

International Convention on the Elimination of All Forms of Racial Discrimination (CERD)

96th Session, August 2018

Consideration of the 14th to 17th periodic reports of China

Submission, The Rights Practice, July, 2018

The Rights Practice was incorporated as a not for profit organisation in the United Kingdom in 2002, and in the United States in 2008. We have been a registered human rights charity in England and Wales (1133616) since 2010. Our charitable purpose is the promotion of human rights (as set out in the Universal Declaration of Human Rights and subsequent UN conventions and declarations). Our mission is to build the capacity of those working for human rights. We have built a programme of work that addresses three strategic themes within China: access to justice, human rights and criminal justice, and public participation. For many years we have engaged with Chinese legal scholars, lawyers and judicial officials to help prevent the use of torture. This submission is informed by stakeholder consultations and a review of Chinese law, media reports and recent cases.

www.rights-practice.org

Response to List of Themes

This submission from The Rights Practice is a response to two issues highlighted in the list of themes (CERD/C/CHN/Q/14-17): the issue of discrimination in migrant access to education (paragraph 15) and the discriminatory detention of Uyghurs and other Muslim ethnic minorities (paragraphs 16, 21, 22, 23 and 24).

Discriminatory access to education for internal migrants (paragraph 15)

The Rights Practice works with Chinese civil society groups researching the problems of migrant workers, in particular the disparity between national reform of the household registration system and its local implementation. They help community welfare organisations in southern China advocate for migrant rights, including access to education for children of migrant workers. They do not collect data on the ethnic status of migrant workers as they consider that this would increase the political sensitivity of their work. Migrants from ethnic minorities face the same *hukou* discrimination as other migrants, but anecdotally our partners report that there are additional problems for Xinjiang migrants in terms of police interest and landlords reporting their presence.

China's 245 million migrant workers continue to face significant barriers accessing basic public services, including free compulsory education. Data from 2012 indicates that the number of children in urban migration exceeded 35 million. Whilst progress has been made towards reforming the household registration system (CERD/C/CHN/14-17, para. 13), particularly in second-tier cities, the 2014 policy to 'strictly control big cities' populations' has meant an erosion of migrant rights in tier 1 cities as well as some tier 2 cities¹. Although ostensibly intended to enforce fire regulations, the razing of migrant villages in Beijing in December 2017 was seen by many observers as part of an effort to restrict the population in tier 1 cities. Recent research in Shenzhen and Guangzhou, which host two of China's largest migrant worker populations, revealed that only approximately 50% of migrant children in Shenzhen and only 42% from Guangzhou attend public school or receive subsidies for private schools.²

Social service organizations in Guangzhou that assist migrant worker families relay how difficult it continues to be for parents of migrant children to secure the paperwork needed for them to attend school. Among documents typically needed are: evidence of employment; social insurance; and proof of residence (a residence card). Many parents do not have social insurance, especially for the number of years required. Residence cards are difficult for migrant families to obtain and do not have anything to do with their daily life (in many

¹ See a translation of the Opinion on Household Registration Reform at China Law Translate <https://www.chinalawtranslate.com/state-council-opinion-of-hukou-reform/?lang=en>

² Report on the enrolment status of migrant children in compulsory education in Guangzhou (2013-2016) <http://dy.163.com/v2/article/detail/D7ODI7910514CACI.html>. "2018 Shenzhen *Lianghui* Recommendations on Solving the Problem of 'Difficulties in Entering Schools' for Compulsory Education for Children in Shenzhen" <http://dy.163.com/v2/article/detail/D9AA58E60514CACI.html>.

countries a utility bill would be a sufficient alternative). Proof of work can be difficult to secure too, especially for informal workers such as a vegetable seller or other street traders. School authorities in some places require three years of proof, which seems designed as a way to keep children out of schools. In many places, school entrance is also still tied to the need for family planning certification, which no longer even aligns to recent changes to family planning policies nationally.

