Human Rights.<sup>208</sup> At issue was the systematic violence against women that the Mexican State failed to address.<sup>209</sup> This case shed light on disappearances and murders of young women throughout Ciudad Juarez, most of whom were factory workers that went missing while going to and from work.<sup>210</sup> This demonstrated a system of gender-based violence that was influenced by a culture of

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<sup>201</sup> *González*, Inter-Am. Ct. H.R. (ser. C) No. 205 at 1; American Convention on Human Rights: “Pact of San José, Costa Rica,” art. 33, Nov. 22, 1969, 1144 U.N.T.S. 144 (establishing the Inter-American Commission on Human Rights and Inter-American Court on Human Rights) [hereinafter American Convention on Human Rights].

<sup>202</sup> *González*, Inter-Am. Ct. H.R. (ser. C) No. 205 ¶¶ 2–3; *Understanding and Addressing Violence Against Women*, WORLD HEALTH ORG [WHO] 1 (Sept. 29, 2012), [https://apps.who.int/iris/bitstream/handle/10665/77421/WHO\\_RHR\\_12.38\\_eng.pdf](https://apps.who.int/iris/bitstream/handle/10665/77421/WHO_RHR_12.38_eng.pdf) (defining femicide as the murder of women and girls because they are female, generally committed by males).

<sup>203</sup> *González*, Inter-Am. Ct. H.R. (ser. C) No. 205 ¶¶ 169–73, 179–81 (finding that, although the authorities carried out the routine procedures, the state failed to prove that the authorities began “a real and effective search for the victims”).

<sup>204</sup> *Id.* ¶ 2.

<sup>205</sup> *Id.* ¶¶ 428–31 (noting the authorities’ unresponsiveness to the families’ complaints and describing the persecution inflicted against the families for filing them).

<sup>206</sup> *Id.* ¶¶ 431–35.

<sup>207</sup> *Id.* ¶ 1 (noting the consolidation of reports numbers 16/05, 17/05, and 18/05, petitions by the families, into the *González* case).

<sup>208</sup> *González*, Inter-Am. Ct. H.R. (ser. C) No. 205 ¶¶ 1, 3.

<sup>209</sup> *Id.* ¶ 284.

<sup>210</sup> *Id.* ¶¶ 113, 122–23, 166 (noting that the murder victims especially included young women working in “the *maquilas*,” or the assembly plants, located in Ciudad Juarez, an area susceptible to different types of organized crime); see also Olivia Kirkpatrick, *Femicide in Mexico: The Cotton Field Case and Its Sequels*, LAT. AM. BUREAU (Mar. 27, 2013), <https://lab.org.uk/femicide-in-mexico-the-cotton-field-case-and-its-sequels/#:~:text=In%201993%20young%20women%20from,traveling%20to%20or%20from%20work> (reporting that the 2009 Cotton Case shed light on Mexico’s long history of negligence in protecting against femicide which started in 1993 when women, mainly factory workers, started disappearing on their way to or from work and turning up brutally murdered).

sexism.<sup>211</sup> The murders of women in Juarez went largely unchecked by Mexican authorities. The main issue of the case was femicide, and the court found that “cruel acts of violence [were] perpetrated against girls and women merely because of their gender.”<sup>212</sup>

In this case, the court found that Mexico did not meet its obligation to prevent violations of the right to life, humane treatment, and personal liberty under the American Convention on Human Rights.<sup>213</sup> The court looked to other regional mechanisms and employed the European Court of Human Rights test to determine violations of the obligation to protect the right to life.<sup>214</sup> This test is to determine if:

authorities have violated their positive obligation to protect the right to life [...] it must be established to its satisfaction that the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual or individuals from the criminal acts of a third party and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk.<sup>215</sup>

Mexico had knowledge of the targeting of women and lacked an adequate response. By failing to address or investigate gender-based violence, Mexico violated its obligations under the regional human rights agreement.<sup>216</sup> Due to this, the court found that Mexico failed to protect the rights of its citizens and failed to prevent crimes like this from occurring.<sup>217</sup>

The court also analyzed these crimes under Mexico’s CEDAW obligations.<sup>218</sup> According to CEDAW, State Parties can be liable for failing “to act with due diligence to prevent violations of rights.”<sup>219</sup> The court

<sup>211</sup> See *González*, Inter-Am. Ct. H.R. (ser. C) No. 205 ¶¶ 128–29.

<sup>212</sup> *Id.* ¶¶ 127–28.

<sup>213</sup> *Id.* ¶ 440, ¶ 602(4)–(6); American Convention on Human Rights, *supra* note 201, at art. 1, ¶ 1 (“The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms.”).

<sup>214</sup> *González*, Inter-Am. Ct. H.R. (ser. C) No. 205 ¶¶ 292–95.

<sup>215</sup> *Id.* at Garcia-Sayan, J., concurrence ¶ 5 (quoting *Osman v. The United Kingdom*, App. No. 23452/94, ¶ 116 (Oct. 28, 1998), <https://hudoc.echr.coe.int/eng?i=001-58257>).

<sup>216</sup> *Id.* ¶ 388; American Convention on Human Rights, *supra* note 201, at art. 1.

<sup>217</sup> *González*, Inter-Am. Ct. H.R. (ser. C) No. 205 ¶¶ 4–5.

<sup>218</sup> *Id.* ¶ 254; Rep. of the Comm. on the Elimination of Discrimination Against Women (1992), transmitted by Letter dated 1 February 1992 from the Chairperson of the Comm. on the Elimination of Discrimination Concerning General Recommendations 19 (eleventh session): Violence Against Women, at 2, ¶ 9, U.N. Doc. A/47/38 (June 24, 1992) [hereinafter Report on Violence Against Women].

<sup>219</sup> *González*, Inter-Am. Ct. H.R. (ser. C) No. 205 ¶ 254; Report on Violence Against Women, *supra* note 218.

additionally quoted the U.N. Special Rapporteur stating, “it may be concluded that there is a norm of customary international law that obliges States to prevent and respond with due diligence to acts of violence against women.”<sup>220</sup> Under both the American Convention on Human Rights and CEDAW, the Mexican government failed to act with due diligence to prevent discrimination and violations of the right to life.<sup>221</sup> Due to this failure, pecuniary and non-pecuniary damages including costs, moral damage, and loss of earnings were awarded to the families of the victims to be paid by Mexico.<sup>222</sup> These damages served as both compensation for the victims and punishment for the Mexican government.<sup>223</sup> The types and motives behind these damages are like those that occur in domestic tort law.

The “*Cotton Field Case*” demonstrated that States, especially those party to CEDAW, are required to prevent human rights violations and respond with due diligence when violations occur.<sup>224</sup> The *Cotton Field* violations were based on a system of sex discrimination.<sup>225</sup> In China the violations against Uyghurs are ethnically targeted; however, that ethnic dimension intersects with the historic, systematic control of women and manifests as reproductive violence against Uyghur women. The two systems of oppression cannot be separated from one another. CEDAW mimics the ICESCR language of State obligations to protect rights which should oblige China to respect the rights of women and ethnic minorities.<sup>226</sup> The “*Cotton Field Case*” illustrated how tortious remedies are used in the human rights system when those obligations to protect are not met and this persuasive authority gives guidance on the potential liability China faces for not only their lack of due diligence to prevent these violations, but also their policies that cause these violations.<sup>227</sup>

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<sup>220</sup> *González*, Inter-Am. Ct. H.R. (ser. C) No. 205 ¶ 254 (quoting Yakin Ertürk (Special Rapporteur on Violence Against Women, Its Causes and Consequences), *Integration of the Human Rights of Women and the Gender Perspective: Violence Against Women*, ¶ 29, U.N. Doc. E/CN.4/2006/61 (Jan. 20, 2006)).

<sup>221</sup> *González*, Inter-Am. Ct. H.R. (ser. C) No. 205 ¶ 158, Decision ¶¶ 4–5.

<sup>222</sup> *Id.* ¶¶ 561–601 (calculating and detailing the damages to be paid, including consequential damages, loss of earnings, and moral damages).

<sup>223</sup> *Id.* ¶¶ 561–86 (detailing compensatory and moral damages, which were increased to include additional non-pecuniary damages, such as those for the state’s failure to ensure the rights to life, personal integrity, and personal liberty of the victims).

<sup>224</sup> *Id.* ¶ 254.

<sup>225</sup> *See id.* ¶¶ 128–29.

<sup>226</sup> Compare CEDAW, *supra* note 17, at art. 1–2 (agreeing to condemn discrimination on the basis of sex), with ICESCR, *supra* note 19, at art. 2, ¶¶ 1–2 (agreeing to undertake to guarantee rights without discrimination based on sex, race, national origin, or other characteristics).

<sup>227</sup> *See González*, Inter-Am. Ct. H.R. (ser. C) No. 205 ¶¶ 254, 561–77 (analyzing the alleged human rights violations under Mexico’s CEDAW obligations and calculating the

## 2. *V.C. v. Slovakia*

In the European Court of Human Rights, a judicial body mandated by the European Convention on Human Rights,<sup>228</sup> the case of *V.C. v. Slovakia* addressed forced sterilization.<sup>229</sup> In 2000, the applicant was sterilized without consent while delivering her child via caesarean section.<sup>230</sup> Medical professionals at the State-run public hospital, led the applicant to believe she could die if she had more children and convinced her to sign a form consenting to the sterilization without understanding the meaning of sterilization.<sup>231</sup> Additionally, the applicant was labeled as Roma in her chart and segregated from non-Roma patients.<sup>232</sup> There appeared to be a history of forced sterilization of Roma women in the area.<sup>233</sup>

The ECHR held that sterilization without proper consent was “incompatible with the requirement of respect for human freedom and dignity.”<sup>234</sup> The court also determined that the applicant was not given clear information and that she was not able to decide of her own free will under the circumstances.<sup>235</sup> The court held that this was a violation of her rights as outlined by the European Convention on Human Rights, specifically citing protections against inhuman and degrading treatment, as well as the right to respect for family life.<sup>236</sup> Forced sterilization violated the rights of this woman to make her own choices about her family freely, and it appears there was a practice of specifically targeting Roma women for this inhumane treatment.<sup>237</sup> The targeting of minority women for forced sterilization in Slovakia is like that in China. This practice implicates human dignity which is fundamental to the human rights regime. Additionally, this practice is discriminatory and violates

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compensatory damages to be paid); *see also* Report on Violence Against Women, *supra* note 218 (holding state parties responsible for failure “to act with due diligence to prevent violations of rights”).

