UYGHUR RIGHTS ADVOCACY PROJECT
PROJET DE DÉFENSE DES DROITS DES OUÏGOURS
ئۇيغۇرلارنىڭ ھوقۇقىنى ھىمايە قىلىش قۇرۇلۇشى

A LEGAL FRAMEWORK: ADVOCATING FOR THE UYGHURS

Ottawa, Canada
www.urap.ca

This prepared booklet is a compilation of legal material, research papers and analyses produced wholly or partially by the Uyghur Rights Advocacy Project (URAP) or its legal counsel. The presented materials are in chronological order, from URAP's establishment in May 2020 until July 2023.

Dear Reader,

This booklet is a brief compilation of legal material presented in its entirety or in part by URAP or on its behalf by its legal counsel. The presented resources are a summary of URAP's legal advocacy undertaken in the last three years. Despite the organization's short existence and limited human and financial resources, URAP is proud of the scope and breadth of its achievements in confronting the ongoing Uyghur Genocide, with the help of the finest legal advisors. Some major highlights are the unanimous adoption of the Uyghur Genocide by the Canadian Parliament in February 2021 (Motion M56), the adoption of Motion M62 (the resettlement of 10,000 Uyghurs and other Turkic Muslims in Canada), the declared intention by the Government of Canada to eliminate Uyghur slave labour products from its supply chain (Budget 2023) and the newly proclaimed policy mission by Global Affairs Canada to strategically pivot Indo-Pacific geopolitics away from China.

These successes are due in large part to the active support, dedication and encouragement of legal professionals. These champions of human rights have contributed their time and expertise on a pro bono basis to address and advance the grave violations of the Uyghur Genocide. Accordingly, their efforts are geared towards countering the mechanisms that the Chinese Government employs to detain, assimilate, surveil and torture Uyghurs. Their past, ongoing and future contribution deserves appreciation and gratitude.

We hope you find this booklet useful in your own advocacy campaigns and gain insight from our work in Canada to pursue justice for the Uyghur cause. Our intention is for you to use these presented legal materials as a model to advance legal advocacy in your jurisdiction. Similarly, URAP looks forward to exchanging and learning from your endeavours. We must band together, united in the same goal of preventing the Uyghur Genocide from becoming a norm in the 21st century.

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SEEKING THE “DECLARATORY RELIEF” ON THE UYGHUR GENOCIDE

by Larochelle Avocats and URAP, February 2022

Court File No. :

FEDERAL COURT

BETWEEN :

UYGHUR RIGHTS ADVOCACY PROJECT
[and/or]

Applicants

and

ATTORNEY GENERAL OF CANADA

Respondent

NOTICE OF APPLICATION

TO THE RESPONDENT:

A PROCEEDING HAS BEEN COMMENCED by the Applicants. The relief claimed by the Applicants appears on the following page.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the Applicants. The Applicants requests that this application be heard at 30, McGill Street in Montreal.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must prepare a notice of appearance in Form 305 prescribed by the Federal Courts Rules and serve it on the Applicants solicitor, or where the Applicants are self-represented, on the Applicants, WITHIN 10 DAYS after being served with this notice of application.

Copies of the Federal Courts Rules information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

Montreal, __ January 2022

Issued by : ___________________________

(Registry Officer)

Federal Court of Canada

30, McGill Street

Montreal (Quebec) H2Y 3Z7

TO :

Attorney General of Canada

Quebec Regional Office

Department of Justice Canada

Guy-Favreau Complex

East Tower, 9th Floor

200 René-Lévesque Boulevard West

Montreal (Quebec) H2Z 1X4

APPLICATION

This is an application for judicial review of the Government of Canada's acts and omissions in relation to the ongoing genocide against members of the Uyghur population, in the north west region of China known as Xinjiang. By these acts and omissions, Canada is violating its international obligations, and failing to prevent the ongoing genocide in that region.

The Applicants make an application for:

- A declaration that the crime of genocide is currently being committed against the Uyghur population on the territory of the People's Republic of China ("PRC") since at least 2014;
- A declaration that the Government of Canada is bound by the provisions of the *Convention on the Prevention and Punishment of the Crime of Genocide* ("Genocide Convention");
- A declaration that the Government of Canada knows, or should have known, that the crime of genocide is being committed against the Uyghur population since at least 2014, or alternatively;
- A declaration that since at least 2014, the Governement of Canada knows, or should have known, of the existence of a serious risk that genocide would be committed against the Uyghur population on the territory of the PRC;
- A declaration that the Government of Canada, by its acts and omissions, is in breach of Article I of the Genocide Convention; and
- Any order and any remedy that this Honorable Court considers appropriate in the circumstances.

The grounds for the application are:

Overview

1. The Applicant Uyghur Right Advocacy Project ("URAP") was established in 2019 to promote the rights of the Uyghur population. URAP conducts research and documents the policies of China's government targeting members of the Uyghur population;
2. URAP also shares it researches and resources with parliamentarians, governments, local and global organisations and advocates for the protection of the Uyghur people;
3. URAP has two full-time staff working from its Ottawa office;
4. URAP collaborates with other Uyghur and human rights organizations, in Canada and abroad, to protect Uyghurs' rights, including efforts to combat the use of Uyghur forced labour in global supply chains;

5. URAP works with Human Rights Watch and Amnesty International in its advocacy efforts to have the crimes committed against the Uyghur population, in China and abroad, acknowledged and fought;

6. URAP was also involved in the creation of the Uyghur Tribunal, which is hearing evidence regarding human rights abuses, including allegations of genocide, committed by the Chinese Communist Party in Xinjiang;

7. Witnesses before the Uyghur Tribunal testified on a myriad of human rights violations and crimes, including sexual abuses, mass detentions and forced labour;

8. The President of URAP, Mr. Mehmet Toti, is also a member of the executive committee of the World Uyghur Congress, a global organisation which promotes human rights and freedom of the Uyghur people;

9. Since March 2000, Mr. Toti has been promoting Uyghur human rights, exposing the atrocities being committed against Uyghurs to the Canadian government, including religious persecution, discrimination, random arrest forced labour and other crimes committed as part of the genocidal campaign of PRC against its Uyghur population;

10. Since 2002, Mr. Toti has been the object of multiple incidents of harassement and intimidation for his advocacy on behalf of the Uyghurs;

11. Mr. Toti organised the first ever Uyghur parliamentary event for the Canadian parliament in May 2005;

12. Since 2006, measures have been taken by the PRC authorities against the immediate family of Mr. Toti;

13. After 2006, family members have been denied passports, and cannot leave the PRC since that year;

14. Since 2016, Mr. Toti can no longer have phone calls with his relatives, and has no idea of the whereabouts of his six brothers and sisters in PRC, and does not even know if they are still alive, with his last contact with any member of his family dating back to 23 October 2016;

15. Mr. Toti continues to this date to advocate for the Uyghur people's rights, in particular with members of the Canadian government;

16. In 2020 and 2021, URAP produced an "Issue Guide for the 2021 Federal Election", documenting and assessing the impact of the PRC's authorities policies targeting Uyghurs in the PRC and globally;

17. On 31 May 2021, URAP issued a report concerning the destruction of the Uyghur family, and how the destruction of the family cell is a central feature of the genocide against the Uyghurs;

18. In January 2022, URAP issued a report on the PRC's Transnational Harassment and Intmidation campaign against Uyghur-Canadians;

19. These reports and Issue Guides are part of URAP's ongoing campaign to have the Canadian authorities formally recognize the genocide, and take measures to prevent it, and to some extent punish those who participate in it;

20. Through his efforts to have the genocide against the Uyghur population recognized and his

meetings with members of the Canadian Governement to see the country ramping up its efforts to prevent and stop that genocide, Mr. Toti has seen and heard how the Canadian authorities have ignored his calls, ignored the genocide, and refused to take meaningful efforts to prevent it;

21. X. worked as a nurse between 2009 and 2012 in the obstetrics and gynecology department of an hospital in the Xinjiang area;

22. During that period, he witnessed the high number of abortions being performed on Uyghur women, some of them being 9 months pregnant;

23. After fleeing to Canada, X received in July 2017 messages concerning his family still residing in the PRC, threatening him that his mom would be taken to a concentration camp;

24. Today, X has no idea about the whereabouts of his parents and his brother, he has not been able to contact them since….

25. Because he fears reprisal from the PRC authorities, X seeks the necessary orders to remain anonymous;

26. Aniwa Dilinuer came to Canada on 22 January 2019;

27. Aniwa Dilinuer's brother in law, Zulpikar Tashmuhemmed, was taken away to a camp in April 2017, and has disappeared since;

28. Aniwa Dilinuer's father in law, Enwer Tashmuhemmed, born in 1952, was also taken to a concentration camp in?

29. Aniwa Dilinuer's mother in law, Reyhangal Yusup, born in 1959, went to a medical examination in?? where she was told she had a liver problem, following which she was taken to the hospital and forcefully had her liver removed;

30. Aniwa Dilinuer's mother in law was later taken to a concentration camp;

31. Aniwa Diliner's inlaws are still detained in a concentration camp to this day;

32. There are 2000 (reference) members of the Uyghur population in Canada

33. Each member of the Uyghur population of Canada has either personally and directly suffered from the genocide being committed by the PRC against that group, or has family members who have suffered because of it;

34. The efforts of the PRC to eradicate the group to which applicants Mehmet Toti, Aniwa Diliner and X is to this day causing stress, trauma and post-traumatic stress disorders to members of the Uyghur population of Canada;

35. For many members of the Uyghur population of Canada, these damages are heightened by the harassment and intimidation campaign pursued by the the authorities of the PRC against them, in Canadian territory;

36. The evidence adduced in support of this application demonstrates that the authorities of the PRC are committing genocide against the Uyghur population, but also that it deploys considerable efforts to try to silence those who denounce that genocide;

37. By failing to acknowledge the nature of the crimes committed against the Uyghur population, and by failing to take meaningful measures to prevent that genocide, the Government of Canada is contributing to the harm suffered by members of the Uyghur population;

38. The present application is divided in three parts. The first part (A) lays out the obligations of Canada under the *Convention on the Prevention and Punishment of the Crime of Genocide,* the second part (B) delves into the growing body of publicly, widely available evidence concerning the commission of the crime of Genocide by China against the Uyghur population, and provides gruesome accounts and details of these crimes whereas the third part (C) will look into Canada's actions and omissions in face of this inescapable body of evidence, and posits that by virtue of these actions and omissions, Canada is in breach of its obligation to prevent genocide under Article I of the Genocide Convention;

A. THE *CONVENTION ON THE PREVENTION AND PUNISHEMENT OF THE CRIME OF GENOCIDE*

39. Canada became a Contracting State to the Genocide Convention upon its ratification on 3 September 1952;

40. Following article I of the Genocide Convention, Canada undertakes to prevent and to punish the crime of genocide;

41. According to the International Court of Justice ("ICJ"):

> "The obligation on each contracting State to prevent genocide is both normative and compelling. It is not merged in the duty to punish, nor can it be regarded as simply a component of that duty. It has its own scope, which extends beyond the particular case envisaged in Article VIII, namely reference to the competent organs of the United Nations, for them to take such action as they deem appropriate.";[1]

42. It is clear therefore that Canada has a distinct obligation to prevent genocide under the Genocide Convention. With regards to the timing of that obligation, the ICJ stated as follows: "

> […] a State's obligation to prevent, and the corresponding duty to act, arise at the instant that the State learns of, or should normally have learned of, the existence of a serious risk that genocide will be committed. From that moment onwards, if the State has available to it means likely to have a deterrent effect on those suspected of preparing genocide, or reasonably suspected of harboring specific intent (*dolus specialis*), it is under a duty to make such use of these means as the circumstances permit.";[2]

43. The nature of the obligation to prevent is not one of result, but one of conduct. Under that obligation, a contracting State could not be blamed for having failed to prevent a genocide, but to have failed to take all measures to prevent it. Or, as put by the ICJ,

> "A State does not incur responsibility simply because the desired result is

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(1) *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment I.C.J. Reports 2007, p. 43, para. 427,

(2) *Ibid.*, para. 431.

> not achieved, responsibility is however incurred if the State manifestly failed to take all measures to prevent genocide which were within its power, and which might have contributed to preventing the genocide. In this area the notion of "due diligence", which calls for an assessment *in concreto*, is of criticalimportance.";[3]

44. Assessing whether a contracting State has effectively discharged its obligation to prevent genocide will rest on various parameters, including the capacity to influence the perpetrators of genocide, the geographical distance of the State concerned from the scene of the events, the strengths of political and other links between the authorities of that State and the main actors in the genocide events;[4]

45. Therefore, a contracting State will be in violation of its obligation to prevent genocide where that state fails to adopt and implement suitable measures to prevent genocide from being committed. The duty to prevent contained in the Genocide Convention places contracting States under a positive obligationto do their best to ensure that the prohibited actes listed at Article III of the Genocide Convention do not occur;[5]

46. [The Travaux Préparatoires of the Genocide Convention…]

B. THE ONGOING GENOCIDE AGAINST THE UYGHUR POPULATION

47. Evidence concerning the ongoing genocide against the Uyghur population is rapidly piling up, and the international community is slowly starting to react by denouncing the genocide, and taking the first measures to prevent it ;

48. Crimes such as torture, massive arbitrary detention and other ill-treatment, measures taken to root out religious traditions, cultural practices and local languages, re-education camps and forced labour, sterilization and forced contraception have been well documented and described by countries, world leaders and international organisations alike;

49. The refusal of Canadian authorities, to call these crimes by their name, i.e. genocide, only contributes to their commission, and to the continued repression against the Uyghur population;

50. The failure of the Canadian authorities to formally recognize that genocide is currently being committed by the PRC authorities against the Uyghur population and the failure to adopt other measures at their disposal to prevent the commission of genocide constitute a violations of the Genocide Convention;

a. Canada

51. In Canada, the Standing Committeee on Foreign Affairs and International Development and its Subcommittee on International Human Rights (the "Committee") released a report entitled *The Human Rights Situation of Uyghurs in Xinjiang China,* in March 2021;

52. The Subcommittee on Human Rights began compiling evidence on human rights violations against

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(3) *Ibid.*, para. 430.

(4) *Ibid.*

(5) *Ibid.,* para. 432.

the Uyghur population in 2018, following which it produced a report on 19 December 2018;[6]

53. The 2018 report describes how the PRC authorities are aiming at the complete cultural and linguistic assimilation of the Uyghur people, through criminalization of the Uyghur identity, the creation of a police state in the Xinjiang Uyghur Autonomous Region (XUAR), where surveillance is pervasive and constant, a large scale extrajudicial detention network where political re-education takes place, isolation from the outside world for Uyghurs in XUAR and harassment of Uyghurs overseas, and forcible return of Uyghur and Turkic muslims from abroad;

54. More witnesses were heard on 20 and 21 July 2020, and the Committee issued a new report in March2021;[7]

55. The second chapter of the Subcommittee's March 2021 report offers detailed evidence of the mechanism of suppression against Uyghurs, both inside and outside of the PRC;

56. Concentration camps and their conditions (p.15), sexual violence (p. 16), forced birth control (p. 17), separation of children from their family (p. 18), forced labour (p. 19), state surveillance and its chilling effects (pp. 22-26), and population control (pp. 27-28) are all part of the arsenal through which the PRC authorities are committing genocide against the Uyghur population;

57. The third chapter offers a classification and a qualification of the crimes described in the second chapter, and explains how these crimes do amount to genocide, and crimes against humanity, as these crimes have been defined by the jurisprudence;

58. It concludes that the Uyghurs are protected as an ethnical group under the Genocide Convention, and infers that the crimes committed against this group are accompanied by the underlying intent to destroy, in whole or in part, that group, thus amounting to the commission of the crime of genocide under article II of the Genocide Convention (p. 31);

59. The report also emphasizes states' obligations to take measures to prevent Genocide, commensurate to their ability to act and adopt measures that will have a restraining effect on the perpetrators of genocide (pp. 35-36);

60. Based on the findings of its report, the Committee issued 15 recommendations addressed to the House of Commons, the Government of Canada, Global affairs Canada, Public Safety Canada, Immigration Refugee and Citizenship Canada and the Canadian Ombudsman for Responsible Enterprise (pp. 1-4);

61. The implementation of these recommendations is characterized by the Committee as a "good starting point for the Government of Canada to meet its international obligations" (p.43);

62. Within 120 days of the publication of the Report, in its answer to the Committee's recommendations, the Government of Canada subscribed to recommendations 1 to 4, 9, 10, 13 and 14, noted recommendations 5, 6, 7, 8 and 15, and provided no response to recommendations 11 and 12;[8]

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(6) *What we heard: A summary of testimony on the Human Rights Situation of Uyghurs and other Turkic muslims*

(7) *The Human Rights Situation of Uyghurs in Xinjiang, China*, Report of the Standing Committee on Foreign Affairs and International Development – Subcommittee on International Human Right, March 2021, 43-2.

(8) Réponse du Gouvernement au quatrième rapport du Sous-Comité des Droits internationaux de la Personne du Comité permanent des Affaires étrangères et du Développement, « La situation des droits de la personne du peuple

63. The failure of the Government of Canada to have fully implemented the recommendations of the Subcommittee to this date amounts to a violation of its obligation to prevent Genocide under the Convention;

64.

b. The Uyghur Tribunal

65. The Uyghur Tribunal was launched on 3 September 2020. It heard witnesses between 4-7 June 2021, and 10-13 September 2021;

66. It then issued a summary Judgment on 9 December 2021;[9]

67. The Uyghur Tribunal heard fact witnesses and experts and considered a number of international reports on the issue of the Genocide against the Uyghur population. In its judgment, it canvasses the evidence adduced during the hearing,

68.

c. The Leaked Files

69. Precious information was recently received through thousands of police files, including a database used by the Urumqui City Public Security Bureau, and the wider Xinjiang Public Security Bureau [Judgment para. 52];

d. The United Nations

70. On 21 October 2021, France delivered a joint statement on behalf of 43 countries denouncing human rights abuses in the XUAR.[10] The statement denounced the numerous abuses taking place in the XUAR, echoed earlier similar findings by the Special Procedure mandate holders recalled the Committee on the Elimination of Racial Discrimination ("CERD") recommendations of 2018, and sought access to XUAR to allow independant observers to monitor the situation.

71. The CERD observations of 2018 itself reported acts of the PRC 's authorities. The reports received by the United Nations referred to the detention of large number of ethnic Uyghurs, mass surveillance disproportionnaly targeting Uyghurs, mandatory collection of extensive biometric data of Uyghur residents of XUAR, confiscation of travel documents, and prohibited refoulement of numerous UyghurstothePRC.[11]

e. The European Union

f. France

Ouïghour au Xinjiang, en Chine ».

(9) Uyghur Tribunal Judgment – Summary form- 9 December 2021.

(10) *Cross-Regional Joint Statement on the Human Rights Situation in Xinjiang, 21 October 2021*, available at https://onu.delegfrance.org/we-call-on-china-to-allow-immediate-meaningful-and-unfettered-access-to

(11) Committee on the Elimination of Racial Discrimination, *Concludind Observations on the combined fourteenth to seventeenth periodic reports of China (Including Hong Kong, China and Macao, China*) 30 August 2018, CERD/C/CHN/CO/14-17

g. United Kingdom

h. United States of America (“USA”)

72. The declarations made and measures adopted by the USA provide an interesting benchmark against which Canada’s inaction with regards to the Uyghur genocide can be measured;

73.

i. *The Uyghur Human Rights Policy act of 2020* (17 June 2020)

74. The latest version of the *Uyghur Human Rights Policy Act*[(12)] was passed by the Senate and the House of Representatives on 17 June 2020;

75. The bill reports that more that more than 1,000,000 Uyghur, ethnic Kazakhs, Kyrgiz and members of other Muslim minority groups have been detained in internment camps since 2014, whereas the XUAR total ethnic minority population was approximatively 13,000,000 at the time of PRC’s census of 2010;

76. The bill mentions that those detained in internment camp have been subjected to forced political indoctrination, torture, beatings, food deprivation and denial of religious, cultural and linguistic freedoms and that the authorities of PRC have been threatening and harassing Uyghurs outside of the PRC, and mentions the importance of protecting asylum seekers from the region;

77. The bill also contains provisions stressing the importance of assessing the use and nature of forced labour related to the detention of Turkic Muslims in the XUAR, and the identification of foreign companies and industries benefiting from such labor;

78. The bill contains a number of provisions aiming at investigating the nature and the scale of the gross violations of human rights to which the Uyghur minority is subjected since at least May 2014, when the authorities of the PRC launched the “Strike Hard Against Violent Extremism” the pretext to justify the repression of the Uyghur minority in XUAR, to identify officials of the PRC that should be held accountable for the aforementioned crimes, and accordingly subjected to sanctions;

79. The bill directs the Director of National Intelligence, the Federal Bureau of Investigation and the United States Department of State to report on the Chinese crackdown on Uyghurs in Xinjiang;

ii. The determination of genocide by the Department of State (19 January 2021)

80. On 19 January 2021, the Secretary of State of the USA declared that genocide is being committed by the authorities of the PRC in XUAR against the Uyghur population and other ethnic and religious minority groups;

81.

82.

iii. The Uyghur Forced Labour Prevention Act

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(12) *An Act To condemn gross human rights violations of ethnic Turkic Muslims in Xinjiang, and calling for an end to arbitrary detention, torture and harassment of these communities inside and outside of China*, June 17, 2020, S. 3744, 22 USC 6901.

83. Asd

iii. The Uyghur Forced Labour Disclosure act

84. Sdf

iv. The America competes Act of 2022

85.

i. Other organisations

86. Testimonies were made available to the Office of the Prosecutor of the International Criminal Court.[13] For example, Sayragul Sauytbay, a medical doctor, teacher and school principal from East-Turkestan, describes in her testimony events that occurred between 2014 and 2018. In that video, she details while the growing repression after 2014 forced her family to leave fopr Kazakhstan, how she was cut from the outside world [at 24:34], how the authorities started to arrest important number of people, demolishing mosques and putting everyone under pervasive surveillance from 2016 [at 25:16], how she was herself arrested, interrogated, beaten and forced to make false confession in 2017 [at 26:00], and eventually transferred into a camp with 2500 other inmates and tortured [at 26:28];

87. Another camp survivor, Omir Bekali, provided details about the torture he experimented after being sent to camp, between 26 March 2017 and 24 November 2017 [between 51:05 and 53:17];

C. CANADA'S VIOLATION OF THE DUTY TO PREVENT GENOCIDE UNDER THE GENOCIDE CONVENTION

88. As stated in the *Bosnia and Herzegovina v. Serbia and Montenegro* case before the ICJ, Canada's obligation to prevent the ongoing Genocide in XUAR is commensurate to its ability to act in the matter;

89. This ability to act can be measured against 15 recommendations made by the Committee to Canada to start meeting its international obligations, in its report of March 2021;

Naming the Genocide

90. Recommendation 11 recommends that the House of Commons to adopt a motion to recognize the Genocide against the Uyghur people in XUAR, and recommendation 12 recommends that the Governement of Canada declares that the oppression of Uyghurs by the Government of the PRC amounts to genocide, and consequently that the Government of Canada denounces the Government of PRC for the commission of these crimes;

91. When the House of commons adopted a motion to accuse the Government of China of committing genocide against the Uyghurs and other Turkic people on 22 February, Foreign Affairs minister Marc Garneau abstained "on behalf of the Government of Canada";

92. In its response to the Committee recommendation to denounce the Government of the PRC for the commission of genocide, the Governement of Canada answered that "it will continue to work

(13) "Seeking Justice for the Uyghurs through the EU and International Courts", YouTube video, East Turkistan National Awakening, 11 November 2021, 24:20. Available at: https://www.youtube.com/watch?v=vXMOTy3L8e0

with the international community to establish whether genocide or crimes against humanity are being committed" (p. 11);

93. By its refusal to name as genocide the crimes that are being committed against the Uyghur population, the Governement of Canada is providing the Government of the PRC with a tacit blanket acceptance of these crimes, and possibly facilitates their commission;

94. The first step in preventing genocide is to name it when it appears, wherever it does;

95. The Government of Canada is thus violating the Genocide Convention by refusing to name and denounce to the world and to the authorities of PRC the genocide they are committing against the Uyghur;

Denouncing the genocide

96. Recommendations 1 and 3 aim at denouncing some of the specific crimes that are committed within the PRC's genocidal campaign in XUAR;

97. Unfortunately, according to Canada's response, most of the diplomatic efforts in that regard are happening behind closed doors, in the context of meetings between representatives of both countries;

98. Just as Canada is violating the Genocide Convention by not naming the crime of genocide in its official communications, it is also violating the Convention by failing to publicly denounce some of the most notorious crimes that are committed in the context of that genocide, such as the network of concentration camps and the widespread campaign of arbitrary arrest and detention of Uyghur people;

Investigating the genocide

99. Recommendations 13 and 14 concern the involvement of the United Nations in investigating and monitoring the crimes committed against the Uyghur population;

100. The Government of Canada subscribes to these initiatives, and details a number of initiatives and occasions where the crimes committed in XUAR were raised within the UN, but offers no indication that these efforts yielded results, and crucially gives no information on how these efforts were received by the PRC;

101. The absence of any concrete results following the steps taken at the United Nations may be indicative of the powerlessness of that institution to achieve anything, in view of the veto power of China at the Security Council of the United Nations, which would allow it to block any meaningful and binding resolution before that body;

102. Recommendation 3 suggests that the Governement of Canada coordinates international efforts, generally, within and outside the United Nations, to allow independants observers access to Xinjiang to evaluate the situation of Uyghurs and other Turkic Muslims;

103. While measures before the United Nations are blocked, specific remedies to prevent genocide which would normally be available under Article VIII of the Genocide Convention remain available, meaning that Canada is breaching its obligations to prevent genocide in omitting to work towards the creation of an independent and impartial body tasked with investigating the ongoing genocide

in XUAR;

Protecting the victims of genocide

104. Recommendations 8 to 10 suggest measures concerning victims of the Uyghur genocide;

105. The Committee is suggesting that Canada should do more in protecting the victims of genocide who managed to escape to Canada, and should facilitate the evacuation and protection of the many members of the Uyghur group that are trying to survive the ongoing genocide and escape the PRC;

106. The Committee also raises the specific case of Huseyn Cecil, a Uyghur who was arbitrarily arrested in 2006 in Uzbekistan, and then deported to China where he has been sentenced to life in prison;

107. Canada is violating the Genocide Convention by failing to adopt measures aimed at protecting the members of the targeted group;

Sanctioning the perpetrators

108. Recommendation 15 aims at imposing *Magnitsky* sanctions against designated Xinjiang or CCP officials;

109. Canada has so far targeted 4 individuals for sanctions, whereas the genocide against the Uyghurs has targeted a whole population for many years;

110. Hundreds, thousands of people are involved in the commission of the genocide against the Uyghur population, as documented by the numerous testimonies who have been made publicly available so far;

111. Despite that, Canada has targeted a handful of individuals, thus failing to prevent the genocide by targeting its all of its known perpatrators;

Facilitating the genocide

112. Recommendation 7 concerns the exportation of goods that may be used by the authorities of PRC in the commission of genocide against the Uyghur people;

113. Unfortunately, Canada's response to that recommendation is guided by the fact that it refuses to acknowledge the commission of the crime of genocide in the PRC;

114. Therefore, any existing mechanisms or protocol to ensure that Canadian technology or products are not used in the commission of genocide or other crimes will be distorted by Canada's approach in refusing to acknowledge that the PRC is committing genocide;

115. Canada is therefore violating the Genocide Convention by not effectively and efficiently insuring that Canadian goods and knowledge are not used to commit or in any manner whatsoever facilitate the commission of the crime of genocide;

Prohibiting undue gains from the genocide (Applying existing laws)

116. Recommendations 4 to 6 suggests measures aimed at preventing the sale of merchandises produced through forced labour of the Uyghur population;

117. Despite the difficulties in monitoring supply lines, multiple reports exist documenting the recourse to forced labour in the production of a variety of goods;

118. The Subcommittee heard evidence that products manufactured through forced labour were sold in Canada (p. 20);

119. The possible presence of such products in Canada, in plain contravention of the tariff which prohibits the importation of such goods, reveals a failure of the Canadian Government to implement its own laws, aimed at preventing the recourse to forced labour, to which the Uyghur group has been subjected;

120. The failure to implement its local laws is another violation of Canada's obligation to prevent the genocide, as is the failure to adopt a "reverse-onus" policy for companies importing products from Xinjiang, or other parts of China where forced labour is prominent (p. 20);

121.

This application will be supported by the following material:

- *Convention on the Prevention and Punishement of the Crime of Genocide*

- Affidavit of

- Sayragul Sauytbay and Omir Bekali, "Seeking Justice for the Uyghurs through the EU and International Courts", YouTube video, East Turkistan National Awakening, 11 November 2021, 24:20. Available at: https://www.youtube.com/watch?v=vXMOTy3L8e0

The Applicants requests the Attorney General of Canada to send a certified copy of the following material that is not in the possession of the Applicants but is in the possession of the Attorney General of Canada to the Applicants and to the Registry:

- Unredacted copies of all correspondences exchanged between Canadian and Chinese authorities regarding the genocide or other crimes committed against the Uyghur population;

- Unredacted copies of all human rights memorandums concerning the ongoing genocide against the Uyghur population taking place in China;

- Unredacted copies of all information detained by Global Affairs Canada regarding the genocide against the Uyghur population taking place in China;

- Unredacted copies of any CBSA, Global Affairs, or any other agency report concerning the existence of Uyghur forced labour in China.

Montreal, __ January 2022

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PROPOSED UYGHUR REFUGEE RESETTLEMENT PROGRAM

by Maria Reisdorf for

URAP, May 2022

Proposed Uyghur Refugee Resettlement Program

Prepared by Maria Reisdorf

May 15, 2022

Maria Reisdorf
15 May 2022

Proposed Uyghur Refugee Resettlement Program

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1. INTRODUCTION

Refugees wishing to resettle in Canada must be identified by the United Nations Refugee Agency (UNHCR), a referral partner, or by private sponsors. Refugees cannot apply directly to Canada for resettlement. Refugees can be admitted to Canada through one of three programs:

1. **Government-Assisted Refugees (GAR)**: referred by the UNHCR based on refugees' vulnerability
2. **Privately Sponsored Refugees (PSR)**: referred for resettlement by private sponsors
3. **Visa Office-Referred Refugees (VOR)**: referred by UNHCR or other designated referral agencies

Of the 30,087 refugees resettled in Canada in 2019, 64% arrived through the Private Sponsorship of Refugees (PSR) program, 33% through the Government-Assisted Refugees (GAR) program, and 3% through the Blended Visa Office-Referred (BVOR) program.[1]

Canada's commitment to resettle refugees is explicitly set out in the *IRPA*, stating that an objective of the legislation is "to fulfill Canada's international obligations with respect to refugees and affirm Canada's commitment to international efforts to provide assistance to those in need of resettlement" (s. 3(2)(b)). The *IRPA* also states that it is first and foremost about "saving lives and offering protection to the displaced and persecuted" (s. 3(2)(a)).

In general, refugees must undergo intensive medical and security checks prior to being approved to settle in Canada. Over the years, Canada has made changes, exemptions, and waivers to some of these policies and requirements to respond to specific urgent situations. Canada has also partnered with certain communities to develop programs that split costs of resettlement between the government and sponsoring groups, such as in 2001, where Canada provided 4 months of financial assistance while sponsoring groups provided 8 months of assistance through the Sierra Leone Blended Sponsorship Pilot, and in 2011, where Canada provided 3 months of financial assistance while sponsoring groups provided the remaining 9 months by partnering with the Rainbow Refugee Society to sponsor LGBTQ+ refugees.

This memo discusses the special immigration streams developed by Canada for the urgent situations faced by Ukrainians, Afghanis, Yazidis, and Syrians, to show that the federal government has the legal authority and capability to create a new refugee stream to facilitate the resettlement of Uyghur refugees in Canada.

[1] https://www.unhcr.ca/in-canada/unhcr-role-resettlement/refugee-resettlement-canada/#:~:text=Refugees%20must%20be%20registered%20with,date%20they%20arrive%20in%20Canada.

2. GOVERNMENT-ASSISTED REFUGEES (GAR) PROGRAM

Under the Government-Assisted Refugees (GAR) program, refugees must be referred for resettlement to Canada by the UNHCR or other partners with which Canada has an agreement. These organizations are called 'Referral Partners' or 'Designated Referral Organizations'.

To be referred, refugees must be registered with either the UNHCR or by the foreign state authorities of the country in which the refugee currently resides. Those resettling in Canada under the GAR program receive financial support from the federal government for up to one year.

A. Referral Partner

Government-sponsored refugees must first be referred by either the UNHCR or a referral organization with whom the government has entered into a Memorandum of Understanding. These referral organizations identify refugees that may be suitable for Canada's resettlement program, and provide some sort of pre-screening, allowing these cases to be processed faster. A UNHCR referral to the visa office indicates that the UNHCR has already assessed the case and concluded that resettlement is the best or only option.

To enter into a Memorandum of Understanding to provide refugee referrals, the organization must demonstrate:

- A working knowledge of the provisions of Canada's *Immigration and Refugee Protection Act* relating to protection criteria; and

- An ability abroad to locate and identify Convention refugees and persons in similar circumstances.

The referral organization provides the visa office with a referral application about the refugee and their family. The final decision still lies with a visa officer, who assesses whether the refugee is in need of resettlement, and will conduct medical, criminal and security screenings.

3. PRIVATE SPONSORSHIP OF REFUGEES (PSR) PROGRAM

There are three types of groups in Canada that can privately sponsor refugees from abroad: Sponsorship Agreement Holders (and their Constituent Groups), Groups of Five, and Community Sponsors. Quebec has its own process for sponsoring refugees.

Under the Private Sponsorship of Refugees (PSR) Program, refugees do not need to be referred for resettlement by the UNHCR or a referral partner, but Groups of Five and Community Sponsors may only sponsor those who are already recognized as refugees by the UNHCR or the foreign state authorities. A private sponsorship group can then refer these previously identified refugees to the Canadian government for potential resettlement.

Only Sponsorship Agreement Holders may apply to sponsor those who have not yet been identified as a refugee by the UNHCR or foreign state.

The *IRPA* sets out the legal framework for who is eligible to sponsor. The *IRPA* provides that "[a] Canadian citizen or permanent resident, or a group of Canadian citizens or permanent residents, a corporation incorporated under a law of Canada or of a province or an unincorporated organization or association under federal or provincial law – or any combination of them – may sponsor a foreign national, subject to the regulations" (*IRPA* s. 13).

B. Private Sponsors

I. Groups of Five:

A Group of Five (G5) is five or more Canadian citizens or permanent residents who have arranged to sponsor a refugee living abroad to come to Canada. Each member of the group must be a permanent resident or Canadian citizen, be at least 18 years old, live in the community where the refugee is expected to settle, and commit to support the refugee for the entire length of the sponsorship (usually one year).

G5s must provide a settlement plan and proof the group has appropriate funds to sponsor the refugee for one year.

G5s may only sponsor applicants who have already been recognized as refugees by the UNHCR or by the government of the country the refugee is currently living in. The principal applicant must already have refugee status.

G5s may choose to sponsor a specific refugee (sponsor-referred refugee), or a refugee referred by a visa office (visa-office referred refugee). Visa-office referred refugees have already been determined to be eligible and have already been chosen by an officer abroad. They have already been screened and confirmed that they are eligible for resettlement in Canada.

They may be sponsored through the Blended Visa Office-Referred (BVOR) Program, or through the Visa Office-Referred (VOR) Program. Refugees usually

arrive in Canada between three and six months after the Resettlement Operations Centre in Ottawa (“ROC-O”) approves a sponsorship request.

a. Blended Visa Office-Referred (BVOR) Program:

The Blended Visa Office-Referred (BVOR) Program matches refugees identified by the UNHCR with private sponsors in Canada.

This program provides income support to refugees, and thus reduces the financial burden on private sponsors. It also priorities the most vulnerable refugees through referral organizations to bring refugees with the greatest needs to Canada.

Additionally, it connects sponsors with refugees that have already been screened and interviewed, and thus can travel to Canada sooner.

b. Visa Office-Referred (VOR) Program:

The VOR program is similar to the BVOR program, however, requires sponsors to take on the full costs of sponsorship – there is no income support provided to refugees sponsored under the VOR program.

Groups may request a refugee profile and will be matched with a case. VOR match requests must be in cities where Canada is resettling government-assisted refugees.

II. Community Sponsors:

Community Sponsors are a group, such as a corporation, association, or organization, who sponsor refugees to come to Canada. A community sponsor must be in the community where the refugees are expected to settle and must commit to support the refugees for the entire length of the sponsorship (usually one year).

Just like G5s, **Community Sponsors may only sponsor applicants who have already been recognized as refugees** by the UNHCR or by the government of the country the refugee is currently living in. The principal applicant must already have refugee status (either recognized by the UNHCR or a foreign state).

Also like G5s, Community Sponsors may choose to sponsor a specific refugee (sponsor-referred refugee), or a refugee referred by a visa office (visa-office referred refugee) through the BVOR or VOR Programs.

III. <u>Sponsorship Agreement Holders:</u>

Sponsorship Agreement Holders (SAHs) are organizations that help refugees resettle in Canada and have signed a sponsorship agreement with the government.

SAHs have financial and legal responsibilities toward each refugee sponsored under their agreement. SAHs must oversee all sponsorships under their agreement and be based in or have representatives in the communities where they resettle refugees. They must also provide refugees with what is necessary to live safely and independently in Canada.

> **Constituent Groups:** A SAH can authorize Constituent Groups (CGs) to sponsor under its agreement and provide support to the refugees. Each SAH sets its own criteria for recognizing CGs.

The government only accepts applications to become a SAH during one period each year (latest period was April 30 – July 31, 2021). To become an SAH, organizations must have been incorporated for at least 2 years, be physically locating in Canada, commit to sponsoring more than 5 refugees or families per year, and have adequate resources and support network.

Additionally, the organization's main contact must be at least 18 years of age, be a permanent resident, Canadian citizen, or Registered Indian, live in or have at least 2 representatives in the same community the refugee will live in, and be eligible under the Immigration and Refugee Protection Regulations (IRPR). Organizations must complete mandatory training and submit an application.

Each year, SAHs are allocated a certain number of refugees which they can sponsor. All new SAHs receive a first allocation of spaces for 25 people. SAHs can sponsor refugees that they have identified on their own or who have been referred by an organization.

Under the SAH program, sponsor-referred refugees must meet the definition of a refugee under Canada's refugee and humanitarian resettlement program. **However, they do not have to have been previously identified by a referral organization**. Principal Applicants without refugee status recognized by the UNHCR or a foreign state can only be sponsored by a SAH.

Sponsor-referred refugee applications often take longer than for refugees who have already been referred. SAHs can also sponsor visa office-referred refugees.

Once approved, the International Organization for Migration arranges their travel to Canada.

Under the IRPR, to be referred as a refugee, one must fall into either of the two following categories:

1. **Convention refugee:**

   Any person who by reason of a well-founded fear of persecution because of race, religion, nationality, membership in a particular social group or political opinion:

   - is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of each of those countries, or

   - does not have a country of nationality and is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country; and
   - is outside Canada
   - is seeking resettlement in Canada
   - and does not have a prospect of another durable solution, within a reasonable period of time, that is:
     - cannot return to their country of nationality or habitual residence
     - cannot integrate in the country of refuge or the country of first asylum; and
     - does not have another offer of resettlement from a country other than Canada.

2. **Country of Asylum class:**

   Any person who:

   - who is outside all of their countries of nationality or habitual residence
   - who has been, and continues to be, seriously and personally affected by civil war, armed conflict or massive violation of human rights in each of those countries
   - and does not have a prospect of another durable solution, within a reasonable period of time, that is:
     - cannot return to their countries of nationality or habitual residence
     - cannot integrate in the country of refuge or the country of first asylum; and
     - does not have another offer of resettlement from a country other than Canada

One can also fall under the definition of a Convention refugee or country of asylum class if the refugee themselves has the funds to support themselves and their family in Canada. They will still need to be referred by the UNHCR, a referral organization, or a private sponsorship group.

The final decision on whether someone meets one of these definitions and is eligible for resettlement is made by an officer at an overseas IRCC office. In addition, the refugee must pass medical, security and admissibility checks. Refugees are also assessed on ability to establish themselves successfully in Canada, looking at criteria such as relatives or a sponsor in Canada, language ability, and employment potential. Refugees deemed to be in urgent need of protection or vulnerable circumstances are not assessed on their ability to establish themselves in Canada.

	Government-Sponsored Refugees	**Private-Sponsored Refugees**		
		G5	**Community Sponsors**	**SAH**
Already identified as a refugee by the UNHCR or a foreign state?	Yes	Yes	Yes	No
Referral by UNHCR or referral organization?	Yes	No	No	No

4. ADDITIONAL REFUGEE SPONSORSHIP OPPORTUNITIES

There are additional sponsorship opportunities for refugees with additional needs.

A. Joint Assistance Sponsorship (JAS) program:

The Joint Assistance Sponsorship (JAS) program allows SAHs to partner with IRCC to resettle refugees with special needs, and support them for up to 24 months.

B. Women at Risk (AWR) program:

The Women at Risk (AWR) program applies to women outside the normal protection of a family unit facing gender-based persecution. AWR cases where the refugee is deemed in 'urgent need of protection' or 'vulnerable' are exempt from the regulatory requirement to determine whether they can establish themselves in Canada successfully. However, they must still pass medical, security, and criminal checks.

C. Urgent Protection Program (UPP):

The Urgent Protection Program (UPP) allows Canada to respond to requests by referral organizations to provide rapid resettlement for refugees in urgent need of protection. Members of the Convention Refugees Abroad or Humanitarian Protected Persons Abroad classes who qualify for resettlement and are in need of urgent protection because of immediate threats to life, liberty or physical well-being are resettled on the expedited basis required by their particular circumstances.

The UNHCR or another recognized referral organizations can refer UPP cases to a Canadian visa office abroad, and a decision to resettle the refugee is made within 24-48 hours. Privately sponsored refugees in urgent need of protection must present themselves to the UNHCR for an assessment. Eligible refugees include:

- Those under threat of refoulement, expulsion, prolonged arbitrary detention or extra-judicial execution; or
- Those facing a real, direct threat to their physical safety, which could result in their being killed or subjected to abduction, rape, sexual abuse, violence or torture.

UPP cases are considered government-assisted refugees, and some may be considered JAS cases. Where a sponsor has not been identified prior to their departure but is needed, the refugees will be sent to cities with reception centres where a sponsor is likely to be found. The refugees will remain in the reception centres while waiting to be matched with a private sponsoring group. Once a sponsor is identified, the refugees will be sent to their final destination. If refugees

have family in Canada, efforts are made to ensure they are sent to their family's community.

UPP cases required expedited medical examinations and backgrounds checks. Canada aims to process UPP cases within one week. When it is not possible to complete all requirements within this timeline, a migration office may issue a Temporary Resident Permit, allowing the refugee to travel to Canada prior to completing these statutory checks. The medical and background checks can then be completed in Canada, and the refugee may then apply for permanent residence.

5. SPECIAL STREAMS

A. Ukraine

Canada's most recent special immigration stream is the Canada-Ukraine Authorization for Emergency Travel (CUAET) for Ukrainian nationals and their family members fleeing Russian aggression. The program does not apply to non-Ukrainians who fled the country, and Ukrainian nationals and their family members are not automatically being granted permanent protection in Canada.

The program allows Ukrainian citizens and their families to come to Canada and work or study for three years. As of May 6, 2022, over 71,000 applications have been approved.

While Ukrainian nationals must attend a collection centre to provide their biometrics (fingerprints and photos), Canada has established several additional biometric collections points throughout Europe to facilitate this step. Only those between the ages of 17-61 must provide their biometrics, as opposed to the normal requirement that anyone over the age of 15 provide them. The biometrics requirement is also being waived on a case-by-case basis in urgent situations.

The requirement to undergo a medical check prior to approval has been waived, but some will be asked to undergo a medical check once in Canada. Ukrainians also do not need to be vaccinated against COVID-19.

Additionally, Ukrainians are being provided with foil-less visas to expedite their travel to Canada (meaning they do not need to get a physical visa placed in their passports prior to traveling to Canada), and all processing fees have been waived.

Those without passports can apply for a one-time Temporary Resident Visa to facilitate their travel to Canada.

B. Afghanistan

In August 2021, the Government of Canada commit to assisting Afghan refugees through several special immigration programs, including through a program for Afghans who assisted the Government of Canada and a humanitarian program.

In addition, the Immigration and Refugee Board took measures to expedite all Afghan files, including reviewing refugee claims to see whether they could be accepted without a hearing or referred to a short hearing.

While initially committing to resettling 20,000 vulnerable Afghans threatened by the Taliban and forced to flee Afghanistan, the Canadian government has now committed to resettle 40,000 refugees and vulnerable Afghans in Canada. Between

August 2021 and April 2022, 12,160 people fleeing the situation in Afghanistan had arrived in Canada through all immigration streams.

I. **Special program for Afghans who assisted Canada:**

These Special Immigration Measures are for Afghans, inside or outside Afghanistan, who worked for the Canadian government. The measures are based on two temporary public policies that apply to Afghans who worked with the Canadian government or whose employment "involved a significant and/or enduring relationship with the Government of Canada".

Global Affairs Canada and the Department of National Defence are responsible for identifying those with an 'enduring relationship'. By August 31, 2021, Canada had evacuated approximately 3,700 people from Afghanistan, most of whom were refugees that had supported Canada's mission.

Upon arrival in Canada, Afghans were placed in quarantine and processed for permanent residence as government-assisted refugees. As of April 28, 2022, 5,995 Afghans have arrived in Canada under this program. The program aims to resettle 18,000 Afghans.

Refugees could contact the government of Canada directly to apply for this program by completing an online web form describing their work with the Canadian government. Under this program, Afghans must still provide their biometrics and complete a medical exam prior to arriving in Canada.

II. **Special program for vulnerable Afghans:**

On August 13, 2021, the Canadian government announced, as part of the second phase of their operation, an expanded humanitarian program for Afghan nationals in need of resettlement. To qualify for this program, Afghans must be outside Afghanistan.

The announcement stated that the program would include 8,000 government-assisted refugees and 7,000 privately sponsored refugees.

The Government of Canada is working with international and Canadian partners to facilitate this program. Afghan nationals cannot apply directly for this program.

Refugees were required to register with the UNHCR or government of the country in which they were residing.

Under this program, to be resettled in Canada, refugees still needed to be referred by the UNHCR, the government of the country in which they were currently living or one of the designated organizations working with Canada, or identified by a private sponsor.

Under the GAR program, Canada's referral partners were the UNHCR, Front Line Defenders, and ProtectDefenders.eu.

Additionally, an agreement was made with the United States, who referred up to 5000 refugees from among Afghans they had evacuated. These refugees included persecuted minorities, women human rights advocates, LGBTI individuals and journalists. This agreement facilitated international efforts to support Afghan refugees and accelerated efforts to bring refugees to Canada.

The government also stated that this program will have more flexibility than normal resettlement programs, especially regarding definitions and inclusion of extended families. The special measures also include prioritized processing of applications, waiving of some fees and the requirement to have a passport, and allowing medical exams to be conducted upon arrival in Canada. Otherwise, refugees were still required to meet all eligibility and admissibility requirements.

Those whose processing is not completed may be issued a Temporary Resident Permit (TRP) to facilitate their travel to Canada. For example, those who had not yet completed a medical exam were issued a TRP and allowed to do the full medical exam upon arrival in Canada. Those arriving without a permanent residence visa are being issued 1-year TRPs, with access to the Interim Federal Health Program (IFH).

As of April 28, 2022, 6,165 Afghans have arrived in Canada under this program.

III. Permanent residence for extended family members of former interpreters

The Pathway to permanent residence for extended family members of former interpreters is a temporary policy created for family members of former Afghan interpreters who immigrated to Canada under the 2009 and 2012 public policies. Up to 5000 people will be accepted under this process.

C. Yazidi Refugees and Other Survivors of Daesh

Following the House of Commons unanimously supporting a Conservative motion calling on the government to provide asylum to an unspecified number of Yazidi women and girls, Canada announced a new policy to welcome Yazidi refugees and other survivors of Daesh to Canada in 2017. By the end of 2017, 1200 survivors had been resettled in Canada. Canada received consent from the Iraq and Kurdish regional governments, who supported and cooperated with the resettlement policy.

The Government of Canada then implemented a second policy to help these survivors' family members come to Canada, which ended in December 2020. By January 31, 2021, Canada had welcomed 1356 government-assisted survivors and 94 privately sponsored survivors.[2] The government-assisted refugees were referred to Canada for resettlement by the UNHCR.

After citing community concerns regarding the definition of immediate family member, the definition of refugee, and about family members who had been missing or in captivity, the government announced a third policy in March 2021, to help reunite the families of Yazidis and other survivors of Daesh in Canada who had to leave their families behind. The policy sought to reunite extended family members, expanding the definition of family member to include siblings, grandparents, aunts, uncles, and others.

All COVID-19 related protocols were followed, and all refugees still had to undergo comprehensive security screening, biometric checks and medical exams prior to resettlement under this new policy. These refugees were primarily resettled in four Canadian cities with well-established Yazidi communities to help them adjust and settle into Canadian life.

The government also announced that it would facilitate private sponsorship of Yazidi refugees.

D. Syrians

Between 2015-2016, 46,070 Syrians were resettled in Canada. Approximately 18,000 Syrian refugees were resettled under the PSR program. Notably, for Syrian refugees, IRCC waived the requirement to have documentation that they had previously been determined to be refugees.

[2] https://www.canada.ca/en/immigration-refugees-citizenship/news/2021/03/canada-expands-efforts-to-welcome-more-yazidi-refugees-and-other-survivors-of-daesh.html

6. SUGGESTIONS FOR UYGHUR RESETTLEMENT PROGRAM

To facilitate the resettlement of Uyghur refugees in Canada in an expedited manner, the Government of Canada should:

1. **Set aside a dedicated number of people that will be accepted under this program so that it is not caught by the overall levels plan (**e.g., 15,000 Uyghurs over the next 5 years).

2. **Allow medical screenings to take place in Canada.** Like for Ukrainian nationals, Uyghurs should be able to complete their medical exams once in Canada if necessary.

3. **Allow extensive security screenings to take place in Canada.** Due to the limited number of Uyghurs that would be arriving in Canada under this program, biometrics could be provided at the port of entry, as they are for some work permit applicants. Just as for the Ukraine program, foil-less visas should be provided so that Uyghurs do not have to present themselves to Canadian embassies abroad, allowing them to proceed to Canada more quickly.

4. **Waive the pre-entry COVID-19 vaccination requirements**, as was done for Ukrainians to ensure those who do not have access to vaccines are still eligible to receive protection in Canada.

5. **Expand the definition of family member for sponsorship**, as was done for Yazidis and Afghans, and will be done for Ukrainians.

6. **Allow Uyghurs who do not have refugee documentation or passports to apply for entry to Canada under this program,** as was done for Syrians and Ukrainians respectively, especially as many Uyghurs may not have access to this official documentation.

7. **Issue single-journey travel documents for those without passports**, as is being done for Ukrainians**. Provide UN refugee travel documents to those found to be refugees but without passports.**

8. **Issue temporary work permits in urgent cases**, obviating the need for refugee protection determinations.

9. **Pre-approve community organizations to act as referral partners** to ensure the expedient identification of the most vulnerable Uyghur refugees abroad, as was done for Afghanistan, as opposed to only relying on the UNHCR to identify individuals eligible for sponsorship under the GAR program.

10. **Identify specific Canadian cities for resettlement** with large Uyghur populations and community support to facilitate successful resettlement, as was done for Yazidis.

11. **Contact governments of countries** where Uyghurs face detention, forcible return to China, denial of exit visas or denial of transit visas to negotiate release from detention or granting of necessary transit or exit visas or the cessation of forcible return.

12. **Waive application and processing fees** where applicable, as was done for Afghanis and Ukrainians.

“JUSTICE FOR UYGHURS” – ASSESSING LEGAL FRAMEWORKS AND OPTIONS FOR ACTION

by Sarah Teich, July 2022

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Justice for Uyghurs

Assessing legal frameworks and options for action

Sarah Teich

The author of this document has worked independently and is solely responsible for the views presented here. The opinions are not necessarily those of the Macdonald-Laurier Institute, its Directors or Supporters, or those of the Canadian Security Research Group or the Uyghur Rights Advocacy Project.

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Executive Summary

The Chinese Communist Party (CCP) is committing numerous crimes and abuses against the Uyghurs in Xinjiang (East Turkestan). There is pervasive surveillance; massive numbers of arbitrary detentions; widespread physical and sexual torture; medical crimes; killings; forced labour; and transnational repression. The Uyghur Tribunal and others have found the crimes committed against the Uyghurs amount to genocide pursuant to the 1948 UN Genocide Convention.

These crimes are in breach of China's legal obligations. But the obligations under international law do not pertain solely to China. Every other state that is a party to the UN Genocide Convention has undertaken to prevent and to punish genocide, which means they have not only a moral obligation to take action to combat the Uyghur genocide, but also a legal one.

This paper summarizes the crimes against the Uyghur people and then outlines the viable options available to help address those crimes.

1. Encourage the Office of the Prosecutor at the International Criminal Court (ICC) to open a preliminary examination into the situation. The ICC has specific jurisdictional constraints. However, certain crimes (namely, the crimes against humanity of deportation and persecution) fall within the jurisdiction of the Court.

2. Refer the matter to the International Court of Justice (ICJ). Multiple human rights treaties, including the UN Genocide Convention and the Convention Against Torture, contain provisions that provide that disputes shall be submitted to the ICJ. Any state that has ratified those treaties could bring a dispute against the Chinese government for its violations of the Genocide Convention and/or the Convention Against Torture, and argue that the Chinese reservations under those provisions are invalid. An advisory opinion could also be sought.

3. Engage the various UN human rights mechanisms. Generally, violations of internationally recognized human rights can be brought to the various UN human rights bodies, including human rights treaty bodies, special procedures, and the Human Rights Council. Because China has not ratified any of the relevant optional protocols, none of the human rights treaty bodies are empowered to receive individual complaints about China. However, complaints of human rights breaches may be lodged with the special procedures.

4. Impose targeted sanctions using domestic law. Countries with Magnitsky or Magnitsky-style legislation may impose targeted sanctions on CCP officials responsible for atrocities committed against Uyghurs. In 2021, Canada, the US, the UK, and the European Union (EU) imposed sanctions on four individuals and one entity responsible for atrocities committed against the Uyghurs. Since then, the US has imposed sanctions on dozens of others. Further individuals and entities should be sanctioned.

5. Engage in civil lawsuits in domestic courts. Civil lawsuits against the Chinese government could potentially be filed in domestic courts for injury or damage that occurs domestically due to transnational repression. Further, civil lawsuits may be pursued against companies that use Uyghur forced labour abroad.

6. Criminally prosecute perpetrators using universal jurisdiction laws. The principle of universal jurisdiction can enable perpetrators of atrocity crimes to be prosecuted in domestic criminal courts, virtually anywhere, even if there is no link between the domestic system and the crimes committed. In Canada, this principle is enshrined in the Crimes Against Humanity and War Crimes Act. Other countries have similar legislation. Individuals responsible for atrocity crimes against Uyghurs should be prosecuted if they are physically present in any jurisdiction that allows for such prosecution.

7. Use of ombudsman or other neutral arbiter. In April 2022, a coalition of 28 Canadian non-profit organizations submitted a complaint to the Canadian Ombudsperson for Responsible Enterprise (CORE), asking it to investigate 14 Canadian companies' use of Uyghur forced labour. This use of an ombudsman or other neutral arbiter should be considered in other jurisdictions where such offices exist, following consultations with local lawyers.

8. Pass novel legislation and/or a policy regarding forced labour. The United States recently passed legislation that presumes that goods from Xinjiang (East Turkestan) are made using forced labour, and stops them from entering the country. Other countries, including Canada, could pass similar legislation or institute a similar policy.

9. Pass novel legislation and/or a policy regarding forced organ harvesting. In Canada, the proposed Bill S-223 is a general bill (not Uyghur- or China-specific) that addresses forced organ harvesting. Previous versions of the bill have received unanimous, bipartisan support. Bill S-223 should be prioritized and passed into law. Other countries may pass similar legislation.

10. Pass novel legislation and/or a policy regarding Uyghur refugee resettlement. The CCP is engaged in efforts to have Uyghurs located outside of China detained and deported back to Chinese custody. The principle of non-refoulement obligates countries to ensure they are not indirectly deporting Uyghurs back to China by returning them to these unsafe third countries. Democratic states, including Canada, should go further and take in Uyghur refugees.

Democratic states – and individual people – should not sit by knowing that atrocities are taking place against the Uyghurs in Xinjiang (East Turkestan). There are several options available for holding the Chinese Communist Party to account. This paper has listed many of them and calls for them to be pursued.

Sommaire

Le parti communiste chinois (PCC) multiplie les infractions graves et les exactions à l'encontre des Ouïgours au Xinjiang (Turkestan oriental) : surveillance invasive, détentions arbitraires massives, tortures physiques et sexuelles généralisées, délits de nature médicale, meurtres, travail forcé et répression transnationale. Le Tribunal ouïgour et d'autres instances ont conclu que les crimes commis contre les Ouïgours constituent un génocide au sens de la Convention des Nations Unies pour la prévention et la répression du crime de génocide (1948).

Ces crimes contreviennent aux obligations légales de la Chine. Or, les obligations imposées par le droit international ne visent pas uniquement la Chine. Tous les pays parties à la Convention des Nations Unies sur le génocide se sont engagés à prévenir et à punir ce crime, ce qui signifie qu'ils ont non seulement l'obligation morale, mais aussi l'obligation vjuridique de lutter activement contre le génocide des Ouïgours.

Ce document a pour objet de passer en revue les crimes commis contre les Ouïgours et de présenter les options viables pour lutter contre ces crimes.

1. Inviter le Bureau du Procureur de la Cour pénale internationale (CPI) à ouvrir un examen préliminaire de la situation. La CPI fait face à des contraintes juridictionnelles. Cependant, certains crimes contre l'humanité (à savoir les crimes de déportation et de persécution) relèvent de sa compétence.

2. Renvoyer l'affaire devant la Cour internationale de Justice (CIJ). De nombreux instruments relatifs aux droits de la personne prévoient la soumission des différends à la CIJ, notamment les conventions des Nations Unies sur le génocide et la torture. Tous les États ratificateurs peuvent engager une procédure contre le gouvernement chinois pour ses violations de la Convention sur le génocide, de la Convention contre la torture ou des deux, et faire valoir que les réserves chinoises à l'égard de leurs dispositions sont non valides. Une demande d'avis consultatif peut également être présentée.

3. Enclencher les différents mécanismes relatifs aux droits de la personne des Nations Unies. En règle générale, les violations des normes internationalement reconnues en matière de droits de la personne peuvent faire l'objet de recours auprès de différentes instances des Nations Unies : organes conventionnels, procédures spéciales et Conseil des droits de l'homme. Comme la Chine n'a pas ratifié les protocoles facultatifs s'y rapportant, aucun organe conventionnel n'est habilité à recevoir de communications individuelles visant la Chine. Toutefois, les dépôts de plaintes

pour violations des droits de la personne peuvent être traités dans le cadre des « procédures spéciales ».

4. Imposer des sanctions ciblées en recourant à la législation nationale. Les pays qui ont édicté une loi Magnitsky ou de type Magnitsky peuvent imposer des sanctions ciblées contre les représentants du PCC responsables des atrocités commises contre les Ouïgours. En 2021, le Canada, les États-Unis, le Royaume-Uni et l'Union européenne ont imposé des sanctions à quatre personnes et une entité, qui étaient responsables d'atrocités commises contre les Ouïgours. Depuis lors, les États-Unis ont imposé des sanctions à des dizaines d'autres. Diverses personnes et entités devraient encore être sanctionnées.

5. Engager des poursuites civiles devant les tribunaux nationaux. Des poursuites civiles peuvent être engagées contre le gouvernement chinois devant les tribunaux nationaux pour les blessures ou dommages subis en raison de la répression transnationale en Chine. En outre, des poursuites civiles peuvent être engagées contre les entreprises qui font appel au travail forcé des Ouïgours outre-mer.

6. Traduire en justice les auteurs d'actes criminels en recourant aux lois de compétence universelle. Le principe de la compétence universelle permet de mettre en accusation les auteurs de crimes d'atrocité devant les cours criminelles nationales, pratiquement n'importe où, même s'il n'existe aucun lien entre le système national et les crimes commis. Au Canada, ce principe est inscrit dans la Loi sur les crimes contre l'humanité et les crimes de guerre. D'autres pays ont adopté une loi similaire. Les coupables de crimes d'atrocité contre les Ouïgours doivent faire l'objet d'une mise en accusation lorsqu'ils sont physiquement présents dans un pays ou sur un territoire pouvant y faire droit.

7. Recourir à l'ombudsman ou à un autre arbitre neutre. En avril 2022, une coalition formée de 28 organisations canadiennes sans but lucratif a déposé une plainte auprès de l'ombudsman canadien pour la responsabilité sociale des entreprises pour qu'une enquête soit menée sur l'appel au travail forcé d'Ouïgours dans 14 entreprises canadiennes. Ce recours à un ombudsman ou à un arbitre neutre devrait être envisagé dans les pays et territoires où de telles fonctions existent, après consultation avec des avocats locaux.

8. Adopter une nouvelle loi, une politique ou les deux concernant le travail forcé. Les États-Unis ont récemment adopté une loi qui suppose que les biens en provenance du Xinjiang (Turkestan oriental) sont fabriqués en recourant au travail forcé, et empêchent l'importation de ces biens. D'autres pays, dont le Canada, pourraient adopter une loi ou une politique similaire.

9. Adopter une nouvelle loi, une politique ou les deux concernant le prélèvement forcé d'organes. Au Canada, le projet de loi S-223, qui est d'intérêt public, traite du prélèvement forcé d'organes (non particulier aux Ouïgours ou à la Chine). Les versions précédentes de ce projet de loi ont reçu un soutien unanime et bipartisan. Le projet de loi S-223 devrait être priorisé et adopté. D'autres pays pourraient faire de même.

10. Adopter une nouvelle loi, une politique ou les deux concernant la réinstallation des réfugiés ouïgours. Le PCC s'efforce d'obtenir que les Ouïgours se trouvant à l'extérieur de la Chine soient placés en détention et expulsés vers la Chine. Le principe de non-refoulement oblige les pays à s'assurer qu'ils n'expulsent pas indirectement les Ouïgours vers la Chine en les renvoyant dans les pays tiers peu sûrs. Les États démocratiques, y compris le Canada, devraient aller plus loin et accueillir des réfugiés ouïgours.

Les États démocratiques – et les personnes – ne doivent pas rester les bras croisés devant les atrocités commises contre les Ouïgours au Xinjiang. Plusieurs options permettent de demander des comptes au PCC. Dans le présent document, on en énumère plusieurs et on demande qu'elles soient mises en œuvre.

Introduction

It is well-established that the crimes being committed by the Chinese Communist Party (CCP) against the Uyghurs in Xinjiang (East Turkestan) constitute genocide, pursuant to the 1948 UN Genocide Convention. There is compelling evidence that numerous international crimes and human rights abuses are being committed against the Uyghurs, including surveillance, arbitrary detentions, physical torture, sexual violence, medical crimes, killings, forced labour, transnational repression, and genocide. Beyond the Genocide Convention, these actions are in breach of multiple human rights treaties to which China is a state party, including the Convention Against Torture and the International Covenant on Civil and Political Rights, and these actions are in violation of the fundamental norms that make up customary international law.

Much of the above has been investigated, in great depth, by credible and independent organizations and bodies. The next natural step is to outline the legal and policy options for action. This is what this report aims to accomplish. Now that we are aware of what is happening to the Uyghurs, what can be done about it?

This report examines and outlines options for action both internationally and domestically. Options canvassed include (1) encouraging the Office of the Prosecutor of the International Criminal Court (ICC) to open a preliminary examination; (2) referring the matter to the International Court of Justice (ICJ), either via relevant human rights treaties or an advisory opinion; (3) engaging the various UN human rights mechanisms; (4) imposing targeted sanctions; (5) engaging in civil lawsuits; (6) criminally prosecuting perpetrators using universal jurisdiction laws; (7) use of ombudsman or other neutral arbiter; and (8) passing novel legislation. This report examines all options. All viable options outlined should be pursued.

Part I: Factual background and crimes committed

The Uyghurs are an ethnic group from Asia's interior. They are predominantly Muslim and live in East Turkestan, a region the CCP calls "Xinjiang Autonomous Region." The CCP has ruled the region since 1949. There are significant diaspora communities of Uyghurs across the globe, including in Uzbekistan, Kyrgyzstan, and Kazakhstan. Smaller communities of Uyghurs also live in Afghanistan, Australia, Belgium, Canada, Germany, Norway, Russia, Saudi Arabia, Sweden, the Netherlands, Turkey, and the United States (Amnesty International 2020a).

It is well-established that the CCP is committing atrocity crimes – including genocide – and human rights abuses against the Uyghurs. The crimes and abuses documented include surveillance, arbitrary detentions, physical torture, sexual violence, medical crimes, killings, forced labour, transnational repression, and genocide. Much of the above has been investigated, in great depth, by credible and independent organizations and bodies.

In October 2020, the Canadian Parliamentary Subcommittee on International Human Rights concluded that a genocide is occurring against the Uyghurs (Canada, House of Commons 2020). This conclusion was based on a series of urgent meetings from 2018 to 2020, in which the Subcommittee heard over 12 hours of testimony and reviewed bodies of evidence from academics, civil society, and survivors. The Subcommittee found that there is pervasive state surveillance in Xinjiang (East Turkestan), mass detention and inhumane treatment of Uyghurs, forced labour, population control, and control through repression (Canada, House of Commons 2020).

In March 2021, the Newlines Institute for Strategy and Policy together with the Raoul Wallenberg Centre for Human Rights (RWCHR) came to the same conclusion on the matter of genocide following an in-depth analysis of the evidence in concert with the legal requirements of the 1948 UN Genocide Convention. The report concluded that the evidence supports a finding of genocide against the Uyghurs in breach of each of the five acts prohibited by Article II of the Genocide Convention (Newlines Institute and RWCHR 2021).

Other reports have focused on certain subsets of atrocities. For instance, Adrian Zenz released a report with the Jamestown Foundation in June 2020 in which he comprehensively analysed the CCP's efforts to suppress Uyghur birthrates through forced sterilization and mandatory birth control (Zenz 2020). The Australian Strategic Policy Institute (ASPI) released a report in February 2020 detailing the widespread use of Uyghur forced labour and the complicity of dozens of corporations whose supply chains are implicated including Apple, Nike, and Zara (Xu et al. 2020). Organizations such as Cana-

dians in Support of Refugees in Dire Need and the International Coalition to End Transplant Abuse in China have made great strides in raising awareness and collecting evidence on the prevalence of forced organ harvesting. A BBC investigation published in February 2021 detailed horrific accounts of the systematic sexual abuse occurring in Uyghur detention centres (Hill, Campanale, and Gunter 2021).

Most recently, the Uyghur Tribunal, chaired by Sir Geoffrey Nice QC, found beyond a reasonable doubt that the Chinese government has committed genocide against Uyghurs (Uyghur Tribunal 2021). Specifically, in paragraph 190 of the judgment, the panel wrote:

> the Tribunal is satisfied beyond a reasonable doubt that the PRC [People's Republic of China], by the imposition of measures to prevent births intended to destroy a significant part of the Uyghurs in Xinjiang as such, has committed genocide.

As a result of the depth of existing research, analysis of evidence will be limited in this report so as to not needlessly duplicate work that has already been conducted. Instead, the majority of this paper will focus on next steps – in other words, action items. Now that we know what is happening to the Uyghurs, what can be done about it?

Before delving into options for action, this section will summarize some of the major findings for completeness and to frame the discussion that follows. The following summary is broken down by type of crime or abuse and will cover the following: surveillance, arbitrary detentions, physical torture, sexual violence, medical crimes, killings, forced labour, transnational repression, and genocide.

Surveillance

According to the evidence reviewed and summarized by the Canadian Parliamentary Subcommittee on International Human Rights, the Newlines Institute for Strategy and Policy, RWCHR, and others, there is pervasive surveillance throughout Xinjiang (East Turkestan), to the point where various analysts, journalists, and witnesses have characterized the region as a police state.[1]

Every corner of Xinjiang (East Turkestan) is under surveillance (Canada, House of Commons 2020). The pervasive surveillance measures have been described as a "virtual cage," a means to control the population that complements the mass detention centres.[2] Cell phone activity is monitored, and various technologies are used to track every movement, including using CCTV, artificial intelligence, facial recognition software, and biometric data (Canada, House of Commons 2020). This mass surveillance has been ongoing

for years. As early as 2014, the CCP installed thousands of high-definition cameras throughout Xinjiang (East Turkestan) – in villages, mosques, and critical intersections – connected to high-tech centralized command locations (Newlines Institute and RWCHR 2021). Surveillance has increased in the years since. Between 2016 and 2018, cities spent up to US$46 million building high-tech surveillance systems; one county installed facial recognition technology in every single mosque in its catchment area – almost 1000 of them (Newlines Institute and RWCHR 2021). By 2018, the US State Department described the region as having "unprecedented levels of surveillance" (quoted in Chan 2018).

The Uyghur Tribunal recently found that the pervasiveness of state surveillance essentially transformed Xinjiang (East Turkestan) into a vast, open-air prison (Uyghur Tribunal 2021, para 170). Especially given the pervasiveness of state surveillance, this appears to be a clear breach of Uyghurs' right to privacy, which is protected in international law. Article 12 of the *Universal Declaration of Human Rights* provides that "no one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation." Article 17 of the International Covenant on Civil and Political Rights (ICCPR) similarly provides that "no one shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation." The ICCPR has been ratified by 167 states. China has not ratified the ICCPR, but the right to privacy likely constitutes customary international law, which means it is binding on all states (United Nations, General Assembly 2014).

State surveillance in Xinjiang (East Turkestan) is so pervasive that it might constitute a crime against humanity

Further, the state surveillance in Xinjiang (East Turkestan) is so pervasive that it might constitute a crime against humanity. Article 7(1)(e) of the Rome Statute provides that "imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law" is a crime against humanity, "when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack" (International Criminal Court 2011, article 7). State surveillance per se does not constitute this crime against humanity, but the pervasiveness of the state surveillance in Xinjiang (East Turkestan) arguably rises to the level of constituting a severe deprivation of physical liberty in contravention of Article 7(1)(e) of the Rome Statute. As noted above, the Uyghur Tribunal recently found

that “the pervasive surveillance systems installed throughout the region [renders] it an open-air prison” (Uyghur Tribunal 2021, para 170).

The surveillance then feeds into the CCP’s other crimes, including mass arbitrary detentions, as state surveillance is employed and used to select Uyghurs for detention (described in further detail below) (Newlines Institute and RWCHR 2021). On its face, this use of surveillance to effectively create an open-air prison, which then aids in detentions, creates a severe deprivation of physical liberty, in contravention of Article 7(1)(e). In the alternative, the pervasive state surveillance can and has been considered to potentially constitute a crime against humanity under Article 7(1)(k), which prohibits “other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health” (International Criminal Court 2011). The Uyghur Tribunal judgment stated explicitly that the evidence it received on pervasive surveillance systems “could [be included] within this category [of other inhumane acts]” (Uyghur Tribunal 2021, para 170). The Tribunal then found that it was “satisfied beyond all reasonable doubt that the crime against humanity of other inhumane acts is proved” (Uyghur Tribunal 2021, para 170).

Arbitrary detentions

Uyghurs and other Turkic Muslims are routinely rounded up and detained in camps. The CCP has euphemistically called these camps “re-education camps,” or characterized them as training centres to alleviate poverty and/or eradicate terrorism and extremism. The camps may be more accurately described as concentration camps.

Uyghurs and other Turkic Muslims are detained in these camps indefinitely and arbitrarily. Vague, catch-all categories are employed to justify the detentions, including “born after 1980s,” or being young, being generally untrustworthy, “having complex social ties,” or “generally acting suspiciously” (Newlines Institute and RWCHR 2021). Once detained, detainees have no indication when or if they will be released, making their detentions indefinite (Canada, House of Commons 2020). One Uyghur Canadian, Huseyin Celil, has been detained by the CCP since 2006 (Canada, House of Commons 2020). There is no indication when, if ever, the CCP intends to release him; his wife and children do not even know if Celil is still alive (Press 2021).

The mass arbitrary detentions likely constitute atrocity crimes. As noted, Article 7(1)(e) of the Rome Statute of the ICC enumerates that “imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law” is a crime against humanity, “when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack” (International Criminal Court 2011). These requirements appear to be met. Uyghurs are imprisoned in these camps in

violation of fundamental rules of international law, as they are imprisoned indefinitely and arbitrarily. Further, the mass arbitrary detentions are a segment of the CCP's overall campaign of repression and genocide against the Uyghurs. The Uyghurs are a civilian population, and the mass arbitrary detentions constitutes a widespread and systematic attack against them.

The prohibition against arbitrary detentions is also a feature of customary international law (International Committee of the Red Cross Undated). This means that the prohibition is binding on all states, including China. It is also enshrined in Article 9 of the *Universal Declaration of Human Rights*, which provides that "no one shall be subjected to arbitrary arrest, detention or exile"; in Article 9 of the ICCPR, which provides that "no one shall be subjected to arbitrary arrest or detention"; and in the International Convention on the Protection of All Persons from Enforced Disappearance.

Within the camps, detainees are subject to numerous other abuses, including physical torture, sexual violence, forced sterilization, forced organ harvesting, other killings, and forced labour. There is evidence that some detainees face such ill treatment in the camps that they die as a result (Uyghur Tribunal 2021, para 22). These mass, arbitrary detentions are used to terrorize the Uyghur community, not to eradicate terrorism.

The scale of the detentions is massive. It is impossible to state with certainty how many Uyghurs are arbitrarily detained, but estimates range from several hundreds of thousands to nearly 2 million, which would make this the largest mass detention of a minority community since the Holocaust (Teich 2021; Canada, House of Commons 2020). Radio Free Asia reported that in five camps in the region around Kashgar alone, 120,000 Uyghurs were detained; this was a figure deemed credible by Human Rights Watch (Phillips 2018). By March 2018, this estimate jumped to at least 880,000 Uyghurs (World Uyghur Congress 2017). The estimates have continued to rise. Adrian Zenz estimated in March 2019 that 1.5 million Uyghurs were detained, deriving the figure from satellite images, witness accounts, and public spending on detention facilities (Nebehay 2019). The US State Department estimated that this figure may have risen to more than 2 million (United States, Senate Foreign Relations Committee 2018). The World Uyghur Congress's own estimate is up to 3 million Uyghurs (Nebehay 2018).

Physical torture

Uyghur detainees within the camps are systematically tortured (Newlines Institute and RWCHR 2021; Uyghur Tribunal 2021, para 19). Methods of torture documented include: beating with sticks; confining in containers, up to the neck, in cold water; detaining in small cages wherein standing or lying is made impossible; detaining in "tiger chairs" where one's feet and hands are locked in position for hours, or even days, without any breaks; and pulling off

fingernails (Uyghur Tribunal 2021, para 19). Detainees are also subjected to beatings and whippings, including by metal and electric prods and bare cords (Newlines Institute and RWCHR 2021). Detainees are also placed in shackles, and sometimes immobilized that way for months on end (Uyghur Tribunal 2021, para 19).

