

Hiding in Plain Sight: The Extraordinary Scale of Human Rights Violations in Xinjiang, China

UK Houses of Parliament, 26th June 2019

Event Report

Introduction

On Wednesday 26th June, the Bar Human Rights Committee in conjunction with the All Party Parliamentary Human Rights Group, held an important panel discussion in Parliament to consider the treatment of Turkic Muslims in the Xinjiang region of China and to explore how to hold China to account for human rights violations there.

It is estimated that over 1 million Uyghurs and other Turkic Muslims are being detained in “political education camps”, with millions more subject to restrictions on their liberty.

Human Rights Watch describes that: “In those camps, they are subjected to forced political indoctrination, renunciation of their faith, mistreatment, and, in some cases, torture. Numerous UN experts, treaty bodies, and the High Commissioner for Human Rights have expressed grave concern about the situation in Xinjiang and called for unrestricted access to the region.”

Redress for rights violations is usually administered through the application of the law, by lawyers and judicial determination. In China, however, human rights defenders and lawyers are systematically prevented from challenging the unlawful exercise of State power, through arrest, prosecution for sedition and disbarment.

Given the scale of unlawful detention; curtailment of liberty, freedom of religion and expression; and interference with private life, the situation in Xinjiang merits urgent and innovative attention.

The event was chaired by Afzal Khan MP, with observations from Nicola Macbean - Executive Director of the predominantly China-focused human rights NGO, The Rights Practice; Rahima Mahmut - Uyghur singer, award-winning translator, and human rights activist; and Serena Gates - UK Barrister and former investigator for the UN Syrian Commission of Inquiry.

Attending the event were policy makers, lawyers, interested organisations and academics and Uighur people from Xinjiang now living in exile in the UK.

Afzal Khan MP opened the event by outlining the intent of BHRC and the PHRG to raise greater awareness about the dire human rights situation in Xinjiang, as well as the lack of domestic legal avenues available, and bring Parliamentarians and others together to explore what should be done in response. He and other Parliamentary colleagues have been raising, for some time, the appalling human rights situation in Xinjiang – where relations between the Turkic Muslims and the Han Chinese have long been troubled, as well as in other areas in China.

He confirmed that they will continue using the Parliamentary platform to raise concerns about human rights violations in China - in the hope that they can urge the international community, including the UK Government and Parliamentarians, to do more to help support and protect human rights victims there – many of whom cannot speak up for themselves, not least because of the very real risk of reprisals.

Speeches

Nicola Macbean focused her discussion on whether the situation in Xinjiang has any foundation in Chinese law.

She explained that the most authoritative sources estimate that at least one million, perhaps 1.5 million Uyghurs and other ethnic Turkic Muslims are being held in internment camps in the Xinjiang region of western China. The evidence for these numbers comes from official procurement documents for contracts to build “transformation through education centres”, as well as satellite imagery, and reports from the many thousands of Uyghurs currently based overseas. Detentions on this large-scale seem to have started in spring 2017.

The Chinese government at first denied that the detentions were taking place, but they now seek to justify them in terms of challenging extremism and counter-terrorism. On the 25th June, a Vice Governor of the Xinjiang regional government spoke at the UN Human Rights Council and said that “vocational education and training centres” were set up in “accordance with the law” for those “influenced by religious extremism” and who have “committed minor legal offences”.

These centres, however, require so-called trainees to be resident. Indeed, according to the Vice Governor, these centres implement something called “boarding management.” Yet, there is nothing voluntary about the training. These training centres are not part of China’s criminal justice system.

Reports suggest a variety of types of facilities exist and clearly not all of them look like the centres being shown to journalists, such as the [BBC’s John Sudworth](#). Detainees at some centres may occasionally be allowed home, but this does not seem to be standard practice. There are also reports of people being subjected to forced labour in local factories.

Nicola explained that China’s own laws do not provide a legal basis for the detention facilities. Article 37 of China’s Constitution states that unlawful detention or deprivation or restriction of citizens’ freedom of the person is prohibited. Article 8 of the Legislation Law stipulates that only the National People’s Congress, China’s legislature, or its Standing Committee may enact laws relating to the deprivation of liberty. Moreover, Article 9 explicitly prohibits the State Council to pass administrative regulations with regard to the deprivation of liberty. Chinese police do have the authority under the Administrative Punishment Law to impose a range of penalties, including up to 15 days’ detention, for offences that do not meet the threshold of what constitutes a crime in the criminal law. However, the numerous accounts on the situation in Xinjiang confirm that the detentions exceed this time limit.