Even when parents can provide the necessary paperwork for their child, there are not enough spaces in public schools or subsidized places in private schools, and private schools are too expensive. Middle school places are particularly in short supply- children between the ages of 11-12 often have no choice but to return to a countryside they do not know, where the quality of education is poorer. In addition to penalizing children, this penalizes women since mothers are typically the ones who return home with their children, and their careers are disrupted. Female children are also more likely to be left behind. According to the last census in 2010, more than one fifth of China's children (some 61 million) are left-behind children and vulnerable to mistreatment. Moreover, urban children are favoured institutionally for university entrance, which can have significant long-term consequences for children from rural areas.

Discriminatory use of detention and risk of torture (paragraphs 16, 21,22, 23, 24)

Since its founding in 2002, The Rights Practice has studied detention in China and supported Chinese lawyers and legal scholars to improve respect for the human rights of detainees. Over the past year we have become increasingly concerned by the wide-scale and discriminatory deprivation of liberty that is taking place in Xinjiang Uyghur Autonomous Region (XUAR or Xinjiang). These detentions are taking place against the background of a coercive policy of cultural assimilation directed at Uyghurs and other largely Muslim, Turkic-speaking ethnic groups in Xinjiang as part of a “de-extremification” campaign. The phrase “de-extremification” was first mentioned by former Party Secretary, Zhang Chunxian, in 2012: this approach to Uyghur and other ethnic Muslim culture in Xinjiang provides the context in which the local authorities, under new Party Secretary Chen Quanguo, are attempting to refashion, some would say re-engineer or, even, eradicate, Uyghur and other Turkic culture in the region. The policy now appears closely linked to “transformation through education” (*jiaoyu chuanhua*) which is one of many terms used to describe political re-education in Xinjiang³.

This submission addresses the use of detention in Xinjiang with respect to some of the themes raised in paragraphs 16, 21, 22, 23 and 24. These include data on the number of people in

³ Zenz, Adrian. “Thoroughly Reforming them Toward a Healthy Heart Attitude” *China's Political Re-Education Campaign in Xinjiang*. 15 May 2018
https://www.academia.edu/36638456/_Thoroughly_Reforming_them_Toward_a_Healthy_Heart_Attitude_-_Chinas_Political_Re-Education_Campaign_in_Xinjiang

detention (16), detention in counter-extremism training centres and education and transformation training centres (21), ethnic profiling and ill-treatment (22), protection from discrimination and torture (23) and the role of lawyers (24). The submission draws on published research, media reports, the testimony of Uyghurs outside China and conversations with a number of private sources.

We have three key concerns:

- China has not officially acknowledged the use of political re-education facilities and it is, therefore, impossible for any scholar or outside organisation to obtain official data on the numbers detained or their ethnic origin. Documents use a range of Chinese terms from “transformation through education centres” to training centres to describe the detention facilities. This makes documentation and discussions with Chinese legal scholars and officials more difficult. There is, nevertheless, persuasive evidence from different sources to indicate very high numbers of persons are being detained on political, ethnic or religious grounds.
- There appears to be no legal basis for the detention of Uyghurs and other persons in these detention facilities. Since there is no legal basis there is also no opportunity for detainees or their legal representatives to appeal the decision to detain or to seek redress for unlawful detention.
- Persons detained in extralegal detention facilities outside the oversight of judicial institutions and without access to lawyers or any external monitors are at greater risk of torture or ill treatment.

Although China has not officially acknowledged the existence of “transformation through education” or re-education detention in Xinjiang, procurement and construction bids for large-scale facilities, published on public and private bid websites, have been identified by Dr Adrian Zenz from the European School of Culture and Theology, Korntal, Germany. There was a sharp increase in public requests to tender for the construction of “transformation through education” or “legal system training” from March 2017. Bid documents for “transformation through education” facilities call for the provision of dormitories, bathrooms and canteens as well as comprehensive security measures, which seem designed to keep people from escaping. Satellite images and other photographs reveal facilities surrounded by high fencing, barbed wire and watchtowers. Procurement information, as well as reports from journalists, indicate that facilities may exist along a spectrum from more open training centres to closed internment camps⁴. Some facilities may offer both a more ‘voluntary’ training programme with a coercive regime for those who fail to comply.