As described by the Newlines Institute for Strategy and Policy and RWCHR, in their report T*he Uyghur Genocide: An Examination of China's Breaches of the 1948 Genocide Convention*:

> Eyewitnesses have testified to seeing blood covering the floors and walls, and watching detainees emerge from the interrogation rooms, some without fingernails. Other eyewitnesses have reported being forced to ingest blackout-causing drugs, confined to nail-covered or electrified chairs, subjected to complete strip searches, or hung on walls and beaten with electrified truncheons. (Newlines Institute and RWCHR 2021)

According to eyewitnesses, detainees could be tortured for reasons such as failing to comply with the strict rules and orders of the camps, turning off the bright cell lights that remain permanently turned on, speaking or whispering with each other, smiling, crying, yawning closing their eyes, eating too slowly, or taking too long in the bathroom (Newlines Institute and RWCHR 2021). The camps contain designated interrogation rooms, with no cameras, where brutal methods of torture are consistently used on detainees. The torture can last 24 hours and cause detainees to lose consciousness (Newlines Institute and RWCHR 2021).

Torture is prohibited under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). China is a state party to CAT, which means it is bound by its provisions and is prohibited from engaging in torture. Torture is also prohibited in the Rome Statute of the ICC. China is not a state party to the Rome Statute, but in any case, the prohibition against torture forms part of customary international law, which means it is binding on all states. In fact, the prohibition against torture is a j*us cogens*, or peremptory norm, which means it is binding even on states that are persistent objectors to the norm – this prohibition against torture is an international law norm from which no derogation is permitted.

The Uyghur Tribunal found that there is "a reasonable basis to believe that the [crime] against humanity of … torture" is being committed (Uyghur Tribunal 2021, para 58).

Sexual violence

Sexual torture is pervasive in the camps. As described to BBC News by survivors, there is "an organised system of mass rape, sexual abuse and torture," and "their goal is to destroy everyone" (Hill, Campanale, and Gunter 2021). The Uyghur Tribunal found that detained women and men "have been raped and subjected to extreme sexual violence," and that there is "a reasonable basis to believe that the [crimes] against humanity of … sexual violence" is being committed (Uyghur Tribunal 2021, paras 19 and 58).

The Uyghur Tribunal heard that one woman was "gang raped by policemen in front of an audience of a hundred people all forced to watch," and that female detainees "have had their vaginas and rectums penetrated by electric shock rods and iron bars" and were "raped by men paying to be allowed into the detention centre for the purpose" (Uyghur Tribunal 2021, paras 19 and 58).

Newlines Institute for Strategy and Policy and RWCHR also described accounts of gang rapes by security officials, including some who witnessed police taking young girls into a room to "take turns with them," with some never returning. They also describe accounts of the use of electrified sticks, biting, and a designated table for "doing things" (Newlines Institute and RWCHR 2021). Other witnesses describe that female detainees would be forced to "routinely undress, squat in the nude, and smear ground chili pepper paste on their genitals in the shower while filmed," as well as that they would be forced to "strip naked on a weekly basis as guards hosed them down with 'scalding' and corrosive disinfectant" (Newlines Institute and RWCHR 2021).

This sexual torture is similarly prohibited by the CAT, the Rome Statute, and customary international law, as above.

Medical crimes

The CCP is also committing medical crimes on Uyghurs, including forced sterilization of Uyghur women. The Uyghur Tribunal found that there is "a reasonable basis to believe that the [crime] against humanity of forced sterilization" is being committed, and that it forms part of a "systematic programme of birth control measures" designed to prevent births within the group (Uyghur Tribunal 2021, paras 58 and 149). It thus also grounds their finding of genocide, as will be discussed below.

There is a great deal of evidence demonstrating that the CCP is engaged in a systematic and deliberate program of preventing births within the Uyghur population (Uyghur Tribunal 2021, paras 58 and 149; Newlines Institute and RWCHR 2021). Population control measures include forced sterilization of Uyghur women and forced intrauterine device (IUD) placements (Newlines Institute and RWCHR 2021).

Chinese government documents from 2019 outline a specific plan for a campaign of mass Uyghur female sterilization, and funding for these programs has increased over time (Newlines Institute and RWCHR 2021; Zenz 2020). Examinations of Uyghur women in Turkey revealed that approximately one in four had been sterilized, despite many of them not being aware that they had undergone this procedure (Newlines Institute and RWCHR 2021). Between 2017 and 2018, the percentage of female infertility increased by 124 percent; and state funding in 2019 and 2020 increased such that they had capacity to sterilize hundreds of thousands of women (Newlines Institute and RWCHR 2021; Zenz 2020).

> *Chinese government documents from 2019 outline a specific plan for a campaign of mass Uyghur female sterilization.*

Forced sterilization is used in concert with forced IUD placements. As Dr. Adrian Zenz found, the CCP planned on subjecting a minimum of 80 percent of women of childbearing age in southern Xinjiang (East Turkestan) to sterilization or IUD placements by 2019 (Newlines Institute and RWCHR 2021; Canada, House of Commons 2020). In 2018, 80 percent of all new IUD placements in China occurred in Xinjiang (East Turkestan), despite the region accounting for only 1.8 percent of China's overall population (Newlines Institute and RWCHR 2021; Canada, House of Commons 2020). Xinjiang (East Turkestan) family planning departments reportedly called Uyghur women in for mandatory IUD insertion procedures, and unauthorized removal procedures were punished with fines and terms of imprisonment (Newlines Institute and RWCHR 2021; Zenz 2020). Forced IUD insertion also occurs in detention centres as reportedly a mandatory procedure (Newlines Institute and RWCHR 2021). Witnesses testify also that female detainees are given injections and medications which stop their menstrual cycles (Newlines Institute and Rao RWCHR 2021; Canada, House of Commons 2020).

The impact of these population control measures is marked. From 2015 to 2018, population growth rates in the two largest Uyghur prefectures declined by 84 percent (Newlines Institute and RWCHR 2021; Zenz 2020; Canada, House of Commons 2020). The Xinjiang government has acknowledged the drop in birth rates and expressly attributed it to these governmental family planning policies (Newlines Institute and RWCHR 2021).

Forced sterilization is a crime against humanity as outlined in the Rome Statute. It has also been identified as a violation of the right to be free from torture and other cruel, inhuman, or degrading treatment, as well as a violation of the right to physical integrity, personal liberty and security, respect for honour and dignity, respect for private and family life, freedom of expression, and freedom to raise a family (Reinsberg 2020). Forced sterilization, when coupled with an intent in whole or in part to destroy a population, may also constitute genocide. This intent is demonstrated in this case, as has been found by the Uyghur Tribunal and others, and will be discussed in detail below.

There is evidence of other medical crimes committed against Uyghurs, including forced organ harvesting. Investigative journalist Ethan Gutmann estimates that 25,000 Uyghurs per year may be victims of forced organ harvesting (Gutmann 2020). Forced organ harvesting is not new, and it is not new in China. The China Tribunal found, as part of its March 2020 judgment, that "in China forced organ harvesting from prisoners of conscience has been practised for a substantial period of time, involving a very substantial number of victims" (ChinaTribunal 2020). International human rights lawyer David Matas has identified 10 "tell-tale signs" that Uyghurs may be subject to forced organ harvesting by the CCP, including "the blood testing and organ examination followed by colour coding of some of those tested," "the disappearances of the colour coded," "the organ transplant lanes at Xinjiang [East Turkestan] airports," and "the construction of crematoria near Uyghur detention camps" (Matas 2022).

Killings

As documented by the Newlines Institute for Strategy and Policy and RWCHR, large numbers of Uyghur detainees have died or have been killed while under police custody or while detained in the camps, and there is at least one confirmed report of mass deaths within a camp (Newlines Institute and RWCHR 2021; Hoshur and Lipes 2019).

Prominent Uyghurs have been sentenced to death (Newlines Institute and RWCHR 2021; and Hoja and Lipes 2018). Many Uyghurs have died from the torture and cruel treatment inflicted on them in the camps (Newlines Institute and RWCHR 2021; Uyghur Tribunal 2021, para 22).

The killings of Uyghurs, by any means, clearly violates the human right to life, which is enshrined in Article 3 of the *Universal Declaration of Human Rights*, and in Article 6 of the International Covenant on Civil and Political Rights.

Murder and extermination are also crimes against humanity, as defined by the Rome Statute. Experts have disagreed as to whether the killings of Uyghurs are organized and mass enough to constitute the crime against humanity of murder or extermination, with the Uyghur Tribunal noting that there is in-

sufficient proof of intent at this time (Uyghur Tribunal 2021, para 170). The Uyghur Tribunal further found that there is not enough evidence that the killings are organized or mass enough to ground a finding of genocide on that basis, although they still found that the CCP is committing genocide based on evidence of population control measures (Uyghur Tribunal 2021, paras 177-190). This will be discussed in detail below.

Forced labour

There is significant evidence of Uyghur forced labour. The government is forcibly transferring Uyghur men and women to cotton fields and factories and compelling them to work under horrible conditions (Xu et al. 2020).

Human rights groups have documented this use of Uyghur forced labour across several Chinese provinces. For instance, ASPI found that over 80,000 Uyghurs were transferred out of Xinjiang (East Turkestan) to work in factories across China between 2017 and 2019 (Xu et al. 2020). According to the ASPI, 27 factories across nine Chinese provinces use Uyghur forced labour, and the supply chains of dozens of massive multinational corporations are implicated, including Nike, Zara, and Apple (Xu et al. 2020). ASPI named 82 global brands, and since its report was released, additional companies have been exposed and come under fire for using Uyghur forced labour as well.[3]

Even if global companies disengage from the Chinese factories named in the ASPI report, they may still be complicit in Uyghur forced labour as long as they continue to operate or source supplies from Xinjiang (East Turkestan), because of the systematic use of Uyghur forced labour in the cotton fields. China produces 22 percent of the world's cotton, and 84 percent of that comes from Xinjiang (East Turkestan). The implication is that, if a brand or corporation uses any factory that uses Chinese cotton, Uyghur forced labour may still be implicated at those earlier stages of the company's supply chain.

Other industries also use Uyghur forced labour. According to the Coalition to End Forced Labour in the Uyghur Region, over 17 global industries are implicated in Uyghur forced labour, including the tomato industry, solar, mining, and tech (see End Uyghur Forced Labour 2022).

Between November 2021 and March 2022, 28 Canadian organizations – including Canadians in Support of Refugees in Dire Need, Uyghur Rights Advocacy Project (URAP), Canadian Security Research Group (CSRG), and RWCHR – wrote letters to 14 Canadian companies that are implicated in the use of Uyghur forced labour.[4] Only Inditex (the parent company of Zara) sent a response.

Use of forced or compulsory labour is prohibited in international law, including in customary international law. It is prohibited by the terms of the Forced

Labour Convention of 1930, the Protocol of 2014 to the Forced Labour Convention, and the Abolition of Forced Labour Convention of 1957. It is also prohibited by the Slavery Convention, which entered into force on March 9, 1927. The Forced Labour Convention has 179 states that are parties to it; the Protocol of 2014 to the Forced Labour Convention has 56 states parties; and the Abolition of Forced Labour Convention has 176 states parties. The Slavery Convention has 99 states parties. China is not a state party to any of these conventions, but this volume of states parties suggests that the prohibition of forced labour constitutes customary international law, making it binding on all states, including China. Further, the prohibition against slavery is a *jus cogens* norm.[5]

Further, the states parties to these conventions, which includes Canada and other democracies, have international treaty law obligations thereunder obligating them to take action to suppress or eliminate forced labour, including in their importations. This likely obligates Canada and other states parties to prevent products made using Uyghur forced labour from entering their domestic markets, possibly through the imposition of a presumptive ban. This will be discussed in greater detail in Part III.

Transantional repression

Transnational repression of Uyghurs outside of China is pervasive and on the rise. This phenomenon has been studied and reported upon by numerous human rights organizations.

In an August 2019 report, UHRP documented that the CCP "is implementing a systematic, ambitious, multi-year, well-resourced, relentless and cruel policy to inflict pain and suffering on Uyghurs abroad," and that this includes the intimidation and silencing of Uyghurs now residing in the United States (Uyghur Human Rights Project 2019). Amnesty International interviewed dozens of Uyghurs across 22 countries and found a similar pattern of harassment and repression (Amnesty International 2020b).

In a joint report released in June 2021, the UHRP and the Oxus Society for Central Asian Affairs found that the CCP "has engaged in an unprecedented scale of transnational repression" since 1997, now reaching 28 countries across the globe (Jardine, Lemon, and Hall 2021). The report catalogues the CCP's efforts to have Uyghurs outside of China detained and deported back to Chinese custody. The report found that between 1997 and March 2021, there were 1546 cases of detention and deportation of Uyghurs across 28 countries (Jardine, Lemon, and Hall 2021). The report also found that the CCP's transnational repression of Uyghurs is "consistently on the rise," with a demonstrated correlation between repression abroad and repression at home (Jardine, Lemon, and Hall 2021).

Transnational repression encompasses more than the CCP's efforts to have Uyghurs abroad deported back to China; it also includes intimidation and harassment of Uyghurs living outside of China. A subsequent report by the UHRP and the Oxus Society for Central Asian Affairs found that Uyghurs outside of China have experienced "relentless harassment, intimidation, and coercion," and that the CCP has been engaging in this form of transnational repression since 2002 (Hall and Jardine 2021). The report found that 95.8 percent of Uyghurs surveyed in liberal democracies reported feeling threatened, and 73.5 percent reported having experienced digital threats, risks, or other forms of harassment online (Hall and Jardine 2021).

The Canadian-based URAP found similar patterns. URAP researchers spoke with Uyghurs across Canada and found that "not a single of these community members has escaped the long arm of the Chinese state's campaign of transnational repression, intimidation, harassment and even direct threats" (Uyghur Rights Advocacy Project 2022).

The report noted that while Uyghurs residing in authoritarian states are threatened with detention and deportation, Uyghurs residing in liberal democracies do not face this same threat. Instead, the CCP "targets, or threatens to further target, relatives still residing in China either with imprisonment, or various forms of harassment and intimidation, as a way to coerce and pressure exiled Uyghurs to either return 'home' to China, or at minimum, put an end to their anti-CCP activism" (Uyghur Rights Advocacy Project 2022).

URAP grouped incidents into five general and overlapping categories: intimidation; intelligence, data gathering and informant recruitment; cyberattacks and online trolling; restrictions on movement and travel; and contact with family members being cut off or these family members being threatened (Uyghur Rights Advocacy Project 2022).

Notably, the transnational harassment and cyber-attacks have extended to also target those assisting the Uyghur community, including human rights lawyers (Teich and Tohti 2022; Nuttall 2022; Uyghur Rights Advocacy Project 2022).

Genocide

Per Article II of the Genocide Convention:

> Genocide means 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. (United Nations, General Assembly 1948/1951, article II)

The charge of genocide is a serious one, and it is true that it should not be made lightly (Sachs and Schabas 2021). However, the atrocities occurring in Xinjiang (East Turkestan) have been found by multiple, credible bodies, to constitute genocide. Numerous parliaments, governments, and non-profit organizations have found that these crimes constitute genocide.

In October 2020, following multiple hearings on the subject, the Canadian Subcommittee on International Human Rights was "persuaded that the actions of the Chinese Communist Party constitute genocide as laid out in the Genocide Convention" (Canada, House of Commons 2020).

Reputable Canadian non-profit organizations immediately echoed these statements. In November 2020, the Friends of Simon Wiesenthal Center (FSWC) and RWCHR called on the government of Canada to implement the Subcommittee's recommendations and recognize the atrocities as constituting genocide (Teich 2021). RWCHR Chair and former Minister of Justice Irwin Cotler stated that "the mass atrocities targeting the Uyghurs constitute acts of genocide under the Genocide Convention" and urged "the Canadian Parliament [to] make [this] determination" (Teich 2021).

In March 2021, the Newlines Institute for Strategy and Policy, together with the RWCHR, came to the same conclusion on the matter of genocide, following an in-depth factual and legal analysis (Newlines Institute and RWCHR 2021). The 55-page report concluded that the evidence supports a finding of genocide against the Uyghurs in breach of each of the five acts prohibited by Article II of the Genocide Convention (Newlines Institute and RWCHR 2021).

In May 2021, URAP released a report highlighting the destruction of Uyghur families as a component of the ongoing genocide, documenting long-standing Chinese government policies of Uyghur family separations that is indicative of the intent to destroy a group (Uyghur Rights Advocacy Project 2021). URAP found that this targeting of Uyghur family units dated back to at least 2014 and included not just massive internment and forced displacement of Uyghurs, but also coerced divorce, forced marriage, forced birth control, mass rape of Uyghur men and women, and the assignment of Han Chinese cadres to live in Uyghur households (Uyghur Rights Advocacy Project 2021).

On December 9, 2021, the Uyghur Tribunal, chaired by Sir Geoffrey Nice QC,

released its final judgment in which it found that the People's Republic of China (PRC) had committed genocide against the Uyghurs within the meaning of the Genocide Convention. Specifically, the panel wrote:

> the Tribunal is satisfied beyond a reasonable doubt that the PRC, by the imposition of measures to prevent births intended to destroy a significant part of the Uyghurs in Xinjiang as such, has committed genocide. (Uyghur Tribunal 2021, para 190)

While the evidence and legal argumentation in support of such findings of genocide are strong, arguments to the contrary have tended to lack substance. In an April 2021 opinion piece written by Jeffrey D. Sachs and William Schabas, they argue that the US State Department should retract its declaration that the PRC has committed genocide against Uyghurs, focusing their objections on a perceived lack of evidence provided specifically by the State Department, to demonstrate killings. They go on to write that:

> Technically, genocide can be proven even without evidence that people were killed. But because courts require proof of intent to destroy the group physically, it is hard to make the case in the absence of proof of large-scale killings. (Sachs and Schabas 2021)

This is not persuasive. Article II of the Genocide Convention specifically includes five enumerated acts, only one of which need be present, and only one of which involves killings. Sachs and Schabas acknowledge this and say that there may be evidence of the imposition of measures intended to prevent births within the group – but then swiftly dismiss such evidence by stating that "Xinjiang [still] records a positive overall population growth rate"[6] and by attempting to discredit the Newlines Institute as an institution (due to its purportedly small size and perceived conservativism).

Putting outliers like Sachs and Schabas aside, the main remaining point of disagreement seems to be simply on the multiplicity of the underlying acts under the Genocide Convention. For instance, the Newlines Institute for Strategy and Policy and the RWCHR have concluded that China is committing genocide under all five underlying acts enumerated in Article II of the Genocide Convention (Newlines Institute and RWCHR 2021). In contrast, the Uyghur Tribunal has concluded that the PRC is committing genocide only under Article II (d) – "Imposing measures intended to prevent births within the group" (Uyghur Tribunal 2021, paras 177-190). Ultimately, this point of disagreement

does not matter, since as noted, the Genocide Convention requires only one underlying act to ground a finding of genocide under the convention (United Nations, General Assembly 1948/1951, article II).

As such, multiple independent and credible bodies have come to the legal conclusion, based on comprehensive reviews of the evidence, that China is committing genocide against the Uyghurs in Xinjiang (East Turkestan).

Part II: International avenues of recourse

Having established that numerous atrocities are taking place, the next question becomes, what can be done? There are several avenues of recourse, spanning international and domestic mechanisms. Some are already in process. These include (1) referral to the International Criminal Court (ICC), (2) submission of a case to the International Court of Justice (ICJ), (3) use of United Nations human rights bodies, (4) imposition of targeted sanctions, (5) initiation of civil lawsuits, (6) initiation of criminal prosecutions, (7) use of ombudsman or other neutral arbiter, and (8) passage of novel legislation or policy. These will be discussed in turn in this and the following sections, starting with a discussion of the international mechanisms available.

International criminal court

As noted, Chinese actions with respect to the Uyghur population have been found to constitute genocide. Further, there is substantial evidence of numerous crimes against humanity committed by the CCP against the Uyghurs. This may expose Chinese officials to possible prosecution at the ICC. The major hurdle is jurisdictional, because China is not a state party to the Rome Statute.

The ICC has specific jurisdictional constraints. It can generally only investigate crimes that occur in the territory of a state party, or crimes committed by state party nationals. One exception is that the ICC can receive a specific declaration by a non-state party accepting jurisdiction under Article 12 of the Rome Statute. Another exception is that the UN Security Council can refer a situation to the ICC even if the state in question is not a state party to the Rome Statute.

China is not a state party to the Rome Statute, and it is safe to assume that China would not file a specific declaration granting the Court jurisdiction to investigate. Further, it is safe to assume that China would veto any UN Security Council action attempting to refer the situation to the ICC for investigation. So, in order for the ICC to have jurisdiction, the crimes would have to be

framed as having occurred in the territories of states that are parties to the Rome Statute. This may be possible based on the precedent set by the Myanmar/Bangladesh case.

In the Myanmar/Bangladesh case, the ICC considered whether it had jurisdiction to investigate the alleged deportation of members of the Rohingya people from Myanmar (not a state party) to Bangladesh (a state party). Pre-Trial Chamber I held that it did have jurisdiction over these crimes. The Chamber concluded that "the Court may assert jurisdiction … if at least one element of a crime within the jurisdiction of the Court or part of such a crime is committed on the territory of a State Party of the Statute" (International Criminal Court 2019, para 64). Among other factors, the Chamber considered that "the inherently transboundary nature of the crime of deportation further confirms this interpretation" (International Criminal Court 2019, para 71).

> *Chinese actions with respect to the Uyghur population have been found to constitute genocide.*

Using this precedent, other groups have asked the ICC prosecutor to open an investigation in cases where people are deported from the territory of a state party to a non-state party (or vice versa). For example, the International Tamil Refugee Assistance Network and the Tamil Rights Group recently filed a communication to the prosecutor asking him to use the Myanmar/Bangladesh precedent to open a preliminary examination into crimes against humanity of deportation and persecution committed by Sri Lankan government officials against the Tamils (Steiner 2021).[7]

This precedent has already been used in the Uyghur context to ask the Office of the Prosecutor at the ICC to initiate the investigative process. UK Barrister Rodney Dixon QC submitted a communication based on the forcible transfer of Uyghurs from Cambodia and Tajikistan (state parties to the Rome Statute) back to China. The communication asserted "that genocide and crimes against humanity … were committed by Chinese officials against Uyghurs and members of other Turkic minorities in the context of their detention in mass internment camps in China" and that "the crimes occurred in part on the territories of ICC States Parties Cambodia and Tajikistan as some of the victims were arrested (or 'abducted') there and deported to China" (International Criminal Court 2020). As noted, the Pre-Trial Chamber I previously held that the Court may assert jurisdiction if at least part of the crime was committed on the territory of a state that is a party to the Rome Statute. This may be the

case if, as Dixon has submitted, Uyghurs were forcibly transferred from the territory of Cambodia and/or Tajikistan, back to China.

In its December 2020 *Report on Preliminary Examination Activities*, the Office of the Prosecutor responded to Dixon's communication and stated that, based on the evidence received until that point, the conduct alleged did not appear to amount to the crime against humanity of deportation (International Criminal Court 2020). The report specified that the crime against humanity of deportation "is associated with a particular protected legal interest and purposive element … the legal interest [is] the right of individuals to live in the State in which they are lawfully present" and that "from the information available, it [did] not appear that the Chinese officials involved in these forcible repatriation fulfilled the required elements described" (International Criminal Court 2020, 19-20).

The prosecutor's office had, based on this, determined that there was no basis to proceed with an investigation. However, since this decision was issued, Dixon communicated to the prosecutor's office a request for reconsideration based on new facts or evidence (International Criminal Court 2020, 20). Presumably, his team is now collecting and submitting evidence relating to this legal interest and purposive element. Of course, even if such evidence is presented, the prosecutor's office could still prove unwilling to grant a formal investigation for discretionary reasons. However, there may still be a worthwhile role for lawyers and non-profit organizations to play to assist in these legal efforts and submit further evidence and legal argumentation to the prosecutor's office.

There may also be a role for states to play. Lawyers and non-profit organizations can, and they have, request that the prosecutor open a preliminary examination on his own initiative into the situation. However, if a state formally refers the situation to ICC, the process becomes expedited.[8]

International Court of Justice

The ICJ is the principal judicial organ of the United Nations and is located in The Hague. It was established by the UN Charter in 1945 and began working in 1946. Its role is to settle international legal disputes between states. Generally, the ICJ cannot make a binding ruling unless both states to the dispute agree that the ICJ shall settle the dispute. However, states do not always have to provide consent on a case-by-case basis; states may consent to have disputes adjudicated by the ICJ in advance, for example by signing onto a treaty that says so.

Relying on human rights treaties to get a case to the ICJ

Both the UN Genocide Convention and the Convention Against Torture contain provisions that provide that disputes shall be submitted to the ICJ. Therefore, by ratifying those treaties, states parties essentially consent in advance to the ICJ's jurisdiction over disputes arising.

Article 30, paragraph 1 of the Convention Against Torture provides that:

> Any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

Similarly, Article IX of the Genocide Convention provides that:

> Disputes between the Contracting Parties relating to the interpretation, application or fulfilment of the present Convention, including those relating to the responsibility of a State for genocide or for any of the other acts enumerated in article III, shall be submitted to the International Court of Justice at the request of any of the parties to the dispute.

Based on these articles, a state party to either treaty may submit a dispute to the ICJ. Regarding the Convention Against Torture, of course, a state party would have to first attempt to negotiate, and then submit the case to arbitration – consistent with the wording of Article 30 of the Convention Against Torture.

The ICJ recently reaffirmed in its order on provisional measures in the case of *Gambia v. Myanmar* (relying on *Belgium v. Senegal*) that a state need not be "specially affected" to bring a case against another state party for breach of the Genocide Convention (Pillai 2020). The court concluded:

> It follows that any State party to the Genocide Convention, and not only a specially affected State, may invoke the responsibility of another State party with a view to ascertaining the alleged failure… and to bring that failure to an end. (Pillai 2020)

Therefore, a state party such as Canada that may not have been "specially affected" should not be barred from bringing a case to the ICJ for this reason. If the state is a party to the Genocide Convention, it can bring the case before the ICJ (Global Centre for the Responsibility to Protect 2020).[9]

China is a state party to both the Genocide Convention and the Convention Against Torture. However, China has made reservations under both those treaties, declaring that it is not bound by Article IX, and paragraph 1 of Article 30, respectively.

Under international law, a state may sign and ratify a treaty, but make certain reservations regarding articles to which it does not consent to be bound. As described by the Office of the High Commissioner for Human Rights (OHCHR):

> A reservation is a statement made by a State by which it purports to exclude or alter the legal effect of certain provisions of a treaty in their application to that State. A reservation may enable a State to participate in a multilateral treaty that it would otherwise be unable or unwilling to participate in. (OHCHC Undated a)

However, as the OHCHR website goes on to state, "reservations cannot be contrary to the object and purpose of the treaty" (OHCHC Undated a). Therefore, a state party may bring a dispute against the Chinese government for its violations of the Genocide Convention and/or the Convention Against Torture, and ask the ICJ to conclude that the Chinese government's reservation(s) should be considered invalid because they are contrary to the object and purpose of the treaty.

The ICJ examined this question in the context of the Genocide Convention in the case of Rwanda's reservation. The Democratic Republic of the Congo (DRC) contended "that Rwanda's reservation was invalid because it sought to prevent the Court from safeguarding peremptory norms" (International Court of Justice 2006). Although the Court in that case disagreed with the DRC and held that the reservation was not incompatible with the object and purpose of the Genocide Convention (International Court of Justice 2006, paras 66-70), Judge Koroma provided a strong dissenting opinion. Judge Koroma held that Rwanda's Article IX reservation was contrary to the object and purpose of the Genocide Convention, which is "the prevention and punishment of the crime of genocide, and this encompasses holding a State responsible whenever it is found to be in breach of its obligations under the Convention" (Koroma 2006, para 12).

Importantly, there is no concept of stare decisis in international law (i.e., relying on precedent set by previous cases or decisions). The Statute of the International Court of Justice, at Article 59, explicitly provides that a "decision of the Court has no binding force except between the parties and in respect of that particular case." This means that if asked again, in a different situation, the ICJ would be free to decide differently. The ICJ would be free to decide that China's Article IX reservation under the Genocide Convention (and/or China's Article 30 reservation under the Convention Against Torture) is invalid.

Asking the ICJ for an advisory opinion

Another option is to seek an advisory opinion from the ICJ. The ICJ is entitled to provide advisory opinions on legal questions referred to it by authorized United Nations organs and agencies. An advisory opinion is not binding, but it does often carry persuasive weight. For example, following the ICJ's 2004 advisory opinion, Legal Consequences of the Construction of a Wall in Occupied Palestinian Territory, referred to it by the UN General Assembly, Israeli courts overseeing a wall's construction directed Israel's government to adjust its direction due to constitutionality concerns. Although Israel did not accept the ICJ's opinion, it still changed course.

Seeking an advisory opinion from the ICJ on Chinese culpability for atrocities committed against the Uyghurs may push the CCP to change course in order to have a favourable impact on public opinion. Of course, the major hurdle to seeking an advisory opinion would be to get the necessary votes in the UN General Assembly or other authorized UN organ or agency. This may prove difficult with China's influence at the United Nations.

UN Human Rights Bodies

Violations of internationally recognized human rights can be brought to the various UN human rights bodies. These include the human rights treaty bodies; the special procedures, including special rapporteurs and working groups; and the United Nations Human Rights Council (UNHRC).

Human Rights Treaty Bodies

Human rights treaty bodies are tasked with monitoring states parties' compliance with international human rights treaties. Each human rights treaty is monitored by its own human rights treaty body. For example, the Committee against Torture monitors states parties' implementation and compliance with the Convention Against Torture; the Human Rights Committee monitors states parties' implementation and compliance with the International Covenant on Civil and Political Rights; and the Committee on the Rights of the Child monitors states parties' implementation and compliance with the Convention on the Rights of the Child. Human rights treaty bodies may investigate Chinese compliance with treaties to which China has acceded, and publish periodic reports.

Although treaty bodies are generally empowered to engage in country reviews and write periodic reports – and they have done so concerning China[10] – this is somewhat frustrated by the fact that there is no human rights treaty body that is empowered to receive individual complaints about China. For the treaty bodies monitoring the Convention Against Torture, the International Convention for the Protection of All Persons from Enforced Disappearance, and the International Convention on the Elimination of All Forms of Racial

Discrimination, China would have had to make a specific declaration recognizing the competence of the treaty body to receive and consider complaints. China has not done that. For the treaty bodies monitoring the International Covenant on Civil and Political Rights, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of Persons with Disabilities, and the Convention on the Rights of the Child, China would have had to ratify an Optional Protocol. Again, China has not done that. This also limits civil society engagement with human rights treaty bodies on this issue, as there is no way of lodging an individual complaint with any of the human rights treaty bodies regarding Chinese breaches of human rights treaties.

Special Procedures

Complaints of human rights breaches may also be lodged with the "special procedures" of the Human Rights Council. The special procedures are international human rights experts with mandates to advise and report on human rights from either a thematic or a country-specific perspective. They can act on individual cases of reported violations, conduct annual studies, undertake country visits, and engage in advocacy. Any individual or group can submit information to special procedures.[11]

Special procedures are either special rapporteurs or working groups. Several special procedures have mandates that may be relevant, including:

- the Working Group on Arbitrary Detention;
- the Working Group on the issue of human rights and transnational corporations and other business enterprises;
- the Special Rapporteur in the field of cultural rights;
- the Working Group on Enforced or Involuntary Disappearances;
- the Special Rapporteur on extrajudicial, summary, or arbitrary executions;
- the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression;
- the Special Rapporteur on the rights to freedom of peaceful assembly and of association;
- the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health;
- the Special Rapporteur on the situation of human rights defenders;

- the Special Rapporteur on the rights of Indigenous peoples;
- the Special Rapporteur on the right to privacy;
- the Special Rapporteur on freedom of religion or belief;
- the Special Rapporteur on contemporary forms of slavery, including its causes and its consequences;
- the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism;
- the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment;
- the Special Rapporteur on violence against women, its causes and consequences; and
- the Working Group on discrimination against women and girls.

All these special procedures can be engaged by individuals, groups, or concerned states. One that may be particularly important to engage is the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism. The Chinese government justifies its oppression of the Uyghurs by claiming that, among other things, it is countering terrorism. Engagement by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, and particularly a country visit to Xinjiang (East Turkestan) by that Special Rapporteur, would be valuable.

Human rights council

Complaints of human rights violations can be lodged with UNHRC. Any individual, group, or non-governmental organization can submit a complaint to UNHRC, against any state member of the United Nations. There are seven criteria for admissibility:

- The complaint must be in writing, in one of the six UN official languages (English, French, Arabic, Chinese, Russian, or Spanish);
- It must contain a description of the relevant facts, including the names of the alleged victims, dates, and location, and contain as much detail as possible without exceeding 15 pages;
- It must not be manifestly politically motivated;

- It must not be exclusively based on reports disseminated by mass media;
- It is not already being dealt with by a special procedure, a treaty body, or other UN or similar regional complaints procedure in the field of human rights;
- Domestic remedies must have been exhausted, unless it appears that such remedies would be ineffective or unreasonably prolonged; and
- It must not use language that is abusive or insulting.[12]

Beyond receiving complaints, UNHRC can pass a condemnatory resolution or establish a commission of inquiry. In addition, any country can deliver an oral statement to UNHRC, whether that country is a member of the council or not.

The difficulty is that UNHRC may only be an option in theory. China's position on UNHRC may, in effect, preclude action on that front. UNHRC has long been populated by some of the world's worst human rights violators; the list now includes China, Eritrea, Sudan, Cuba, and Pakistan (see United Nations, Human Rights Council 2022). This reality has, unfortunately, served to undermine the credibility of UNHRC and draw the ire of many civil society leaders.[13] However, it is noteworthy that the UN General Assembly recently voted to suspend Russia from UNHRC in response to its invasion of Ukraine (United Nations 2022). If China were to be similarly suspended, lodging a human rights violation complaint against it may be open not just in theory but in practice.

Part III: Domestic avenues of recourse

Targeted actions

Another option available to many domestic governments, including Canada, is to impose targeted sanctions on Chinese individuals and entities complicit in atrocities committed against Uyghurs. In Canada, the relevant pieces of legislation are the *Justice for Victims of Corrupt Foreign Officials Act* (Sergei Magnitsky Law) (popularly called the Magnitsky Act) and the *Special Economic Measures Act* (SEMA), which was amended with the passage of the *Magnitsky Act* in 2017.

Similar acts exist in many countries around the world. Magnitsky acts generally allow for the imposition of sanctions on officials of foreign states who have engaged in significant corruption or gross violations of internationally

recognized human rights. Sanctions can include property-blocking sanctions and visa restrictions, so that individuals sanctioned under the law may have their assets frozen and visas (if any) revoked. In Canada, there is also new proposed legislation that would permit Canada to sell off assets of these perpetrators and use proceeds to compensate victims (Chase 2022).[14]

Magnitsky acts exist in Canada, the United States, the United Kingdom, the European Union, Estonia, Lithuania, Latvia, Gibraltar, Jersey, and Kosovo. Other countries including Australia are contemplating passing a Magnitsky act. Even in countries without a Magnitsky act, they may have other legislation that permits the imposition of similar sanctions on CCP officials.

Domestic governments like Canada (and any other government with a *Magnitsky Act* or a Magnitsky-style act) can impose targeted sanctions on Chinese individuals and entities complicit in atrocities committed against Uyghurs.

The Magnitsky Act (Canada)

The *Magnitsky Act* in Canada allows for the imposition of sanctions on officials of foreign states who have engaged in significant corruption or gross violations of internationally recognized human rights. Specifically, the following foreign nationals may be subjected to sanctions:

- Foreign nationals responsible for or complicit in extrajudicial killings, torture, or other gross violations of internationally recognized human rights committed against individuals in any foreign state who seek (i) to expose illegal activity carried out by foreign public officials, or (ii) to obtain, exercise, defend, or promote internationally recognized human rights and freedoms;

- Foreign nationals acting as agent of or on behalf of a foreign state in a matter relating to an activity described in point [a] above;

- Foreign public officials or associates of such officials responsible for or complicit in ordering, controlling, or otherwise directing, acts of significant corruption, including bribery, expropriation of private or public assets for personal gain, corruption related to government contracts or the extraction of natural resources, or the transfer of the proceeds of corruption to foreign jurisdictions; and

- Foreign nationals materially assisting, sponsoring, or providing financial, material or technological support for or goods or services in support of an activity described in point [c] above.

The *Magnitsky Act* permits the government to impose property-blocking and travel sanctions on listed individuals. Specifically, the governor in council may

"by order, cause to be seized, frozen or sequestrated… any of the foreign national's property situated in Canada" (Sergei Magnitsky Law 2017, 4). In addition, the governor in council may prohibit "any person in Canada [and] Canadians outside Canada" from:

- Dealing, directly or indirectly, in any property, wherever situated, of the listed foreign national;
- Entering into or facilitating, directly or indirectly, any financial transaction related to a dealing described above;
- Providing or acquiring financial or other related services to, for the benefit of, or on the direction or order of the listed foreign national; and
- Making available any property, wherever situated, to the listed foreign national or to a person acting on behalf of the listed foreign national.

The *Magnitsky Act* also amended the *Immigration and Refugee Protection Act* (IRPA) to designate these foreign nationals inadmissible to Canada on grounds of human or international rights violations. To date, the Magnitsky Act in Canada has not been used to sanction Chinese individuals complicit in the atrocities committed against the Uyghurs. However, Canada has used SEMA, another related sanctions regime, to do so.

The Special Economic Measures Act (Canada)

Pursuant to section 4 (1.1) (c) of SEMA, sanctions may be imposed if "gross and systematic human rights violations have been committed in a foreign state."[15] If this circumstance applies, the governor in council may order that property situated in Canada be seized, frozen, or sequestrated, if such property belongs to the foreign state, any person in that state, or a national of that state who does not ordinarily reside in Canada. The governor in council may also restrict or prohibit dealing with the foreign state in a variety of ways, including restricting or prohibiting Canadians (or persons in Canada) from dealing in property held by nationals of that foreign state.

SEMA is wider than the *Magnitsky Act* in several respects, including in that legal entities may also be sanctioned, whereas the *Magnitsky Act* may only be used to list and sanction individuals.[16]

Existing targeted sanctions levied

In March 2021, Canada, the EU, the UK, and the US all imposed sanctions on four individuals and one entity responsible for atrocities committed against the Uyghurs.[17] The listed individuals were Zhu Hailun, Wang Junzheng, Wang Mingshan, and Chen Mingguo. The listed entity was Xinjiang Production and Construction Corps (XPCC) Public Security Bureau.

The list has been enlarged in the US, and a total of 107 sanctions have been imposed, with 57 Chinese companies and 33 Chinese officials and government agencies sanctioned by the US government (Uyghur Human Rights Project 2022). More officials and entities should be sanctioned everywhere, particularly in Canada, the EU, and the UK.

While it is commendable that Canada has used SEMA to impose sanctions in response to the atrocities committed against Uyghurs, and that the EU and the UK have similarly imposed sanctions, listing four individuals and one entity is not sufficient. Other individuals and entities for whom there is evidence of complicity in the atrocities committed against Uyghurs should be listed and sanctioned. To assist in these efforts, civil society, and in particular Uyghur non-profit organizations, should be consulted.

For example, in January 2020, URAP submitted 10 names of CCP officials to the sanctions division of Global Affairs Canada. Only one of those 10 names was subsequently sanctioned by Canada, the EU, and the UK.

The 10 names URAP provided are listed immediately below. As noted, Canada, the EU, and the UK have yet to sanction nine of the 10.

1. **Hu Lianhe, Deputy Head, Secretariat for Coordinating Xinjiang Work, Central Political and Legal Affairs Committee of the CCP**

   Hu has been described by the Jamestown Foundation as "arguably the most important Party official overseeing day-to-day Xinjiang work in Beijing" (Leibold 2018). Hu was the CCP official to mount China's first international defence of the security campaign in Xinjiang (East Turkestan) at the United Nations (Shepherd 2019). The United States sanctioned Hu in December 2021 (United States, Embassy in Chile 2021).

2. **Shohret Zakir, Chairman of Xinjiang Uyghur Autonomous Region (XUAR) (2018-2021)**

   During Shohret's tenure as Chairman (United States, Department of the Treasury 2021a), numerous crimes were committed against the Uyghurs, as described in detail above. Among other things, millions of Uyghurs have been arbitrarily detained. On July 9, 2020, the US sanctioned the Xinjiang Public Security Bureau (XPSB), a constituent department of the XUAR, for its role in the serious human rights abuses occurring in Xinjiang (East Turkestan) since at least 2016. Shohret is sanctioned by the US, pursuant to E.O. 13818, and has been designated as a foreign person who is or has been a leader or official of an entity, including any government entity, that has engaged in, or whose members have engaged in, serious

human rights abuse relating to their tenure. The United States sanctioned Shohret in December 2021 (United States, Department of the Treasury 2021a).

3. **Chen Quanguo, Former Party Secretary of XUAR, Political Commissar of the Xinjiang Production and Construction Corps (XPCC), and member of the 19th Politburo of the CCP**

After his appointment as Party Secretary of XUAR in August 2016, Chen oversaw the implementation of a comprehensive surveillance, mass detention, and indoctrination program targeting Uyghurs and other Turkic Muslims. Chen also oversaw the construction of a network of internment camps. Another measure Chen introduced was the establishment of state boarding schools to which Uyghur and other Turkic children were sent. Prior to his appointment to Party Secretary of XUAR, Chen was the Party Secretary of the Tibet Autonomous Region. In that role, Chen focused on "stability maintenance" through the establishment of an extensive security architecture enabling surveillance, control, and coercion. Chen led repressive initiatives including the blocking of external media sources, re-education programs, and promoting intermarriage. In August 2016, due to his perceived successes in the Tibet Autonomous Region, Chen was appointed to the position of Party Secretary of XUAR. The United States sanctioned Chen in July 2020 (United States, Department of the Treasury 2020a).

4. **Zhu Hailun, Former Secretary of the Political and Legal Affairs Committee of the XUAR**

The United States sanctioned Zhu in July 2020 (United States, Department of the Treasury 2020a). Canada, the UK, and the EU subsequently sanctioned him in March 2021. (In Canada, this was pursuant to Special Economic Measures (People's Republic of China) Regulations, SOR/2021-49.)

5. **Sun Jinlong, Former Political Commissar of XPCC**

As former Political Commissar of the Xinjiang Production and Construction Corps (XPCC), Sun had responsibility for its activities, including the organization's involvement in crimes against Uyghurs. The XPCC is directly involved in implementing surveillance systems, systems of mass detention, and Uyghur forced labour in Xinjiang (East Turkestan). The United States sanctioned Sun in July 2020 (United States, Department of the Treasury 2020b).

6. **Peng Jiarui, Deputy Party Secretary and Commander, XPCC**

   The XPCC is a state-owned organisation that exercises administrative authority and controls economic activities in the Uyghur Region. The XPCC is involved in the atrocities committed against the Uyghurs, including in the implementation of a large-scale surveillance, detention, and indoctrination program targeting Uyghurs and other Turkic Muslims. The Public Security Bureau of the XPCC has been sanctioned by Canada, the US, the EU, and the UK. As commander of the XPCC, Peng directs the organization in these activities. The United States sanctioned Peng in July 2020 (United States, Department of the Treasury 2020b).

7. **Shawket Imin, Head, United Front Department, XPCC**

   The XPCC is involved in the atrocities committed against the Uyghurs, including in surveillance, detention, and indoctrination. Shawket is head of the United Front Department of the XPCC. The United States sanctioned him in July 2020 (Talley 2020).

8. **Zhou Jianguo, XUAR armed police commander**

9. **Guan Yanmi, former commander of the XUAR armed police**

10. **Yang Huan Ning, Executive Vice Minister of Security**

Other individuals that should be considered for targeted sanctions are Erken Tuniyaz and Huo Liujun. Erken Tuniyaz is currently the acting Chairman of the XUAR and had previously served as Vice Chairman since 2008. The United States has already sanctioned Erken; he is designated pursuant to E.O. 13818 for being a foreign person who is or has been a leader or official of an entity, including any government entity, that has engaged in, or whose members have engaged in, serious human rights abuses relating to their tenure (United States, Department of the Treasury 2021b).

Huo Liujun is the former Party Secretary of the Xinjiang Public Security Bureau (XPSB). He led the XPSB from at least March 2017 to 2018. Under his command, the XPSB deployed an AI-assisted computer system called the Integrated Joint Operations Platform (IJOP), which created biometric records for millions of Uyghurs in Xinjiang (East Turkestan). The XPSB, through the IJOP, uses digital surveillance to track Uyghurs' movements and activities. IJOP then uses this data to determine which persons could be potential threats, and then some of these individuals are detained and sent to detention camps, where they may be held indefinitely and without charges or trial. The United States has already sanctioned Huo (United States, Department of the Treasury 2020a).

Civil lawsuits

Civil lawsuits against the Chinese government

Domestic courts in Canada and other common-law countries may provide other avenues through which to hold to account those responsible for atrocities committed against Uyghurs. The first possibility to explore is possible civil lawsuits against the Chinese government. Civil lawsuits have the potential of providing real redress to victims. For example, in Canada, if a Canadian court finds that the Chinese government is liable and must provide compensation for damages caused, some of its assets in Canada may be seized, then sold, and the proceeds may be distributed to those who have incurred losses.

The major hurdle to advancing such a lawsuit is overcoming the general principle of sovereign immunity. This is the principle that foreign states are generally immune from the jurisdiction of domestic courts. In Canada, no foreign state can be sued in domestic courts unless the situation fits one of the specific, limited exceptions articulated in Canada's *State Immunity Act* (*State Immunity Act*, RSC 1985, c. S-18). The United States law on this topic is nearly identical. The two exceptions to sovereign immunity that may apply are:

- The commercial activity exception (states do not have immunity for commercial activity); and

- The harm exception (states do not have immunity for death, injury, or property damage that occurs in Canada or the United States, as the case may be).

The Commercial Activity Exception

Pursuant to section 5 of the Canadian *State Immunity Act*, "a foreign state is not immune from the jurisdiction of a court in any proceedings that relate to any commercial activity of the foreign state" (State Immunity Act, RSC 1985, c. S-18 at section 5). Per section 2, "commercial activity means any particular transaction, act or conduct or any regular course of conduct that by reason of its nature is of a commercial character" (State Immunity Act, RSC 1985, c. S-18 at section 2).

The US *Foreign Sovereign Immunities Act* provides for a similar exception, stating as follows:

> A foreign state shall not be immune from the jurisdiction of courts of the United States or of the States in any case in which … the action is based upon a commercial activity carried on in the United States by the foreign state; or upon an act performed in the United States in connection with a commercial activity of the foreign state elsewhere;

> or upon an act outside the territory of the United States in connection with a commercial activity of the foreign state elsewhere and that act causes a direct effect in the United States. (*Foreign Sovereign Immunities Act*, 28 USC § 1605(a)(2) (1976))

Commercial activity is defined in the US legislation as meaning "either a regular course of commercial conduct or a particular commercial transaction or act. The commercial character of an activity shall be determined by reference to the nature of the course of conduct or particular transaction or act, rather than by reference to its purpose" (28 USC 1603, reproduced in *Kuwait Airways Corp v. Iraq*, 2010 SCC 40, at para 26).

The rationale behind the commercial activity exception is that a government should not be immune from the jurisdiction of domestic courts for actions that a private actor is empowered to take – in other words, commercial activity. The difficulty in using this exception tends to be discerning whether an activity is commercial or political, as many government actions can be construed as both (for example, think of a government engaging in a construction contract or tender). In settling this, courts across Commonwealth systems have typically held that one must look to the nature of the transaction and not the purpose or underlying motivation. This interpretation of the exception is the current law in the US, whereas Canadian courts still look to "the entire context," which includes both the nature of the transaction and the purpose of the activity (28 USC 1603 at para 31; *Re Canada Labour Code*, [1992] 2 SCR 50, at paras. 27-28).

Although certain aspects of certain crimes committed against Uyghurs may have links to commerce – for example, use of Uyghur forced labour in the camps and beyond – it would likely be a challenge to frame Chinese actions as constituting commercial activity.

In the Canadian context, this exception has been interpreted restrictively in Canadian courts. For example, in *Bouzari v Iran*, 2004 CanLII 871 (ONCA), the Ontario Court of Appeal held that the commercial activity exception could not be extended to cover torture (a political act) that was committed for a commercial purpose. Despite this restrictive interpretation of the commercial activity exception in Bouzari, it may be possible to argue in this case that the use of forced labour is an act of a commercial nature for a political purpose (as opposed to an action of a political nature for a commercial purpose) and is therefore distinguishable from Bouzari on those grounds. However, the restrictive interpretation of the commercial activity exception in Bouzari together with the blended nature of the analysis in Canadian law would likely still make this a challenging argument.

Moreover, the Chinese government was likely not relying on power that a private actor possesses – the original legal test upon which this exception to sovereign immunity was first philosophized.

The Harm Exception

Per section 6 of Canada's *State Immunity Act*:

> a foreign state is not immune from the jurisdiction of a court in any proceeding that relates to
>
> - any death or personal or bodily injury, or
> - any damage to or loss of property that occurs in Canada. (*State Immunity Act*, RSC 1985, c. S-18 at section 6)

Similarly, 28 USC 1605 (the US *Foreign Sovereign Immunities Act*) provides:

> A foreign state shall not be immune from the jurisdiction of courts of the United States or of the States in any case in which … 1605(a) (5) money damages are sought against a foreign state for personal injury or death, or damage to or loss of property, occurring in the United States and caused by the tortious act or omission of that foreign state or of any official or employee of that foreign state while acting within the scope of his office or employment; except this paragraph shall not apply to –
>
> (a) any claim based upon the exercise or performance or the failure to exercise or perform a discretionary function regardless of whether the discretion be abused, or
>
> (b) any claim arising out of malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights. (*Foreign Sovereign Immunities Act*, 28 USC § 1605(a)(2) (1976) at 1605(a)(5))

Case law in both Canada and the United States has held that this exception only applies when the acts causing injury or damage occurred domestically.

The Supreme Court of Canada has held that the harm exception "does not apply where the impugned events, or the tort causing the personal injury or death, did not take place in Canada" (*Kazemi Estate v. Islamic Republic of Iran*, 2014 SCC 62, at para. 73). Similarly, US courts have found in several cases that the act that causes the harm must occur in the United States.[18] It cannot be an act that occurs in another country and causes effects in the United States.

This feature of the exception makes it unlikely to apply to lawsuits regarding Chinese atrocities committed against Uyghurs. The one exception may be regarding injury or damage that occurs in Canada or the United States, as the case may be, due to transnational repression.

As discussed in Part I above, transnational repression of Uyghurs outside of China is pervasive and rising. In an August 2019 report, the Uyghur Human Rights Project (UHRP) documented that the CCP "is implementing a systematic, ambitious, multi-year, well-resourced, relentless and cruel policy to inflict pain and suffering on Uyghurs abroad," and that this includes the intimidation and silencing of Uyghurs now residing in the United States (Uyghur Human Rights Project 2019). A subsequent report by the UHRP and the Oxus Society for Central Asian Affairs found that 95.8 percent of Uyghurs surveyed in liberal democracies reported feeling threatened, and 73.5 percent reported having experienced digital threats, risks, or other forms of harassment online (Hall and Jardine 2021). The Canadian-based Uyghur Rights Advocacy Project (URAP) found similar patterns in Canada, finding that, of the numerous Uyghurs interviewed in Canada, "not a single of these community members" has escaped transnational repression by the CCP (Uyghur Rights Advocacy Project 2022).

If any of these actions, in a particular case, lead to personal or bodily injury, or damage to or loss of property, this could potentially ground a civil lawsuit against the Chinese government in Canada or the United States (or other democratic countries, if they have similar laws). Of course, claims for harm must still also meet the tort law requirement that the action "proximately caused" the injury, so a plaintiff would still need to demonstrate that the Chinese government proximately caused the damage or injury suffered. This would require analysis on a case-by-case basis.

Civil lawsuits against corporations

As discussed in Part I above, there is significant evidence of Uyghur forced labour. Human rights groups have documented this use of Uyghur forced labour across several Chinese provinces, as well as the complicity of dozens of multinational corporations. The Australian Strategic Policy Institute (ASPI) found that 27 factories across nine Chinese provinces use Uyghur forced labour, and that the supply chains of 82 corporations are implicated, including Nike, Zara, and Apple (Xu et al. 2020). Since the ASPI report was released, additional companies have been exposed.[19]

Use of forced or compulsory labour is prohibited in international law, including in customary international law. Further, the prohibition against slavery is a *jus cogens* norm: a fundamental norm of international law that is binding on all states and from which no derogation is permitted.

It is not just states that have a duty to protect these human rights; enterprises do as well. As noted by the *OECD Guidelines for Multinational Enterprises*, "respect for human rights is the global standard of expected conduct for enterprises independently of States' abilities and/or willingness to fulfil their human rights obligations" (OECD 2011). The UN's *Guiding Principles on*

Business and Human Rights also makes clear that there is corporate responsibility to respect human rights, and that corporations have a responsibility to conduct human rights due diligence and ensure that their operations abroad do not adversely affect human rights (OHCHR 2011).

Corporations complicit in Uyghur forced labour may be vulnerable to civil lawsuits in Canada and the United States – as well as other common-law countries with similar laws.

In Canada, a civil lawsuit against one of these corporations would rely on the precedent set by *Nevsun Resources Ltd. v. Araya*, a landmark Supreme Court of Canada judgment from 2020. In *Nevsun*, the Supreme Court ruled that customary international law, including *jus cogens* norms, automatically form part of Canadian law unless there is legislation to the contrary. The Supreme Court also found that such customary international law applies not just to states, but to corporations. The court found that, as a result, the plaintiffs, who were victims of forced labour in Eritrea, could sue the corporation in tort for damages in a Canadian court (*Nevsun Resources Ltd. v. Araya*, 2020 SCC 5). The plaintiffs had been subject to forced labour in a mine in Eritrea; the mine was owned by a corporation that was in turn owned by Nevsun, a Vancouver-based mining company (*Nevsun Resources Ltd. v. Araya*, 2020 SCC 5). The *Nevsun* case can be used as a precedent to pursue civil lawsuits against Canadian corporations that use Uyghur forced labour abroad.

In the United States, civil lawsuits against corporations may be pursued using the *Trafficking Victims Protection Reauthorization Act*, which creates a civil cause of action for such crimes. In certain European countries, some companies are facing legal process for complicity in crimes against humanity due to use of Uyghur forced labour. There may be similar precedents or legislation that permit civil lawsuits against companies in other jurisdictions, and this should involve consultations with local lawyers.

Criminal prosecutions using universal jurisdiction

China is not a party to the Rome Statute, and so initiating international criminal prosecutions at the ICC will be a challenge. However, the ICC is not the only body that may prosecute individuals for crimes against humanity, war crimes, and genocide. Many countries can prosecute individuals in their domestic legal systems for these crimes and other *jus cogens* norms, even when there is no link between the activity and the state. In other words, there exists universal jurisdiction for these crimes that enables these crimes to be tried (almost) anywhere.

The exercise of universal jurisdiction depends on the particulars of each country's domestic legislation. For example, in Canada, the *Crimes Against Humanity and War Crimes Act* permits Canadian courts to prosecute crimes

against humanity, war crimes, and genocide that occurred outside of Canada, so long as the individual to be prosecuted is a Canadian citizen, resident, or visitor. Further, heads of state and other high-ranking officials are immune from domestic criminal jurisdiction (they are "internationally protected persons" under section 2 of the Canadian *Criminal Code*, and enjoy common-law personal immunity in international law).

As discussed in Part I, multiple credible bodies have already found that the atrocities occurring in Xinjiang (East Turkestan) constitute genocide. There is also substantial evidence that crimes against humanity are occurring. According to Article 7, paragraph 1 of the Rome Statute:

> "crime against humanity" means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:
>
> - Murder;
> - Extermination;
> - Enslavement;
> - Deportation or forcible transfer of population;
> - Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
> - Torture;
> - Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;
> - Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;
> - Enforced disappearance of persons;
> - The crime of apartheid;
> - Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health. (International Criminal Court 2011)

Based on the evidence summarized in Part I above, and in addition to genocide, there is evidence that all of these crimes against humanity are being committed against Uyghurs. As described above, Uyghurs are killed, enslaved, forcibly transferred, imprisoned, tortured, raped, persecuted, and forcibly disappeared. There is also a strong argument to be made that the crime against humanity of apartheid is being committed, with legal academics finding that "prosecutors will likely be able to demonstrate that China has intentionally created and perpetuated a system of apartheid by pointing to evidence of widespread discrimination against Muslim minorities" (Lim 2021, 122-24).

These acts are likely committed as part of a widespread and systematic attack directed against Uyghurs. As the ICC's "Elements of Crimes" document makes clear, the acts underlying "attack directed against a civilian population" need not constitute a military attack (International Criminal Court 2011, 5).

As a result, and under universal jurisdiction laws, perpetrators that end up in Canada, even as visitors, may be prosecutable for these crimes and tried criminally in Canadian courts.

Some domestic systems may even permit universal jurisdiction prosecutions without the perpetrator's physical presence in the country. This would require consultations with local lawyers.

Use of ombudsman or other neutral arbiter

In Canada, the Canadian Ombudsperson for Responsible Enterprise (CORE) operates at arm's length from government and has a mandate to investigate human rights abuses committed by Canadian companies' operations abroad. CORE is limited to investigating companies that operate in one of three sectors: garment, mining, and oil and gas. CORE was established in 2019 and became operational in 2021. The office has yet to investigate a single case.

In April 2022, a coalition of 28 Canadian non-profit organizations submitted a complaint to CORE, asking it to investigate 14 Canadian companies alleged to use Uyghur forced labour in their supply chains. Twelve of the companies operate in the garment sector and two operate in the mining sector. The lawyers on the file are Sarah Teich, David Matas, and Maria Reisdorf.

The 14 Canadian companies named were: Costco Canada, Gap Canada, Hugo Boss Canada, Nike Canada, Ralph Lauren Canada, Zara Canada, Diesel Canada, Guess Canada, Levi Strauss Canada, Walmart Canada, Lululemon Canada, Amazon Canada, Dynasty Gold Corp, and GobiMin. As of time of writing, CORE has yet to determine if they will open the investigation per our request.

If CORE opens an investigation into these Canadian companies, they may be held accountable for their use of Uyghur forced labour in their supply chains.

This use of an ombudsman or other neutral arbiter should be considered in other jurisdictions where such offices exist. Local lawyers should be consulted.

Novel legislation and policy changes

Forced labour

Another step that countries can take domestically, to specifically tackle Uyghur forced labour, is to institute a presumption that goods from Xinjiang (East Turkestan) are produced using forced labour. The United States has already done this. In Canada, Uyghur groups have argued that instituting such a presumption is something that the Canada Border Services Agency (CBSA) is already permitted to do, pursuant to the existing provisions of the Customs Tariff.

On November 24, 2020, a group of lawyers and advocates wrote to CBSA with a request that they "prohibit the import of all goods produced in Xinjiang on the basis that, absent clear and convincing evidence to the contrary, those goods have been produced wholly or in part by forced labour."[20] On January 13, 2021, the CBSA replied by email and stated that "the Customs Tariff does not provide the authority to [do that]" and that this would require novel legislation.[21] Lawyer David Matas then filed an application for judicial review in Federal Court of Canada, on behalf of the applicants, asking the Court to rule that the imposition of such a presumption is something that the CBSA is presently authorized to do, pursuant to the relevant provisions of the Customs Tariff. URAP intervened in the court case, represented by the author (Sarah Teich). The hearing date in Federal Court was December 6, 2021. We received a negative judgment on April 5, 2022. The applicants have filed a notice of appeal, and URAP intends to apply for leave to intervene.

If the CBSA remains unwilling to institute the requested presumption, novel legislation can be passed to mandate the imposition of such a presumption. In fact, there are presently three forced labour bills under consideration in Canadian Parliament. Bill S-204, introduced by Senator Leo Housakos, would amend the Customs Tariff to prohibit the importation of any and all goods produced in the Uyghur region on the basis that they are produced using Uyghur forced labour. The other two – Bill S-211 and Bill C-243 – are not Uyghur-specific but would generally impose reporting obligations on government institutions and private-sector entities to "report on the measures taken to prevent and reduce the risk that forced labour or child labour is used [in their supply chains]" (Senate 2021a, Bill S-211).

All three Canadian bills, if passed, would contribute to the tackling of Uyghur forced labour. Similar steps as these may be available in other countries. Particularly in countries that already prohibit the importation of goods made

with forced labour, groups can write to government asking for the imposition of a presumption that goods from the Uyghur region are produced using forced labour. If that fails, judicial review may be sought, if such a remedy is available. Legislation may also be pursued. Consultations should always be undertaken with local lawyers.

Forced organ harvesting

In Canada, Bill S-223, *An Act to amend the Criminal Code and the Immigration and Refugee Protection Act (trafficking in human organs)*, was proposed to address forced organ harvesting. Bill S-223 passed the Senate on December 9, 2021 and had its second reading at the House of Commons on May 18, 2022. It would amend the *Criminal Code* to create new offences in relation to forced organ harvesting, and it would amend the *Immigration and Refugee Protection Act* to provide that a permanent resident or foreign national would become inadmissible to Canada if they engaged in any such activities. Bill S-223 is not Uyghur- or China- specific but rather, generally concerning forced organ harvesting. Different versions of the bill had previously received unanimous, bipartisan support from both the House of Commons and the Senate. Similar domestic legislation to combat forced organ harvesting can and should be pursued in other countries.

Uyghur refugees

Uyghurs located in Xinjiang (East Turkestan) cannot currently escape. However, there are still populations of vulnerable Uyghurs in other locations that should be protected by Canada and by other liberal democracies.

As found by the UHRP and the Oxus Society for Central Asian Affairs, the CCP is engaged in transnational repression across dozens of countries, and these efforts include CCP efforts to have Uyghurs located outside of China detained and deported back to Chinese custody. These populations of Uyghurs, in unsafe third countries, should be protected by Canada and by other liberal democracies.

The principle of non-refoulement has been described by the UNHCR as "the cornerstone of international refugee protection" (UNHCR 2007). This is the principle that refugees and asylum-seekers should not be sent back or removed, "directly or indirectly, to a place where their lives or freedoms would be in danger" (UNHCR 2007, 3). The UNHCR considers the principle of non-refoulement as part of customary international law (UNHCR 2007, 7). This means that the principle of non-refoulement is binding on all states.

As a result, when any of these countries – which may include Egypt, Thailand, Malaysia, Kyrgyzstan, Pakistan, Afghanistan, Kazakhstan, Cambodia, Turkey, and Myanmar – deports Uyghurs back to Xinjiang (East Turkestan), they are in

breach of their international legal obligations. It also means that if liberal democracies such as Canada or the United States were to deport Uyghurs back to one of those countries (for example, by sending Uyghur asylum-seekers back to Thailand), they may be in breach of their international legal obligations as well, because this would be, indirectly, sending the asylum-seeker(s) back "to a place where their lives or freedom would be in danger" (UNHCR 2007, 3).

The principle of non-refoulement does not, according to the UNHCR, "entail a right of the individual to be granted asylum in a particular state" (UNHCR 2007, 3). As noted in the preamble to the Refugee Convention, "the grant of asylum may place unduly heavy burdens on certain countries" (UNHCR 1951, preamble). However, as the preamble goes on to say, "a satisfactory solution of a problem of which the United Nations has recognized the international scope and nature cannot … be achieved without international cooperation" (UNHCR 1951, preamble). The Executive Committee of the UN High Commissioner for Refugees' *Conclusion on International Protection No. 90 (LII)* reiterated "its strong commitment to international solidarity, burden-sharing and international cooperation to share responsibilities" and commended "uses of resettlement as an important tool of international protection, as a durable solution… and as an expression of international solidarity and a means of burden or responsibility sharing" (UNHCR 2001). Resettlement allows "states to share responsibility for refugee protection and reduce the impact of forced displacement on countries that are hosting refugees" (UNHCR and Canada 2022).

> *"The CCP is engaged in transnational repression across dozens of countries.*

As the Immigration Refugees and Citizenship Canada's *Minister Transition Binder 2021: Refugee Resettlement* states, "resettlement is used when refugees do not have a durable solution in their first country of asylum and cannot be voluntarily repatriated" (Canada, Immigration, Refugees and Citizenship 2021). It is obvious that Uyghur refugees who risk detention and deportation back to China do not have a durable solution where they are.

As a result, the principle of non-refoulement may not obligate Canada or any other state to grant asylum in a particular case, but such countries do have obligations to share the burden in terms of resettlement, prioritizing those in need of protection. As the Centre for International Governance Innovation's Jessie Thomson has recommended, "UN member states should redouble efforts to enhance the strategic use of resettlement, increasing the role of host

states and countries of asylum in comprehensive solutions efforts" (Thomson 2017).

In the Canadian context, the entry and resettlement of Uyghur refugees can be accomplished in any number of ways.

Presently, other than for refugees sponsored by a constituent group of a sponsorship agreement holder, an asylum-seeker needs a referral from a settlement agency like the UNHCR. This is a broader problem plaguing Immigration, Refugees and Citizenship Canada. In many cases, asylum seekers in vulnerable positions cannot feasibly obtain UNHCR status. This is true for many Uyghurs in unsafe third countries, but it is also true more broadly. The UNHCR requirement can be waived as a matter of policy, as it has been waived previously for other groups. Another simple and obvious reform would be for Canada to expand the numerical cap that exists for the sponsorship agreement holders, remove it, or declare that it no longer exists for a particular group. The current numerical cap on sponsorship agreement holders is another broader problem that merits reform as it frustrates the generosity of Canadians and has an impact on Uyghurs as well as other asylum-seekers. Canada can and should fix the above problems to help Uyghur refugees enter Canada. Canada can also specifically create a special or exceptional stream for Uyghur refugees, as it did for Afghani and now Ukrainian asylum-seekers.

None of this should even require novel legislation, as Canada can do much of this as a simple matter of policy. Of course, novel legislation can always be passed to mandate one or more of the above reforms or avenues.

Canada has demonstrated several times that where it has the political will, it can flexibly accommodate large numbers of asylum-seekers. Less than two weeks after the start of the Russian invasion of Ukraine in 2022, Canada announced special measures to permit Ukrainian asylum-seekers to enter Canada quickly and without the usual limitations; to accomplish this, it created the Canada-Ukraine Authorization for Emergency Travel (Canada, Immigration, Refugees and Citizenship 2022a; Canada, Immigration, Refugees and Citizenship 2022b). A few years earlier and following a campaign promise from Prime Minister Justin Trudeau to do so, *Operation Syrian Refugees* saw 26,172 Syrian refugees resettled in Canada within a span of 118 days from November 2015 to February 2016 (Hamilton, Veronis, and Walton-Roberts 2019).

In the United States, the *Uyghur Human Rights Protection Act* has already been introduced. This Act would grant priority designation to Uyghurs and members of other predominately Turkic or Muslim ethnic groups, and the spouses, children, and parents of such individuals. The bill would also waive certain immigration-related requirements for such individuals. The Uyghur Human Rights Protection Act should be prioritized and passed into law.

Canada, the United States, and other democratic countries should take measures to facilitate the resettlement of Uyghur asylum-seekers, particularly considering the risk of detention and deportation that many face in third countries. As the Office of the UNHCR emphasizes, the strategic use of resettlement should involve, first, protection. Those first resettled, from anywhere, should be those who face refoulement in their current host country. Second, that resettlement should be used as a basis for negotiation with the host country, not just to stop refoulement, but also to treat refugees in their own country better by taking steps towards local integration.

Conclusions and recommendations

Numerous crimes and abuses are being committed by the CCP against the Uyghurs in Xinjiang (East Turkestan). There is pervasive surveillance, to the level where the region has been characterized as a police state; massive numbers of arbitrary detentions; widespread physical and sexual torture; medical crimes; killings; forced labour; and transnational repression. The crimes committed against the Uyghurs have been found to amount to genocide pursuant to the 1948 UN Genocide Convention. Numerous parliaments, governments, and non-profit organizations have found that these crimes constitute a genocide. On December 9, 2021, the Uyghur Tribunal released its final judgement in which it found that the People's Republic of China had committed genocide against the Uyghurs within the meaning of the 1948 UN Genocide Convention.

These crimes are in breach of China's legal obligations. By ratifying the UN Genocide Convention, China has undertaken to prevent and punish genocide. This is an undertaking which the Chinese government has now breached. The CCP's actions are also in breach of several other human rights treaties, including the Convention Against Torture and the International Covenant on Civil and Political Rights. The CCP's actions are also in violation of many of the fundamental norms which make up customary international law.

The obligations under international law do not rest solely on China. Every other state party to the UN Genocide Convention has also undertaken to prevent and to punish genocide. Every other state that has ratified the Genocide Convention, has not only a moral obligation to take action to combat the Uyghur genocide, but also a legal one.

What can be done? The answer is that there is quite a lot that can be done, both internationally and domestically. Every viable option that is summarized below and was described in detail in Parts II and III above should be pursued.

1. **Encourage the Office of the Prosecutor at the International Criminal Court to open a preliminary examination into the situation.** The ICC has specific jurisdictional constraints. Absent a referral by the UN Security Council, the ICC prosecutor can only investigate crimes that occur on a state party's territory, or crimes committed by state party nationals. China is not a state party to the Rome Statute, and because of China's veto power at the UN Security Council, a referral is not a viable option either. However, using the precedent of the Myanmar/Bangladesh case, certain crimes (namely, the crimes against humanity of deportation and persecution) can be framed as having occurred, in part, on the territories of states parties.

   UK Barrister Rodney Dixon QC has already submitted a communication to the prosecutor's office on this issue and has asked them to open a preliminary examination into the forcible transfer of Uyghurs from Cambodia and Tajikistan (state parties to the Rome Statute) back to China. Other lawyers and non-profit organizations may assist in this effort by submitting further evidence and/or legal argumentation. Further, a state party to the Rome Statute can refer the situation to the ICC, and individuals as well as civil society can lobby states parties to do so. Dixon is asking the prosecutor to open a preliminary examination on his own initiative, but if a state party formally refers the situation, the process becomes expedited.

2. **Refer the matter to the International Court of Justice. Multiple human rights treaties, including the UN Genocide Convention and the Convention Against Torture, contain provisions that provide that disputes shall be submitted to the ICJ.** In the Genocide Convention, this is contained in Article IX. In the Convention Against Torture, this is contained in paragraph 1 of Article 30. By ratifying these treaties, states parties consent in advance to the ICJ's jurisdiction over disputes arising. China is a state party to both the Genocide Convention and the Convention Against Torture. However, China has made reservations under both treaties, declaring that it is not bound by Article IX, and paragraph 1 of Article 30, respectively. Under international law, a state may ratify a treaty, but make certain reservations regarding articles to which it does not consent to be bound.

   However, "reservations cannot be contrary to the object and purpose of the treaty." Therefore, **a state party such as Canada may bring a dispute against the Chinese government for its violations of the Genocide Convention and/or the Convention Against Torture, and ask the ICJ to conclude that the Chinese government's reservation(s) should be considered invalid because they are contrary to the object and purpose of the treaty. Individuals and civil society can lobby government to this effect. Another option is to seek an advisory opinion from the ICJ.** The ICJ is entitled to provide advisory opinions on legal questions referred to it by authorized UN organs and agencies.

An advisory opinion is not binding, but it may carry persuasive weight. Seeking an advisory opinion on Chinese culpability for atrocities committed against the Uyghurs may push the CCP to change course and/or take actions that would have a favourable impact on public opinion.

3. **Engage the various UN human rights mechanisms.** Generally, violations of internationally recognized human rights can be brought to the various UN human rights bodies, including human rights treaty bodies, special procedures, and the Human Rights Council. Human rights treaty bodies may investigate Chinese compliance with treaties to which China has acceded, and publish periodic reports. They have done so. However, because China has not ratified any of the relevant optional protocols or lodged any of the requisite declarations, none of the human rights treaty bodies are empowered to receive individual complaints about China. This limits the possibility of civil society engagement with human rights treaty bodies on this issue. However,

   Yet complaints of human rights breaches may be lodged with the special procedures, several of which have relevant mandates, including the Working Group on Arbitrary Detention, the Special Rapporteur on the right to privacy, the Special Rapporteur on contemporary forms of slavery, the Special Rapporteur on torture, and the Special Rapporteur on violence against women. **Any individual or group can submit information online or by mail to special procedures. Finally, complaints of human rights violations can be lodged with the UN Human Rights Council. Any individual, group, or non-governmental organization can submit a complaint to the Human Rights Council, against any state member of the UN.** There are seven criteria for admissibility which are listed earlier in this report. Of course, China's position on the Human Rights Council may, in effect, preclude effective action on that front.

4. **Impose targeted sanctions using domestic law.** Another option available to many domestic governments, including Canada, is to impose targeted sanctions on Chinese individuals and entities complicit in atrocities committed against Uyghurs. **In March 2021, Canada, the US, the UK, and the EU imposed sanctions on four individuals and one entity responsible for atrocities committed against the Uyghurs. Since then, the United States has imposed sanctions on dozens of other individuals and entities. More individuals and entities should be sanctioned by Canada, the UK, the EU, and others.** In January 2020, URAP submitted to the sanctions division of Global Affairs Canada 10 names of CCP officials. Only one of those names was subsequently sanctioned by Canada, the UK, and the EU In contrast, the United States has now sanctioned all of them. Canada should impose further targeted sanctions in consultation with civil society and in particular with Uyghur non-profit organizations in Canada.

5. **Engage in civil lawsuits in domestic courts.** Actions to hold China to account may also be sought in domestic courts, including in Canada and the United States, through the filing of civil lawsuits. Civil lawsuits against the Chinese government will generally be precluded by China claiming sovereign immunity. However, there may be a narrow opening for such lawsuits based on the personal injury or harm exception to sovereign immunity, which holds that "a foreign state is not immune from the jurisdiction of a court in any proceeding that relates to … any death or personal or bodily injury, or … any damage to or loss of property that occurs in Canada."

   The United States law on this topic is nearly identical. The case law in both Canada and the United States is clear that this exception only applies when the acts causing injury or damage occurred domestically. **Using this exception, there may be the possibility for a civil suit against the Chinese state for injury or damage that occurs in Canada or the United States due to transnational repression.** Of course, claims would still have to meet the tort law requirement that the action "proximately caused" the injury, so a plaintiff would still need to demonstrate that the Chinese government proximately caused the damage or injury suffered. **Further, civil lawsuits may be pursued against companies that use Uyghur forced labour, using the Trafficking Victims Protection Reauthorization Act in the United States, and/or the precedent set by Nevsun Resources Ltd. v. Araya in Canada.**

6. **Criminally prosecute perpetrators using universal jurisdiction laws.** The ICC is not the only body that may prosecute individuals for crimes against humanity, war crimes, and genocide. There is universal jurisdiction for these crimes and other jus cogens norms, such that many countries, including Canada, can prosecute individuals in their domestic legal systems for these crimes even when there is no link between the activity and the state. The operation of universal jurisdiction varies by country. In Canada, the Crimes Against Humanity and War Crimes Act permits Canadian courts to prosecute crimes against humanity, war crimes, and genocide that occurred outside of Canada, so long as the individual to be prosecuted is a Canadian citizen, resident, or visitor.