<sup>228</sup> Convention for the Protection of Human Rights and Fundamental Freedoms art. 19, Nov. 4, 1950, 213 U.N.T.S. 221 (establishing the European Court of Human Rights).

<sup>229</sup> *V.C. v. Slovakia*, 2011-V Eur. Ct. H.R. 381, 388–89 (2011).

<sup>230</sup> *Id.* ¶¶ 9–10.

<sup>231</sup> *Id.* ¶ 15.

<sup>232</sup> *Id.* ¶¶ 17–18.

<sup>233</sup> *Id.* ¶ 43.

<sup>234</sup> *Id.* ¶ 107.

<sup>235</sup> *Slovakia*, 2011-V Eur. Ct. H.R. ¶ 112.

<sup>236</sup> *Id.*; Convention for the Protection of Human Rights and Fundamental Freedoms, *supra* note 228, arts. 3, 8.

<sup>237</sup> *See Slovakia*, 2011-V Eur. Ct. H.R. ¶¶ 23–24, 43, 95–96, 107–09.

the prohibition against cruel and inhuman treatment, all of which are rights the people of China hold through ratified treaties.<sup>238</sup>

The State in this case was ordered to pay the victim non-pecuniary damages as well as costs and expenses,<sup>239</sup> again mirroring a domestic torts compensatory scheme. While human rights violations cannot be undone, financial compensation can help survivors move forward.<sup>240</sup> Financial penalties can serve some form of punishment to perpetrators, but is that enough of a punishment for State agents who commit such large-scale violations as those in Xinjiang?

### B. International Criminal Law

Unlike human rights law, international criminal law generally addresses the individual liability of alleged criminals, rather than focusing on State accountability.<sup>241</sup> The main global instrument of international criminal law is the Rome Statute which creates the ICC;<sup>242</sup> however, the charters of the ICTY<sup>243</sup> and ICTR<sup>244</sup> are also key sources; despite their limited jurisdiction, the opinions of these tribunals remain highly persuasive.<sup>245</sup> Whereas human rights law generally imposes

<sup>238</sup> *Id.* ¶¶ 41, 132–35 (holding that forced sterilization violates Article 3 of the European Convention on Human Rights); see also CEDAW, *supra* note 17, at arts. 1–2 (condemning discrimination against women); Report on Violence Against Women, *supra* note 218, at 1–2 (clarifying that CEDAW protects the right of all women to be free from cruel and inhuman treatment).

<sup>239</sup> See *Slovakia*, 2011-V Eur. Ct. H.R. at 418, ¶ 7; see also *V.C. v. Slovakia*, App. No. 18968/07, ¶ 188 (Nov. 8, 2011), <https://hudoc.echr.coe.int/fre?i=001-107364> (expanding on judgment's inclusion of cost and expenses which was omitted from official reporter).

<sup>240</sup> See *González v. Mexico*, Preliminary Objection, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 205 ¶¶ 568–86 (Nov. 16, 2009) (awarding pecuniary and non-pecuniary damages, including damages for continued emotional harm, as recovery for human rights violations); INT'L COMM'N OF JURISTS, THE RIGHT TO A REMEDY AND REPARATION FOR GROSS HUMAN RIGHTS VIOLATIONS: A PRACTITIONER'S GUIDE 54 (rev. ed. 2018) (describing meaningful remedies for victims of sex-based discrimination, including restitution, compensation, and rehabilitation).

<sup>241</sup> See INT'L COMM. OF THE RED CROSS, GENERAL PRINCIPLES OF INTERNATIONAL CRIMINAL LAW 1, 4 (2021) (explaining that international criminal law focuses on individual responsibility). Compare ICESCR, *supra* note 19, at arts. 1–2 (holding states accountable for protecting certain individual rights), with S.C. Res. 955, *supra* note 142 (limiting the penalties and reparations available for serious violations of international law to hold individuals liable proportionally).

<sup>242</sup> Rome Statute, *supra* note 149, arts. 1, 5 (establishing the International Criminal Court and establishing jurisdiction over matters of international criminal law).

<sup>243</sup> S.C. Res. 827, ¶ 2 (May 25, 1993) (establishing the International Criminal Tribunal for the Former Yugoslavia).

<sup>244</sup> S.C. Res. 955, *supra* note 142, ¶ 1 (establishing the International Criminal Tribunal for Rwanda).

<sup>245</sup> Aldo Zammit Borda, *Precedent in International Criminal Courts and Tribunals*, 2 CAMBRIDGE J. INT'L & COMPAR. L. 287, 304 (2013) (“The decisions of international and

financial remedies, the international criminal system will generally use imprisonment, and sometimes reparations, as a punishment for criminal activity on the part of individual perpetrators.<sup>246</sup> The three statutes outlined above each define the elements of international crimes that are under the jurisdiction of that statute, all of which include the crime of genocide.<sup>247</sup> Furthermore, the Rome Statute defines enforced sterilization and forced pregnancy as crimes against humanity.<sup>248</sup> Finally, there is precedent that forced marriage is considered an international crime, as well as scholarship that proposes forced marriage should be considered a crime against humanity.<sup>249</sup>

Below are two cases that expanded the jurisprudence specifically for the crime of rape. The facts of these cases are analogous to the alleged violations in Xinjiang. In Xinjiang, the scheme of reproductive control includes not only the prevention of Uyghur births, but also the forced impregnation of Uyghur women by Han men.<sup>250</sup> This includes by means of rape as well as forced marriage. The expansion of the jurisprudence of rape is particularly important as it shows how rape can be construed as an element of each major international crime including torture, genocide, war crimes, and crimes against humanity.

### 1. Akayesu

*The Prosecutor v. Jean-Paul Akayesu* was the first case to rule that rape could constitute genocide and the first to convict for rape as a crime

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regional human rights courts have been accorded highly persuasive value, particularly when the issue before the international criminal courts and tribunals was one of due process.”).

<sup>246</sup> *Compare González*, Inter-Am. Ct. H.R. (ser. C) No. 205 ¶¶ 561–601 (awarding various pecuniary damages, including consequential damages, loss of earnings, and moral damages), with S.C. Res. 955, *supra* note 142, at art. 23 (authorizing the tribunal to order imprisonment and the return of any property or proceeds acquired by convicted person in the course of criminal activity).

<sup>247</sup> Rome Statute, *supra* note 149, arts. 5–6 (providing jurisdiction to the ICC over genocide and further defining genocide); S.C. Res. 827, *supra* note 243, at 1, ¶ 2 (establishing a tribunal to address violations of international human rights law, including “mass killings” and “ethnic cleansing”); S.C. Res. 955, *supra* note 142, ¶ 1 (establishing a tribunal for genocides committed in Rwanda).

<sup>248</sup> Rome Statute, *supra* note 149, at art. 7(1)(g).

<sup>249</sup> See Neha Jain, *Forced Marriage as a Crime Against Humanity: Problems of Definition and Prosecution*, 6 INT’L CRIM. JUST. 1013, 1013 (2008).

<sup>250</sup> WORDEN & SETIWALDI, *supra* note 117, at 2, 29–30 (detailing forced marriage of Uyghur women generally and describing the “Becoming Family” program in which Han men stay with Uyghur women to promote assimilation, resulting in systematic sexual harassment and rape of the Uyghurs).

against humanity.<sup>251</sup> Jean-Paul Akayesu was the bourgmestre<sup>252</sup> of the Taba commune in Rwanda. During the period prior to, and throughout the genocide of 1994, 2,000 Tutsis were killed in the area.<sup>253</sup> Akayesu was indicted for genocide, incitement of genocide, and crimes against humanity.<sup>254</sup> The ICTR held that the rapes perpetrated and encouraged by Akayesu constituted serious mental and bodily harm.<sup>255</sup> That harm, coupled with a genocidal intent, led to the conviction of Akayesu.<sup>256</sup> Just as the Tutsis were targeted in Rwanda with an intent to destroy their community, in Xinjiang Uyghur women are similarly being targeted on ethnic grounds in a larger campaign to destroy the Uyghur identity and alter the demographics of the region.

In Rwanda, rape was used systematically to inflict harm on Tutsi women.<sup>257</sup> This case was the first time rape was analyzed as an act of genocide and the Tribunal determined that “rape and sexual violence certainly constitute infliction of serious bodily and mental harm on the victims.”<sup>258</sup> The language referring to harm clearly reflects the definition of genocide in the Genocide Convention.<sup>259</sup> Furthermore, the Tribunal agreed that “rapes resulted in physical and psychological destruction of Tutsi women, their families and their communities.”<sup>260</sup> Throughout this decision the ICTR distinguished rape as an *actus reus* of genocide.<sup>261</sup>

Rape cannot constitute genocide without the specific intent to destroy in whole or in part a community required by the definition of genocide.<sup>262</sup> In the case of *Akayesu*, the court held the Defendant had the specific intent to commit genocide.<sup>263</sup> The ICTR determined intent can be inferred from several factors including the “general context of the perpetration” and “the

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<sup>251</sup> Prosecutor v. Akayesu, Case No. ICTR 96-4-T, Judgment, ¶¶ 695, 730–32, 734 (Sept. 2, 1998); *Rwanda: The First Conviction for Genocide*, HOLOCAUST ENCYC., <https://encyclopedia.ushmm.org/content/en/article/rwanda-the-first-conviction-for-genocide#:~:text=In%20addition%20to%20its%20historic,in%20a%20prison%20in%20Mali> (last visited Mar. 11, 2024).