The accounts from some former detainees and multiple anecdotal reports from friends and family members of XUAR residents indicate that Uyghurs and other ethnic Muslim groups are the targets of the “education through transformation” campaign. Large-scale recruitment of

⁴ Zenz *ibid.*

Chinese language teachers and the temporary redeployment of university teachers to rural areas of Xinjiang further support the view that re-education is targeted at the non-Han population.

Lack of legal basis

The vast majority of recent detentions in Xinjiang have no known legal basis and are taking place outside the criminal justice system. China abolished the system of ‘re-education through labour’ (RETL) at the end of 2013. Under RETL the police had the power to authorise detention for up to four years for a number of offences which did not meet China’s threshold for designation as crimes. RETL was the best known of China’s several measures for depriving persons of their liberty which exist outside the mainstream criminal justice system. Although RETL has been abolished the Chinese authorities continue to deploy other measures and new ones have been introduced. These measures, variously, share a lack of judicial oversight, the use of unofficial detention facilities, restricted or no access by lawyers, and a regime which combines interrogations with some form of ‘re-education’ or compulsion to confess.

‘Residential surveillance in a designated location’ (RSDL) is a provision under the criminal procedure law. Detention in RSDL can be authorised by the police for up to six months for persons accused of acts of terrorism or subversion of state security; major bribery was also subject to RSDL, but these cases will now be subject to the new, comparable measure, of ‘retention in custody’. RSDL is not permitted to take place in registered pre-trial detention centres (*kanshousuo*), but takes place in unofficial facilities, such as hotels or training centres; it can be used for up to six months (Criminal Procedure Law Article 77). In their Concluding Observations to their review of China in 2015, the Committee Against Torture called for the provision of RSDL to be repealed (CAT/C/CHN/CO/5 paragraph 15).

The newly introduced ‘retention in custody’ (*liuzhi*) replaces the system of *shuanggui* (‘double designation’) which was targeted at Chinese Communist Party (CCP) members⁵. The new measure of detention and investigation can be used towards CCP members and other officials suspected of bribery or corruption. ‘Retention in custody’ lies outside the criminal procedure law; its legal basis is Article 24 of the 2018 Supervision Law which grants Supervision Organs the authority to approve detention for up three months, with a possible three month extension, prior to the case potentially being transferred to the criminal process for prosecution. China’s Administrative Punishment Law allows the police to authorise short term detention, up to 20 days, for a number of low level offences. In addition to the above measures the Chinese authorities use extra-judicial measures to compel drug addicts to receive compulsory drug rehabilitation under the 2008 Anti-Drug Law.

⁵ Human Rights Watch “Special Measures” Detention and Torture in the Chinese Communist Party’s Shuanggui System. 2016. <https://www.hrw.org/report/2016/12/06/special-measures/detention-and-torture-chinese-communist-partys-shuanggui-system>

The above measures have a minimal, if inadequate, basis in Chinese law whereas information from Xinjiang indicates the lack of any kind of legally authorised procedure for detaining people for re-education. The detention of Uyghurs, Kazakhs and other Muslim minorities in Xinjiang appears similar to the use of “legal education centres” for Falungong practitioners. While Chinese officials have publicly refused to acknowledge the use of re-education in Xinjiang, some Chinese, with official backgrounds, privately acknowledge detentions are taking place, but imply this is no more than Chinese language learning or vocational training. There are reports that Chinese officials are making reference to China’s National Security Law to justify their actions. Article 26 of the National Security Law includes a vague provision to “prevent and lawfully punish activities dividing ethnicities”⁶, but provides no more details.