   As discussed in Part I of this report, multiple credible bodies have found that the atrocities occurring in Xinjiang (East Turkestan) constitute genocide as well as crimes against humanity. **As a result, using universal jurisdiction, perpetrators may be prosecuted for atrocity crimes in domestic criminal systems. Individuals and civil society can work to encourage prosecutors in Canada and elsewhere to initiate these prosecutions where appropriate.**

7. **Use ombudsman or other neutral arbiter.** In Canada, CORE may in-

vestigate human rights abuses committed by Canadian companies' operations abroad in one of three sectors: garment, mining, and oil and gas. In April 2022, a coalition of 28 Canadian non-profit organizations submitted a complaint to CORE, asking it to investigate 14 Canadian companies alleged to use Uyghur forced labour in their supply chains. The lawyers on the file are Sarah Teich, David Matas, and Maria Reisdorf. The 14 Canadian companies named were Costco Canada, Gap Canada, Hugo Boss Canada, Nike Canada, Ralph Lauren Canada, Zara Canada, Diesel Canada, Guess Canada, Levi Strauss Canada, Walmart Canada, Lululemon Canada, Amazon Canada, Dynasty Gold Corp, and GobiMin. **This use of an ombudsman or other neutral arbiter should be considered in other jurisdictions where such offices exist. Local lawyers should be consulted.**

8. **Pass novel legislation and/or a policy to address forced labour. Another step that countries can take domestically to tackle Uyghur forced labour specifically is to institute a presumption that goods from Xinjiang (East Turkestan) are produced using forced labour.** Legislation to this effect is already passed in the United States, and a similar Uyghur forced labour bill has been introduced in Canada. Canadian Bill S-204 introduced by Senator Housakos would amend the Customs Tariff to prohibit the importation of any and all goods produced in Xinjiang (East Turkestan), on the basis that they are produced using Uyghur forced labour. There are another two proposed bills, Bill S-211 and Bill C-243, which are general in nature and would impose reporting requirements.

9. **Pass novel legislation and/or a policy to address forced organ harvesting.** In Canada, Bill S-223 is a general bill (not Uyghur- or China-specific), that was proposed to address forced organ harvesting. Different versions of the bill have previously received unanimous, bipartisan support from both the House of Commons and the Senate. Bill S-223 should be prioritized and passed into law, and similar domestic legislation to combat forced organ harvesting can and should be pursued in other countries.

10. **Pass novel legislation and/or a policy to address Uyghur refugee non-refoulement and resettlement.** There are populations of vulnerable Uyghurs across the world that Canada and other liberal democracies should protect. The UNHCR has described the principle of non-refoulement as "the cornerstone of international refugee protection," and as constituting customary international law. If Canada or any other liberal democracy were to deport Uyghurs back to a country that may, from there, deport them back to China, that may be a breach of international legal obligations.

As a result, **democratic countries must ensure that they are not indirectly deporting Uyghurs back to China by returning them to unsafe third countries. Further, although the principle of non-refoulement does not per se "entail a right of the individual to be granted asylum in a particular state," democratic countries should take in Uyghur refugees. In Canada, this could be accomplished by simple policy change(s) and would not require novel legislation, although it can be done that way as well. The United States should pass the *Uyghur Human Rights Protection Act*, which would grant priority designation to Uyghurs and other Turkic Muslims and waive certain immigration-related requirements for such individuals.**

This paper has demonstrated that a number of reliable sources have concluded that the Chinese government is committing genocide against the Uyghurs in Xinjiang (East Turkestan). Democratic nations – as well as individual people – should not sit by knowing that atrocities are taking place. There are several options available for holding the CCP and others complicit to account. This paper has listed many of them and calls for them to be pursued.

About the author

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Endnotes

1 See for example, Adrian Zenz quoted in Chan (2018) and Buckley and Mozur (2019). This language was also employed by the Canadian Parliamentary Subcommittee on International Human Rights (Canada, House of Commons 2020).

2 See, for example, Buckley and Mozur (2019).

3 See for example, the Star's exposing of Costco Canada as being implicated in Uyghur forced labour (McNaughton and Nuttall 2021).

4 Those 14 letters were drafted by Sarah Teich, David Matas, CM, Iman M'Hiri, Executive Director of CSRDN, and Maria Reisdorf.

5 Jus cogens norms are norms that are fundamental in international law; these are the norms from which no derogation is permitted. Jus cogens norms include slavery, piracy, torture, crimes against humanity, war crimes, and genocide.

6 This appears to be false; see Catholic News Agency (2020). In any case, even if Xinjiang did still record a positive overall population, the PRC could still be committing genocide if they "[impose] measures intended to prevent births within the group" coupled with an "intent to destroy."

7 The lawyers on this communication were Sarah Teich and David Matas.

8 There are three ways for a preliminary examination to be launched by the Office of the Prosecutor at the ICC. First is by state referral (whereby a state party to the Rome Statute asks the Prosecutor to look into a situation). Second is on the prosecutor's own initiative (proprio motu). Third is through a UN Security Council referral. Following the conclusion of a preliminary examination, the Office of the Prosecutor may open an investigation. If the preliminary examination is initiated in the first or second way, the alleged crimes must have occurred on the territory of a state party or by state party nationals. Further, if the preliminary examination is initiated the second way, the prosecutor must obtain confirmation from the Chambers to proceed into an investigation following the preliminary examination. This is an extra step that is not required if there is a state party referral.

9 Note that the state would have to have not made a reservation under Article IX or Article 30, respectively.

10 For example, the Committee Against Torture has conducted five reviews concerning China. See United Nations, Human Rights Treaty Bodies (2015).

11 The complaint form can be found at https://spsubmission.ohchr.org/. Communications may also be sent by mail to Special Procedures, OHCHR-UNOG, 8-14 Avenue de la Paix, 1211 Geneva 10, Switzerland.

12 Communications to UNHRC may be sent by email (CP@ohchr.org), fax (41 22 917 90 11), or mail (Complaint Procedure Unit, Human Rights Council Branch, Office of the United Nations High Commissioner for Human Rights, United Nations Office at Geneva, CH-1211 Geneva 10, Switzerland). The complaint form can be found online at https://www.ohchr.org/en/hr-bodies/hrc/complaint-procedure/hrc-complaint-procedure-index.

13 See for example, the advocacy of Hillel Neuer (@HillelNeuer) of UN Watch, https://twitter.com/hillelneuer?s=21.

14 Steven Chase, "Canada giving itself power to turn over sanctioned Russian assets to Uktraine", The Globe and Mail, April 26, 2022, https://www.theglobeandmail.com/canada/article-canada-giving-itself-power-to-pay-out-compensation-from-sanctioned/.

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15 Note that subsections (a), (b), and (d) provide for three other circumstances where sanctions may be imposed using SEMA. These are not discussed in this section because Canada has used subsection (c) to impose sanctions, as will be discussed below.

16 This limitation of the Magnitsky Act – that it excludes the listing of legal entities – has been criticized by former Minister of Justice Irwin Cotler (see Cotler and Silver 2020.)

17 In Canada, this was using the Special Economic Measures Act. See Special Economic Measures (People's Republic of China) Regulations, SOR/2021-49.

18 Argentine Republic v Amerada Hess Shipping Corp, 488 US 428, 439 (1989); Jerez v. Republic of Cuba, 964 F. Supp. (2d) 52, No. 09-466 (RWR), 2013 WL 4578999, at *2–3 (DDC 29 August 2013); Doe I v. State of Israel, 400 F. Supp. (2d) 86, 108 (DDC 2005); O'Bryan v. Holy See, 556 F. (3d) 361, 382 (6th Cir. 2009); Frolova v. Union of Soviet Socialist Republics, 761 F. (2d) 370, 379 (7th Cir. 1985); see also Stewart (2013).

19 See for example, the Star's exposing of Costco Canada as being implicated in Uyghur forced labour: McNaughton and Nuttall (2021).

20 Personal correspondence (letter to Canada Border Services Agency), November 24, 2020.

21 Personal correspondence (email response to David Matas), January 13, 2021.

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“THE RIGHT TO STATEHOOD: THE CASE OF EAST TURKISTAN

by David Matas, November, 2022

The right to statehood: the case of East Turkestan

(Remarks prepared for delivery to the International Uyghur Forum November 9, 2022, Brussels, Belgium)

by David Matas

The right of every people to self-determination of peoples does not mean the right of every people to statehood. But sometimes the right to self-determination does mean the right to statehood. The right to self-determination of the Uyghurs of East Turkestan/ Xinjiang is one of those cases. For Uyghurs, the right to self-determination means a right to statehood.

Purposes

The issue of the content of the right to self-determination and in particular whether or not it includes a right of statehood must be approached purposively.[1] The right to self-determination must be read as part of the overall rights amongst which it is found in the international instruments. The right to self-determination needs to be approached from this purposive perspective to set out the conditions under which this right becomes a right to statehood.

Self-determination of a people serves two purposes. One purpose is to ensure a representative, democratic governing framework in which the people can participate. The second is to protect, preserve and develop the people's identity[2]. Uyghur statehood would allow for a representative, democratic governing framework in which the Uyghur people could participate and for the Uyghur people to preserve their cultural identity, neither of which is possible now, under Chinese repression.

The right to self-determination is found in both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights[3]. Its presence in both Covenants shows it to be a foundation for all rights. These treaties both state in a preambular paragraph that the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights as well as his economic social and cultural rights[4].

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(1) Vienna Convention on the Law of Treaties, Article 31(1)

(2) See the Saskatoon Statement on Self Determination, March 6, 1993, adopted at the Martin Ennals Memorial Symposium.

(3) Common article 1(1)

(4) The International Covenant on Civil and Political Rights, preambular paragraph three; International Covenant on Economic, Social and Cultural Rights, preambular paragraph three.

Because both Covenants assert the right to self-determination of peoples, this preambular statement can be read to say that the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy the right to self-determination of the people or peoples of which they form part, amongst other rights. In other words, it is necessary for everyone to enjoy the right to self-determination of peoples, amongst other rights, in order for the ideal of free human beings to be achieved. Put in this framework, the question becomes: is the right to statehood necessary in order for the ideal of free human beings to be achieved?

The right of self-determination must be read as part of the overall rights amongst which it is found in the international instruments. Why has the right to self-determination been proclaimed internationally? What is the purpose that the international community wished to achieve by asserting that right? How best can the purpose be realized for which the right to self-determination has been proclaimed? Can that purpose best be realized through creation of a state?

The purposes of human rights, set out in the preamble to the Universal Declaration of Human Rights, are eight in number. The first is achieving respect for human rights. The second is providing a foundation for peace. The third is conforming to the conscience of humanity. The fourth is achieving the highest aspirations of humanity. The fifth is avoiding recourse to rebellion against tyranny and oppression. The sixth is promoting friendly relations amongst nations. The seventh is the promoting social progress and better standards of life. The eighth is achieving a common understanding for the full realization of rights and freedoms. The realization of these purposes requires, I suggest, the creation of the state of East Turkestan. Rejecting the creation of the state of East Turkestan would frustrate the realization of these purposes.

Achieving respect for human rights

Although human rights instruments list many rights, amongst which is the right to self-determination of peoples, at bottom there is only one overall human right, of which the various listed rights are part. That basic right is stated in the Universal Declaration of Human Rights as "recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family". The International Human Rights Covenants add: "these rights derive from the inherent dignity of the human person"[5].

In determining the content of any particular human right in the International Bill of Rights (the Universal Declaration, the International Covenant on Civil and Political Rights, and the International

(5) Universal Declaration of Human Rights, preambular paragraph 1; International Covenant on Civil and Political Rights, preambular paragraphs 1 and 2; International Covenant on Economic, Social and Cultural Rights, preambular paragraphs 1 and 2.

Covenant on Economic, Social and Cultural Rights) one must ask, can the inherent dignity of the person and the equal and inalienable rights of all members of the human family only be achieved by giving the right the content suggested? Does the content suggested derive from the inherent dignity of the human person?

In particular, in determining whether or not the right to self-determination includes, in a given context, the right to effect statehood, one must ask, can the inherent dignity of the person and the equal and inalienable rights of all members of the human family only be achieved by recognizing a right of statehood? Does a right of statehood derive from the inherent dignity of the human person?

In a situation where the human rights of the people or peoples are being violated in a grave manner either by government or by sections of the population from which the government is either unable or unwilling to offer protection, then the inherent dignity of the person and the equal and inalienable rights of residents could only be achieved by recognizing a right of statehood. A right of statehood, in that context, would derive from the inherent dignity of the human person.

The international law of statehood is akin to international refugee law. It is a backup to protection one expects from the state of which one is a national. It is meant to come into play only in situations when that protection is unavailable. It is surrogate or substitute protection when no other alternative remains.

The right of self-determination was never meant to allow a people to form a state that offers better protection than that from which the people benefits already, where there is already protection(6). There is room for improvement in protection almost everywhere. However, pointing to the need for improvement in an already decent protection system can not justify a right to statehood. Only the absence of protection can do that.

The difference between refugee law and the law of self-determination is that refugee law applies to single individuals. The law of self-determination applies to peoples, to groups of individuals. One individual who no longer has the protection of the state of which he/she is a national is entitled at international law to seek and enjoy the protection of other states. A group of individuals who form a people and who no longer have the protection of the state of which they are nationals are entitled to form a state which can offer them protection(7).

Absent a complete breakdown of state protection, it should be assumed that a state is capable

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(6) *Ward v. AG of Canada*, Supreme Court of Canada case number 21937, June 30, 1993, at pages 16, 37 and 38

(7) Universal Declaration of Human Rights, Article 14(1)

of protecting its people or peoples from grave violations of human rights[8]. In order for a claim of a failure of state protection from grave violations of human rights to justify a right of a people to form a state, there must be clear and convincing confirmation of the inability to protect. In a nondemocratic state, that confirmation may be readily forthcoming. In a democratic state with an independent judiciary, there is a presumption, albeit rebuttable, that the state will offer protection to its people or peoples[9].

Would the creation of an independent state of East Turkestan enhance the respect for human rights of the Uyghur people? The answer to that, in light of past experience and present reality is obvious. Yes, it would.

Providing a foundation for peace

Respect for human rights is important on its own. Furthermore, internationally it is important in order to preserve peace in the world. The International Bill of Rights refers to respect for human rights as "the foundation of freedom, justice and peace in the world". Respect for human rights is an end in itself. It is also a means to an end[10].

To the same effect is the Charter of the United Nations. The Charter provides the United Nations shall promote universal respect for and observance of human rights and fundamental freedoms with a view to the creation of conditions[11] of stability.

The question then becomes, in assessing whether any particular human right has a proposed content, does the proposed content provides a foundation for peace in the world? Does the proposed content create conditions of stability? In particular, would including the right to statehood in the right to self-determination provide a foundation for peace in the world? Would it create conditions of stability?

The answer in a general sense to these questions is clearly not. On the contrary, including the right to statehood in the right to self-determination would create conditions of instability. If every

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(8) *Ward v. AG of Canada*, Supreme Court of Canada case number 21937, June 30, 1993, at page 36; *Zalzali v. M.E.I.* (1991) 3 F.C. 605 (F.C.A.); *M.E.I. v. Villafranca*, A-69-90, December 18, 1992, Federal Court of Appeal

(9) *Ward v. AG of Canada,* Supreme Court of Canada case number 21937, June 30, 1993, at pages 16, 37 and 38; *M.E.I. v. Satiacum* (1989) 99 N.R. 1717 (F.C.A.) at 176

(10) Universal Declaration of Human Rights, preambular paragraph 1; International Covenant on Civil and Political Rights, preambular paragraph 1; International Covenant on Economic, Social and Cultural Rights, preambular paragraph 1.

(11) Article 55

people had a right of statehood, then almost no state would be stable.

The only situation where interpreting the right of self-determination to include a right to statehood would further stability and peace is a situation where violations of human rights against a people are so severe that these violations are themselves destabilizing, a threat to the peace. In that situation, the creation of a state that puts an end to the violations has a stabilizing and peace generating effect.

Would the creation of East Turkestan as an independent state provide a foundation for peace? The failure to create East Turkestan as an independent state has led to massive violations of the human rights of Uyghurs of Xinjiang, leading to a deterioration of relations between China and other countries. If East Turkestan shad been created much earlier, these massive violations of human rights and the consequent deterioration of relations could have been avoided.

Conforming to the conscience of humanity

The Universal Declaration of Human Rights observes that disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind. The International Bill of Rights is a reaction to those barbarous acts. It is a statement of the standards the disregard and contempt of which outrage the conscience of humanity(12).

In assessing whether any proposed right is part of an asserted right in the International Bill of Rights, it is legitimate to ask whether disregard and contempt for the asserted right would outrage the conscience of humanity, whether disregard and contempt for the asserted right would be considered barbarous. In particular, in determining whether the right to self-determination includes a right of statehood, one must ask whether disregard and contempt for a right of statehood would outrage the conscience of humanity, whether disregard and contempt for a right of statehood would be considered barbarous.

In order to come to a conclusion that disregard and contempt for a right of statehood would outrage the conscience of humanity, in order to come to a conclusion that disregard and contempt for a right of statehood would be considered barbarous, there must be overwhelming universal condemnation of that disregard. A mere trend in support of a right of statehood would not suffice.(13)

However, there is no universal overwhelming condemnation of disregard of the right of statehood.

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(12) Universal Declaration of Human Rights preambular paragraph 2

(13) *Re Kindler and Minister of Justice* (1991) 67 C.C.C.(3d) 1 at 11. (S.C.C.)

It is even going too far to say that there a trend in support of a right of statehood. Disregard of the right of statehood is not considered barbarous by the international community. Disregard of the right of statehood does not shock the conscience of humanity.

There are two situations in which disregard of the right of statehood would shock the conscience of humanity. One is a situation where violations of human rights are so grave that statehood is necessary in order to protect against the continuing violations. The other is a situation where there were violations that have ceased, but the violations were so atrocious that it would be considered inhumane to expect the people or peoples who are victims of those violations to remain as part of the state that perpetrated or let happen those violations.

Again, here there is an analogy with the refugee situation. A person may be considered to be a refugee even though the person is not at risk of serious violations of human rights where "there are compelling reasons arising out of previous persecution for refusing to avail himself of the protection of the country of nationality."(14) Violations of human rights which have ceased can justify a refusal to accept the protection of the state of which a people forms part only in extraordinary situations, where the victimization of the people has been so appalling that it alone is sufficient to justify the refusal to accept the protection of the existing state.(15)

Has the disregard and contempt for human rights of the Uyghurs of East Turkestan/ Xinjiang resulted in barbarous acts which have outraged the conscience of mankind? The answer to that question, I am sure you would agree, is yes.

Achieving the highest aspirations of humanity

The Universal Declaration of Human Rights proclaims that the advent of a world where human rights are enjoyed is the highest aspiration of the common people.(16) In assessing whether any proposed right is part of an asserted right in the International Bill of Rights, we should ask whether enjoyment of the right is one of the highest aspirations of humanity. In particular, in determining whether the right to self-determination includes a right of statehood, one must ask whether enjoyment of a right of statehood is one of the highest aspirations of humanity.

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(14) 1951 Convention Relating to the Status of Refugees, Article 1C(5); Immigration Act, Continuing Consolidation of the Statutes of Canada, Chapter I-2, section 2(3); United Nations High Commissioner for Refugees Handbook on Procedures and Criteria for Determining Refugee Status, paragraph 136.

(15) *M.E.I. v. Obstoj* (1992) 2 F.C. 739 (F.C.A.); *Hassan and Hassan v. M.E.I.,* A-653-92, May 4, 1994 (F.C.T.D.)

(16) Universal Declaration of Human Rights preambular paragraph 2

Put this way, a right of statehood not only appears inappropriately included in the right of self-determination of peoples. It appears ludicrous to include a right of statehood in the right of self-determination of peoples. While a self-determination is a credible, legitimate aspiration for the common people at all times everywhere, a right of statehood is not. Statehood may be a necessity, a resort for self-protection in a given context. It cannot possibly be a credible legitimate aspiration in all contexts for all peoples.

The problem here is not just practical; it is conceptual. The right to self-determination is a human right. The right to statehood is not. At most, the right to statehood is a means to realize the right to self-determination. Because it is a means, it becomes subject to the test whether it is the best means or the most appropriate means of realizing the human right of self-determination. In situations where the right to self-determination is realized in other ways, the right to statehood does not exist, because there is no need to resort to the means of statehood to realize the end of self-determination.

One can hardly fault the Uyghur people for failing to try other means besides statehood to recognize respect for their right to self-determination. These other means were tried from the inception of Communist rule over China with disastrous results. The history of these failed attempts is a persuasive argument for an East Turkestan state to offer protection to the Uyghurs of East Turkestan.

Avoiding recourse to rebellion against tyranny and oppression

The Universal Declaration of Human Rights proclaims that it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected[17] This preamble is the closest the International Bill of Rights comes to recognizing the legitimacy of forming a new state. For rebellion, like secession is a rejection of the authority of the state. Rebellion is not recognized, however, as a right, but rather something to which men and women may be understandably driven by tyranny and oppression. Rebellion is not something that is endorsed. Rather, in certain circumstances, those of tyranny and oppression, it is excused.

The forming of a state must be considered in the same light as rebellion. It is not a right in itself, but a resort that is excused in situations of tyranny and oppression. Conversely, where there is neither tyranny nor oppression, rebellion is unnecessary. So is the formation of a state.

It makes no sense to say that the right to rebellion needs to be protected in order to avoid recourse to rebellion. The right to rebel is not a fundamental human right. Rebellion is an understandable

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(17) Universal Declaration of Human Rights preambular paragraph 3

reaction to the violation of human rights, not the expression of a right.

It makes no sense to say that the right to form a state needs to be protected in order to avoid recourse to state formation. What needs to be protected are the fundamental human rights and freedoms. In the absence of such protection, recourse to state formation becomes understandable. Again here, because of the absence of protection of Uyghurs from human rights violations by the Chinese state, the creation of a state of East Turkestan is understandable.

Promoting friendly relations amongst nations

The United Nations Charter refers to the principle of self-determination but does not assert the principle as one which the United Nations and its member states should follow. The obligation is rather to develop friendly relations based on respect for the principle of self-determination.[18]

The language of the United Nations Charter is ambiguous. Is the Charter asserting that where there is violation of the principle of self-determination, then unfriendliness is excused legally? Or is the Charter asserting that in order for there to be friendly relations, realistically and practically, there must be respect for the principle of self-determination?

The Universal Declaration of Human Rights resolves this ambiguity in a preambular paragraph, asserting that respect for human rights is essential to promote the development of friendly relations between nations. It becomes impossible to promote friendly relations between nations when human rights, including the right to self-determination of peoples, are being violated. The point being made is the practical one rather than the legal one. Violations of human rights do not excuse legally the rupture of friendly relations. Rather, violations of human rights impede practically the development of friendly relations.

In assessing whether any proposed right is part of an asserted right in the International Bill of Rights, we should ask whether respect for the right is essential to promote the development of friendly relations amongst nations. In particular, in determining whether the right to self-determination includes a right of statehood, one must ask whether it is essential in order to promote the development of friendly relations amongst nations that the right to statehood be respected.

It is hard to see how respect for the right of statehood, in the absence of human rights violations, can promote friendly relations amongst nations. Whether or not the forming of a state is a legal act,

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(18) Articles 1(2), 55; David Matas "Can Quebec separate?" (1975) McGill Law Journal 387 at 399

it is a decidedly unfriendly act against the state from which the territory of the new state is drawn. Any support of that new state formation would also be considered unfriendly.

Indeed, this has been the Canadian experience. When French President Charles de Gaulle uttered his statement "Vive le Québec Libre", which was interpreted as endorsing a right of statehood of Quebec, that utterance led to a deterioration of relations between France and Canada.

In order to promote friendly relations amongst states, the formation of new states rather than being endorsed, should be discouraged. Friendly relations amongst states are most likely to be promoted if states do not see other states endorsing their dismemberment.

One must acknowledge that, where human rights are not protected, then it is unrealistic to expect states to be friendly to each other. In such a situation, if formation of a new state occurs or is attempted, one cannot blame the formation of the new state for the worsening of international relations. The blame must fall on the prior grave violations of human rights that prompted the attempt to create the new state.

However, where human rights are protected and formation of a new state is attempted, the blame for the deterioration in friendly relations must fall squarely on the shoulders of the statehood attempt itself. In such a situation, formation of a new state, rather than being a realization of the objectives of the International Bill of Rights and the United Nations Charter, works to frustrate the objective of friendly relations in the International Bill of Rights and the United Nations Charter.

It is stating the obvious to say that assertion by states of the creation of East Turkestan would create a problem in international relations between the Government of China and the asserting states. But it would be perverse to blame the assertion for the worsening of international relations. Rather the blame must fall on the prior grave violations of human rights against the Uyghurs.

Promoting social progress and better standards of life

The Universal Declaration of Human Rights proclaims that the peoples of the United Nations have in the Charter determined to promote social progress and better standards of life in larger freedoms[19]. In assessing whether any proposed right is part of an asserted right in the International Bill of Rights, we should ask whether protection of the proposed right helps to promote social progress and better standards of life. In particular, in determining whether the right to self-determination includes a right

(19) Universal Declaration of Human Rights preambular paragraph 5; United Nations Charter article 55(a)

to form a state, one must ask whether respect for the right to form a state helps to promote social progress and better standards of life.

In a situation of economic and social tyranny and oppression, where a people are subjected to grave violations of economic and social rights, one can say that statehood helps to promote social progress and better standards of life. Otherwise, it does not.

What is at issue here is not the net economic benefits of statehood to the people in the new state, but rather social progress and better standards of life for all humanity. In any country where a richer part secedes from a poorer whole, the richer part will, presumably, be better off after the secession than before. However, humanity as a whole does not benefit socially and economically.

When the Universal Declaration of Human Rights talks about social progress and better standards of life, it is referring to fundamental human economic and social rights, not just economic and social performance indicators. In the absence of violation of social and economic rights directed against a people, there is no linkage between statehood and respect for economic and social rights.

The destruction of the Uyghurs of East Turkestan/ Xinjiang is a loss to all of humanity. It is not just the Uyghurs who suffer. Statehood for the Uyghur people of East Turkestan/ Xinjiang, by offering them protection they do not have now, would be a benefit to all humanity. By protecting Uyghurs of East Turkestan/ Xinjiang from the worst depredations, the existence of East Turkestan as an independent state would be a global boon.

Achieving a common understanding for the full realization of rights and freedoms

Finally, the Universal Declaration of Human Rights proclaims that a common understanding of rights and freedoms is of the greatest importance for the full realization of the rights and freedoms[20]. In assessing whether any proposed right is part of an asserted right in the International Bill of Rights, we should ask whether a common understanding that the proposed right is part of the asserted right would assist the full realization of rights and freedoms. In particular, in determining whether the right to self-determination includes a right of statehood, we should ask whether a common understanding that respect for the right of statehood is part of the right to self-determination would be important for the full realization of human rights.

What is at issue here, is not whether there is a common understanding. It is quite clear that there

(20) Universal Declaration of Human Rights preambular paragraph 7.

is no common understanding that the right to self-determination includes a right of statehood.

However, the issue is not just whether there is a common understanding of the right to self-determination and what it is. The issue is rather what common understanding of self-determination would be important for the full realization of human rights and freedoms.

A common understanding that a general right to form a state is part of the right of self-determination would not be important for the full realization of all rights and freedoms. Indeed, it is hard to see, in the absence of gross oppression, how forming a state would assist in the full realization of rights and freedoms.

In contrast, where there is or has been gross oppression, a common understanding that the right to form a state is part of the right of self-determination would be important for the full realization of all rights and freedoms. If existing states knew that at international law a right to form a new state arose from gross oppression, then gross oppression would be less likely to occur. Where there is gross oppression, the right to form a state is part of the right of self-determination.

If the genocide inflicted against the Uyghur people of East Turkestan/ Xinjiang does not give these peoples a right of statehood, the lesson human rights violators would draw would be chilling. It would be a form of impunity that humanity should not countenance. A linkage between the Uyghur genocide and the legitimacy of East Turkestan is a warning to would be violators everywhere and at all times that oppression of a minority provides a justification for their statehood they did not have before.

III. Precedents

The relevant international law precedents are these:

Eluent Islands

There is first the situation of the Eluent Islands in 1921. Before World War I, Finland, which included the Swedish speaking Eluent Islands, was part of Imperial Russia. After the Russian revolution of 1917, Finland broke away from Russia and its Eluent Islands wanted to join Sweden. The Council of the League of Nations, the component of the League charged with settling international disputes, appointed a Commission of Rapporteurs to advise the Council on the dispute between Sweden and Finland over the Islands, whether the Eluent Islands should be part of Sweden or Finland.

The Commission advisory opinion stated:

> "But what reasons would there be for allowing a minority to separate itself from the State to which it is united, if this State gives it the guarantees which it is within its rights in demanding, for the preservation of its social, ethnical or religious character? Such indulgence, apart from every political consideration, would be supremely unjust to the State prepared to make these concessions.
>
> The separation of a minority from the State of which it forms a part and its incorporation in another State can only be considered as an altogether exceptional solution, a last resort when the State lacks either the will or the power to enact and apply just and effective guarantees."[21]

In the end, the Eluent Islands remained Swedish speaking and part of Finland, and remains Swedish speaking and part of Finland to this day. One can draw from that advisory opinion these principles. A minority has a right to effective guarantees for the preservation of its social, ethnic or religious character. If those guarantees are not given or, if given, are not effective, then the right of self-determination of the minority becomes a right to separate from the state of which it forms part.

That is the case of the Uyghurs of East Turkestan/ Xinjiang. They do not have, within China, effective guarantees for the preservation of their distinctive social, ethnic and religious character. On the contrary, China under the Communists is engaged in an active effort to obliterate that distinctive character.

Zaire

The second jurisprudential precedent relates to Zaire. The Katangese Peoples' Congress in 1992 requested the African Commission on Human and Peoples' Rights to recognise the Katangese Peoples' Congress as a liberation movement entitled to support in the achievement of independence for Katanga, recognise the independence of Katanga and help secure the secession of Zaire from Katanga. The Commission denied the request, ruling:

> "In the absence of concrete evidence of violations of human rights to the point that the territorial integrity of Zaire should be called to question and in the absence of evidence that the people of Katanga are denied the right to participate in Government ..., the Commission holds the view that Katanga is obliged to exercise a variant of selfdetermination that is compatible with the sovereignty and territorial integrity of Zaire." [22]

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(21) Report Presented to the Council of the League of Nations by the Commission of Rapporteurs page 4, https://www.ilsa.org/Jessup/Jessup10/basicmats/aaland2.pdf

(22) *Katangese Peoples Congress v Zaire* (Communication no. 72/92) [1992] ACHPR 3; (1 January 1992)

The implication is that in the presence of concrete evidence of violations of human rights to the point that the territorial integrity of a state should be called into question and of evidence that the people of a state are denied the right to participate in Government, the right to secession arises. That is the case of the Uyghurs of East Turkestan/ Xinjiang. Here there is concrete evidence of violations of human rights to the extent that the territorial integrity of China should be called into question and evidence that the Uyghurs of East Turkestan/ Xinjiang are denied the right to participate in their own governance.

Cyprus

The third jurisprudential precedent is a 1996 case before the European Court of Human Rights about Cyprus. After a coup in Cyprus in 1974 engineered by Greece to unite Cyprus with Greece, Turkey invaded and occupied the northern part of Cyprus. The Turkish Cypriot authorities proclaimed the Turkish Republic of Northern Cyprus and purported to secede from Cyprus.

Titina Loizidou, a Greek Cypriot, complained to the European Commission and Court of Human Rights, that Turkey was denying her access to her property in Northern Cyprus. The Court held in favour in principle of Ms. Loizidou without giving her a remedy on the basis that the decision on remedy was not ready for decision.

Turkey, in answer to the claim of Ms. Loizidou that they had violated the European Convention on Human Rights, argued that the violation, if it existed, was not theirs but rather that of the Turkish Republic of Northern Cyprus. Turkey further argued that the Court should recognize the Turkish Republic of Northern Cyprus as the responsible state based on the right to self-determination of the Turkish people of Northern Cyprus.

Judge Wildhaber, joined by Judge Ryssdal, in a separate concurring opinion, wrote:

> "Until recently in international practice the right to selfdetermination was in practical terms identical to, and indeed restricted to, a right to decolonisation. In recent years a consensus has seemed to emerge that peoples may also exercise a right to selfdetermination if their human rights are consistently and flagrantly violated or if they are without representation at all or are massively underrepresented in an undemocratic and discriminatory way. If this description is correct, then the right to selfdetermination is a tool which may be used to reestablish international standards of human rights and democracy.

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paragraph 6 https://africanlii.org/afu/judgment/african-commission-human-and-peoples-rights/1992/3

> ... where the modern right to selfdetermination does not strengthen or reestablish the human rights and democracy of all persons and groups involved, as it does not in the instant case, it cannot be invoked to overcome the international community's policy of nonrecognition of the 'TRNC"[23]

The implication of this reasoning is this. Take a situation where the human rights of a people are consistently and flagrantly violated. Or suppose a situation where a people are without representation at all or are massively underrepresented in an undemocratic and discriminatory way. Assume further that the claim of the people to statehood would strengthen or reestablish the human rights and democracy of all persons and groups involved. Then, in that context, the right to self-determination could be invoked to accept the right to statehood.

These criteria apply to the situation of Uyghurs in East Turkestan/ Xinjiang. Their human rights are consistently and flagrantly violated. They are unrepresented in the Chinese government system. What formal representation does exist is undemocratic and discriminatory. Statehood could realize respect for the human rights and democracy of Uyghurs. In that context, the right to self-determination of the Uyghurs means the right to statehood.

Quebec

The next significant jurisprudential development was the Secession Reference in the Supreme Court of Canada. Quebec held referenda in 1980 and 1995 about seceding from Canada. The 1980 referendum defeated secession by a vote of almost 60% against. The 1995 referendum result was a lot closer, with only slightly less than 51% against secession.

The second referendum prompted the Government of Canada to ask the Supreme Court of Canada a set of questions, two of which related specifically to international law:

> "Does international law give the National Assembly, legislature or government of Quebec the right to effect the secession of Quebec from Canada unilaterally? In this regard, is there a right to self-determination under international law that would give the National Assembly, legislature or government of Quebec the right to effect the secession of Quebec from Canada unilaterally?"

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(23) Council of Europe, European Court of Human Rights, (Grand Chamber), case of *Loizidou v. Turkey,* (application no. 15318/89), Judgment, Strasbourg, 18 December 1996,

https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/Loizidou%20v%20Turkey.pdf

Part of the answer that the Court gave to these questions was this:

> "when a people is blocked from the meaningful exercise of its right to selfdetermination internally, it is entitled, as a last resort, to exercise it by secession."

The Court also wrote:

> "A State whose government represents the whole of the people or peoples resident within its territory, on a basis of equality and without discrimination, and respects the principles of selfdetermination in its internal arrangements, is entitled to maintain its territorial integrity recognized by other States. Quebec does not meet the threshold of a colonial people or an oppressed people, nor can it be suggested that Quebecers have been denied meaningful access to government to pursue their political, economic, cultural and social development."[24]

The implication is that if the people of Quebec were an oppressed people or if the people of Quebec had been denied meaningful access to government to pursue their political, economic, cultural and social development, then the people of Quebec would be entitled to secede from Canada at international law. The Uyghurs of East Turkestan/ Xinjiang meet these criteria. They are a colonial, oppressed people and they have been denied meaningful access to the Government of China to pursue their political, economic, cultural and social development.

Southern Cameroon

Fourteen individuals brought a communication on their behalf and on behalf of the people of Southern Cameroon to the African Commission on Human and Peoples' Rights against the Republic of Cameroon, claiming a right to statehood for Southern Cameroon under the African Charter on Human and Peoples' Rights. The claim was denied. The Commission acknowledged that the rights of the Southern Cameroonians had been violated, but not sufficiently to justify a right to statehood.

The Commission in May 2009 wrote:

> "The Commission has so far found that the Respondent has violated Articles 2, 4, 5, 6, 7, 11 and 19 of the Charter. It is the view of the Commission, however that, in order for such violations to constitute the basis for the exercise of the right to self-determination under the African Charter, they must meet the test set out in the Katanga case, that is, there must be: 'concrete evidence of violations of human rights to the point that the territorial integrity of the State Party should be called to question, coupled with the denial of the people, their right to

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(24) *Reference re Secession of Quebec,* 1998 CanLII 793 (SCC), [1998] 2 SCR 217 https://www.canlii.org/en/ca/scc/doc/1998/1998canlii793/1998canlii793.html?searchUrlHash=AAAAAQATc2VjZXNzaW9uIHJlZmVyZW5jZQAAAAB&resultIndex=1

participate in the government as guaranteed by Article 13.1.'"[25]

Kosovo

The fifth legal precedent I want to mention is the case of Kosovo. The United Nation General Assembly in October 2008 asked the International Court of Justice for an advisory opinion on this question: "Is the unilateral declaration of independence by the Provisional Institutions of SelfGovernment of Kosovo in accordance with international law?"

The Court, in July 2010, the concluded that the declaration of independence of Kosovo of February 2008 did not violate international law. Justice Abdulqawi Yusuf, in a separate opinion addressed the international law of self-determination. He wrote:

> "Turning now to the issue of selfdetermination itself, it should be observed at the outset that international law disfavours the fragmentation of existing States and seeks to protect their boundaries from foreign aggression and intervention. It also promotes stability within the borders of States, although, in view of its growing emphasis on human rights and the welfare of peoples within State borders, it pays close attention to acts involving atrocities, persecution, discrimination and crimes against humanity committed inside a State. To this end, it pierces the veil of sovereignty and confers certain internationally protected rights to peoples, groups and individuals who may be subjected to such acts, and imposes obligations on their own State as well as other States. The right of self-determination, particularly in its postcolonial conception, is one of those rights.
>
> 8. It is worth recalling, in this context, that the right of selfdetermination has neither become a legal notion of mere historical interest nor has it exhausted its role in international law following the end of colonialism. .... It is a right which is exercisable continuously particularly within the framework of a relationship between peoples and their own State.
>
> 9. In this postcolonial conception, the right of selfdetermination chiefly operates inside the boundaries of existing States in various forms and guises, particularly as a right of the entire population of the State to determine its own political, economic and social destiny and to choose a representative government; and, equally, as a right of a defined part of the population, which has distinctive characteristics on the basis of race or ethnicity, to participate in the political life of the State, to be represented in its government and not to be discriminated against. These rights are to be exercised within the State in which the population or the ethnic group live, and thus constitute internal rights of selfdetermination. They offer a variety of entitlements to the concerned peoples within the borders of the State without threatening its sovereignty.
>
> 10. In contrast, claims to external selfdetermination by such ethnically or racially distinct

(25) Paragraph 194, 266/03: *Kevin Mgwanga Gunme et al / Cameroon,* 27 May 2009, Communication No. 266/2003

groups pose a challenge to international law as well as to their own State, and most often to the wider community of States. Surely, there is no general positive right under international law which entitles all ethnically or racially distinct groups within existing States to claim separate statehood, as opposed to the specific right of external selfdetermination which is recognized by international law in favour of the peoples of nonselfgoverning territories and peoples under alien subjugation, domination and exploitation. Thus, a racially or ethnically distinct group within a State, even if it qualifies as a people for the purposes of selfdetermination, does not have the right to unilateral secession simply because it wishes to create its own separate State, though this might be the wish of the entire group. The availability of such a general right in international law would reduce to naught the territorial sovereignty and integrity of States and would lead to interminable conflicts and chaos in international relations.

11. This does not, however, mean that international law turns a blind eye to the plight of such groups, particularly in those cases where the State not only denies them the exercise of their internal right of self-determination ..., but also subjects them to discrimination, persecution and egregious violations of human rights or humanitarian law. Under such exceptional circumstances, the right of peoples to selfdetermination may support a claim to separate statehood provided it meets the conditions prescribed by international law, in a specific situation, taking into account the historical context. Such conditions may be gleaned from various instruments, including the Declaration on Principles of International Law Concerning Friendly Relations and Cooperation among States in Accordance with the Charter of the United Nations, which, ... reflects customary international law. The Declaration contains, under the principle of equal rights and selfdetermination of peoples, the following saving clause:

'Nothing in the foregoing paragraphs shall be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and selfdetermination of peoples ... and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or colour.'

12. This provision makes it clear that so long as a sovereign and independent State complies with the principle of equal rights and selfdetermination of peoples, its territorial integrity and national unity should neither be impaired nor infringed upon. It therefore primarily protects, and gives priority to, the territorial preservation of States and seeks to avoid their fragmentation or disintegration due to separatist forces.

However, the saving clause in its latter part implies that if a State fails to comport itself in accordance with the principle of equal rights and self-determination of peoples, an exceptional situation may arise whereby the ethnically or racially distinct group denied internal selfdetermination may claim a right of external selfdetermination or separation from the State which could effectively put into question the State's territorial unity and sovereignty.

16. To determine whether a specific situation constitutes an exceptional case which may legitimize a claim to external selfdetermination, certain criteria have to be considered, such as the existence of discrimination against a people, its persecution due to its racial or ethnic

characteristics, and the denial of autonomous political structures and access to government. A decision by the Security Council to intervene could also be an additional criterion for assessing the exceptional circumstances which might confer legitimacy on demands for external self-determination by a people denied the exercise of its right to internal self-determination. Nevertheless, even where such exceptional circumstances exist, it does not necessarily follow that the concerned people has an automatic right to separate statehood. All possible remedies for the realization of internal selfdetermination must be exhausted before the issue is removed from the domestic jurisdiction of the State which had hitherto exercised sovereignty over the territory inhabited by the people making the claim. In this context, the role of the international community, and in particular of the Security Council and the General Assembly, is of paramount importance."[26]

The Uyghurs of East Turkestan/ Xinjiang have exhausted all possible remedies in China for the realization of internal self-determination. The issue of self-determination can accordingly be removed from the domestic jurisdiction of China.

IV. Conclusion

So, in conclusion, the right to self-determination of a people does not always mean a right to statehood. However, it coalesces into a right to statehood whenever the rights of a people are violated in so gross and flagrant a manner without local remedy that to expect the people to remain under the government of the perpetrators would be inhumane.

The rights of Uyghurs of East Turkestan/ Xinjiang have been violated in so gross and flagrant a manner without remedy in China that to expect them to remain under the government of their Chinese perpetrators would be inhumane. The right to self-determination of these people has become a right to statehood in East Turkestan.

The right to self-determination of peoples means that the State of East Turkestan has to be created. Rejecting the existence of East Turkestan as an independent state means rejecting the right to self-determination of peoples.

....

David Matas is an international human rights lawyer based in Winnipeg, Manitoba, Canada.

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(26) Accordance with international law of the unilateral declaration of independence in respect of Kosovo, Advisory Opinion of 22 July 2010

https://www.icj-cij.org/public/files/case-related/141/141-20100722-ADV-01-02-EN.pdf

RE-DETERMINATION OF TARIFF CLASSIFICATION OF GOODS PRODUCED WHOLLY OR IN PART BY FORCED LABOUR

– Conlin Bedard LLP and URAP, November 2022

November 25, 2022

SENT BY EMAIL

Recourse Directorate
Canada Border Services Agency
Ottawa, ON K1A 0L8

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Trade Compliance Verification
Canada Border Services Agency

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Labour Program – Forced Labour
Employment and Social Development Canada
140 Promenade du Portage
Gatineau, QC K1A 0J9

EDSC.AIIT.TravailForce-ForcedLabour.IILA.ESDC@labour-travail.gc.ca

Dear Madam/Sir:

RE: Re-Determination of Tariff Classification of Goods Produced Wholly or in Part by Forced Labour

This letter is on behalf of our client, the Uyghur Rights Advocacy Project ("**URAP**").

We are sending this letter to place evidence before the Canada Border Services Agency ("**CBSA**") demonstrating that certain importations to Canada have been produced wholly or in part by forced labour in the Xinjiang Uyghur Autonomous Region ("**the XUAR**" or "**Xinjiang**") of China. We submit that the CBSA should immediately take action in response to this information.

URAP's position is that CBSA should take steps to re-determine the tariff classification of these importations under section 59 of the *Customs Act*.[1]

For all importations identified in this letter, the evidence is sufficient to warrant re-determining the tariff classification of these importations without further verification. If CBSA feels that it does

[1] R.S.C. 1985, c. 1 (2nd Supp.).

not yet have sufficient evidence to determine that these shipments were prohibited, CBSA should immediately initiate compliance verifications under section 42.01 of the *Customs Act* to assess whether the tariff classifications of these goods should be re-determined.

Further, CBSA should verify all importations by the importers in question since July 1, 2020, when the prohibition on imports produced by forced labour was imposed, as well as all importations in which the producers/exporters in question were involved.

Finally, CBSA should add tomato products and gloves exported from China to its list of targeted verification priorities so that additional CBSA resources can be directed to monitoring shipments of these products and to incentivize voluntary disclosures from importers.

Regardless of the particular mechanisms used, we urge CBSA to take **urgent and expedited** action in response to this letter given the clear connection between forced labour and the specific importations raised below.

In this letter, we present evidence that certain importations to Canada were produced wholly or in part by forced labour. Next, we identify the tools available to CBSA to address these importations. We then explain why CBSA should take immediate steps to classify these importations under tariff item 9897.00.00. Finally, we ask CBSA to add the products in question to its list of targeted verification priorities for tariff classification.

I. Evidence of Imports Produced Wholly or in Part by Forced Labour

URAP has accessed detailed import statistics for shipments that initially arrived in the United States ("**US**") and then were shipped to Canada. This data was accessed through Panjiva, a subscription-based service that aggregates public customs data for all shipments to the US. The statistics referenced below are enclosed at Attachments 1 and 2 to this letter.

These attachments show a series of importations to Canada that were produced wholly or in part by forced labour. To our knowledge, none of these goods have been classified under Chapter 98 of the Schedule to the *Customs Tariff*.[2]

We wish to emphasize in particular that data on these shipments were only available to URAP because the goods transited through the US. This may represent only a small proportion of the shipments of the products in question, from the importers in question, and/or from the shippers/exporters in question. As such, we are relying on CBSA to conduct a thorough analysis of all shipments with similar characteristics to the ones identified below.

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[2] S.C. 1997, c. 36.

A) Tomato Paste (Attachment 1)

1) Evidence that Dollarama is importing tomato paste using tomatoes from the XUAR

Attachment 1-A is a collection of entries of tomato paste spanning from April 10, 2020, to September 6, 2022. These shipments were consigned to Dollarama at 5805 Avenue Royalmount, Mont-Royal, Quebec.[3]

The shipper is listed as "Baoding Sanyuan Food Packing" ("**Baoding SFP**"). On the Made-in-China website, a China-based online platform to promote exports, Baoding SFP's profile states expressly that it uses tomatoes from the XUAR:

> *Our unwavering business dedication to integrity and innovation, **in conjunction with support of premium quality yield of naturally vine-ripened tomato in Xinjiang Autonomous Region** and geographically ideal neighbour Xingang Port (Tianjin), enables us to proactively expand our international business and cooperation in all different regions of the world.[4] (emphasis added)*

Baoding SFP's website contains an identical passage on the "about us" page, with the only difference being the use of the term "northwest region" in the place of "Xinjiang Autonomous Region":

> *Our unwavering business dedication to integrity and innovation, **in conjunction with support of premium quality yield of naturally vine-ripened tomato in northwest Regio**n and geographically ideal neighbour Xingang Port (Tianjin), enables us to proactively expand our international business and cooperation in all different regions of the world.[5](emphasis added)*

The northwest region of China is the Xinjiang Autonomous Region.[6]

Together, these sources confirm that Baoding SFP's tomato paste is produced using tomatoes from XUAR.

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[3] Attachment 1-A: Panjiva Import Statistics, April 2020 to September 2022, Dollarama imports of Tomato Paste from "Baoding Sanyuan Food Packing".
[4] Attachment 1-B: "Baoding Sanyuan Food Packing Co., Ltd.", Made-in-China.com, available online: https://sanyuanfood132.en.made-in-china.com/.
[5] Attachment 1-C: About Us, Baoding Sanyuan Food Packing Co., Ltd, accessed October 7, 2022, available online: http://www.sanyuanfoods.com/eninfo/enuser/view.asp?id=16.
[6] See Attachment 1-D: "Study of Supply Chain Risks Related to Xinjiang Forced Labour", Global Affairs Canada at 5.

2) *Tomatoes from Xinjiang are produced wholly or in part from forced labour*

It is well documented that Tomatoes and Tomato products from the XUAR are produced with forced labour.

First, the Government of Canada's own report on supply chain risks lists Tomatoes as a product for which "there is a high probability of being produced wholly or in part by non-voluntary Uyghur workers".[7]

Second, the Government of the US has taken action to ban imports of tomatoes and tomato products from the XUAR region, including downstream products produced outside of the XUAR that incorporate tomatoes from the XUAR.[8] This ban was issued on January 13, 2021 based on information that "reasonably indicates the use of detainee or prison labor and situations of forced labor". US Customs and Border Protection found the following indicators of forced labour in connection with tomatoes and tomato products from the XUAR:

- Debt bondage
- Restriction of movement
- Isolation
- Intimidation and threats
- Withholding of wages
- Abusive living and working conditions.[9]

The recognition that tomatoes from Xinjiang are produced by forced labour is broadly accepted across the US government, including by the Bureau of International Labour Affairs,[10] the Department of State, the Department of the Treasury, the Department of Commerce, the Department of Homeland Security, the United States Trade Representative and the Department of Labor.[11]

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[7] Attachment 1-D: "Study f Supply Chain Risks Related to Xinjiang Forced Labour", Global Affairs Canada at 6.
[8] Attachment 1-E: "Withhold Release Orders and Findings List", United States Customs and Border Protection.
[9] *Ibid*.
[10] Attachment 1-F: "Against Their Will: The Situation in Xinjiang", United States Bureau of International Labor Affairs.
[11] Attachment 1-F: "Xinjiang Supply Chain Advisory: Risks and Considerations for Businesses and Individuals with Exposure to Entities Engaged in Forced Labor and other Human Rights Abuses linked to Xinjiang, China", July 13, 2021 at 8, 10, 25 (Annex 2), 31 (Annex 6).

Third, credible media outlets have investigated and uncovered the use of forced labour in the production of tomatoes and tomato products in the XUAR. On October 29, 2021, CBC's *Marketplace* released a report detailing its investigation that conducted along with the Guardian and the Investigative Reporting Project Italy. This report uncovered that major brands had purchased tomatoes from companies in Xinjiang. It also found that Canadian grocery stores including Loblaws, Sobeys and Whole Foods were working with Italian processors who did business with Xinjiang companies.[12]

Critically, CBC and Adrian Zenz, senior fellow in China studies at the Victims of Communism Memorial Foundation, reviewed Chinese state media reports that showed transfers of Uyghurs to tomato fields and factories in the XUAR. These transfers were reportedly done under the guise of "poverty alleviation", a pretense for coercive labour transfer programs in Xinjiang according to a detailed report authored by Dr. Zenz in March 2021 for the Jamestown Foundation.[13]

According to CBC, two large Chinese companies – Cofco Tunhe Tomato ("**Cofco**") and Xinjiang Guannong Tomato Products Co. ("**Guannong**") – were beneficiaries of these labour transfers.[14] Export records reviewed by CBC showed that Cofco sold tomato paste to companies such as Heinz and Del Monte, with Guannong selling in Russia. These companies both have ties to the Xinjiang Production and Construction Corps ("**XPCC**"), a paramilitary organization linked to Xinjiang's agricultural sector. The XPCC, according to a report by the US Congressional Executive Commission on China cited by the CBC, has been connected to the large-scale surveillance, detention and indoctrination program targeting Uyghurs and other groups.[15] Canada has recognized the connection of the XPCC to forced labour by sanctioning it directly.[16]

CBC also interviewed a Uyghur individual from Xinjiang who noted that:

[12] Attachment 1-G: Eric Szeto et. al, "Canada's Grocery Chains Stocked with Tomato Products Connected to Chinese Forced Labour", *CBC Marketplace*, October 29, 2021, available online: https://www.cbc.ca/news/canada/marketplace-tomato-products-investigation-1.6227359.
[13] Attachment 1-H: Adrian Zenz, "Coercive Labor and Forced Displacement in Xinjiang's Cross-Regional Labor Transfer Program: A Process-Oriented Evaluation", *The Jamestown Foundation*, Washington, DC: March 2021 (endnotes and Appendices omitted for size), available online: https://jamestown.org/product/coercive-labor-and-forced-displacement-in-xinjiangs-cross-regional-labor-transfer-program/.
[14] Attachment 1-G: Eric Szeto et. al, "Canada's Grocery Chains Stocked with Tomato Products Connected to Chinese Forced Labour", *CBC Marketplace*, October 29, 2021, available online: https://www.cbc.ca/news/canada/marketplace-tomato-products-investigation-1.6227359.
[15] *Ibid*, citing United States Congressional-Executive Commission on China, 2020 Annual Report, Chapter II, "Business and Human Rights" at 7, available online: https://www.cecc.gov/publications/annual-reports/2020-annual-report.
[16] *Special Economic Measures (People's Republic of China) Regulations*, SOR/2021-49, Schedule part II.

if they are not in [internment] camps ... my family is picking tomatoes. The Chinese Communist party has so many ways to torture you.

Finally, in March 2022 Parliamentarians questioned an official from Employment and Social Development Canada ("**ESDC**") on why it has not taken action to block imports of tomatoes and tomato products from Xinjiang. The Honourable Michael Chong raised tomatoes as a product that is connected to forced or coerced labour in Xinjiang, questioning why CBSA had not blocked any shipments of such tomato products.[17] The Honourable Sameer Zuberi also noted that "[m]ost global tomato paste comes from the region in question". The answer from Rakesh Patry of ESDC was that CBSA still needed to "effectively operationalize" the ban.[18] Over 7 months later, this remains a ban that has not been operationalized, at least in any way that is discernible to the public.

B) Gloves (Attachment 2)

1) Magenta Designs Ltd. is importing gloves from the XUAR

Attachment 2-A is an entry of "Women's Fabric Velvet Gloves" on October 21, 2021. This shipment was consigned to Magenta Designs Ltd. in North Vancouver, BC.[19]

The shipper on this entry is listed as Xinjiang Xianzhen Garment, with its parent company listed as Xinjiang Xianzhen Garment Manufacturing Co., Ltd ("**XXG**"). The shipper's address is listed as "Ili Kazakh Autonomous Prefecture Xinjiang Uyghur Province 835300, China." The HS code subheading provided is 6116.93.

2) Gloves are being produced in the XUAR wholly or in part by Forced Labour

There is extensive evidence to document that gloves are one of the main products produced with forced labour in the XUAR. The US Bureau of International Labour Affairs has identified reports of glove factories "forcibly training and employing 1,500 to 2,000 ethnic minority adult workers with the government's support."[20]

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[17] Attachment 1-I: Canada. Parliament. House of Commons. Standing Committee on Foreign Affairs and International Development. Evidence. (Issue No. 12, March 28, 2022). 44th Parliament, 1st Session. (Online). Available: https://www.ourcommons.ca/Content/Committee/441/FAAE/Evidence/EV11663289/FAAEEV12-E.PDF at 13, 14.
[18] *Ibid* at 15.
[19] Attachment 2-A: Panjiva Import Statistics, October 2021, Magenta Designs Import of Women's Fabric Velvet Gloves from Xinjiang Xianzhen Garment Manufacturing Co., Ltd.
[20] Attachment 2-B: "Against Their Will: The Situation in Xinjiang", United States Bureau of International Labor Affairs (China – Gloves – Forced Labor).

In the case of XXG specifically, its address is located amidst a cluster of internment camps connected to factories. It is also located near other glove-producing factories that are subject to Withhold Release Orders (‘**WROs**”) in the US and which have been the subject of individual testimonies describing the production of gloves using forced labour. Further, it is located an industrial park, a preferred tool for the Government of China to industrialize the XUAR, a process which has gone hand-in-hand with the securitization of the region and the detention of its residents.

a) There is a cluster of Internment Camps Near the Exporter

XXG’s postal code (835300) allows its address to be searched on google maps. This location and its surroundings are shown in the screenshot below and at Attachment 2-C:

As shown above, the address provided for XXG is very close to the centre of Qapqal Xibe Autonomous County. Google maps shows this as a distance of 8.3km by car.

As part of its “Mapping Xinjiang’s ‘re-education’ Camps” project, the Australian Strategic Policy Institute (“**ASPI**”) maintains an interactive map of camps in Xinjiang. This map provides intelligence on 380 re-education camps, detention centres and prisons that were newly built or significantly expanded since 2017.

The ASPI interactive map shows five facilities in the Qapqal (also commonly written as Chapchal, including in the ASPI report) area, marked by black diamonds in the screenshot below. These camps have been labelled by ASPI as Chapchal Facility #1-5. The descriptions for each facility are attached at Attachment 2-D.

ASPI's descriptions identify the number of factories within and adjacent to each facility as well as the growth in buildings at these locations since 2017. Each of these facilities has multiple factories either within or adjacent to the complex. Chapchal Facility #2, a former middle school that was converted into a "Vocation and Technical Education Centre," has been photographed by the activist group "Bitter Winter." At least four victims have been specifically tied to this facility, with

former detainees stating that the facility was expanded from a capacity of thousands to tens of thousands.[21]

Further, public materials state that XXG was established in 2018, during the time period when ASPI's has tracked the rapid expansion of the re-education camps in the area. The presence and expansion of this cluster of detention centres and re-education facilities near XXG's stated address provides strong evidence that its products are produced using forced labour.

b) Evidence of Forced Labour in Nearby Ghulja (Yining)

As noted, the address for XXG is in the "Yinan Industrial Park" in the Qapqal Xibe Autonomous Region of the Ili Kazakh Autonomous Prefecture.[22] This location is only 50 kilometers by car from Ghulja (also known as Yining Prefecture), a region where there is extensive evidence that gloves are being produced using forced labour.

First, this has been recognized by the US Government. Since September 14, 2020, the US CBP has enforced WROs for "Apparel produced by Yili Zhuowan Garment Manufacturing Co., Ltd. ("**Zhuowan**") and Baoding LYSZD Trade and Business Co., Ltd in Xinjiang Uyghur Autonomous Region, China."[23] These companies are both located in the Ghulja region. The press release announcing these WROs states the following:

> *Information reasonably indicates that these entities use prison and forced labor in apparel production. CBP identified forced labor indicators including the restriction of movement, isolation, intimidation and threats, withholding of wages, and abusive working and living conditions.*[24]

Second, the production of gloves using forced labour in this region, and by Zhuowan specifically, is supported by first-hand accounts. Less than 10 days after the issuance of the WROs, media outlet *Radio Free Asia* (RFA) published an article reporting that nine Kazakh women from Ghulja County, where these companies are located, were sent back to an internment camp after refusing

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[21] Attachment 2-D: Australian Strategic Policy Institute, "Mapping Xinjiang's 'Re-education' Camps", Chapchal Facilities 1-5, accessed November 3, 2022.

[22] Attachment 2-E: Export Hub, "Xinjiang Xianzhen Garment Co. Ltd. Company Profile", accessed November 3, 2022, available online: https://www.exporthub.com/xinjiang-xianzhen-garment-co-ltd/. Please note that the website printed into a format that is difficult to read. For this reason, we have included a screenshot at page 1 of the attachment that shows how the website appears in the author's browser.

[23] Attachment 2-F: Excerpt from "Withhold Release Orders and Findings List" and Press Release Dated September 14, 2020, United States Customs and Border Protection, available online: https://www.cbp.gov/trade/forced-labor/withhold-release-orders-and-findings.

[24] *Ibid*.

to sign a labour contract for compensation that was 40% of a typical wage for a manual worker.[25] According to RFA, these women were sent to work in the Jiafang Garments Industrial Park after their release from an internment camp. They were expected to work 12-hour shifts sewing gloves and to attend one hour of "political education" every day.[26] RFA reported that Zhuowan produces leather and wool gloves.

RFA spoke with a Uyghur individual outside of China whose younger sister had, at the time, spent two years in a Zhuowan factory under forced labour conditions. This source provided RFA with photos and described factories in Ghulja that "produce name-brand gloves, bags, clothing and other goods, and then export them to Russia as well as Europe and the United States."[27] This individual indicated that the factories "use people from camps basically for free" and punish them where they cannot meet demands, including 10-plus hours of work a day.[28]

RFA also spoke to a Kazakh woman, Gulzira Auelkhan who worked at Zhuowan and who confirmed she had been sent there after spending 15 months at an internment camp that she was prohibited from leaving from July 2017 to October 2018. Having been showed the pictures of the factory provided by the source noted above, Ms. Auelkhan said: "This is Jiafang—I worked in a glove factory there for three months." She further stated that "The Zhuowan glove factory and the camp were both on the grounds there. [The factory] was just like being in a camp. Even now, just thinking of it makes my heart cry. I can't stand it."

According to Ms. Auelkhan, the factory was surrounded by armed police and workers were punished if they did not meet a quota of 20 pairs of gloves a day. Ms. Auelkhan was promised pay for the three months she spent at Zhuowan, but received nothing at the end of the contract and was forced to sign a document indicating that she had received "free job training." Ms. Auelkhan was beaten by police when she initially refused to sign the document.

In a report by Laura T. Murphy titled "Laundering Cotton: How Xinjiang Cotton is Obscured in International Supply Chains,"[29] Ms. Murphy provides the testimony of Erzhan Qurban, a 42-year-old man who was held in an internment camp and, once released, was sent to work in a glove factory in the Jiafang Clothing Industrial Park. Mr. Qurban was told that if he did not work in the

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[25] Attachment 2-G: "New Evidence Further Links Xinjiang Company Sanctioned by US to Forced Labour", *Radio Free Asia*, September 23, 2020, accessed November 3, 2022, available online: https://www.rfa.org/english/news/uyghur/factory-09232020171245.html.
[26] *Ibid*.
[27] *Ibid*.
[28] *Ibid*.
[29] Attachment 2-H: Laura T. Murphy, et al. (2021). "Laundering Cotton: How Xinjiang Cotton is Obscured in International Supply Chains." Sheffield, United Kingdom: Sheffield Hallam University Helena Kennedy Centre.

glove factory, he would be sent back to the internment camp.[30] The report quotes Mr. Qurban as follows:

> *We were watched by four cameras in our room, which ensured that we didn't talk to each other. Those who spoke anyways were handcuffed and had to stand by the wall. "You don't have the right to talk, because you are not humans," said the guards. "If you were humans, you wouldn't be here." [….] After nine months, on November 3, 2018, I was released. They sent me to a factory which produced leather and fleece gloves. I worked on a production line for 53 days, earning 300 yuan in total.*[31]

Ms. Murphy's report also includes the testimony of Gluzira Auelkhan, noted above, corroborating the very low pay she was provided and the fact that she was held in a dormitory at night and forced to take part in ideological education and Chinese language sessions.

The proximity of XXG to Ghulja further supports that it is likely producing gloves using forced labour.

c) Industrial Parks as a Primary Means of Industrializing the XUAR

Finally, XXG is located in an industrial park. Industrial parks are a preferred means of the Government of China to industrialize the XUAR, which has gone hand in hand with the securitization of the region and the detention of its residents.

As noted, XXG is located in the "Yinan Industrial Park." Non profit organization C4ADS in the US has released a report that identifies industrial parks as a primary vehicle, through the Xinjiang pairing assistance program, to industrialize the XUAR. This initiative links provinces and cities in Eastern China to prefectures and localities in the XUAR, with Chinese companies outside of the XUAR being incentivized to move manufacturing into the region.[32]

According to C4ADS, industrial parks are the primary facilities through which industrial transfer takes place.

The C4ADS report explains:

> *The securitization of the region coincides with a considerable industrialization drive, which together constitute two facets of one strategy. The government sees the mass detention campaign and the establishment of a police state as prerequisites that allow Chinese*

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[30] *Ibid* at 15.
[31] *Ibid* at 5.
[32] Attachment 2-I: "SHIFTING GEARS: The Rise of Industrial Transfer into the Xinjiang Uyghur Autonomous Region", *C4ADS,* June 30, 2022, available online: https://c4ads.org/reports/shifting-gears/.

> *manufacturing companies to feel secure enough to move into XUAR. In turn, these manufacturers move Uyghurs from their farms and villages to factories and industrial parks where they can be monitored, indoctrinated, and transformed into "modern" industrial workers.*[33]

In its report, C4ADS includes the Yining Textile Industry Zone, which is the Ghulja industrial park where Zhuowan is located, as a case study. The report notes:

> *The zone serves as an example of how industrial parks, built as pairing program initiatives, work as vectors for the transfer of companies from their paired region to XUAR. An analysis of these parks reveals how these linkages expose broader supply chains to coerced labor.*[34]

If the Yinan industrial park is similarly connected to the Xinjiang pairing assistance program, this may be further evidence that forced labour is being used by XXG.

II. Tools at CBSA's Disposal

A. The Prohibition under Tariff Item 9897.00.00

On July 1, 2020, the Government of Canada amended the Schedule to the *Customs Tariff* to prohibit the importation to Canada of "Goods mined, manufactured or produced wholly or in part by forced labour." As of that date, goods of this description are to be classified under tariff item 9897.00.00.

In accordance with subsection 136(1) of the *Customs Tariff*, "The importation of goods of tariff item No. 9897.00.00, 9898.00.00 or 9899.00.00 is prohibited".

Canada's imposition of this prohibition stems directly the *Canada-United States-Mexico Free Trade Agreement* ("**CUSMA**"), which obligates Canada to prohibit the importation of goods into its territory produced "in whole or in part by forced or compulsory labor, including forced or compulsory child labor."[35]

This legislative framework prohibits the importation of goods produced "wholly or in part" by forced labour. The terms "wholly or in part" are not defined under the *Customs Act* or the *Customs*

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[33] *Ibid* at 6.
[34] *Ibid* at 13.
[35] CUSMA, Art. 23.6, available at: https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/cusma-aceum/text-texte/23.aspx?lang=eng.

Tariff. These terms are also not defined in CUSMA. On its face, this language is broad and would encompass situations where forced labour is present anywhere in the supply chain of a good.

B. Re-Determination under section 59(1)

The *Customs Act* establishes an administrative process pursuant to which the tariff classification of goods imported to Canada is determined and can be re-determined and appealed.

When goods are imported to Canada, their tariff classification is either determined by an officer under subsection 58(1) or deemed to be determined as declared by the person accounting for the goods under subsection 58(2).

Under subsection 59(1), an officer may re-determine the tariff classification of any imported goods within four years after the date of the determination under section 58 on the basis of either:

(i) An audit or examination under section 42, a verification under section 42.01 or a verification of origin under section 42.1; or

(ii) If the Minister considers it advisable to make the re-determination.

C. Verification under section 42.01

Section 42.01 of the *Customs Act* allows CBSA to conduct a verification of compliance with tariff classification, and to re-determine tariff classification if warranted.

Section 42.01 states as follows:

> ***42.01*** *An officer, or an officer within a class of officers, designated by the President for the purposes of this section may conduct a verification of origin (other than a verification of origin referred to in section 42.1), verification of tariff classification or verification of value for duty in respect of imported goods in the manner that is prescribed and may for that purpose at all reasonable times enter any prescribed premises.*

Under its verification authority, CBSA conducts random verifications to measure compliance rates and revenue loss.[36] It also publishes "targeted verification priorities," which are determined "through a risk-based, evergreen process, meaning that new targets are added throughout the year."[37]

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[36] CBSA, Trade compliance verifications: July 2022, available online: https://www.cbsa-asfc.gc.ca/import/verification/menu-eng.html.

[37] *Ibid*.

To our knowledge, CBSA has not published the process that it uses to determine which shipments should be subject to verification and/or which products should be added to its targeted verification priorities. Presumably CBSA considers the level of risk associated with 'red flags' that arise from the customs information that it collects on a daily basis. We assume that CBSA also considers information that is brought to its attention by third parties, whether through its Border Watch Line[38] or otherwise. Further, we understand that in the context of suspected forced labour practices, CBSA would consider information from reports prepared by the Labour Program of ESDC.[39]

D. Standards of Proof

CBSA does not need to be *certain* that goods were produced in part by forced labour in order to classify them under tariff item 9897.00.00. Rather, tariff classification decisions should be made by CBSA on a balance of probabilities, which is the standard that is applied by the Canadian International Trade Tribunal ("**CITT**") on appeal.[40] In more practical terms, the evidence need only be sufficient to demonstrate that is it **more likely than not** that the goods in question were produced wholly or in part by forced labour.

Balance of probabilities is the standard applicable in most non-criminal proceedings in Canada. The leading case from the Supreme Court of Canada, *F.H. v. McDougall,* stipulates that to meet the balance of probabilities standard it is clear that evidence need not be absolute or actual proof, but rather proof showing that it is more likely than not that a fact exists or an event occurred.[41] Canadian administrative tribunals and boards also consistently apply this civil standard in human rights, tax, labour/employment, immigration/refugee, and competition/economic contexts.

There is no prescribed standard of evidence to be used by CBSA for determining whether a verification under section 42.01 of the *Customs Act* should be conducted. However, given that a verification is conducted to gather evidence, and involves weighing resource availability and competing priorities within the agency, it is necessarily a lower threshold than a balance of probabilities. In this context, where CBSA is not yet satisfied that tariff classification should be re-determined but has evidence that is: (a) credible; (b) specific in respect of shipments and entities

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[38] *Ibid*; CBSA, Memorandum D9-1-6, "Goods Manufactured or Produced by Prison or Forced Labour", May 28, 2021, available at: https://www.cbsa-asfc.gc.ca/publications/dm-md/d9/d9-1-6-eng.html.
[39] CBSA, Memorandum D9-1-6, "Goods Manufactured or Produced by Prison or Forced Labour", May 28, 2021, available at: https://www.cbsa-asfc.gc.ca/publications/dm-md/d9/d9-1-6-eng.html.
[40] *Best Buy Canada Ltd., P & F Usa Inc. and LG Electronics Canada Inc.,* AP-2015-034, AP-2015-036 and AP-2016-001, Decision and Reasons issued February 27, 2017 at paras 44, 84-87, 99.
[41] *F.H. v. McDougall*, 2008 SCC 53, [2008] 3 SCR 41 at paras. 40-49 ("**McDougall**").

involved; and (c) reasonably indicates the **potential** presence of forced labour, then CBSA should conduct a verification to determine whether the goods were properly classified.

III. CBSA Should Take Steps to Re-determine Tariff Classification

This letter presents compelling evidence that, on its face, connects specific importations of goods to Canada to forced labour in the XUAR region. This evidence supports the conclusion that these imports were more likely than not produced in part by forced labour and are therefore prohibited under section 136 of the *Customs Tariff*.

With respect to the importations of tomato paste by Dollarama, the evidence presented in this letter establishes that, on a balance of probabilities, the goods imported were produced in part by forced labour. The evidence in this respect is clear and direct. This tomato paste was repeatedly imported from a producer in China whose marketing emphasizes the XUAR as its source of supply for tomatoes. These importations occurred both before and after the 2021 CBC *Marketplace* investigation, which caused public outrage and resulted in at least one prominent grocery chain taking action to remove an impugned product from its shelves.[42] Further, the Government of Canada has itself accepted that "tomatoes and downstream processed food products" present a high probability of being produced wholly or in part by non-voluntary Uyghur workers."[43] The evidence supports immediately determining that these importations are properly classified under tariff item 9987.00.00.

With respect to the importation of fabric velvet gloves, the evidence presented in this letter also establishes, on a balance of probabilities, that the goods imported were produced in part by forced labour. The Government of Canada has accepted that "cotton and downstream fabric and apparel products" present a high probability of being produced wholly or in part by non-voluntary Uyghur workers."[44] Public information shows an adjacent cluster of rapidly expanding "re-education" camps and detention facilities and a nearby cluster of camps and factories for which there is extensive evidence of gloves being produced through forced labour. The evidence supports immediately re-determining that this importation is properly classified under tariff item 9987.00.00.

In the alternative, if CBSA feels that it does not yet have sufficient evidence to determine that these shipments were prohibited, CBSA should immediately initiate compliance verifications under section 42.01 of the *Customs Act* to assess whether the tariff classifications of these goods should

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[42] Attachment 1-G: Eric Szeto et. al, "Canada's Grocery Chains Stocked with Tomato Products Connected to Chinese Forced Labour", *CBC Marketplace*, October 29, 2021, available online: https://www.cbc.ca/news/canada/marketplace-tomato-products-investigation-1.6227359.

[43] Attachment 1-D: "Study of Supply Chain Risks Related to Xinjiang Forced Labour", Global Affairs Canada.

[44] *Ibid*.

be re-determined. Given the strength of this evidence, any verifications should be conducted on an **expedited basis** and should move to a re-determination of tariff classification under paragraph 59(1)(a)(i) of the *Customs Act* as soon as CBSA is satisfied that the evidence supports doing so on a balance of probabilities.

Further, CBSA should take immediate steps to identify all shipments involving the importers and/or exporters in question since July 1, 2020 and should re-determine tariff classification or conduct compliance verifications as warranted.

IV. CBSA should add the Products in Question to its List of Verification Priorities Immediately

In addition to the above, CBSA should add tomato products and gloves exported from China to its list of targeted verification priorities for tariff classification. Given that this is a dynamic list of priorities, it is open to CBSA to do immediately.

Amending the list of verification priorities in this manner would allow CBSA to direct resources nationally to apply greater scrutiny to future shipments of these products, both of which present a high risk of being produced by forced labour. It would also incentivize importers of these goods to voluntarily disclose past importations of these products to avoid a more probing audit of their importing activities over the past four years. Finally, and perhaps most critically, it would incentivize importers to shift their supply chains away from the XUAR.

V. Conclusion

URAP urges CBSA to take action that gives meaning to the prohibition imposed in mid-2020 and which, to date, has not been used. The House of Commons has recognized that a **genocide** is occurring in the XUAR.[45] Further, the Government of Canada has pledged to its North American trading partners, and to the Canadian public, that it will prohibit goods produced by forced labour, in whole or in part.

While URAP appreciates that this is a complex problem for which evidence gathering is difficult, CBSA now has compelling evidence before it connected to specific entities, products and shipments. This creates both a moral and a legal imperative for urgent action.

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[45] Ryan Patrick Jones, “MPs vote to label China's persecution of Uighurs a genocide”, *CBC News*, February 22, 2021, available at: https://www.cbc.ca/news/politics/uighur-genocide-motion-vote-1.5922711.

URAP would be pleased to work with CBSA to provide any assistance that we can, through our counsel or our network of experts on the genocide occurring in the XUAR.

Yours truly,

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List of Attachments

Attachment	Description
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Attachment 1-D	"Study of Supply Chain Risks Related to Xinjiang Forced Labour", Global Affairs Canada
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Attachment 1-G	Eric Szeto et. al, "Canada's Grocery Chains Stocked with Tomato Products Connected to Chinese Forced Labour", *CBC Marketplace*, October 29, 2021, available online: https://www.cbc.ca/news/canada/marketplace-tomato-products-investigation-1.6227359
Attachment 1-H	Adrian Zenz, "Coercive Labor and Forced Displacement in Xinjiang's Cross-Regional Labor Transfer Program: A Process-Oriented Evaluation", *The Jamestown Foundation*, Washington, DC: March 2021 (endnotes and Appendices omitted for size), available online: https://jamestown.org/product/coercive-labor-and-forced-displacement-in-xinjiangs-cross-regional-labor-transfer-program/

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Attachment 2-B	"Against Their Will: The Situation in Xinjiang", United States Bureau of International Labor Affairs (China – Gloves – Forced Labor)
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SLAVERY AND SUPPLY CHAINS

by Conlin Bedard LLP, Power Point Presentation

January 2023

Slavery and Supply Chains

A discussion of the trade tools being deployed by Canada and its trading partners to rid supply chains of products produced with forced labour

Presented by: Linden Dales

January 13, 2023

CONLIN BEDARD
LLP
BARRISTERS & SOLICITORS

Outline

- Background: What is happening in Xinjiang?
- ILO: Definition and indicators of forced labour
- Avenues of accountability in international law
- Trade law responses in Canada and the US
- International obligations
- Questions?

BACKGROUND: WHAT IS HAPPENING IN XINJIANG?