Nicola informed us that last year, there were some misleading reports that the vocational training centres were being legalised. However, this was not the case. The Xinjiang Regulations on de-extremification were revised by the Xinjiang People’s Congress in October 2018. The regulations seek to justify the use of “transformation and education” to “contain and eradicate extremism”. The regulations authorise the construction of education and training facilities. However, under Chinese law, this does not provide a legal basis for the deprivation of liberty. The regulations cite China’s Counter-terrorism Law, but this law can only authorise detention up to 15 days. More serious cases of alleged terrorism must be handled under the criminal law.

Nicola said that some Chinese legal scholars agree that the detentions in Xinjiang are unlawful. But such admissions are only made in private. This is because there are legal and practical difficulties for anyone in China trying to challenge detention in these vocational training facilities.

Without any basis in the criminal or administrative law, there are no legal procedures for lawyers to appeal the detention. No official notifications appear to be given to family members of detainees providing the grounds for detention, who authorised custody or when they will be released.

Nicola also outlined the dangers to lawyers bringing actions against the State, a practise area that is common in the UK. Some of China's most courageous lawyers have previously attempted to challenge other examples of this kind of extrajudicial or arbitrary detention, notably the use of so-called "legal education centres" to re-educate Falun Gong practitioners. One of the last high profile attempts to seek the release of people held in a legal education centre resulted in the detention and torture of the four lawyers concerned. This case, from 2014, was a precursor to the crackdown on China's human rights lawyers and defenders, which started in July 2015. The treatment of lawyers, and in particular those still in detention as a consequence of the crackdown, remains a significant concern to BHRC and other human rights organisations.

Nicola explained that the political sensitivity in China to what is happening in Xinjiang means that every self-defined "rights defence" lawyer knows they will, at a minimum, likely lose their license to practice if they attempt to challenge any of the detentions in the camps. Administrative regulations introduced in 2016 impose a series of new restrictions on the operations of law firms and lawyers.

Since there is no legal basis for these detention facilities, Nicola stated that there is also an absence of external monitoring or accountability for the treatment of detainees or the conditions of detention. Reports suggest that there are a worrying number of deaths in detention or of those recently released from these centres, but the true figure is unknown. There are many more reports from former detainees of ill treatment, in some cases likely amounting to torture.

While the internment camps hold the vast majority of Uyghurs being detained, a sharp increase has also occurred in the number of criminal cases in the region. Official data from Xinjiang suggests that criminal prosecutions increased fivefold from 2014 to 2017. Nicola outlined that one of the most disturbing cases reported was a two-year suspended death sentence given to the President of Xinjiang University for alleged "splittism" (Criminal Law Art.103 (i) and 113).

Nicola suggested that, while China's criminal justice system provides some limited opportunities for oversight by judicial agencies and the participation of a lawyer, the huge increase in the number of cases, the lack of adequate legal aid and perceived political sensitivities may offer detainees only very limited protection. However, for the vast majority of detainees in the internment camps, there is no legal protection at all.

Nicola summed up by concluding that the Chinese authorities have deliberately chosen to detain huge numbers of their own citizens without any legal basis. This not only has practical consequences for the detainees, but also speaks volumes about the way China views its own laws.

This is because at the end of 2013, China abolished the system of "re-education through labour". Under this administrative measure the police were able to detain persons for up to four years without trial. Chinese lawyers had enjoyed some limited success in challenging sentences to re-education through labour using the Administrative Procedure Law while Chinese legal scholars appealed to the laws cited above to argue that re-education through labour did not have a proper legal basis. In Xi Jinping's China, however, no lawyer or legal scholar dares to take on this argument.

Last August the UN Committee on the Elimination of Racial Discrimination (“CERD”) reviewed compliance by China. Its Concluding Observations called for China to “halt the practice of detaining individuals who have not been lawfully charged, tried and convicted for a criminal offence in any extra-legal detention facilities”.

China is due to provide evidence on implementation of this and other recommendations by the end of August, 2019. Nicola concluded with a hope that the groups gathered and others can keep up the pressure on China in the coming months to implement the CERD recommendations and close the internment camps.

Rahima Mahmut explained that she comes from a large family in the Ghulja region of Xinjiang. She left in 2000 and has never been back. Since 2017, she has completely lost contact with her family. When she did get through to her eldest brother he told her to leave them in God’s hands and that was the last contact she has had. This is not unusual amongst Uyghurs.

90% of people living in exile do not have any opportunity to contact their relatives or have any information about how their loved ones are.

Rahima has developed considerable experience as an interpreter and translator in relation to the situation in Xinjiang. Since the internment camps started to be used, she has been bombarded with requests from media organisations for assistance on news reports. She is encouraged that the world has started paying some attention to the situation.

Rahima illustrated how difficult the situation is for Uyghur people in China. For example, less than two weeks ago, she heard of three deaths. A prominent Uyghur writer died on 31st May after being deprived treatment. His daughter who lives in Canada made the news public. If no one was living outside China, it is likely that this information would not have emerged. His name was Nurmuhemmet Tohti. He had no affiliation with terrorism. He deserved better and so do millions of others who are suffering in these camps right now.