Accounts from Xinjiang indicate that local authorities have detention targets. In Tuwet township, Hotan prefecture, the head of the judicial department reported that one out of ten of the township’s 32,000 residents had been detained in the past year⁷. It appears that Uyghurs are being detained for having travelled abroad⁸ or having relatives overseas⁹, the display of overt piety¹⁰ or adherence to local cultural traditions. Detentions are taking place against a backdrop of increased restrictions on many forms of cultural identity or religious piety.¹¹

Given the lack of legal basis for the re-education facilities there is no official data on the numbers detained or their ethnic origin. Zenz writes that it “is reasonable to speculate that the total number of detainees might range anywhere between several hundred thousand and just over one million”¹². At the upper level this would represent in the region of 10% of the adult Uyghur and Kazakh population.

Risk of torture and other cruel, inhuman or degrading treatment

Detainees in XUAR political re-education camps face a high risk of torture or other cruel, inhuman or degrading treatment due to the nature of these unregulated facilities. There seem to be no regulations governing treatment in these camps or minimum standards for nutrition, access to fresh air and exercise or sleeping space. The camps do not seem to be subject to any kind of external or independent monitoring. Reports received by Radio Free Asia describe vastly overcrowded cells. In testimony to the British Parliamentary Human Rights Group in

⁶ See China Law Translate for an unofficial English translation of the National Security Law <https://www.chinalawtranslate.com/2015nsl/?lang=en>.

⁷ Radio Free Asia. “One in 10 Uyghur Residents of Xinjiang Township Jailed or Detained in ‘Re-Education Camp’” 29 June 2018. <https://www.rfa.org/english/news/uyghur/target-06292018132506.html>

⁸ Radio Free Asia. 13 April 2018 “Xinjiang Authorities Detain Uyghur Pro Footballer For ‘Visiting Foreign Countries’” <https://www.rfa.org/english/news/uyghur/footballer-04132018162312.html>

⁹ Human Rights Watch. “China: Free Xinjiang ‘Political Education’ Detainees” 10 September 2017 <https://www.hrw.org/news/2017/09/10/china-free-xinjiang-political-education-detainees>

¹⁰ Radio Free Asia. “Elderly Among Thousands of Uyghurs Held in Xinjiang Re-Education Camps”. 26 October 2017 <https://www.rfa.org/english/news/uyghur/elderly-10262017150900.html>

¹¹ BBC “China Uyghurs: Xinjiang ban on long beards and veils” 1 April 2017. <https://www.bbc.com/news/world-asia-china-39460538>

¹² Zenz. Ibid footnote 3.

early July, a speaker shared an eyewitness report on the overcrowded and inhumane conditions. Seventy people shared a room less than 70 square metres. Only fifteen people could sleep at a time. Because of the intense heat detainees stripped off half their clothing to keep cool, and they took it in turns to stand near a vent to breathe fresh air for five minutes at a time. They were only allowed to wash once a fortnight; with such unhygienic conditions, everyone suffered from lice and skin diseases.

There is no official information on how long persons are detained. There is a report from one former detainee, a USA-based student, of being incarcerated for 17 days¹³ while others know of persons who have been detained for over a year. One source spoke of a Uyghur friend who was detained periodically over the past year, each time around politically sensitive dates. There are also reports of some persons being required to attend open camps where they can return home every evening¹⁴. Detainees do not seem to be given any official copies of records noting dates of imprisonment and release.

There is a lot of secrecy surrounding treatment in detention. Released detainees describe a monotonous daily regime of marching, shouting out slogans in Chinese and being required to listen to lectures or watch instructional videos about approved religious practice.¹⁵ One former Kazakh detainee described “endless brainwashing and humiliation”. He spoke of detainees who disobeyed rules being placed in hand and ankle cuffs for up to 12 hours. Repeated disobedience could result in waterboarding or being strapped into a metal contraption known as a “tiger chair”¹⁶. Former detainees are warned not to publicise their experience in re-education with threats that other family members will be detained.