Factual Background

- Estimates of 1-2 million imprisoned Uyghurs other Turkic minorities
- GOC uses “terrorism”, “extremism”, “separatism”, “poverty alleviation” as pretexts to target Uyghurs and members of other ethnic and muslim minority groups

- Arrests for visiting sensitive (Muslim majority) countries; outward expressions of Muslim faith; being a relative of a detained person; using the backdoor of their home too often.
- Individuals are arrested, sent for “Re-education” to “Vocational Education and Training Centres”.

Factual Background (cont.)

“While in detention, Uyghurs and other Muslim ethnic minorities face **torture or cruel, inhuman and degrading treatment or punishment, obligatory patriotic and cultural education, forced labour, and mass arbitrary forced separation of children from their parents**. There are also credible reports of **systematic rape and gender-based sexual violence,** and witnesses and victims have reported **forced medical procedures that are performed without the patient's consent, including forced sterilization, abortions, contraceptive device insertion, and organ removal**”(Regulatory Impact Analysis Statement, *Special Economic Measures (People's Republic of China) Regulations*: SOR/2021-49, March 2021)

“Largest incarceration of an ethno-religious minority since the holocaust” (Adrian Zenz, Sr. China researcher, VOC Memorial Foundation)

Factual Background (cont.)

- Repression made possible by extensive surveillance
- State surveillance has transformed Xinjiang into a “vast, open-air prison” (UK Uyghur Tribunal, 2021)

Factual Background (cont.)

- Upon "graduation", mass transfers to factories, in some case attached to the VETCs.
- Xinjiang pairing assistance program links provinces and cities in Eastern China to Xinjiang

"The securitization of the region coincides with a considerable industrialization drive, ***which together constitute two facets of one strategy. The government sees the mass detention campaign and the establishment of a police state as prerequisites that allow Chinese manufacturing companies to feel secure enough to move into XUAR****. In turn, these manufacturers move Uyghurs from their farms and villages to factories and industrial parks where they can be monitored, indoctrinated, and transformed into "modern" industrial workers*" (C4ADS)

Factual Background: Key Products

- Cotton products (85% of Chinese cotton is from Xinjiang)
- Tomatoes and tomato products (70% or more of tomato paste supply globally)
- Polysilicon (50% or more of global supply)

- Red dates (20% of global supply tainted by forced labour)
- Gloves
- Human hair

- ASPI Report: found forced labour in the supply chains of 82 global brands, including Apple, BMW, Gap, Huawei, Nike, Samsung, Sony and Volkswagen. (Uyghurs for Sale: 'Re-education', forced labour and surveillance beyond Xinjiang, March 2020)

ILO: DEFINITION AND INDICATORS OF FORCED LABOUR

What is Forced Labour?

The ILO Forced Labour Convention, 1930 (No. 29) defines forced labour in its Article 2(1) 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 [or herself] voluntarily".*

Forced labour can take different forms, including debt bondage, bonded labour, trafficking for labour and sexual exploitation, slave-like practices, forced overtime and child soldiers.

What is Forced Labour? (cont.)

ILO Indicators of Forced Labour:

• Abuse of vulnerability • Deception • Restriction of movement • Isolation • Physical and sexual violence • Intimidation and threats	• Retention of identity documents • Withholding of wages • Debt bondage • Abusive working and living conditions • Excessive overtime

AVENUES OF ACCOUNTABILITY IN INTERNATIONAL LAW

Accountability: International Law

- *1948 UN Genocide Convention*.
  - Various governments and reputable institutions have concluded that the actions of the GOC in Xinjiang constitute genocide
    - US Government
    - Parliaments of the UK and Canada
    - Canadian Subcommittee on International Human Rights
    - The "Uyghur Tribunal", a NGO-funded body in the UK established to investigate genocide and crimes against humanity in Xinjiang
    - Newlines Institute for Strategy and Policy, in cooperation with the Raoul Wallenberg Centre for Human Rights.
- Multiple human rights treaties to which China is a state party, including the *Convention Against Torture* and the *International Covenant on Civil and Political Rights*
- Fundamental norms that make up customary international law

TRADE LAW RESPONSES OF CANADA AND THE UNITED STATES

Canada’s Response: Statements

“Canada is **gravely concerned** with evidence and reports of human rights violations in the People’s Republic of China against members of the Uyghur ethnic minority and other minorities. **These violations include repressive surveillance, mass arbitrary detention, torture and mistreatment, forced labour within the Xinjiang Uyghur Autonomous Region (Xinjiang), and mass transfers of forced labourers from Xinjiang to provinces across China**.”

- Global Affairs Canada, “Measures Related to the Human Rights Situation in the Xinjiang Uyghur Autonomous Region”, January 2021

Canada’s Response: Statements

“Since 2017, **credible reports** have continued to emerge of mass arbitrary detentions of Uyghurs and other Muslim ethnic minorities in the Xinjiang Uyghur Autonomous Region (XUAR) on the basis of their religion and ethnicity. Throughout the XUAR, Uyghurs and other Muslim ethnic minorities face repressive physical and digital surveillance, which includes severe restrictions on movement, the forced collection of biometric data, and coercive police surveillance. Family members of Canadian citizens have also disappeared and are incommunicado. These arbitrary detentions are directed by the central and regional governments under the pretext of countering terrorism and violent extremism. **While in detention, Uyghurs and other Muslim ethnic minorities face torture or cruel, inhuman and degrading treatment or punishment, obligatory patriotic and cultural education, forced labour, and mass arbitrary forced separation of children from their parents. There are also credible reports of systematic rape and gender-based sexual violence, and witnesses and victims have reported forced medical procedures that are performed without the patient's consent, including forced sterilization, abortions, contraceptive device insertion, and organ removal**. In July 2019, Chinese authorities stated that detention camps had been closed. However, there is strong evidence, including satellite imagery, leaked government documents, and witness testimony, suggesting that the detention facilities remain in operation. The Chinese government denies any such human rights abuses against Uyghur people and rejects any accountability for wrongdoing, instead seeking to discredit as well as intimidate victims and those who choose to speak out.

Extreme Internet and media censorship in the People's Republic of China (PRC) and restricted access to the region have limited the ability of the international community to ascertain the exact scope and details of the human rights situation in Xinjiang. **Experts estimate the number of Uyghurs and other Muslim ethnic minorities detained in the XUAR to be between 1 and 1.8 million, representing one of the largest human rights violations in the 21st century.”**

- Regulatory Impact Analysis Statement, *Special Economic Measures (People's Republic of China) Regulations*: SOR/2021-49, March 2021

Canada's Response: Statements

"There is **documented evidence** of human rights violations in the People's Republic of China against members of the Uyghur ethnic minority and other minorities within the Xinjiang Uyghur Autonomous Region (Xinjiang) that includes **repressive surveillance, mass arbitrary detention, torture and mistreatment, forced labour, and mass transfers of forced labourers from Xinjiang to provinces across China**. The evidence has been widely acknowledged by the international community, including both Canada and the United States."

- Global Affairs Canada, *Study of Supply Chain Risks related to Xinjiang forced labour*, April 2022

Canada's Response: Sanctions

- *Special Economic Measures (People's Republic of China)Regulations,*
- In response to the "gross and systematic human rights violations in the Xinjiang Uyghur Autonomous Region (XUAR)."
- "dealings prohibition" typical of Canadian economic sanctions. Effectively freezes assets and prohibits any dealing/transacting with listed persons, including provision of services
- Individuals inadmissible to Canada under the Immigration and Refugee Protection Act

Canada’s Response: Sanctions (cont.)

- Individuals
  - 1 ZHU Hailun (Vice Chairman of the Standing Committee of the People's Congress of Xinjiang Uygur Autonomous Region)
  - 2 WANG Junzheng (CCP Secretary of Tibet; former head of XPCC)
  - 3 WANG Mingshan (Secretary of Xinjiang Uygur Autonomous Regional Political and Legal Affairs Commission_
  - 4 CHEN Mingguo (director of the Xinjiang Public Security Bureau)
- Entities
  - 1 Xinjiang Production and Construction Corps Public Security Bureau (economic and paramilitary organization of the CCP)

Canada's Response: Sanctions

- Potential to severely restrict dealings in a region, industry, market
- An effective tool to cause targeted pain (to the extent of exposure to the Canadian mkt/Canadian companies)
- In this case, too narrow/no changes since March 2021

Canada's Response: Certifications, Declarations, Oversight

- Integrity Declaration on Doing Business with Xinjiang Entities
- Anti-forced labour clause in all federal contracts
- Creation of the Canadian Ombudsperson for Responsible Enterprise (CORE), focus on the extractive and garment industries. Canada's National Contact Point (NCP) for responsible business conduct covers all industries.

Canada's Response: Import Controls

- In July 2020, Canada added to the Customs Tariff a ban on imports of

  "Goods mined, manufactured or produced wholly or in part by forced labour;"

- Goods meeting this def'n classified under heading 9897 of the Customs Tariff, banned from entering (abandoned or re-exported)
- Assessments on whether to detain goods made on a case by case basis by the CBSA officer. That officer will make a judgement as to whether the goods were produced by forced labour.
- ESDC has a mandate to research relevant facts related to problematic supply chains and prepares reports to be shared with CBSA flagging goods that are likely mined, manufactured or produced by forced labour.

However…

Canada's regime, despite being now nearly 2.5 years old, has never been used to prevent imports from entering Canada!

- Only one documented instance of goods being detained. Goods were released following an appeal by the importer. In July 2022, CBSA confirmed that no further goods had been detained

US Import Control Regime

- Longstanding ban on imports of any goods made “wholly or in part” using forced, indentured, or convict labor, in any part of the world (section 307, *Tariff Act of 1930*).
- Until December 2021, resulted in a number of goods being detained under Withhold Release Orders (WROs). Including order on all Cotton, Tomatoes and downstream products
- December 2021, *Forced Labour Prevention Act* came into force. Rebuttable presumption that <u>all imports</u> from the Xinjiang region have been produced wholly or in part by forced labour, therefore barred

Track Records

- Fiscal year 2022 (Oct 1, 2021-sept 30, 2022), US CBP targeted **2,398** shipments on suspicion of forced labour (including under the rebuttable presumption)
- Even before the rebuttable presumption imposed, from Oct 1, 2020 to sept 30 2021, CBP targeted **1,469** shipments.
- Over this whole period, Canada has targeted **1** shipment.

Critical Differences

- **Lack of Guidance:** No regulatory or meaningful policy guidance for the officer. No evidence ESDC has provided reports. No invitation for public to provide reports other than through "border watch tip line"
  - US has specific regulations; encourages petitions from non-profit and nongovernmental organizations, partner government agencies, the press, and individuals. Analysts review academic articles, press reports, etc.

- **Lack of transparency:** CBSA has said it may, upon request, publish type of goods, country of origin. It will not publish the producer of the goods or other details.
  - CBP reports information on enforcement actions (WRO), enforcement outcomes
  - Includes manufacturer name, type of goods, and country of origin in all cases

Critical Differences (cont.)

- **Differing standards of proof**
  - **US: Reasonably but not conclusively indicates the presence of forced labour**
  - **Canada: Legally sufficient and defensible evidence**
- **Lack of systemic impact**: CBSA evaluates on a case by case basis
  - WROs that are issued when enforcement action is taken prevent any future shipments of that product from that producer from being released; puts importers/potential importers on notice; puts exporters/potential exporters on notice.

Changes to Canadian Legislation

Bill S-211, *An Act to enact the Fighting Against Forced Labour and Child Labour in Supply Chains Act and to amend the Customs Tariff*

- Likely to become law imminently. Companies subject to S-211, (requires public listing or a minimum size) will be required to file a supply chain risk report
  - disclose the steps taken to prevent and reduce the risk of forced labour in their supply chains
  - Report on policies, due diligence processes relating to forced labour; high risk parts of its supply chains; training provided to employees; self-assessment of effectiveness.
  - Must be approved by the governing body of the reporting entity
  - Reports will be publicly available
- If passed, it will align Canada with other countries that impose reporting obligations such as Australia and the United Kingdom.

Changes to Canadian Legislation (cont.)

Bill S-204:

- Introduced by conservative senator Leo Housakos
- Would impose US-style ban on importation of all goods "manufactured or produced wholly or in part" in Xinjiang
- Has not progressed since May 2022. Not likely to pass.
- If such presumptive ban is to be imposed, it will require legislation. See *Kilgour v. Canada,* 2022 FC 472

INTERNATIONAL OBLIGATIONS

International Obligations

- WTO agreements do not deal explicitly with labour standards
- Import restrictions: WTO-consistent if applied on a non-discriminatory basis (GATT, Articles I, III)
- Region-wide Import Ban: quantitative restriction contrary to GATT Article XI:1
- Potentially saved under Article XX(a), (b), (e)
- Would need to demonstrate that the measure does not "constitute a means of arbitrary or unjustifiable discrimination"

International Obligations: Cont.

- Canada's ban on imports arose from its commitment under CUSMA to ban all imports produced wholly or in part from forced labour (Art. 23.6)
- Current course of action risks friction with US

Concluding Remarks

Questions?

UYGHUR RIGHTS ADVOCACY PROJECT

PROJET DE DÉFENSE DES DROITS DES OUÏGHOURS

SESSION 1: ESCALATION OF UYGHUR GENOCIDE TO INTERNATIONAL INSTITUTIONS

1) ICJ - Genocide Convention, Rwanda case, Koroma dissent

The International Court of Justice (ICJ) is the principal judicial organ of the United Nations. The ICJ cannot make a binding ruling unless both states to the dispute agree that the ICJ shall settle the dispute. However, states do not have to provide consent on a case-by-case basis; states may consent to have disputes adjudicated by the ICJ in advance, for example, by signing onto a treaty that says so. The UN Genocide Convention contains a provision that provides that disputes shall be submitted to the ICJ. By ratifying that treaty, states parties consent, in advance, to the ICJ's jurisdiction. China is a state party to the Genocide Convention. However, China made a reservation, declaring that it does not consent to the ICJ's jurisdiction over disputes. That reservation might be challengeable. Reservations are invalid if contrary to the object and purpose of the treaty. A state party, such as Canada, may bring a dispute against the Chinese government for its violations of the Genocide Convention, and ask the ICJ to conclude that China's reservation is invalid. The ICJ examined this question previously, between the Democratic Republic of the Congo and Rwanda, and concluded that Rwanda's reservation was valid. However, a strong dissenting opinion was provided by Judge Koroma, and there is no concept of *stare decisis* in international law, meaning that if asked again, the ICJ would be free to decide differently. If they find China's reservation invalid, the ICJ could hear the case and issue a binding ruling concerning China's violations of the Genocide Convention.

2) ICJ – Convention Against Torture

The Convention Against Torture similarly contains a provision that provides that disputes shall be submitted to the ICJ. China is a state party to the Convention Against Torture, but made a reservation declaring that it does not consent to the ICJ's jurisdiction over disputes. Similar to the above, that reservation might be considered invalid by the Court if contrary to the object and purpose of the treaty. A state party may bring a dispute against the Chinese government for its violations of the Convention Against Torture, and ask the ICJ to conclude that China's reservation is invalid. If the Court agreed, it could hear the case and issue a binding ruling concerning China's violations of the Convention.

3) ICJ advisory opinion, vote of the General Assembly or one of its committees

The ICJ could provide an advisory opinion. Advisory opinions do not require states' consent. They need only be referred to the ICJ by a UN organ or body authorized to do so. They are not binding, but often carry persuasive weight. The UN General Assembly or other authorized organ or agency may ask the ICJ to issue an advisory opinion on China's violations of the Genocide Convention and/or the Convention Against Torture. The major hurdle would be to get the necessary votes in the UN General Assembly or other authorized organ or agency.

4) ICJ against countries deporting to China – Genocide Convention

A state party to the UN Genocide Convention may initiate a dispute at the ICJ against other states parties (besides China) for complicity in the Uyghur genocide. Article I of the Genocide Convention provides that states parties "undertake to prevent and to punish" genocide. Article III provides that "complicity in genocide" "shall be punishable". A state party to the Genocide Convention, such as Canada, may initiate disputes against states parties that have been extraditing or deporting Uyghurs back to China, including potentially Egypt, Cambodia, Tajikistan, Kazakhstan, Kyrgyzstan, and/or Afghanistan, for complicity in the Uyghur genocide. This would enable the ICJ to make findings of fact regarding the Uyghur genocide, even in the absence of China's consent.

5) ICJ against countries deporting to China – Convention Against Torture

Similarly, a state party to the Convention Against Torture may initiate a dispute at the ICJ against other states parties that have been extraditing or deporting Uyghurs back to China. Article 3, paragraph 1, of the Convention Against Torture provides that "no State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture". This could again implicate countries such as Egypt, Cambodia, Tajikistan, Kazakhstan, Kyrgyzstan, and/or Afghanistan, that are sending Uyghurs back to China, where there are substantial grounds for believing they would be in danger of being subjected to torture.

6) ICC jurisdiction with deportation, article 15, initiative of the prosecutor, article 15, coercive environment

There is substantial evidence of numerous crimes against humanity committed by the CCP against Uyghurs. This may expose Chinese officials to possible prosecution at the International Criminal Court (ICC). China is not a state party to the Rome Statute, and absent a UN Security Council referral, the ICC only has jurisdiction to investigate crimes committed on the territories of states parties or crimes committed by states parties' nationals. However, the crimes against humanity of deportation and persecution may be framed as having occurred, in part, on territories of states parties (for instance, Cambodia and/or Tajikistan) from which Uyghurs were forcibly transferred, as was done in the case of Myanmar and Bangladesh. UK Barrister Rodney Dixon KC submitted a communication to this effect and asked the Office of the Prosecutor (OTP) to open a preliminary

examination on his own initiative (proprio motu) into these crimes. In a December 2020 Report on Preliminary Examination Activities put out by the OTP, they responded to Dixon's communication and stated that the conduct alleged did not appear to amount to the crime against humanity of deportation. Dixon then communicated to the Prosecutor's office a request for reconsideration based on new facts or evidence. Presumably, his team is now collecting and submitting further evidence. Although Dixon is already working on this, other lawyers and non-profit organizations may offer to assist.

7) ICC jurisdiction, state referral, article 14

There are three ways for a preliminary examination to be launched by the Office of the Prosecutor at the ICC. One way is on the Prosecutor's own initiative (proprio motu), described above. A second way is by UN Security Council referral. A third way is by state referral. This is where a state party to the Rome Statute asks the Prosecutor to look into a situation. A state party referral, as opposed to proprio motu, carries with it certain procedural advantages. For instance, if a state refers a situation, the prosecutor may proceed from the preliminary examination stage to the investigation stage without obtaining confirmation from a Pre-Trial Chamber. As a result of these advantages, it would be valuable if a state party to the Rome Statute referred the situation relating to the Uyghurs to the Office of the Prosecutor, based on the same territorial jurisdiction argument described above. Czech Republic may be a good option to pursue given the positive relationship between their parliament and the Uyghur community and their influential role within the ICC Assembly of States Parties.

8) UN special procedures

Complaints of human rights breaches may be lodged with the UN special procedures. These are either special rapporteurs or working groups, and they are comprised of international human rights experts with mandates to advise and report on human rights from either a thematic or a country-specific perspective. They can act on individual cases of reported violations, conduct annual studies, undertake country visits, and engage in advocacy. There is no country-specific special procedure on China, but several thematic special procedures have mandates that may be relevant, including the Working Group on Arbitrary Detention; the Special Rapporteur on the right to privacy; the Special Rapporteur on freedom of religion or belief; the Special Rapporteur on contemporary forms of slavery, including its causes and its consequences; the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; and the Special Rapporteur on violence against women, its causes and consequences. Any individual or group can submit a complaint to special procedures online by clicking here. In addition, the establishment of a country-specific special procedure on China may be pursued, though this may not be feasible at this juncture given China's influence at the United Nations.

9) An international or hybrid court

A number of international or hybrid courts have been established with mandates to address crimes in particular jurisdictions. Examples are the International Criminal Tribunal for the Former Yugoslavia, the International Criminal Tribunal for Rwanda, the Special Court for Sierra Leone, the Extraordinary Chambers in the Courts of Cambodia and the Extraordinary African Chambers within the Courts of Senegal. These Courts have been established either by the Security Council, in which China has a veto, or with the cooperation of the relevant State. Nonetheless anyone can request the establishment of such a Court.

10) A UN Human Rights Council resolution

The UN Human Rights Council on October 6, 2022 defeated a motion "to hold a debate on the situation of human rights in the Xinjiang Uyghur Autonomous Region" at its next session. The vote was 17 to 19, with 11 abstentions.

The text of the resolution can be found at this link:

https://daccess-ods.un.org/tmp/6611269.71244812.html

The recorded vote of each voting state can be found at this link:

https://hrcmeetings.ohchr.org/HRCSessions/RegularSessions/51/DL_Resolutions/A_HRC_51_L.6/Voting%20Results.pdf

Only three abstaining states need to vote in favour for the result to change. The resolution could and should be reintroduced at the next session and, in the meantime, an effort could and should be made to persuade the abstaining states to vote in favour.

11) A special session of the UN Human Rights Council

A special session of the UN Human Rights Council can be convened at any time provided one third of the member states of the UN Human Rights Council so request. See https://www.ohchr.org/en/hr-bodies/hrc/sessions.

The Council has 47 members. If sixteen member states of the Council request a special session, the one third threshold would be met.

The defeated resolution on China at the most recent Council meeting had seventeen votes in favour. Those seventeen states could and should be approached to ask them to join in a request for a special session on the situation of human rights in the Xinjiang Uyghur Autonomous Region.

12) An interstate complaint on racial discrimination

The International Convention on the Elimination of All Forms of Racial Discrimination provides, in Articles 11 to 13, for the adjudication of an inter-state complaint of violation of the Convention. The text of the Convention can be found at this link:

https://www.ohchr.org/en/instruments-mechanisms/instruments/

international-convention-elimination-all-forms-racial

China is a state party. So are 181 other states. See:

https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-2&chapter=4&clang=_en

Any of these other states can and all of these other states should bring a complaint against China for violations of the Convention with Uyghur victims.

13) United Nations Convention on the Rights of the Child

States parties to the Convention on the Rights of the Child are obligated to make periodic reports to the expert Committee on the Rights of the Child established under the Convention. The Rule 75(1) of the Rules of Procedure of the Committee provide that “the Committee may make such suggestions and general recommendations on the implementation on of the Convention by the reporting State as it may consider appropriate”. The Convention provides, in Article 44(4) that, subsequent to the periodic report of the state party, “the Committee may request from States Parties further information relevant to the implementation of the Convention”.

China is a state party to the Convention and has reported periodically to the expert Committee. The Committee can be asked to request from China information relevant to its implementation of the Convention beyond that already provided. From that further information, or a failure to provide it, the Committee could make recommendations on the implementation of the Convention by China.

14) UN Human Rights Council confidential procedure

The UN Human Rights Council has a confidential procedure to address consistent patterns of gross and reliably attested violations of human rights and fundamental freedoms occurring in any part of the world. A complaint goes first to the Working Group on Communications, then to the Working Group on Situations, and then to the Human Rights Council.

Though what happens under the procedure is confidential, the names of countries referred by the Working Group on Situations to the Human Rights Council are public. China is not now and has never been subject to this confidential procedure.

A complaint can be submitted by anyone, but it can not be based exclusively on media reports. It also can not address a claimed violation already being dealt with by another international human rights mechanism.

Remedies available under the confidential procedure are that the Council can:

a. keep the situation under review and request the State concerned to provide further information within a reasonable period of time;
b. keep the situation under review and appoint an independent and highly qualified expert to monitor the situation and report back to the Council;

c. discontinue reviewing the matter under the confidential complaint procedure in order to take up public consideration of the same (this has happened with Kazakhstan and Eritrea); and
d. recommend to the Office of the High Commissioner for Human Rights to provide technical cooperation, capacity building assistance or advisory services to the State concerned.

15) UN investigations

United Nations investigative bodies can and have been established by the Security Council, the General Assembly, the Secretary - General, the High Commissioner for Human Rights, and the Human Rights Council. The Office of the High Commissioner for Human Rights, on their own initiative, undertook one such investigation of Uyghur victimization, an assessment of human rights concerns in the Xinjiang Uyghur Autonomous Region, China and released their report in August 2022.

16) UN anti-colonialism system

The United Nations Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples has an agenda item titled "Question of the list of Territories to which the Declaration on the Granting of Independence to Colonial Countries and Peoples is applicable". Right now, Puerto Rica is discussed under that agenda item, even though the United States objects to its inclusion.

The Committee accepts and considers petitions from groups and individuals. Anyone and any NGO can petition the Committee to include East Turkestan/ Xinjiang in that agenda item.

17) Council of Europe Convention against Trafficking in Human Organs

This Convention obligates states parties to prohibit its nationals and habitual residents from engaging in organ trafficking whether inside or outside the territory of the state party. The Convention is open for signature and ratification, beyond member states of the Council of Europe, to observer states of the Council and to all other states on invitation. To date, thirteen states of the Council of Europe have signed and ratified the treaty. One observer state has done so - Costa Rica and one state which is neither a member nor observer state, Chile, - has been invited to do so. All states can and should sign and ratify the Convention, requesting an invitation to do so, if necessary.

18) UN Joint Office on the Prevention of Genocide and Responsibility to Protect

This joint office has two special advisors to the UN Secretary General, a Special Advisor on the Prevention of Genocide and a Special Advisor on the Responsibility to Protect. Their website indicates that the two advisors share "a common methodology for early warning, assessment, convening, learning, and advocacy, as well as a common office and staff based in New York". The

Office to date has engaged in early warning public briefings to the Security Council on Burundi, the Central African Republic, South Sudan and Ukraine, but not, to date, on China.

SESSION 2: FORCED LABOUR

19) Forced labour prevention act

Rights-respecting countries can and should pass legislation to tackle Uyghur forced labour by implementing a presumption that goods from the Uyghur region are produced using forced labour. The US has done this with its passage of the Uyghur Forced Labor Prevention Act (UFLPA). In Canada, Bill S-204, introduced by Senator Leo Housakos, would amend the Customs Tariff to prohibit the importation of any and all goods produced in the Uyghur region on the basis that they are produced using Uyghur forced labour. Similar steps as these may be available in other countries.

20) Forced labour prevention litigation on legislative interpretation

Strategic litigation may be utilized, particularly in countries that already prohibit the importation of goods made with forced labour. In Canada, the applicants in *Hon. David Kilgour et al. v. the Attorney General of Canada et al.* argued that implementing a rebuttable presumption that goods from the Uyghur region are produced using forced labour is something that the Canada Border Services Agency (CBSA) is already permitted to do, under the existing provisions of the Customs Tariff. The Federal Court did not rule in the applicants' favour, and the case is now under appeal. Similar litigation initiatives can be pursued in other jurisdictions, particularly in countries like Canada that already prohibit, in general, the importation of goods made with forced labour.

21) Use of ombudsman or other neutral arbiter

In Canada, the Canadian Ombudsperson for Responsible Enterprise (CORE) may investigate human rights abuses committed by Canadian companies' operations abroad in one of three sectors: garment, mining, and oil and gas. In April 2022, a coalition of 28 Canadian non-profit organizations submitted a complaint to CORE, asking it to investigate 14 Canadian companies alleged to use Uyghur forced labour in their supply chains. The fourteen Canadian companies named were Costco Canada, Gap Canada, Hugo Boss Canada, Nike Canada, Ralph Lauren Canada, Zara Canada, Diesel Canada, Guess Canada, Levi Strauss Canada, Walmart Canada, Lululemon Canada, Amazon Canada, Dynasty Gold Corp, and GobiMin. This use of an ombudsman or other neutral arbiter should be considered in other jurisdictions where such offices exist.

22) Divestment

Investment and pension funds have billions placed in China, in a wide variety of companies. Yet, these companies may either use forced labour or rely on supply chains which do, particularly

those companies or supply chains operating in Xinjiang.

Investment and pension funds may focus on only the profitability of investments, without regard to how the money is made. To overcome that tendency, there needs to be investment and pension board members with human rights sensibilities, policies that direct boards away from investments where money is being made through human rights violations, legislation setting out human rights investment criteria and standards and, if necessary, class actions, by those with a financial interest in investment or pension funds to hold the funds to human rights standards.

23) Interstate complaints to the International Labour Organization

The constitution of the International Labour Organization allows, in Article 26, any of the state member of the ILO to file a complaint with the International Labour Office if it is not satisfied that any other member is securing the effective observance of any Convention which both have ratified. The Constitution sets out an elaborate complaints procedure triggered by the complaint. Starting from August 12, 2023, this complaint procedure can be invoked against China.

24) Trade union or employer complaints to the International Labour Organization

The constitution of the International Labour Organization (ILO) allows, in Article 25, industrial associations of employers or workers to represent that any member of the Organization has failed to observe a labour convention to which it is a party. If the member either does not respond to the representation or gives what the governing body of the ILO deems to be an unsatisfactory answer, the governing body has the right under Article 26 to publish the representation and the reply, if any.

China is a member of the International Labour Organization and a state party to both the Forced Labour Convention, 1930 and the Abolition of Forced Labour Convention, 1957. These Convention both provide that they come into force for any member of the ILO twelve months after the date on which the ratification of the Convention has been registered with the ILO. China ratified both conventions on August 12, 2022. They come into force for China in August 12, 2023.

25) Uniform labour standards

Legislation can set uniform labour standards internationally for local companies.This sort of legislation, if enacted and enforced, can prevent reliance by local companies on forced labour abroad.

26) Class action against an importing company

Class actions require certification of a class. The relevant class for a company importing products of forced labour is the forced labourers. They could potentially be certified as a class to sue the importing company for damages.

27) OECD contact point

OECD contact points may be another avenue to hold corporations accountable for complicity

in, or responsibility for, atrocities committed against Uyghurs including forced labour. The OECD Guidelines provide that, among other things, enterprises should respect human rights, avoid causing or contributing to adverse human rights impacts, seek ways to prevent or mitigate adverse human rights impacts, and carry out human rights due diligence. National Contact Points (NCPs) in various implementing jurisdictions monitor companies' compliance with the OECD Guidelines. NCP offices exist across the world, including in Canada, and their procedures are governed by procedures guidelines, which may vary across the implementing jurisdictions. If there are reasonable grounds to believe that companies are not observing OECD Guidelines in their operations in the Uyghur region, civil society organizations may submit requests to their respective NCPs regarding these companies' non-compliance with the OECD Guidelines.

28) Consumer protection legislation and false advertising

Consumer protection legislation could require a statement that a product has not been produced by forced labour. If there is such legislation, and such a statement on the product, but, in fact, the product is produced in whole or in part, at any point in the supply chain, by forced labour, then the producer, importer, distributor and sales point could potentially all be found in violation of the law.

29) Targeted verification priorities

There are a lot of imports coming into every country. Indiscriminate application of import prohibition rules amounts to finding a needle in a haystack. To make the system workable, targeted verification priorities are necessary. When it comes to the prohibition of the importation of products of forced labour, an obvious targeted verification priority should be goods produced, in whole or in part, in Xinjiang, China.

30) Advance ruling requests

Import procedures often allow for advance ruling requests. The advance ruling request procedure can potentially be used to forestall importation of products of forced labour.

31) Invoking importation retroactive jurisdiction

Import procedures sometimes allow for retroactivity, reconsideration of the admission of a product after it is admitted. Where a retroactivity procedure exists, it can and should be used to question the importation of products already imported where there is evidence that products have been produced in whole or in part by forced labour.

Establishing an importation supervisory body

Any government importation control agency applying laws against importation of products of forced labour needs an independent supervisory body. That body could adjudicate complaints that the agency is not going about, in an effective way, the implementation of the obligation to prohibit

the importation of goods produced by forced labour. How a prohibition against importation of goods produced by forced labour is effected should not be left to the arbitrary discretion of the government importation control agency.

32) Responsible sourcing guidelines

Some buyers, particularly governments, will buy only those products which meet industry adopted responsible sourcing guidelines. Any industry can establish these guidelines. Any buyer can restrict purchases to products which meet these guidelines. An example is the London Bullion Market Assocation Good Delivery List.

SESSION 3: DOMESTIC CIVIL LAWSUITS, CRIMINAL PROSECUTIONS, TARGETED SANCTIONS

33) Sanctions - Magnitsky, SEMA

Several domestic governments have legislation that allows them to impose targeted sanctions on foreign officials and/or entities with responsibility for gross violations of human rights and/or significant corruption. Sanctions can include property-blocking sanctions and visa restrictions. In Canada, the Justice for Victims of Corrupt Foreign Officials Act allows for the imposition of such targeted sanctions on foreign officials, while the Special Economic Measures Act allows for the imposition of sanctions on foreign officials as well as entities. Similar legislation exists in other jurisdictions, including the United States, the United Kingdom, the European Union, Estonia, Lithuania, Latvia, Gibraltar, Jersey, Kosovo, Norway and Australia. Czech Republic and Taiwan are in final stages of passing similar legislation as well. These pieces of domestic legislation can and have been used to impose targeted sanctions on Chinese officials and entities with responsibility for atrocities committed against Uyghurs. In March 2021, Canada, the EU, the UK and the US imposed sanctions on four individuals and one entity responsible for atrocities committed against Uyghurs. This list has been enlarged in the US, but more should be sanctioned everywhere. Civil society can and should submit names, with as much evidence as possible, to the sanctions divisions of their domestic governments, and ask for the implementation of targeted sanctions, tailoring particular submissions to the social, political, and foreign policy contexts of the prospective implementing jurisdiction. In countries without appropriate domestic legislation, civil society should lobby governments to pass such legislation. Among others, Japan may be lobbied to pass such legislation, as they are hosting the upcoming G7 and they are the last G7 holdout.

34) Sanctions – repurposing assets

In Canada, new legislation now permits the government to sell off assets of sanctioned foreign officials and entities, and use the proceeds to compensate victims. Civil society in Canada should ask the Canadian government to apply to Federal Court to ask for any assets held by the four

sanctioned CCP officials and one sanctioned entity in Canada to be repurposed, with proceeds used to compensate victims. This should also form part of future sanctions requests in Canada, that any assets held in Canada be repurposed. In other countries that have legislation that enables the imposition of targeted sanctions, civil society should lobby their respective governments to follow Canada's lead and pass legislation that permits the sale of assets and their use to compensate victims.

35) Immigration designations

Foreign officials with responsibility for human rights violations may also be sanctioned with immigration designations. This may have the effect of blocking their entry into the country and/ or revoking existing visas. The mechanisms to accomplish this vary per jurisdiction. In Canada, this may be done using the Immigration and Refugee Protection Act. In the United States, there are several routes, including using Senate Appropriations if there is impasse or difficulty at securing executive action.

36) Persona non grata, international institutions and diplomatic posts

Many authoritarian regimes appoint officials with responsibility for atrocity crimes to key diplomatic posts overseas. Among other things, this confers upon them diplomatic immunity, so that they cannot be subject to court processes in their host country. Rights-respecting countries that are hosting these officials may declare them persona non grata, which may enable domestic accountability efforts including universal jurisdiction prosecutions (see below). Declaring officials persona non grata is rooted in the Vienna Convention on Diplomatic Relations, which provides that a receiving State may, at any time and without having to explain its decision, notify the sending State that the head of the mission or any member of the diplomatic staff of the mission is persona non grata or that any other member of the staff of the mission is not acceptable. The Convention further provides that if the sending State does not agree to the notification, the receiving State may refuse to recognize the person concerned as a member of the mission. Every single UN member state (except Palau and South Sudan) is a party to the Convention. This means that if a rights-respecting state declares a CCP diplomat persona non grata under the Convention, and if China does not agree to the notification and the official remains in the host country, that official should lose their diplomatic immunity. This may open them up to prosecution using universal jurisdiction laws (see below) or civil lawsuits, as appropriate.

37) Discrimination complaints under Human Rights legislation

Provincial and federal legislation in Canada and other countries sets up anti-discrimination, equality regimes, with a complaints adjudication process. Chinese government operatives in foreign countries often incite locals to discriminate against their chosen targets. There is a history of this happening with Falun Gong targets. These targets/ victims have successfully invoked local anti-discrimination regimes in various countries.

38) Civil liability

Corporations with responsibility for atrocities committed against Uyghurs may be vulnerable to civil lawsuits in Canada and the United States, as well as in other common-law countries with similar laws. In Canada, a civil lawsuit may rely on the precedent set by *Nevsun Resources Ltd. v. Araya,* a landmark Supreme Court of Canada judgment from 2020. In *Nevsun,* the Supreme Court ruled that customary international law, including *jus cogens* norms, automatically form part of Canadian law unless there is legislation to the contrary. The Supreme Court also found that such customary international law applies not just to states, but to corporations. The court found that, as a result, the plaintiffs, who were victims of forced labour in Eritrea, could sue the Canadian corporation in tort for damages, in Canadian court (*Nevsun Resources Ltd. v. Araya,* 2020 SCC 5). In the United States, civil lawsuits against corporations may be pursued using the Trafficking Victims Protection Reauthorization Act (TVPRA), which creates a civil cause of action for trafficking including forced labour. Civil lawsuits may also be pursued in the United States under the Alien Tort Statute and/or the Torture Victims Protection Act (TVPA) for crimes of torture and/or extrajudicial killings, pursuant to each Act's specific jurisdictional constraints. There may be similar precedents or legislation that permit civil lawsuits in other jurisdictions, and these should be explored in consultation with local lawyers.

39) Universal jurisdiction – criminal – argentina perpetrator does not have to be present

The ICC is not the only body that may prosecute individuals for crimes against humanity, war crimes and genocide. Many countries can prosecute individuals in their domestic legal systems for these crimes and other *jus cogens* norms, even when there is no link between the activity and the state. In other words, there exists universal jurisdiction for these crimes that enables these crimes to be tried (almost) anywhere. The exercise of universal jurisdiction, and its requirements, depends on the particulars of each country's domestic legislation. For example, in Canada, the Crimes Against Humanity and War Crimes Act permits Canadian courts to prosecute crimes against humanity, war crimes, and genocide that occurred outside of Canada, so long as the individual to be prosecuted is a Canadian citizen, resident, or visitor. France similarly requires presence or residence, although this varies based on the crime and there is conflicting practice with respect to when presence is required. In contrast, in Argentina, a perpetrator does not have to be present. In Sweden, although the laws do not require a perpetrator's presence or residence, in practice, an investigation will not be initiated if the perpetrator's absence would prevent an effective investigation, or if there is no reasonable prospect of an arrest. The World Uyghur Congress (WUC) has already initiated a universal jurisdiction case in Argentina with UK Barrister Michael Polak. Further universal jurisdiction cases may be considered, as appropriate, for instance, if a perpetrator ends up physically present in Canada, Sweden or France.

40) Parliamentary Resolutions

Parliamentary resolutions are a quasi-legal remedy. Resolutions in the Parliaments of enough countries can create customary international law. They also, if they have enough support, act as a pressure on the governments of the country where the Parliaments sit to act.

41) Foreign Agents Registration Act

Legislation can and should be passed by rights-respecting states to require the registration of foreign agents. The United States and Australia have foreign agent registry-type legislation, and similar legislation has been introduced in Canada as well. The United States' Foreign Agents Registration Act (FARA), enacted in 1938, obligates agents of foreign principals that are engaged in political or other specified activities to make periodic public disclosure of their relationship with the foreign principal. Australia's Foreign Influence Transparency Scheme Act 2018 (FITSA) built upon the United States' precedent and created a public registry for those acting on behalf of a foreign principal. In Canada, Bill S-237, An Act to establish the Foreign Influence Registry and to amend the Criminal Code, would impose an obligation on individuals acting on behalf of a foreign principal to file a return when they undertake specific actions with respect to public office holders. It would also amend Canada's Criminal Code and provide for the establishment of a public registry in which all returns must be kept. Civil society can advocate for the passage of the Canadian bill already introduced, and similar legislation in other rights-respecting countries that do not yet have foreign agents registration legislation.

42) Extraterritorial organ transplant abuse legislation, transplant tourism compulsory reporting

Legislation can and should be passed by rights-respecting states to combat forced organ harvesting. In Canada, Bill S-223, An Act to amend the Criminal Code and the Immigration and Refugee Protection Act (trafficking in human organs) passed the Senate on December 9, 2021 and had its second reading at the House of Commons on May 18, 2022. It would amend the Criminal Code to create new offences in relation to forced organ harvesting, and it would amend the Immigration and Refugee Protection Act to provide that a permanent resident or foreign national would become inadmissible to Canada if they engaged in any such activities. Bill S-223 is not Uyghur- or China-specific but rather, generally concerning forced organ harvesting. Different versions of the bill had previously received unanimous, bipartisan support from both the Canadian House of Commons and the Senate. Similar domestic legislation to combat forced organ harvesting can and should be pursued in other countries. Civil society can advocate their respective governments to this effect. Further, legislation to combat forced organ harvesting can include compulsory reporting to make implementation more effective, and civil society can advocate on that point as well.

43) Excluding transplant tourism from health insurance

Transplant tourists, on return, require aftercare. In particular, they need anti-rejection drugs. It would be wrong to deny them that aftercare. It would not be wrong to require them to pay for that aftercare, to prohibit health insurance coverage for that aftercare. On the contrary, that sort of prohibition can serve as a disincentive to transplant tourism. If transplant tourists have the funds to pay for their transplant tourism, they should have the funds to pay for their aftercare.

44) Proceeds of crime legislation

Proceeds of crime legislation can be used both to seize funds which are proceeds of crime and distribute those proceeds to the victims. Proceeds of human rights violations, such as forced labour, are typically also proceeds of crime, since human rights violations are typically criminal.

45) Prohibitions against collaboration or complicity

Collaboration or complicity in foreign human rights violations can happen in a myriad of ways. It may be difficult to impossible to stop, in the short term, massive human rights violations abroad. It is, in contrast, entirely within the power of local jurisdictions to stop collaboration or complicity with those violations.

46) Museums and evidence repositories

Bringing perpetrators to justice requires state cooperation. Recording their crimes can be done by victims and witnesses. Museums and evidence repositories can serve as memorials to victims. Though state support is welcome, it is not essential to make the museums and evidence repositories functional. Their very existence serves as a spur to prosecutions and other remedies.

COMBATTING THE TRANSNATIONAL REPRESSION AND INTIMIDATION IN CANADA

by Sarah Teich, David Matas and Hannah Taylor, September 2023.

COMBATTING TRANSNATIONAL REPRESSION AND FOREIGN INTERFERENCE IN CANADA:

A Paper by Secure Canada and Human Rights Action Group

September 2023

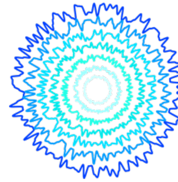
Sarah Teich, David Matas,
and Hannah Taylor

Secure Canada was founded to combat terrorism, extremism, and related threats by creating innovative and transformative laws, public policies, and alliances that strengthen Canada's national security and democracy. Secure Canada has proposed cutting-edge strategies on issues including foreign interference, hostage-taking, human shields, returning foreign fighters, sanctions, and terror victims' rights. Most dramatically, Secure Canada drafted a landmark law that enables victims of terror and their families to sue state and non-state actors that sponsor terrorism – securing billions of dollars in judgments to date.

Human Rights Action Group is a dedicated collective of legal experts advocating for the protection of human rights worldwide. Co-founded by esteemed lawyers David Matas and Sarah Teich, Human Rights Action Group actively collaborates with global partners to combat human rights abuses in regions like China, Ethiopia, Sri Lanka, Cuba, and Turkey. They challenge injustice by leveraging international and domestic legal mechanisms, supporting victims, and ensuring accountability for mass atrocity crimes and gross violations of human rights around the world.

ENDORSED BY CANADIAN DIASPORA COMMUNITY ORGANIZATIONS:

UYGHUR RIGHTS ADVOCACY PROJECT



The Alliance of Genocide Victim Communities

COMITÉ CANADA TIBET COMMITTEE

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Association of Families of Flight PS752 Victims

DEMOCRATIC SPACES

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Executive Summary

Human rights violations abroad tend to generate global diaspora. Authoritarian regimes repress their people to the point that many of them flee the country of their birth in search of greener pastures. Hundreds of thousands of refugees make their way to Canada each year – many of them fleeing the oppression of an authoritarian government abroad.

However, authoritarian regimes do not stop at committing human rights violations in their home countries. Rather, many of these regimes reach beyond their borders and continue to oppress diaspora community members. Many of these regimes also engage in attacks against institutions. This is a threat to Canadians and to Canada. Per Canada's National Security and Intelligence Committee of Parliamentarians' 2020 report, some of the biggest perpetrators are China, Russia, and Iran.

The Chinese Communist Party carries out a widespread transnational repression scheme targeting ethnic and religious minorities, political dissidents, human rights activists, journalists, and former insiders accused of corruption. Its campaign employs an array of tactics, including espionage, renditions, physical assaults, cyber threats, and coercion-by-proxy – the sheer breadth and scale of which is unparalleled. Russia also engages in an aggressive campaign of transnational repression, often by targeting former insiders and those perceived to be threats to the regime's security. To exert influence over the diaspora, the state also exerts control over key cultural institutions. Iran engages several state agencies to carry out transnational repression and is particular about its targets. In Canada, Iran has predominantly targeted critics of the regime. Other authoritarian regimes, including Saudi Arabia, Eritrea, and Turkey, engage in transnational repression as well.

There are a variety of methods of transnational repression and foreign interference. Following a review of the relevant literature and witness and victim interviews, we discuss the presence in Canada of direct attacks, such as harassment, threats, and intimidation; assault, detentions and arrests; involuntary returns; and assassinations and attempted assassinations. We also find that perpetrating states carry out long distance threats such as cyber threats and coercion-by-proxy and impose controls on the mobility of their victims living abroad. States may co-opt other countries or abuse INTERPOL processes. Finally, perpetrating states may interfere with Canadian parliamentarians, elections, government agencies, media, academic and university life, and the business sector.

Canada is legally obligated to protect people within its borders against certain human rights violations arising from incidents of transnational repression and there are legal frameworks and mechanisms available to Canada at the international and domestic levels to combat such incidents. Despite this, the Canadian government has yet to sufficiently respond.

Following an in-depth review of the problem, and of the relevant legal frameworks and mechanisms, we propose thirty-seven (37) recommendations for the Government of Canada to combat foreign interference and transnational repression:

1. **Create a dedicated agency:** Canada should create a centrally coordinated government agency to address transnational repression. It should serve as a central coordinating organization and facilitate cooperation between agencies to ensure fulsome responses.

2. **Create a Commissioner of Foreign Influence:** The foreign influence commissioner should be able to receive complaints, including of violations by foreign embassies and consulates, and should make annual reports.

3. **Create a dedicated hotline or reporting mechanism:** A singular reporting mechanism, encapsulated by a dedicated agency, could clarify where victims should report and ensure that one organization has all the relevant information.

4. **Define 'transnational repression' and 'foreign interference:'** Currently, there are no clear and consistent definitions for these terms in Canadian law.

5. **Review and update the Canadian Security Intelligence Service Act:** The CSIS Act should be reviewed and updated to ensure it no longer limits CSIS' ability to achieve its mandate and reflects the progression of digital technologies.

6. **Review and update the Security of Information Act:** The Act is not sufficient to combat all types of foreign interference and does not sufficiently provide avenues for justice. Sections 19 and 20 should be closely reviewed.

7. **Review and update the Lobbying Act:** Currently this Act requires registration of any person who is paid to communicate with federal public office holders. Canada should consider expanding this to unpaid volunteers acting on behalf of a foreign state.

8. **Review and update the Canada Elections Act:** The Canada Elections Act needs to be continuously updated as new threats and technologies emerge.

9. **Create a civil cause of action specific to transnational repression:** There is no specific civil cause of action for transnational repression. Government could pass legislation that creates a civil cause of action specific to transnational repression.

10. **Criminalize refugee espionage:** There are several criminal offences that may be engaged by acts of transnational repression, but there are no Criminal Code offences specific to transnational repression. Canada should pass new legislation defining 'refugee espionage' as a criminal offence.

11. **Criminalize online harassment and digital violence:** Canada should implement a scheme to protect those who receive harassing or threatening messages, have their private information, including contact information and locations posted, and have their reputations smeared, including through the release or doctoring of private photos.

12. **Develop clear public policy guiding Attorney General consent:** Prosecution under many of the existing offences relevant to transnational repression require the Attorney General's consent to proceed. To enhance the ability of victims to seek redress, there should be clear public policy outlining when the Attorney General's consent will or will not be provided.

13. **Bar perpetrators:** Various provisions of the Immigration and Refugee Protection Act should be utilized to bar or remove individuals engaged in transnational repression, where appropriate.

14. **Implement a Foreign Agents Registry:** The government should ensure that it follows through in the development and implementation of a Foreign Agents Registry, similar to that of the US and Australia.

15. **Review Canada's terrorist lists:** Designating states as state supporters of terrorism and/or adding entities to the terrorist list under the Criminal Code might allow terror victims to pursue civil lawsuits and seek financial compensation in Canadian courts under the Justice for Victims of Terrorism Act.

16. **Monitor and track incidents of transnational repression:** Having a singular reporting system to track domestic incidents of transnational repression and identify perpetrators could allow the government to monitor and track incidents, inform the development of comprehensive watchlists and help determine at-risk targets.

17. **Form explicit partnerships between government agencies:** The federal government should establish a permanent mechanism to share information and coordinate policies and operations between different levels of government.

18. **Provide physical protection services to victims:** Many victims are told that if they are concerned about their safety, they should hire private protection or stop their activism, which is not an appropriate response. Victims of transnational repression often require physical protection and support and this should be provided to them.

19. **Provide psychological support services to victims:** Victims of transnational repression, even where a crime cannot be proven, should be offered psychological and mental health supports by those who have been trained on issues of transnational repression.

20. **Create a specialized victims of transnational repression fund:** The government should create a fund that can be used to assist victims of transnational repression for things like emergency housing, personal security, new phones or laptops, and physical and mental health treatment. Financial support should be extended to support legal initiatives victims may undertake.

21. **Build community resilience:** Support should be provided to build greater resilience within communities thereby reducing the vulnerability of potential

targets. One aspect of building resilience is community education. Educational materials for targeted victim communities in Canada should be prepared, published and distributed, in multiple languages.

22. **Train law enforcement officers:** Law enforcement officers should be trained on responding to incidents of transnational repression. Clear standards should be established to ensure that police responses are legally justified and specific training to ensure that law enforcement does not breach the Charter rights of either victims or alleged perpetrators should be provided. Training should also be provided to RCMP and CBSA officers, and to officials at Canadian diplomatic missions.

23. **Train campus security officers:** Campus security officers should be trained on responding to incidents of transnational repression on campus and made aware of the particular threats that these communities face on campus.

24. **Implement additional safeguards for asylum seekers:** Among other things, Canada should ensure that every single asylum request from a national of a state that is a perpetrator of transnational repression, including China, Russia, and Iran, takes into account their history of transnational repression. Further, victims of INTERPOL abuse who become endangered abroad should be prioritized in IRCC's "Global Human Rights Defenders Stream", and the allocated quota of the two-hundred and fifty (250) for this stream should be doubled in number.

25. **Engage in increased multilateralism:** Canada must work with allies to coordinate responses and track transnational repression worldwide.

26. **Learn from our allies:** The Canadian government should study its allies' responses to transnational repression, both positive and negative, effective and non-effective, to better inform responses.

27. **Close foreign states' police stations in Canada:** The alleged Chinese police stations illegally operating on Canadian soil should be closed. Diplomats conducting illegal activity in Canada can be declared persona non grata and removed and employees of the service stations conducting illegal activity may be prosecuted under Canadian criminal law.

28. **Publicly speak out against transnational repression:** The federal government should take every opportunity to publicly speak out against transnational repression, and to publicly call out perpetrators of transnational repression. It could do so by including data on transnational repression in human rights reports or by raising the issue of transnational repression at the next UN Human Rights Council session.

29. **Update travel advisories:** Travel advisories for perpetrating states, including Russia, China and Iran, should be updated to explicitly include the risk of transnational repression and mention specific communities at risk.

30. **Implement targeted sanctions:** The Canadian government should implement targeted sanctions on individuals and entities engaged in qualifying acts of transnational repression under the Justice for Victims of Corrupt Foreign Officials Act and the Special Economic Measures Act.

31. **Request that INTERPOL amend its rules:** The Red Notice and Diffusion systems need to be changed so that INTERPOL does not accede to requests to send out Red Notices or Diffusions where the requests emanate from states not subject to the rule of law, as these systems are often abused by repressive states to harass and intimidate their targets overseas.

32. **Limit mutual legal assistance with repressive regimes under the Convention on Cooperation in International Crimes:** If Canada is to sign the Convention, a reservation limiting the obligations that it owes under the Convention only to states parties with which Canada has operative extradition treaties is advisable. If it turns out that the reservation is not acceptable to the other states parties, Canada should withdraw from the Convention.

33. **Terminate the Treaty Between Canada and the People's Republic of China on Mutual Legal Assistance in Criminal Matters:** Canada should terminate the treaty and there should not be similar treaties with other countries not subject to the rule of law.

34. **Encourage the appointment of a UN Special Rapporteur on Transnational Repression:** This could provide a central focal point globally for victims of transnational repression and enable deeper investigation into and combatting of this issue at the UN level.

35. **Encourage the creation of a specific treaty on transnational repression:** Canada should work with its allies to encourage the creation of an international treaty to combat transnational repression containing provisions obligating states parties to take various actions to combat transnational repression including many of the suggestions contained herein.

36. **Implement Human Rights Watch's 12-point Code of Conduct for universities and colleges:** Canadian institutions should implement this Code, created originally to respond to threats by the Chinese government, and apply it to other perpetrators of transnational repression as well.

37. **Sanction and/or ban surveillance companies complicit in transnational repression:** These companies may be sanctionable under the Special Economic Measures Act and any assets they have in Canada may be repurposed to compensate victims.

Introduction

Definitions

There is no clear or universally accepted legal definition of transnational repression. The term "transnational repression" was coined by Dr. Dana Moss, a sociology professor at the University of Notre Dame.[1] She developed the term to refer to the ways that authoritarian regimes engage in direct and indirect practices to repress and silence criticism abroad.[2]

The Citizen Lab at the Munk School of Global Affairs & Public Policy at the University of Toronto ("Citizen Lab") defines transnational repression as when governments reach across borders to stalk, intimidate, or assault people with the aim to silence dissent among diasporas and exiles.[3] Citizen Lab describes transnational repression as forming "part of a pattern of spreading global authoritarianism and the impairment of human rights and democracy".[4]

Similarly, Dr. Gerasimos Tsourapas, a professor of international relations at the University of Glasgow, founded the term "transnational authoritarianism", and conceptualizes it "as any effort to prevent acts of political dissent against an authoritarian state by targeting one or more existing or potential members of its emigrant or diaspora communities".[5]

Under Canadian law, acts of transnational repression fall under the term "foreign influenced activities". The Canadian Security Intelligence Service Act[6] ("CSIS Act") stipulates foreign influenced activities as "activities within or relating to Canada that are detrimental to the interest of Canada and are clandestine or deceptive or involve a threat to any person".[7] Foreign influenced activities, or foreign interference, is further described by the Canadian Security Intelligence Service ("CSIS") as "deliberate and covert activity undertaken by a foreign state to advance its interests, often to the detriment of Canada's".[8] CSIS also states that foreign interference or foreign-influenced activities broadly include "attempts to covertly influence, intimidate, interfere, corrupt or discredit individuals,

[1] Dana M. Moss, "Transnational Repression, Diaspora Mobilization, and the Case of The Arab Spring", Social Problems (2016) 63:4, pp. 480-498 at 481.
[2] Ibid.
[3] Noura Al-Jizawi, Siena Anstis, Sophie Barnett, Sharly Chan, Niamh Leonard, Adam Senft, and Ron Deibert, "Psychological and Emotional War: Digital Transnational Repression in Canada", Citizen Lab Research Report No. 151, University of Toronto, March 2022. [Citizen Lab 2022]
[4] Noura Aljizawi and Siena Anstis, "Wrestling the long arm of authoritarianism", Policy Options, 19 August 2022. [Aljizawi and Anstis]
[5] Gerasimos Tsourapas, "Global Autocracies: Strategies of Transnational Repression, Legitimation, and Co-Optation in World Politics", International Studies Review (2021) 23, pp. 616-644 at 621. [Gerasimos Tsourapas]
[6] Canadian Security Intelligence Service Act (R.S.C., 1985, c. C-23). [CSIS Act]
[7] Ibid at s. 2.
[8] Canadian Security Intelligence Service, "Foreign Interference and You", Government of Canada, p. 2. [Foreign Interference and You]

organizations and governments to further the interests of a foreign country".[9]

CSIS explains that transnational repression is "purposely covert, malign, and deceptive", with the goal of achieving geopolitical, economic, military, or strategic advantage, and that hostile actors may attempt to sow discord, disrupt the economy, and influence politics through strategic targeting.[10]

Global Affairs Canada ("GAC") states that foreign interference is "the attempt to covertly influence, intimidate, manipulate, interfere, corrupt or discredit individuals, organizations, and governments. It is an attempt to further the interests of a foreign country over the views of its citizens. Activities can be carried out by both state and non-state actors, and it differs from normal diplomatic conduct due to its deceptive and clandestine nature".[11]

As such, various similar terms and definitions are used in current legal and political spheres. In general, the term "transnational repression" is often used to refer to incidents against individuals, such as direct harassment, while "foreign interference" is commonly employed to discuss institutional incidents, such as cyber-attacks against a government agency or processes, such as democratic elections. However, this is not always the case. Because this difference is not made explicitly clear in Canadian legislation, for the purposes of this paper, the terms "transnational repression", "transnational authoritarianism", "foreign interference", and "foreign influence" will be used interchangeably.

Categorizing Incidents

Incidents of transnational repression are becoming increasingly prevalent and pervasive globally for a variety of reasons, including the development of new technology, an expansion of ideological extremism, and an increase in global threats such as climate change and pandemics.[12] Such factors have ushered in an over-growing resurgence of authoritarian power and leaders who readily exploit a shifting world order – one that is not governed by the current rules-based international order.

Transnational repression includes acts from harassing phone calls and text messages to physical surveillance and stalking, to deportations and detentions, to attempted or successful assassinations. These acts are orchestrated by authoritarian regimes in democratic countries across the world, including Canada. Acts may be committed by the state itself or by non-state actors at the behest of the state.[13]

[9] Canadian Security Intelligence Service, "Foreign Interference Threats to Canada's Democratic Process", Government of Canada, July 2021, p. 5. [CSIS: Foreign Interference Threats]
[10] Foreign Interference and You, supra note 8.
[11] Global Affairs Canada, "Rapid Response Mechanism Canada: Global Affairs Canada", Government of Canada, 20 September 2022.
[12] Vincent Rigby and Thomas Juneau, et al., "A National Security Strategy for the 2020s: Report of the Task Force on National Security", Graduate School of Public and International Affairs, University of Ottawa, May 2022. [University of Ottawa Report]
[13] CSIS: Foreign Interference Threats, supra note 9.

One of the most infamous recent cases of transnational repression was the October 2018 assassination of Jamal Khashoggi. Khashoggi, a Saudi Arabian journalist who had previously migrated to the US, was murdered inside Saudi Arabia's consulate in Istanbul, Turkey. Dr. Tsourapas advises that Khashoggi's murder "served as a brutal demonstration of how authoritarian power … is not confined to the boundaries of the nation-state".[14] Another high-profile case is that of Sergei Skripal, a British citizen, who had formerly worked as a Russian intelligence officer, and his daughter Yulia, who were poisoned in 2018 with the Soviet nerve agent Novichok in Salisbury, England. While Russia immediately denied any involvement, it is otherwise nearly universally accepted that the Russian government was behind the attack.[15] Older cases include the 1940 assassination of Russian revolutionary Leon Trotsky in Mexico City by the Soviet NKVD, and the 1978 assassination of Bulgarian dissident Georgi Markov by ricin injected via the tip of an umbrella in London, England.[16]

Transnational repression can also take form short of assassination. For example, in May 2021, Belarus used a fighter jet to force Ryanair to divert a passenger airplane to land in Minsk, falsely claiming that a bomb was on board. In reality, Belarus diverted the plane in order to arrest opposition journalist Roman Protasevich.[17] China repeatedly kidnaps dissidents abroad, or lures individuals into returning to the country, where they are promptly arrested and jailed without trial. Other times, states have harassed activists in-person or digitally, threatening the targeted individual or their families.

Different institutions have developed different methods of categorizing incidents of transnational repression.

In 2021[18] and 2022[19], Freedom House released a two-part project on transnational repression, mapping its global scale and scope. The project split incidents into four categories:

1. Direct attacks referred to "[o]rigin country tactics that physically reach the individual targeted", such as assassination, assault, physical intimidation, disappearance, and rendition.
2. Long distance threats referred to "[o]rigin country tactics that do not require physically reaching the individual targeted", such as cyber threats and coercion-by-proxy.

[14] Gerasimos Tsourapas, supra note 5 at p. 618.
[15] US Embassy & Consulates in Italy, "Putin's poisons: 2018 attack on Sergei Skripal", 11 April 2022.
[16] Bradley Jardine, "Great Wall of Steel: China's Global Campaign to Suppress the Uyghurs", Wilson Center, 2022, p. xxxii. [Bradley Jardine]
[17] Ibid.
[18] Nate Schenkkan and Isabel Linzer, "Out of Sight, Not Out of Reach: The Global Scale and Scope of Transnational Repression", Freedom House, Washington, DC: February 2021. [Freedom House 2021]
[19] Yana Gorokhovskaia and Isabel Linzer, "Defending Democracy in Exile: Policy Responses to Transnational Repression", Freedom House, Washington, DC: June 2022. [Freedom House 2022]

3. Mobility controls referred to incidents in which "origin countries restrict individuals' ability to travel", including via passport revocation or denial of consular service.
4. Co-opting other countries referred to incidents in which "origin countries manipulate host country institutions like police or immigration authorities to harass, detain, or transfer individuals", including unlawful deportation, detention, rendition, or INTERPOL abuse.

The Central Asia Political Exiles database, also used by the China's Transnational Repression of Uyghurs Dataset, uses a 3-stage model to evaluate cases of transnational repression, from least to most severe:[20]

1. Put on notice includes warnings and threats to individuals and their family members, and arrest requests issued bilaterally or through international organizations such as INTERPOL.
2. Arrest/detention includes short or long detention, imprisonment, or conviction overseas associated with suspected activities at home.
3. End game includes formal extradition, informal rendition, disappearance, serious attack, and assassination.

Bradley Jardine, a political analyst and journalist based in Washington, D.C., has built a comprehensive database of incidents of transnational repression against Uyghurs globally, in collaboration with the Uyghur Human Rights Project and Oxus Society for Central Asian Affairs, categorizing acts of transnational repression against Uyghurs into three stages:[21]

1. Stage 1 attacks include the freezing or seizure of assets; calls to return home; cyberattacks and malware; intelligence and data gathering; intimidation (including active surveillance and threats); recruitment as informants; restrictions on movement and legal status via passport control; restrictions of free speech and assembly (including attacks on journalists or public speakers); smear campaigns; and the use of threats and proxies.
2. Stage 2 attacks include detention, house arrest, physical assault, and the destruction of property.
3. Stage 3 attacks are coercion to return, deportation, extradition, rendition, and attempted or successful assassination.

To systematize threats of transnational repression, a December 2021 CSIS report disclosed China's use of a colour-coded system of political interference tactics to

[20] Natalie Hall and Bradley Jardine, ""Your Family Will Suffer": How China is Hacking, Surveilling, and Intimidating Uyghurs in Liberal Democracies", Uyghur Human Rights Project and Oxus Society for Central Asian Affairs, 10 November 2021, p. 8. [Hall and Jardine]

[21] Bradley Jardine, supra note 16 at p. xxxiv-xxxviii.

gain influence over Canadians.[22] CSIS identified that:

1. Blue refers to "sophisticated cyberattacks on targets' computers, smartphones and hotel rooms for possible blackmail".
2. Gold refers to bribes.
3. Yellow refers to what CSIS describes as "honey pots", or using sexual seduction to compromise targets.[23]

Since no universally recognized method of categorizing incidents of transnational repression exists, this paper will generally follow the categories put forward by Freedom House, as they include the most encompassing definitions.

Transnational Repression and Foreign Interference in Canada

All four categories of transnational repression are present in Canada, and these incidents are on the rise. According to CSIS, in 2020, they saw the highest levels of foreign interference directed at Canadian targets since the end of the Cold War.[24]

There have been several studies into transnational repression in Canada undertaken by large NGOs, including Freedom House[25] and Citizen Lab,[26] and smaller reports by organizations such as the Uyghur Rights Advocacy Project (URAP),[27] in attempts to highlight individual cases of transnational repression. However, there has been no comprehensive attempt to map all incidents, or even all types of incidents, in Canada. And there has been no mapping attempt by the Canadian Government.

As part of their 2022 Report, Freedom House released a case study on Canada. Freedom House found that the mechanisms available to report incidents of transnational repression in Canada are inadequate, and that victims are often "disappointed by the lack of response from law enforcement".[28] There is no specific reporting mechanism for incidents of transnational repression, nor have authorities engaged in significant or meaningful outreach to communities. Freedom House also noted that many of the threats posed by foreign states do not rise to the level of a criminal offence in Canada, but rather fall outside the scope of Canadian criminal law. This poses a unique challenge in responding to threats, and many victims have stopped reporting incidents due to lack of responsiveness by Canadian authorities.[29]

Citizen Lab, in a March 2022 report on digital transnational repression in Canada, reported similar findings: that Canadian law

[22] Robert Fife and Steven Chase, "CSIS reports outline how China targets Canadian politicians, business leaders", CBC News, 20 February 2023.
[23] Ibid.
[24] Catharine Tunney, "State actors could use blackmail, threats to influence voters, politicians in the next elevation, CSIS warns", CBC News, 22 July 2021. [Catharine Tunney]
[25] Freedom House 2022, supra note 19.
[26] Citizen Lab 2022, supra note 3.
[27] Uyghur Rights Advocacy Project, "Intended and Unending: A Report on China's Transnational Harassment and Intimidation Campaign Against Uyghur-Canadians", February 2022, p. 28. [Uyghur Rights Advocacy Project]
[28] Freedom House 2022, supra note 19.
[29] Ibid.

enforcement is unresponsive, and "participants simply avoided dealing with the police, fearing that it might make the situation worse or that they could not be of assistance".[30]

In its 2020 Annual Report, Canada's National Security and Intelligence Committee of Parliamentarians ("NSICOP") warned that "foreign interference activities pose a significant risk to national security, principally by undermining Canada's fundamental institutions and eroding the rights and freedoms of Canada".[31]

Despite warnings, the Canadian government has been slow to act. Recent reports on foreign influence in Canadian elections suggest that CSIS has been prodding the federal government to take action for several years now, only to have their concerns dismissed.[32] Former governor general David Johnston was appointed by the government as Independent Special Rapporteur on Foreign Interference on 15 March 2023, but his positioning on the issues and an "appearance of bias" pertaining to threats of transnational repression by China against Canadian parliamentarians forced him to publicly resign by June 2023, after he delivered a final – but classified – report to the Canadian government.[33] Overall, Canada's response to foreign interference has long been criticized for lagging behind those of our allies.[34]

On 7 September 2023, the establishment of a Public Inquiry into Foreign Interference in Federal Electoral Processes and Democratic Institutions led by the Honourable Marie-Josée Hogue was announced.[35] Justice Hogue is mandated to "examine and assess interference by China, Russia and other foreign states or nonstate actors, including any potential impacts, to confirm the integrity of, and any impacts on the 43rd and 44ths federal general elections at the national and electoral district levels."[36]

Justice Hogue is also mandated to "assess the capacity of federal entities to detect, deter and counter foreign interference targeting Canada's democratic processes, and to make any recommendations she deems appropriate to better protect Canada's democratic processes from foreign interference…"[37] According to the Inquiry's Terms of Reference, Justice Hogue must

[30] Citizen Lab 2022, supra note 3 at p. 25.
[31] NSICOP Annual Report 2020, p. 17, https://www.nsicop-cpsnr.ca/reports/rp-2021-04-12-ar/annual_report_2020_public_en.pdf. [NSICOP Annual Report 2020]
[32] Ben Mussett, "Canadian governments have ignored Chinese interference warnings for 30 years, former CSIS agent says", Toronto Star, 31 March 2023.
[33] Darren Major, "Johnston delivers classified final report on foreign interference, officially steps down", CBC News, 26 June 2023.
[34] University of Ottawa Report, supra note 12 at p. 10.
[35] Minister of Public Safety, Democratic Institutions and Intergovernmental Affairs, "Government of Canada launches public inquiry into foreign interference", Cision, 7 September 2023.
[36] Ibid.
[37] Ibid.

> "…examine and assess the capacity of relevant federal departments, agencies, institutional structures and governance processes to permit the Government of Canada to detect, deter and counter any form of foreign interference directly or indirectly targeting Canada's democratic processes, notably in relation to…
>
> …the supports and protections in place for members of a diaspora who may be especially vulnerable and may be the first victims of foreign interference in Canada's democratic processes…"[38]

Appointed under the *Inquiries Act*, the Commissioner will operate independently from the government and will have a full range of powers, including the power to compel witnesses and testimony on matters within federal jurisdiction. As Commissioner, Justice Hogue is given the authority to "recommend any means for better protecting federal democratic processes from foreign interference" that she finds appropriate and must deliver an interim report of her findings by February 29, 2024, as well as a final report by December 2024.[39]

Structure of This Paper

Despite the rise and severity of transnational repression and foreign interference in Canada, there has to date been no comprehensive overview conducted. While this paper brings together academic literature, government and non-governmental organization publications, news articles, and first-hand victim interviews, it does not serve as a database of all cases, incidents, or methods of transnational repression with a Canadian nexus. Rather, this report serves to map Canada's legal and political landscape as it pertains to transnational repression and propose steps that the Canadian government should implement to protect Canadians from the risks transnational repression poses. The first step is to conduct a comprehensive review of tactics and incidents.

Part I of this paper provides an overview of how authoritarian states operate abroad to control their citizens and diaspora, focusing on China, Russia, and Iran. Part II presents various incidents of transnational repression and foreign interference with a Canadian nexus, drawing on media reports, academic articles, governmental publications including from parliamentary hearings, civil society reports, and first-hand interviews.[40]

[38] Terms of Reference, Public Inquiry into Foreign Interference in Federal Electoral Processes and Democratic Institutions, 12 September 2023, https://www.canada.ca/en/privy-council/terms-reference.html.

[39] Ibid.

[40] Between January and April 2023, we interviewed 18 victims of transnational repression across seven Canadian cities. All of our interviewees hold legal status in Canada. Where possible, statements were cross-checked with previously reported information and checked for inconsistencies. Six interviews were conducted with the assistance of two interpreters, who are well-known and trusted within the victim communities. Real names are used where we cite publicly reported information, or where we received explicit consent to use someone's personal name.

Part III describes the legal framework, including relevant international and domestic laws, as well as Canada's responses, ultimately concluding that the Canadian government has failed to meet its legal obligations by inadequately understanding and responding to these incidents. Finally, Part IV outlines a series of recommendations for the Canadian government to undertake to ensure that we have a robust and comprehensive response in place to protect individual victims – as well as wider Canadian society and institutions – from transnational repression and foreign interference, both from a human rights and national security perspective.

Otherwise, we have assigned victims random pseudonyms. We use the term "victim" throughout this paper, as that is how participants described themselves in interviews.

Part I. Authoritarian States and Their Operations Abroad

Despite the increase of transnational authoritarianism, Dr. Gerasimos Tsourapas concludes that "the field of international studies lacks a coherent framework that explains how, when, and why governments engage in repressive action against their citizens beyond national borders".[41]

States engage in foreign interference as a means of achieving their "immediate, medium and long-term strategic objectives".[42] Bradley Jardine, mentioned above, writes that as the normative costs of engaging in transnational repression remain low, autocrats are emboldened "to make increasingly dramatic moves to stifle dissent".[43] Incidents of transnational repression often lead to self-censorship, behavioural modification, and social isolation.[44] The URAP report describes the "psychological torture" of transnational repression as "an almost all-encompassing suffering that [victims] could never escape".[45] Many of the victims we spoke with also articulated significant fear and anxiety, as well as incredible sadness and distress.

In its 2020 report, Canada's National Security and Intelligence Committee of Parliamentarians named China, Russia, and Iran as three autocratic regions posing a foreign interference threat to Canada.[46] Some of our allies, including the US, the UK, and Australia, have taken steps to counter individual threats posed by these three regimes.

However, authoritarian states learn techniques and approaches from each other, boldening their strategies to repress and evade accountability. China, Russia, and Iran work together to repress human rights and civil liberties both domestically and abroad.[47] Neither Canada nor any of its allies have significantly addressed the even greater threat posed by these three countries working together, both formally and informally.

A fulsome analysis of the cooperation between authoritarian regimes is beyond the scope of this paper. However, it is notable that beyond bilateral and ad-hoc collaboration on specific issues, many of the world's most repressive autocrats now use multilateral organizations and mechanisms to further their cooperation. The Shanghai Cooperation Organization ("SCO"), for example, encourages cooperation between

[41] Gerasimos Tsourapas, supra note 5 at p. 636.
[42] CSIS: Foreign Interference Threats, supra note 9 at p. 7.
[43] Bradley Jardine, supra note 16 at p. xxxiii.
[44] Aljizawi and Anstis, supra note 4.
[45] Uyghur Rights Advocacy Project, supra note 27 at p. 28.
[46] NSICOP Annual Report 2020, supra note 31 at para 59.
[47] See for example: University of Ottawa Report, supra note 12 at p. 4; Katie Bo Lillis and Natasha Bertrand, "Iran has sent military trainers to Crimea to train Russian forces to use drones", CNN, 19 October 2022; Marcus Kolga and Kaveh Shahrooz, "Both the Russian army and Iran's IRGC should be on Canada's terror list", National Post, 10 November 2022; and Courtney Kube and Carol E. Lee, "Russia is providing 'unprecedented' military support to Iran in exchange for drones, officials say", NBC News, 9 December 2022.

China, Russia, and Central Asian states, including by the sharing of data and possibly of surveillance technology. A March 2011 white paper by Human Rights in China describes the SCO's counter-terrorism framework as a "vehicle for social and political control over ethnic and vulnerable targets".[48]

Authoritarian states work together, learn from each other, and collaborate to continue repression abroad. While Canada has failed to recognize the threat posed by such regimes working together, so have our allies. No state has yet put forward a national security strategy that addresses how authoritarian countries may be working together to further their control and repression of individuals abroad. This is a critical gap that should be filled.

The following sections focus on how China, Russia, and Iran operate to repress individuals abroad.

China

The autocratic political system in China conflates the Chinese Communist Party (CCP) and the Chinese government, which it completely controls. The CCP's transnational repression scheme is incredibly widespread and intricate, using several agencies and methods to spy on, harass, and detain individuals abroad, including in Canada. Freedom House has found that China wages "the most sophisticated, global, and comprehensive campaign of transnational repression in the world".[49] CSIS supplements this finding – asserting in 2022 that China conducts more foreign interference than any other nation in the world.[50] In March 2023, CSIS stated that China's foreign interference activities are the "greatest strategic threat to national security" in Canada, using "all the state powers at its disposal to carry out activities that directly threaten the national security and sovereignty of the country".[51]

Freedom House states that the CCP's efforts to control the overseas population are marked by three distinctive characteristics.

First, their campaign targets many groups, including ethnic and religious minorities, political dissidents, human rights activists, journalists, and former insiders accused of corruption.[52] On top of former officials, critics, and activists, China targets anyone who fits into one of the groups they are targeting, whether it be Uyghurs, Falun Gong, Tibetans, Hong Kongers, or Inner or Southern Mongolians.