<sup>252</sup> *Akayesu*, Case No. ICTR 96-4-T, Judgment, ¶ 3.

<sup>253</sup> *Id.* ¶ 12.

<sup>254</sup> *Id.* ¶¶ 6, 10.

<sup>255</sup> *Id.* ¶ 731.

<sup>256</sup> *Id.* ¶¶ 726, 733–34.

<sup>257</sup> *Id.* ¶ 732.

<sup>258</sup> *Akayesu*, Case No. ICTR 96-4-T, Judgment ¶ 731; U.N. News, *The Power of Bearing Witness: How Rape Became an ‘Act of Genocide’*, AFRICA RENEWAL, <https://www.un.org/africarenewal/web-features/podcast-power-bearing-witness---how-rape-became-act-genocide> (last visited Mar. 12, 2024, 1:47 PM).

<sup>259</sup> See Genocide Convention, *supra* note 12, at art. II (defining one method of genocide as “causing serious bodily or mental harm”).

<sup>260</sup> *Akayesu*, Case No. ICTR 96-4-T, Judgment, ¶ 731.

<sup>261</sup> *Id.* (emphasizing that rape and sexual violence constitute genocide when committed with the requisite specific intent).

<sup>262</sup> See *id.* ¶¶ 519–521.

<sup>263</sup> *Id.* ¶ 734.

fact of deliberately and systematically targeting victims on account of their membership of a particular group.”<sup>264</sup> In *Akayesu*, the rape “victims were systematically and deliberately selected because they belonged to the Tutsi group.”<sup>265</sup> Intent could be inferred by the context of the larger genocide taking place in Rwanda, coupled with the targeting of Tutsi women.<sup>266</sup> “[T]utsi women were subjected to sexual violence because they were Tutsi. Sexual violence was a step in the process of destruction of the [T]utsi group – destruction of the spirit, of the will to live, and of life itself.”<sup>267</sup> With both the *actus reus* and *mens rea* elements met, the court ruled that Akayesu had incited genocide by condoning the rape of Tutsi women.<sup>268</sup>

Many parallels can be drawn from the *Akayesu* case and the current treatment of Uyghurs in Xinjiang that allow for the inference of an intent to destroy. Similarly, Uyghurs in Xinjiang are being systematically targeted on an ethnic basis and raped. It appears that the intent is both to cause physical and mental harm, as well as destroy the Uyghur people.<sup>269</sup> Just as in *Akayesu*, inferences of intent can be drawn from the general context, as well as the systematic and deliberate targeting of individuals simply because they are Uyghur or Turkic Muslims. Also like in *Akayesu*, once Uyghurs have been targeted for their ethnicity, they are subjected to conditions that cause serious mental or physical harm or prevent births of Uyghur children.<sup>270</sup>

## 2. Nyiramasuhuko

Pauline Nyiramasuhuko’s prosecution was unique as the first woman indicted by an international criminal tribunal for rape as a war crime and crime against humanity and the first woman indicted by an international criminal tribunal for genocide.<sup>271</sup> At the time of the Rwandan Genocide, Nyiramasuhuko was serving as the Minister of Family and Women’s

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<sup>264</sup> *Id.* ¶ 523.

<sup>265</sup> *Id.* ¶ 730.

<sup>266</sup> *Akayesu*, Case No. ICTR 96-4-T, Judgment, ¶¶ 728–30.

<sup>267</sup> *Id.* ¶ 732.

<sup>268</sup> *Id.* ¶¶ 729–31, 733–34.

<sup>269</sup> See *supra* notes 99–142 and accompanying text.

<sup>270</sup> See BREAK THEIR LINEAGE, *supra* note 8 (detailing how the Chinese government specifically targeted the Uyghurs, resulting in Uyghur detention, oppression, and torture); see also *China Cuts Uighur Births with IUDs, Abortion, Sterilization*, *supra* note 9797 (describing how China used forced birth control methods against Uyghur women to curb their population).

<sup>271</sup> Sherrie L. Russell-Brown, *Rape as an Act of Genocide*, 21 BERKLEY J. INT’L L. 350, 352–53 (2003).



Development in Rwanda.<sup>272</sup> Nyiramasuhuko specifically ordered those killing Tutsi women at the Butare prefect office to first rape the women.<sup>273</sup> She also distributed condoms specifically for the purpose of raping Tutsi women.<sup>274</sup>

The trial chamber held that Nyiramasuhuko had superior responsibility over those committing rapes in Butare.<sup>275</sup> The trial chamber further held that Nyiramasuhuko's indictment "was defective in failing to plead rape as genocide. . . . Although the evidence establishes in this case that rape was utilized as a form of genocide, the Chamber has concluded that it would be prejudicial to the Accused to hold them responsible for a charge of which they had insufficient notice,"<sup>276</sup> meaning that there would have been sufficient evidence to convict Nyiramasuhuko of rape as genocide had the indictment been properly pled.<sup>277</sup> However, Nyiramasuhuko was convicted of genocide generally. The rapes that occurred under her command were used in part to establish genocidal intent. The Appeals Chamber upheld the Trial Chamber's reliance on "Nyiramasuhuko's orders to rape women as circumstantial evidence of her genocidal intent in relation to the crime of genocide."<sup>278</sup>

This case sets precedent that ordering targeted rapes can serve as evidence of the *mens rea* element of genocide.<sup>279</sup> In *Akayesu* the ICTR firmly established that ethnic rape could be an *actus reus* of genocide,<sup>280</sup> and *Nyiramasuhuko* built on the precedent in dicta by saying the evidence in this case could have established rape as genocide but also by showing how ethnically targeted rapes can be evidence of genocidal intent.<sup>281</sup> This series of cases is critical in establishing the elements of genocide in the context of the Uyghurs. In Xinjiang, "education camp" guards stated they

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<sup>272</sup> See *id.*; Appeals Chamber Delivers Judgement in the *Nyiramasuhuko et al Case*, U.N. INT'L RESIDUAL MECHANISM FOR CRIM. TRIBUNALS (Dec. 14, 2015), <https://unictr.irmct.org/en/news/appeals-chamber-delivers-judgement-nyiramasuhuko-et-al-case>.

<sup>273</sup> Prosecutor v. Nyiramasuhuko, Case No. ICTR 98-42-T, Summary of Judgment and Sentence, ¶¶ 23–24 (June 24, 2011); see also Russel-Brown, *supra* note 271.

<sup>274</sup> Prosecutor v. Nyiramasuhuko, Case No. ICTR-98-42-A, Judgment, ¶ 540 (Dec. 14, 2015), <https://ucr.irmct.org/LegalRef/CMSDocStore/Public/English/Judgement/NotIndexable/ICTR-98-42/MS46274R0000566969.PDF>.

<sup>275</sup> *Nyiramasuhuko*, Case No. ICTR-98-42-T, Summary of Judgment and Sentence, ¶ 26.

<sup>276</sup> *Id.* ¶ 25.

<sup>277</sup> *Id.*

<sup>278</sup> *Nyiramasuhuko*, Case No. ICTR-98-42-A, Judgment ¶ 508.

<sup>279</sup> *Id.*

<sup>280</sup> See Prosecutor v. Akayesu, Case No. ICTR-96-4-T, Judgment, ¶¶ 494, 507–508, 523 (Sept. 2, 1998), <https://ucr.irmct.org/LegalRef/CMSDocStore/Public/English/Judgement/NotIndexable/ICTR-96-04/MS44787R0000619822.PDF>; Russell-Brown, *supra* note 271, at 352, 371.

<sup>281</sup> *Nyiramasuhuko*, Case No. ICTR-98-42-A, Judgment, ¶ 508.

witnessed an “organized system of mass rape,”<sup>282</sup> and released women described rapes occurring in their shared cell every night.<sup>283</sup> Given Uyghurs and Turkic Muslims are specifically targeted for arbitrary detention in the education camps, so too is the system of mass rape ethnically targeted. Based on *Akayesu* and *Nyiramasuhuko*, these systematic, ethnically targeted rapes can serve as both the *actus reus* and evidence of the *mens rea* element of genocide.

### C. *The Marriage of the Shield and Sword*

The connection between international criminal law and human rights law has been noted previously. Both legal regimes serve as tools to try and make sense of and address massive atrocities.<sup>284</sup> These two regimes have been described as the sword and shield. One scholar sees human rights as having both “a defensive and an offensive role, a role of both neutralizing and triggering the criminal law.”<sup>285</sup> Tulkens describes how the recognition of human rights places limitations on criminal punishment; however, criminal law is also employed to protect human rights.<sup>286</sup> Human rights agreements place limits on how far systems, like criminal justice, can go before violating human rights.<sup>287</sup> For example, prohibitions on torture and arbitrary detention impose limits on a State’s powers.<sup>288</sup> However, the reverse can also be true in the “sword” function, wherein criminal law is implemented to uphold the importance of human rights.<sup>289</sup> Human rights law hopes to push actors to uphold certain principles while international criminal law punishes, and threatens, those same actors when those same principles are betrayed.<sup>290</sup>

Another main overlap can be seen in the acts the two legal regimes govern. For example, rape on its own can be a violation of someone’s human rights as well as a crime.<sup>291</sup> As the above case law demonstrated,

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<sup>282</sup> Hill et al., *supra* note 116.

<sup>283</sup> BREAK THEIR LINEAGE, *supra* note 8, at 36.

<sup>284</sup> See Yvonne M. Dutton, *Commitment to International Human Rights Treaties: The Role of Enforcement Mechanisms*, 34 U. PA. J. INT’L L 1, 10–14 (2012) (chronicling the progression of both areas of law from the first human rights treaties to the establishment of international tribunals to prosecute crimes against humanity).