The second person is Aytursun Eli, a 34 year old tour guide in Kashgar. On 4th June 2018 she was suddenly detained by the police. The police visited her mother and said they were taking her to the hospital. When she arrived, she was taken to see the dead body of her daughter. This news came from the Autonomous Region Women’s Federation. An interview with the mother was recorded and somehow smuggled out, which Rahima obtained about 10 days ago. The full recording of the mother sobbing and providing the horrendous account - of being taken to hospital, dragged inside, told that she was not allowed to cry, was only permitted to touch her daughters face and could not see her body - was harrowing. What happened to Elly is very suspicious.

As to the third person, Radio Free Asia reported that a 41 year old man from Aksu was also detained in July last year and died in November. His crime was apparently that he had visited Turkey many years ago.

The three cases illustrate the reality in Xinjiang for Uyghur people. Rahima conducted an interview with someone who managed to leave the country many years ago – everyone was fearful of being taken to an internment camp or for family who already had been. Relatives dare not even greet each other with the usual Muslim greeting - *As-salamu alaikum* (meaning “peace be upon you”). A simple knock on the door would bring extreme anxiety and fright.

Rahima emphasised the pressure that the entire Uyghur people are under:

Computers are used to identify who will be detained and no one knows whether their name will pop up or not; all their activities are recorded by CCTV cameras and feed into the programme. The programme categorises as “dangerous”, “normal” or “partly not normal”.

Rahmina questioned how extremists were being correctly identified by this method? Once identified, the person is summonsed to a police station and they are issued with a detention notice to a particular detention facility. Whatever the person says as to their lack of extremist ideology or activities is deemed irrelevant.

Rahima also raised the particularly worrying consequences for children. In April she went to Turkey and interpreted for a reporter who interviewed some victims and families that lost their children to orphanages.

Two fathers had recognised their children on a national propaganda video. They had very similar stories – having been abroad, they landed at the airport in Xinjiang and were immediately taken away for a four year detention. As such, their children were placed in orphanages. They did not know what had happened to their children until they saw them on the video.

One woman cried from the beginning of the interview. She had explained that she came to Turkey to look after her father. She left four children behind with her mother-in-law. Because of the situation, she could not go back and lost contact. Then she found out that her mother-in-law had been arrested. She went back and found that her four children had been left in the house alone for three days. On that same day the police arrived and took away the children.

Rahima concluded by saying that there were too many examples to tell of the terrible treatment Uyghur people were receiving. She said that everyone is suffering unimaginable pain.

Serena Gates discussed the international justice architecture to see if any avenues for accountability might be available.

She reflected on the situation in Syria and observed that some of the obstacles to justice are similar.

The UK is supposed to hold human rights in high regard. But in reality it is handicapped by its trading relationships, especially post Brexit.

There are also a limited number of international legal options. Where strategic litigation is being brought, which is designed to effect the actions of states, it is brought by NGOs and national bodies in domestic courts of foreign countries, because the international architecture is ineffective.

Serena suggested that we consider the ways in which pressure is being brought to bear – at present this is happening through the media, and NGOs such as Human Rights Watch. She wondered what is being done through the justice system.

Considering international criminal law, arguably, the transfer of people to these camps may well constitute a crime against humanity. It certainly constitutes a grave human rights abuse. Crimes against humanity can be prosecuted in peace time and can include forcible transfer of people. There does not appear to be any legal justification for the long term detention of people in these camps.

However, Serena explained that the avenues for bringing those rights violations to account are limited and difficult. There could be no referral to the International Criminal Court, as this would be vetoed by China, Russia, other aligned states. Nevertheless, universal jurisdiction is established for this crime and it could be tried in the domestic court of another country. For example, in the UK there is the International Criminal Court Act 2001. If a Communist Party member was resident in the UK, or even a corporate body that was complicit, action could be taken against them. Establishing an evidential basis for crimes against humanity is very important for the bringing of a claim.

To establish a proper body of evidence there would need to be a fact finding mission. In order to establish this, the incident could be reported to the UN Human Rights Commission as an internationally recognised mechanism for fact finding.

Serena suggested that prosecution against UK companies with subsidiaries in China could also be looked at, with respect to aiding and abetting the crimes. However, it would be necessary to establish that the company is not in fact under Chinese control.

But if there is no political will to bring a criminal action in another country, what else could be done? Serena suggested that private prosecution might be an option. She observed that actions against private companies are starting to be brought, i.e. *LaFarge* – a French cement company was charged in the French courts because one of its subsidiary groups allowed a cement factory to continue operating in Syria despite the war, and was therefore considered complicit. Similar cases could be brought in the UK for companies operating in Xinjiang that are supplying or otherwise associated with the internment camps.