[48] Research Directorate, Immigration and Refugee Board of Canada, "Kyrgyzstan and China: The Shanghai Cooperation Organization (SCO), including relationship between China and Kyrgyzstan; activities of the organization involving the two countries (2012-2015)", Government of Canada, 12 February 2015.
[49] Freedom House 2021, supra note 18 at p. 15.
[50] Sam Cooper, "Canadian intelligence warned PM Trudeau that China covertly funded 2019 election candidates", Global News, 7 November 2022. [Sam Cooper]
[51] Jessica Mundie, "Foreign interference is the 'greatest strategic threat' facing Canada's national security, CSIS says", CBC News, 17 March 2023.
[52] Freedom House 2021, supra note 18 at p. 15.

Second, their campaign spans the full spectrum of tactics, including espionage, renditions, physical assaults, cyber threats, and coercion-by-proxy.[53]

Third, the sheer breadth and global scale of their campaign is unparalleled.[54]

From at least the late 1970s, China has been targeting its nationals abroad.[55] We spoke with many victims who reported incidents of transnational repression since at least the early 2000s. These acts have only increased in recent years.

One victim, Grace, told us that China's method of targeting anyone that falls into a particular group helps create an atmosphere of fear as anyone could be next, regardless of whether they have taken on a public activist role or not. In addition, those not in the group try to maintain distance from them in order to avoid being targeted themselves. Some have been targeted for "mundane" activities, such as practicing their religion or joining a political party.[56] Others have been targeted for who they know. These ordinary acts are perceived as a challenge to authoritarian rule and put individuals at risk of transnational repression.[57] Another victim we spoke to, Louisa, told us that because China's targeting is so prevalent and random, many believe that they could be next at any time, and thus take measures to stay out of public spheres.

Kayum Masimov, a leading activist in the Uyghur community, described to us that "you could literally interview any Uyghur in Canada and they will have a story [of transnational repression]. Everyone is affected".

In 2013, Xi Jinping became President of China, soon implementing and systematizing a strong crackdown on what the CCP called "corruption'" In July 2014, the Ministry of Public Security (MPS) launched Operation Fox Hunt, an international campaign to battle corruption and persuade economic refugees to return to China.[58] However, many national security experts agree that Operation Fox Hunt is "more about CCP extending tentacles of repression into diaspora communities abroad and clamping down on dissidents".[59]

Chinese authorities use Operation Fox Hunt to forcibly return those who have fled overseas after being accused of corruption in China.[60] MPS leads a task force to identify, track down, and apprehend those who have fled.[61] Madrid-based NGO Safeguard Defenders explains that regarding these involuntary returns, "the CCP's message is

[53] Ibid.
[54] Ibid.
[55] Safeguard Defenders, "Involuntary Returns: China's covert operation to force 'fugitives' overseas back home", January 2022, p. 14. [Safeguard Defenders, "Involuntary Returns"]
[56] Yana Gorokhovskaia, "Transnational Repression Threatens Freedom Worldwide", Freedom House, 2 June 2022.
[57] Ibid.
[58] Safeguard Defenders, "Involuntary Returns", supra note 55 at p. 12.
[59] Sam Cooper, supra note 50.
[60] Safeguard Defenders, "Involuntary Returns", supra note 55 at p. 3.
[61] Ibid at p. 12.

that nowhere is safe; fleeing overseas will not save you, there is no escape".[62]

A year later, in April 2015, the CCP, under the leadership of the Supreme Procuratorate, launched Operation Sky Net, which absorbed Fox Hunt as one of its many branches.[63] Under Sky Hunt, Operation Fox Hunt targets higher value suspects, such as former high-level officials.[64] Operation Sky Net is a massive operation, with several additional task forces focusing on issues like money laundering, fake passports, and illegal income. In April 2018, Operation Sky Net was taken over by the National Supervision Commission (NSC), a new non-judicial organ.[65] Safeguard Defenders says that "its creation is one of the single greatest strikes to the rule of law in China".[66]

The NSC replaced the Central Commission for Discipline Inspection (CCDI) in some of its functions, especially in its "anti-corruption" activities targeting CCP members. The NSC is designated as a state organ (rather than a party body), and as such can deal with both party and non-party members. It also wields investigatory powers over the police, prosecutor's offices, and courts, and is leading China's growing reach overseas.[67] Despite not being a judicial organ, it often leads China's international judicial cooperation in bilateral and multilateral agreements.[68]

Today, China's transnational repression campaign utilizes several parts of the state apparatus, including the Ministry of State Security (persecution of Uyghurs, Tibetans, and political dissidents), Ministry of Public Security (coercion-by-proxy), 6-10 Office (anti Falun-Gong activities – extralegal security agency tasked with suppressing banned religious groups), the People's Liberation Army (spyware campaigns), and the Ministry of Foreign Affairs (issues that involve legal and political systems of foreign countries, including detentions and extraditions). Each agency's exact role is blurred, and they sometimes overlap.[69]

In addition to direct government agencies, China also uses a "network of proxy entities" abroad.[70] China's "transnational repression activities are embedded in a broader framework of influence that encompasses cultural associations, diaspora groups and in some cases, organized crime networks".[71] It also includes student groups and scholarly bodies.[72]

The expansion of the CCP's reach overseas is "intricately linked" and "instrumental" to Xi Jinping's domestic anti-corruption drive.[73] As diaspora communities grow, so does the CCP's desire to control them.[74] According to Safeguard Defenders, "Beijing has never

[62] Ibid at p. 11.
[63] Ibid at p. 12.
[64] Ibid at p. 18.
[65] Ibid at p. 12.
[66] Ibid at p. 17.
[67] Ibid at p. 17.
[68] Safeguard Defenders, "Involuntary Returns", supra note 55 at p. 18.
[69] Freedom House 2021, supra note 18 at pp. 16-17.
[70] Ibid at p. 17.
[71] Ibid at p. 16.
[72] Ibid at p. 17.
[73] Safeguard Defenders, "Involuntary Returns", supra note 55 at pp. 3, 11.
[74] Ibid at p. 3.

been more motivated to expand the powers of its security forces overseas".[75]

These actors all make up what is part of the United Front Work Department (UFWD), a network of CCP and state agencies tasked with influencing groups outside of the CCP.[76] Operation Fox Hunt and Sky Net are perpetrated by the UFWD, whose influence networks abroad significantly increased in 2015, in turn increasing the interference threats to Canada by China.[77]

Very little data about these operations are made public.[78] According to official Chinese data, they have successfully returned nearly 10,000 people under Operation Fox Hunt, since its launch in mid-2014.[79] Experts agree that this figure is likely just the tip of the iceberg, and that almost none of these cases are legally processed.[80] In their report on involuntary returns, Safeguard Defenders presents 80 cases of involuntary return actions across 18 countries, including Canada.[81] The Uyghur Human Rights Project's Transnational Repression of Uyghurs Dataset identifies at least 395 Uyghurs that were repatriated to China, including extraditions, deportations, and involuntary returns.[82]

In 2018, the Supreme Procuratorate offered a 130-day grace period for those who returned to China to face justice, warning that those who did not return would face severe punishment if they were ever returned to China at a later date.[83] They also threatened to punish anyone who helped their targets, and offered rewards to anyone who provided the CCP with information about them or helped persuade them to return and surrender.[84]

Safeguard Defenders explains that China's extraterritorial policing targets two key types of individuals – those accused of economic or political corruption crimes, and critics of the CCP.[85] For the first category, their goal is to seek their return so they can be prosecuted.[86] For the second category, the CCP's objective is to frighten them into giving up their activism.[87] The line between the two is often blurred.[88] Recently, Uyghurs have been particularly targeted by China's transnational repression.[89]

China's foreign interference in Canada is orchestrated by the Third Bureau of the United Front Work Department, "which mobilizes large sections of society abroad to fulfil" CCP objectives. Of its four main agencies, the Overseas Chinese Affairs Office ("OCAO") is most relevant to these activities. The UFWD oversees several types of organizations, including hometown associations, ethnic Chinese professional associations, cultural and religious groups,

[75] Ibid.
[76] Freedom House 2021, supra note 18 at p. 17.
[77] Sam Cooper, supra note 50.
[78] Safeguard Defenders, "Involuntary Returns", supra note 55 at p. 10.
[79] Ibid.
[80] Ibid.
[81] Ibid at p. 11.
[82] Ibid.
[83] Ibid at p. 15.
[84] Ibid.
[85] Ibid at p. 21.
[86] Ibid.
[87] Ibid.
[88] Ibid.
[89] Ibid.

and student groups.[90] The UFWD is also used to target critics and groups it considers the "five poisons": Uyghurs, Tibetans, Taiwanese, democracy advocates, and Falun Gong.[91] The United Front also facilitates interference operations from Chinese consulates in Canada, from which officials direct funds into Canada's political system using CCP proxies.[92]

The CCP also engages in sophisticated hacking and phishing attacks.[93] The Jamestown Foundation's Center for Security and Emerging Technology found that in 2019, the UFWD spent nearly $600 million on foreign influence operations and overseas proxy groups.[94] Safeguard Defenders notes that China is extending its reach overseas and building a legal framework to try to legitimize these operations.[95] For example, officials encourage nationals at home and abroad to help them identify and locate targets.[96] Officials have even established a website to allow people to easily report information on targets, and reward those who do.[97]

Freedom House warns that China's use of transnational repression poses a long-term threat to rule of law systems as "Beijing's influence is powerful enough to not only violate the rule of law in an individual case, but also to reshape legal systems and international norms to its interests".[98]

In March 2022, China announced that Operations Sky Net and Fox Hunt are set to expand.[99]

Strikingly, the Federal Court of Canada concluded in Gao v Canada (Citizenship and Immigration) that the OCAO is involved in espionage activities that harm Canada's interests.[100]

In that case, a Canadian citizen applied to sponsor her parents (the "Applicants") from China for permanent residence in Canada.[101] The Applicants were found to be inadmissible by the Immigration, Refugees, and Citizenship Canada office in Hong Kong.[102] The Officer found that the father was inadmissible to Canada as he had formerly worked for the OCAO for 20 years and there were reasonable grounds to believe that the OCAO had engaged in acts of espionage "contrary to Canada's interests", per paragraph 34(1)(a) of the

[90] Clive Hamilton, "China's Influence Activities: What Canada can learn from Australian", Macdonald-Laurier Institute, November 2018.
[91] Tom Blackwell, "'Don't step out of line': Confidential report reveals how Chinese officials harass activists in Canada", The National Post, 5 January 2018. [Tom Blackwell]
[92] Sam Cooper, supra note 50.
[93] Freedom House 2021, supra note 18 at p. 16.
[94] Ryan Fedasiuk, "Putting Money in the Party's Mouth: How China Mobilizes Funding for United Front Work", Jamestown Foundation, China Brief Volume 20 Issue 16, 16 September 2020.
[95] Safeguard Defenders, "Involuntary Returns", supra note 55 at p. 8.
[96] Ibid at p. 22.
[97] Ibid.
[98] Ibid at p. 16.
[99] Safeguard Defenders, "110 Overseas: Chinese Transnational Policing Gone Wild", September 2022, p. 18. [Safeguard Defenders, "110 Overseas"]
[100] Gao v Canada (Citizenship and Immigration), 2022 FC 64 (CanLII).
[101] Ibid at para 2.
[102] Ibid at para 3.

Immigration and Refugee Protection Act ("IRPA").[103]

In other words, the Officer found that the OCAO's covert intelligence gathering activities constituted espionage and that their activities were contrary to Canada's interests.[104] The Officer also stated that "based on information from open credible sources, OCAO is known to have engaged in covert actions against overseas Chinese communities around the world and thus, it is reasonable to believe this includes overseas Chinese communities in Canada and allied countries which can be considered contrary to Canada's interests".[105]

On judicial review, the Officer's decision was upheld, and the case dismissed.[106] The Federal Court found that "it was reasonable for the Officer to conclude that OCAO engaged in covert action and intelligence gatherings against the overseas Chinese communities and other minorities around the world"[107], and that this was against Canada's interests.[108]

Grace said that China uses "all the nation's machine[ry] against us". She said that if Canada does not act soon to combat transnational repression, but rather continues allowing victims to remain in the grips of authoritarianism, "more Canadians will fall victim".

Russia

Russia also engages in an aggressive campaign of transnational repression.[109] Russia is controlling of its citizenry both inside and out of the country. Within Russia, the state focuses on repressing activism and controlling the information received by domestic audiences.[110] Freedom House explains that outside of Russia, the state tends to target former insiders and those perceived to be threats to the regime's security, and gain control over key cultural institutions in order to exert influence over the diaspora.[111]

Transnational repression began in the early days of the Soviet Union, which existed from 1922 to 1991. The Joint State Political Directorate (OGPU) – the Soviet security service and secret police – persecuted opponents who had migrated abroad.[112] They have been accused of committing several assassinations on foreign soil.[113]

Beginning in 1934, these efforts were overtaken by the People's Commissariat for Internal Affairs (NKVD). Famously, the NKVD was responsible for the 1940 assassination of dissident Leon Trotsky in Mexico City.[114] The Soviet Union also often forced opponents into exile by removing their citizenship and declaring them enemies of the state.[115]

[103] Ibid at para 3.
[104] Ibid at paras 18-19.
[105] Ibid at para 20.
[106] Ibid at para 57.
[107] Ibid at para 37.
[108] Ibid at para 51.
[109] Freedom House 2021, supra note 18 at p. 27.
[110] Ibid.
[111] Ibid.
[112] Gerasimos Tsourapas, supra note 5 at p. 629.
[113] Ibid.
[114] Ibid.
[115] Ibid at p. 631.

Following the collapse of the Soviet Union in 1991, Russia operated both domestically and abroad to silence opponents. Since 2000, when President Vladimir Putin came to power, the Russian regime has engaged in an "ongoing subversion campaign" abroad.[116] As part of this "political warfare" campaign, Russia builds influence networks through corrupt means, builds alliances with other authoritarian actors, and conducts hacking operations abroad.[117]

Regarding individuals, Freedom House found that Russia tends to target those who defected to NATO member states or cooperate with their intelligence agencies, those who previously engaged in armed conflict against Russia, or who have conflict with Russia's security services due to business or political activities.[118]

Despite international condemnation, Russia still commonly engages in assassination.[119] There have been several cases of attempted or successful assassinations of high-profile Russians in exile, including the already mentioned case of Sergei Skripal, a former Russian intelligence officer who nearly died after being attacked by the nerve agent Novichok in England in 2018.

In addition, Freedom House found that the "Kremlin is perhaps the world's most prolific abuser of the Interpol notice system".[120] Russia is responsible for 38% of all public Red Notices worldwide, and Freedom House concludes that without more transparency, it is difficult to ascertain how Russia continues to use the system so extensively.[121]

Russia combines these tactics with attempts to control key pillars of the Russian community abroad, including the Russian Orthodox Church, Russian media, and Russian cultural institutions.[122] Freedom House concludes that rather than trying to control the entire Russian diaspora with coercion, the Russian regime uses domestic repression to drive activists out of the country.[123]

On a different note, however, Russian citizens from the Chechen Republic do face a full-scale campaign of transnational repression.[124] As a result of over a century of Russian occupation, and the two Chechen wars (1994-1996 and 1999-2000) seeking independence from Russia, the Chechen diaspora has grown significantly.[125] After the separatist movement was defeated in 2000, Akhmad Kadyrov was appointed head of the administration of the Chechen Republic by Russian president Vladimir Putin, and the republic was reintegrated under Russian rule. Kadyrov eventually became President of the Chechen Republic.[126] After his

[116] Freedom House 2021, supra note 18 at p. 27.
[117] Ibid at p. 28.
[118] Ibid.
[119] Ibid.
[120] Ibid.
[121] Ibid.
[122] Ibid.
[123] Ibid.
[124] Ibid at p. 29.
[125] Ibid.
[126] Ari Shapiro, Jonaki Mehta, and Ashley Brown, "Chechnya once resisted Russia. Now, its leader is Putin's brutal ally in Ukraine", NPR, 27 April 2022.

assassination in 2004, his son, Ramzan Kadyrov, came to power as Head of the Chechen Republic.[127]

Today, Ramzan Kadyrov leads the transnational repression campaign against the Chechen diaspora, with the approval of the Russian central government.[128] The intense repression and brutality of Kadyrov's regime has caused tens of thousands of Chechens to flee.[129] Dissidents have been killed in Europe, including in Austria, Germany, and France.[130] Freedom House writes that "[e]ven in exile, Kadyrov's brutality follows Chechens".[131]

Chechens abroad face assassination, surveillance, digital intimidation, and coercion-by-proxy, where the government arrests, threatens, and even tortures family members in Chechnya to gain leverage against Chechens abroad.[132] The government also seeks and recruits asylum seekers to act as spies within the Chechen diaspora.[133]

Iran

The Islamic Republic of Iran is another prolific perpetrator of transnational repression around the world.[134] Iranian intelligence agencies have been spying on, abducting, and killing dissidents since the country's inception in April 1979. Iran utilizes several state agencies in these operations, including the Islamic Revolutionary Guard Corps (IRGC), and the Ministry of Intelligence and Security (MOIS).[135]

MOIS – Iran's primary intelligence body – became responsible for coordinating the country's entire intelligence community in 1989, consisting of 16 intelligence and counterintelligence bodies.[136] While MOIS initially focused on eliminating Iranian opposition elements, after 1989, the agency turned its attention to abducting and assassinating Iranian dissidents abroad.[137]

In February 2017, MOIS' foreign intelligence branch had its powers and responsibilities formally expanded.[138] The organization increased its extensive monitoring and targeting of dissidents abroad, including abductions and killings.[139]

According to the US Department of State, the Iranian regime has been responsible for "as many as 360 targeted assassinations in other countries" since its inception in 1979.[140] According to a May 2020 fact sheet on the State department website, "Iranian diplomatic personnel have repeatedly been implicated in assassinations abroad, as

[127] Freedom House 2021, supra note 18 at p. 29.
[128] Ibid.
[129] Ibid.
[130] Ibid.
[131] Ibid.
[132] Ibid.
[133] Ibid.
[134] Ibid at p. 35.
[135] Saeid Golkar, "Iran's Intelligence Organizations and Transnational Suppression", The Washington Institute for Near East Policy, 5 August 2021.
[136] Ibid.
[137] Ibid.
[138] Ibid.
[139] Ibid.
[140] Adam Burns, "Victim of Markham, Ont., homicide identified as Iranian-Canadian activist Mehdi Amin", The Canadian Press, 23 October 2020. [Adam Burns]

evidenced by arrest warrants, judicial and police investigations, intelligence services, and witness reports".[141]

Freedom House has also identified several successful or attempted assassinations by Iran since 2014, including in the Netherlands, France, and Denmark.[142] One notorious example includes a June 2018 bomb plot against a gathering of the National Council of Resistance of Iran (NCRI) in France. The plot was foiled by Belgian authorities, who attributed the plot to the Iranian regime. Four individuals were arrested in a joint operation by German, French, and Belgian police, including Iranian diplomat Assadollah Assadi, who was convicted and sentenced to a 20-year jail term.[143]

Freedom House found that Iran mobilizes the "full spectrum of transnational repression tactics".[144] In Canada, these tactics include attempted kidnappings and death threats, physical and digital intimidation, spyware, mobility controls, and property damage. Freedom House notes that Iran's transnational repression scheme is "distinguished by the total commitment it receives from the state, the level of violence that it employs, and its sophisticated application of diverse methods against a similarly diverse set of targets".[145]

Unlike China, who will target any member of a specified group, Iran is particular about its targets. In Canada, Iran has predominantly targeted critics of the regime, including civil and human rights activists. Members of the Association of Families of Flight PS752 Victims have also faced extreme and specific harm and targeting, both in Iran and Canada. Iran also aims to reputationally harm anti-regime activists abroad.[146] Iran publicly refers to them as drug addicts, traitors, terrorists, and enemies of the state, in a bid to turn public support against them and stigmatize them.[147]

Others

It should be noted of course that countries beyond China, Russia and Iran participate in transnational repression and commit acts similar to those discussed in these sections.

For example, the Turkish government's campaign of transnational repression is "remarkable for its intensity, its geographic reach, and the suddenness with which it [has] escalated."[148] Following the failed coup attempt of 2016, Ankara initiated a "global purge" of those it suspected to be connected to the Gülen movement, often targeting teachers and administrators.[149] It has pursued diaspora members in at least 31 different host countries, relying heavily on the use of mobility controls, detentions and

[141] Ibid.
[142] Freedom House 2021, supra note 18 at p. 35.
[143] Ibid at p. 36. Assadollah Assadi was released in 2021 in a prisoner swap. See: "Iran, Belgium conduct prisoner swap freeing aid worker, diplomat", Al Jazeera, 26 May 2023.
[144] Freedom House 2021, supra note 18 at p. 35.
[145] Ibid.
[146] Gerasimos Tsourapas, supra note 5 at p. 631.
[147] Ibid.
[148] Freedom House 2021, supra note 18 at p. 38.
[149] Ibid at p. 39.

illegal renditions, often persuading "targeted states to hand over individuals without due process…".[150] The Turkish government states it has returned 116 people in connection with the coup attempt and UN experts have referred to "at least 100 individuals … subjected to arbitrary arrests and detention, enforced disappearance and torture."[151]

[150] Ibid at p. 38.

[151] Ibid at p. 39.

Part II. Incidents of Transnational Repression and Foreign Interference with a Canadian Nexus

This part describes a wide variety of methods and incidents of transnational repression and foreign interference with a Canadian nexus. We include cases where targeted individuals have legal status in Canada, and/or where at least part of the incident took place on Canadian territory.

The first four sections below follow the lead of Freedom House's categorization of acts of transnational repression, namely, (1) direct attacks, (2) long distance threats, (3) mobility controls, and (4) co-opting other countries. The final four sections focus on attacks against Canadian institutional sectors, including the government, media, academia, and business sectors. These categories are not mutually exclusive, and there is significant overlap; multiple incidents may fit multiple categories.

Direct Attacks

According to Cherie Wong, Executive Director of Alliance Canada Hong Kong, "[d]issidents are not safe – not in their own homes, not in civil societies, not at work, and not in Canada".[152] Direct threats are common, and include harassment, threats, and intimidation; assault; detentions and arrests; involuntary returns; and assassinations and attempted assassinations.

Harassment, Threats, and Intimidation

Numerous authoritarian states – including China, Russia, and Iran – engage in the harassment, threats, and intimidation of individuals outside of their borders.

In March 2020, the Canadian Coalition on Human Rights in China (CCHRC) and Amnesty International Canada (Amnesty Canada) published a report on the "organized and sustained campaign of intimidation and harassment aimed at activists working on China-related human rights issues in Canada, in circumstances suggesting the involvement or backing of Chinese government officials".[153] The CCHRC and Amnesty Canada found that several individuals have faced personal harassment and intimidation, including online attacks and harassing phone calls.[154]

The CCHRC and Amnesty Canada found that individuals targeted include Falun Gong practitioners across Canada, including in Ottawa, Winnipeg, and Calgary.

Falun Gong, or Falun Dafa, is considered a loosely religious movement, founded in China in the early 1990s. They are known for speaking out against the Chinese Communist Party and have faced extreme

[152] Canada, Parliament, House of Commons, Special Committee on Canada-China Relations, Evidence, 43rd Parl, 2nd Sess, No 27 (31 May 2021), https://www.ourcommons.ca/DocumentViewer/en/43-2/CACN/meeting-27/evidence. [Special Committee on Canada-China Relations]

[153] Canadian Coalition on Human Rights in China and Amnesty International Canada, "Harassment & Intimidation of Individuals in Canada Working on China-related Human Rights Concerns", March 2020, p. 2. [CCHRC and Amnesty Canada]

[154] Ibid at p. 3.

persecution within China, including detention, death, and forced organ harvesting. They are also a heavy target of transnational repression.

Practitioners engage in this spiritual practice via a set of exercises and meditation. The three underlying tenets of their belief are truthfulness, compassion, and forbearance/tolerance. Across Canada, Falun Gong practitioners engage in "Clarifying Truth" events. These events involve practicing the set of exercises and meditation in a public place, often in a group of people. Practitioners often hold banners or provide information about their practice.

The CCHRC and Amnesty Canada found that Falun Gong practitioners have faced threats, bullying, and false correspondence sent out in their name to discredit them.[155] The interviews we conducted with Falun Gong practitioners corroborate this.

One Falun Gong practitioner that we interviewed, Louisa, told us that many in their community have faced extreme threats, harassment, and intimidation, particularly during Clarifying Truth events. She said that these acts of harassment are both "purposeful and malicious" and are "meant to threaten practitioners".

Daria, another Falun Gong practitioner, has attended events in both Toronto and Niagara Falls. Daria works as a translator and is well-connected within her community. She said that her community is often verbally and physically harassed at Clarifying Truth events. She described the harassment in Niagara Falls as "intentional" and "very systematic", saying that practitioners are followed wherever they go.

In Toronto, Falun Gong practitioners engage in Clarifying Truth events throughout the city, including at Lakeshore, Chinatown, Toronto City Hall, and before the Chinese Consulate, among other locations. Daria said that they practice in front of the Consulate every day, are often yelled at and harassed by ethnically Chinese passersby, or individuals who have emerged from the Consulate.

Rachel, another Falun Gong practitioner who works for an organization helping Chinese individuals "quit" the CCP, told us that she was once practicing outside the CN Tower when someone came up to her and began filming her. She asked him why, and he said that he was from the Chinese Consulate in Toronto. She said that people often come take photos of them during their practice, and due to this incident, she believes that most of them are linked to the Consulate.

Daria told us that once a practitioner was being harassed and verbally assaulted when the perpetrator began saying her father's full name. Her father remains living in Mainland China, and thus she became immediately concerned for his safety. Daria told us about another practitioner who had newly arrived in Canada when she spoke to another practitioner about her family in China. At the time, she believed this person was a true practitioner. Soon after, her sister, who is also a Falun Gong practitioner, was arrested in China. She believes that these incidents were connected, and that her sister's arrest

[155] Ibid.

was due to her own activities in Canada. Daria said that in response, her community is now aware of "someone hiding among" them, and that there could be spies pretending to be practitioners. Rachel told us that there have been individuals that have tried to join her community that she believes were CCP spies.

Grace, a volunteer for the Falun Dafa Association of Canada, told us that during practitioner activities in Toronto and other cities, there have been incidents where posters were destroyed, banners were torn, and people were verbally and physically assaulted. She said that they have reported some of these incidents to police, who say they cannot do anything as they are unable to identify individual perpetrators. Eventually, they stopped reporting these incidents to police.

Pro-Hong Kong democracy activists have reported similar incidents. At organized protests across Canada, they have been met by pro-China counter-protestors in aggressive, confrontational attacks.[156] Experts believe these counter-protesters are organized or directed by Chinese state authorities.[157] Counter-protestors have physically dismantled protest installations, and verbally and physically assaulted protestors.[158] Counter-protestors have attended and harassed individuals at pro-Hong Kong democracy protests in several cities, including Halifax, Montreal, Toronto, Ottawa, and Vancouver.[159]

Many pro-Hong Kong democracy activists have expressed concerns that CCP agents could take photos of them at protests and use facial recognition software to identify them.[160] They "expressed serious and legitimate fears that once their identities are known by Chinese state agents, this information could be used to arrest or detain them if they were to travel to China, and/or intimidate or retaliate against their loved ones, family members, employers/colleagues, and any individuals associated with them".[161]

Anastasia Lin, a Falun Gong practitioner, former Miss World Canada, and senior fellow at the Macdonald-Laurier Institute, has stated that believes that she is physically monitored at community events and has her phone communications monitored by Chinese agents.[162]

Rachel told us that she often coordinates groups of practitioners from the Toronto community to go to Niagara Falls. Once, after meeting the group at a subway station and seeing them off, she headed off and was followed by someone back to her home. Annie, a Falun Gong practitioner who arrived in Canada in 2010 as a refugee, told us that once while engaging in Falun Gong exercises, she and others had photos taken of them, later discovering that she and others in her circle had been followed to their homes via drone. She believes the CCP was collecting intelligence and images of her home and places she frequents. Another time, while Rachel was engaging in her

[156] Ibid at p. 22.
[157] Ibid.
[158] Ibid at p. 23.
[159] Ibid at pp. 24-26.
[160] Ibid at p. 27.
[161] Ibid.
[162] Ibid at p. 47.

practice in a park in Niagara Falls, she found herself surrounded by three large, strong men. One of them opened their jacket to reveal a shirt that said, "Falun Gong is a cult". She described feeling frightened that they would harm her, and they only left after she said that "this is Canada, not China", and that if they did anything to her the police would take action.

Mehmet Tohti, a renowned Uyghur activist and Executive Director of URAP, said that he was surprised to discover how much information the CCP had on him. He said that they know where he lives, works, and what his schedule is. He said that he believes he is being physically watched in-person and online.

Harassment online is widespread and conducted across multiple communities. Sheng Xue, a public critic of the Chinese government and pro-democracy activist, has been the target of a "long-standing" online smear campaign.[163] She has had her phone hacked and been subjected to death threats on several online platforms, including Twitter, and several of her associates have been harassed by Chinese security agents due to their associations with her.[164] Some of her associates have been impersonated online to spread more false information about her.[165] She has tried reporting these threats to police but no action has been taken.[166] Amnesty International's East Asia regional director, Nicholas Bequelin, analysed her case and said that while these incidents cannot be definitely linked to the Chinese government, they do have the markings of a coordinated attack by the CCP.[167]

Sheng Xue told us that on top of receiving harassing private messages, her personal information was leaked online. She said that while hosting an event about the 25th anniversary of the Tiananmen Square massacre online, her home phone, web phone, and cell phone number were all published online in advertising columns claiming that she was offering sexual services. These ads were run in Vancouver, Toronto, Montreal, New York, Chicago, and San Francisco. She received dozens of phone calls requesting these services. She reported it to the police, "but of course, I received no help" she said. The police advised that she change her number, which she knew wouldn't help as they could just as easily find her new number. The police told her that there is not much they can do in this type of situation.

Sheng Xue has had over 10,000 harassing online posts about her. There are several websites, Twitter accounts, and three online books published solely to harass her. There are also many fake email, Twitter, Facebook, and other social media accounts registered with her name and image.

In further attempts to ruin her reputation, images of her face were superimposed onto the bodies of naked women. These photoshopped images, or "deepfake" images, were spread online and identified as her nude photos. This method was used to try to embarrass and shame her. She told me

[163] Ibid at p. 33.
[164] Ibid.
[165] Ibid.
[166] Ibid.
[167] Ibid.

the first time she saw these photos was in October 2013, right before hosting an international conference in Toronto. The images were sent directly to attendee's inboxes. Immediately after coming off stage, an attendee came up to her and said "I saw your photo. You are beautiful". She said the incident left her shaken up.

Since then, the photos have been circulated on websites, WeChat groups, and over 10,000 email groups. She said that someone "could write a book on all this evidence". She said that the campaign was successful, and she has now been ostracized by her community.

Erkin Kurban, a Uyghur activist living in Montreal, told us that his reputation is constantly under attack online. He said that most of these attacks are from people that have never met him, and that it makes him "very angry" as he cannot defend himself.

Anastasia Lin has faced several instances of harassment.[168] Chinese state agents have sent her messages through her father and grandparents, warning her that if she continues her human rights work, she risks turning her family against each other.[169] She has said that her father has repeatedly been intimidated by police in China.[170] He has been barred from leaving the country.[171] She has also faced ostracism from parts of the Chinese Canadian community.[172] Her pageant sponsor, a Toronto dress shop owned by a Chinese-Canadian, dropped her after receiving a harassing email from the Chinese consulate.[173] She is no longer invited to events linked with the Chinese consulate or embassy.[174] In 2015, she was declared persona non grata by the Chinese government. As such, she could not travel to China to represent Canada at the Miss World pageant.[175]

Annie told us that she only uses a fake name on social media due to the harassment she has faced. Helen, a Falun Gong practitioner who came to Canada as an international student, said that she only posts online under a fake name as she is afraid that using her real name will draw the attention of the CCP and encourage them to watch and persecute her.

Helen said that in the past she has been attacked by Chinese people online on several occasions. She explained that there are two types of attackers. First, there are those directly instructed by the CCP to attack her, and second, there are Chinese people who have been "brainwashed" by the CCP but attack her of their own accord. Additionally, Helen said that she registered her phone number under a fake name, and only communicates via online phone platforms to avoid being monitored. She does not have apps like WeChat downloaded to her device. When she wants

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[168] Ibid at p. 47.
[169] Ibid.
[170] Tom Blackwell, supra note 91.
[171] Geordon Omand, "Miss World Canada aimed to confront China on human rights – not to win a tiara", The Canadian Press, 20 December 2016. [Geordon Omand]
[172] CCHRC and Amnesty Canada, supra note 153 at p. 47.
[173] Tom Blackwell, supra note 91.
[174] CCHRC and Amnesty Canada, supra note 153 at p. 47.
[175] Geordon Omand, supra note 171.

to speak to someone in China, she uses a phone card that can only be used once.

Helen told us about another practitioner who recently had their backpack stolen from outside the Chinese consulate – they believe by consulate staff. The backpack contained their cell phone, which held sensitive data, including the contact information of several other practitioners. Soon after, the practitioner's Telegram account was hacked and stolen, where the hacker pretended to be the practitioner online. Eventually, the hacker asked the practitioner to lend them money.

As Facebook, Twitter, and other social media platforms are banned in China, some believe that it is government officials with access to these channels that target individuals abroad with online harassment.

Russian officials also engage in harassment, threats, and intimidation, both on- and off-line. Marcus Kolga, a critic of the Kremlin and senior fellow at the Macdonald-Laurier Institute, testified before the Standing Committee on National Defence in 2023 that "independent media … reports that the Russian embassy in Canada is actively monitoring the social media activities of Russian diaspora members and critics of the Putin regime in Canada".[176] He testified further that:

> "One Russian Canadian was sent a message by the Russian embassy in Ottawa warning him, 'We know you, we're watching you, we know what you do'. Last year the Estonian honorary consul in Toronto received a letter threatening to spread anthrax if Estonians continue to support Ukraine. There have been reports of attempting phishing attacks in various diaspora communities as well.
>
> Canadian parliamentarians also face a daily barrage of emails and trolls on social media that seek to influence their decision-making. I've been told by some members that their support for Ukraine is frequently attacked by anonymous social media accounts."[177]

Kolga himself has faced intimidation, threats, and harassment. He described that in May 2020, York Regional Police investigated violent threats against him.[178] Online, Kolga has described the "toxic mix" of "automated and radicalized trolls", who have accused him of being "demon, Satan, Ukrainian, evil Jew", and have told him to "die".[179]

Harassment, threats, and intimidation may occur in individuals' homes, workplaces, and schools. Helen told us that a Chinese man once came to her front door in Toronto and began asking about her father. She said the man identified her father by name, which frightened her as her father was still living in

[176] Canada, Parliament, House of Commons, Standing Committee on National Defence, 44th Parl, 1st Sess, No 50 (14 February 2023), https://publications.gc.ca/collections/collection_2023/parl/xc34-1/XC34-1-2-441-50-eng.pdf.

[177] Ibid.

[178] Marcus Kolga, "The long and poisonous tentacles of Kremlin intimidation", Toronto Star, 13 September 2020.

[179] Ibid.

China. She said that she immediately ended the conversation and left her home as she was afraid of what the man might do to her or her family.

Sheng Xue has had several experiences with physical surveillance, including by four separate tenants who lived in her home near Toronto. Sheng Xue told us that she rents out the basement of her home and tries to be careful in selecting tenants. She only accepts those recommended by other community members and does not advertise online.

Over several years, Sheng Xue had three tenants with similar experiences: After living in Sheng Xue's home for several years, they returned to China for a short trip where they were visited by the State Security Department. They were threatened and asked to spy on Sheng Xue, and report on her activities back to the CCP. Two of them told Sheng Xue about this upon their return and immediately moved out. One tenant told her that the State Security Department told him they would "go to toss his family" if he didn't spy on her, and thus had to move out. Sheng Xue said she often wonders what would have happened had the tenants not told her and rather just done what the CCP had asked them to do.

The third individual did not tell Sheng Xue about it for three months, but eventually did and also moved out. She said that she understands why the individual didn't immediately tell her: she needed to protect herself and her family. Despite living in Canada, there was no way for her to stand up to the CCP. Sheng Xue said that this results in "a very complicated, difficult situation for everyone". Rather than blaming individuals, she said that the "criminal source is the CCP".

The fourth person lived on and off in Sheng Xue's home over the course of 10 years. She said that "I trusted this person very much". He had been an activist for over 20 years, and Sheng Xue met him via the Overseas Democracy Movement. She eventually discovered that he was collecting information on her and worked for the Chinese government.

Ardeshir Zarezadeh is an Iranian-Canadian and Toronto-based paralegal, who had been arrested 12 times and spent two years in solitary confinement in Iran before moving to Canada.[180] He was confronted by an Iranian intelligence officer at his Toronto law office.[181] Mr. Zarezadeh reported the incident to the FBI and RCMP, but after confirming that the officer was a known threat and a top regime operative, the FBI merely warned Mr. Zarezadeh to be very careful.[182] The RCMP did not even respond to his messages.[183]

In an interview with CBC News, Mr. Zarezadeh described feeling so unsafe that he "[brings] people … everywhere I go

[180] Angela Hennessy and Katie Swyers, "Iranian dissidents in Canada say they're being watched and under threat from the regime in Iran", CBC News, 26 November 2022. [Hennessy and Swyers]

[181] Ibid.
[182] Ibid.
[183] Ibid.

because who knows any day now I could get a knife in my back".[184]

Harassment, threats, and intimidation may also occur by phone. Victims report receiving two main types of phone calls. The first type is harassing robocalls, and the second type are personal phone calls from a live agent.

Many Uyghurs have reported receiving robocalls instructing them to immediately present themselves at the Chinese Embassy or Consulate to pick up important documents.[185] URAP listened to several of these robocalls, and documented that they were delivered in a female voice in mandarin, and ranging from 15 seconds to 1 minute.[186] None of those interviewed by URAP actually visited a Chinese government building, but some reported that upon calling the number back, they reached the Chinese embassy or a consulate and were either hung up on or evasively told that the embassy had not made the initial call.[187] URAP states that the "robocalls serve as a powerful reminder to Uyghurs, and especially activists, that even in Canada, the Chinese state is keeping an eye on them and expecting them to remain silent".[188]

Falun Gong practitioners have also reported receiving robocalls. Louisa told us that in March 2023, a Vietnamese practitioner began receiving several phone calls from China after signing a petition to "end" the CCP. The calls originated from Shanghai and Shenzhen, China. The practitioner did not pick up, but received voicemail messages in Mandarin telling him that he would be deported from Canada.

Rachel, who helps people in mainland China "quit" the CCP, often receives harassing phone calls using abusive, dirty, and swearing language. She often receives these calls during the night, which she points out is daytime in China. She believes these individuals are paid by the CCP to call her, and they often call her from different phone numbers.

Gloria Fung, President of Canada-Hong Kong Link, has said that she was the victim of several cyber-attacks, harassing phone calls, and intimidation.[189] She said that she has received several phone calls from various individuals using foul language to threaten her.[190]

Dilnur Enwer, a Uyghur living in Montreal, has also reported receiving several phone calls from embassy and consulate officials asking her to attend to pick up "important travel documents".[191] Dilnur had recently fled the Uyghur region, and prior to having all contact with her relatives in the region cut off, including with her young children, she was warned by a relative that the Embassy would catch her and deport her to China.[192]

[184] Ibid.
[185] CCHRC and Amnesty Canada, supra note 153 at p. 41.
[186] Uyghur Rights Advocacy Project, supra note 27 at p. 26.
[187] Ibid.
[188] Ibid.
[189] CCHRC and Amnesty Canada, supra note 153 at p. 30.
[190] Ibid at p. 31.
[191] Ibid at p. 39.
[192] Hall and Jardine, supra note 20 at p. 37.

Kayum Masimov, another Uyghur activist living in Montreal, told us that right after being elected chair of a Uyghur committee in 2012, he began receiving dozens of calls from unknown numbers. The caller knew that he was Uyghur and threatened to kill him and his family. Some of the threats included them saying "people like you should be killed", and "you don't deserve to live". He reported these calls to the Montreal police, who opened a file and analyzed his phone. After a few months, they told him that they were not equipped to trace the phone calls and have no mandate to do international investigations. As such, their solution was to advise that he change his phone number.

Cherie Wong, executive director of Alliance Canada Hong Kong, said that she has faced significant harassment and intimidation since at least July 2019, when she became an outspoken leader in the Hong Kong community.[193] She has reported being subjected to coordinated online harassment, including rape and death threats.[194]

In January 2020, Cherie was in Vancouver to host events surrounding the launch of Alliance Canada Hong Kong's work. Out of caution, her hotel room was booked under someone else's name.[195] Still, she received a phone call to her hotel room, where a man aggressively and repeatedly demanded she leave her hotel room immediately with all of her belongings and that he was sending people to collect her.[196] He repeatedly said "[w]e know where you are. We're coming to get you".[197] She hung up and called the Vancouver police, concerned that she may have been doxed, and feeling threatened, intimidated, and unsafe.[198] She is still unclear on who the caller was, why they wanted her to leave, or whether she was actually in any danger.[199] While the Vancouver police gave her some comfort, they were unable to take any concrete action and claimed that there was "no credible threat".[200] In response to the threats they face in Canada, she said "I don't want to discourage any Hong Konger from coming here… but don't think that once you're here, you're free – there's nothing stopping the regime from coming after you here".[201]

Mehmet Tohti receives disturbing phone calls prior to significant events. On February 1, 2023, the House of Commons voted to pass a motion facilitating the arrival of 10,000 Uyghur and other Turkic Muslim refugees to Canada. Mehmet was instrumental in passing this piece of legislation. Two weeks prior, on January 16, 2023, Mehmet received a phone call from the Chinese police stating that his mother and two sisters were dead, his three brothers were disappeared, and all their children and spouses have disappeared as well. They said

[193] CCHRC and Amnesty Canada, supra note 153 at p. 29.
[194] Ibid at p. 30.
[195] Christy Somos, "Hong Kongers say they're being targeted by Chinese agents on Canadian soil", CTV News, 16 April 2021. [Christy Somos]
[196] CCHRC and Amnesty Canada, supra note 153 at p. 30.
[197] Christy Somos, supra note 195.
[198] CCHRC and Amnesty Canada, supra note 153 at p. 30.
[199] Ibid.
[200] Ibid.
[201] Christy Somos, supra note 195.

they took his uncle and cousin hostage. They told him that if he continues with his activism, they will suffer a terrible fate. Mehmet says this is further proof that the CCP is watching him and his daily activities.

In our interviews, victims also described varying incidents involving property damage.

Michelle Zhang, a Falun Gong practitioner, told us that while living in Vancouver in the early 2000s, her husband's car, parked 50 metres from their apartment, had its windows smashed. A few months later, they noticed a very bad odour from around their apartment, before realizing that human feces had been spread all over their balcony. Michelle believes both incidents were perpetrated by CCP agents, who were monitoring them and tapping their phones.

At several Clarifying Truth events in Toronto, banners have had things thrown at them, been ripped, or destroyed. Practitioners in Niagara Falls have reported the same thing. Daria told us that often their banners are covered with Christian signs, and that the police often show up to their demonstrations as soon as they arrive. She said that "obviously, it is only after receiving malicious reports" that the police are able to arrive so soon. She said that she believes the calls come from the CCP's secret insiders.

Additionally, Louisa told us that the Epoch Times (and its Chinese version, Dajiyuan), a newspaper founded by Falun Gong practitioners, is often vandalized. In her city, the Falun Gong community has placed a newspaper rack in a large university's central building. She said that every new term in which a new batch of students arrives, the rack is damaged and vandalized, and the papers are stolen to prevent their dissemination. She believes that the new students are ordered to do so. Louisa also told us about a grocery store in her city that had to install a new type of newspaper rack with security features to prevent individuals from stealing stacks of Dajiyuan papers and trying to destroy the rack.

Rachel told us that she was once in a group of Falun Gong practitioners travelling from Toronto to Niagara Falls. The group entered a rest stop and while inside, someone had hammered nails into the tires of their vehicle. When they went to have their car repaired, the mechanic told them that the nails used were quite unique and very different from ones that may typically be found on roads from other vehicles. She believes that they were followed and attacked by CCP agents.

Another incident involving a vehicle occurred to Hamed Esmaeilion, who at the time was the spokesperson for the Association of Families of Flight PS752 Victims.[202] Hamed, whose wife and daughter were killed on Flight PS752, has faced significant threats and intimidation by Iranian officials.[203] He testified in a Canadian parliamentary hearing that he felt himself in danger in Canada, describing an incident in which two of his car tires were flattened

[202] Canada, Parliament, House of Commons, Subcommittee on International Human Rights of the Standing Committee on Foreign Affairs and International Development, 44th Parl, 1st Sess, No 12 (21 June 2022), https://www.ourcommons.ca/DocumentViewer/en/44-1/SDIR/meeting-12/evidence.

[203] Ibid.

when he went into a grocery store.[204] He testified that "[t]he police came and did some investigating, but the car was not in the range of the camera, so the case was closed".[205] He further testified that he and other family members "see suspicious cars around our houses", without much response from the government.[206] He testified that "nothing is shared with us if we are under threat or not".[207]

The harassment, threats, and intimidation faced by Hamed Esmaeilion form part of the broader pattern of Iranian officials targeting family members of those killed on Ukraine International Airlines Flight PS752, which was shot down by the IRGC on January 8, 2020, moments after it took off from Tehran's International Airport.[208] The IRGC fired at least two missiles at the aircraft, killing all 176 passengers and crew, and an unborn child, onboard.[209] 55 Canadian citizens and 30 permanent residents were among those killed.[210]

Initially, the Iranian government denied all wrongdoing, blaming the crash on technical failures.[211] Due to mounting evidence and international pressure, Iran changed their official position, stating that the missiles were fired at the aircraft due to "human error".[212] This position has been widely discredited, including in a Canadian civil court case, in which the Ontario Superior Court of Justice ruled that "on the balance of probabilities… the missile attacks on Flight 752 were intentional and directly caused the deaths of all onboard", and that "the plaintiffs have established that the shooting down of Flight 752 by the defendants was an act of terrorism and constitutes 'terrorist activity'".[213]

Iran has intimidated, threatened, and harassed the surviving family members, both inside and outside of Iran. Human Rights Watch has described this as "a campaign of harassment and abuse" perpetrated by Iranian authorities against the families of those killed.[214]

Javad Soleimani, who lost his wife Elnaz on Flight PS752, was targeted by Iranian officials after criticizing the local Mullah – a representative of Iran's Supreme Leader Ali Khamenei – the day after his wife's burial, in a mosque at her memorial event.

The next day, he received a call from the city's Intelligence Office to discuss his online posts, and they asked him to come to their office. He said that he had already left the city and so could not come in. That next day in the evening, he boarded a flight out of Iran, worried about what might happen to him if he stayed.

[204] Ibid.
[205] Ibid.
[206] Ibid.
[207] Ibid.
[208] The Association of Families of Flight PS752 Victims, "Flight PS752: The Lonely Fight For Justice", November 2021.
[209] Ibid at p. 1.
[210] Ibid.
[211] Ibid.
[212] Ibid.
[213] Zarei v Iran, 2021 ONSC 3377 at paras 52-53.
[214] Human Rights Watch, "Iran: Ukraine Airline Victims' Families Harassed, Abused", 27 May 2021.

In March 2020, Javad received a message on Instagram from someone identifying themselves as the head of Iran's Aircraft Accident Investigations Board, saying that he would like to speak with him about the downing of Flight PS752, and his online criticism of the regime. Javad told us that they spoke on the phone, before he was threatened to remove an Instagram post about the regime. Javad said that he was asked to return to Iran to talk, which he refused. He was then asked to meet somewhere more neutral, like Paris or another European city. Again, Javad refused, concerned about what could happen to him if he did so.

Since then, he has been very vocal against the regime, speaking out in both English and Persian media. In response, he has received several hate messages online, particularly through Twitter and Instagram. He often gets messages stating things like, "we will kill you".

Javad's friends have told him that he is under physical surveillance by the regime. He explained that "this is the case for many activists in Canada". He asked, with the amount of IRGC supporters, agents, and commanders living in Canada, "how can we feel safe?"

Javad said that "if I had the opportunity to leave Canada, and go to another country, like the US, I would". He said that he no longer feels safe in Canada, as it is "very obvious that [the] Iranian regime is right here".

Harassment, threats, and intimidation perpetrated by the IRGC target others critical of the Iranian regime. Beyond the incident targeting Ardeshir Zarezadeh, described above, many Iranian-Canadians have reported being threatened, monitored, and followed by the Iranian regime.[215] Speaking to CBC News, Maryam Shafipour, an Iranian activist living in Canada, said that members of the IRGC acquired personal information about her through surveillance, including the view out of her apartment, that she had three cats, and which of her friends had come to her home.[216] The IRGC tried to use that information to threaten her family in Iran with the hopes of luring her back to the country.[217] While still living in Iran, Ms. Shafipour had spent two months in solitary confinement in the notorious Evin Prison for "spreading propaganda against the system".[218] As a result of the threats and monitoring she has endured in Canada, Ms. Shafipour has cut ties with all her friends, and reported being now very isolated.[219] She said that she has not received any help from Canadian police or government officials, and feels the threat is not being taken seriously.[220]

Two young Iranian Canadians interviewed by CBC News said that they went to police to report harassing messages but could not even get past reception.[221] They say they were told no one could help them.[222] One of them said, "I feel like the police, whether in

[215] Hennessy and Swyers, supra note 180.
[216] Ibid.
[217] Ibid.
[218] Ibid.
[219] Ibid.
[220] Ibid.
[221] Ibid.
[222] Ibid.

Toronto or anywhere in Canada… wait until someone dies and then they will do something".[223]

Authoritarian regimes have also engaged in death threats.

In November 2022, CSIS publicly announced in a media statement to CBC News that it was "actively investigating several threats to life emanating from the Islamic Republic of Iran" toward individuals in Canada.[224] CSIS said that it was aware that state actors from Iran were monitoring and intimidating individuals inside Canada, particularly aiming to silence those who criticize the regime.[225]

According to CBC News, this was "the first time the agency has confirmed multiple ongoing investigations into what it calls 'lethal threats to Canadians and people located in Canada' emanating from Iran".[226]

Kayum Masimov told us that he has also received several death threats for his activism in the Uyghur community.

Falun Gong practitioner Michelle Zhang told us that three months after moving to Toronto in 2008, she left her apartment on the eighteenth floor for the day, leaving her two children, aged four and seven, with a babysitter. While gone, a man with a gun came to her apartment door, demanding that the babysitter hand over the two children. Michelle said that at the time, only the babysitter knew where they were living. The babysitter asked the children to hide, and the gunman eventually left. She reported the incident to the police and was interviewed. Michelle says that she believes that her and her children's lives were threatened. It is a possibility, given the other incidents of transnational repression described by Michelle, that this threat was perpetrated by the CCP or by pro-CCP elements.

Individuals have also been harassed, threatened, and intimidated to spy on other community members.

Erkin Kurban[227], a Canadian citizen of Uyghur ethnicity living in Montreal, was able to continue visiting his relatives in China until 2010 when his anti-CCP activism became known to Chinese state officials.[228] He soon began getting phone calls from his brothers in China, who sounded terrified as they requested information about his move to Canada and political activities.[229] His requests for travel visas were continually denied until 2013, when he sought to return to the Uyghur region for a visit to see his ill mother prior to her passing.[230] Chinese officials called Erkin's brother in, asking him to tell Erkin that he would only receive his

[223] Ibid.
[224] Ashley Burke and Nahayat Tizhoosh, "Spy agency investigating 'credible' death threat from Iran against individuals in Canada", CBC News, 18 November 2022.
[225] Ibid.
[226] Ibid.
[227] Also spelled Aierken Kuerban.
[228] Uyghur Rights Advocacy Project, supra note 27 at p. 37.
[229] Ibid.
[230] Ibid.

visa if he cooperated with them.[231] As Erkin was eager to see his mother, he agreed.[232]

He travelled to Ürümqi, the capital of the region, in April 2014, where he was called in to speak with the Public Security Bureau.[233] He said that after being interrogated for ten hours by four people about his political activities and contacts in Canada, he was allowed to leave after pointing out that they had no right to detain him as he is a Canadian citizen.[234] He was told that his Canadian passport had no value in China.[235] About a week later, he was ordered to return to their office and harshly interrogated for another three hours.[236] Chinese officials threatened to deport him back to Canada, before pressuring him to send back reports on the Uyghur community in Canada.[237] Erkin said that they were well informed about the Uyghur community in North America.[238] Erkin said the officials told him that they "have special people" in Canada to whom he can provide the information he collects.[239] They told him that if he did not commit espionage, he would be removed from China and unable to visit his hometown.[240] In order to secure his release, Erkin gave them a list of seven fake Uyghur leaders,[241] and pages of fake handwritten information.[242] After returning to Canada, Erkin reported these events to CSIS.[243] He continued to receive threatening phone calls from Chinese officials for several months after.[244]

We spoke with Erkin Kurban about this incident. He told us that he was asked to collect general information on Uyghurs in Canada, and on activists like Mehmet Tohti and Kayum Masimov. He was asked to forward information on what they were planning, who they contact within the Canadian government, and information on upcoming events. He said that the CCP would not trust Uyghurs to spy on someone "really important", but rather, they are asked to spy on other community members to instill fear and mistrust.

We asked Erkin how he was expected to forward the information he gathered to China. He told me that he did not know exactly, but that he would not have done so through the consulate. Rather, he said that "they have intermediaries here in Canada" that he would report to.

Erkin insists that he never spied on Uyghurs in Canada and has been unable to return to China for fears to his safety. He has also heard similar stories from other Uyghurs asked to spy on their community in Canada. He said that he has suspicions that information is being passed on about Uyghurs in Canada by community members.

231 Bradley Jardine, supra note 16 at p. 142.
232 Uyghur Rights Advocacy Project, supra note 27 at p. 38.
233 Radio Free Asia, "Uyghur-Canadian Interrogated, Pressured to Spy For Chinese Authorities", 24 April 2015. [Radio Free Asia]
234 Ibid.
235 Uyghur Rights Advocacy Project, supra note 27 at p. 38.
236 Radio Free Asia, supra note 233.
237 Ibid.
238 Bradley Jardine, supra note 16 at p. 143.
239 Radio Free Asia, supra note 233.
240 Bradley Jardine, supra note 16 at p. 143.
241 Radio Free Asia, supra note 233.
242 Bradley Jardine, supra note 16 at p. 143.
243 Ibid.
244 Ibid.

He suspects that these Uyghurs may be older community members who do not care about the Uyghur cause or plight. Rather, they want to be able to return to China and visit their relatives, and for this purpose "they are willing to sacrifice their morals and break the law".

Assault

There have been a few incidents of transnational repression involving physical assault in Canada. While many of the incidents below were reported to Canadian authorities, so far, no concrete action has been taken.

Several Falun Gong practitioners told us of incidents where drinks were thrown at individuals. For example, Annie told us that in February 2023 an elderly practitioner was standing outside the Consulate when a man in a car drove up to them and began taking pictures. When the practitioner asked him why, the man threw a cup of hot coffee on her. A woman then emerged from the Consulate and got into the car before they drove off. The incident was reported to both the local police and the RCMP. Annie told us that several years prior, another practitioner had water sprayed all over him and their banner in a clearly intentional manner. Others also told us about incidents where water was thrown at practitioners.

William, a Falun Gong university professor, told us that he was once practicing outside his university, with another practitioner, when a man came up to them and began videotaping them. The man began swearing at the other practitioner and threatened to beat her to death. In response, William began recording the man's threats, before the man came up to William and threw his lit cigarette at him, hitting him in the face. William said that he went to the police station and showed them the video but decided not to pursue legal charges against the man and instead show him compassion.

Helen was once attending a Clarifying Truth event outside the Chinese consulate when someone tried to attack her with a backpack. She said that she avoided being hit but is often sworn at and verbally attacked. Helen said that she was not sure whether either of these incidents are considered crimes under Canadian law, or where she would report these types of non-urgent incidents.

In a more serious incident, Rachel told us about an assault that recently took place in front of Toronto City Hall. She said that practitioners had been coming to the same spot for several days in a row and holding a banner. One day, as soon as they arrived, a "western man" came up to them, grabbed the banner and ripped it up, and then grabbed a practitioner "viciously by the neck". She says he squeezed the practitioner's neck so hard that the person couldn't breathe. Rachel said that she and other practitioners have "noticed oftentimes CCP instructed some paid westerners to do the harassment and intimidations".

In an interview with CTV News, Cherie Wong, executive director of Alliance Canada Hong Kong, explained that "[e]very decision I make surrounds my own safety". She said that she is afraid to go outside or to protests and worries about being attacked, despite living in Canada. She said that colleagues abroad have been attacked in public, and that she is "afraid that would happen to me, and I don't think the police or the

government could protect me from that kind of violent attack".[245]

Detentions and Arrests

There have been several cases of Canadians being detained or arrested by authoritarian governments.

Famously, Canadians Michael Kovrig and Michael Spavor were arbitrarily detained for over 1,000 days, in deplorable conditions, in China. Their detentions are considered a Chinese use of "hostage diplomacy", as their detentions were blatantly used by the CCP to pressure Canada to release Meng Wanzhou, Huawei's Chief Financial Officer, who was lawfully arrested in Canada in December 2018.[246] Kovrig and Spavor were released in September 2021, a few short hours after Meng Wanzhou was permitted to leave Canada.[247]

Around the same time, there were also several cases of Canadians receiving harsher sentences in China.[248]

Fan Wei received a death penalty sentence in April 2019 on allegations of serving in a multinational drug smuggling case. Although Canadian officials had stated that they had "not had an indication that his sentence was arbitrary", there are irregularities in the case, including the fact that Mr. Fan was not sentenced to death "until the dispute over Ms. Meng's arrest".[249]

Robert Schellenberg, a Canadian convicted of drug smuggling in China in 2018 and sentenced to 15 years imprisonment, was suddenly re-tried and re-sentenced with the death penalty after Meng was detained in Canada. The re-trial was ordered shortly after Meng's arrest; Schellenberg has maintained his innocence; and Canadian officials have repeatedly called his conviction and sentence arbitrary.[250]

Xu Weihong and Ye Jianhui were also both sentenced to death in China in August 2020, after being found guilty of drug charges.[251] They were the third and fourth Canadians to be sentenced to death on drug charges in two years.[252]

Grace told us about the case of Professor Kunlun Zhang, a Falun Gong practitioner and former visiting professor at McGill University. In 2001, he traveled to China to visit his ill mother-in-law, where he was

[245] Christy Somos, supra note 195.
[246] Sarah Teich, "Fighting back against global hostage-taking: A proposed new Act to hold state and terrorist actors to account", Macdonald-Laurier Institute and Canadian Coalition Against Terror, 2021.
[247] John Boyko, "Meng Wanzhou Affair (Two Micheals Case)", The Canadian Encyclopedia, 19 July 2022.
[248] CCHRC and Amnesty Canada, supra note 153 at p. 3.
[249] Nathan Vanderklippe, "Foreign Affairs Minister, Ambassador mum on Fan Wei, Canadian sentenced to death in China", The Globe and Mail, 22 April 2020. [Nathan Vanderklippe]
[250] Jessie Yeung and Steven Jiang, "Chinese court rejects Canadian's appeal against death sentence for drug smuggling", CNN, 10 August 2021.
[251] The Associated Press, "China sentences 4th Canadian to death on drug charges in 2 years", 7 August 2020.
[252] Ibid.

arrested, tortured, and sentenced without trial to three years in a forced labour camp. His daughter, who lived in Ottawa at the time, reached out to then-Liberal MP (now former Justice Minister) Irwin Cotler, who took up Professor Kunlun Zhang's case. Grace said that soon after, Mr. Cotler received a letter from an individual known to be close to the Chinese embassy, claiming to be writing on behalf of 25 Chinese organizations in Ottawa, telling him not to help Falun Gong practitioners as it would jeopardize the relationship between Canada and China. Later, Grace spoke with some of the listed 25 organizations, who were not aware of the letter. Many of the organizations had no real contact information, and Grace suspected that they may not actually exist. Grace said that the CCP uses these Chinese groups as the Chinese government's mouthpiece to influence politics and government in Canada.

Other MPs also advocated for his release, including then-Canadian Alliance MP Scott Reid, who at the time said that the "Canadian message has changed from condemnation to complacency, even though it is one of our own citizens that has fallen victim to these horrific acts".[253]

In February 2017, Sun Qian, a Canadian citizen and Falun Gong practitioner, was arrested without a warrant and has remained in detention in Beijing ever since.[254] She was forced to renounce her Canadian citizenship.

Canadian businessman Xiao Jianhua, who was kidnapped from his hotel room in Hong Kong in 2017, also remains arbitrarily detained in China.

Huseyin Celil, a Uyghur-Canadian, also remains in detention in China. Celil arrived in Canada in 2001 as a political refugee and became a Canadian citizen four years later.[255] He was arrested by Uzbek police during his visit to Uzbekistan in March 2006, and quietly handed over to Chinese authorities in June 2006.[256] In February 2020, Canadian Ambassador to China Dominic Barton appeared before the House of Commons Special Committee on Canada-China Relations, and "appeared unaware that Celil is a Canadian citizen".[257] Barton "claimed that Canada had done everything it could to access him in order to provide consular services, but supposedly had not succeeded due to his citizenship status".[258]

The contrast between Canada's treatment of cases like Huseyin Celil's, and Kovrig and Spavor, illustrate the potentially differential treatment received in cases where dual nationals are detained abroad. This is problematic. As Alex Neve, then secretary-general of Amnesty International Canada,

[253] Randy Boswell, "Ottawa Citizen: Liberal MP rises to defend Canadian jailed in China; KunLun Zhang a classic 'prisoner of conscience', says Irwin Cotler", The Ottawa Citizen, 9 December 2000.
[254] CCHRC and Amnesty Canada, supra note 153 at p. 17.
[255] Adam Miller and Francesca Fionda, "10 years later, family of Canadian in Chinese prison still looking for answers", Global News, 17 March 2016.
[256] Ibid.
[257] CCHRC and Amnesty Canada, supra note 153 at p. 17.
[258] Ibid.

articulated: "Dual nationals, who may have been born in China before coming to Canada, absolutely have the same urgent need for Canadian protection as do Canadian citizens who do not have Chinese roots"; "Canada's commitment to all of these cases must be the same".[259]

Detentions and arrests of Canadians abroad occur in authoritarian countries beyond China, including in Russia and Iran.

Paul Whelan, an American-Canadian citizen and former US marine, has been arbitrarily detained in Russia for almost five years.[260] He was detained in Moscow in December 2018 and accused of involvement in an intelligence operation.[261] He maintains his innocence, and the US government faced some criticism for leaving him behind when they secured the release of American hostage Brittney Griner.[262] Meanwhile, it is unclear if Canadian authorities have done anything of substance to assist in securing Whelan's release.

Vladimir Kara-Murza is another individual arbitrarily detained in Russia. He was arbitrarily arrested mere hours after condemning Putin's invasion of Ukraine, and is widely considered a political prisoner of the Kremlin.[263] Kara-Murza was arrested in April 2022 in Moscow, and in May 2023, he was granted honourary Canadian citizenship.[264] Kara-Murza stated in Russian court that he "[knew his] verdict": "I knew it a year ago when I saw in the mirror people in black uniforms and black masks running after my car. Such is the price for not being silent in Russia now. But I also know that the day will come when the darkness over our country will dissipate".[265]

It is unclear how many Canadians are, or have been, detained in Iran.[266]

Homa Hoodfar, a Canadian professor, was jailed in Iran in 2016 for "dabbling in feminism and security matters".[267] She was arrested in June 2016 and detained in Evin prison for 112 days.[268] Around the same time, famous Iranian-Canadian sculptor Parviz Tanavoli had his passport confiscated

[259] Nathan Vanderklippe, supra note 249.
[260] Jennifer Hansler, "Exclusive: Paul Whelan tells CNN he's confident 'wheels are turning' toward his release", CNN, 21 May 2023.
[261] Ibid.
[262] Jennifer Hansler, "Exclusive: Paul Whelan tells CNN he is 'disappointed' that more has not been done to secure his release", CNN, 8 December 2022.
[263] Vladimir Kara-Murza, Raoul Wallenberg Centre for Human Rights, https://www.raoulwallenbergcentre.org/en/pursuing-justice/defending-political-prisoners/vladimir-kara-murza.
[264] Ibid; "Russia: Anti-war political activist and prisoner of conscience Vladimir Kara-Murza sentenced to 25 years in jail", Amnesty, 17 April 2023.
[265] "Russia: Anti-war political activist and prisoner of conscience Vladimir Kara-Murza sentenced to 25 years in jail", Amnesty, 17 April 2023.
[266] Catherine Cullen, "How many Canadians are jailed in Iran? The government won't say", CBC News, 13 July 2016. [Catherine Cullen]
[267] Ibid.
[268] Ibid; "Interview / Homa Hoodfar", Canadian Association of University Teachers, January 2017.

in Iran and was barred from leaving.[269] He temporarily faced criminal charges for two weeks before authorities dropped the case and he was permitted to return to Vancouver.[270]

Canadian permanent resident Saeed Malekpour was arrested while visiting his ill father in Iran in 2008.[271] For a time, he faced the death penalty, before it was "commuted to life in prison" following international pressure.[272] Saeed has been described as "a ragdoll in the middle" of the tensions between Iran and Canada.[273] Saeed was held in solitary confinement and tortured, and denied sufficient medical treatment for eleven years.[274] He was granted a three-day release, during which time he escaped to Canada through a third country.[275] Saeed landed in Vancouver on August 2, 2019.[276]

Zahra Kazemi, a Canadian journalist of Iranian origin, was arrested and imprisoned in Iran in June 2003, after taking photos outside Evin prison in Tehran.[277] She was sexually assaulted, tortured, and beaten in prison.[278] She lapsed into a coma and died two days later.[279] Zahra's family launched a civil lawsuit against Iran and Iranian officials in Canada, but the Supreme Court ultimately held that Iran and Iranian officials are protected by Canada's State Immunity Act, which prevents plaintiffs from suing foreign countries (or their officials) unless the act falls under a handful of limited exceptions.[280] Neither torture nor death abroad falls under one of the exceptions.

A Canadian couple is currently missing in Iran. Thirty-five-year-old Behnoush Bahraminia and her partner Mathew Safari visited Iran almost two years ago; their families have not heard from them since they landed in Tehran on November 6, 2021.[281] Security sources told the family that the couple were arrested.[282] The family has appealed to the Canadian government for assistance.[283] It is unclear what, if anything, has been done so far to facilitate their return.

Involuntary Returns

Safeguard Defenders defines involuntary returns as the "use of non-traditional, often illegal means of forcing someone to return …against their will, most often to face

[269] Cheryl Chan, "Detained Iranian-Canadian sculptor Parviz Tanavoli returns to Vancouver", Vancouver Sun, 18 July 2016.
[270] Ibid.
[271] Catherine Cullen, supra note 266.
[272] Ibid; "Toronto-area man faces death in Iran prison", CBC News, 18 January 2012.
[273] "Toronto-area man faces death in Iran prison", CBC News, 18 January 2012.
[274] Saeed Malekpour, Raoul Wallenberg Centre for Human Rights, https://www.raoulwallenbergcentre.org/en/pursuing-justice/defending-political-prisoners/saeed-malekpour.
[275] Ibid.
[276] Ibid.
[277] Jordan Press, "Supreme Court says Zahra Kazemi's family can't sue Iran for her death", Ottawa Citizen, 10 October 2014.
[278] Ibid.
[279] Ibid.
[280] Ibid.
[281] Negar Mojtahedi, "Canadian woman missing in Iran and her family believes she's been detained", Global News, 8 March 2023.
[282] Akhtar Safi, "Canadian Couple 'Missing' In Iran For 18 Months", IranWire, 9 March 2023.
[283] Ibid.

certain imprisonment".[284] Looking specifically at China, they describe three methods, outside of formal bilateral agreements, that are used to forcibly or involuntarily secure the return of targets from abroad.[285]

The first method is to force a target to return by targeting their loved ones in China. This is a form of coercion-by-proxy, which is further discussed below. Officials threaten that family members will be arrested or worse unless the targeted individual returns to China.[286] The second method is to force a target to return by directly approaching the target where they reside. This typically involves using Chinese police officers working abroad illegally, as well as locally hired individuals, like private investigators, to harass, surveil, and directly threaten individuals to return to China.[287] The third method is state-sanctioned kidnapping, and this typically involves covert cooperation with host countries.[288] This often involves tricking targeted individuals into a third country where they can be returned to China without due process.[289]

The scale of use of these methods is massive. According to China's Vice-Minister of Public Security Du Hangwei, in 2021, the CCP "persuaded 210,0000 people to return" from abroad.[290]

All three of these methods have been used against Canadian citizens.

The first method has been used against Uyghur-Canadian Mehmet Tohti. Mehmet has been cut off from his entire family living in the Uyghur region, and several of his siblings have been detained. Before cutting contact, he received several phone calls from family members urging him to end his activism because of the effects it could have on them. In 2016, Mehmet called a distant relative living in China, who was immediately detained after their phone call.[291] Mehmet believes that his family is being targeted in a bid to prevent him from speaking out and to force him to return to China. Mehmet told us that this has occurred to many Uyghur-Canadians, many of whom have had to completely cut off contact with their families for their own protection.

Several targets that we interviewed faced the second method: being directly approached in Canada. Safeguard Defenders found that many targets are persuaded to return or harassed by "one of the roving squads of agents" across several countries, including Canada.[292] This method is perpetrated both legally and illegally, either with the host country's permission or clandestinely.[293] Safeguard Defenders found that in at least three instances, "Chinese police, agents and/or non-state actors" have

[284] Safeguard Defenders, "Involuntary Returns", supra note 55 at p. 3.
[285] Ibid.
[286] Ibid.
[287] Ibid.
[288] Ibid at p. 4.
[289] Ibid.
[290] Safeguard Defenders, "110 Overseas", supra note 99 at p. 6.
[291] Hall and Jardine, supra note 20 at p. 9.
[292] Safeguard Defenders, "Involuntary Returns", supra note 55 at p. 8.
[293] Ibid at p. 36.

been sent to Canada to try to force a target to return.[294]

The third method, state-sanctioned kidnappings, has also been used to target Canadians. The true number of state-sanctioned kidnappings will likely never be known, as very few victims are able to come forward.[295]

Huseyin Celil, whose case is detailed in the previous section, provides an example of this method. Celil has been arbitrarily detained in China since 2006, after being arrested by Uzbek police in March 2006 and quietly handed over to Chinese authorities in June of the same year.[296] Amnesty International Canada detailed that Celil was arrested by Uzbek police at the behest of Chinese officials.[297] In another instance, Xiao Jianhua, a Canadian citizen, was abducted by Chinese agents from his Four Seasons hotel room in 2017 in Hong Kong.[298] While he has not been seen since, there have been reports that he was returned to mainland China after CCTV footage showed him being pushed out of the hotel in a wheelchair, followed by about a dozen agents.[299]

Xie Weidong, a former judge on China's Supreme Court, fled to Canada after publicly criticizing China's criminal justice system. Chinese officials have, on multiple occasions, tried to force him to return to China. Chinese authorities accused him of corruption and asked him to return voluntarily. Upon refusing, his sister and son were detained in China. Authorities also reached out to his other contacts in China, including his ex-wife, a former business partner, and his sister's lawyer, to try to convince him to return. Eventually, a Chinese lawyer was sent to Canada to confront him and try to persuade him in person.[300] In 2017, two people repeatedly rang his doorbell at 2 a.m., leaving before he opened the door.[301] One of the people was later identified as the wife of a lawyer still living in China, and he believes that they were there to threaten or kidnap him back to China.[302] Chinese officials later admitted that they had been recruiting Xie's associates to speak with him.[303]

Sheng Xue told us that the tenant that was living with her and providing information about her to the CCP tried very hard from November 2012 to May 2013 to get her to travel to Thailand and Burma. He was adamant that she should travel to one of those locations, and very disappointed when she did not. A month later, he started an online attack campaign against her. She said that that is when she understood why he was so eager for her to go there. When we asked what she thought would have happened to her had she travelled to Thailand or Burma,

[294] Ibid at p. 36.
[295] Ibid at pp. 47-48.
[296] Adam Miller and Francesca Fionda, "10 years later, family of Canadian in Chinese prison still looking for answers", Global News, 17 March 2016.
[297] Huseyin Celil, Amnesty International Canada, https://amnesty.ca/huseyin-celil/.
[298] Safeguard Defenders, "Involuntary Returns", supra note 55 at p. 7.
[299] Ibid.
[300] Ibid at p. 8.
[301] Ibid at p. 41.
[302] Ibid.
[303] Ibid.

she said "you wouldn't have had the chance to talk to me now". Sheng Xue reported this person to CSIS. The person eventually moved to Shanghai, China, where he passed away in March 2023.

In addition to the three methods detailed above, China also tries to force Chinese nationals abroad to return through other means, such as by having the Embassy refuse their request to renew their passport, which would force them to return to China to do so, directly harassing them online into returning, or by misusing legal avenues and institutions, such as the INTERPOL Red Notice system.[304] Chinese nationals who have been detained abroad have also reported being visited by Chinese officials and being forced to choose to either return to China or stay in the host country to spy on the diaspora.[305]

Strikingly, Safeguard Defenders identified cases where democratic countries, including Canada, secretly cooperated with Chinese law enforcement to track down and deport alleged fugitives.[306] Regarding Canada, Safeguard Defenders found that:

> "Documentation from the Canada Border Services Agency (CBSA) from late, drawn up whilst Canada was in negotiations with China about a possible readmission agreement showed that Canada was assisting Chinese officials and police in entering the country to carry out "negotiations" with Chinese nationals there, with the expressed intent of "persuading" them to return to China. Assistance was offered for both Chinese embassy staff, as well as visiting Chinese police, and includes help in securing the visiting police officers' visas. CBSA clarified that it does not participate in the negotiations between the Chinese national and the official Chinese side, which indicates that such meetings, carried out inside Canada, are unsupervised. The documentation continues to state that in the event negotiations are successful, CBSA can assist with logistics at the airport to help with the smooth departure of the individual. The documentation acknowledges that those sought are alleged criminals in China and not convicted of crimes in Canada."[307] [emphasis added]

In their 2022 briefs, CSIS stated that in 2020, a Chinese police agent worked with a Canadian police officer to repatriate an economic fugitive.[308]

Iran has also targeted Canadians in this manner. For example, in 2021, five individuals were targets of a kidnapping plot by the Iranian regime. One of the targets, Iranian American journalist Masih Alinejad, was surveilled by regime agents in New York.[309] Of the four others targeted in this plot, three were residing in Canada.[310]

[304] Ibid at p. 8.
[305] Ibid at p. 9.
[306] Ibid at p. 54.
[307] Ibid.
[308] Sam Cooper, supra note 50.
[309] Hennessy and Swyers, supra note 180.
[310] Their names have not been made public. Brennan MacDonald, "Canada condemns Iran

US authorities foiled the plot and arrested four individuals, claiming that the defendants formed an "Iranian intelligence network", and that they had reportedly hired private investigators in the US and Canada to spy on their targets.[311] The perpetrators planned to kidnap the targets and send them back to Iran.

Javad Soleimani told us that he knows that he was not a target in this plot, but that after the news broke, a Canadian official called him to ensure that he was in a safe place. He said this news was very concerning to him, as "Canada is a safe haven for [the] Iranian regime and its officials". He said that he has "real security concerns" and does not feel completely safe in his home knowing that regime officials are here in Canada. He explained that in the US, the IRGC is on the terrorist list, so at least cannot officially operate. Javad also expressed his concern that it was the FBI, and not Canadian officials, that foiled the plot. He believes that without the FBI's involvement, they may have been successful at kidnapping individuals on Canadian soil.