<sup>285</sup> Françoise Tulkens, *The Paradoxical Relationship between Criminal Law and Human Rights*, 9 J. INT’L CRIM. JUST. 577, 577 (2011).

<sup>286</sup> *Id.* at 578–79.

<sup>287</sup> *Id.* at 579.

<sup>288</sup> See *id.* at 583, 588.

<sup>289</sup> *Id.* at 577–78.

<sup>290</sup> Compare *International Human Rights Law*, *supra* note 144, with INT’L COMM. OF THE RED CROSS, *supra* note 241.

<sup>291</sup> See generally Mark Ellis, *Breaking the Silence: Rape as an International Crime*, 38 CASE W. RES. J. INT’L L. 225, 226 (2007) (tracing the legal developments of rape within

rape is an affront to human dignity. Rape is also a crime in domestic and international law.<sup>292</sup> These legal systems view the same actions through different lenses and work to prevent rape from happening by establishing norms against it and punishing it. Juan Pablo Pérez-León Acevedo looks specifically at the “close relationship between . . . serious human rights violations and crimes against humanity,”<sup>293</sup> determining the “relationship is of a close and intrinsic nature.”<sup>294</sup> Generally, crimes against humanity include widespread and systematic violations of human rights.<sup>295</sup> Acevedo argues that a main consequence of qualifying human rights violations as crimes against humanity is “the international [S]tate obligation to sanction those individuals responsible.”<sup>296</sup> This lesson can be applied to both genocide and the Uyghurs as well. The atrocities in Xinjiang are human rights violations but defining them in criminal terms calls for the international community to hold perpetrators individually responsible. Therefore, international criminal law should be used to sanction States criminally when they themselves have effective control over crimes and violations.

The International Court of Justice (ICJ) case, *Bosnia and Herzegovina v. Serbia and Montenegro*<sup>297</sup> (the “Genocide Case”), demonstrates the connection between these legal regimes. Furthermore, this case directly examines the issue of State responsibility for genocide. This Article has established that genocide is a criminal offense. However, this case was brought in front of the ICJ, a non-criminal court, because Article IX of the Genocide Convention states that disputes under the

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international law, including “rape as a crime of genocide, a crime against humanity, and a war crime”). See also Dubravka Šimonović (Special Rapporteur on Violence Against Women), *Rape as a Grave, Systematic and Widespread Human Rights Violation, a Crime and a Manifestation of Gender-based Violence Against Women and Girls, and its Prevention*, ¶ 9, U.N. Doc. A/HRC/47/26 (Apr. 19, 2021) (explaining that current international human rights jurisprudence “recognizes rape as a human rights violation”); Prosecutor v. Akayesu, Case No. ICTR-96-4-T, Judgment, ¶ 731 (holding that specific instances of rape and sexual violence did constitute genocide).

<sup>292</sup> Šimonović, *supra* note 291, ¶¶ 1, 8–9.

<sup>293</sup> Juan Pablo Pérez-León Acevedo, *The Close Relationship Between Serious Human Rights Violations and Crimes Against Humanity: International Criminalization of Serious Abuses*, 17 ANUARIO MEXICANO DE DERECHO INTERNACIONAL 145, 146 (2017).

<sup>294</sup> *Id.* at 184.

<sup>295</sup> *See id.* at 149–51.

<sup>296</sup> *Id.* at 175.

<sup>297</sup> Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosn. & Herz. v. Serb. and Montenegro), Judgment, 2007 I.C.J. 43, ¶ 379 (Feb. 26), <https://www.icj-cij.org/sites/default/files/case-related/91/091-20070226-JUD-01-00-BI.pdf>

Genocide Convention may be submitted to the ICJ.<sup>298</sup> Therefore, the ICJ was the appropriate venue given the State of Serbia was the defendant.<sup>299</sup>

In its ruling, the ICJ determined the Respondent's obligations under the Genocide Convention and established a test to determine State responsibility for the commission of genocide.<sup>300</sup> The Court first held that Serbia did not commit or conspire to commit genocide.<sup>301</sup> However, the Court did in fact find that Serbia "violated the obligation to prevent genocide" under the Genocide Convention.<sup>302</sup> Finally, the Court established a three-prong test to determine State responsibility for genocide.<sup>303</sup> The first two prongs determine whether genocidal acts can be attributed to the State. The first prong requires that genocidal acts be committed by organs whose acts are "attributable to it under customary [rules of State Responsibility]" for a State to bare liability.<sup>304</sup> Second, it should be determined if other punishable acts like conspiracy or incitement to commit genocide were committed by organs of State.<sup>305</sup> Finally, in the last prong, the court must rule on violations of the Genocide Convention obligations to prevent and punish genocide.<sup>306</sup> This case serves as a unique instance of an international court examining direct State responsibility for the commission of genocide post Nuremberg.

This Article defines "State Genocide" as a genocide in which a State has effective control over the entities or actors committing genocide with the intent to destroy the community in whole or in part. This concept differs from the responsibility test laid out in the *Genocide Case* because it contemplates the possibility that the institution of the State itself can potentially possess genocidal intent instead only individual genocidaires. The theory of State Genocide draws on three main authorities: first, the Genocide Convention's *mens rea* requirement;<sup>307</sup> second, the *Genocide Case* of the ICJ and the State responsibility test the court developed therein;<sup>308</sup> and finally, the effective control test from *Nicaragua*, which defined effective control as the State being so in control of the group committing crimes that the group could be considered an organ of the

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<sup>298</sup> Genocide Convention, *supra* note 12, at art. IX.

<sup>299</sup> Martin Mennecke & Christian J. Tams, *The Genocide Case Before the International Court of Justice*, 25 SEC. & PEACE 71, 71–73 (2007).

<sup>300</sup> *Bosn. & Herz.*, Judgment, 2007 I.C.J. ¶ 379.

<sup>301</sup> *Id.* ¶¶ 413–15.

<sup>302</sup> *Id.* ¶ 471(5).

<sup>303</sup> *Id.* ¶ 379.

<sup>304</sup> *Id.* ¶ 406.

<sup>305</sup> *Id.* ¶¶ 379–80.

<sup>306</sup> *Bosn. & Herz.*, Judgment, 2007 I.C.J. ¶ 379.

<sup>307</sup> WILLIAM A. CHABAS, GENOCIDE IN INTERNATIONAL LAW: THE CRIMES OF CRIMES 206–07 (2000); *see also* Genocide Convention, *supra* note 12, at art. II.

<sup>308</sup> *Bosn. & Herz.*, Judgment, 2007 I.C.J. ¶ 379.

State.<sup>309</sup> The act of State Genocide is a key example of the intersection of the human rights and criminal law systems. The Genocide Convention is the shield to protect against mass atrocities and creates obligations for States, whereas the prosecution of genocidaires is the sword that punishes violations of those obligations.<sup>310</sup> As demonstrated above, States can be liable for genocide in two ways. First, States can fail to meet their human rights treaty obligations to prevent and punish genocide.<sup>311</sup> Second, States can be held accountable for the crime of genocide if organs whose acts are “attribute[able] to [it] under [customary] rules . . . of State [R]esponsibility” commit genocide or other punishable acts.<sup>312</sup> In recent history, the latter has not occurred.<sup>313</sup>

The Holocaust is not only the most well-known genocide, but also the most notable example of State Genocide.<sup>314</sup> The genocide of the Jews was perpetrated with the effective control of the Nazi State.<sup>315</sup> Anton Weiss-Wendt asserts that, until the genocides of the 1990s, “the [S]tate had been considered as the prime, if not the only, agent of genocide.”<sup>316</sup> In fact, in the drafting of the Genocide Convention, there was a push to proclaim that States were the “most likely offender” of genocide.<sup>317</sup> Weiss-Wendt further argues that genocide “requires premeditation, usually by a government with a record of gross human rights violations. . . . [it] is intricately linked to the idea of the modern [S]tate.”<sup>318</sup> Despite that, the criminal jurisprudence of genocide since Nuremberg has focused largely

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<sup>309</sup> Military and Paramilitary Activities in and Against Nicaragua (Nicar. v. U.S.), Judgment, 1986 I.C.J. 14, ¶¶ 109, 114–15 (June 27).

<sup>310</sup> Mattia Pinto, *Awakening the Leviathan through Human Rights Law - How Human Rights Bodies Trigger the Application of Criminal Law*, 34 UTRECHT J. INT'L & EUR. L., 161, 164–65 (2018); see also Johan D. Van der Vyver, *Punishment and Prosecution of the Crime of Genocide*, 23 FORDHAM INT'L L.J. 287, 290–91 (1999).

<sup>311</sup> Genocide Convention, *supra* note 12 at arts. I, II, V, VI.

<sup>312</sup> *Bosn. & Herz.*, Judgment, 2007 I.C.J. ¶ 379.

<sup>313</sup> Marko Milanović, *State Responsibility for Genocide*, 17 EUR. J. INT'L L. 553, 603 (2006); see also *Bosn. & Herz.*, Judgment, 2007 I.C.J. ¶¶ 413–15 (holding that Serbia was not responsible on a statewide level for committing genocide).

<sup>314</sup> *Genocide Studies Program: Holocaust*, YALE UNIV., (Mar. 22, 2024), <https://gsp.yale.edu/case-studies/holocaust>; see also *Frequently Asked Questions about the Holocaust for Educators*, U.S. HOLOCAUST MEM'L MUSEUM, <https://www.ushmm.org/teach/fundamentals/holocaust-questions> (last visited Mar. 28, 2024).

<sup>315</sup> *Who Perpetrated the Holocaust?*, WORLD JEWISH CONG., <https://aboutholocaust.org/en/facts/who-perpetrated-the-holocaust> (last visited Apr. 1, 2024); Michael Berenbaum, *Holocaust*, BRITANNICA, (Mar. 18, 2024) <https://www.britannica.com/event/Holocaust>.