Serena also considered that there might be a role for the civil courts – the recent case of *Vedanta* before the UK Supreme Court considered whether the English courts had jurisdiction to hear a group tort claim concerning responsibility for the acts of a subsidiary and parent company, relating to the pollution of water in copper mines in Zambia. The case confirmed that a British company could be sued in the UK for acts in China, if it can be established that the company has committed a tort in Xinjiang.

Serena also thought that opaque supply chains could be looked at to consider whether Uyghur people are forced to work in factories manufacturing products coming into UK markets. The Modern Slavery Act sets out the responsibility for companies to identify its supply chains. However, the penalties are quite weak. There have been calls to tighten these, so this might be a useful avenue to explore.

Serena considered that one of the reasons China is so concerned about Xinjiang separatism is because of its links to the West and potential impact on trade routes, so the actions of companies found to be complicit is crucial.

From Serena's survey of the options, she concluded that in reality, prosecutions are expensive and states are reluctant to bring them with respect to foreign country criminal actions. As to what we can therefore do, in the first instance, calling for a UN fact finding mission would be very useful for any subsequent legal action. Other kinds of investigations might be possible, although we have heard that attempting to conduct phone interviews with Uighur people in Xinjiang is not realistic - being found with WhatsApp on your phone leads to arrest. But people can get out, the interviews we have heard about tonight demonstrate this. The satellite footage and other documentaries are also useful sources of evidence. While states may not politically want to bring actions themselves, they can do more to create a body of evidence.

Then, working with allies is another option – asset freezing, export control measures to prevent the Chinese Government getting hold of equipment with which to violate rights are examples of where international pressure might be possible.

Discussion

Following the speakers, observations were made by some of those present.

Yasmine Qureshi MP announced that she and other MPs have been following the situation in Xinjiang and speaking to NGOs and other groups. Some debates in Parliament had been held and MPs are very concerned about this. As a consequence, an All Party Parliamentary Group on Xinjiang is being set up, which Yasmine hopes will work with the All Party Parliamentary Human Rights Group to hold an inquiry into what is happening. They will invite NGOs, academics, and anyone with information so that they can compile a definitive report in this Parliament to back up the concerns. The APPG will engage with the Chinese embassy as well. This group should be set up in the next couple of weeks.

Myrto Tilianaki from Human Rights Watch (HRW) highlighted their report released last month on how mass surveillance works in Xinjiang – HRW gained access to the mobile app which is used by officials in Xinjiang, reversed engineered it and found that the app gives officials access to the Integrated Joint Operations Platform that collects data on people the police think are threatening or suspicious. HRW found that information on people's ordinary routines is being used against them. Officials are also looking at people's height, blood type, political affiliation and other details. Everyone is monitored, through their phones, identity cards, and other means. Information deemed to be suspicious, such as using the back door to exit one's home instead of the front, someone using a car registered to another driver, or using WhatsApp is gathered and evaluated as to whether the person should be detained. The technology maximises detention of those considered suspicious, who are then taken for interrogation, with no safeguards or rights. HRW is calling for the use of the app to stop.

Members of the Uyghur Community A number of people at the meeting were from the Uyghur community in exile in the UK. Although they were grateful to be here, they were extremely concerned about what is happening in Xinjiang. They explained their situations, uncertainty about the safety of their families in Xinjiang and the anguish of not knowing what is happening. The Uyghur and Turkic population in Xinjiang is huge and is being systematically destroyed, just because they are different to other ethnic Chinese people. Each called for help to stop the unlawful internment and treatment of peaceful Muslims in China.

Joanna Smith Finley, Newcastle University highlighted that she has been researching the situation in Xinjiang for many years. She wanted to explain that the Chinese State is representing the education centres as counter terror policy. She felt that this must be turned on its head. The internment of people on this scale absolutely fits the definition of state terrorism – where state violence is employed to instil violence beyond the direct victims; where actions are intended to curtail political opinion, this constitutes state terrorism. There needs to be a deliberate act or threat of violence, which is intended to induce extreme fear, and the target audience is forced to change its behaviour in some way, for political, ideological or religiously motivated reasons. Joanna was in Xinjiang last summer. Everything had changed since she was last there. None of my network of friends and respondents would engage with her; they put the phone down, or came up with excuses. They said they had a “heart problem”, which is used as code for a really horrible situation. She had never seen anything like the level of fear that was evidence among Uighur people. Even the crescent symbol had been taken off a mosque she saw, and people were denying ever having been to the mosque.

BHRC will be putting together a working group to consider what avenues are available to hold China to account for the treatment of Uyghur people in Xinjiang. If you would like to be involved, please contact us at coordination@barhumanrights.org.uk.

A powerful and immensely brave documentary aired on 15th July on ITV, Undercover: Inside China's Digital Ghulag, and demonstrates the scale of the problem.