The Turkish government has also engaged in involuntary returns. For example, in 2016, under the initiative of the Turkish Embassy, illegal deportations were carried out against the Acar family by Bahraini authorities. Public officials forcibly abducted Murat and Candan Acar, along with their two children, from their residing country, Bahrain, and brought them to Turkey on the basis of their alleged affiliation with the Gülen movement.

In August 2016, the Acars' passports were suddenly canceled without the implementation of any legal process. Murat and Candan were separated from their children and from 8 October 2016 until 12 October 2016 were informally detained in the law enforcement unit at Istanbul Atatürk Airport. They were then detained at the Ankara Security Directorate. Both were accused of membership in an armed terrorist organization; however, no evidence was put forward against them at the time of, or after, their detention. In the inhuman and severe conditions of detention, the basic hygienic and nutritional needs of Murat and Candan were not met. The conditions of their detentions were designed to break their will.

The Kaçmaz family was similarly targeted and victimized by Turkish authorities in September 2017 due to their alleged affiliation with the Gülen movement. Mesut and Meral Kaçmaz had been working as teachers and administrators and residing in Wapda Town, Lahore, with their two children, when their home was raided by Pakistani officials. Mesut and Meral were subjected to violence and threats and kept in a secret base for 17 days. They were then handed over to security guards from Turkey and illegally abducted from Pakistan back to Turkey. While in transit, they were subjected to torture and ill-treatment.

When they arrived in Turkey, Mesut was taken to the Istanbul Police Department where he was detained arbitrarily and tortured. Meral and their two daughters were taken to the detention center at Istanbul Airport. After a few hours, Meral was

after kidnapping plot alleged in US indictment", CBC News, 14 July 2021.

[311] Ibid.

transferred to the Ankara Police Department and her daughters were released from custody into the care of a family friend. Both Mesut and Meral faced long periods of arbitrary detention under difficult conditions that amounted to torture and ill-treatment. The Acar and Kaçmaz families now reside in Canada as citizens and permanent residents, respectively.

Assassinations and Attempted Assassinations

There have been cases of alleged assassination plans or attempts in Canada.

Saad Aljabri, a former Saudi Arabian intelligence officer, believes that Crown Prince Mohammad bin Salman orchestrated a plot to kill him in Canada, similar to that of Jamal Khashoggi.[312] He believes the Saudi authorities want him dead due to his close relationship with US intelligence officials.[313] In August 2020, Aljabri filed a federal lawsuit in the US, alleging that the prince and his associates pressured him to return to Saudi Arabia, and sent agents to the US to locate him and place malware on his phone.[314] Once he was located, he asserts that a "hit squad" was sent to kill him in Canada in October 2018.[315] This alleged group, known as the Tiger Squad, was stopped by Canadian customs officials, and were found to be carrying tools that could be used to dismember a body.[316] He has had to hire private security for protection in Toronto.[317]

Aljabri has had several family members detained and/or tortured by Saudi officials, including two of his children, which he asserts in the lawsuit is "all in an effort to bait [Aljabri] back to Saudi Arabia to be killed".[318] Aljabri said that the crown prince has repeatedly tried to have him return to the country, even sending private messages, with one saying, "We shall certainly reach you".[319] In response, Canada's then-Federal Minister of Public Safety Bill Blair said that he could not comment on specific cases but was aware of incidents of transnational repression in Canada.[320] He said that it "is completely unacceptable and we will never tolerate foreign actors threatening Canada's national security or the safety of our citizens and residents. Canadians can be confident that our security agencies have the skills and resources necessary to detect, investigate and respond to such threats".[321]

Mehmet Tohti told us that he believes he may have been the victim of an attempted assassination by China on Canadian soil. Mehmet was hospitalized for several days after another vehicle drove directly into his driver's side door. At the time, Mehmet was advocating for the release of Huseyin Celil, the Uyghur-Canadian citizen detained in China, discussed above. Mehmet said that

312 Spencer S. Hsu and Shane Harris, "Former Saudi intelligence officer accuses crown prince of ordering his assassination in Canada", The Washington Post, 6 August 2020. [Hsu and Harris]
313 Ibid.
314 Ibid.
315 Ibid.
316 Ibid.
317 BBC News, "Saudi crown prince accused of sending hit squad to Canada", 6 August 2020. [BBC News]
318 Hsu and Harris, supra note 312.
319 BBC News, supra note 317.
320 Ibid.
321 Ibid.

during this period he was being followed by neighbours, and a suspicious black car had been parked outside his home. While Mehmet said that it is still a mystery whether this car crash was politically motivated or not, he believes that it was a deliberate attack on his life. After this incident, he became very concerned about his safety, and left for Europe. He said that he "left Canada for five years due to that fear". He said that there were many suspicious activities occurring around him at the time, and he did not believe that the Canadian government would do anything to protect him.

In October 2020, Iranian Canadian human rights activist Mohammad Mehdi Amin Sadeghieh, or Mehdi Amin, was found murdered in his home in Markham, Ontario, just north of Toronto.[322] Both Kaveh Shahrooz and Ardeshir Zarezadeh, mentioned above, knew Mehdi Amin, and at the time, both urged police to investigate whether his death was politically motivated.[323] On November 4, 2020, police arrested a 27-year-old, charging her with second-degree murder in Amin's death.[324] The police said that they do not believe there is any connection between Amin's death and his political views.[325] However, many in the Iranian community believe the police got it wrong, or at least did not seriously consider the possibility that the Iranian regime could have been involved.[326]

In December 2020, 34-year-old Karima Baloch, an outspoken Pakistani activist living in exile in Canada, was found dead under suspicious circumstances, having drowned off the Toronto lakeshore.[327] Karima had been living in exile in Canada for five years, after Canadian authorities helped her flee Balochistan, a region in western Pakistan, where she was being persecuted for her work as a well-known human rights activist. She was a leader in the Baloch Students Organization (BSO), a student movement campaigning for human rights and the rights of students in Balochistan.

After arriving in Canada, Karima continued to face harassment and receive death threats. On December 20, 2020, Karima went missing after traveling to Toronto Island, and her body was discovered the next day. Within 16 hours, the Toronto Police concluded that Karima had committed suicide. Her family and friends disagreed. Her brother, Sameer Mehrab, told police that he believes she may have been murdered, and that the family was unclear on how the police came to the suicide conclusion. Chris Alexander, Canada's then-Minister of Immigration when the Canadian Embassy helped bring Karima to Canada, similarly believed this was the wrong conclusion. In a podcast with Mary Lynk, he stated, "I don't think it was one of the finest moments for the Toronto Police Service. I think it was given to a front-line officer who looked at the immediate

[322] Adam Burns, supra note 140.
[323] Ibid.
[324] CBC News, "Woman charged with 2nd-degree murder in death of Iranian activist Mehdi Amin", 5 November 2020.
[325] Ibid.
[326] Adam Burns, supra note 140.
[327] Shah Meer Baloch and Hannah Ellis-Petersen, "Karima Baloch, Pakistani human rights activist, found dead in Canada", The Guardian, 22 December 2020.

evidence before him or her and came to the wrong conclusion".[328] When asked whether he believes that Karima committed suicide, he said "Absolutely not. I think she was killed".[329]

On the day of her death, Dr. Zaffar Baloch, President of the Baloch Human Rights Council of Canada, tweeted that their organization rejects the suicide finding.[330] He wrote that Karima "did not escape Pakistan to come to Canada and commit suicide. BHRC demands an independent enquiry into her death that excludes any Pakistani-Canadian police".[331] Naeli Quadri Baloch, president of the Vancouver-based World Baloch Women's Forum, said that this case has caused fear within their community and that "Karima's death is scary for all the persecuted people who have taken asylum in Canada".[332] She said that the "way justice is denied to Karima has created a grave sense of insecurity" in those who had immigrated to Canada.[333]

Activist Gulalai Ismail, who escaped Pakistan in 2019 and currently resides in the US, said that she is "devastated by the fact that even refuge in Canada couldn't save her life. The stories of Baloch don't change. They go missing and are then found dead. Be it Pakistan, … or Canada".[334]

Long Distance Threats

Long distance threats refer to "[o]rigin country tactics that do not require physically reaching the individual targeted", such as cyber threats and coercion-by-proxy.[335] As discussed, there is overlap in multiple instances between categories, including between long distance threats and direct attacks. For example, many cyber threats and incidents of coercion-by-proxy also constitute harassment or intimidation, and were discussed in the prior section.

Cyber Threats

The continuous development of new digital technologies has provided authoritarian regimes with incredible tools to repress individuals abroad. These technologies allow regimes to monitor exiles like never before, using both digital repression and more "traditional methods of extraterritorial coercion" against their targets.[336]

328 Mary Lynk, (Host), "Episode 1: Death of an Icon", In: The Kill List, CBC Listen, Ilina Ghosh, 23 January 2022.
329 Ibid.
330 Zaffar Baloch, [@ZaffarBaloch], "Baloch Human Rights Canada #BHRC rejects finding of the @TorontoPolice that #KarimaBaloch killed herself. She did not escape death in Pakistan to come to Canada and commit suicide. BHRC demands an independent enquiry into her death that excludes any Pakistani-Canadian police," Twitter, https://twitter.com/zaffarbaloch/status/1341460512245215237.
331 Ibid.
332 Diary Marif, "Karima Baloch's death remains a mystery", New Canadian Media, 6 January 2023.
333 Ibid.
334 Hindustan Times, "Baloch activist vocal about Pakistan goes missing, found dead in Toronto", 22 December 2020.
335 Freedom House 2021, supra note 18; Freedom House 2022, supra note 19.
336 Marcus Michaelsen and Johannes Thumfart, "Drawing a line: Digital transnational repression against political exiles and host state sovereignty", European Journal of International

The use of cyber threats and digital spyware on political opponents are a common tactic for a variety of reasons. They are relatively low-cost and low risk; hacking a single individual may expose entire networks of individuals and information; and this tactic may be incredibly effective at fostering fear and mistrust among diaspora communities, preventing them from participating in social and political life.[337] Louisa said that as digital threats can reach anyone anywhere, including in their own homes, their use also prevents individuals who have not yet been targets of transnational repression from fully participating in Canadian society as they fear that anyone could be next.

Targets may be monitored and spied on, hacked, or have malware attacks sent to their devices. Many witnesses that we spoke to said that they have repeatedly been the targets of cyberattacks. Often, they are sent malicious links by email or WhatsApp from someone posing as a friend or community member. Other times, they don't know the exact source of the malware. Others told us that while they were not aware of any specific attacks, they assumed that their mobile phones had been hacked and were being monitored.

Omar Abdulaziz, a Saudi Arabian dissident living in Montreal, is an emblematic case study of this tactic. Omar was a close associate of murdered Saudi Arabian journalist Jamal Khashoggi.[338] Khashoggi, a Washington Post columnist and critic of Saudi Arabia, had gone to the Saudi Arabian consulate in Istanbul to pick up legal paperwork, where he was tortured and killed by a Saudi Arabian hit squad.

After Khashoggi's death, Citizen Lab analyzed Abdulaziz' mobile phone and found that it had been infected with the NSO Group's Pegasus spyware.[339] The powerful surveillance tool gave the hackers access to his files, including emails and messages.[340] As such, they could track his communications with others, including conversations with Khashoggi in the weeks leading up to his killing.[341] The Saudi regime only decided to go forward with their plan of killing Khashoggi after hacking Abdulaziz' mobile phone and learning the details of different activism projects the two were planning together.[342] In the case of Jamal Khashoggi, "sophisticated digital spyware deployed across borders was an underappreciated component of the violent plot on his life".[343] Khashoggi's death also reveals the great lengths that authoritarian regimes will go to silence their opponents.[344]

Security (2022), pp.1-21 at 2. [Michaelsen and Thumfart]

337 Ibid at p. 9.

338 Marcus Michaelsen, "The Digital Transnational Repression Toolkit, and Its Silencing Effects". In: Nate Schenkkan et al. (Eds.), "Perspectives on "Everyday" Transnational Repression in an Age of Globalization", Freedom House, July 2020. [Marcus Michaelsen]

339 Aljizawi and Anstis, supra note 4.

340 Marcus Michaelsen, supra note 338.

341 Aljizawi and Anstis, supra note 4.

342 Michaelsen and Thumfart, supra note 336 at p. 2.

343 Nate Schenkkan, "Introduction". In: Nate Schenkkan et al. (Eds.), "Perspectives on "Everyday" Transnational Repression in an Age of Globalization", Freedom House, July 2020, p.2. [Nate Schenkkan]

344 Michaelsen and Thumfart, supra note 336 at p. 1.

China likewise engages in cyber threats regularly, and across multiple platforms.

In March 2021, Facebook disclosed that Canada's Uyghur community had been targeted by a sophisticated cyber espionage campaign.[345] Facebook stated that the operation tried to infect devices with malware to permit surveillance of the owner's device by targeting hundreds of Uyghur activists, journalists, and dissidents across several countries.[346] Facebook said that they traced the malware to two companies in China and would be notifying "fewer than 20" people in Canada who had been targets.[347] Facebook's head of cyber espionage investigations Mike Dyilyanksi and their head of security policy Nathaniel Gleicher released a media statement saying that the "group used various cyber espionage tactics to identify its targets and infect their devices with malware to enable surveillance".[348]

While they said they were unable to determine whether the Chinese government was involved, the operation "had the hallmarks of a well-resourced and persistent operation, while obfuscating who's behind it".[349] Hostile actors set up Facebook accounts posing as "journalists, students, human rights advocates and members of the Uyghur community" to trick individuals into clicking on malicious links.[350] Facebook said the hackers also set up malicious websites that looked like popular Uyghur or Turkish news sites, fake third party stores with Uyghur-themed apps, including a keyboard app, prayer app, and dictionary app, and used "watering hole attacks", which infect device users visiting legitimate websites.[351]

Many Uyghurs as well as Falun Gong practitioners have also reported being tracked and intimidated by Chinese authorities on WeChat, an unencrypted platform that is regularly monitored by the CCP.[352] For many, WeChat is the only tool available to communicate with their relatives.[353] They have been asked to provide ID information and numbers, passport photos, and their locations or residence by Chinese police on WeChat.[354] China also routinely hacks personal devices to track and listen to conversations between activists and/or potential dissidents.[355]

Hong Kong organizations have reported several phishing attempts to hack into their computers and have reported an influx of cyber-attacks around important and symbolic dates.[356] Uyghur organizations have reported similar issues with receiving malware. Both Tuyghun Abduweli, president of the East Turkistan Association of Canada,

345 Elizabeth Thompson, "Chinese cyber espionage operation targeted Canadian Uyghurs, says Facebook", CBC News, 24 March 2021.
346 Ibid.
347 Ibid.
348 Ibid.
349 Ibid.
350 Ibid.
351 Ibid.
352 Amnesty International, "Nowhere Feels Safe: Uyghurs Tell of China-Led Intimidation Campaign Abroad", February 2020.
353 Ibid.
354 Ibid.
355 CCHRC and Amnesty Canada, supra note 153 at p. 41.
356 Ibid at p. 30.

and Mehmet Tohti have said that the websites of their current organizations, and previous organizations they have led, have been repeatedly hacked over several years. They personally, and their organizations, have often been targeted by virus-laden emails, and as a result have had to routinely purchase new computers.[357]

In the early 2010s, Kayum Masimov received an email in Uyghur from Mehmet Tohti, right after to speaking to him on the phone. The email summarized their discussion, and included an attachment that he was prompted to open. While the details of their conversation were accurate, Kayum noticed slight deviations from Mehmet's normal pattern of language. He called Mehmet again, who told him that he had never sent the email. After checking the email address closely, he noticed that a single letter had been changed from Mehmet's real email address. Kayum concluded that someone had listened in to their phone conversation and delivered a sophisticated, custom, and rapid malware attack.[358]

Speaking to the Parliamentary Special Committee on Canada-China Relations, Rukiye Turdush said that she often received viruses meant to destroy her computers, email, and blog.[359] She said that for many years she was threatened online on Twitter and YouTube, receiving messages from Chinese trolls saying to "be careful" and that "you are looking for your own death".[360]

Grace said that Falun Gong practitioners in Canada and around the world have been subject to countless cyber-attacks that have paralyzed websites, stolen private information, and destroyed files. Practitioners have had to replace things like computers and file servers. Rachel said that she and her fellow practitioners helping former CCP members are often hacked. She also said that she often receives messages on her personal computer that she is being watched and monitored. Annie also said that her phone and computer have been hacked several times, she believes by the Chinese government. Once in 2018 or 2019, she believed that her home computer and Wi-Fi were being repeatedly interfered with and interrupted. Shortly afterward, she was informed by experts that her computer had been hacked and she was advised to reset her computer and cellphone to factory settings.

Coercion-by-proxy

Coercion-by-proxy "constitutes the actual or threatened use of physical or other sanctions against an individual within the territorial jurisdiction of a state, for the purpose of repressing a target individual residing outside its territorial jurisdiction".[361] Authoritarian states operate within their own territory and jurisdiction to target the family members or associates of individuals living abroad, to punish, threaten, or control them. This type of repression is relatively "low cost", it does not receive a lot of media

[357] Uyghur Rights Advocacy Project, supra note 27 at p. 33.
[358] Ibid at p. 34.
[359] Special Committee on Canada-China Relations, supra note 152.
[360] Ibid.
[361] Gerasimos Tsourapas, supra note 5 at p. 627.

attention, and it does not violate the sovereignty of other states.[362]

Coercion-by proxy is used to punish, deter, compel, or control those living abroad, and can be used against individuals, or entire groups, like students studying at institutions abroad.[363] Coercion-by-proxy as punishment is retribution for acts committed by targets; deterrence refers to using threats to prevent actions by targets; compelling involves using threats to coerce targets into specific behavior or actions; and control refers to controlling groups through self-policing and self-censorship.[364] Coercion-by-proxy may be used "as a means of information gathering and retribution against dissidents abroad".[365] It can entail tactics such as threats, surveillance, mobility restrictions, imprisonment, physical attacks, disappearances, or even assassinations.[366]

Hannah, a Falun Gong practitioner and former Epoch Times employee, faced coercion-by-proxy soon after arriving in Canada. Her husband remained in China, where he was visited by CCP officials. They warned him that she had attended many Falun Gong events in Canada, and that if she ever returned to China she would be immediately arrested, so she should just stay in Canada. Soon after joining the Epoch Times, her husband was visited again by police where he was harassed and told that the Epoch Times is "anti-CCP" media. He called her afterward and asked her to stop attending Falun Gong events and stop doing anti-CCP media. Hannah refused, saying that Falun Gong was legal in Canada.

Emma, another Falun Gong practitioner who had been previously imprisoned in China, faced a similar situation. The day after delivering a speech in front of the Chinese consulate in Toronto about her imprisonment in China, her relatives were visited by Chinese police, complaining of her anti-CCP work in Canada. Afterward, Emma's husband tried to pressure her to stop speaking out in Canada. Emma did not. After an article was published in which Emma criticized the CCP, the police went back to her relatives' home and demanded that Emma and her brother return to China. Emma says that had she returned, she would have been immediately arrested, tortured, and imprisoned.

China often uses coercion-by-proxy to further involuntary returns. They target family members, friends, and even associates to persuade targets to return to China.[367] Safeguard Defenders has identified three roles that family members can play: middleman, hostage, or scapegoat.[368]

When a family member is used as a middleman, their role is to persuade the target to return, often to face prosecution or penalty.[369] Authorities often order family

[362] Fiona B. Adamson and Gerasimos Tsourapas, "At Home and Abroad: Coercion-by-Proxy as a Tool of Transnational Repression". In: Nate Schenkkan et al. (Eds.), "Perspectives on "Everyday" Transnational Repression in an Age of Globalization", Freedom House, July 2020.
[363] Ibid.
[364] Ibid.
[365] Ibid.
[366] Ibid.
[367] Safeguard Defenders, "Involuntary Returns", supra note 55 at p. 25.
[368] Ibid.
[369] Ibid.

members to call the target and urge them to return.[370] In some cases, officials may bring family members, friends, or lawyers to the host country to encourage the target to return in person.[371]

In 2015, Chu Shilin, a Chinese businessman living in Canada and accused of financial crime in China, received a phone call from his ex-wife who had been detained in China, and forced to call him from the detention centre.[372] During the call, he says that an agent took over and urged him to return to China for the sake of his family.[373] In 2016, Jiang Qian, a Chinese business executive living in Canada and accused of corruption in China, received a recorded video from his father-in-law in China asking him to return.[374] When he refused, his father-in-law came to Canada to urge his return face-to-face.[375] In another case, Chinese police brought a Fox Hunt target's brother and father to Canada and refused to allow them to return to China unless the target fugitive agreed to return as well.[376]

Family members can also be used as hostages.[377] Where they are unable to persuade family members to return, authorities may arrest them and hold them in detention centres, work camps, or black sites.[378] Officials threaten that they will only be released on condition that the target returns to China.[379] Officials will often fabricate evidence or make up charges to justify their detention.[380]

Dilnur Enwer, a Uyghur woman living in Montreal, has said that she is afraid to speak out about her parents' detention in the Uyghur region for fears of her own and her relatives' safety.[381] She has two young children living in the Uyghur region, with whom she has no contact.[382]

Tuyghun Abduweli was cut off from his family on February 1, 2016, after receiving a phone call from his father telling him not to call anymore, as he had been warned by Chinese police that he would be imprisoned if his son ever called again.[383] His siblings received the same warning.[384] He later learned, from a contact living in Turkey, that his brother had been sentenced to 20 years in prison as retribution for his activism in Canada.[385]

Turnisa Matsedik-Qira, a Uyghur woman living in Vancouver, has faced intense harassment while organizing protests outside of the Chinese consulate.[386] She once received a phone call from a man warning her in Mandarin "not [to] jump too far. You need to think about your family in

[370] Ibid at p. 26.
[371] Ibid.
[372] Ibid.
[373] Ibid.
[374] Ibid at p. 27.
[375] Ibid.
[376] Sam Cooper, supra note 50.
[377] Safeguard Defenders, "Involuntary Returns", supra note 55 at p. 28.
[378] Ibid at pp. 28, 30.
[379] Ibid at p. 28.
[380] Ibid.
[381] CCHRC and Amnesty Canada, supra note 153 at p. 39.
[382] Ibid.
[383] Uyghur Rights Advocacy Project, supra note 27 at p. 39.
[384] Ibid.
[385] Ibid.
[386] Ibid at p. 27.

China".[387] She did not heed the warning, and continued her long-standing activism.[388] In August 2021, she found out that her brother had died in a concentration camp in the Uyghur region.[389] Turnisa believes that he was killed as retribution for her activism.[390]

Another way of holding relatives hostage is by preventing them from leaving China. These exit bans can be issued by Chinese law enforcement agencies and the NSC.[391] Chinese authorities refuse to issue exit visas to family members, thus trapping them in the country. Kayum Masimov said that his relatives were "most certainly punished" for his activism. He believes they will never receive exit visas or passports, and face the risk of being sent to concentration camps. He said that the main barrier activists face are fears for their family in China, but that some decide that "silence is not an option".

Mehmet Tohti's whole family has faced retribution for his activism. He has been publicly advocating for Uyghur rights since moving to Canada in 1998.[392] In 2004, he was told by a security officer to stop his activism or his family will be in danger.[393] Soon after, his brother was fired from his job and sent to prison.[394] In 2011, Tohti's sister died in mysterious circumstances after giving birth to her first child at a hospital in the Uyghur region.[395] In October 2016, all communication with his family in the Uyghur region was cut off, after Chinese authorities began interrogating his family members every time that he would call.[396] Mehmet said that he cannot call his family or friends in China as their phones are heavily monitored. Sometimes, the police will call him directly and connect him with his family members, who tell him about "hospitalizations, detentions, and consequences the family faces because of him", and saying "please stop or I will face the same thing". On January 16, 2023, Mehmet received a phone call from Chinese police stating that his mother and two sisters were dead, his three brothers were disappeared, and all their children and spouses have disappeared as well. They said they took his uncle and cousin hostage. They told him that if he continues with his activism, they will suffer a terrible fate.

Mehmet's experience is not unique within the Uyghur diaspora community. As noted by David Tobin and Nyrola Elimä, "[f]amily separation, either by direct threats to end communication or forcing people to sever contact to protect their family, is the central tactic of the party-state's transnational repression of Uyghurs and its attempts to globalise its governance over individuals born in PRC territory".[397]

[387] Ibid.
[388] Ibid at p. 28.
[389] Ibid.
[390] Ibid.
[391] Safeguard Defenders, "Involuntary Returns", supra note 55 at p. 31.
[392] Uyghur Rights Advocacy Project, supra note 27 at p. 40.
[393] Ibid.
[394] Ibid.
[395] Ibid.
[396] Ibid.
[397] David Tobin and Nyrola Elimä, "'We know you better than you know yourself': China's transnational repression of the Uyghur diaspora", The University of Sheffield, 2023.

Karima Baloch, the Balochistan activist whose alleged murder is discussed above, also faced this type of coercion-by-proxy. Her uncle in Pakistan was arrested, tortured, and killed, which she found out about immediately before attending her refugee hearing in Montreal.[398]

The third role identified by Safeguard Defenders is that of the scapegoat. If other approaches to get a target to return to China fail, officials may simply punish their family members in their place. Authorities often accuse family members of conspiring with the target, and often fabricate evidence to justify their arrest or detention.[399]

For example, in July 2022, the government of Wenchang City, Hainan province, issued a notice warning those who had fled to Myanmar to return immediately or their relatives would be suspended from receiving subsidies, including medical insurance, their children would be disqualified from registering for urban schools, their immediate family would be banned from joining the CCP, military, and from taking exams to become public servants or work for state-owned companies, and their real estate would be vacated and auctioned off.[400] Other cities have made similar announcements, including that children would be sent back to their hometowns and that relatives' and friends' bank accounts would be controlled or cancelled if the targets did not return.[401]

In this situation, relatives are considered by the CCP to be guilty by association.[402] This type of punishment is clearly prohibited under international law.

Mobility Controls

There are several extralegal strategies commonly used by authoritarian regimes to control the mobility of its targets, either by denying them the ability to leave the country or trying to force them to return once they have left. One strategy includes controlling the issuance or renewal of travel documents, such as exit visas or passports. Another strategy involves forcing or coercing individuals to appear at consulates or embassies in host countries, where they are apprehended or forced or induced to return to their country of origin.[403]

Consular services may also be withheld as a form of punishment by authoritarian regimes. In January 2023, it was reported that Elena Pushkareva, a Russian national, had an appointment with the Russian Embassy in Ottawa cancelled because she subscribes to a Facebook page for a group in support of Alexei Navalny, the jailed opposition leader and anti-corruption activist in Russia. She said that she received a call from a member of Russia's diplomatic mission to Canada, who told her that the ambassador had decided not to meet with her. She went to the embassy anyway to clarify the situation, where she was denied entry into the building and told by a security

[398] Mary Lynk, (Host), "Episode 4: 'I am not a terrorist'", In: The Kill List, CBC Listen, Ilina Ghosh, 23 January 2022.
[399] Safeguard Defenders, "Involuntary Returns", supra note 55 at p. 31.
[400] Safeguard Defenders, "110 Overseas", supra note 99 at p. 8.
[401] Ibid at p. 9.
[402] Ibid at p. 5.
[403] Gerasimos Tsourapas, supra note 5 at p. 626.

guard that she was a "security threat to the Russian foreign mission".[404]

An embassy representative confirmed that the refusal to meet was due to the Facebook Group which calls "for violent actions to damage the interests of the Russian Federation". Pushkareva said that while the page discusses politics, such as the Russian invasion of Ukraine, and supports political prisoners, including Navalny, it does not promote violence. She said that in October 2022, another member of this Facebook Group also had issues with the Russian embassy. They said to him "[w]e know you, we're watching you, we know what you do".[405]

Taking a different tactic, China attempts to lure Uyghurs to China by denying extensions or renewals of passports, other travel documents, or birth certificates for their children.[406] China often refuses to issue passport renewals or travel visas for Uyghurs out of embassies or consulates, including the ones in Canada.[407] Rather, Uyghurs are told that they must return to China in order to renew their passport, and are only offered one way travel documents to do so.[408] They are often prevented from visiting family members, and if they can visit, they may be putting their freedom or life at risk. Many have submitted complaints to the RCMP, but report receiving very little to no follow-up.[409]

China has also used the provision of consular services as a front in their global efforts to lure targets to China. In 2022, Safeguard Defenders identified dozens of alleged secret Chinese police stations across the world, including three in Toronto, used to repatriate Operation Fox Hunt targets.[410] Two more were quickly discovered, with at least one being in Vancouver.[411] In March 2023, two more were discovered in Quebec.[412]

While China purports that these stations are used to assist Chinese residents in obtaining consular services, such as renewing drivers licenses, the stations are used to harass and threaten individuals in attempts to involuntarily return them to China.[413] Some of these stations are tied to the UFWD, seeking to influence diaspora communities rather than provide genuine services.[414]

As part of their involuntary returns campaign, China circumvents "normal bilateral mechanisms of policy and judicial cooperation", to extra-legally target

404 Meduza, "Russian Embassy in Canada refused to admit a Russian national because she follows a pro-Navalny Facebook page", 27 January 2023.
405 Ibid.
406 CCHRC and Amnesty Canada, supra note 153 at p. 38.
407 Uyghur Rights Advocacy Project, supra note 27 at p. 37.
408 Ibid.
409 CCHRC and Amnesty Canada, supra note 153 at p. 41.
410 Idil Mussa, "RCMP investigating Chinese 'police' stations in Canada", CBC News, 26 October 2022.
411 Sam Cooper, supra note 50.
412 Kalina Laframboise, "Why RCMP are investigating 'alleged Chinese police stations' in Quebec", Global News, 9 March 2023.
413 Safeguard Defenders, "110 Overseas", supra note 99 at p. 12.
414 Ibid at p. 11.

Chinese residents abroad.[415] According to Safeguard Defenders, China is establishing their own "alternative policing and judicial system" in Canada and other democratic countries, circumventing "firmly-set international principles such as the non-derogatory principle of non-refoulement".[416]

Annie told us that prior to coming to Canada, she and her husband were imprisoned in China. She said that it is possible that China wants her arrested in Canada, and she believes that they could make that happen. She said that she is very concerned about the Chinese police stations, and believes it is possible that they have illegally arrested or kidnapped people on Canadian soil.

The US cracked down on Chinese police stations using their foreign agent registry – legislation that Canada does not yet have but is amid discussion. In April 2023, US authorities shut down a Chinese police station in New York, criminally charging two American citizens with failing to register their work on behalf of China and obstruction of justice after trying to delete text messages with a Chinese state security official.[417]

According to CBC News, "[t]hese are believed to be the first charges laid anywhere in the world against people suspected of running extra-territorial Chinese police stations", and that US Attorney for the Eastern District of New York Breon Peace "called it surreal that an authoritarian state could set up a police outpost in the heart of Manhattan".[418]

In March 2023, three Canadian officials testified in parliamentary hearings that the police stations are being shut down. Laura Harth, campaign director for Safeguard Defenders, said that Canada has done more about the Chinese police stations than most other countries, praising Canada for opening an investigation and providing individuals with an RCMP phone number and email to report incidents of harassment by staff of Chinese police stations.[419]

China responded by accusing Canada of smearing its reputation, stating that China has been "strictly abiding by international law and respecting all countries' judicial sovereignty".[420]

Co-opting Other Countries

Under international law, states have an obligation to comply with the principle of non-refoulement, which prohibits states from returning individuals, directly or indirectly, to a country where they face a substantial risk of irreparable harm upon return, including persecution, torture, severe ill-treatment, or other serious human rights violations. The principle of non-refoulement is explicitly enshrined in the Refugee

[415] Ibid at p. 4.
[416] Ibid at p.19.
[417] Alexander Panetta and Richard Raycraft, "The US is cracking down on Chinese 'police stations' with a tool Canada still doesn't have", CBC News, 22 April 2023. [Panetta and Raycraft]
[418] Ibid.
[419] Ibid.
[420] The Canadian Press, "China accuses Canada of smearing its reputation over alleged secret police stations", CBC News, 10 March 2023.

Convention, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment[421] ("CAT") and the International Convention for the Protection of All Persons from Enforced Disappearance[422] ("ICPPED"). It is also guaranteed in several regional instruments and is considered an essential protection under international human rights, refugee, and humanitarian law. This principle has also reached the status of customary international law, meaning that it is binding on all states. The principal applies to any form of removal or transfer of individuals, regardless of their legal or migration status.

Yet, many countries do not respect this principle. Some countries are open about their violations. For example, Turkish Vice President Fuat Oktay recently announced in a parliamentary speech that over 100 people have been forcibly returned to Turkey by their National Intelligence Organization (MiT) due to "intelligence diplomacy".

Some countries, like Thailand, Turkey, and Egypt, have sent back Uyghurs to China at China's request. While Canada does not brazenly return Uyghurs to China, it does sometimes cooperate with authoritarian regimes to return individuals who are at significant risk of human rights violations.

Freedom House points out that Canada has acted on false accusations of terrorism made by foreign states. For example, Canada has denied entry to Uyghurs based on accusations that they are members of a terrorist organization, for being members of the East Turkistan Islamic Movement, despite the fact that it is not listed as a terrorist group in Canada.[423]

Clearly, there is some protection offered by being physically located in Canada. URAP points out that "while Uyghurs residing in liberal democracies do not face the same threat of being detained and forcibly returned to China, they nonetheless remain the subject of persistent harassment and repression by the Chinese government".[424]

Both Uyghurs and Iranians have recounted being asked to attend their respective consulates in Canada to pick up important documents, where they believe they would have been detained and kidnapped. Saudi dissident Omar Abdulaziz, mentioned earlier, was encouraged to stop his activism and return to Saudi Arabia by government officials, "urging him to visit the Saudi Embassy to renew his passport".[425]

Kayum Masimov told us that being a target is financially taxing. For example, it now costs him significantly more to travel internationally, a key aspect of his activism work. He cannot take flights with stops in places like Hong Kong or Macau and does not even fly over China. Additionally, he avoids countries that don't have transparent

[421] UN General Assembly, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 10 December 1984, United Nations, Treaty Series, vol. 1465, p.85.
[422] UN General Assembly, International Convention for the Protection of All Persons from Enforced Disappearance, 20 December 2006.
[423] Freedom House 2021, supra note 18 at p. 7.
[424] Uyghur Rights Advocacy Project, supra note 27 at p. 23.
[425] Gerasimos Tsourapas, supra note 5 at p. 627.

institutions, as he fears they may try to arrest and/or extradite him.

INTERPOL Abuse

INTERPOL is the world's largest police organization, representing 195 member countries.[426] It is the second largest international organization in the world, after the United Nations.[427] It facilitates cross-border police cooperation and assists in combatting international crime.[428] Each member state has a National Central Bureau to liaise with INTERPOL's General Secretariat to share information and provide mutual assistance. Canada's National Central Bureau, INTERPOL Ottawa, is operated by the RCMP, housed at RCMP National Headquarters, and composed of RCMP and other Canadian police officers, public service employees, and civilian members.[429]

The RCMP's website makes clear that "[a]n arrest warrant from another country has no legal status in Canada".[430] However, an arrest warrant issued by a foreign state may be accompanied by an INTERPOL Red Notice, which may lead to legal implications in Canada. INTERPOL Red Notices basically serve as international arrest requests. Under international law, there is no legal obligation for another member state to enforce the notice, however, many countries use a Red Notice as grounds for arrest and treat Red Notices as specific arrest warrants.[431]

Red Notices may be initiated by National Central Bureaus (NCBs) or the International Criminal Court. Red Notices are examined by INTERPOL headquarters in Lyon, France, before being sent to member states.[432] In Canada, INTERPOL Ottawa then conducts its own vetting before deciding whether to act on a Red Notice.[433]

INTERPOL also has other mechanisms in place, such as Yellow Notices, which are used to track missing persons.[434] Diffusions – requests for international cooperation, including the arrest, detention, or movement restriction of an individual – are similar to Red Notices, but used much more often.[435]

Not all Red Notices are made public, even to the wanted individual. Of the approximate 62,000 INTERPOL Red Notices worldwide, only about 7,000 have been

[426] INTERPOL, "Member countries", https://www.interpol.int/en/Who-we-are/Member-countries#:~:text=INTERPOL%20has%20195%20member%20countries,police%20with%20our%20global%20network.
[427] Safeguard Defenders, "No Room to Run: China's expanded mis(use) of INTERPOL since the rise of Xi Jinping", 2021, p.5. [Safeguard Defenders, "No Room to Run"]
[428] Royal Canadian Mounted Police, "INTERPOL and Europol", 31 July 2017. [RCMP]
[429] Ibid.
[430] Ibid.
[431] Safeguard Defenders, "No Room to Run", supra note 427.
[432] Canada, Parliament, House of Commons, Standing Committee on Public Safety and National Security, Evidence, 42nd Parl, 1st Sess, No 138 (22 November 2018) at 0845. [Standing Committee on Public Safety and National Security, 2018].
[433] Ibid.
[434] Safeguard Defenders, "No Room to Run", supra note 427 at p. 5.
[435] Ibid.

made public.[436] INTERPOL only publishes limited data on its issuance of Red Notices, and almost no data on Diffusions, "putting those individuals who are unaware that they are being hunted on political grounds by non-Rule of Law countries … at additional risk and unable to mitigate its effects until it's too late".[437] INTERPOL cannot notify individuals of a notice against them without permission from the issuing country, and as such, the INTERPOL notice system violates the right to due process.

INTERPOL's "neutrality rule" states that it is strictly prohibited for them to undertake any intervention or activities of a political, military, religious, or racial character.[438] While INTERPOL rules ban member states from issuing Red Notices for political crimes, many countries do so anyway as a means of suppressing dissidents who have fled abroad. Moreover, regarding Diffusions, INTERPOL rules merely state that NCBs must ensure the Diffusion follows their rules.[439] Diffusions are immediately sent to other member states, prior to any review by INTERPOL headquarters.[440] Thus, they are a useful tool for authoritarian regimes, even if they know the Diffusion may be withdrawn upon review by INTERPOL.[441] If the review shows that the Diffusion is in violation of INTERPOL rules, the Diffusion is deleted from INTERPOL's system.[442] However, the Diffusion is not automatically deleted from member states' own systems.[443] As such, this post-review system "opens the door to significant and unmitigated misuse".[444]

Safeguard Defenders analyzed several studies and reports, including INTERPOL's annual reports, to put together the most comprehensive data publicly available on Red Notices.[445] Safeguard Defenders says that INTERPOL ignored all their requests to fill in the gaps.[446]

A Red Notice may impact one's ability to travel or seek asylum. Those subject to Red Notices are generally considered wanted criminals, and this can make international travel for many impossible. It may effectively trap them in one country, as crossing borders may put them at risk of arrest and deportation to the requesting country. These individuals have valid fears that they may be deported to a country where they will not receive a fair trial. Additionally, under the Convention Relating to the Status of Refugees ("Refugee Convention")[447], countries are not obligated to grant asylum to individuals wanted for or convicted of criminal offences.

The Commission for the Control of INTERPOL's Files ("CCF") is an independent body responsible for maintaining the integrity of INTERPOL's work. The CCF maintains a mechanism to challenge Red

[436]Ibid at p. 6.
[437] Ibid.
[438] Ibid at p. 9.
[439] Ibid at p. 8.
[440] Ibid at p. 5.
[441] Ibid.
[442] Ibid at p. 8.
[443] Ibid.
[444] Ibid.
[445] Ibid.
[446] Ibid at p. 6.
[447] UN General Assembly, Convention Relating to the Status of Refugees, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137. [Refugee Convention]

Notices, [448] however, these challenges can be very difficult to make and often take several years. While INTERPOL has implemented some reforms in response to criticism, there are still many issues with their systems.[449]

In 2015, INTERPOL introduced a new policy to remove Red Notices for individuals who have been recognized as refugees under the Refugee Convention, if the individual requests it.[450]

A 2019 reform implemented new rules to the Rules on the Processing of Data, allowing individuals to seek information on Red Notices, Diffusions, and other instruments possibly made against them.[451] However, the process is slow, taking several months, and INTERPOL will only release information that the issuing NCB agrees to have disclosed.[452] Safeguard Defenders concludes that this renders the process meaningless, and that "[d]espite the urgent need for further reforms, INTERPOL has so far resisted implementing any more changes".[453] While INTERPOL rules allow for countermeasures against states that misuse their mechanisms, Safeguard Defenders believes that these countermeasures have never been applied.[454]

The use of INTERPOL's Red Notice system is increasing. With this has come an increase in the misuse and abuse of the Red Notice system. In 2022, INTERPOL released data for the first time, revealing they delete or reject approximately 1,000 Red Notices and diffusions per year: about half are rejected on human rights or neutrality grounds.[455]

INTERPOL abuse is perpetrated by authoritarian regimes, including China and Russia.

China joined INTERPOL in 1984, and dramatically increased their use of these tools under Xi Jinping's anti-corruption campaign.[456] INTERPOL has now become an important tool in China's global reach, especially as a means of implementing Operations Fox Hunt and Sky Net.[457]

Between 2015 and 2017, CCP officials, through Operation Sky Net, released an annual top 100 list of wanted persons for

[448] INTERPOL, "Commission for the Control of INTERPOL's Files (CCF)", https://www.interpol.int/en/Who-we-are/Commission-for-the-Control-of-INTERPOL-s-Files-CCF#:~:text=The%20Commission%20for%20the%20Control,complies%20with%20the%20applicable%20rules.

[449] Rasmus H. Wandall, "Ensuring the rights of EU citizens against politically motivated Red Notices", European Parliament, Policy Department for Citizens' Rights and Constitutional Affairs, February 2022.

[450] Sophie Richardson, "Letter from HRW to Interpol Secretary General Stock", Human Rights Watch, 24 September 2017. [Sophie Richardson]

[451] Safeguard Defenders, "No Room to Run", supra note 427 at p. 9.

[452] Ibid.

[453] Ibid.

[454] Ibid.

[455] Fair Trials, "INTERPOL: New data reveals 1,000 Red Notices and Wanted Person diffusions rejected or deleted each year", 7 November 2022.

[456] Safeguard Defenders, "No Room to Run", supra note 427 at p. 4.

[457] Ibid.

which China had applied for Red Notices.[458] However, China stopped publicizing this list in 2017.[459] The CCP would also announce how many people it had successfully returned, most of whom were returned via involuntary returns rather than INTERPOL or other official channels.[460] While the CCP often focuses on involuntary returns, leaders have increasingly stated that they will use INTERPOL and other legal means to chase Chinese "fugitives" globally.[461] Freedom House states that China uses the INTERPOL system to "imply international endorsement of its pursuit" of fugitives, despite these notices not being subject to judicial review.[462]

While INTERPOL rules state that Red Notices are to be issued for the "arrest or restriction of movement for the purpose of extradition, surrender, or similar lawful action", China continuously violates this rule.[463] In 2019, Meng Qingfeng, China's deputy minister of public security, said that "[t]he US and Canada, countries with which China has no extradition treaty, have become top destination[s] for Chinese fugitives. Bringing them back to face legal action in China therefore requires the use of INTERPOL protocols".[464] However, as Safeguard Defenders points out, this is a clear violation of INTERPOL protocols as Red Notices and Diffusions are meant to apprehend and detain individuals while the requesting country files a formal extradition request.[465] As Canada and China have no extradition treaty, China is violating INTERPOL rules every time it issues a Notice for an individual in Canada.

In November 2021, Michael J. Abramowitz, President of Freedom House, presented at the 89th INTERPOL General Assembly, respectfully opposing "the candidacy of any Chinese government representative for a place on INTERPOL's executive committee or in any position of leadership at INTERPOL.[466] According to Freedom House, China and other authoritarian regimes have abused INTERPOL's notification system to target critics, dissidents, and others abroad, rather than to combat serious crime as intended.[467] The Chinese government has misused the INTERPOL system to target former officials, peaceful activists, and members of minority groups, and "used INTERPOL's reputation to legitimate its campaign of transnational repression both domestically and internationally".[468]

Safeguard Defenders has also found that while data on China's use of INTERPOL is "extremely sparse", their focus on the return of Chinese nationals and expanding effort to control the Chinese diaspora "has led to a

[458] Safeguard Defenders, "Involuntary Returns", supra note 55 at p. 12.
[459] Ibid.
[460] Ibid at p. 13.
[461] Ibid at p. 19.
[462] Freedom House 2021, supra note 18 at p. 20.
[463] Safeguard Defenders, "No Room to Run", supra note 427 at p. 14.
[464] Ibid.
[465] Ibid.
[466] Michael J. Abramowitz, "INTERPOL Must Not Legitimize Governments Committing Transnational Repression", Freedom House, 24 November 2021.
[467] Ibid.
[468] Ibid.

significant increase in its use of INTERPOL as a means to advance these goals".[469]

Three years prior, before INTERPOL's 86th General Assembly, Human Rights Watch released a letter to INTERPOL Secretary General Jürgen Stock about China's misuse of the INTERPOL Red Notice system and concerns about INTERPOL's "ability to adhere to human rights obligations under the leadership of the new president, Meng Hongwei, the vice minister of the Chinese Ministry of Public Security".[470] The Ministry of Public Security oversees the domestic security branch tasked with silencing dissent, which continuously uses harassment, arbitrary detention and torture to pursue their goals.[471]

In 2018, while still President of INTERPOL, Meng Hongwei disappeared while on a trip to China.[472] He was secretly detained before reappearing, when China confirmed that he had been arrested on corruption charges for allegedly accepting bribes.[473] His wife, Grace Meng, who remains living under protection in France, has argued the charges are politically motivated.[474] Meng was eventually sentenced to 13.5 years imprisonment.[475] In July 2019, his wife filed a legal complaint in the Permanent Court of Arbitration against INTERPOL, claiming the agency failed to protect her family and "is complicit in the internationally wrongful acts of its member country, China".[476]

In the aftermath of Meng Hongwei's disappearance, Canada's Standing Committee on Public Safety and National Security met in November 2018 and discussed, among other things, INTERPOL abuse by authoritarian regimes.[477] Among others, the Parliamentary Committee heard from Chief Superintendent Scott Doran, Director General of International Specialized Services within the RCMP's Federal Policing Program; Bill Browder, Head of Global Magnitsky Justice Campaign; and Marcus Kolga, a Canadian journalist and expert on Russia and foreign policy.

Bill Browder provided evidence on Russia's INTERPOL abuse. Browder testified that due to his activism, Vladimir Putin has a vendetta against him, and Russia has tried to use INTERPOL mechanisms to arrest him on at least seven separate occasions throughout the years, including immediately after the US passed their Magnitsky Act, after Canada passed their Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law), and after the E.U. began serious discussions on their Magnitsky Act.[478] Sometimes his lawyers have had to file evidence proving the request was politically motivated, while other times, INTERPOL has rejected the

[469] Safeguard Defenders, "No Room to Run", supra note 427 at p. 10.
[470] Sophie Richardson, supra note 450.
[471] Ibid.
[472] BBC News, "Meng Hongwei: China sentences ex-Interpol chief to 13 years in jail", 21 January 2020.
[473] Ibid.
[474] Ibid.
[475] Ibid.
[476] Angela Charlton, "Wife of arrested Chinese ex-Interpol president sues agency", AP News, 7 July 2019.
[477] Standing Committee on Public Safety and National Security, 2018, supra note 432.
[478] Ibid.

request themselves without intervention.[479] Browder explained that Russia has been abusing INTERPOL on "a serial basis", and is allowed to continue doing so.[480] He suggested that INTERPOL should use its rule that if a country consistently abuses INTERPOL, then that country can be suspended from using its mechanisms, to suspend Russia from using the INTERPOL system.[481]

While not Canadian, Browder raised issues with the INTERPOL system that are present in Canada. Browder concluded his testimony by stating that:

> "…my story tells you about serial abuse. In theory, some people from INTERPOL could argue, 'Look, our systems do work, because every time Russia has gone after Bill Browder, we have rejected it'. That's all fine and nice, except that I'm probably the most high-profile person in the world with this problem. I've even written a book called Red Notice…"[482]

Marcus Kolga, who has also faced the wrath of Russia due to his activism, testified that Russia is the leader in "politically motivated abuse of INTERPOL's notice system by various authoritarian regimes", and that without reform, Canadians too could become targets of this abuse.[483] Kolga explained that Russia restricts free speech "regardless of borders", to "target and convict critics globally".[484]

Russia uses the Red Notice system to restrict targets' movements, and targets foreign activists who have advocated for gay rights or who disagree with the official Russian state version of Soviet history.[485] Kolga testified that "INTERPOL's Red Notice system allows the Kremlin and other authoritarian regimes to extend the reach of their repression around the world, and while local authorities are responsible for choosing whether to execute these notices, they do represent a significant threat to activists, who are at risk of being targeted by laws intended to silence them".[486]

Attacks on Government Institutions

CSIS states that while foreign interference targets all facets of Canadian society, one of the key targeted sectors is our "democratic institutions and processes".[487] Governmental institutions are particularly vulnerable.

Recent reports have shown that Canadian politicians at all levels are targeted by foreign agents. Some Members of Parliament have received illegal foreign funding toward their campaigns; others have had their offices infiltrated by spies. Voters and candidates are targeted through foreign-funded media agencies and attack ads. Individuals in Canada, or their loved ones abroad, may be targeted if they do not

[479] Ibid.
[480] Ibid.
[481] Ibid.
[482] Ibid.
[483] Ibid.
[484] Ibid.
[485] Ibid.
[486] Ibid.
[487] CSIS: Foreign Interference Threats, supra note 9 at p. 4.

donate toward, or publicly support, a particular candidate.[488] Foreign states may also use flattery, promise compensation, including gifts or travel, or blackmail to target the outcomes of elections.[489] There are allegations that foreign agents have infiltrated some government agencies, including the RCMP and Immigration, Refugees, and Citizenship Canada (IRCC). These serious allegations must be investigated. Even if untrue, the Government of Canada must take steps to address them and the widespread distrust prevalent within diaspora communities.

Interference with Parliamentarians and Elections

The Australian Strategic Policy Institute has conducted research into cyber-interference targeting electoral events, identifying two main spheres.[490] Cyber operations, which include attacks to disrupt voting infrastructure, and online information operations, meant to "exploit the digital presence of election campaigns, voters, politicians, and journalists.[491] Combined, they are used to influence voters, information, and public trust in democratic processes.[492]

In Canada, there have been several cases of attempted or alleged interference with federal elections. CSIS itself states that it "has observed persistent and sophisticated state-sponsored threat activity targeting elections for many years now", and that they are rising in frequency.[493] CSIS also notes that in general, acts of foreign interference in Canada "tend to increase" around the time of elections.[494]

In the run-up to the 2021 federal election, CSIS warned several MPs and senators that their conversations may be monitored by foreign states. A briefing document on CSIS talking points to officials stated "[y]ou are of immediate and constant interest to certain hostile state actors". According to the document, officials were warned of different methods used by foreign powers, including "elicitation", which is "when a foreign actor provides an individual with limited or false information in the hope that the target will correct them and provide the right answers". CSIS said that the goal of the briefings was to alert Parliamentarians and "create political resiliency against the People's Republic of China's foreign interference efforts in Canada".[495]

CSIS warned that staff members could be taken advantage of, and that foreign agents may monitor public conversations, seek private meetings, and attempt to seek employment with their offices. They warned that threat actors may try to use MPs and campaigns to conduct illicit financing, and

488 Catharine Tunney, supra note 24.
489 Ibid.
490 Danielle Cave and Jake Wallis, "Defending democracies from disinformation and cyber-enabled foreign interference", Australian Strategic Policy Institute, 22 April 2021.
491 Ibid.
492 Ibid.
493 CSIS: Foreign Interference Threats, supra note 9 at p. 6; Catharine Tunney, supra note 24.
494 Foreign Interference and You, supra note 8 at p. 5.
495 Catharine Tunney, "CSIS warned MPs, senators that hostile states might listen in on their conversations", CBC News, 25 April 2023.

that in extreme cases, they may use blackmail or threats against them or their family.[496]

In mid-February 2023, Robert Fife and Steven Chase of the Globe and Mail reported that "China employed a sophisticated strategy to disrupt Canada's democracy in the 2021 federal election".[497] After viewing secret and top-secret CSIS documents, they reported that an "orchestrated machine was operating in Canada" to ensure that a minority Liberal government won in 2021, and that specific Conservative candidates were defeated.[498] The documents also stated that the CCP was using Canadian organizations to advocate on their behalf.[499]

Among other things, Chinese diplomats engaged in providing undeclared cash donations to political campaigns and getting international Chinese students to volunteer in electoral campaigns. It is also alleged that for some voting stations, Chinese international students and seniors were bussed in from different ridings, instructed to use a fake address to register to vote, and told who to vote for.[500]

Notably, the Globe and Mail reported that CSIS had briefed the federal government on China's election interference on several previous occasions.[501]

During a parliamentary committee into foreign interference, some MPs told CSIS officials that they struggle to identify foreign interference. NDP MP Rachel Blaney said that "[t]here is not clarity, quite frankly, around what MPs and their parties can do to protect themselves", while Liberal MP Jennifer O'Connell said that there is "little to no briefings or trainings for MPs".[502]

Foreign interference in federal elections has been ongoing for years. In November 2022, Global News journalist Sam Cooper revealed that in January 2022, Canadian intelligence officials warned Prime Minister Justin Trudeau and several cabinet members that China furthered its influence in Canada by clandestinely funding at least 11 Liberal and Conservative candidates running in the 2019 federal election.[503] CSIS reported that China's consulate in Toronto "directed a large clandestine transfer of funds to a network of at least eleven federal election candidates and numerous Beijing operatives who worked as their campaign staffers", and that many members of this alleged network are affiliated with the CCP.[504] CSIS did not comment on whether they believe the network successfully influenced the 2019 election results.[505]

[496] Ibid.
[497] Robert Fife and Steven Chase, "CSIS documents reveal Chinese strategy to influence Canada's 2021 election", The Globe and Mail, 17 February 2023.
[498] Ibid.
[499] Ibid.
[500] Ibid.
[501] Ibid.
[502] Catharine Tunney, "CSIS warned MPs, senators that hostile states might listen in on their conversations", CBC News, 25 April 2023.
[503] Sam Cooper, supra note 50.
[504] Ibid.
[505] Ibid.

Either way, s.363(1) of the Canada Elections Act[506] prohibits contributions and donations made directly or indirectly by foreign nationals or organizations, providing that:

> "363 (1) No person or entity other than an individual who is a Canadian citizen or is a permanent resident as defined in subsection 2(1) of the Immigration and Refugee Protection Act shall make a contribution to a registered party, a registered association, a nomination contestant, a candidate or a leadership contestant."

According to CSIS, Beijing also allegedly made payments through intermediaries to candidates affiliated with the CCP, sought to co-opt former Canadian officials to gain leverage in Ottawa, and engaged in aggressive campaigns to punish politicians who stood up to China.[507]

It is also alleged that China was able to place agents as staffers in the offices of several MPs in order to influence MPs and their policies regarding China.[508] Grace said that according to Chen Yonglin, a Chinese defector who used to work for the Chinese consulate in Sydney, Australia, CCP agents have infiltrated MPs offices, and often try to get very close to politicians and their staff members. Chen said there were more than 1000 Chinese spies in Canada. Grace said that it's frightening as we don't know who they are or where they work, just that they "live among us".

[506] Canada Elections Act (S.C. 2000, c.9). [Canada Elections Act]

[507] Sam Cooper, supra note 50.

CSIS also reported that an official in Toronto's Chinese Consulate directed a 2019 federal election campaign staffer to control and monitor their candidate's meetings, which included preventing meetings with Taiwanese representatives.[509]

Louisa told us that CCP agents often attend functions hosted by Members of Parliament, including Prime Minister Trudeau's events. She said that the Liberal Party once held an event at a convention centre in her city, and there were Chinese nationals present with parliamentary staff that tried to stop anyone who attempted to speak to the leaders about Chinese persecution.

Grace told us that a few individual politicians have been stopped from publicly supporting Falun Gong practitioners and events, or from criticizing China due to pressure from the Chinese regime. She said that one MP who initially showed support for their cause, later asked to have his supporting letter removed from a Falun Gong website. The MP said that he was going to visit China for parliamentary business and was threatened that he would not receive a visa due to his support for the Falun Gong community. Grace did not provide us with the name of the MP.

Most victims reported that there was very little governmental support for them and their communities in the face of transnational repression. Grace said that "we generally don't get help from officials"

[508] Simina Mistreanu and Rozina Sabur, "China planted spies in Canadian parliament", The Telegraph, 8 November 2022.

[509] Sam Cooper, supra note 50.

and that "we are kind of powerless in fighting transnational repression in our country. We have to fight ourselves, but our resources and means are limited". She explained that these fights take time, money, and energy, and that not all victims can do this due to how draining it is to fight back. However, she also wanted to point out that many individual politicians do continue to support them even after receiving threats from China. She said that without their support, many more in her community in China would be killed or tortured.

Hannah said that many MPs themselves are threatened. She said that oftentimes, after an official publicly criticizes China, their photos and information are circulated on WeChat with instructions to go attack them. She said this occurs to officials at all levels of government, including for federal MPs.

This occurred in the context of the House of Commons' February 2021 vote to recognize the Uyghur genocide. In a leaked CSIS report written in July 2021, the Agency stated that China's intelligence service had "taken specific actions to target Canadian MPs" in this context.[510] Ultimately, the House of Commons still unanimously voted in support of the motion that declared that China's treatment of Uyghurs and other Turkic Muslims amounts to genocide.[511]

Some MPs have been particularly targeted, including Conservative MP Michael Chong. On May 8, 2023, the federal government sanctioned a Chinese diplomat, Zhao Wei, who was accused of targeting Chong and his family. Zhao Wei allegedly attempted to gather information on Chong's family in Hong Kong after he voted in favour of the Parliamentary motion condemning the Uyghur genocide. Canada declared Zhao Wei persona non grata, with Minister of Foreign Affairs Mélanie Joly stating that "we will not tolerate any form of foreign interference in our internal affairs. Diplomats in Canada have been warned that if they engage in this type of behaviour, they will be sent home".[512]

MP Chong stated in response that the federal government had been warned for years about China's targeting of diaspora communities in Canada, and that this type of action should have been taken "years ago". He said that "[t]he fact is, we've become somewhat of a playground for foreign interference threat activities".[513]

The leaked CSIS report stated that China's intelligence service was seeking information on Chong's relatives in China "for further potential sanctions", and that it was "almost certainly meant to make an example of this MP and deter others from taking anti PRC positions". CSIS also stated that Canada's lack of a foreign agents' registry makes Canada a "high-priority target". Chong stated that he did not know that there was an intelligence report stating his family was

[510] Robert Fife and Steven Chase, "China views Canada as a 'high priority' for interference: CSIS report", The Globe and Mail, 1 May 2023.
[511] Vote No.56, 43rd Parliament, 2nd Session, 22 February 2021. https://www.ourcommons.ca/members/en/votes/43/2/56.
[512] Darren Major, "Canada expelling diplomat accused of targeting MP Michael Chong's family", CBC News, 8 May 2023. [Darren Major]
[513] Ibid.

at risk of harm.[514] CSIS claimed that the report did not reach higher authorities or those outside of CSIS as they felt that it "wasn't a significant enough concern". Prime Minister Trudeau said that he has now instructed CSIS to alert the government whenever it receives intelligence or has concerns "that talk specifically about any MP, or about their family".[515]

The report also stated that "[t]hreat actors almost certainly perceive their activities in Canada to be low-risk and high reward". While the report was written in July 2021, the government did not act until May 2023 when it was leaked publicly, nearly two years later.

Before declaring him persona non grata, Minister Joly stated that the government was weighing the blowback they could face from China for expelling Zhao Wei. After the decision was made to do so, she said that it had "been taken after careful consideration of all the factors at play".[516]

Other federal politicians, and former politicians, have been subjected to smear or disinformation campaigns.

Canada's Deputy Prime Minister, Chrystia Freeland, an outspoken ethnic Ukrainian, has long been the target of Russian disinformation in attempts to discredit her by claiming that she and her family are "Nazis".[517] Reuters investigative journalist Mark Hosenball said that his US intelligence contacts believe that "this is part of a propaganda campaign by Russia to embarrass, discredit, [and] possibly intimidate Chrystia Freeland".[518]

Former Conservative leader Erin O'Toole has been subjected to smears from Chinese groups. The Chinese Canadian Conservative Association (CCCA) urged O'Toole to resign due to his criticism of human rights violations in China.[519] He was accused of being "anti-China".[520]

Of course, it is flawed to conflate valid criticism of the CCP with anti-Asian hatred. There needs to be a clearer understanding of the difference between calling out anti-Asian racism, which is a growing problem in Canada, and using this to obfuscate and limit valid criticism of the Chinese Communist Party. There is a "clear distinction between criticism of leadership and support for peoples controlled by communist regimes".[521]

Former Conservative MP Kenny Chiu (Steveston-Richmond East) said that he was the victim of a misinformation campaign, in which voters were convinced that he was

[514] The Globe and Mail, "The alarm on China's interference is ringing louder", 2 May 2023.
[515] Steven Chase and Robert Fife, "Trudeau blames CSIS for not informing MP Chong about being target of China", The Globe and Mail, 3 May 2023.
[516] Darren Major, supra note 512.
[517] CBC Radio, "Chrystia Freeland a target a of Russian intelligence operation, says expert", 13 March 2017.
[518] Ibid.
[519] Tasha Kheiriddin, "China's people need the most protection from the Chinese Communist Party", National Post, 15 November 2022. [Tasha Kheiriddin]
[520] Chauncey Jung, "China's Interference in Canada's Elections", The Diplomat, 22 November 2022.
[521] Tasha Kheiriddin, supra note 519.

racist via WeChat and Mandarin-language media reports after he had called for transparent elections in Hong Kong, voted in favour of declaring China's actions against Uyghurs a genocide, and tabled a private member's bill calling for a foreign influence registry.[522] He said that articles about the bill purported to "put Chinese Canadians in danger", instilling fear in voters.[523] While campaigning, constituents would angrily shut the door in his face.[524] He believed this smear campaign posted on Chinese language media outlets was perpetrated by Chinese agents working on behalf of the CCP,[525] and that China's alleged interference in the 2021 federal election is why he lost his seat.[526]

In March 2023, Chiu said that he was worried for Canada as we are "continuously allowing and permitting foreign countries that are aggressive and predatorial to penetrate our systems, our institutions and jeopardizing their integrity… without our government doing anything to protect and safeguard it".[527]

Interference in Governmental Security Agencies

In October 2021, the federal government awarded a contract to provide RCMP communications equipment to a company with ties to the Chinese government, raising concerns about China's access to RCMP communications and data.[528] University of Ottawa senior fellow Margaret McCuaig-Johnston, a former senior federal official and a specialist on China's science and technology, said that "it's like giving the key to Canada's security to Chinese actors".[529]

The contract was awarded to Sinclair Technologies for a radio frequency filtering system, with one of their purposes being to prevent others from listening in on the RCMP's land-based radio communication.[530] Sinclair Technologies is controlled by Hytera Communications, a company based in Shenzhen, China. [531] The Chinese government owns 10% of the company. The CBSA also uses communications equipment and technology from Hytera.[532]

In 2021, the US Federal Communications Commission blacklisted Hytera, stating the company poses "an unacceptable risk to the

522 Sam Cooper, supra note 50.
523 CBC News, "Former B.C. MP says he lost his seat due to China allegedly meddling in Canadian election", 3 March 2023.
524 Ibid.
525 Catharine Tunney, "Spy agency warned Trudeau China's tactics becoming more 'sophisticated… insidious'", CBC News, 7 December 2021. [Catharine Tunney, December 2021]
526 CBC News, "Former B.C. MP says he lost his seat due to China allegedly meddling in Canadian election", 3 March 2023.
527 Ibid.
528 Marc Godbout and Richard Raycraft, "Federal government awarded RCMP contract to firm with ties to China", CBC News, 7 December 2022. [Godbout and Raycraft]
529 Ibid.
530 Ibid.
531 Catharine Tunney, "RCMP says it's running checks on equipment purchased from company linked to China", CBC News, 30 January 2023.
532 Godbout and Raycraft, supra note 528.

national security of the United States or the security and safety of the United States persons".[533] Hytera Communications is also facing charges in a US espionage case.[534]

In response to concerns, the RCMP suspended its contract with Sinclair Technologies in December 2022. Public Safety Minister Marco Mendicino stated that the RCMP was "in the process of both reviewing the manner in which this contract was awarded, as well as mitigating against any risks".[535] In January 2023, Public Safety Minister Marco Mendicino told a House of Commons committee that "[w]e are confident there was no breach of security in this process".[536]

While this may be true, other companies with close ties to the CCP have been operating in Canada's surveillance sector. For example, Hikvision, which has been sanctioned in the US and UK, still operates in Canada. Their video cameras are used across the country, including on government buildings.[537] In 2020, Nuctech, a Chinese company with close ties to the CCP won a $6.8 million contract to install security devices at 170 Canadian embassies and consulates, before the contract was cancelled. Huawei's 5G equipment has been installed across the country. Despite being banned in May 2022 by the federal government, they have until May 2024 to remove their equipment.[538] Finally, iFlyTek, blocked from conducting business with US companies, is funding research projects at both Queen's University and York University.[539]

On August 21, 2023, news broke that a retired RCMP officer is charged "with conducting foreign interference on behalf of China".[540] Specifically, the RCMP assert that this retired officer "used his knowledge and his extensive network of contacts" to assist the Chinese government with Operations Fox Hunt and Sky Net, including by "build[ing] a dossier on a Uyghur activist". This officer faces charges under Sections 23 and 22 of the Security of Information Act, which prohibits "preparatory acts for the benefit of a foreign entity", and conspiracy, respectively.[541]

Media

According to the Canadian Centre for Cyber Security (the Cyber Centre), misinformation "refers to false information that is not

533 Ibid.
534 Ibid.
535 Richard Raycraft, "RCMP suspends contract with China-linked company", CBC News, 8 December 2022.
536 Catharine Tunney, "RCMP says it's running checks on equipment purchased from company linked to China", CBC News, 30 January 2023.
537 Conor Healy and Margaret McCuaig-Johnston, "Canada is being naïve about the risks of Chinese technology", The Globe and Mail, 13 December 2022.
538 Ibid.
539 Robert Fife and Steven Chase, "Chinese AI firm blacklisted by US gave funds to York, Queens universities", 28 May 2021, https://www.theglobeandmail.com/politics/article-chinese-ai-firm-blacklisted-by-us-gave-funds-to-two-ontario/.
540 Robert Fife and Steven Chase, "Mountie targeted B.C. real estate tycoon for China, RCMP allege", Globe and Mail, 21 August 2023.
541 Ibid.

intended to cause harm". [542] Disinformation, on the other hand, "refers to false information that is intended to manipulate, cause damage, or guide people, organizations, and countries in the wrong direction". The term malinformation, which is not as commonly used, "refers to information that stems from the truth but is often exaggerated in a way that misleads and causes potential harm". The Cyber Centre says that misinformation, disinformation, and malinformation (MDM) "are damaging to public trust in institutions and, during elections, may even pose a threat to democracy itself".[543]

In their National Cyber Threat Assessment 2023-2024, the CSE warned that Canadians' exposure to MDM "will almost certainly increase" over the next two years.[544] States are increasingly willing to use MDM to advance their own interests, including geopolitical ones.

Russia and China, for example, firmly control the internet within their own countries. In China, many websites, including Facebook and YouTube, are banned. WeChat is strictly monitored. Information about certain topics, such as Uyghurs and COVID-19 are highly regulated. In Russia, this control can be seen in the disinformation propagated by the Kremlin regarding their unprovoked war against Ukraine. Authoritarian regimes try to suppress facts and obfuscate criticism, both domestically and abroad. As discussed above, MDM has been used to criticize the Canadian government and individual officials.

According to CSIS, these campaigns are often used by foreign actors "to influence public opinions, perceptions decisions and behaviours", often attempting to "change civil discourse, policymakers' choices, government relationships, and the reputation of politicians and countries both nationally and globally".[545] MDM campaigns often aim to foster distrust in democratic institutions.

In Canada, foreign actors may "manipulate the media" by sponsoring investigative journalism, funding media outlets or advertising in them, and in some cases even acquiring media outlets.[546] According to CSIS, "[t]hese activities undermine legitimate public discourse and erode the public's trust in the media, which is a direct attack on our democracy". In December 2021, CSIS spokesperson John Townsend said that foreign states target both mainstream media outlets like print publications, radio, and television programs, as well as online outlets and social media channels to peddle MDM.[547]

[542] Canadian Centre for Cyber Security, "How to identify misinformation, disinformation, and malinformation", February 2022.
[543] Ibid.
[544] Canadian Centre for Cyber Security, "National Cyber Threat Assessment 2023-2024", Government of Canada, p.16. [National Cyber Threat Assessment 2023-2024]
[545] Foreign Interference and You, supra note 8 at p. 4.
[546] CSIS: Foreign Interference Threats, supra note 9 at p. 8.
[547] Catharine Tunney, December 2021, supra note 525.

In 2021, Alliance Canada Hong Kong, an organization of Hong Kong pro-democracy activists, released a report[548] claiming that the CCP has a sophisticated network to promote Beijing-friendly narratives into media outlets in Canada.

For example, Grace told us that Chinese-language media in Canada refuse to print about Falun Gong activities and have been told to exclude them from events. They often promote CCP propaganda. She said that she has asked them why they continue to support the Communist regime in furthering harm against Falun Gong, and that they responded that the regime forces them to. The CCP has previously pulled funding from publications that publish about Falun Gong events.

MDM allows authoritarian regimes to capitalize on current events, to sow discord and serve their own interests. For instance, there was widespread MDM from China and Russia surrounding the COVID-19 pandemic. The pandemic increased social and political tensions, emboldened extremists, and heightened geopolitical competition.[549] The Canadian pharmaceutical sector became particularly vulnerable to cyber espionage and attacks by hostile states.[550]

During the early stages of the pandemic, Chinese groups in Canada, the US, Australia, and others mobilized to gather scarce medical supplies to send to China.[551] It appears that these acts were linked to directives by the All-China Federation of Returned Overseas Chinese, a United Front Work Department agency.[552] Once the virus had spread globally, United Front Work Department groups began donating supplies across the world, propagating CCP narratives about the pandemic.[553]

In later stages, many foreign states tried to put forward conspiracy theories about the pandemic and sow distrust about western-developed COVID-19 vaccines. Australia faced a "trade war" with China after calling for an international investigation into the outbreak of the pandemic.[554] In order to deflect attention, Chinese officials claimed that the virus may have come from the US[555] – a theory completely rejected by all facts.

Russia also took advantage of the COVID-19 pandemic, "flood[ing] the information environment with toxic narratives that have contributed to vaccine hesitancy and the rejection of public health protocols".[556]

[548] Alliance Canada Hong Kong, "In Plain Sight: Beijing's unrestricted network of foreing influence in Canada", May 2021.
[549] University of Ottawa Report, supra note 12 at p. 7.
[550] Ibid.
[551] Alex Joske, "The party speaks for you: foreign interference and the Chinese Communist Party's united front system", Australian Strategic Policy Institute, 9 June 2020.
[552] Ibid.
[553] Ibid.
[554] Michael Walsh, "Australia called for a COVID-19 probe. China responded with a trade war", ABC News, 2 January 2021.
[555] Ibid.
[556] Marcus Kolga, "Confusion, Destabilization and Chaos: Russia's Hybrid Warfare Against Canada and its Allies", Canadian Global Affairs Institute, October 2021, p. 2.

In February 2021 remarks to the Centre for International Governance Innovation, CSIS Director David Vigneault stated that "[t]he fluid and rapidly evolving environment created by COVID-19 has created a situation ripe for exploitation by threat actors seeking to cause harm or advance their own interests". He said that, for example, there has been an increase in the exploitation of cyber tools to steal information and conduct attacks, and that violent extremists use online platforms "to recruit others and to spread their hateful messaging, anti-authority narratives and conspiracy theories on the pandemic to rationalize and justify violence". Additionally, he stated that our adversaries "spread disinformation about pandemic responses in an attempt to discredit government efforts".[557]

Former Commissioner of Canada Elections, Yves Côté, spoke to CBC News in June 2022 to mark the end of his 10-year term as head of Canada's chief election watchdog.[558] He said that disinformation and foreign interference are two of the biggest threats facing our electoral system.[559]

There is a significant amount of MDM spread around elections, especially on digital platforms. Images with false information, memes, fake articles, "deepfakes" and links to websites full of MDM are meant to deceive and manipulate voters. Information that misleads voters about how to exercise their rights, such as where their polling station is or when they can vote, could be considered voter suppression, which is illegal. And while there are rules on how parties and candidates advertise, there are ways of "exploiting loopholes in the law" in order to propagate MDM in elections.[560]

University of Ottawa associate professor Michael Pal, an expert on Canadian election law, said that there "are ways the Elections Act could be updated to deal with some of the groups that are advertising online to make sure they are subject to the rules that ensure transparency and a level playing field through spending audits".[561] However, he points out that "you can have the best law in the world, but if someone in a state-affiliated entity in Moscow is the one spreading the misinformation and they're not concerned about the impact of being charged, they know it's unlikely they will ever have to face Canadian justice".[562]

Academia

Academia is another sector that has been vulnerable to foreign interference. This can take many forms. Foreign regimes may engage in the suppression of academic freedom by mobilizing and taking advantage of their international students abroad, targeting researchers, or paying for

[557] Public Safety Canada, "Remarks by Director David Vigneault to the Centre for International Governance Innovation", Government of Canada, 9 February 2021.
[558] Elizabeth Thompson, "Disinformation, foreign interference threating Canada's electoral system, elections watchdog warns", CBC News, 22 June 2022. [Elizabeth Thompson]
[559] Ibid.
[560] Hannah Jackson, "Experts warn of disinformation during election but say political attack ads within legal limit", Global News, 22 September 2019.
[561] Elizabeth Thompson, supra note 558.
[562] Ibid.

research in order to influence or manipulate it. Foreign interference in academia can also include "covertly influencing research agendas or peer review processes; exerting economic pressure to achieve desired outcomes; introducing or obscuring conflicts of interests or military ties; [and] recruiting researchers and staff for interference activities".[563]

China engages in this type of "soft power" in Canada in furtherance of Chinese state interests and policies.[564] Specifically, the UFWD has identified overseas students as one of 12 target groups requiring ideological guidance and promotion of CCP policies.[565] In recent years, there has been a "noticeable mobilization of Chinese international students" and an increase in interference in the realm of academia.[566]

It is important to state that many Chinese international students are victims as well. As Chemi Lhamo has pointed out:

> "The long-arm tactics of the CCP is also affecting Chinese international students who are paying four to five times more for an education, but are having to become incognito spies for the embassy or who get bullied to follow party lines and protest initiatives that are deemed threatening, instead of focusing on their education. Anonymous Chinese students have written to their student unions saying they're terrified by the presence of organizations like Canadian CSSAs [Chinese Students and Scholars Associations], which are reporting campus activities to the Chinese government."[567]

Incidents related to foreign interference in academia can generally be broken down into three categories: interference with events, campus harassment, and funding of academic institutes.

Interference with Events

There have been several incidents where foreign regimes have been accused of attempting to cancel or disrupt events.