<sup>316</sup> Anton Weiss-Wendt, *State Genocide*, in OXFORD HANDBOOK OF GENOCIDE STUDIES 81, 82 (Donald Bloxham & A. Dirk Moses eds., 2010).

<sup>317</sup> *Id.*

<sup>318</sup> *Id.* at 81.

on individual liability for genocide.<sup>319</sup> Perhaps because the attribution of genocidal intent to a State is far more challenging, both politically and evidentiarily, than that of an individual.<sup>320</sup>

The Nazi State's intent to destroy the Jews was clear. It was demonstrated within the policies of the Third Reich, like the "Final Solution to the Jewish Question," which was an organized plan to systematically destroy the Jews in Europe.<sup>321</sup> As held by the court in *Akayesu*, intent can be inferred from several factors including the "general context of the perpetration" and "their general nature, in a region or a country, or furthermore, the fact of deliberately and systematically targeting victims on account of their membership of a particular group."<sup>322</sup> Through the examination of CCP policy and the intersecting oppression of Uyghur women, similar intent can be found in the CCP policies against the Uyghurs. This genocide is perpetrated with the effective control of the Chinese government which can be gleaned not only from the party status of perpetrators, but also the official instructions and speeches that call for genocide which, as analyzed below, show that the current situation in Xinjiang calls for a more traditional understanding of state accountability for genocide as described by Weiss-Wendt.

## V. GENOCIDE OF THE UYGHURS

As both Muslims and women, Uyghur victims face sex, religious, and ethnic discrimination in Xinjiang.<sup>323</sup> This discrimination leads to arbitrary detention and a myriad of human rights violations. Rape, forced sterilization, and forced marriage are all human rights violations under agreements China has ratified.<sup>324</sup> Specifically, each of these acts violates the ICESCR Article 12 "right of everyone to the enjoyment of the highest attainable standard of physical and mental health."<sup>325</sup> These acts violate

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<sup>319</sup>See Tove Rosen, *The Influence of the Nuremberg Trial on International Criminal Law*, ROBERT H. JACKSON CTR., <https://www.roberthjackson.org/speech-and-writing/the-influence-of-the-nuremberg-trial-on-international-criminal-law/>, (last visited Feb. 21, 2024); *Individual Criminal Accountability*, HUM. RTS. ADVOC. & THE HIST. OF INT'L HUM. RTS STANDARDS, <https://humanrightshistory.umich.edu/accountability/individual-criminal-accountability/> (last visited Mar. 3, 2024).

<sup>320</sup> See Weiss-Wendt, *supra* note 316, at 81–82.

<sup>321</sup> *The "Final Solution"*, HOLOCAUST ENCYCLOPEDIA, (May 11, 2021), <https://encyclopedia.ushmm.org/index.php/content/en/article/the-final-solution>; see also Adam Volle, *Final Solution*, BRITANNICA, (Mar. 28, 2024), <https://www.britannica.com/event/Final-Solution>.

<sup>322</sup> Prosecutor v. Akayesu, Case No. ICTR 96-4-T, Judgment, ¶ 523 (Sept. 2, 1998).

<sup>323</sup> ABDUWELI AYUP & RACHEL HARRIS, UYGHUR HUM. RTS. PROJECT, TWENTY YEARS FOR LEARNING THE QURAN: UYGHUR WOMEN AND RELIGIOUS PERSECUTION 1–2 (2024), [https://uhrp.org/wp-content/uploads/2024/02/UHRP-Buwi-Report\\_2024-01-31-1.pdf](https://uhrp.org/wp-content/uploads/2024/02/UHRP-Buwi-Report_2024-01-31-1.pdf).

<sup>324</sup> See Šimonović *supra* note 292, ¶¶ 20, 51; see also *supra* notes 179–190 and accompanying text.

<sup>325</sup> ICESCR, *supra* note 19, at art. 12.

other critical human rights for women found in CEDAW, such as the Article 12 right to family planning<sup>326</sup> and the Article 16 freedom to willingly enter marriage.<sup>327</sup> Furthermore, these acts, especially rape and forced sterilization, violate the physical integrity and inherent dignity of their victims. The deference to inherent dignity is fundamental throughout the human rights regime.<sup>328</sup> The Torture Convention specifically references this dignity in the codification of the *jus cogens* prohibition of torture.<sup>329</sup> Uyghur women's human rights have been violated by agents of the Chinese government. At the minimum, the Chinese government has agreed to recognize these rights in CEDAW, but further has assented that they "shall ensure" the prohibition on torture is upheld.<sup>330</sup> As human rights violations, the response to these acts calls for State accountability and financial reparations. However, these acts are not only human rights violations, but are also international crimes.

The CCP is actively preventing births within the Uyghur community.<sup>331</sup> The birth rate in Uyghur majority areas fell by nearly 50% between 2017–2019.<sup>332</sup> Uyghur women have reportedly been subjected to forced sterilizations, forced abortions, and forced implementations of IUDs.<sup>333</sup> These policies harken back to the strictly enforced one-child policy in China. Today, however, childbearing is encouraged in the rest of China while Uyghurs still face the pervasive infrastructure of reproductive control.<sup>334</sup> The targeting of Uyghurs for these practices infers a forcible prevention of births which is an *actus reus* of genocide under the Genocide Convention.<sup>335</sup> Additionally, there are policies to strongly encourage inter-ethnic marriages and efforts to move Han into minority

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<sup>326</sup> CEDAW, *supra* note 17, at art. 12.

<sup>327</sup> *Id.* at art. 16.

<sup>328</sup> *See, e.g.*, G.A. Res. 217 (III) A, Universal Declaration of Human Rights, pmbl., (Dec. 10, 1948).

<sup>329</sup> Torture Convention, *supra* note 18, at pmbl.

<sup>330</sup> *Id.*; 40 Years After CEDAW Ratification, *Human Rights Defenders in China Still Face Reprisals*, FRONT LINE DEFENDERS (Nov. 3, 2020), <https://www.frontlinedefenders.org/en/statement-report/40-years-after-cedaw-ratification-women-human-rights-defenders-china-still-face>.

<sup>331</sup> Cate Cadell, *China Policies Could Cut Millions of Uyghur Births in Xinjiang*, REUTERS (June 6, 2021, 9:30 PM), <https://www.reuters.com/world/china/exclusive-amid-accusations-genocide-west-china-polices-could-cut-millions-uyghur-2021-06-07/>.

<sup>332</sup> *Id.*

<sup>333</sup> *Id.*; Adrian Zenz, 'End the Dominance of the Uyghur Ethnic Group': An Analysis of Beijing's Population Optimization Strategy in Southern Xinjiang, 40 CENT. ASIAN SURV. 291, 293–94 (2021).

<sup>334</sup> Zenz, *supra* note 333, at 293–95.

<sup>335</sup> Genocide Convention, *supra* note 12, at art. II(d).

communities.<sup>336</sup> Both effectively dilute the Uyghur population and destroy Uyghur cultural identity. These practices not only prevent Uyghur births but cause serious mental and physical harm to Uyghurs.<sup>337</sup> So too does rape, which *Akayesu* firmly established as an *actus reus* of genocide.<sup>338</sup> However, for these practices to constitute genocide, genocidal intent must also be present.

The prevention of Uyghur births is occurring with the intent to destroy the Uyghur community in whole or in part. *Akayesu* described how the context within a country and targeting of one group can indicate genocidal intent.<sup>339</sup> Here, numerous factors indicate this intent. First, several Statements from party officials, such as “[b]reak their lineage, break their roots, break their connections, and break their origins,”<sup>340</sup> which echo extermination language, should be considered. Additionally, the “Xinjiang Communist Party secretary, Ma Xingrui, vowed in November 2022 to continue ‘counterterrorism and stability maintenance’ measures, require ‘various ethnic groups ... to fully embed’ into the Chinese nation, ‘Sinicize’ Islam so it is consistent with ‘socialist values,’ and deepen cultural and ideological control over the region.”<sup>341</sup> Statements such as this are found in leaked speeches as well as leaked internal policy documents.<sup>342</sup> Second, through China’s historic ethnonational background it has worked to actively build a national identity by favoring the Han *minzu* as the true ethnicity of the nation while vilifying others like the Uyghurs.<sup>343</sup> This shows the general context within the country that serves as the backdrop for ethnic targeting. As established in *Akayesu*, the general context in which events occur can allow for an inference of intent.<sup>344</sup> Additionally, the *Nyiramasuhuko* case demonstrated how targeted rapes can be used as circumstantial evidence

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<sup>336</sup> See Jonathan Kaiman, *Chinese Authorities Offer Cash to Promote Interethnic Marriages*, THE GUARDIAN (Sept. 2, 2014, 8:06 PM), <https://www.theguardian.com/world/2014/sep/02/chinese-authorities-cash-inter-ethnic-marriages-uyghur-minority>; Gulchehre Hoja, *Subsidies for Han Settlers ‘Engineering Demographics’ in Uyghur-Majority Southern Xinjiang*, RADIO FREE ASIA (Apr. 13, 2020), <https://www.rfaorg/english/news/uyghur/settlers-04132020172143.html>.

<sup>337</sup> See *id.*

<sup>338</sup> Prosecutor v. Akayesu, Case No. ICTR 96-4-T, Judgment, ¶ 731 (Sept. 2, 1998).

<sup>339</sup> See *supra* notes 263–268 and accompanying text.

<sup>340</sup> BREAK THEIR LINEAGE, *supra* note 8, at 1.

<sup>341</sup> *China: Unrelenting Crimes Against Humanity Targeting Uyghurs*, *supra* note 11.

<sup>342</sup> Austin Ramzy & Chris Buckley, ‘Absolutely No Mercy’: Leaked Files Expose How China Organized Mass Detentions of Muslims, N.Y. TIMES (Nov. 16, 2019), <https://www.nytimes.com/interactive/2019/11/16/world/asia/china-xinjiang-documents.html>.