It is inevitable that the detention of large numbers of people will result in deaths in custody. This is likely to be exacerbated by the incarceration of the elderly in very hot and unhygienic conditions¹⁷. There is no official information on deaths in custody. The authorities must take responsibility for any deaths given the overcrowded and unsanitary conditions as well as the lack of accountability for the treatment of detainees. Reports that China is building more crematoria in XUAR have caused anxiety¹⁸. There is a fear that not only is the use of

¹³ Foreign Policy Dispatch. “A Summer Vacation in China’s Muslim Gulag” 28 February 2018. <https://foreignpolicy.com/2018/02/28/a-summer-vacation-in-chinas-muslim-gulag/>

¹⁴ China Digital Times “Details Emerge About Xinjiang’s Reeducation Camp System” 18 July 2018 <https://chinadigitaltimes.net/2018/05/an-entire-culture-is-being-criminalized-details-emerge-about-xinjiang-reeducation-camp-system/>

¹⁵ Ibid 13 above

¹⁶ Denyer, Simon. Washington Post. “Former inmates of China’s Muslim ‘reeducation’ camps tell of brainwashing, torture” 17 May 2018. https://www.washingtonpost.com/world/asia_pacific/former-inmates-of-chinas-muslim-re-education-camps-tell-of-brainwashing-torture/2018/05/16/32b330e8-5850-11e8-8b92-45fdd7aaef3c_story.html?utm_term=.c9ce62625845

¹⁷ Radio Free Asia. “More Than Two Dozen Uyghurs From One Xinjiang County Perished in Re-Education Camps” 27 June 2018. <https://www.rfa.org/english/news/uyghur/deaths-06272018141605.html>

¹⁸ Radio Free Asia. “Xinjiang Rapidly Building Crematoria to Extinguish Uyghur Funeral Traditions. 26 June 2018. <https://www.rfa.org/english/news/uyghur/crematoriums-06262018151126.html>

crematoria an attempt to undermine traditional funeral rituals, but that it is a response to increased deaths in custody.

The use by the Chinese authorities of political re-education camps to “transform” the Uyghur and other ethnic Muslim groups in XUAR into compliant Chinese citizens is likely to face resistance from detainees unwilling to renounce aspects of their culture or religion. This also places detainees at risk of torture or ill treatment. Experience from elsewhere in China suggests that persuasion may be accompanied by beatings and/or psychological pressure to induce compliance. This would be exacerbated by any locally imposed targets for successful transformation or re-education. Certain influential members of the Uyghur community may be specially targeted for ‘re-education’ and face additional risks of ill treatment.

Over the years many of China’s frontline lawyers have attempted to represent clients detained in one of China’s various extra-judicial forms of detention including RETL, ‘legal education centres’ for Falungong practitioners, as well as fellow lawyers detained in RSDL as part of the ‘709’ crackdown on lawyers (called after the date in July 2015 when it was initiated). The ability of lawyers to play a role in challenging detention in XUAR re-education centres is undermined by recent political pressure on lawyers, particularly those with the courage to try to hold the authorities to account; the added political sensitivity of trying to represent clients detained in secretive and unknown locations; and on the lack of information and legal grounds, in Chinese law, to sue the authorities. The Rights Practice has not heard of or read reports of any lawyers being able to meet with or represent anyone detained in one of the political re-education camps.

An enabling environment

Two factors have come together to provide an extremely troubling enabling environment for what appears to be the large scale incarceration of Uyghurs and other ethnic Muslim minorities taking place in XUAR. First, there are the highly discriminatory policies intended to undermine the cultural identity of China’s Muslim, Turkic peoples. These policies denigrate the linguistic, religious and other cultural practices of these ethnic communities. Secondly, despite China’s stated commitment to the rule of law and its abolition of RETL, the government still supports an extensive system of extra-judicial detention which lacks the minimal protections provided by the criminal justice system. These arbitrary detention facilities continue to provide an unregulated, unmonitored regime of re-education or “transformation” which places detainees at risk of torture and ill treatment.