For example, in February 2019, two Muslim student groups held an event on the Uyghur genocide at McMaster University in Hamilton, featuring Rukiye Turdush, a Canadian citizen and ethnic Uyghur activist, as a speaker.[568] Several Chinese students organized themselves via WeChat to disrupt the event.[569] The event was disrupted by at least five Chinese student groups, and filmed by unidentified Chinese students, one of whom "verbally assaulted" Turdush during her presentation.[570] When we interviewed Rukiye, she told us that she

[563] Foreign Interference and You, supra note 8 at p. 4.
[564] CCHRC and Amnesty Canada, supra note 153 at p. 10.
[565] Ibid.
[566] Ibid at p. 20.
[567] Special Committee on Canada-China Relations, supra note 152.
[568] Yojana Sharma, "Student group with links to Beijing banned from McMaster", University World News, 4 October 2019. [Yojana Sharma]
[569] Bradley Jardine, supra note 16 at p. 164.
[570] CCHRC and Amnesty Canada, supra note 153 at p. 41.

believes this person may not have been a student at all, and was rather merely a CCP spy. She said he entered the room first and sat down directly in front of her, near the front of the room. While students were asked not to record her presentation, he was using his phone and computer the entire time.

When showing pictures of the victims of the genocide, Rukiye said "I could see the hatred from his face". The student identified himself as Chinese, and when Rukiye asked him what he thought of her presentation, he began swearing at her and said that she had no right and could not give this speech. Rukiye responded by saying that "yes, I can".

Rukiye later saw the video that these disrupting students had filmed and could hear what the group of Chinese students were saying, as it was circulating on WeChat.[571] One student said, "[w]e have been told by the embassy to report this event to the Chinese student association and the school".[572] Another student was heard instructing the others to determine who her son is – a student at McMaster – presumably so that he could be harassed as well.[573] WeChat messages showed that the protest had been a coordinated effort between students and the Chinese consulate in Toronto.[574] It is believed the disrupting students then reported back to Chinese consulate officials.[575] One of the messages, from an anonymous person stated, "We told you guys to disrupt this separatist's speech. How come only five people came?" Rukiye highlights that they were instructed and organized to disrupt her speech well in advance.

In response, the campus organizations that hosted the event wrote a letter to Canada's then-Minister of Foreign Affairs Chrystia Freeland and then-Public Safety Minister Ralph Goodale, asking the government to look into the Chinese government's role in directing students to silence activists on campus.[576]

One of the student groups that disrupted the event, the CSSA, released a bulletin about the event, harshly condemning the university for allowing this type of event to go forward.[577] The CSSA operates on hundreds of university campuses across the world and are often backed or closely tied to Chinese embassies and consulates.[578]

After the CSSA disrupted the talk, the Student Representative Assembly (SRA) – McMaster's student union – revoked permission for the group to operate on campus over their alleged links to the Chinese government.[579] There were concerns that the CSSA were reporting fellow students to the Chinese Embassy.[580] In September 2022, the club was de-ratified, and no longer allowed to operate, with

[571] Special Committee on Canada-China Relations, supra note 152.
[572] Ibid.
[573] Ibid.
[574] CCHRC and Amnesty Canada, supra note 153 at p. 41.
[575] Yojana Sharma, supra note 568.
[576] Ibid.
[577] Bradley Jardine, supra note 16 at p. 164.
[578] Yojana Sharma, supra note 568.
[579] Ibid.
[580] Bradley Jardine, supra note 16 at p. 164.

immediate effect.[581] SRA member Simrangeet Singh said that allowing the organization to continue to operate "undermines the safety of students on campus", and while they cannot change what is happening in China, "we do have the ability to try to protect people who are here at McMaster".[582]

Rukiye told us of another event she organized in London, Ontario, in which two people she believes are CCP agents tried to infiltrate. She said they were taking photos of attendees, including specifically trying to take photos of her youngest son. She said they refused to show identification and refused to delete the photos they had taken. In response, Rukiye took their photo and reported the incident to the RCMP. Rukiye said that this was the second time she has been followed in public.

In another instance, in spring 2019, the Montreal Institute for Genocide and Human Rights Studies at Concordia University held an event hosting Dolkun Isa, President of World Uyghur Congress.[583] Kyle Matthews, executive director of the Montreal Institute, was contacted the day before the event by the Chinese consul general asking for an urgent meeting.[584] Matthews ignored the request, later finding out that the Chinese consulate in Montreal was trying to cancel the event, even pressuring the mayor of Montreal to do so.[585] The mayor refused to get involved, and the university refused to cancel the event.[586] The consulate claimed that Dolkun was a terrorist[587] and that he should not be allowed to speak on campus.[588] Matthews stated that "[t]his I think shows that a university event attracting 30 people was deemed to be a major foreign policy priority for the Chinese government to disrupt and try to end".[589]

Louisa told us about another incident where an event hosted at an art college in downtown Toronto was disrupted by Chinese students. The event was about forced organ harvesting; a student who had completed her dissertation on forced organ harvesting in China was hosting a film screening at the school, and Louisa and a lawyer were asked to speak on a panel following the screening.

Louisa told us that a group of Chinese students had tried to have the event cancelled. While university officials met with the student organizing the event, they allowed it to proceed, citing freedom of expression. Louisa said that the crowd in the large lecture hall was approximately 98% Chinese, clearly had leaders, and was purposefully organized. Throughout the film, the students continually disrupted the

[581] Yojana Sharma, supra note 568.
[582] Ibid.
[583] Special Committee on Canada-China Relations, supra note 152; CCHRC and Amnesty Canada, supra note 153 at p. 43.
[584] Special Committee on Canada-China Relations, supra note 152.
[585] Ibid.
[586] Ibid.
[587] China has also issued several improper Red Notices for Dolkun Isa's arrest, claiming that he is a terrorist.
[588] CCHRC and Amnesty Canada, supra note 153 at p. 43.
[589] Levon Sevunts, "Chinese officials pressured Canadian university to cancel event with Uighur activist", Radio Canada International, 27 March 2019.

event, yelling that the documentary was not true, and asking "very inappropriate" questions. At the end of the event, one student from the disrupting group came up to one of the panelists and asked whether he was paid to be at the event. The panelist replied that no, he had not been paid to attend, and asked the student the same question – was he paid to be at the event? The student said that yes, he was paid to be there. Louisa said that she saw a large group of the students deliberating together afterward and believes that they were receiving instructions from the Chinese consulate.

Campus Harassment

Chemi Lhamo, a Canadian citizen of Tibetan dissent, was attacked by Chinese students in 2019 when she successfully ran for student elections at the University of Toronto Scarborough. Speaking to the Parliamentary Special Committee on Canada-China Relations in May 2021, Chemi shared about her "experiences of the CCP attempting to silence and infringe upon [her] right to freedom of speech and expression, even in an open and democratic society like Canada".[590]

Chemi detailed how she was intimidated on social media, receiving thousands of harassing comments on her social media posts when she ran for student president.[591] She received rape and death threats targeting her and her family. One commentator led Chemi to believe that her mother may be dead; another said, "that the bullet that would go through [her] was made in China".[592] Chemi testified that the backlash was "because of [her] Tibetan identity – not because of [her] work or [her] capabilities".[593] Prior to the student election, a message circulated on WeChat calling on Chinese international students to ensure that Chemi did not become president to prevent the student union from being "controlled by Tibetan separatists".[594] Chemi believes that due to the pace at which numerous Chinese students rallied against her, they were likely directed by the Chinese consulate.[595]

Campus security was utterly unprepared to help Chemi. The head of security described her case as "beyond [their] pay grade", and she was merely given a walkie-talkie to stay safe.[596] Chemi has also gone to Toronto Police, CSIS, and the RCMP, but she has "just been pointed from one direction to the other".[597] Throughout her presidential term at the university, Chemi continued to receive threats.[598] She testified that "prior to COVID-19, students on … campus who threatened to kill and rape me roamed freely [and] pointed, stared, followed and took photos of people whom I communicated with".[599] She testified that as a result, she had "friends

[590] Special Committee on Canada-China Relations, supra note 152.
[591] Ibid.
[592] Ibid.
[593] Ibid.
[594] CCHRC and Amnesty Canada, supra note 153 at p. 34.
[595] Ibid at p. 35.
[596] Special Committee on Canada-China Relations, supra note 152.
[597] Ibid.
[598] Ibid.
[599] Ibid.

actually escorting [her] to the washrooms".[600]

Hong Kongers and Uyghurs are also harassed on university campuses. For example, Louisa told us that when students hosted an event at a Canadian university on protests in Hong Kong, many Chinese students came to disrupt the event and harass those present. At another event in which students were raising awareness about the democratic movement in Hong Kong, campus security had to attend the event to separate students as "mainland Chinese students tried to assault them". Louisa said that "we all know they were funded by [the] Chinese consulate".

Rukiye Turdush told us that Uyghur students are often harassed on Canadian campuses but are too scared to speak with the media or with Canadian government officials. She said that they do not attend events as they are concerned about being noticed by spies. She said that psychologically, it is too much pressure on young students whose families are at risk in China, and thus they cannot speak out. Rukiye described that Chinese police harass Uyghur students in Canada through video calls, where they may ask for their school address and/or information about their status in Canada.[601] She said that some students have had to officially disown their parents in order to protect their families back home.[602] She said that Uyghur students are often scared to even speak to her, because they are concerned that the CCP is monitoring their calls. Students often worry that if they become involved in activities in Canada, their parents in China will be sent to camps. Those whose parents are already in camps have told Rukiye that they fear their parents will be killed if they become involved.

China is not the only authoritarian state interfering in the academic sector. Since Russia's invasion of Ukraine in February 2022, many university students have reported a sharp increase of anti-Ukrainian sentiment on university campuses in Canada. While there are many individuals in the Russian diaspora, and some within Russia itself, that do not support the war or the regime more generally, there have been several instances of targeted attacks by Russians against Ukrainians in Canada.

For example, on January 26, 2023, the Carleton Ukrainian Students' Society, a student organization at Carleton University in Ottawa, released a statement on "Acts of Hate Against Ukrainian Students".[603] The statement reads that the club is concerned about the "drastic increase in hate symbols and harassment towards Ukrainian students", and is particularly concerned about a "recent unauthorized pro-Russian propaganda and disinformation event" held at the university.[604]

The club explains that this event, held by the Ottawa Peace Council, the Young Communist League, and other groups,

[600] Ibid.
[601] Ibid.
[602] Ibid.
[603] Carleton Ukrainian Students' Society, "Statement RE: Acts of Hate Against Ukrainian Students at Carleton University", 27 January 2023.
[604] Ibid.

"featured known provocateurs Yves Engler, Miguel Figueroa and Tamara Lorinz, who appear to be funded by Russian interests".[605] The club does not define what they mean by "funded by Russian interests", but state that Lorinz is "known for her disruption of meetings of Canadian high officials", Figueroa served as leader of the Communist Party of Canada for 23 years, and Egler is a frequent guest on Russia Today, a news channel banned from Canadian airwaves for peddling disinformation.[606]

After reporting the event to university officials, the club was told that the event was unauthorized, the event's room booking would be rescinded, and that campus security would not allow the event to take place "as it incited violence".[607] Despite this, the event went forward, with university officials citing that they wished to promote free speech on campus. Ukrainian students at the event said they were made to feel "incredibly unsafe", and that the event was "encouraging genocide".[608]

Considering the increasing harassment of Ukrainian students on campus, the Carleton Ukrainian Students' Society made several recommendations for the university, including developing a "policy which condemns disinformation and propaganda on campus, in line with the Canadian government's efforts to tackle disinformation surrounding the Russian invasion of Ukraine".[609]

[605] Ibid.
[606] Ibid.
[607] Ibid.
[608] Ibid.
[609] Ibid.

Funding of Academic Institutes

Some of those we interviewed expressed concern about foreign interference via the funding of academic institutes. Grace said that the CCP can influence foreign universities with funding, so that they "become China institutes". She said they pressure Chinese academics abroad on what they can and cannot study, manipulate researchers, and threaten that they will have trouble doing research or academic projects in China if they do not comply.

Louisa conducts research for a large Canadian university. She said that once, while presenting her work on China's human rights abuses at a Chinese Professor's Association forum, a colleague began yelling and berating her, saying that she should not present on this topic, even though she had received funding and ethics approval from the university for her research.

In January 2023, the Globe and Mail found extensive collaboration between Canadian universities and Chinese military scientists over the past several years.[610] They found that researchers across 50 Canadian universities published hundreds of joint scientific papers, between the years of 2005 and 2022, in collaboration with researchers connected to China's military, including on automated surveillance.[611] 240 papers were written in collaboration with the National University of Defence Technology ("NUDT"), the primary research arm of the

[610] Robert Fife and Steven Chase, "Canadian universities conducting joint research with Chinese military scientists", Globe and Mail, 30 January 2023.
[611] Ibid.

People's Liberation Army, which was blacklisted by the US in 2015 for posing "a significant risk of being or becoming involved in activities that are contrary to the national-security or foreign-policy interests of the United States".[612]

Between 2017 and 2022, researchers at the University of Waterloo, one of Canada's top research universities, published 46 papers in collaboration with NUDT scientists. Some of this research was on photonics, a key technology in many national security systems.[613]

In response to the Globe and Mail's report, the federal government announced that it will no longer fund research produced in collaboration with Chinese military and state security institutions.[614] Additionally, they announced that national-security risk assessments would be conducted on research grant applications from three federal agencies.[615]

The University of Waterloo issued guidelines to faculty and researchers, advising them that they are not required to speak to CSIS officials or grant them access to university equipment in their investigations into joint research projects with foreigners. The memo stated that individuals may be approached by CSIS agents who "may be concerned that you could be a target of a foreign state or entity, or they may have questions about some of your activities".[616] The University stated that the guidelines are to safeguard their work and protect their privacy.[617]

Margaret McCuaig-Johnston, former executive vice-president at the Natural Sciences and Engineering Research Council explained that the "University of Waterloo is the number one target of China to gain access to our most advanced technology and so that puts them on the front line of helping our researchers to protect their own work and protect Canadian technology especially as it may be used by the Chinese military".[618] In May 2023, the University of Waterloo announced that it would be ending all research partnerships with Huawei to "safeguard scientific research" at the university.[619] The university stated that they realize this will risk some researchers' work as they will lose a significant amount of funding, but called upon Canadian businesses and government to partner with the university to make up for this lost funding.[620]

The funding and operation of Confucius Institutes may also be problematic. Confucius Institutes, which purport to be Chinese language and cultural education centers, have been established at over 500

612 Ibid.

613 Robert Fife and Steven Chase, "University of Waterloo advises researchers they aren't obligated to talk to CSIS agents", The Globe and Mail, 24 April 2023. [Robert Fife and Steven Chase, "University of Waterloo"]

614 Robert Fife and Steven Chase, "Ottawa ends all research funding with Chinese military and state security institutions", The Globe and Mail, 14 February 2023.

615 Ibid.

616 Robert Fife and Steven Chase, "University of Waterloo", supra note 613.

617 Ibid.

618 Ibid.

619 The Canadian Press, "University of Waterloo to end research partnership with Chinese tech giant Huawei", 4 May 2023.

620 Ibid.

schools and universities across the world since 2004.[621] They have deep ties with the CCP,[622] and have been accused of undermining academic freedom at host institutions by engaging in espionage, surveillance, and control of Chinese international students, and furthering China's interests abroad.

According to the National Association of Scholars, Confucius Institutes "undermine academic integrity and import censorship".[623] A 2013 CSIS report accused them of political interference and censorship – they do not allow the "discussion of topics that the Chinese government deems sensitive".[624]

Students who do not engage satisfactorily have their families in China threatened. Teachers are required to adhere to strict teachings. Falun Gong practitioners are barred from teaching, which violates Canadian laws. Some critics have called it a "trojan horse" for Chinese propaganda and influence.[625] Ivy Li, a member of the group Canadian Friends of Hong Kong said that "[o]ur universities are being used as a platform to promote (China's) message, and that message is disinformation".[626]

Sheng Xue said that the CCP claims that Confucius Institutes are about education, language, culture, and history, but that they are not about this at all. She said that it is hypocritical for the CCP to support language development when Tibetans, Uyghurs, Mongolians, and others are not allowed to speak their language in their homeland. She also said that there are 1.7 million Chinese people in Canada, and that "there is no need at all" for the CCP to export the language or culture to Canada, as community groups can do this instead. Rather, these organizations are a front to propagate CCP interests. She described that "Confucius Institutes are the soft power of the CCP landed abroad".

In 2014, the Toronto Chinese Consulate allegedly paid $1 million to proxy groups to organize protests to support the continued integration of the culture-education program into Toronto's district school board system.[627] These protests ultimately failed as the Toronto School District Board trustees voted against it.[628]

Some Canadian universities, such as McMaster University, have cut ties with

[621] Tom Blackwell, "Chinese government's Confucius Institute holds sway on Canadian campuses, contracts indicate", National Post, 22 March 2020.
[622] Canadian Security Intelligence Service, "The Security Dimensions of an Influential China", Government of Canada, September 2013, p. 123. [Canadian Security Intelligence Service, "The Security Dimensions of an Influential China"]
[623] National Association of Scholars, "How Many Confucius Institutes Are in the United States?", 19 September 2022.
[624] Canadian Security Intelligence Service, "The Security Dimensions of an Influential China", supra note 622 at p. 125.
[625] Tom Blackwell, "Chinese government's Confucius Institute holds sway on Canadian campuses, contracts indicate", National Post, 22 March 2020. [Tom Blackwell, "Chinese government's Confucius Institute"]
[626] Ibid.
[627] Sam Cooper, supra note 50.
[628] Ibid.

Confucius Institutes. However, as of 2020, at least ten Confucius Institutions were still hosted in Canada – by two school boards, two colleges and six universities.[629]

Business Sector

Businesses in Canada have also been the target of foreign interference. Businesses in Canada may gather intelligence and remit it to foreign states, or may be used to harass and threaten individuals directly. In the past, there have been "strategic investments in sensitive sectors in Canada by companies who obfuscate their state ties". [630] Foreign companies working in Canada may also steal intellectual property to advance foreign states' interests. [631]

Iranian Canadian lawyer Ardeshir Zarezadeh shared that Canada allows those associated with the Iranian regime to own and fund businesses and nongovernmental organizations in Canada.[632] As such, Zarezadeh has begun compiling a list of names and addresses of known Iranian regime affiliates in Canada.[633]

Robert Fife and Steven Chase of the Globe and Mail reported that, in the same CSIS documents about Chinese electoral interference leaked in February 2023, there was evidence that China had instructed its consulates and visa offices to alert Chinese officials of influential Canadians planning visits to China.[634] The Bank of China, a state-owned financial institution, was also instructed to report the travel plans of Canadian business executives attending conferences in China that were sponsored by the bank.[635]

Fenella Sung, a leader in Canada's Hong Kong community, has said that "she has long believed that Chinese intelligence has infiltrated Canadian diaspora groups, by using business inducements and 'subtle psychological warfare'".[636] There are many specific examples of this occurring.

In one incident, detailed above, Anastasia Lin was dropped by her pageant sponsor, a Toronto dress shop owned by a Chinese Canadian, after the shop received a harassing email from the Chinese consulate. Another Falun Gong practitioner that we interviewed told us about an incident when the Shen Yun Performing Arts group ("Shen Yun") came to her city.[637] The practitioner told us that the owners of a large grocery store had agreed to sponsor Shen Yun's show in the city. The grocery store owners also owned a restaurant frequented by Consulate employees. Immediately after the grocery store agreed, but before the sponsorship was made public, the owners received a call from the Consulate telling them not to sponsor the group.

[629] Tom Blackwell, "Chinese government's Confucius Institute", supra note 625.
[630] University of Ottawa Report, supra note 12 at p. 9.
[631] Ibid.
[632] Hennessy and Swyers, supra note 180.
[633] Ibid.
[634] Robert Fife and Steven Chase, "CSIS reports outline how China targets Canadian politicians, business leaders", The Globe and Mail, 20 February 2023.
[635] Ibid.
[636] Sam Cooper, supra note 50.
[637] Shen Yun is operated by Falun Gong, and performs globally. It is banned in China.

William told us about his friend who owns a grocery store in his city. He said that the grocery store distributes the Falun Gong newspaper, the Epoch Times, for free. Additionally, he would post anti-CCP content on WeChat. His friend told him that one day a woman entered the store, said that she represents the CCP, and warned him not to distribute the paper anymore or he would have issues in China. William's friend did eventually return to China for a short trip, where he was detained, placed in a black room, and interrogated for many hours. As a result, upon returning to Canada, he stopped posting anything that he believed the CCP would not like.

Sheng Xue told us that the CCP tried to prevent her from publishing a book critical of China. In 2001, when Sheng Xue was working on her book, her husband's younger brother called her and asked her not to publish it. When they asked how he knew about the book, he said that he had been taken to a police station and asked to stop his sister-in-law in Canada from publishing a book, and that this is a very serious matter.

Soon after doing a media interview about her book, she received a phone call from a friend, a Canadian citizen, asking to buy the manuscript for a large amount of money. She refused. He then suggested that she give the manuscript to her husband to bring back to Beijing. When she asked why, he said not to worry, that they would not kidnap him, and just that "our people want to read the book before its published". She said the kidnapping comment had struck her as very odd, as she had not mentioned anything about her husband being kidnapped. He again offered to pay a large sum for the book, which she again refused. He then told her that he had $4,000 USD in cash at his home, that he would bring her if she at least let him read the book. She said no. He asked her to send him an email explaining the reasons for her refusal. She said that she wrote the email because she understood that he needed to report to higher-ups in China. The next day, her email was bombarded with spam. Sheng Xue said that she received several harassing phone calls about the book. One time she received a call asking, "what about $1 million USD?" When asked for what, the caller said, "to buy the copyright of your book so it can never be published". When she refused, the caller became very upset, cursed at her, and hung up.

Part III. Legal Frameworks and Available Mechanisms

There is very little, if any, research on host governments' obligations to combat transnational repression and foreign interference. Marcus Michaelsen and Johannes Thumfart point out that as the human rights approach primarily focuses on the relationship between authoritarian states and their subjects or victims abroad, it obscures the role and interests of host states.[638]

However, it is evident that Canada is legally obligated to protect people within its borders against certain human rights violations. As a result, failing to sufficiently respond to incidents of transnational repression and foreign interference could put Canada in violation of its international legal obligations. Failing to sufficiently respond could also put Canada in violation of its domestic laws.

The following sections cover the relevant legal frameworks and available mechanisms, including Canada's responses so far to combat incidents of transnational repression and foreign interference. We ultimately conclude that the Canadian government is not responding sufficiently to these incidents, setting the stage in Part IV for a series of recommendations.

[638] Michaelsen and Thumfart, supra note 336 at p. 2.

International Legal Framework

Before discussing the relevant international laws, it is important to understand how Canada itself views international law. In essence, Canada is both a monist and dualist country, meaning that different rules apply regarding the implementation of international law into the domestic framework, depending on the source of the law.

According to Article 38 of the Statute of the International Court of Justice[639], there are four sources of international law:

a. international conventions, whether general or particular, establishing rules expressly recognized by the contesting states;
b. international custom, as evidence of a general practice accepted as law;
c. the general principles of law recognized by civilized nations; and
d. subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

For the first source, international conventions, also known as international treaty law, Canada follows the dualist approach. This means that treaties to which Canada is a party must be implemented by legislative or executive act to become part of Canadian law. They do not automatically

[639] Statute of the International Court of Justice, Article 38(1).

apply.[640] In other words, although Canada's ratification of an international treaty creates international legal obligations for Canada, it must be incorporated into domestic legislation for those obligations "to be given the force of law domestically".[641]

For the second source, international custom, also known as customary international law, Canada follows the monist approach. This means that legal rules that have achieved the status of customary international law are considered Canadian law without any additional legislative or executive action.[642] In R v Hape, the Supreme Court of Canada accepted that Canadian "courts may adopt rules of customary international law as common law rules in order to base their decisions upon them, provided there is no valid legislation that clearly conflicts with the customary rule".[643]

However, customary international law establishing international crimes in Canada follow the dualist approach. Thus, international crimes must be implemented by domestic statute. Customary international criminal law must either be found in Canadian law or have Canadian law explicitly refer to the customary international criminal law as being supplementary to reflect these concepts into Canadian law.

Some principles are found in both international treaty law and customary international law. The principle of non-refoulement, for example, is both codified in international treaty law and has reached the status of customary international law.

According to the Vienna Convention on the Law of Treaties[644], to which Canada is a party, states are obligated to recognize the supremacy of international treaty law and customary international law. It prohibits Canada from invoking domestic law to justify failing to abide by a treaty. This obligation also exists under customary international law, applying to both treaties and customary international law. As such, under both international convention and international custom, Canada is legally obligated to implement any legislative changes necessary to comply with the treaties to which it is party, and customary international law.

Canada has ratified or acceded to most international human rights treaties,[645] and taken steps to enact them through domestic law. The human rights obligations arising from these treaties may therefore apply to all levels of government in Canada.

[640] "International Law and Canadian Domestic Law", University of Melbourne, https://unimelb.libguides.com/c.php?g=929683&p=6717562#:~:text=While%20ratification%20of%20a%20treaty,be%20incorporated%20into%20domestic%20legislation.
[641] Ibid.
[642] Ibid.
[643] R. v. Hape, [2007] 2 S.C.R. 292, 2007 S.C.C. 26 at para 36.
[644] United Nations, Vienna Convention on the Law of Treaties, 23 May 1969, United Nations, Treaty Series, vol. 1155, p. 331.
[645] OHCHR, "Ratification of 18 International Human Rights Treaties", United Nations.

International Treaties

There is no international treaty on transnational repression. Nor does any treaty even explicitly mention transnational repression. However, there are some treaties that may cover certain acts of transnational repression, and thus may provide remedies to victims. They may also impose obligations on Canada to protect victims or provide them with avenues for recourse.

The Universal Declaration of Human Rights[646] was adopted by the United Nations General Assembly in 1948, after 48 countries, including Canada, voted to adopt it.[647] It established the first list of fundamental human rights to be universally protected. Since, Canada has ratified numerous UN human rights treaties, and submits reports on their implementation.

According to the Office of the High Commissioner for Human Rights:

> "International human rights law lays down obligations which States are bound to respect. By becoming parties to international treaties, States assume obligations and duties under international law to respect, to protect, and to fulfil human rights. The obligation to respect means that States must refrain from interfering with or curtailing the enjoyment of human rights. The obligation to protect requires States to protect individuals and groups against human rights abuses. The obligation to fulfil means that States must take positive action to facilitate the enjoyment of basic human rights."[648] [emphasis added]

The human rights treaties most relevant to transnational repression, from the Canadian perspective, are the International Covenant on Civil and Political Rights[649] ("ICCPR") and the Refugee Convention. Canada is a party to both the ICCPR and the Refugee Convention. Russia, China, and Iran are all also states parties or signatories to the ICCPR and the Refugee Convention.

There are several rights in the ICCPR that impose obligations on the Canadian government relevant to transnational repression. Most of these rights are reflected in the Canadian Charter of Rights and Freedoms[650]. These rights include the right to life; the right to be free from torture and cruel, inhuman or degrading treatment or punishment; the right to liberty and security

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[646] UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (III).
[647] Universal Declaration of Human Rights, A/RES/217(III)[A], 10 December 1948, 3rd Sess, Supp No 13, UN Doc A/810 (1948) 71.
[648] "International Human Rights Law", United Nations Office of the High Commissioner for Human Rights, https://www.ohchr.org/en/instruments-and-mechanisms/international-human-rights-law#:~:text=International%20human%20rights%20law%20lays,and%20to%20fulfil%20human%20rights.
[649] UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171. [ICCPR]
[650] Canadian Charter of Rights and Freedoms, s 7, Part 1 of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11. [Charter]

of the person; the right to hold opinions without interference and freedom of expression; the right to peaceful assembly; and freedom of association with others. Particularly relevant to transnational repression in Canada are Articles 17, 25, and 27 of the ICCPR.

Article 17 (1) of the ICCPR states that "[n]o one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation". Article 17 (2) states that "[e]veryone has the right to the protection of the law against such interference or attacks." Article 25 of the ICCPR provides that "[e]very citizen shall have the right and the opportunity … [t]o take part in the conduct of public affairs, directly or through freely chosen representatives [and t]o have access, on general terms of equality, to public service in his country." Finally, Article 27 states that "[i]n those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language."

Article 2 of the ICCPR provides that state party obligations under the ICCPR apply to all individuals within its territory and subject to its jurisdiction.[651] Article 2 also provides that each state party to the ICCPR "undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant".[652]

The Optional Protocol to the International Covenant on Civil and Political Rights ("ICCPR-OP1") was ratified by Canada in 1976. Under Article 1 of the ICCPR-OP1, state parties allow the Human Rights Committee to consider a complaint by an individual that the state party has violated their rights under the ICCPR. Individuals can only make a complaint to the Human Rights Committee after all domestic remedies have first been exhausted.

The Refugee Convention and the 1967 Protocol relating to the Status of Refugees ("Refugee Protocol") are also relevant. These treaties outline the key rights and international standards of protection for refugees. The Refugee Convention outlines the obligations of host states toward refugees, and minimum standards for their treatment.

Canada, as a signatory to the Refugee Convention, is obligated to protect refugees on its territory. Under the Convention, refugees have, inter alia, the right to freedom of religion, the right of association, the right to access the legal system, the right to education and employment, the right to public relief and assistance, and the right to freedom of movement.[653]

Initially, the Refugee Convention only applied to those displaced as a result of events occurring before 1 January 1951. The

[651] ICCPR, supra note 649 at Article 2.
[652] ICCPR, supra note 649 at Article 2.

[653] Refugee Convention, supra note 447 at Articles 4, 15-18, 22-23, and 26.

Refugee Protocol removed both the temporal and geographical restrictions, and thus the Refugee Convention now applies universally. Canada acceded to both the Refugee Convention and the 1967 Protocol in 1969.

Beyond the ICCPR and the Refugee Convention, additional human rights treaties may be applicable from the perspective of the authoritarian regimes engaged in transnational repression, including the International Convention on the Elimination of All Forms of Racial Discrimination ("ICERD")[654], the International Covenant on Economic, Social and Cultural Rights ("ICESCR")[655], the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("CAT")[656], the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families ("ICMW")[657], and the International Convention for the Protection of All Persons from Enforced Disappearance ("CPED")[658].

The applicability of each of these treaties would depend on the facts of the incident of transnational repression. For instance, China, Russia, and Iran are all states parties to the ICERD, and the ICERD defines "racial discrimination" broadly, to include discrimination on grounds of race, colour, descent, or national or ethnic origin. It is arguable that, especially relating to China and Russia, much of their repression beyond their borders discriminates on the basis of "national or ethnic origin". For example, China targets Uyghurs across the globe, including in Canada, and the Uyghurs are a distinct ethnic group. Russia targets Ukrainians, people distinguishable by national origin. As a result, these authoritarian regimes may be in breach of their international legal obligations under the ICERD, in the context of their acts of transnational repression.

China, Russia, and Iran are also all states parties to the ICESCR, which protects economic, social and cultural rights. The ICESCR includes reference to many such rights, including the right to enjoy the highest attainable standard of physical and mental health (Article 12), and the right to take part in cultural life (Article 15). As detailed above, transnational repression impacts these rights, by instilling fear and sowing distrust in diaspora communities, and preventing members from actively engaging in various activities and communications. As a result, these authoritarian regimes engaged in transnational repression that are states parties to the ICESCR may be in breach of

[654] UN General Assembly, International Convention on the Elimination of All Forms of Racial Discrimination, 21 December 1965. [ICERD]
[655] UN General Assembly, International Covenant on Economic, Social and Cultural Rights, 16 December 1966. [ICESCR]
[656] UN General Assembly, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 10 December 1984. [CAT]
[657] UN General Assembly, International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 18 December 1990. [ICMW]
[658] UN General Assembly, International Convention for the Protection of All Persons from Enforced Disappearance, 23 December 2010. [CPED]

their international legal obligations under this Covenant.

China and Russia are also states parties to the CAT. To the extent that Chinese or Russian government actions involve involuntary returns, this would likely constitute a breach of their international legal obligations under the CAT. For instance, if Uyghurs are forcibly returned to China, they would very likely face arbitrary detention and torture upon their return. This may also apply to any involuntary return by Russia. Iran is not a state party to the CAT, but the prohibition against torture is a feature of customary international law (and a jus cogens norm), which would make it binding on Iran as well.

The ICMW and the CPED might also be breached by certain incidents of transnational repression. Although the ICMW would apply only to migrant workers – and not to refugees – it guarantees certain rights for this population, including the right of migrant workers and members of their families to have the right to freedom of thought, conscience and religion and to be free from arbitrary or unlawful interference with his or her privacy, family, correspondence or other communications, or to unlawful attacks on his or her honour and reputation. The CPED applies to prohibit enforced disappearance, which it defines as "the arrest, detention, abduction or any other form of deprivation of liberty" by government agents or those acting with "authorization, support or acquiescence" of a government. None of China, Russia, or Iran are states parties to either of these treaties, although one might make an argument that at least some of the provisions of these treaties may constitute customary international law, and would be binding on all states.

Breach of Sovereignty

Under international law, a state's authority applies within its territory and to its nationals. Operating within the territory of another state without permission breaches international norms of sovereign independence and territorial integrity. As such, transnational repression can be considered a violation of a state's sovereignty.

Transnational repression involves government action on another state's territory, which is tightly restricted under international law. The International Court of Justice has held that a state cannot exercise its jurisdiction outside its territory unless an international treaty or customary law allows it to do so.[659]

Further, in the context of digital transnational repression, incidents can violate state sovereignty in three main ways: by constituting extraterritorial enforcement jurisdiction; by distorting public debate and interfering with national self-determination; and by impeding the host state's adherence to fundamental norms of international law.[660]

Regarding non-digital modes of enforcement, the prohibition of extraterritorial enforcement jurisdiction is

[659] The Case of the S.S. "Lotus" (France v. Turkey) (1927) P.C.I.J., Ser. A, No. 10.

[660] Michaelsen and Thumfart, supra note 336 at p. 2.

non-controversial.[661] Michaelson and Thumfart then explain that digital modes of enforcement should be treated equally to physical enforcement and amount to extraterritorial enforcement jurisdiction prohibited by international law if committed without the agreement of the host state. For example, in criminal law, obtaining evidence from servers abroad is considered a physical intrusion into a different jurisdiction, and usually require agreements such as a Mutual Legal Assistance Treaty (MLAT).[662]

The second way that digital transnational repression violates state sovereignty is by interfering with national self-determination, or with a state's domaine réservé, which "describes the areas of State activity that are internal or domestic affairs of a State and are therefore within its domestic jurisdiction or competence".[663] Transnational repression interferes in the self-determination of the host states in this way by preventing individuals from participating in political life, and either silencing or distorting their voices.[664] The repression of individuals can thus affect foreign policy and minimize criticism of authoritarian regimes abroad.

The prohibition of cyber intervention, as outlined in the Tallinn Manual[665], is based on both the interference with another state's domaine réservé and the coerciveness of the interference.[666] It states that cyber intervention refers to "acts of interference with a sovereign prerogative of another State that have coercive effect", or that are designed to influence outcomes in matters reserved to a target state. Additionally, the coercive act must have the potential for compelling the target state to engage in an action that it would otherwise not take, or to refrain from taking an action that it would otherwise take.[667]

Michaelson and Thumfart assert that even transnational repression incidents against individuals could be coercive if they are undertaken "with the intention to alter the host state's political agency, rather than the political agency of the individual dissident".[668]

Finally, Michaelsen and Thumfart argue that transnational repression violates sovereignty by preventing states from meeting their international obligations.

Transnational repression interferes with several basic rights, including the right to privacy, free speech, and to seek and enjoy political asylum. As described above, states are obligated, under both domestic and international law, to uphold certain fundamental rights. Due to the importance of these fundamental rights, "any form of transnational repression against political emigrants, including in its digital forms, must be regarded as an interference with the political will and the sources of legitimacy of

[661] Ibid at p. 10.
[662] Ibid at p. 11.
[663] Katja S. Ziegler, "Domaine Réservé", Max Planck Encyclopedias of International Law, April 2013.
[664] Michaelsen and Thumfart, supra note 336 at p. 11.
[665] Tallin Manual on the International Law Applicable to Cyber Warfare, Michael N. Schmitt ed., 2012.
[666] Michaelsen and Thumfart, supra note 336 at p. 12.
[667] Ibid.
[668] Ibid.

a State, and hence, a violation of its sovereignty".[669] Acts of transnational repression "undermine the credibility of the host state as the holder of effective control of the monopoly on enforcement jurisdiction and the guarantee of fundamental rights".[670] They challenge the host state's authority, seeking to undermine trust in public institutions and instill societal division.[671] This is a particular challenge in Canada, a country that takes in hundreds of thousands of immigrants and refugees yearly, in building trust within diaspora communities and allowing them to fully integrate into Canadian society.

Michaelson and Thumfart provide an example regarding Eritrean refugees in Canada.

The Eritrean regime is one of the most repressive in the world.[672] Under the dictatorship of President Isaias Afewerki, Eritreans are subjected to widespread forced labour; restrictions on various freedoms including freedom of religion and expression; and prolonged, unlawful detentions.[673] The country has no legislature, no independence of the judiciary, no independent civil society, and no elections.[674] Eritrea has also sided with Russia in its acts of aggression against Ukraine.[675]

Canada imposed sanctions related to Eritrea under the United Nations Act, which entered into force in 2010.[676] Sanctions included prohibitions on "sale, supply or transfer of arms and related material to Eritrea", and asset freezes and travel bans.[677] In addition, Eritrean forces have been implicated as cooperating with Ethiopian forces in the commission of crimes against Tigrayans in the context of the recent Tigrayan conflict.[678] The United Nations High Commissioner for Human Rights has concluded that a number of these crimes may amount to crimes against humanity and war crimes.[679]

The Eritrean government has for years imposed a 2% income tax on Eritreans living abroad, also known as the "diaspora tax", using threats to family members still living in Eritrea to ensure the tax is paid.[680] In 2013,

669 Ibid at p. 13.
670 Ibid at p.14.
671 Ibid.
672 "Eritrea: Events of 2020", Human Rights Watch, https://www.hrw.org/world-report/2021/country-chapters/eritrea.
673 Ibid.
674 Ibid.
675 "Why is Eritrea backing Russian aggression in Ukraine?", The Economist, 8 March 2022.
676 "Canadian Sanctions Related to Eritrea", Government of Canada, https://www.international.gc.ca/world-monde/international_relations-relations_internationales/sanctions/eritrea-erythree.aspx?lang=eng.
677 Ibid.
678 See the Report of the Ethiopian Human Rights Commission/Office of the United Nations High Commission for Human Rights Joint Investigation into Alleged Violations of International Human Rights, Humanitarian and Refugee Law Committed by all Parties to the Conflict, https://digitallibrary.un.org/record/3947207?ln=en#:~:text=From%2016%20May%20to%2030,refugee%20law%20committed%20in%20the.
679 Ibid at 5.
680 "Eritreans in Canada say consul still demands cash from them", CBC News, 22 May 2013.

Canada banned the "diaspora tax" and has prohibited the solicitation of funds for the Eritrean military.[681] Despite this, the collection of the tax continues although a "greater emphasis has been placed on voluntary contributions through concerts and cultural events organized by PFDJ."[682]

Beyond constituting repression of the Eritrean communities in Canada, and threats to family members at home, the monies collected may be used to fund atrocity crimes abroad, both in Eritrea and Ethiopia. Recently, a group of parliamentarians in the UK called for an investigation into the Eritrean diaspora tax as they were concerned that the revenue has been used to fund Eritrea's war effort in Tigray. [683] Despite Canada's prohibition of the "diaspora tax" as illegal, Eritrean refugees have reported that they were pushed to break Canadian law as they were forced to donate money for military activities in Eritrea by embassy staff.[684] By contravening efforts of the Canadian government to protect refugees and integrate them into Canada, Eritrea and other authoritarian regimes breach Canadian sovereignty by engaging in this type of "coerced allegiance to the … origin country[,] … contrary to the law of the host state", which further lowers "the host societies' capacity to integrate … migrants".[685]

International Legal Mechanisms

There are no specific international mechanisms to deal with transnational repression. There is no specialized treaty relating to transnational repression, nor is there a specific United Nations special procedure on transnational repression. However, there are a number of international legal mechanisms that may be leveraged. These include the International Court of Justice, United Nations human rights bodies, and perhaps the International Criminal Court, in certain instances.

International Court of Justice

The International Court of Justice (ICJ) is the principal judicial organ of the United Nations and is located in The Hague, The Netherlands. It was established by the United Nations Charter in 1945 and began working in 1946. Its role is to settle international legal disputes between states. Generally, the ICJ cannot make a binding ruling unless both states to the dispute agree that the ICJ shall settle the dispute. However, states do not always have to provide consent on a case-by-case basis; states may consent to have disputes adjudicated by the ICJ in advance, for example by accepting the Court's

[681] "Ottawa forced Eritrea to nix '2% extortion tax' on citizens in Canada", National Post, 2 September 2012; "Eritrea's 'diaspora tax' is funding violence and oppression", Al Jazeera, 20 February 2023.
[682] "Letter dated 11 July 2012 from the Chair of the Security Council Committee pursuant to resolutions 751 (1992) and 1907 (2009) concerning Somalia and Eritrea addressed to the President of the Security Council" (13 July 2012) at 22, https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/Somalia%20S%202012%20545.pdf.
[683] "Eritrea's 'diaspora tax' is funding violence and oppression", Al Jazeera, 20 February 2023.
[684] Michaelsen and Thumfart, supra note 336 at p. 14.
[685] Ibid.

compulsory jurisdiction, or by signing onto a relevant treaty that provides that disputes concerning its provisions shall be settled by the ICJ.

Regarding compulsory jurisdiction, neither China nor Russia have accepted the ICJ's compulsory jurisdiction. Iran recently accepted the ICJ's compulsory jurisdiction, but only in relation to disputes regarding "the jurisdictional immunities of the State and State property" and "immunity from measures of constraint against State or State property".[686] As a result, none of China, Russia, or Iran could be brought before the ICJ over incidents of their transnational repression using compulsory jurisdiction. Pakistan has made a declaration recognizing the Court's compulsory jurisdiction, but has included a number of specific exclusions, including "all matters related to the national security of the Islamic Republic of Pakistan".[687] No other authoritarian regime discussed in this report has made a declaration recognizing the Court's compulsory jurisdiction.

A more likely route to the ICJ is through one of the relevant human rights treaties discussed above. As noted, various human rights treaties may be breached by authoritarian regimes engaged in transnational repression, including the ICCPR, the ICERD, the ICESCR, the CAT, the ICMW, and the CPED. Some of these treaties contain ICJ dispute resolution clauses.

The ICERD, the CAT, the ICMW, and the CPED all contain provisions that provide that disputes shall be submitted to the ICJ. Therefore, by ratifying those treaties, states parties essentially consent in advance to the ICJ's jurisdiction over disputes arising.

Article 22 of the ICERD provides that "[a]ny dispute between two or more States Parties with respect to the interpretation or application of this Convention, which is not settled by negotiation … shall, at the request of any of the parties to the dispute, be referred to the International Court of Justice…".

Article 30, paragraph 1 of the CAT similarly provides that:

> "Any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court."

Article 92, paragraph 1 of the ICMW, as well as Article 42, paragraph 1 of the CPED, are

[686] "Declarations recognizing the jurisdiction of the Court as compulsory: Iran, Islamic Republic of", International Court of Justice, https://www.icj-cij.org/declarations/ir.

[687] "Declarations recognizing the jurisdiction of the Court as compulsory: Pakistan", International Court of Justice, https://www.icj-cij.org/declarations/pk.

almost word-for-word the same as the above.

The ICJ recently reaffirmed in its order on provisional measures in the case of Gambia v. Myanmar (relying on Belgium v. Senegal) that a state need not be "specially affected" to bring a case against another state party for breach of the Genocide Convention.[688] The court concluded "that any State party … and not only a specially affected State, may invoke the responsibility of another State party".[689] This should be applicable to states parties bringing disputes to the ICJ under other human rights treaties.

Therefore, a state party such as Canada that may not have been "specially affected", should not be barred from bringing a case to the ICJ for this reason. If the state is a party to the relevant treaty, they should be able to bring the case before the ICJ.[690]

China, Russia, and Iran are all states parties to the ICERD, as is Canada. China and Russia are states parties to the CAT, as is Canada. Iran is not a state party to the CAT, and none of China, Russia, Iran, or Canada are states parties to the ICMW or the CPED.

China has made reservations under each treaty declaring that they are not bound by Article 22 of the ICERD, or Article 30 of the CAT, respectively.

Under international law, a state may sign and ratify a treaty, but make certain reservations regarding articles to which it does not consent to be bound. As described by the Office of the High Commissioner for Human Rights (OHCHR), "[a] reservation is a statement … made by a State by which it purports to exclude or alter the legal effect of certain provisions of a treaty in their application to that State. A reservation may enable a State to participate in a multilateral treaty in which it would otherwise be unable or unwilling to do so."[691] However, "[r]eservations cannot be incompatible with the object and purpose of the treaty".[692] Therefore, a state party may bring a dispute against the Chinese government for its violations of the ICERD and/or the CAT and ask the ICJ to conclude that the Chinese government's reservation(s) should be considered invalid because they are incompatible with the object and purpose of the treaty.

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[688] "ICJ Order on Provisional Measures: The Gambia v Myanmar", OpinioJuris, 2020, http://opiniojuris.org/2020/01/24/icj-order-on-provisional-measures-the-gambia-v-myanmar/.
[689] Ibid.
[690] "Q&A: The Gambia v Myanmar, Rohingya Genocide at The ICJ, May 2020 Factsheet", Global Centre for the Responsibility to Protect, 2020, https://www.globalr2p.org/publications/myanmarqav2/. Note that the state would have to have not made a reservation under the relevant article.
[691] Office of the UN High Commissioner for Human Rights, "Glossary of technical terms related to the treaty bodies", https://www.ohchr.org/en/treaty-bodies/glossary-technical-terms-related-treaty-bodies#:~:text=A%20reservation%20may%20enable%20a,approve%20or%20accede%20to%20it.
[692] "What are reservations to treaties and where can I find them?" Dag Hammarskjöld Library, https://ask.un.org/faq/139887#:~:text=Reservations%20cannot%20be%20incompatible%20with,withdrawn%20at%20a%20later%20date.

The ICJ examined this question in the context of the Genocide Convention in the case of Rwanda's reservation. The Democratic Republic of the Congo (DRC) contended "that Rwanda's reservation was invalid because it sought to prevent the Court from safeguarding peremptory norms".[693] Although the Court in that case disagreed with the DRC and held that the reservation was not incompatible with the object and purpose of the Genocide Convention[694], Judge Koroma provided a strong dissenting opinion. Judge Koroma held that Rwanda's Article IX reservation was contrary to the object and purpose of the Genocide Convention, which is "the prevention and punishment of the crime of genocide, and this encompasses holding a State responsible whenever it is found to be in breach of its obligations under the Convention".[695]

There is no concept of stare decisis in international law (i.e., relying on precedent set by previous cases or decisions). The Statute of the International Court of Justice, at Article 59, explicitly provides that a "decision of the Court has no binding force except between the parties and in respect of that particular case." This means that if asked again, and especially in a different situation and in regard to a different treaty, the ICJ would be free to decide differently. The ICJ would be free to decide that China's reservations under this and other treaties are invalid.

This means that Canada may be able initiate a case against China at the ICJ under the ICERD and/or CAT for certain instances of their transnational repression, and request that the ICJ find China's reservation(s) invalid so that they can examine the case. Canada may also initiate cases against Russia at the ICJ under the ICERD and/or the CAT. Although Iran is also a state party to the ICERD, there is less of an indication that Iran's transnational repression fits under that treaty, as it does not appear based on race or ethnic or national origin.

A final option is bringing a case against China and/or Russia under the UN Genocide Convention, which also contains an ICJ dispute resolution provision.

Incidents of transnational repression by China would not, in isolation, constitute genocide. However, the Chinese government has been found, by multiple, credible bodies, to be responsible for committing genocide against Uyghurs and other Turkic Muslims.

For instance, as early as October 2020, and following multiple hearings on the subject, the Canadian Subcommittee on International Human Rights was "persuaded that the actions of the Chinese Communist Party constitute genocide as laid out in the Genocide Convention".[696] The Newlines Institute for Strategy and Policy and the

[693] Case Concerning Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo v. Rwanda), International Court of Justice, 3 February 2006.
[694] Ibid at paras 66-70.
[695] Dissenting Opinion of Judge Koroma at para 12, https://www.legal-tools.org/doc/34abef/pdf.
[696] "Statement By The Subcommittee On International Human Rights Concerning The Human Rights Situation Of Uyghurs And Other Turkic Muslims In Xinjiang, China",

Raoul Wallenberg Centre for Human Rights concluded, based on the evidence, that the Chinese government is committing genocide under all five underlying acts enumerated in Article II of the Genocide Convention.[697] Numerous parliaments and governments have recognized the genocide, including in Canada, the US, Ireland, Taiwan, France, the UK, the Netherlands, Czech Republic, Estonia, Lithuania, Belgium, and the European parliament. China's use of transnational repression must be seen in this context.

There is also evidence that Russia is in breach of the UN Genocide in the context of Ukraine.[698] Russia's use of transnational repression should also be seen in this context.

Both China and Russia are states parties to the Genocide Convention. Article IX of the Genocide Convention provides that,

> "Disputes between the Contracting Parties relating to the interpretation, application or fulfilment of the present Convention, including those relating to the responsibility of a State for genocide or for any of the other acts enumerated in article III, shall be submitted to the International Court of Justice at the request of any of the parties to the dispute."[699]

China has made a reservation, declaring that it is not bound by Article IX. However, for the same reasons as above, a state party to the Genocide Convention may still initiate a case at the ICJ, and ask the Court to find that China's reservation is invalid for being incompatible with the object and purpose of the treaty. Russia has not made a reservation.

A final option is to seek an advisory opinion from the ICJ. The ICJ is entitled to provide advisory opinions on legal questions referred to it by authorized United Nations organs and agencies. An advisory opinion is not binding, but it does often carry persuasive weight. For example, following the ICJ's 2004 advisory opinion, Legal Consequences of the Construction of a Wall in Occupied Palestinian Territory, referred to it by the UN General Assembly, Israeli courts overseeing a wall's construction directed Israel's government to adjust its direction due to constitutionality concerns. Although Israel did not accept the ICJ's opinion, it still changed course. Seeking an advisory opinion from the ICJ on Chinese, Russian, and/or Iranian culpability for incidents of transnational repression may push these regimes to change course. Of course, the

Subcommittee on International Human Rights of the Standing Committee on Foreign Affairs and International Development, House of Commons Chambre Des Communes Canada, 21 October 2020.

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

[698] "An Independent Legal Analysis of the Russian Federation's Breaches of the Genocide Convention in Ukraine and the Duty to Prevent", Newlines Institute for Strategy and Policy and the Raoul Wallenberg Centre for Human Rights, May 2022.

[699] UN General Assembly, Convention on the Prevention and Punishment of the Crime of Genocide, 9 December 1948, Article IX.

major hurdle to seeking an advisory opinion would be to get the necessary votes in the UN General Assembly or other authorized UN organ or agency. This may prove difficult with the influence held by particularly China and Russia at the United Nations.

United Nations Human Rights Bodies

Violations of internationally recognized human rights can be brought to the various UN human rights bodies. These include the human rights treaty bodies; the special procedures, including special rapporteurs and working groups; and the United Nations Human Rights Council.

Human rights treaty bodies are tasked with monitoring states parties' compliance with international human rights treaties. Each human rights treaty is monitored by its own human rights treaty body. For example, the Committee against Torture monitors states parties' implementation and compliance with the Convention Against Torture; the Human Rights Committee monitors states parties' implementation and compliance with the International Covenant on Civil and Political Rights; and the Committee on the Rights of the Child monitors states parties' implementation and compliance with the Convention on the Rights of the Child. Human rights treaty bodies may investigate Chinese, Russian, and/or Iranian compliance with treaties to which they have acceded, and publish periodic reports.

Treaty bodies are generally empowered to engage in country reviews and write periodic reports. However, for the treaty bodies monitoring the CAT, the CPED, and the ICMW to be able to receive and consider complaints about a particular state party, the state party would have had to make a specific declaration recognizing the competence of the treaty body to receive and consider complaints. Regarding the CAT, China has not done so, but Russia has. Regarding the CPED and the ICMW, as noted, none of China, Russia, or Iran are even states parties. Iran is not a state party to the CAT. As a result, complaints may be lodged against Russia for any violations of the CAT, but that is just about the only remedy available pursuant to these human rights treaty bodies.

For the treaty bodies monitoring the ICCPR, the ICESCR, and the ICERD, a state party would have had to ratify the relevant Optional Protocol in order for that body to receive and consider individual complaints. Between China, Russia, and Iran, only Russia has done so and only with respect to the ICCPR and the ICERD.

Inter-state complaints to the treaty body monitoring the ICERD may be launched so long as the state party has not made a reservation pursuant to Articles 11-13 of the ICERD. None of China, Russia, or Iran have done so. As a result, while individual communications are limited to complaints about Russia, the inter-state communications procedure under the ICERD may be leveraged with respect to China, Russia, and Iran.

Inter-state complaints to the treaty body monitoring the ICCPR may be launched only if a specific declaration, recognizing the competence of the Committee, is made by

the state party.[700] Neither China nor Iran has done this; Russia has.

The treaty body monitoring compliance with the ICESCR will only consider inter-state complaints if the state parties have ratified the relevant Optional Protocol. As noted, none of China, Russia, or Iran have ratified this Optional Protocol.

In sum, the human rights treaty bodies may be leveraged in several ways. Individuals and/or states may lodge a complaint against Russia for violations of the CAT, the ICCPR, and/or the ICERD. Further, inter-state complaints may be made against China and/or Iran for violations of the ICERD. This is particularly significant for China, considering the depth of evidence that China is engaged in transnational repression of Uyghurs and the broad definition of "racial discrimination" in the ICERD, as discussed above.

Besides leveraging the human rights treaty bodies, complaints of human rights breaches may also be lodged with the special procedures of the Human Rights Council. The special procedures are international human rights experts with mandates to advise and report on human rights from either a thematic or a country-specific perspective. They can act on individual cases of reported violations, conduct annual studies, undertake country visits, and engage in advocacy. Any individual or group can submit information to special procedures.[701]

Special procedures are either special rapporteurs or working groups. Although there is no specific special procedure on transnational repression, several special procedures have mandates that may be relevant, including:

- the Working Group on Arbitrary Detention;
- the Working Group on the issue of human rights and transnational corporations and other business enterprises;
- the Special Rapporteur in the field of cultural rights;
- the Working Group on Enforced or Involuntary Disappearances;
- the Special Rapporteur on extrajudicial, summary, or arbitrary executions;
- the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression;
- the Special Rapporteur on the rights to freedom of peaceful assembly and of association;
- the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health;
- the Special Rapporteur on the situation of human rights defenders;

[700] "Inter-state complaints", United Nations Office of the High Commissioner for Human Rights, https://www.ohchr.org/en/treaty-bodies/human-rights-bodies-complaints-procedures/inter-state-complaints.

[701] The complaint form can be found at https://spsubmission.ohchr.org/. Communications may also be sent by mail to Special Procedures, OHCHR-UNOG, 8-14 Avenue de la Paix, 1211 Geneva 10, Switzerland.

- the Special Rapporteur on the rights of indigenous peoples;
- the Independent expert on the promotion of a democratic and equitable international order;
- the Special Rapporteur on the right to privacy;
- the Special Rapporteur on freedom of religion or belief;
- the Special Rapporteur on contemporary forms of slavery, including its causes and its consequences;
- the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; and
- the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

All these special procedures can be engaged by individuals, groups, or concerned states. One that may be particularly important to engage is the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism. The Chinese government justifies its oppression of the Uyghurs by claiming that, among other things, it is countering terrorism. Russia utilizes this justification as well in the context of its crimes against Ukrainians. Engagement by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, and particularly country visits to the relevant regions by that Special Rapporteur, would be valuable.

Complaints of human rights violations may also be lodged with the UN Human Rights Council. Any individual, group, or non-governmental organization can submit a complaint to the Council, against any state member of the United Nations. There are seven criteria for admissibility:

a. The complaint must be in writing, in one of the six UN official languages (English, French, Arabic, Chinese, Russian, or Spanish);
b. It must contain a description of the relevant facts, including the names of the alleged victims, dates, and location, and contain as much detail as possible without exceeding 15 pages;
c. It must not be manifestly politically motivated;
d. It must not be exclusively based on reports disseminated by mass media;
e. It is not already being dealt with by a special procedure, a treaty body, or other UN or similar regional complaints procedure in the field of human rights;
f. Domestic remedies must have been exhausted, unless it appears that such remedies would be ineffective or unreasonably prolonged;
g. It must not use language that is abusive or insulting.[702]

[702] Communications to the UN Human Rights Council may be sent by email (CP@ohchr.org), fax (41 22 917 90 11), or mail (Complaint Procedure Unit, Human Rights Council Branch, Office of the United Nations High Commissioner for Human Rights, United Nations Office at Geneva, CH-1211 Geneva 10, Switzerland). The complaint form can be found online at https://www.ohchr.org/en/hr-

In terms of remedies, the Council can pass a condemnatory resolution or establish a commission of inquiry. In addition, any country can deliver an oral statement to the Council, whether that country is a member or not.

The difficulty is that the Human Rights Council may only be an option in theory. China's position may, in effect, preclude action. The UN Human Rights Council has long been populated by some of the world's worst human rights violators, including China, Eritrea, Sudan, Cuba, and Pakistan. This reality has, unfortunately, served to undermine the credibility of the Human Rights Council and draw the ire of many civil society leaders.[703] However, it is noteworthy that the UN General Assembly recently voted to suspend Russia from the Council in response to its invasion of Ukraine. This may indicate that the Council may be willing to take action vis-à-vis Russia's transnational repression, and perhaps Iran's. Further, if China were to be similarly suspended from the Human Rights Council, lodging a human rights violation complaint against China's transnational repression may be an option not just in theory but in practice.

International Criminal Court

International criminal law is a distinct field that is similarly capable of holding states to account via the prosecution of their high-ranking officials. International criminal law prohibits crimes of genocide, crimes against humanity, war crimes, and in some instances, the crime of aggression. Although international criminal law is an expansive field that has seen several international tribunals and other attempts to enforce the law, the International Criminal Court (ICC) in The Hague, the Netherlands, has the broadest jurisdiction and is most likely to be relevant in these circumstances. The ICC is governed by the Rome Statute and is responsible for prosecuting international criminals.

The ICC has specific jurisdictional restraints: It can only investigate crimes that occur in the territory of a state party, or crimes committed by state party nationals. These restraints are in effect unless the court has received a specific declaration by a non-state party accepting jurisdiction or a mandate from the UN Security Council to investigate a specific situation. Then, it can investigate and prosecute the above-mentioned international crimes: genocide, crimes against humanity, war crimes, and in some instances, the crime of aggression.

None of China, Russia, or Iran are states parties to the Rome Statute. However, Canada is a state party to the Rome Statute. To the extent that incidents of transnational repression are occurring in Canada (or in the territories of other states that are parties to the Rome Statute), the ICC may have territorial jurisdiction to investigate.

The major hurdle would be construing transnational repression as falling within one of the international crimes contained in the Rome Statute. Incidents of transnational

bodies/hrc/complaint-procedure/hrc-complaint-procedure-index.

[703] See for example, the advocacy of Hillel Neuer (@HillelNeuer) of UN Watch, https://twitter.com/hillelneuer?s=21.

repression would not be war crimes, and would unlikely rise to the level of crimes against humanity. However, certain crimes committed in Canada may arguably be investigable in the context of ongoing genocides.

It is well-established that the Chinese government is committing genocide against Uyghurs and other Turkic Muslims. This has been the conclusion drawn by multiple, credible bodies. For example, the Canadian Subcommittee on International Human Rights in October 2020 concluded that "the actions of the Chinese Communist Party constitute genocide as laid out in the Genocide Convention".[704] The Newlines Institute for Strategy and Policy and the Raoul Wallenberg Centre for Human Rights similarly concluded that the Chinese government is committing genocide under all five underlying acts enumerated in Article II of the Genocide Convention.[705] Numerous parliaments and governments have recognized that China is committing genocide against Uyghurs and other Turkic Muslims, including Canada. China's use of transnational repression must be seen in this context.

The Chinese government aims to destroy Uyghurs and other Turkic Muslims, and in pursuit of this aim, pursues them across borders. In an August 2019 report, the Uyghur Human Rights Project (UHRP) documented that the Chinese Communist Party "is implementing a systematic, ambitious, multi-year, well-resourced, relentless and cruel policy to inflict pain and suffering on Uyghurs abroad".[706] Part II of this report has already detailed the scale of this repression, including the Chinese government's unprecedented efforts to have Uyghurs outside of China forcibly returned to China, where they would almost certainly face arbitrary detention and torture in Chinese custody. These activities abroad are part and parcel of the genocide happening in China. An argument may be made that the transnational repression occurring in Canada is part of the genocide, and as such, may be properly investigated by the Court.

The same argument may be made for Russia's targeting of Ukrainians in Canada. Evidence is mounting that Russia is committing genocide against Ukrainians[707], and the ICC has already opened an investigation into atrocity crimes, including genocide, committed by Russia in Ukraine.

[704] "Statement By The Subcommittee On International Human Rights Concerning The Human Rights Situation Of Uyghurs And Other Turkic Muslims In Xinjiang, China", Subcommittee on International Human Rights of the Standing Committee on Foreign Affairs and International Development, House of Commons Chambre Des Communes Canada, 21 October 2020.
[705] "The Uyghur Genocide: An Examination of China's Breaches of the 1948 Genocide Convention", Newlines Institute for Strategy and Policy and the Raoul Wallenberg Centre for Human Rights, March 2021.
[706] "Repression Across Borders: The CCP's Illegal Harassment and Coercion of Uyghur Americans", Uyghur Human Rights Project, August 2019.
[707] Kristina Hook, "The Russian Federation's Escalating Commission of Genocide in Ukraine: A Legal Analysis", Newlines Institute for Strategy and Policy and the Raoul Wallenberg Centre for Human Rights, 26 July 2023.

To the extent that Russia is engaged in incidents of transnational repression in Canada connected with the genocide abroad, such incidents may be investigable by the ICC as part of its probe into Putin's genocide.

Domestic Legal Framework and Mechanisms

There is no specific domestic legislation in Canada that effectively tackles foreign interference and transnational repression. There are several domestic laws that may encompass certain incidents, spanning four categories: human rights law, civil law, criminal law, and immigration law. More specific, but still insufficient in their current forms, are the CSIS Act, the Security of Information Act, the Lobbying Act, and the Canada Elections Act. There are also various government agencies and other mechanisms tasked with combatting foreign interference. These domestic laws and mechanisms are discussed in turn.

Human Rights Law

Each province and territory has its own human rights legislation and mechanisms. For example, in Ontario, the human rights system is made up of three agencies: the Ontario Human Rights Commission, which focuses on legal action and policy development; the Human Rights Legal Support Centre, which provides legal help to individuals who have experienced discrimination under the Ontario Human Rights Code ("OHRC"); and the Human Rights Tribunal, where human rights applications are filed and decided.[708]

The OHRC, which was enacted in 1962, prohibits actions that discriminate against people based on a protected ground in a protected social area.[709]

The OHRC defines harassment as "a course of vexatious comment or conduct that is known, or ought reasonably to be known, to be unwelcome", and includes offensive comments or actions related to the OHRC grounds.[710] The protected grounds include citizenship, ethnic origin, place of origin, and creed. The five protected social areas are accommodation (housing); contracts; employment; goods, services and facilities; and membership in unions, trade or professional associations.

The OHRC may apply to very specific, individual cases of transnational repression. For example, it could apply to Hannah's case, whose landlord kicked her out of her Toronto home after discovering that she was a Falun Gong practitioner. Another type of transnational repression that might violate the OHRC are cases of reprisal. Individuals that face reprisal (punishment or retaliation), or threats of reprisal, because they claimed their rights, refused to discriminate against someone else, or participated in a human rights proceeding may bring a claim before the Human Rights Tribunal of Ontario. This

[708] Ontario Human Rights Commission, "About the Commission"; Human Rights Legal Support Centre, "Defending your Human Rights in Ontario", Government of Ontario; Human Rights Tribunal of Ontario, "About the HRTO", Government of Ontario; Human Rights Code, R.S.O. 190, c. H.19. [OHRC]
[709] Ibid.
[710] Human Rights Tribunal of Ontario, "What We Do", Government of Ontario.

could apply, for example, to individuals who have received threats for not cutting off professional contacts due to their ethnicity, like Uyghurs or Tibetans.

One example is that of Daiming Huang, a Chinese Canadian Falun Gong practitioner who brought a complaint to the Ontario Human Rights Tribunal after having her membership in the Ottawa Chinese Seniors Association ("OCSA") revoked. Ms. Huang claimed that she faced discriminatory remarks from OCSA leadership and was forced to withdraw her membership, excluding her from their services, due to her belief in Falun Gong.[711] She claimed that her membership was revoked after the OCSA received propaganda from the Chinese government asserting that Falun Gong was an evil cult.[712] The Tribunal heard from an OCSA member who stated that he overheard an official from the Chinese consulate tell the Association that they must exclude Falun Gong practitioners.[713]

While her membership was revoked in late 2001, the Tribunal case was not resolved until 2011. The Tribunal ruled in Ms. Huang's favour, finding that the OSCA had violated the Ontario Human Rights Code, but did not find that the discrimination was directed by the Chinese embassy.[714] The judge disregarded the testimony concerning the Consul General's statement as it did "not stand up to examination in terms of reasonableness or consistency with the other evidence and the circumstances".[715] Ms. Huang was awarded $15,000,[716] but Grace told us that by this time, the OSCA had dissolved, and thus she did not receive any compensation.

There is no analogous federal human rights code in Canada. The rights and freedoms believed to be necessary for a free and democratic society are enshrined in the Canadian Charter of Rights and Freedoms ("Charter"). Incidents of transnational repression may prevent individuals from exercising their rights and freedoms guaranteed under the Charter. However, the Charter applies only to governments in Canada; it does not apply to actions by organizations, businesses, or people. In certain narrow instances, victims of transnational repression may be able to successfully argue that their Charter rights were violated where, for example, law enforcement officials failed to act. The Charter imposes a mix of positive and negative obligations on governments, and to the extent that the Charter imposes a positive obligation, it may apply to government inaction.

The Charter may also come into play where the Canadian government implements policy or legislation to prevent acts of transnational repression, and that policy or legislation (inadvertently or not) infringes upon Canadians' Charter rights. To guard against this, the Canadian government should rely on human rights organizations to assist in the drafting and implementation of any policy or legislation designed to combat transnational repression. The government

[711] Huang v 1233065 Ontario, 2011 HRTO 825 (CanLII), at para 5.
[712] Ibid at paras 110-116.
[713] Ibid at para 69.
[714] Ibid at para 70.
[715] Ibid.
[716] Ibid at para 142.

should also work with diaspora organizations at every step.

Civil Law

To our knowledge, neither civil nor criminal law (discussed below) has been used in the context of individual acts of transnational repression in Canada. This is not surprising; victims contemplating civil suits may face several obstacles in seeking justice.

In Canada's common law system, a civil tort consists of a wrongful act or injury that leads to physical, emotional, or financial damage to a person, and where another person can be held legally responsible.[717] To receive compensation for an intentional tort claim in court, the victim must prove that the defendant intended to cause them harm, and that their injuries directly caused them harm.[718]

There are torts that could potentially be used by victims of transnational repression to seek redress in court. However, there are several issues that may arise in this context.

The first issue stems from identifying perpetrators. It may be difficult to attribute acts to a clear perpetrator to hold responsible. Even where individual perpetrators are identified, they may try to claim diplomatic immunity. Diplomatic immunity generally protects diplomats and embassy personnel from criminal and/or civil proceedings, although this may not be so when an individual does not act in their official capacity. For example, in February 2004, the Deputy Consul General of China in Toronto, Pan Xinchun, was ordered to pay damages to Falun Gong practitioner Joel Chipkar after defaming him in a letter published in the Toronto Star by saying he was a member of a "sinister cult" designed to "instigate hatred".[719] According to its post-ruling statement, China had made several requests to Canada's Department of Foreign Affairs and International Trade to intervene.[720] The Chinese government also released a statement saying that Mr. Pan was "acting on the instructions of PRC to respond to an attack", and that he "was acting in the exercise of consular functions and is thus immune from Canadian courts' jurisdiction".[721] The judge found that as Mr. Pan was not acting in an official capacity at the time, diplomatic immunity did not protect him in this case.[722]

If one tries to launch a civil suit against a state organ rather than an individual perpetrator, Canada's State Immunity Act may preclude the action. Canada's State Immunity Act provides that foreign states are generally immune from the jurisdiction of domestic courts, unless the situation fits one of the specific, limited exceptions articulated

[717] Lewis N. Klar, "Torts in Canada", The Canadian Encyclopedia, 30 July 2013, last edited 30 October 2020, https://www.thecanadianencyclopedia.ca/en/article/torts.
[718] Ibid.
[719] Chris Lackner, "Court seeks diplomat's assets", The Globe and Mail, 29 July 2004 [Chris Lackner]; See also: Minghui.org, "Toronto Star Reports on Falun Gong Practitioner's Victory of Libel Lawsuit", 6 February 2004. [Minghui.org]
[720] Ibid.
[721] Ibid.
[722] Ibid.

in the Act. The majority in Kazemi Estate v. Islamic Republic of Iran held that Canada's State Immunity Act may also preclude suits against individual perpetrators, to that extent that they are public officials acting in their official capacity.[723] However, a strong dissenting opinion by Justice Abella in that case held that the State Immunity Act does not apply to the individual perpetrators and that the proceedings against those lower-level officials who committed torture is not barred by immunity ratione materiae[724], as "[t]orture cannot … be an official state act for the purposes of immunity ratione materiae".[725]

In terms of the potential availability of civil lawsuits for acts of transnational repression, section 6 of the State Immunity Act may apply to restrict the immunity of a foreign state and/or state officials. Section 6 provides that "a foreign state is not immune from the jurisdiction of a court in any proceedings that relate to (a) any death or personal or bodily injury, or (b) any damage to or loss of property that occurs in Canada."[726]

The case law is clear that Section 6 only applies when the acts causing injury or damage occurred domestically. The Supreme Court of Canada has held that this exception to state immunity "does not apply where the impugned events, or the tort causing the personal injury or death, did not take place in Canada."[727] However, to the extent that acts of transnational repression occur in Canada and cause death or personal or bodily injury, or any damage to or loss of property – it is possible that foreign states and/or state actors may be susceptible to civil suit.

The Supreme Court of Canada held in Schreiber v. Canada (Attorney General) that the exception to state immunity contained in Section 6 (a) "applies to all torts committed by a foreign state which cause death or personal injury".[728] The Court in that case further held that this exception "is applicable to both [acts of government] and [acts of a commercial nature]", as to suggest otherwise would "deprive the victims of the worst breaches of basic rights of any possibility of redress in national courts".[729] It stated:

> "Given the recent trends in the development of international humanitarian law enlarging this possibility in cases of international crime…such a result would jeopardize at least in Canada a potentially important progress in the protection of the rights of the person."[730]

[723] Kazemi Estate v. Islamic Republic of Iran, 2014 SCC 62. [Kazemi]

[724] Immunity ratione materiae applies in respect of official acts performed for or on behalf of a state. Immunity ratione materiae is distinguished from immunity ratione personae, which is a blanket immunity attaching to all acts performed by high-ranking officials such as heads of state.

[725] Kazemi, supra note 723 at para 229.

[726] State Immunity Act, RSC 1985, c. S-18, s. 6. [State Immunity Act]

[727] Kazemi, supra note 723 at para 73.

[728] Schreiber v. Canada (Attorney General), 2002 SCC 62 at para 32. [Schreiber]

[729] Ibid.

[730] Ibid at para 37.

The scope of personal injury covered by Section 6 (a) is not solely physical. In Walker v. Bank of New York Inc, the Ontario Court of Appeal held that the scope of personal injury covered can include mental distress, emotional upset and the restriction of liberty.[731] In later case law, the Ontario Court of Appeal in United States of America v. Friedland clarified that Section 6 (a) extends to mental distress and emotional upset "only in so far as such harm arises from or is linked to a physical injury".[732] The Court also clarified in that case that Section (b) "refers to physical harm to or loss or destruction of property" and "does not extend to pure economic loss.[733]

The Supreme Court of Canada in Schreiber v. Canada (Attorney General) agreed with the respondent in Friedland "that the scope of the exception in s. 6(a) is limited to instances where mental distress and emotional upset were linked to a physical injury."[734] It noted that "[f]or example, psychological distress may fall within the exception where such distress is manifested physically, such as in the case of nervous shock."[735] The Supreme Court of Canada further clarified in Kazemi Estate v. Islamic Republic of Iran that this exception does not apply where the injury suffered does not stem from a physical breach of personal integrity; rather, it applies "only when psychological distress manifests itself after a physical injury."[736]

Of course, any claims for harm in a civil suit must still meet the tort law requirement that the action "proximately caused" the injury, which may be difficult to prove.[737]

Relatedly, and with respect to any civil suit, another issue that may arise is that victims may struggle with producing evidence. Despite the burden of proof being lower than in a criminal case, many torts still have high tests to meet. In the case mentioned above, Mr. Pan did not attend the hearing to offer a defense, and thus the allegations, by default, were accepted as admissions.[738]

Finally, these cases can be emotionally and financially taxing. They often take several years to complete. Victims often must relive the trauma they experienced and may have very little support. Victims may have to review all the harassing messages, every post and every comment about them. It can be incredibly difficult and draining.

On top of the mental toll, cases can become expensive. Even if a plaintiff wins, it is possible that a judgment for damages cannot be enforced where the defendant has no assets or cannot be located. A defendant may return to the perpetrating state to avoid paying damages. In Mr.

[731] Walker v. Bank of New York Inc, 111 DLR (4th) 186, 16 OR (3d) 504.
[732] United States of America v. Friedland, 182 DLR (4th) 614, 46 OR (3d) 321 at para 25.
[733] Ibid at paras 26-27.
[734] Schreiber, supra note 728 at para 42.
[735] Ibid.
[736] Kazemi, supra note 723 at para 75.
[737] Doe v. Holy See, 434 F. Supp. (2d) 925, 948 (D. Or. 2006), aff'd in part, rev'd in part, 557 F. (3d) 1066 (9th Cir. 2009), cert. denied sub nom. Holy See v. Doe, 130 S. Ct. 3497 (mem.) (2010); Skeen v. Federative Republic of Brazil, 566 F. Supp. 1414, 1417 (DDC 1983).
[738] Minghui.org, supra note 719.

Chipkar's case, although he was awarded $1,000 for the defamation and $10,000 to cover his legal fees, attempts to access Mr. Pan's personal bank account at the Bank of China were unsuccessful. The Court issued a notice to seize his personal assets.[739] Grace told us that soon after, Mr. Pan returned to China. However, most provinces and territories do operate victim compensation funds that may allow individuals to receive some compensation.

Assuming these issues can be overcome, there are a handful of torts in Canadian jurisdictions that may cover certain acts of transnational repression, including defamation, intentional infliction of mental suffering, intimidation, and online harassment. Other torts may also be committed in the context of transnational repression, including assault, battery, vandalism, invasion of privacy, or trespassing.[740]

Victims who have suffered damages as a result of an untrue statement may be able to sue for defamation, such as those who have had their reputations smeared online. The Supreme Court of Canada discussed the necessary elements to find a publication defamatory in the seminal case of Grant v. Torstar Corp.[741], stating:

> "[28] A plaintiff in a defamation action is required to prove three things to obtain judgment and an award of damages: (1) that the impugned words were defamatory, in the sense that they would tend to lower the plaintiff's reputation in the eyes of a reasonable person; (2) that the words in fact referred to the plaintiff; and (3) that the words were published, meaning that they were communicated to at least one person other than the plaintiff. If these elements are established on a balance of probabilities, falsity and damage are presumed, though this rule has been subject to strong criticism: see, e.g., R. A. Smolla, "Balancing Freedom of Expression and Protection of Reputation Under Canada's Charter of Rights and Freedoms", in D. Schneiderman, ed., Freedom of Expression and the Charter (1991), 272, at p. 282. … The plaintiff is not required to show that the defendant intended to do harm, or even that the defendant was careless. The tort is thus one of strict liability."