<sup>343</sup> See AGNIESZKA JONIAK–LUTHI, THE HAN, 7, 9, 26–27 (2015).

<sup>344</sup> See Prosecutor v. Akayesu, Case No. ICTR 96-4-T, Judgment, ¶ 523 (Sept. 2, 1998).



of a genocidal intent.<sup>345</sup> Here, the organized system of mass rape of Uyghur women who have been arbitrarily detained based on ethnicity can also provide evidence of genocidal intent. Finally, China has maintained a double standard of over controlling Uyghur reproduction as well as clearly targeting Uyghurs for detention and other human rights violations.<sup>346</sup> As outlined above, systematic and deliberate targeting based on ethnicity can evidence genocidal intent.<sup>347</sup> The CCP has attempted to explain these practices by employing the Islamophobic trope that Muslims are terrorists.<sup>348</sup> While there have been several Uyghur-led terrorist attacks, CCP policies deem any small religious act as a sign of extremism,<sup>349</sup> making the defense of their deliberate ethnic targeting lack luster. These acts are born from an intent to destroy the Uyghur ethnic community; this intent is demonstrated by the general context, pervasive rape and reproductive control, and systematic and deliberate targeting of Uyghurs. This intent is rooted in China's Han ethnonationalism and manifests through serious physical and mental harm and the prevention of births within the Uyghur community.

These genocidal acts are directly attributable to the Chinese State policy. The Strike Hard Campaign is an official CCP policy that has enacted many of these practices.<sup>350</sup> In leaked speeches, President Xi called for, "an all-out 'struggle against terrorism, infiltration and separatism' using the 'organs of dictatorship,' and showing 'absolutely no mercy.'"<sup>351</sup> This demonstrates how the leader of China has called for organs of the State to carry out this genocidal campaign. The Chinese State has additionally created handbooks to enact the Strike Hard Campaign.<sup>352</sup> Furthermore, CCP members face punishment "for resisting or failing to carry out the crackdown with sufficient zeal."<sup>353</sup> The leaked documents

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<sup>345</sup> See Prosecutor v. Nyiramasuhuko, Case No. ICTR-98-42-A, Judgment, ¶ 508 (Dec. 14, 2015).

<sup>346</sup> Zenz, *supra* note 333, at 293–94.

<sup>347</sup> See Akayesu, Case No. ICTR 96-4-T, Judgment, ¶ 523.

<sup>348</sup> THE STATE COUNCIL INFO. OFF. OF CHINA, THE FIGHT AGAINST TERRORISM AND EXTREMISM AND HUMAN RIGHTS PROTECTION IN XINJIANG pts. II–III (2021), [geneva.china-mission.gov.cn/eng/ztjs/aghj12wnew/Whitepaper/202110/120211014\\_9587980.htm](http://geneva.china-mission.gov.cn/eng/ztjs/aghj12wnew/Whitepaper/202110/120211014_9587980.htm).

<sup>349</sup> *Xinjiang Documentation Project: Cadre Materials*, UNIV. OF B.C., <https://xinjiang.sppga.ubc.ca/chinese-sources/cadre-materials/> (last visited Mar. 19, 2024) (summarizing informational handbooks that tell CCP members to use things like beards, praying, and displaying religious art to identify extremists).

<sup>350</sup> DANIEL L. BYMAN & ISRAA SABER, IS CHINA PREPARED FOR GLOBAL TERRORISM? XINJIANG AND BEYOND 3 (2019), [https://www.brookings.edu/wp-content/uploads/2019/09/FP\\_20190930\\_china\\_counterterrorism\\_byman\\_saber-1.pdf](https://www.brookings.edu/wp-content/uploads/2019/09/FP_20190930_china_counterterrorism_byman_saber-1.pdf).

<sup>351</sup> Ramzy & Buckley, *supra* note 342.

<sup>352</sup> *Xinjiang Documentation Project: Cadre Materials*, *supra* note 349.

<sup>353</sup> Ramzy & Buckley, *supra* note 342.

and speeches from the CCP indicate that the genocidal acts can easily be attributed to even the highest levels of the Chinese government.<sup>354</sup>

By pursuing justice for genocide, legal hurdles can be increased; however, the importance of properly naming atrocities is meaningful in and of itself. The word genocide holds such a level of gravity within the international community that labeling these acts anything short of what they are is a disservice to the victims in Xinjiang.<sup>355</sup> It would also fail the victims of Xinjiang to not properly address the fact that this was a systematic genocidal campaign imposed by their own government. These violations must be viewed as State Genocide. The atrocities in Xinjiang can and should be considered a State Genocide because not only does the CCP have effective control of the actors in Xinjiang,<sup>356</sup> but the actors committing this genocide are members of the CCP acting out the State's Strike Hard Campaign.<sup>357</sup> Furthermore, the history of ethno-nation building demonstrates there is a possibility that the institution of the CCP or Chinese State itself could possess the requisite genocidal intent. By understanding these atrocities as a State Genocide, the goals of both the human rights and international criminal law regimes are beckoned forward in hopes of addressing this crisis.

Labeling State Genocide is even more critical as it evokes an integrated response from both the human rights and criminal law systems. State Genocide demands to be addressed by both legal systems. First, because of the identity of the actors that are perpetrating genocide. Individual criminal liability is important; however, it is critical to pull State accountability into the equation to provide justice for State Genocide. Additionally, the remedial methods of both systems are needed. These include financial reparations, imprisonment, and policy changes.<sup>358</sup> Finally, the acts that are perpetrated against the Uyghurs are both human rights violations and crimes. When these crimes are taken in an aggregate in the context of China's historic background and the targeting of Uyghurs through government policy, the case is easily made that these crimes escalate to State Genocide.

To serve justice and bring forward peace, a hybrid of criminal law and human rights law must be utilized. Both peace and justice are very theoretical concepts and are often in the eye of the beholder. Justice evokes ideas of righting a wrong, consequences, balancing of scales, and

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<sup>354</sup> *Id.*

<sup>355</sup> See Genocide Convention, *supra* note 12, at pmb1.

<sup>356</sup> See Ramzy & Buckley, *supra* note 342.

<sup>357</sup> See *id.*; BYMAN & SABER, *supra* note 350.

<sup>358</sup> See Milanović, *supra* note 313, at 554–55, 561, 564; Andrew N. Keller, *Punishment for Violations of International Criminal Law: An Analysis of Sentencing at the ICTY and ICTR*, 12 IND. INT'L & COMP. L. REV. 53, 54–55 (2001).

possibly healing,<sup>359</sup> whereas peace evokes ideas of stability and security.<sup>360</sup> As abstract as both peace and justice are, we as humans understand the need for both to be brought about after a conflict or violence occurs. This is evidenced in the goals of both legal regimes described earlier: goals of deterrence, punishment, compensation, retribution, and rehabilitation. However, it is time the international community reflect and determine if those goals do in fact create peace and serve justice.

In the transitional period after a conflict, there is a debate that peace and justice are at odds with one another. Amnesty has been used as a bargaining chip to negotiate peace and bring immediate end to ongoing conflict.<sup>361</sup> On the other hand, many feel there is a duty to prosecute those most responsible for heinous international crimes to deter future commission.<sup>362</sup> This is made more complicated by the fact that the perpetrators frequently retain political power.<sup>363</sup> There are two vital aspects to consider: how to end ongoing violence and how to stably rebuild. The peace versus justice dilemma appears to put those aspects contrary to one another. The crisis in Xinjiang is no different. The State actors perpetrating this genocide wield considerable power over the situation, and while justice must be served, the violence needs to come to an end as soon as possible.<sup>364</sup>

While criminal prosecution can serve justice, the mechanism of imprisonment may not serve peace. Prisons have served as a breeding ground for radicalization in other conflicts.<sup>365</sup> Examples of this radicalization in prisons were seen in Northern Ireland and the Irish

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<sup>359</sup> *Justice*, MERRIAM-WEBSTER DICTIONARY (11th ed. 2019).

<sup>360</sup> *Peace*, MERRIAM-WEBSTER DICTIONARY (11th ed. 2019).

<sup>361</sup> Johannes Langer, *Peace vs. Justice: The Perceived and Real Contradictions of Conflict Resolution and Human Rights*, 8 CRITERIOS 165, 167 (2015).

<sup>362</sup> Kenneth Rodman, *Peace Versus Justice*, in ENCYCLOPEDIA OF GLOB. JUST. 824, 824 (Deen Chatterjee ed., 2011).

<sup>363</sup> *Id.* at 824, 826.

<sup>364</sup> See BREAK THEIR LINEAGE, *supra* note 8; *China: Unrelenting Crimes Against Humanity Targeting Uyghurs*, *supra* note 11.

<sup>365</sup> COUNCIL OF EUR., HANDBOOK FOR PRISON AND PROBATION SERVICES REGARDING RADICALISATION AND VIOLENT EXTREMISM 4 (2016), <https://rm.coe.int/16806f9aa9> (“Concern has been expressed over the fact that prisons may be used as a breeding ground for radicalised violent extremists . . . .”); see, e.g., Steven Mufson, *How Belgian Prisons Became a Breeding Ground for Islamic Extremism*, WASH. POST. (Mar. 27, 2016, 3:39 PM), [https://www.washingtonpost.com/world/europe/how-belgian-prisons-became-a-breeding-ground-for-islamic-extremism/2016/03/27/ac437fd8-f39b-11e5-a2a3-d4e9697917d1\\_story.html#](https://www.washingtonpost.com/world/europe/how-belgian-prisons-became-a-breeding-ground-for-islamic-extremism/2016/03/27/ac437fd8-f39b-11e5-a2a3-d4e9697917d1_story.html#) (describing how Arabic-speaking prisoners gradually win over “impressionable youths” while prison officials remain unaware); Salim Yaacoub, *British and Lebanese Prisons: Are They Fertile Breeding Ground for Terrorism?*, 11 J. STRATEGIC SEC. 79, 82–83 (2018) (summarizing the “increasing evidence” of Islamic radicalization in British and Lebanese prisons).

Republican Army<sup>366</sup> and the Islamic State in the Middle East.<sup>367</sup> Furthermore, retributive justice alone does not properly consider the needs of victims and can therefore hinder peace-making.<sup>368</sup> Retributivism can have a negative impact on peace if not utilized correctly and at the right time.<sup>369</sup> Perpetrators who know they will face criminal prosecution are unlikely to halt their crimes, and this form of justice seems less likely to succeed when authoritarian leaders maintain power.<sup>370</sup>

This consideration is especially vital looking to the Uyghurs as it is unlikely this conflict will result in the CCP losing any power or control. The most probable, best-case scenario is the CCP halts their genocidal practices while still maintaining control, and there is some degree of liability that is attributed to the State which could allow for reparations and rebuilding efforts in Xinjiang. The probability the CCP is somehow ousted from power and this crisis disappears is nearly nonexistent, which should frame the way we hope to achieve justice because with the CCP in power, that justice will likely not fit into the retributive model of international criminal law on its own.<sup>371</sup>

There are tools in the international community's arsenal that work to create peace through justice.<sup>372</sup> Frameworks like transitional justice and restorative justice work to bridge some goals of both human rights and criminal law systems while looking towards future stability and community development.<sup>373</sup> Transitional justice argues that through serving justice and establishing the rule of law a lasting peace is

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<sup>366</sup> SHANE BRYANS, U.N. OFF. ON DRUGS & CRIME, HANDBOOK ON THE MANAGEMENT OF VIOLENT EXTREMIST PRISONERS AND THE PREVENTION OF RADICALIZATION TO VIOLENCE IN PRISONS 51 (2016), [https://www.unodc.org/pdf/criminal\\_justice/Handbook\\_on\\_VEPs.pdf](https://www.unodc.org/pdf/criminal_justice/Handbook_on_VEPs.pdf).

<sup>367</sup> *Id.*

<sup>368</sup> Monica Adami, *Retributive Justice: How Can It Harm a Peace Process?*, LONDON SCH. ECON. & POL. SCI.: INT'L DEV. BLOG (Jan. 23, 2018), <https://blogs.lse.ac.uk/internationaldevelopment/2018/01/23/retributive-justice-how-can-it-harm-a-peace-process/>.

<sup>369</sup> *Id.*

<sup>370</sup> *Id.*

<sup>371</sup> See Wang, *supra* note 9 (explaining how China's key economic allies rejected a U.N. motion to debate the CCP's treatment of the Uyghurs, thereby "thwarting an unprecedented opportunity to hold Beijing accountable" for its human rights violations); Lauren Baillie & Matthew Parkes, *Don't Look Away from China's Atrocities Against Uyghurs*, U.S. INST. OF PEACE (Apr. 6, 2023), <https://www.usip.org/publications/2023/04/dont-look-away-chinas-atrocities-against-uyghurs> ("Beijing continues to use its vast influence to manipulate U.N. processes and to ensure that its allies avoid public acknowledgement of the persecution of the Uyghurs.").

<sup>372</sup> See U.N. Secretary-General, *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies*, ¶¶ 21, 31, U.N. DOC. S/2004/616 (Aug. 23, 2004) (explaining that establishing independent national human rights commissions helps restore justice and peace to conflict and post-conflict societies).

<sup>373</sup> Tricia D. Olsen et al., *The Justice Balance: When Transitional Justice Improves Human Rights and Democracy*, 31 HUM. RTS. Q. 980, 983, 983 n.6 (2010).

created.<sup>374</sup> In national studies, restorative justice diversion programs have shown a “significant reduction in offender recidivism.”<sup>375</sup> Some restorative justice practices have been implemented in international law through truth and reconciliation commissions.<sup>376</sup> These commissions work to establish patterns and answer unanswered questions.<sup>377</sup>

The international community must look beyond individual punishment for crimes and instead towards the systems and structures that perpetrated those crimes. Atrocities at the scale of those in Xinjiang do not occur without systematic organization.<sup>378</sup> In this instance, we know that organization has come directly from the Chinese State itself.<sup>379</sup> Additionally, by examining the systems that allowed for such a failure of humanity to occur, it seems more likely that we can remedy those failures and prevent similar, future acts. As individual criminal liability has become more common in international law, it has become harder to conceptualize what State liability would constitute, as well as understand, the pivotal role States play in international atrocities.<sup>380</sup>

State criminal accountability is not a new concept. In fact, “the concept of State criminality is an emergent general principle of international law.”<sup>381</sup> This is further evidenced by the International Law Commission’s passing of the Draft Articles on Responsibility of States for Internationally Wrongful Acts.<sup>382</sup> Scholars have suggested that State

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<sup>374</sup> *Peace Versus Justice: A False Dilemma*, INT’L CTR. FOR TRANSITIONAL JUST. (May 9, 2011), <https://www.ictj.org/news/peace-versus-justice-false-dilemma>; *Transitional Justice and Human Rights*, U.N. OFF. OF THE HIGH COMM’R FOR HUM. RTS., <https://www.ohchr.org/en/transitional-justice#:~:text=Transitional%...s%20have%20repeatedly,thereby%20contribute%20to%20l>asting%20peace (last visited Jan. 21, 2024).

<sup>375</sup> James Bonta et al., *An Outcome Evaluation of a Restorative Justice Alternative to Incarceration*, 5 CONTEMP. JUST. REV. 319, 319 (2002).

<sup>376</sup> Carrie J. Niebur Eisnaugle, *An International “Truth Commission”: Utilizing Restorative Justice as an Alternative to Retribution*, 36 VAND. J. TRANSNAT’L L. 209, 224, 238 (2003).

<sup>377</sup> *Truth and Reconciliation Commissions*, INT’L JUST. RES. CTR., <https://ijrcenter.org/cases-before-national-courts/truth-and-reconciliation-commissions/> (last visited Jan. 21, 2024).

<sup>378</sup> See, e.g., *China: Draconian Repression of Muslims in Xinjiang Amounts to Crimes Against Humanity*, AMNESTY INT’L (Jun. 10, 2021), <https://www.amnesty.org/en/latest/news/2021/06/china-draconian-repression-of-muslims-in-xinjiang-amounts-to-crimes-against-humanity/> (“Uyghurs, Kazakhs and other predominantly Muslim ethnic minorities in China’s Xinjiang Uyghur Autonomous Region face systematic state-organized mass imprisonment, torture and persecution amounting to crimes against humanity . . .”).

<sup>379</sup> *Id.*

<sup>380</sup> NINA H.B. JØRGENSEN, *THE RESPONSIBILITY OF STATES FOR INTERNATIONAL CRIMES*, at ix (2000).

<sup>381</sup> *Id.* at 231.

<sup>382</sup> *Draft Articles on Responsibility of States for Internationally Wrongful Acts*, [2001] 2 Y.B. Int’l L. Comm’n 26–30, U.N. Doc. A/CN.4/SER.A/2001/Add.1 (Part 2).

criminal liability may borrow from other legal frameworks such as the criminal organization model or the corporate crime model.<sup>383</sup> The *modus operandi* of punishing States adds to the complexity of this issue; however, it's important to recognize that just by criminalizing an act, the way that act is perceived changes.<sup>384</sup> “The purpose of the concept of [S]tate criminality is to make it more difficult for States to engage in criminal conduct and still maintain credibility.”<sup>385</sup> This way of thinking harkens back to the same motivations of an ICJ advisory opinion – that once actions are publicly labeled as criminal other States will be more hesitant to tolerate associating with criminal actors.<sup>386</sup> For example, by properly labeling the atrocities in Xinjiang as a State Genocide, other States will possibly reconsider their responses and connection to China. By properly labeling this crisis as a State Genocide, we beckon the remedies and mechanisms of human rights law and criminal law, which have a better chance of success in this crisis if they are implemented together.<sup>387</sup>

## VI. CONCLUSION

The international community must act swiftly to not only put an end to these egregious actions, but also determine a strategy to assist the Uyghurs while preventing this from happening again. It is no doubt a positive thing that China has ratified several human rights instruments. However, those agreements alone have not prevented this crisis from happening. The human rights system alone does not have the teeth to deter China, and the criminal law system alone does not have the capacity to bring about peace. China has a long history of reproductive control and discrimination against minorities that has contributed to this crisis as well as given context for genocidal intent.

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<sup>383</sup> JØRGENSEN, *supra* note 380, at 80.

<sup>384</sup> *Id.* at 167, 184–85.

<sup>385</sup> *Id.* at 185.

<sup>386</sup> *Id.* at 185–86; see *Advisory Jurisdiction*, INT'L CT. JUST., <https://www.icj-cij.org/advisory-jurisdiction#:~:text=They%20are%20often%20an%20instrument,of%20peaceful%20relations%20between%20States> (last visited Jan. 31, 2024) (explaining that ICJ advisory opinions, while not binding, “carry great legal weight and moral authority” and help clarify and develop international law); e.g., Talulah Ratcliffe, *From the Hague to the Holy Land: The Possible Impact of the ICJ on International Conflicts*, HARV. INT'L REV. (Aug. 18, 2023), <https://hir.harvard.edu/from-the-hague-to-the-holy-land-the-possible-impact-of-the-icj-on-international-conflicts/> (describing how an ICJ advisory opinion denouncing South African occupation of Namibia “persuaded” the United States and United Kingdom “to stop vetoing sanctions against South Africa, which contributed critically to the end of apartheid.”).

<sup>387</sup> BREAK THEIR LINEAGE, *supra* note 8; Leiry Cornejo Chavez, *New Remedial Responses in the Practice of Regional Human Rights Courts: Purposes Beyond Compensation*, 15 INT'L J. CONST. L. 372, 372–76 (2017) (discussing the remedies of human rights and criminal law).

The human rights and international criminal systems have different but important goals. Human rights favor goals associated with tort law such as deterrence and compensation,<sup>388</sup> whereas criminal law goals are more classically determined to be punishment, deterrence, incapacitation, retribution, and rehabilitation.<sup>389</sup> While genocide is an international crime, the Uyghur genocide is a State sanctioned and organized genocidal campaign, and State accountability should be prescribed. As we saw in the “*Cotton Field Case*,” States are responsible for correcting systems in their own borders that violate human rights.<sup>390</sup> Here, China is not only failing under both systems but is perpetrating this genocide itself. The objectives and remedies of both legal systems are needed to properly address the issue of State Genocide.

Unfortunately, several jurisdictional hurdles stand in the way of holding China to account under either legal system, but that should not cripple the international community from taking some action. Any action that can be taken, even if it is considered small, should be taken and can serve as a catalyst for further action. The first goal should be to prevent any additional Uyghurs from being subjected to this system. This can begin to be done by pressuring complicit nations outside of China to halt any extraditions of Uyghurs into China. There are several nations that are currently complicit with China’s actions by extraditing Uyghurs into China.<sup>391</sup> Article 3 of the Torture Convention specifically prohibits State parties from extraditing to countries where individuals “would be in danger of being subjected to torture.”<sup>392</sup> This could serve as the first crack in the ice to deal with this crisis.

An ICJ advisory opinion would have the effect of clarifying for the international community what exactly is occurring in Xinjiang. Turning back to Preston Jordan Lim, he proposes that an advisory opinion would provide “an unbiased and definitive interpretation of international law

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<sup>388</sup> Compare Chavez, *supra* note 387, at 372–74 (stating that the purposes of human rights law include compensation and deterrence), with ANDREAS KUERSTEN, CONG. RSCH. SERV., IF11291, INTRODUCTION TO TORT LAW 1 (2023) (stating that the purposes of tort law include compensation and deterrence).

<sup>389</sup> Albert W. Alschuler, *The Changing Purposes of Criminal Punishment: A Retrospective on the Past Century and Some Thoughts about the Next*, 70 U. CHI. L. REV. 1, 1 (2003); GEOFFREY S. CORN ET. AL., CRIMINAL LAW: CONCEPTS, CRIMES, AND DEFENSES 3 (2023).

<sup>390</sup> González v. Mexico, Preliminary Objection, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 205, ¶¶ 2, 280–86, 366–68 (Nov. 16, 2009).

<sup>391</sup> Bradley Jardine, *The Arab World Isn’t Just Silent on China’s Crackdown on Uyghurs. It’s Complicit*, TIME (Mar. 24, 2022, 4:47 PM), <https://time.com/6160282/arab-world-complicit-china-repression-uyghurs/>; Jomana Karadsheh & Gul Tuysuz, *Uyghurs are Being Deported from Muslim Countries, Raising Concerns About China’s Growing Reach*, CNN (June 8, 2021, 11:26 AM), <https://www.cnn.com/2021/06/08/middleeast/uyghur-arab-muslim-china-disappearances-cmd-intl/index.html>.

<sup>392</sup> Torture Convention, *supra* note 18, at art. 3.

and would likely dissuade several countries from supporting Beijing's narrative on Xinjiang."<sup>393</sup> However, this Article would alter Lim's original proposal by adding a question regarding the commission of genocide by the CCP. An ICJ advisory opinion would have the additional impact of not needing support from the UN Security Council because under Article 96 of the UN Charter either the General Assembly or the Security Council may request an advisory opinion.<sup>394</sup>

We must also explore the emerging general principle of State responsibility for international crimes and other possible mechanisms. Just as an advisory opinion would, labeling these acts could have the social, political, and diplomatic effects of pressuring the CCP on the international stage. Furthermore, it is likely that mechanisms such as a truth and reconciliation commission may serve this conflict well. There remain so many unknowns and a commission may help provide some understanding and closure. Again, these possibilities stem from the goals of human rights and criminal law while combining their mechanisms to serve both peace and justice.

The UN Security Council provides the main hurdle for the international community to act. As a permanent member of the UN Security Council, China can veto any action the Security Council could take.<sup>395</sup> However, this can be said for any permanent member acting against the interest of peace and security, such as Russia's interference in Ukraine or American war crimes in Afghanistan.<sup>396</sup> The Security Council was born from the victors of World War II and thrived under the bilateral nature of the Cold War Era.<sup>397</sup> It would be a massive undertaking to

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<sup>393</sup> Lim, *supra* note 154, at 156.

<sup>394</sup> U.N. Charter art. 96, ¶ 1.

<sup>395</sup> U.N. Security Council, *Voting System*, U.N., <https://www.un.org/securitycouncil/content/voting-system> (last visited Feb. 2, 2024).

<sup>396</sup> *See id.* (listing the United States and Russia as permanent members of the Security Council); *see also* *Russia Vetoes Security Council Resolution Condemning Attempted Annexation of Ukraine Regions*, U.N. (Sept. 30, 2022), <https://news.un.org/en/story/2022/09/1129102> (describing how Russia vetoed a Security Council resolution condemning its unlawful attempts to annex parts of Ukraine); Alice Speri, *How the U.S. Derailed an Effort to Prosecute Its Crimes in Afghanistan*, THE INTERCEPT (Oct. 15, 2021, 10:21 AM), <https://theintercept.com/2021/10/05/afghanistan-icc-war-crimes/> (contending that the ICC, which relies on Security Council case referrals for jurisdiction, denied a request to investigate America for Afghanistan-related war crimes following strong U.S. opposition).

<sup>397</sup> CFR Staff, *The UN Security Council*, COUNCIL OF FOREIGN RELS. (Feb. 28, 2023, 11:00 AM), <https://www.cfr.org/background/un-security-council>; *see* Off. of the Historian, *United States Relations with Russia: The Cold War*, U.S. DEP'T OF STATE (Jan 20, 2009), <https://2001-2009.state.gov/r/pa/ho/pubs/fs/85895.htm> (describing the overall nature of Russia and the United States as bilateral during the Cold War); Gültekin Sümer, *The Impact of the Cold War Legacy on US-Russia Bilateral Relation*, 4 BÖLGESEL ARAŞTIRMALAR DERGİSİ 116, 120–21 (2020) ("There is no doubt that the Cold War was the most crucial era in the



overhaul the construction of the Security Council, but we must at least start to question whether the current composition of the Security Council and the Permanent Five still serves global peace and security. In the meantime, the international community must begin to chip away at the ice in hopes that the Uyghurs can be saved.

Ultimately, Uyghur women are facing intersecting human rights violations that amount to State Genocide. Uyghur women are marginalized as women, Uyghurs, and Muslims.<sup>398</sup> They are being subjected to rape, forced sterilization, and many other vile crimes.<sup>399</sup> These acts are perpetrated by organs whose practices are directly attributable to the Chinese State.<sup>400</sup> Genocidal intent is found through the history of Chinese ethnonationalism and the goal to destroy the Uyghur community by breaking their lineage and their roots.<sup>401</sup> It is critical to label this as a State Genocide to validate the experience of victims while also invoking the international responsibility to respond to genocide. Not only should individual genocidaires be held accountable for these atrocities, but the Chinese State should as well through the recommendations above. Perpetrators must be held accountable, and financial reparations coupled with policy changes must take place to give

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history of the US-Russia bilateral relations since it played determinative role in shaping the nature of the current relations.”); Ross N. Berkes, *The United Nations and the Cold War Conflict*, 37 CURRENT HIST. 228, 228–29 (1959) (describing the Security Council’s role during the Cold War).

<sup>398</sup> See *China Cuts Uighur Births with IUDs, Abortion, Sterilization*, *supra* note 97 (“The state [China] regularly subjects [Uyghur] women to pregnancy checks, and forces intrauterine devices, sterilization and even abortion. . . . Even while the use of IUDs and sterilization has fallen nationwide, it is rising sharply in Xinjiang.”); Çaksu, *supra* note 98, at 180 (“In some camps, washing of hands and feet is not allowed, as it is equated with Islamic ablution. [Uyghur] [w]omen are forced to apologize for wearing long clothes in Muslim style, praying or teaching the Quran to their children”).

<sup>399</sup> BREAK THEIR LINEAGE, *supra* note 8.

<sup>400</sup> See *id.* (explaining that the Uyghurs are systematically repressed per official CCP policy that has been “adopted to the highest levels of the Party”).

<sup>401</sup> See *id.* (reporting that a Chinese religious affairs official declared, “Break their lineage, break their roots, break their connections, and break their origins. Completely shovel up the roots of ‘two-faced people,’ dig them out, and vow to fight these two-faced people until the end.”); Amit Anand, *Repression of Uyghur Muslims and the Freedom of Religious Beliefs in China*, 8 J. SOC. INCLUSION STUD. 23, 29–30 (2022) (“As soon as Xi came to power, he advocated for the rejuvenation of the Chinese nation which according to him was only possible by vigorously following the Chinese national culture or rather his version of Chinese national culture.”); David Tobin, *Genocidal Processes: Social Death in Xinjiang*, 45 ETHNIC & RACIAL STUD. 93, 98–99, 103, 109–10 (2022) (Using the fusion theory to describe the genocidal practices in Xinjiang); Hu YanWenan, *The Rising Tide of ‘Imperial Han’ Nationalism in China*, THE DIPLOMAT (Dec. 2, 2023), <https://thediplomat.com/2023/12/the-rising-tide-of-imperial-han-nationalism-in-china/> (describing the development of the CCP’s Han ethnonationalist policy that has led to Party-sanctioned persecution of the Uyghurs and other minorities).

the Uyghurs justice, using the best tools of both human rights law and international criminal law.