The tort of intentional infliction of mental suffering is well recognized in Canadian jurisdictions. It may cover harassing conduct in the context of transnational repression; however, its test is often difficult to meet, and awards are not often granted. The test to prove the tort of intentional infliction of mental suffering, set out in Prinzo v. Baycrest Centre for Geriatric Care[742], requires the plaintiff to prove that the conduct of the defendant is (1) flagrant and outrageous, (2) calculated to produce harm, and (3) results in a visible and provable illness. The first

[739] Chris Lackner, supra note 719.

[740] Torts and their legal tests may vary between provinces and territories. For consistency, in this section, we focus on torts available in Ontario.

[741] Grant v. Torstar Corp., 2009 SCC 61 (CanLII), [2009] 3 SCR 640.

[742] Prinzo v. Baycrest Centre for Geriatric Care, 2002 CanLII 45005 (ON CA).

element is objective. The court must be satisfied that the conduct was objectively, viewed in all of the circumstances, both flagrant and outrageous. The third element is also objective – whether the conduct resulted in a visible and proven illness.[743] The difficult part of the test to meet is the second element. It is not satisfied by mere evidence of foreseeability or reckless disregard. Rather, it must be proven that the harm is substantially certain to follow. Additionally, the kind of harm suffered must have been intended or known to be substantially certain to follow.[744]

The tort of intimidation was recognized by the Supreme Court of Canada in Central Canada Potash Co. Ltd. et al. v. Government of Saskatchewan[745]. In that case, the Court described the tort of intimidation as follows:

> "A commits a tort if he delivers a threat to B that he will commit an act or use means unlawful as against B, as a result of which B does or refrains from doing some act which he is entitled to do, thereby causing damage either to himself or to C. The tort is one of intention and the plaintiff, whether it be B or C, must be a person whom A intended to injure."[746]

In 2019, the Ontario Court of Appeal held that the tort of harassment does not currently exist in Ontario.[747] The Court in that case stated that the proposed tort of harassment is similar to the already established tort of intentional infliction of mental suffering. As the test for intentional infliction of mental suffering is less onerous than that proposed for harassment, the Court stated that it provides an easier route to a remedy.

However, there have been some recent cases that suggest online harassment may be an emerging tort in Ontario. In Caplan v. Atas, the Ontario Superior Court of Justice drew on precedent from the US, finding that the tort of online harassment should exist in Ontario.[748] The Court in that case created a three-part test:

1. The defendant maliciously or recklessly engaged in communications conduct so outrageous in character, duration, and extreme in degree so as to go beyond all possible bounds of decency and tolerance;
2. With the intent to cause fear, anxiety, emotional upset or to impugn the dignity of the plaintiff; and
3. The plaintiff suffers such harm.[749]

[743] "Intentional Infliction Of Mental Suffering In The Workplace ", Achkar Law, https://achkarlaw.com/intentional-infliction-of-mental-suffering-in-the-workplace/#:~:text=What%20Constitutes%20Intentional%20Infliction%20of,provable%20illness%20for%20the%20plaintiff.
[744] Ibid.
[745] Central Canada Potash Co. Ltd. et al. v. Government of Saskatchewan, 1978 CanLII 21 (SCC), [1979] 1 SCR 42.
[746] Ibid at p. 8.
[747] Merrifield v. Canada (Attorney General), 2019 ONCA 205 (CanLII).
[748] Caplan v. Atas, 2021 ONSC 670 (CanLII).
[749] Ibid.

The judge stated that "academic commentators are almost universal in their noting that, while online harassment and hateful speech is a significant problem, there are few practical remedies available for the victims".[750] In this case, the Court prohibited the defendant from engaging in any harassing or defamatory behavior online and allowed the plaintiffs to seek removal of the offending posts without the defendant's consent.[751]

The Ontario Superior Court in 385277 Ontario Ltd. v. Gold[752], also spoke of the "burgeoning tort of online harassment".[753] The Honourable Justice Myers stated:

> "[50] Current law is not always adequate to deal with internet harassment. One problem with existing tort law is that, generally, torts require proof of physical or provable mental injury…
> …
> [54] The point of harassment is to cause mental suffering or to change another's behaviour by subjecting them to unwelcomed torment. It may but need not lead to 'visible and provable illness'. It may not create a threat of imminent physical harm …
> [55] Existing torts do not necessarily capture the mischief or harm intended by online harassment meant to intimidate.
> …
> [57] The law has recognized for many years the particular threat that internet harassment poses to a person's reputation and well-being. In 2004, in Barrick Gold Corp. v. Lopehandia, 2004 CanLII 12938 (ON CA), at para. 34, Blair JA wrote:
>
> > …Internet defamation is distinguished from its less pervasive cousins, in terms of its potential to damage the reputation of individuals and corporations, by the features described above, especially its interactive nature, its potential for being taken at face value, and its absolute and immediate worldwide ubiquity and accessibility. The mode and extent of publication is therefore a particularly significant consideration in assessing damages in Internet defamation cases.
>
> …
> [59] The threat today of one's life being turned upside down because of something someone else says on the internet that is heard or read by strangers half a world away is real and cannot just be dismissed or ignored like a person with a megaphone on the street.
>
> [60] In Caplan v. Atas, 2021 ONSC 670 (CanLII) after eloquently making many of the foregoing points, my colleague Corbett J. accepted the following test for a new tort of internet harassment:

[750] Ibid at para 99.
[751] Ibid at para 228.
[752] 385277 Ontario Ltd. v Gold, 2021 ONSC 4717 (CanLII).
[753] Ibid at para 48.

> The plaintiffs propose, drawn from American case law, the following test for the tort of harassment in internet communications: where the defendant maliciously or recklessly engages in communications conduct so outrageous in character, duration, and extreme in degree, so as to go beyond all possible bounds of decency and tolerance, with the intent to cause fear, anxiety, emotional upset or to impugn the dignity of the plaintiff, and the plaintiff suffers such harm. [Notes omitted]

…

[62] On the other hand, people who believe that online freedom of expression has no boundaries and that the internet is a free-for-all from which they may deliberately harm their neighbours offer nothing positive to society. Whether people harass others online to gain clicks (and thereby make money), to hurt, or to intimidate, the law must be able to respond with some boundary to protect and preserve countervailing values like peoples' privacy, their right to go about their days unmolested, their right to health and to protect the health of their loved ones, and the rule of law.

> [63] A society that does not protect its neighbours and its members from deliberately inflicted harm cannot remain a community. There have to be limits to internet harassment and the law has to be able to impose those limits."[754]

Other cases accepting the possibility of the tort of online harassment have also emerged, including 2110120 Ontario Inc. o/a Cargo County v. Buttar[755], in which the Court appears to have accepted the possibility of a tort claim as a result of the defendants' "manipulation of social media to deliberately negatively impact" the plaintiff's business, and in 40 Days for Life v Dietrich et. al.[756], in which the Court stated that "there are grounds to believe that the claim based on the tort of internet harassment has substantial merit".[757]

Criminal Law

There is no specific foreign interference offence in the Criminal Code of Canada ("Criminal Code"). However, certain acts of transnational repression may, in some cases, amount to existing criminal offence(s).

Clearly, to the extent that an act of transnational repression involves kidnap, abduction, or murder, such acts are prohibited under the Criminal Code. Attempts to engage in these acts are also prohibited. However, as such incidents are less common in Canada, other criminal offences are more likely to be relevant. These include criminal harassment;

[754] Ibid at paras 50-63.
[755] 2110120 Ontario Inc. o/a Cargo County v. Buttar, 2022 ONSC 1766 (CanLII).
[756] 40 Days for Life v. Dietrich et. al., 2022 ONSC 5588 (CanLII).
[757] Ibid at para 92.

advocating or promoting genocide; public incitement of hatred; willful promotion of hatred; harassing communications; threats; assault; and mischief. These offences are described, briefly, in turn, although as always, the applicability of any of these offences will depend on the facts of any given case.

Criminal harassment is prohibited under Section 264 of the Criminal Code. It refers to harassing behaviour, including unwanted contact and stalking. It must cause the victim to reasonably fear for their safety, which has been interpreted to include both physical and psychological safety. Usually, the harassing behaviour must occur repeatedly, but a single incident that is particularly threatening may be sufficient. Examples of criminal harassment include repeatedly calling someone over the phone or leaving threatening messages, repeatedly contacting someone online, following someone or their family or friends, or monitoring or tracking someone. In Canada, less than 1% of criminal harassment cases involve physical injury to the victim.[758]

According to the Department of Justice's website, victims should call 911 if they are in immediate danger. Otherwise, they can call the regular police number to discuss their situation. They say that the "police can suggest ways to stop unwanted contact and improve your safety", including via victim service workers or crisis and counselling services. They continue that the police will investigate the complaint and collect as much evidence as possible. To assist the police, victims are asked to try to keep information on any relevant details about the perpetrator, including whether they have a gun or criminal record, detailed written records about every contact, and things the perpetrator has sent the victim, including phone messages.

The website states that "[i]f there is enough evidence of an offence, the police will charge the person". Where there may not be enough evidence, "police may suggest other legal options such as a peace bond, restraining order or protection order".[759]

Section 318 (1) of the Criminal Code makes it an offence to advocate or promote genocide, while Sections 319 (1) and (2) criminalize the public incitement of hatred and the willful promotion of hatred, respectively.

In 2004, two members of the Chinese consulate were accused of distributing anti-Falun Gong literature at a conference at the University of Alberta in Edmonton. Witnesses reported this incident to the police, claiming that the dissemination amounted to a hate crime. The Edmonton Police analyzed four distributed publications, claiming that Falun Gong view family as evil, and encourage suicide and the murder of friends and family members. The Edmonton Police recommended prosecution for the willful promotion of hatred.[760] Despite this recommendation, the Attorney General of Alberta refused consent

758 Government of Canada, "Stalking is a crime called criminal harassment", 8 December 2021.
759 Ibid.
760 Chen et al. v Attorney General of Alberta, (2007), 416 A.R. 14 (QB).

to prosecute.[761] The Attorney General referenced three previous cases on the dissemination of Nazi propaganda to show the dissimilarity between that and the anti-Falun Gong material.[762] In those cases, the Nazi propaganda was directly linked to the mistreatment of Jews and other minorities during the Holocaust, which was only possible due to the deliberate incitement of hatred. The Attorney General found that because the statements against Falun Gong differed, they did not amount to an incitement of hatred.

The complainants challenged the decision not to consent to prosecution, arguing that the Attorney General had failed to recognize the causal role of anti-Falun gong propaganda and its effect on their persecution. Counsel for the Attorney General responded that "[t]here is no evidence of a direct causal link between the two, i.e. that the circulation of the literature is what caused persecution in China".[763] The Court upheld the decision of the Attorney General, saying that it would not interfere with their exercise of discretion.[764]

However, the persecution of Falun Gong is made possible by propaganda. Grace told us that a police officer told her that the Attorney General had refused consent for political reasons.

Section 372 (3) of the Criminal Code prohibits harassing communications. It provides that "[e]veryone commits an offence who, without lawful excuse and with intent to harass a person, repeatedly communicates, or causes repeated communications to be made, with them by a means of telecommunication".[765] This provision could apply in certain cases of transnational repression, for example, where individuals are told that their family members are dead in efforts to silence them. Of course, this would only work where a perpetrator is identifiable.

Other relevant criminal offences may include uttering threats (Section 264.1(1)), assault (Section 265(1)), and mischief (Section 430(1)).

As discussed, the applicability of any of these provisions would have to be assessed on a case-by-case basis. Criminal charges may only be applicable where perpetrators can be identified. Further, some individual perpetrators may enjoy diplomatic immunity and would not be able to be criminally charged. As described above, immunity ratione personae applies to protect certain high-ranking officials, including heads of state, from the jurisdiction of any Canadian court, while immunity ratione materiae would protect lower-ranking officials engaged in official state acts. These immunities may present an insurmountable bar to prosecution in many instances.

Further, for any of these offences, the decision to prosecute is at the discretion of

[761] Ibid (Memorandum of the Applicants, 26 August 2006 at para 37).
[762] Ibid at para 3.
[763] Ibid (Respondent's brief at para 53).
[764] Ibid (Argument, Counsel for the Attorney General).
[765] Criminal Code, R.S.C., 1985, c. C-46)at s. 372(3) [Criminal Code].

the Attorneys General.[766] In R v Power,[767] the Supreme Court held that courts may intervene in this prosecutorial discretion only "where there is conspicuous evidence of improper motives or of bad faith or of an act so wrong that it violates the conscience of the community, such that it would genuinely be unfair and indecent to proceed".[768]

Victims may be able to launch criminal prosecutions in limited instances. In general, unless explicitly not permitted, private parties can launch criminal prosecutions. However, private prosecutions are rarely used. Launching a private prosecution is quite onerous. The private party must first lay the information before a Justice of the Peace; the information must be made under oath, in writing, and must set out the identity of the accused person, the particulars of the offence(s) alleged, and the relevant sections/legislation.[769] The private party must serve the information on the Attorney General. The court will then hold a pre-enquete hearing, in which a justice will consider the information, to decide whether a criminal prosecution should be commenced. The private party must provide reasonable notice to the Attorney General of the pre-enquete hearing and at the hearing the private party must demonstrate a prima facie case on all essential elements of the offence(s) alleged.[770] If all those steps are satisfied, a criminal prosecution may be initiated. At that time, the Attorney General has the option of taking over the prosecution or withdrawing the charges. If the Attorney General does nothing, the matter will proceed as a private prosecution.[771]

The default in the Criminal Code is that private prosecutions are permitted. However, this varies by offence. If a particular offence specifically includes that it requires the "consent of the Attorney General" (this does not have to be verbatim) – no private prosecution on that offence is permitted without the consent of the Attorney General. Further, if the accused person is not a Canadian citizen, the consent of the Attorney General of Canada is required.[772]

If the Canadian government wants to enhance the ability of victims to seek redress, it should develop clear public policy outlining when consent will or will not be provided. The request that the government establish public criteria is not novel. B'nai Brith Canada has requested the same in the context of private prosecutions for hate speech. As David Matas, Honorary Senior Legal Counsel to B'nai Brith Canada, submitted to the House of Commons Standing Committee on Justice and Human Rights in May 2019:

> "What we need is that the consent or denial of consent of the Attorney General be exercised according to principle. In British Columbia, the

[766] Krieger v. Law Society of Alberta, 2002 SCC 65 at para 46.
[767] R v Power, [1994] 1 SCR 601.
[768] Ibid at para 12.
[769] Jacob R. W. Damstra, "Private Prosecutions in the Public Interest?: Process, Possibilities, and Problems" Lerners, October 2016.
[770] Ibid.
[771] Ibid.
[772] Criminal Code, supra note 765 at s. 7 (7).

Crown Counsel Policy Manual provides that in almost all hate offences, the public interest applies in favour of prosecution.

Approvals for alternative measures should be given only if:

1. Identifiable individual victims are consulted and their wishes considered.
2. The offender has no history of related offences or violence.
3. The offender accepts responsibility for the act, and
4. The offence must not have been of such a serious nature as to threaten the safety of the community.

Those are criteria which could be adopted for denial of consent. There needs to be at least something, rather than, as now, a vacuum where consent can be denied arbitrarily, without explanation. … The grant or denial of consent by the Attorney General for hate speech crimes should be subject to clear public criteria. Reasons should be given for the grant or denial of consent and those reasons should explain why the criteria were or were not met."[773]

Immigration Law

IRCC screens immigration applications of those abroad seeking to enter Canada. IRCC officers identify applications that require further investigation, and CBSA officers carry out the investigations, before providing the IRCC with information and recommendations regarding admissibility. There are several reasons a person may be inadmissible to Canada. Many of these provisions may be utilized to find inadmissible those engaged in transnational repression.

For example, section 34 (1) of the Immigration Refugee Protection Act ("IRPA") states that a "permanent resident or a foreign national is inadmissible on security grounds for

(a) engaging in an act of espionage that is against Canada or that is contrary to Canada's interest;
(b) engaging in or instigating the subversion by force of any government;
(b.1) engaging in an act of subversion against a democratic government, institution or process as they are understood in Canada;
(c) engaging in terrorism;
(d) being a danger to the security of Canada;
(e) engaging in acts of violence that would or might endanger the lives or safety of persons in Canada; or
(f) being a member of an organization that there are reasonable grounds to believe engages, has engaged or will engage in acts referred to in paragraph (a), (b), (b.1) or (c)."[774]

[773] Written copy of submission available at: https://d3n8a8pro7vhmx.cloudfront.net/bnaibrithcanada/pages/2771/attachments/original/1556816941/Matas-Submission_02May2019.pdf?1556816941.

[774] Immigration and Refugee Protection Act, S.C. 2001, c. 27 at s. 34(1). [IRPA]

Section 33 clarifies that "[t]he facts that constitute inadmissibility under sections 34 to 37 include facts arising from omissions and, unless otherwise provided, include facts for which there are reasonable grounds to believe that they have occurred, are occurring or may occur".[775]

Section 34 (1) (a), (b.1), (d), (e), and (f) may all be applicable to individuals engaged in transnational repression and foreign interference, depending on the facts of the case.

Further, section 35 (1) of the IRPA states that a "permanent resident or a foreign national is inadmissible on grounds of violating human or international rights for

(a) committing an act outside Canada that constitutes an offence referred to in sections 4 to 7 of the Crimes Against Humanity and War Crimes Act;
(b) being a prescribed senior official in the service of a government that, in the opinion of the Minister, engages or has engaged in terrorism, systematic or gross human rights violations, or genocide, a war crime or a crime against humanity within the meaning of subsections 6(3) and (5) of the Crimes Against Humanity and War Crimes Act; or
(c) having engaged in conduct that would, in the opinion of the Minister, constitute an offence under section 240.1 of the Criminal Code [trafficking in human organs]."[776]

These sections may also be relevant, depending on the facts of the case.

Section 35.1 (1) of the IRPA provides that a foreign national who has been subject to sanction under the Special Economic Measures Act (SEMA) or the Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law) is inadmissible to Canada.[777] This would enable those engaged in transnational repression to be found inadmissible if they were subjected to sanctions under SEMA or the Sergei Magnitsky Law.

Section 36 of the IRPA covers inadmissibility due to criminality. Section 36 (2) provides that a "foreign national is inadmissible on grounds of criminality for … (d) committing, on entering Canada, an offence under an Act of Parliament prescribed by regulations".[778] This would enable those engaged in transnational repression to be found inadmissible if they were found to be committing an offence by virtue of their engagement in transnational repression.

Finally, section 40 might apply if the individual engaged in transnational repression was found to have misrepresented on their application to enter Canada. Section 40 (1) states that a "permanent resident or foreign national is inadmissible for misrepresentation (a) for directly or indirectly misrepresenting or withholding material facts relating to a

[775] Ibid at s. 33.
[776] Ibid at s. 35 (1).
[777] Ibid at s. 35.1 (1).
[778] Ibid at s. 36 (2).

relevant matter that induces or could induce an error in the administration of this Act".[779]

If an individual is found inadmissible under IRPA for any one of the above reasons, they could lose their status and face removal from Canada.

Diplomatic or consular staff engaged in acts of foreign interference may also be expelled from Canada using the Foreign Missions and International Organizations Act.[780] This Act requires foreign states to submit the names of their consular staff to the Government of Canada, although there is no requirement of public registration. This Act then provides that any member of a consular or diplomatic staff can be declared persona non grata, which could lead to their removal from Canada. This can be done for any reason, or without giving a reason.

The CSIS Act

The CSIS Act more specifically addresses foreign interference in that it defines "threats to the security of Canada" as including "foreign influenced activities within or relating to Canada that are detrimental to the interests of Canada and are clandestine or deceptive or involve a threat to any person".[781]

Beyond this definition, though, the CSIS Act does not appear to substantively address foreign interference. It deals primarily with the establishment, mandate, and duties and functions of the Canadian Security Intelligence Service. It is also out-of-date; Rigby and Juneau note that Canada has "not seriously reviewed the Canadian Security Intelligence Service Act since CSIS was established in 1984".[782] As such, it has not kept up to date with the progression of digital technologies, and the current legislation limits CSIS' ability to achieve its mandate.

The Security of Information Act

The Security of Information Act, formerly known as the Official Secrets Act, deals mostly with espionage by foreign states and terrorist organizations. It creates several offences, and enables perpetrators to be charged if they commit, attempt to commit, or conspire to commit, any one of the enumerated offences.[783]

The Security of Information Act creates several offences that effectively prohibit some acts of foreign interference, but many of the offences are limited. Most deal narrowly with espionage in government institutions. For example, section 4 prohibits the wrongful communication of information, but this appears to only relate to code words or other such secret information, or information acquired by virtue of someone's position in government.[784] Section 5 prohibits the unauthorized use of uniforms, falsification of reports, forgery, personation

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[779] Ibid at s. 40 (1).

[780] Foreign Missions and International Organizations Act, S.C. 1991, c. 41.

[781] CSIS Act, supra note 6 at s. 2.

[782] University of Ottawa Report, supra note 12 at p. 2.

[783] Security of Information Act, R.S.C., 1985, c. O-5 at s. 22-23. [Security of Information Act]

[784] Ibid at s. 4.

and false documents.[785] Section 6 prohibits approaching or entering a prohibited place, which is defined in Section 2 as a place relating to military/defence.[786] Sections 9-15 deal with special operational information and persons permanently bound to secrecy.[787] Section 16 prohibits certain communications with foreign states or terrorist groups if the person shares information "that the Government of Canada or … a province is taking measures to safeguard".[788] Section 17 prohibits communicating special operational information, and Section 18 prohibits persons with security clearance from communicating safeguarded information to a foreign entity or terrorist group.[789]

Section 19 prohibits economic espionage more broadly. Specifically, Section 19 (1) prohibits persons from, "at the direction of, for the benefit of or in association with a foreign economic entity [defined in Section 2 as an entity associated with a foreign state], fraudulently and without colour of right and to the detriment of Canada's economic interests, international relations or national defence or national security

(a) communicates a trade secret to another person, group or organization; or
(b) obtains, retains, alters or destroys a trade secret."[790]

It is a defence to this offence that a person "acquired [the information] in the course of the person's work and is of such a character that its acquisition amounts to no more than an enhancement of that person's personal knowledge, skill or expertise".[791] It is unclear, therefore, if Section 19 would effectively prohibit the type of foreign interference occurring in academia, for example, described above.

Section 20 (1) prohibits any person from, "at the direction of, for the benefit of or in association with a foreign entity or a terrorist group, induc[ing] or attempt[ing] to induce, by threat, accusation, menace or violence, any person to do anything or to cause anything to be done

(a) that is for the purpose of increasing the capacity of a foreign entity or a terrorist group to harm Canadian interests; or
(b) that is reasonably likely to harm Canadian interests".[792]

Section 20 (2) holds that "[a] person commits an offence under subsection (1) whether or not the threat, accusation, menace or violence occurred in Canada".[793]

These sections may cover some acts of transnational repression against individuals. However, the applicability of these sections is limited in several ways, including by the phrase "harm Canadian interests", which is defined in Section 3(2). Pursuant to Section 3(2), "harm is caused to Canadian interests if a foreign entity or terrorist group does [any

[785] Ibid at s. 5.
[786] Ibid at s. 6, s. 2.
[787] Ibid at s. 9-15.
[788] Ibid at s. 16.
[789] Ibid at s. 17-18.
[790] Ibid at s. 19 (1).
[791] Ibid at s. 19 (3) (b).
[792] Ibid at s. 20 (1).
[793] Ibid at s. 20 (2).

one of 14 enumerated acts]". The enumerated acts are as follows:

(a) commits, in Canada, an offence against the laws of Canada or a province that is punishable by a maximum term of imprisonment of two years or more in order to advance a political, religious or ideological purpose, objective or cause or to benefit a foreign entity or terrorist group;
(b) commits, inside or outside Canada, a terrorist activity;
(c) causes or aggravates an urgent and critical situation in Canada that
    (i) endangers the lives, health or safety of Canadians, or
    (ii) threatens the ability of the Government of Canada to preserve the sovereignty, security or territorial integrity of Canada;
(d) interferes with a service, facility, system or computer program, whether public or private, or its operation, in a manner that has significant adverse impact on the health, safety, security or economic or financial well-being of the people of Canada or the functioning of any government in Canada;
(e) endangers, outside Canada, any person by reason of that person's relationship with Canada or a province or the fact that the person is doing business with or on behalf of the Government of Canada or of a province;
(f) damages property outside Canada because a person or entity with an interest in the property or occupying the property has a relationship with Canada or a province or is doing business with or on behalf of the Government of Canada or of a province;
(g) impairs or threatens the military capability of the Canadian Forces, or any part of the Canadian Forces;
(h) interferes with the design, development or production of any weapon or defence equipment of, or intended for, the Canadian Forces, including any hardware, software or system that is part of or associated with any such weapon or defence equipment;
(i) impairs or threatens the capabilities of the Government of Canada in relation to security and intelligence;
(j) adversely affects the stability of the Canadian economy, the financial system or any financial market in Canada without reasonable economic or financial justification;
(k) impairs or threatens the capability of a government in Canada, or of the Bank of Canada, to protect against, or respond to, economic or financial threats or instability;
(l) impairs or threatens the capability of the Government of Canada to conduct diplomatic or consular relations, or conduct and manage international negotiations;
(m) contrary to a treaty to which Canada is a party, develops or uses anything that is intended or has the capability to cause death or serious bodily injury to a significant number of people by means of
    (i) toxic or poisonous chemicals or their precursors,

(ii) a microbial or other biological agent, or a toxin, including a disease organism,
(iii) radiation or radioactivity, or
(iv) an explosion; or

(n) does or omits to do anything that is directed towards or in preparation of the undertaking of an activity mentioned in any of paragraphs (a) to (m).[794]

It is not clear if this list would be considered exhaustive. In March 2007, the Standing Committee on Public Safety and National Security made several recommendations for changes to the Security of Information Act. One of the Standing Committee's recommendations was to make clear that the list of 14 enumerated acts prejudicial to the safety or interests of the State under section 3(1) is non exhaustive:

> "…it is not clear, from the wording of the section itself, whether the list of conduct is exhaustive or non-exhaustive. The Subcommittee does not believe that the 14 paragraphs are an exhaustive (closed) list, as it is not possible to envisage every act that would be prejudicial to Canada, and the former Official Secrets Act operated without a similar provision. Instead, we believe that section 3 lists conduct that, for certainty, is *deemed* to be prejudicial, and that it leaves open the possibility of other conduct that a court might find to be prejudicial.
>
> This interpretation is reinforced in that other sections of the *Security of Information Act* mention prejudicial conduct that is not already included in section 3. Sections 4(1)(*b*), 4(2) and 5(1) each name a specific act or acts followed by the words "or in any *other* manner prejudicial to the safety or interests of Canada." The first-mentioned conduct (for example, using information for the benefit of any foreign power, communicating information to any foreign power, and gaining admission to a prohibited place) are therefore implied to be prejudicial to Canada, although they are not listed in section 3. The Subcommittee accordingly believes that section 3 of the Act should use the word "includes" or be amended in some other way so that, for clarity, the list of conduct prejudicial to the safety and interest of the State is understood to be non-exhaustive.
>
> RECOMMENDATION 49
>
> The Subcommittee recommends that section 3 of the *Security of Information Act* be amended, for example through use of the word "includes," so that the list of what constitutes a purpose prejudicial to the safety or interests of the State is clearly non-exhaustive."[795]

Without clarity as to whether this list is meant to be exhaustive, it may be difficult to conceptualize certain acts of transnational

[794] Ibid at s. 3(1).
[795] Subcommittee on the Review of the Anti-terrorism Act, "Rights, Limits, Security: A Comprehensive Review of the *Anti-terrorism Act* and Related Issues (Final Paper of the Standing Committee on Public Safety and National Security)", March 2007 at p. 65.

repression against individuals as fitting into one of these boxes, absent an amendment to Section 2 to designate, as harmful to Canadian interests, the targeting of a person in Canada by virtue of their membership in, or affiliation with, a particular diaspora community.

A final limitation is contained in Section 24, which holds that any prosecution under the Security of Information Act requires the consent of the Attorney General.[796] As detailed above, without transparency as to when such consent would be granted or withheld, access to justice for victims is limited.

The Lobbying Act

Canada's Lobbying Act is another specific, relevant law that somewhat addresses influence by foreign actors. This Act requires registration of any person, regardless of nationality, who is paid to communicate with federal public office holders.[797] This Act also establishes a Commissioner of Lobbying who is required to develop and has developed a code of conduct for registered lobbyists. The Act requires that the Code and its amendments be considered by a House of Commons committee before they take effect.

The Lobbying Act offers some transparency concerning potential foreign influence, but it is insufficient to address foreign interference in Canada. As detailed in previous sections, foreign agents or those operating on behalf of foreign states sometimes engage in activity in Canada without communicating with federal public office holders.

The Canada Elections Act

The Canada Elections Act was amended in 2018 by the passage of the Elections Modernization Act[798]. This was aimed to combat foreign influence and cyber threats.[799] The Office of the Minister of Democratic Institutions said in a press release that:

> "The Elections Modernization Act will help Canadians know where information is coming from, guard against misinformation and interference during an election period. Further, foreign entities will now be prohibited from spending to influence elections."[800]

Some of the key features included requiring online platforms to maintain a registry of political advertisements. The registry is an attempt to respond to microtargeting, in which individuals receive specifically targeted advertising, "hidden from view from all except the intended audience".[801] The registry will require advertisements to be publicly viewable, and includes

[796] Ibid at s. 24.
[797] Lobbying Act, R.S.C., 1985, c. 44 (4th Supp.). [Lobbying Act]
[798] Elections Modernization Act, S.C. 2018, c.31. [Elections Modernization Act]
[799] Office of the Minister of Democratic Institutions, "Government of Canada passes Elections Modernization Act", Government of Canada, 14 December 2018.
[800] Ibid.
[801] Michael Pal, "Evaluating Bill C-76: the Elections Modernization Act", Journal of Parliamentary and Political Law, 25 August 2019, p. 171-181 at 172. [Michael Pal]

advertisements from political parties, candidates, nomination contestants, registered third parties, potential candidates, and eligible parties.[802] The registry must include the advertisement and the person who authorized it for two years.[803] However, only the largest online platforms must conform to the registry requirement.[804]

As amended, the Canada Elections Act bans foreign individuals, corporations, unions, political parties, and governments from exercising undue influence, meaning knowingly incurring "any expense to directly promote or oppose" a candidate, party or leader or to otherwise commit an offence to influence an elector.[805] It is also an offence to interfere with a computer with the goal of affecting the result of an election,[806] to impersonate a candidate online or to disseminate a communication that misleadingly purports or appears to be from a political party,[807] and to sell advertising space to a foreign entity.[808]

This Act is insufficient to address the problem of attempts at influence by foreign actors operating in Canada, as foreign agents or those operating on behalf of foreign states sometimes engage in activity in Canada without attempting to influence Canadian elections. Further, as detailed below, Canada's Critical Election Incident Public Protocol reported that both the 2019 and 2021 federal elections were free and fair, despite evidence that foreign interference attempts existed.[809] This calls into question the efficacy of the Canada Elections Act, as amended by the Elections Modernization Act, to accomplish its stated purposes.

Government Agencies and Reporting

There are several federal departments that are tasked with dealing with incidents of transnational repression in Canada, including the Canadian Security Intelligence Service (CSIS), Global Affairs Canada (GAC), the Royal Canadian Mounted Police (RCMP), and the Communications Security Establishment (CSE).

CSIS' mandate is to investigate activities suspected of constituting threats to the security of Canada, report these threats to the Government of Canada, and at times, take measures to reduce these threats in accordance with well-defined legal requirements and Ministerial direction. CSIS' role is to collect and analyze threat-related information, including threats related to terrorism, espionage, foreign interference,

[802] Elections Modernization Act, supra note 798 at s. 325.1 (1).
[803] Michael Pal, supra note 801 at p. 173.
[804] Ibid.
[805] Canada Elections Act, supra note 506 at ss. 282.4 (1) and (2).
[806] Ibid at s. 323.
[807] Ibid at s. 481 (1).
[808] Ibid at s. 282.4 (5).

[809] "Countering an evolving threat: Update on recommendations to counter foreign interference in Canada's democratic institutions", Government of Canada, https://www.canada.ca/en/democratic-institutions/news/2023/04/countering-an-evolving-threat-update-on-recommendations-to-counter-foreign-interference-in-canadas-democratic-institutions.html ["Countering an evolving threat"]

and cyber-tampering affecting critical infrastructure.[810]

Part of GAC's mandate, as it relates to foreign interference, states that GAC is responsible for developing and implementing foreign policy and fostering the development of international law. GAC engages with international players to advance Canada's political, legal, and economic interests, including the promotion of a rules-based international order, accountable governance, and human rights. GAC also leads the negotiation of bilateral and multilateral trade agreements, the administration of export and import controls, and addresses international security threats.[811] The Rapid Response Mechanism ("RRM") at GAC monitors and analyzes potential cases of foreign interference, including by reviewing social media content.[812] The RRM "monitors the digital information environment for foreign state-sponsored disinformation" and "supports Canada's international engagement on foreign state sponsored disinformation".[813] The RRM works with the SITE Task Force[814] during elections, and shares information with Canada's G7 allies.[815] In August 2022, a dedicated Eastern Europe unit at the RRM was announced to monitor and detect Russian disinformation.[816]

The RCMP, as Canada's national police service, works to prevent crime, enforce the law, investigate offences, keep Canadians and their interests safe and secure, and assist Canadians in emergency situations.[817] The RCMP also conducts international policing activities and shares intelligence with domestic and international partners. The RCMP is Canada's focal point when dealing with INTERPOL. The National Cybercrime Coordination Centre ("NC3"), housed in the RCMP, includes RCMP officers and civilians to "help reduce the threat, impact and victimization of cybercrime in Canada".[818] The NC3 plans to launch a national cybercrime and fraud reporting system and reach full operating capability in 2024.[819]

The CSE is the national signals intelligence agency for foreign intelligence and the technical authority for cybersecurity and

[810] Canadian Security Intelligence Service, "Mandate", Government of Canada, 25 January 2021.
[811] Global Affairs Canada, "Raison d'etre, mandate and role: who we are and what we do", Government of Canada, 27 February 2023.
[812] University of Ottawa Report, supra note 12 at p. 16.
[813] Government of Canada, "Rapid Response Mechanism Canada: Global Affairs Canada", Global Affairs Canada, 20 September 2022.
[814] Canada's Security and Intelligence Threats to Elections (SITE) Task Force brings together officials from the CSE, CSIS, GAC, and the RCMP to assess and respond to interference threats. It works to identify and prevent covert, clandestine, or criminal activities from influencing or interfering with Canadian elections.
[815] Government of Canada, "Rapid Response Mechanism Canada: Global Affairs Canada", Global Affairs Canada, 20 September 2022.
[816] Ibid.
[817] Royal Canadian Mounted Police, "About the RCMP", Government of Canada, 22 November 2021.
[818] Government of Canada, "The National Cybercrime Coordination Centre (NC3)", Royal Canadian Mounted Police, 19 October 2022.
[819] Ibid.

information assurance.[820] Among other things, the CSE is responsible for protecting federal institutions' electronic information and information structures.[821] The CSE defends critical infrastructure against cyberattacks, and at times engages in offensive operations. It also houses the Canadian Centre for Cyber Security (Cyber Centre), which was created under Canada's National Cyber Security Strategy in 2018.[822] Among other things, the Cyber Centre increases awareness of digital crimes and other threats like foreign interference and assists law enforcement in combatting cybercrime.[823] The Cyber Centre provides advice, guidance, services and support on cyber security issues to Canadians, including individuals, businesses, government, and academia.[824] The Cyber Centre protects Canada's cyber assets and leads the federal government's response to cyber security events.[825]

Canada has also formed a handful of task forces, committees, and protocols to combat foreign interference, though their impact is questionable. For example, the Critical Election Incident Public Protocol refers to a panel of senior federal public servants whose role is to communicate with Canadians in the event of an incident threatening the integrity of a federal election.[826] The Panel reported that both the 2019 and 2021 federal elections were free and fair.[827] Earlier this year, the Government announced the establishment of a National Counter-Foreign Interference Coordinator within Public Safety Canada. [828] It is too soon to comment on the effectiveness of this newly created position.

It is unclear what impact any of these agencies and mechanisms have had in practice. The RCMP has undertaken only a handful of investigations into incidents of foreign interference. In November 2022, the RCMP charged a former Hydro-Québec employee for allegedly obtaining trade secrets for the Chinese government.[829] He allegedly obtained information to benefit China at "the detriment of Canada's economic interests" and is facing charges under the Security of Information Act and the Criminal Code of Canada, including obtaining trade secrets, fraud for obtaining trade secrets, and breach of trust by a public officer.[830] In another instance, a retired RCMP officer was charged "with conducting

[820] Communications Security Establishment Act, S.C. 2019, c. 13, s. 76 at s. 15.
[821] Ibid at s. 17-19.
[822] Government of Canada, "Canadian Centre for Cyber Security", 30 May 2023.
[823] University of Ottawa Report, supra note 12 at p. 18.
[824] Government of Canada, "About the Cyber Centre", Canadian Centre for Cyber Security, 23 December 2022.
[825] Ibid.
[826] "Countering an evolving threat", supra note 809.
[827] Ibid.
[828] "Government of Canada provides update on recommendations to combat foreign interference", Government of Canada, https://www.canada.ca/en/democratic-institutions/news/2023/04/government-of-canada-provides-update-on-recommendations-to-combat-foreign-interference.html.
[829] Aaron D'Andrea and Annabelle Olivier, "Hydro-Quebec employee charged with alleged espionage for China: RCMP", Global News, 14 November 2022.
[830] Ibid.

foreign interference on behalf of China".[831] Specifically, the RCMP assert that this retired officer "used his knowledge and his extensive network of contacts" to assist the Chinese government with Operations Fox Hunt and Sky Net, including by "build[ing] a dossier on a Uyghur activist". This officer now faces charges under Sections 23 and 22 of the Security of Information Act.[832] The RCMP have also opened an investigation into the so-called Chinese police stations operating on Canadian soil, discussed above.

The CSE may increase awareness of foreign interference. Their 2020 National Cyber Threat Assessment flagged China, Russia, Iran, and North Korea as the biggest threats to Canada.[833] In their October 2022 update, the CSE stated that these countries "continue to pose the greatest strategic cyber threat to Canada".[834] The CSE's October 2022 report states that hostile countries, including Russia and China, are targeting foreign nationals, diasporas, activists, and journalists in Canada. As the CSE focuses on cyber security, the new report says that "[s]tate-sponsored cyberthreat actors almost certainly" target these groups in Canada, which "likely threatens individuals' safety and security, in addition to increasing distrust and polarization in Canadian society".[835]

There is no one governmental agency that is specifically focused on combatting transnational repression. There is also no body that is specifically focused on collecting reports of transnational repression incidents. Victims of transnational repression are told they can report to CSIS through a 1-800 number or through their Reporting National Security Information web form.[836] However, victims are also encouraged to contact the RCMP's National Security Information Network through a different 1-800 number, or via email.[837] In cases of immediate threats to one's safety, individuals are told to call 911.[838]

Practically, victims of transnational repression are often shuttled around between the different agencies and left in a state of confusion.[839] For example, Cheuk Kwan, a member of the Toronto Association for Democracy in China, told The Guardian that he and others in his community have repeatedly asked the RCMP to assist in instances of harassment and intimidation, "only to be told the issues are best dealt with by local police, or even police back in China".[840] He said that police often chalk it

[831] Robert Fife and Steven Chase, "Mountie targeted BC real estate tycoon for China, RCMP allege", Globe and Mail, 21 August 2023.
[832] Ibid.
[833] Canadian Centre for Cyber Security, "National Cyber Threat Assessment 2020", Government of Canada, p. 11.
[834] National Cyber Threat Assessment 2023-2024, supra note 544 at p. iii.
[835] Ibid at p.12.
[836] Foreign Interference and You, supra note 8.
[837] Royal Canadian Mounted Police, "News Release: Foreign Actor Interference", Government of Canada, 22 November 2022.
[838] Ibid.
[839] Sarah Teich and Mehmet Tohti, "Hacking the activists fighting for human rights", iPolitics, 12 January 2022.
[840] Leyland Cecco, "'A brazen intrusion': China's foreign police station raise hackles in Canada", The Guardian, 7 November 2022 [Leyland Cecco].

up to a "family feud or something that didn't merit investigation", concluding that "that's the most insidious part of this, the naivety [of the federal police] – of them not taking it seriously for so long".[841] Rukiye Turdush brought up a similar point, saying that usually Canadian officials state that if the perpetrators are in China, there is nothing they can do to help.

In 2015 and 2016, Sheng Xue reported various incidents of transnational repression to her local police station in Mississauga. Mississauga police refused to assist and suggested she call the head office in Toronto. She did so, and the Toronto police head office instructed her to call the RCMP. The RCMP told Sheng Xue that the situation seemed to fall under an international affairs issue and instructed her to report it to CSIS. CSIS then told her that this type of matter should be reported to local police. Sheng Xue then called her local police station in Mississauga yet again, and they told her that because the incidents were primarily occurring in Ottawa, she should report it to local Ottawa police. Accompanied by her husband and four friends, she went to a police station in Ottawa. After telling Canadian authorities her story for the seventh time, Ottawa police told her there is not much that they can do without evidence that the individual was planning on killing or physically hurting her. She asked if they could at least speak to the individual. They agreed and called him to the station. They spoke to him for approximately 10 minutes.

[841] Ibid.

[842] Freedom House 2022, supra note 19 at pp. 3-4.

Grace told us that she has repeatedly reported cases of harassment to the Ottawa police, CSIS, and GAC, but she is unclear if they have taken any action. She said they often told her there is nothing to be done. She said her organization participates in an annual meeting with GAC to discuss these issues, but as far as she knows, nothing ever comes of it.

Freedom House states that while CSIS and the RCMP maintain ways for "reporting national security information", these are not specific to transnational repression, and as most reports are deemed not to be national security related, they are not followed up with by law enforcement.[842]

Emma told us that in 2014, her apartment was broken into when she was out attending a Falun Gong parade. Furniture had been moved, items had been stolen, and water had been sprayed on her mattress. Emma said that Falun Gong stickers she had stuck to her door had been torn off. Emma believes her apartment was broken into by individuals associated with the Chinese consulate. When she attended a local police station to report the incident, she was told she should have called 911, who could have sent officers to investigate. The police told her that because she did not call 911 immediately, they could not assist her.

Language barriers also present an issue. Cherie Wong explains that many cannot access the National Security Information Network hotline as "the information is not available in our languages".[843]

[843] Christy Somos, supra note 195.

Part IV. Recommendations

Transnational repression poses a serious threat to democracy and the rule of law, in Canada and across the globe. According to CSIS, foreign interference "activities pose strategic, long-term threats to Canada's interests, jeopardize our future prosperity, and have a corrosive effect on our democratic processes and institutions".[844]

Experts agree that Canada's laws are outdated, and that hostile actors, including China, Russia, and Iran, are exploiting them.[845] While our allies are strengthening their counter-interference laws, so far Canada has failed to do so.[846] Canada last reviewed its national security policy in 2004.[847] The CSIS Act has not been seriously reviewed or updated since CSIS' inception in 1984.[848] The Security of Information Act has not been substantially updated in decades. Canada has "not produced a strategic threat assessment for the Canadian public in years", and nor has it "set out an international strategy since 2005".[849] There has been no recent assessment of Canada's national security tools or agencies.[850]

Authoritarian regimes will continue to readily exploit and aggressively engage in transnational repression so long as Canada fails to implement concrete countermeasures. To that end, following our review of various incidents, international and domestic law, and available mechanisms, we propose thirty-seven (37) recommendations for the Government of Canada to combat foreign interference and transnational repression.

1. Create a Dedicated Agency

To lay the groundwork, Canada should create a centrally coordinated government agency or focal point organization to address transnational repression. The federal government could mandate the creation of a new agency, department, or centre solely focusing on understanding, responding to, and preventing acts of transnational repression. It could be housed within an existing department or agency. The threat of transnational repression is so vast and widespread that it will require an entire dedicated team to address it.

While the designated agency should not subsume the role of all other agencies working on transnational repression, it should serve as a central coordinating organization, have access to all information available, and facilitate cooperation between agencies to ensure fulsome responses. Currently, there are several separate teams within different federal departments and agencies with slightly different mandates, all investigating and responding to specific types of threats. Their ability to work together and cooperate is frustrated by the lack of open lines and specific mechanisms to communicate on these issues. A central focal point could partner with and oversee all the teams

844 Foreign Interference and You, supra note 8 at p. 3.
845 Sam Cooper, supra note 50.
846 Ibid.
847 University of Ottawa Report, supra note 12 at p. 1.
848 Ibid at p. 2.
849 Ibid at p. 10.
850 Ibid.

already working on transnational repression, facilitate open lines of communication, and allow for a more collective response.

The 2023 Budget includes the creation of a National Counter-Foreign Interference Office within Public Safety. While it remains unclear exactly what this Office will do, it could take on the type of role described above.

2. Create a Commissioner of Foreign Influence

Canada could also create a commissioner of foreign influence, akin to the Commissioner of Lobbying. A commissioner of foreign influence could develop a code of conduct with specific reference to what is expected for diplomatic and consular personnel. It could also include a prohibition against spying on opposition in Canada to the home government or paying others to do so.

The foreign influence commissioner should be able to receive both publicly and privately complaints of violations of the code of conduct committed by any person or entity, including violations by foreign embassies and consulates.

Like the Lobbying Commissioner, a foreign influence commissioner should be obliged to report annually to Parliament and have the power to report at any time on matters of such urgency or importance that they should not await annual reporting. The reports should set out the extent of compliance with the Code, including complaints and their recommended disposition.

A foreign influence commissioner could also be obligated to provide updates to relevant authorities on specific cases of transnational repression and foreign interference, including those involving Canadians detained in foreign states, such as Huseyin Celil.

3. Create a Dedicated Hotline or Reporting Mechanism

A dedicated agency could also encapsulate a dedicated hotline or reporting mechanism for victims of transnational repression. The information for this hotline should be widely disseminated with the assistance of community organizations, so that individuals most at risk of transnational repression are well-aware of it. This could ensure that victims of transnational repression know who to contact for assistance and limit the confusion they currently face. Ensuring the hotline has appropriate language capabilities will be important.

Many victims we spoke with were unclear on what type of incidents warranted being reported to the authorities and where they should report these incidents. Many victims also said that as the government had not responded to their reports in the past, they no longer bothered disclosing incidents. A singular reporting mechanism could clarify where victims should report and ensure that one organization has all the relevant information on all cases of transnational repression, making responses easier and more consistent.

A dedicated hotline or reporting mechanism could also be led by a civil society organization at arms-length from the government.

Mehmet Tohti said that a singular reporting mechanism could be helpful, but only if legislation is passed to empower them to take action. He said that "symbolically establishing one center won't help", but rather "what we need is a legal mechanism to empower our security and policing departments to execute their function" and respond to the reports this mechanism receives.

4. Define Transnational Repression and Foreign Interference

The terms used interchangeably in this paper – transnational repression, foreign interference, transnational authoritarianism, and foreign influence – require clear and official definitions in Canadian law. Currently, there are no clear and consistent definitions for these terms. Definitions for these terms should be implemented and used across all government agencies uniformly.

Not having clear definitions impedes the ability to track and respond to transnational repression. While current definitions used by various government agencies are a good foundation, clear and specific legal definitions should be passed after the government has concluded its comprehensive investigation. The definition could also outline which acts could be criminalized.

In addition to civil liberty organizations, victims should also be consulted to ensure the definition encompasses all relevant activities occurring in Canada.

5. Review and Update the CSIS Act

As described above, Canada has "not seriously reviewed the Canadian Security Intelligence Service Act since CSIS was established in 1984".[851] As such, it has not kept up to date with the progression of digital technologies, and the current legislation limits CSIS' ability to achieve its mandate.

The CSIS Act does not provide a clear definition of transnational repression, and thus neither includes "measures to prevent and penalize it".[852] In a 2021 speech, CSIS Director David Vigneault said that the agency's mandate and enabling legislation hinders how they can spread warnings, explaining that the CSIS Act "enables advice to government but limits our ability to provide relevant advice to key partners".[853]

The CSIS Act should be reviewed and updated to specifically arm CSIS with the guidelines and tools to adequately police and respond to threats of transnational repression.

The Business Council of Canada recently recommended that Canada update and review the CSIS Act as well. Specifically, the Council recommended that Canada

[851] University of Ottawa Report, supra note 12 at p. 2.
[852] John Packer and Ghuna Bdiwi, "Canada Must Protect Activists-in-Exile Against Transnational Repression", Centre for International Policy Studies, University of Ottawa, 9 December 2022.
[853] Catharine Tunney, "CSIS warned MPs, senators that hostile states might listen in on their conversations", CBC News, 25 April 2023.

"comprehensively review and amend the [CSIS Act] to align the agency's legislative mandate and powers with expanding expectations for it to identify, analyze, and disrupt threats to Canada's economic security".[854] They recommended that the Act be amended, among other things, to enable CSIS to share information with non-governmental stakeholders, where such disclosure would be "in the public interest" and subjected to "all necessary safeguards and oversight".[855]

6. Review and Update the Security of Information Act

As detailed above, the Security of Information Act is insufficient in combatting all types of foreign interference and does not sufficiently provide avenues for justice for victims. This is unsurprising, as the Security of Information Act has not been substantially changed or updated since at least 2002.

This Act should be reviewed and updated. In fact, the National Security and Intelligence Committee of Parliamentarians in both its 2021 and 2022 Annual Reports recommended that the adequacy of existing legislation that deals with foreign interference, including the Security of Information Act and the CSIS Act, be assessed and proposals for changes be made if required.[856]

The applicability of sections 19 and 20, in particular, should be closely reviewed. As detailed above, although Section 19 prohibits economic espionage, it is a defence to this offence that a person "acquired [the information] in the course of the person's work and is of such a character that its acquisition amounts to no more than an enhancement of that person's personal knowledge, skill or expertise".[857] It is unclear, therefore, if Section 19 would effectively prohibit the type of foreign interference occurring in academia and other relevant sectors.

Section 20 prohibits any person from, "at the direction of, for the benefit of or in association with a foreign entity or a terrorist group", inducing or attempting to induce a person to do something "by threat, accusation, menace or violence"[858], but this may not be sufficient to prohibit acts of transnational repression against individuals absent an amendment to Section 2 to designate, as harmful to Canadian interests, the targeting of a person in Canada by virtue of their membership in, or affiliation with, a particular diaspora community.

7. Review and Update the Lobbying Act

Canada's Lobbying Act somewhat addresses influence by foreign actors. It is necessarily limited, as it is focused on communications with federal public office holders, and foreign agents or those

[854] "Economic Security is National Security", Business Council of Canada, 7 September 2023.
[855] Ibid.
[856] The National Security and Intelligence Committee of Parliamentarians, "2021 Annual Report" May 2022 at 16; The National Security and Intelligence Committee of Parliamentarians, "2022 Annual Report" at 17.
[857] Security of Information Act, supra note 783 at s. 19 (3) (b).
[858] Ibid at s. 20.

operating on behalf of foreign states sometimes engage in activity in Canada without communicating with federal public office holders.

Nonetheless, the Lobbying Act can and should be reviewed and updated to close any legislative loopholes. For instance, currently, this Act requires registration of any person who is paid to communicate with federal public office holders.[859] It may be desirable to expand the registration requirement to any person who is an unpaid volunteer but acting on behalf of a foreign state.

8. Review and Update the Canada Elections Act

The Canada Elections Act needs to be continuously updated as new threats and technologies are employed to subvert democracy. According to Dennis Molinaro, a former senior CSIS analyst and expert on foreign interference, China's election interference and targeting of MPs and diaspora communities is "serious and alarming", and this level of foreign interference "says … that foreign adversaries understand the legislative loopholes that exist in Canada and are taking full advantage of them".[860]

University of Ottawa Law Professor Michael Pal states that while the provisions in the Elections Modernization Act regarding foreign interference are a good start, it is unclear how enforceable the provisions truly are.[861] He explains that while the prohibition on platforms from accepting foreign money for election advertisements may do well as "the main conduits for advertising are few in number and easily identifiable", the other offences against impersonation and hacking are likely less successful at deterring foreign interference as foreign entities, "especially those sponsored by a hostile state", are unlikely to be brought before Canadian courts.[862] Rather, these offences "will mainly be deterrents against malicious activity by domestic actors".[863] Pal concluded that "[e]lection legislation must be continuously updated to adapt to new ways of conducting politics".[864]

One way to further protect our elections could be by criminalizing "deliberate deception". In June 2022, Chief Electoral Officer Stephane Perrault sent a report to the House of Commons, proposing recommendations to combat disinformation and hate speech against targeted groups, and preventing foreign funding and interference.[865] He recommended criminalizing "deliberate deception", or providing misleading statements about the voting process and results, "for the purpose of undermining trust in the process or the result".[866] This could include activities like telling voters the wrong location or date to

[859] Lobbying Act, supra note 797.
[860] Sam Cooper, supra note 50.
[861] Michael Pal, "Evaluating Bill C-76: the Elections Modernization Act", Journal of Parliamentary and Political Law, [13 J.P.P.L.] p.171-181. p.180.
[862] Ibid.
[863] Ibid.
[864] Ibid.
[865] Global News, "Knowingly spreading disinformation ahead of voting must be outlawed: Elections Canada", 7 June 2022.
[866] Ibid.

cast ballots. Perrault also suggested banning untraceable political donations and requiring federal political parties to keep a record of all contributions received via cryptocurrency.[867]

Further, the exception to the exception in the Canada Elections Act for foreign broadcasting is anachronistic. What is legitimately a matter of contemporary concern is automated spam generated by foreign actors who do not disclose their identities. To combat this, there should be a requirement of digital disclosure of the source of mass electronic opinion campaigns.

9. Create a Civil Cause of Action Specific to Transnational Repression

As outlined above, there are a handful of torts in Canadian jurisdictions that may cover certain acts of transnational repression, including defamation, intentional infliction of mental suffering, intimidation, and online harassment. Other torts may also be committed in the context of transnational repression, including assault, battery, vandalism, invasion of privacy, or trespassing. However, there is no specific civil cause of action for transnational repression. Government could pass legislation that creates a civil cause of action specific to transnational repression.

Diplomatic immunity and/or state immunity may still preclude certain actions, as explained in detail above.

10. Criminalize Refugee Espionage

While there are several criminal offences that may be engaged by acts of transnational repression, there are no Criminal Code offences specific to transnational repression. This is a serious limitation of our legal frameworks for dealing with foreign interference. According to Dan Stanton, a former CSIS officer, "We simply don't have a prosecutorial end game to deal with foreign interference".[868] Canada is also demonstrably behind in this area. For instance, Sweden, Norway and Switzerland have explicitly criminalized "refugee espionage". Canada should do the same.

"Refugee espionage" refers to incidents where foreign authorities carry out intelligence activities against diaspora communities, refugees, political dissidents and regime critics who have sought safety abroad.[869] This type of espionage violates the basic rights and freedoms of the individuals targeted, as well as Canada's sovereignty.

Some countries have taken steps to criminalize refugee espionage. Sweden, Norway, and Switzerland have explicitly criminalized refugee espionage, or acts of obtaining and/or providing information detrimentally about another individual in order to benefit a foreign state.[870] In Austria, France, and Germany, refugee espionage may be included within general espionage provisions depending on statutory

[867] Ibid.
[868] Sam Cooper, supra note 50.
[869] Unrepresented Nations & Peoples Organization, "The Recognition and Criminalization of 'Refugee Espionage' in Europe", March 2022. [UNPO]
[870] Ibid.

interpretation.[871] In the US, the Department of Justice has prosecuted individuals accused of engaging in the transnational repression acts of spying on individuals and communities.[872]

The Swedish Security Services states that:

> "'Refugee espionage', i.e. unlawful intelligence activities against an individual, refers to intelligence activities targeting dissidents and minority groups from other countries in Sweden. Typically carried out by authoritarian and non-democratic states, such activities make people fear not only for their own security, or life and health, but also that of relatives in their former home countries and in Sweden. This also undermines the democratic process, as people given refuge in Sweden may be afraid to exercise their fundamental rights and freedoms. Others who express their support for these dissidents may also be subject to monitoring by foreign intelligence services."[873]

Canada should pass new legislation defining this type of transnational repression activity as a criminal offence.

11. Criminalize Online Harassment and Digital Violence

Another way to protect individual victims of transnational repression could be by criminalizing online harassment or digital violence. Canada's legal regime to protect victims, and that of many other countries, has not kept up with the continuous innovation of digital technologies.

One model that Canada could follow was implemented in Belgium, where the federal government recently reformed its criminal code provisions on harassment to include online harassment. This means that online offences, including things like harassment, sending unwanted explicit photos, or doxing, will have the same penalties as offline harassment. Canada should implement a similar scheme to protect those who receive harassing or threatening messages, have their private information, including contact information and locations posted, and have their reputations smeared, including through the release or doctoring of private photos.

The United Nations Population Fund ("UNFPA") has also supported a novel approach to what it calls "digital violence" or "technology facilitated gender-based violence".[874] It includes cyberbullying, doxing, hate speech, and the non-consensual use of images of videos, including deepfakes.[875] They state that for example, having one's "image taken, manipulated and shared without permission is a violation of privacy, dignity, autonomy and can be a devastating experience. The feelings of fear, anxiety, loss of self-esteem

[871] Ibid.
[872] Aljizawi and Anstis, supra note 4.
[873] UNPO, supra note 869 at p. 5.
[874] United Nations Population Fund, "A new copyright for the human body", https://www.unfpa.org/bodyright.
[875] Ibid

and sense of powerlessness are real and enduring".[876]

The UNFPA further states that these activities, including the "non-consensual use, misuse or abuse of people's images should be criminalized", and social media and other technology companies should be obligated to put in effective systems to prevent and report incidents.[877] The UNFPA has begun a "bodyright" campaign to encourage states to regard incidents involving individual's images as an infringement of copyright, which could lead to the "swift removal of content and legal penalties".[878] This new way of conceptualizing rights is an example of a novel solution Canada could implement to help counter transnational repression.

12. Develop Clear Public Policy Guiding Attorney General Consent

As detailed above, prosecution under many of the existing offences relevant to transnational repression require the Attorney General's consent to proceed. For example, Section 24 of the Security of Information Act provides that any prosecution under the Act requires the consent of the Attorney General.[879] As previously detailed, without transparency as to when such consent would be granted or withheld, access to justice for victims is limited. This constrains the ability of victims to pursue private prosecutions. If the Canadian government wants to enhance the ability of victims to seek redress, it should develop clear public policy outlining when the Attorney General's consent will or will not be provided.

The request that the government establish public criteria is not novel. As David Matas submitted to the House of Commons Standing Committee on Justice and Human Rights:

> "What we need is that the consent or denial of consent of the Attorney General be exercised according to principle. In British Columbia, the Crown Counsel Policy Manual provides that in almost all hate offences, the public interest applies in favour of prosecution.
>
> Approvals for alternative measures should be given only if:
>
> 1. Identifiable individual victims are consulted and their wishes considered.
> 2. The offender has no history of related offences or violence.
> 3. The offender accepts responsibility for the act, and
> 4. The offence must not have been of such a serious nature as to threaten the safety of the community.
>
> Those are criteria which could be adopted for denial of consent. There needs to be at least something, rather than, as now, a vacuum where consent can be denied arbitrarily, without explanation.

[876] Ibid.
[877] Ibid
[878] Ibid.
[879] Security of Information Act, supra note 783 at s. 24.

…

The grant or denial of consent by the Attorney General for hate speech crimes should be subject to clear public criteria. Reasons should be given for the grant or denial of consent and those reasons should explain why the criteria were or were not met."[880]

13. Bar Perpetrators

As described in detail above, various provisions of the IRPA may apply to bar from entry those individuals engaged in acts of transnational repression. For example, an individual may be held inadmissible for engaging in act of espionage; engaging in an act of subversion against a democratic government, institution or process; being a danger to the security of Canada; engaging in acts of violence; or being a member of an organization that engages in any of the above.[881] An individual may also be held inadmissible if they misrepresented on their application to enter Canada.[882]

If an individual is found inadmissible under IRPA for any reason, they could lose their status and face removal from Canada.

Diplomatic or consular staff engaged in acts of foreign interference may also be expelled from Canada using the Foreign Missions and International Organizations Act.[883] This Act provides that any member of a consular or diplomatic staff can be declared persona non grata, for any reason, or without giving a reason.

These provisions may be utilized to bar or remove individuals engaged in transnational repression, where appropriate.

14. Implement a Foreign Agents Registry

In early March 2023, Public Safety Minister Marco Mendicino announced that he is launching consultations on setting up a foreign influence transparency registry.[884] The upcoming registry is supposed to "ensure transparency and accountability from people who advocate on behalf of a foreign government and ensure communities who are often targeted by attempts at foreign interference are protected".[885]

This follows previous attempts to establish a foreign agent registry in Canada. Former Conservative Member of Parliament Kenny Chiu had introduced Bill C-282, An Act to establish the Foreign Influence Registry, on April 13, 2021. It never reached second reading.[886] More recently, Senator Leo Housakos introduced S-237, An Act to

[880] Written copy of submission available at: https://d3n8a8pro7vhmx.cloudfront.net/bnaibrithcanada/pages/2771/attachments/original/1556816941/Matas-Submission_02May2019.pdf?1556816941.
[881] IRPA, supra note 774 at ss. 34 (1) (a), (b.1), (d), (e), and (f).
[882] Ibid at s. 40.
[883] Foreign Missions and International Organizations Act, S.C. 1991, c. 41.
[884] Government of Canada, "Government of Canada launches public consultations on a Foreign Influence Transparency Registry in Canada", Public Safety Canada, 10 March 2023.
[885] Ibid.
[886] Bill C-282, An Act to establish the Foreign Influence Registry, 2nd Sess, 43rd Parl, 2001.

establish the Foreign Influence Registry and to amend the Criminal Code, which was debated at second reading on May 16, 2023, in the Senate.[887]

The government should ensure that it follows through in the development and implementation of a Foreign Agents Registry, which would align us with our allies. Both the US and Australia have implemented similar registries, and Canada's should be modelled in a similar way, both in terms of the acts it criminalizes and the penalties it may impose. The UK also plans to introduce similar legislation.

The US enacted the Foreign Agents Registration Act (FARA) in 1938.[888] It requires "certain agents of foreign principals who are engaged in political activities or other activities specified under the statute to make periodic public disclosure of their relationship with the foreign principal, as well as activities, receipts and disbursements in support of those activities".[889] These disclosures allow the government and citizens to evaluate the activities "of such persons in light of their function as foreign agents". The government's FARA unit is housed in the Department of Justice.[890] FARA violations may lead to criminal charges and/or immigration proceedings, and also has a civil enforcement provision allowing the Attorney General to seek an injunction requiring registration under FARA.[891]

Australia's Foreign Influence Transparency Scheme, passed in 2018, introduces "registration obligations for persons and entities who have certain arrangements with, or undertake certain activities on behalf of, foreign principals".[892] Those who engage in influencing activities, such as political lobbying, are required to disclose certain details when acting on behalf of a foreign government related entity, and this information appears on a public registry.[893] Australia also passed the Australia's Foreign Relations (State and Territory Arrangements) Act 2020,[894] under which agreements of state and local government bodies with foreign governments are publicly registered. The federal government has the power to terminate any agreements that are inconsistent with Australia's foreign policy.

In the UK, a foreign agents registry is in the final stages of adoption as part of a broad national security bill. It will include a

887 Bill S-237, An Act to establish the Foreign Influence Registry and to amend the Criminal Code, 1st Sess, 44th Parl, 2021.
888 United States Government, "Foreign Agents Registration Act", US Department of Justice, https://www.justice.gov/nsd-fara.
889 Ibid.
890 Ibid.
891 Government of Canada, "Foreign Interference – Foreign Agent Registry", Public Safety Canada, 20 August 2021, https://www.publicsafety.gc.ca/cnt/trnsprnc/brfng-mtrls/prlmntry-bndrs/20210625/20-en.aspx.
892 Library of Congress, Australia. "Australia: Bills Containing New Espionage, Foreign Interference Offenses, and Establishing Foreign Agent Registry Enacted", 21 August 2018, https://www.loc.gov/item/global-legal-monitor/2018-08-21/australia-bills-containing-new-espionage-foreign-interference-offenses-and-establishing-foreign-agent-registry-enacted/.
893 Ibid.
894 Australia's Foreign Relations (State and Territory Arrangements) Bill 2020.

maximum 2-year prison sentence for failing to register political-influence activities on behalf of a foreign power or foreign-controlled entity.[895]

15. Review Canada's Terrorist Lists

Marcus Kolga and Kaveh Shahrooz, both senior fellows at the Macdonald-Laurier Institute, argue that both Russia and the Iranian Revolutionary Guard Corps ("IRGC") should be listed as terrorist entities in Canada. They argue that "[t]errorism is inseparable from the IRGC; it is in its DNA", and that Russia's indiscriminate attacks in Ukraine are "acts designed to terrorize Ukrainians and the world into submission", and that "such acts clearly rise to the level of terrorism". [896]

Regarding Russia, the calls to declare the country a terrorist state have been growing over the last year, following their invasion of Ukraine in February 2022. For example, in November 2022, the NATO Parliamentary Assembly passed a resolution – which the Canadian delegation voted in favour of – "to state clearly that the Russian state under the current regime is a terrorist one".[897]

A state may be listed as a state supporter of terrorism in Canada under the State Immunity Act if the state in question "supported or supports terrorism"[898], which is defined as "commit[ting], for the benefit of or otherwise in relation to a listed [terrorist] entity] … an act or omission that is, or had it been committed in Canada would be, punishable under [the terrorism offences contained in Part II.1 of the Criminal Code]".[899] In other words, a state may be listed as a state supporter of terrorism in Canada if the state supports the terrorism of a listed terrorist entity.

Canada has designated the Russian Imperial Movement (RIM) as a listed terrorist entity under the Criminal Code.[900] To the extent that Russia supports the RIM's terrorism, this may enable the listing of Russia as a state supporter of terrorism. However, designating a state as a state supporter of terrorism is largely a political decision. To date, only two countries are on this list: Iran and Syria.

To be listed as a terrorist entity under the Criminal Code, in turn, the entity must have "knowingly carried out, attempted to carry out, participated in or facilitated a terrorist activity" or must have "knowingly acted on behalf of, at the direction of, or in association with an [existing listed] entity".[901] An entity is defined as "a person, group, trust, partnership or fund or an unincorporated association or organization".[902] It is unclear if a foreign state could on its own be listed as a terrorist

[895] Panetta and Raycraft, supra note 417.
[896] Marcus Kolga and Kaveh Shahrooz, "Opinion: Both the Russian army and Iran's IRGC should be on Canada's terror list", National Post, 10 November 2022. [Kolga and Shahrooz]
[897] Allan Woods, "Is Vladimir Putin running a 'terrorist state'? Why what we call Russia right now matters", Toronto Star, 25 November 2022.
[898] State Immunity Act, supra note 726 at s. 6.1 (2).
[899] Ibid at s. 2.1.
[900] Criminal Code, supra note 765.
[901] Ibid at s. 83.05 (1).
[902] Ibid at s. 83.01 (1).

entity under the Criminal Code, as it is unclear if a foreign state could be considered an "entity" under this definition. It is notable, however, that the Taliban remains a listed terrorist entity in Canada: this might suggest that a foreign government could be listed (or at least remain listed) under the Criminal Code so long as they are not recognized by Canada as a legitimate government.

Both the terrorist entity list under the Criminal Code and the state supporters of terrorism list under the State Immunity Act should be reviewed and updated. There are plenty of terrorist groups and supporters of terrorism that remain unlisted. For example, on January 30, 2023, MP Heather McPherson introduced a motion in the House of Commons, which received unanimous support, to list the Wagner Group as a terrorist entity. The Wagner Group is a private Russian military company that has taken terrorist action in several foreign states, including Ukraine, Syria, and the Central African Republic. In April 2023, the Council of the European Union added the Wagner Group "to the list of those subject to EU restrictive measures for actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine", for participating in the war and "spearhead[ing] the attacks against the Ukrainian towns of Soledar and Bakhmut".[903] The Wagner Group is now subject to asset freezes, and EU citizens and companies are prohibited from making funds available to them.[904]

To the extent that states that support terrorism cannot be listed under the State Immunity Act for political reasons, it may be worth reviewing the Criminal Code and amending it, if necessary, to permit states to be listed as terrorist entities under that framework.

Kolga and Shahrooz explain that these terrorist designations are important for, among other things, facilitating justice for victims of these regimes.[905] Indeed, designating a state as a state supporter of terrorism and/or adding entities to the terrorist list under the Criminal Code may allow terror victims to pursue civil lawsuits and seek financial compensation in Canadian courts under the Justice for Victims of Terrorism Act.

Some have argued against listing Russia as a state supporter of terrorism, one argument being that it could ruin diplomatic relations with Russia.[906] This argument requires careful consideration by the federal government: would the value of adding Russia to this list outweigh the damage to Canada's bilateral relations with Russia?

The IRGC is made up of several branches. One branch, the Quds Force, is listed as a terrorist entity in Canada under the Criminal Code. However, many have been campaigning for the IRGC in its entirety to

[903] Council of the EU, "Russia's war of aggression against Ukraine: Wagner Group and RIA FAN added to the EU's sanctions list", Press release, 13 April 2023.
[904] Ibid.
[905] Kolga and Shahrooz, supra note 896.
[906] Delaney Simon and Michael Wahid Hanna, "Why the US Should Not Designate Russia as a State Sponsor of Terrorism", International Crisis Group, 4 August 2022.

be listed as well. The IRGC has been implicated in several human rights abuses and terrorist acts, including the mass murder of Iranian protestors following the murder of Mahsa Amini, including children, and of course, the downing of Ukraine International Airlines Flight PS752. Kolga and Shahrooz point out that the US has already designated the IRGC a terrorist entity, so Canada's designation would not be novel.[907] In a December 2022 open letter to Prime Minister Justin Trudeau and Opposition Leader Pierre Poilievre, eight Iranian Canadian lawyers urged the Government to designate the IRGC as a terrorist entity. They explain that listing the IRGC would allow "law enforcement to zero in on the nexus between terrorism and business in Canada; provid[e] a means to disrupt the financial support network of terrorist activity; and, facilitat[e] the prosecution of those corrupt members of this horrific regime" in Canada.[908] They write that not listing the IRGC in its entirety will allow those engaged in human rights violations to continue to enter Canada, and allow those already in the country to stay without consequence.[909]

The letter explains that some believe Canada is not listing the IRGC as a terrorist entity as it could capture individuals who were forced to join the IRGC due to mandatory military service, but asks whether the government is "incapable of tailoring the law through legislative means… to exempt from prosecution those who had no choice but to perform their mandatory conscription time".[910]

Javad Soleimani told us the same thing: that the government says its primary concern is that innocent people could be caught by the law, but that this could easily be resolved by carving out an exemption for those who were subject to mandatory military service. Javad told us that he was also told by government officials that listing the IRGC is not that simple. He was told the situation is more complicated as it would lead to the significant closure of businesses and bank accounts and would leave some individuals unemployed. Javad says this shows that in reality, "it is about money", and just goes to show how powerful the IRGC is here in Canada. Canada must not succumb to these special interests.

16. Monitor and Track Incidents of Transnational Repression

Freedom House suggests that governments create a "specific mechanism to track domestic incidents of transnational repression and identify the perpetrator governments."[911] According to Yana Gorokhovskaia, "[t]racking transnational repression is crucial to stopping it".[912]

Having a singular reporting mechanism, as described above, could allow the government to monitor and track incidents, and could lead to the development of

[907] Kolga and Shahrooz, supra note 896.
[908] Mojdeh Shahriari, et al., "Open Letter from Canadian lawyers – Action against the Islamic Republic of Iran", 23 December 2022.
[909] Ibid.
[910] Ibid.
[911] Freedom House 2022, supra note 19 at p. 33.
[912] Yana Gorokhovskaia, "Tracking Transnational Repression: Next Steps for the State Department's Human Rights Reports", Just Security, 2 June 2021.

comprehensive watchlists for both victims and perpetrators, which could streamline the process of protecting individuals. Emerging trends could be analyzed to help determine potential at-risk targets, who could be warned and further protected by authorities.

Activities that count as transnational repression should be specifically documented and analyzed. This would make discovering and investigating mass incidents of transnational repression easier and allow for systematic responses. This type of accountability and oversight could limit the malign activities of repressive regimes.

A watchlist of perpetrators could include individuals, organizations and states. It should include individuals identified as spies or foreign agents, as well as front organizations and fake NGOs[913] used to attack and monitor individuals on Canadian soil. The list should describe the methods they use to perpetrate transnational repression. Perpetrators may be deterred by knowing that they have been placed on a specific watch list, especially if the list is made public and they are named and shamed. This list could assist the government in diplomatic discussions with perpetrating states.

17. Form Explicit Partnerships Between Government Agencies

The federal government should establish a permanent mechanism to share information, and coordinate policies and operations between different levels of government.[914] This can be headed by the proposed National Counter-Foreign Interference Office.

According to CSIS, Canada's security and intelligence agencies, including CSIS, CSE, RCMP, GAC, and other government partners share information and work together to keep Canadians safe.[915] However, this is not always the case, and much information is not shared between agencies and departments. Greater information sharing capacities are crucial to ensure that all agencies are working with the same information both regarding national security threats and individual incidents of repression.

Each agency should be acutely aware of each other's role in combatting transnational repression, and the National Counter-Foreign Interference Office could be used to fill in the gaps. Rigby and Juneau found that, for example, many departments still have a poor understanding of CSE's mandate and capabilities.[916]

[913] Front organizations and fake NGOs are commonly utilized by authoritarian regimes. For example, in 2019, an organization called the "Tibetan Association of Canada" was established in Toronto. This organization was supported by the Chinese government. See: https://savetibet.org/setting-up-astroturf-tibetan-associations-in-the-west-is-chinas-latest-ploy-to-mislead-the-world-on-tibet/.

[914] University of Ottawa Report, supra note 12 at p. 15.

[915] CSIS: Foreign Interference Threats, supra note 9 at p. 14.

[916] University of Ottawa Report, supra note 12 at p. 18.

Freedom House also suggests that governments of countries that host exiles and targeted diasporas, such as Canada, review its counterintelligence and law enforcement information-sharing practices, and ensure that they can effectively disseminate information regarding "threats stemming from transnational repression".[917]

Information must also be disseminated among other officials and the Canadian public. Individuals must be aware of the threats of transnational repression to help combat them. The National Counter-Foreign Interference Office should brief all legislators and senior government officials on their work, the work of other agencies, and the threats faced by Canadians.

18. Provide Physical Protection Services to Victims

Many victims of transnational repression expressed distrust of Canadian authorities. The distrust partly stems from law enforcement's failures to take action to protect them or prevent these incidents from occurring in the future. The Canadian government and law enforcement agencies must do a better job of working with victim communities and building trust with them.

One important element is physical protection. Victims of transnational repression may require physical protection and support. Yet, many victims are told that if they are concerned about their safety, they should hire private protection. This is not an appropriate response and will only serve to engender distrust and resentment. Freedom House states that authorities should review the processes for issuing warnings and assigning police protection in response to threats of transnational repression.[918]

Others were told to stop their activism, which is another inappropriate response. Sheng Xue explained that "if you stop, you have to stop everything", meaning one would have to withdraw from every activity, and that "it means you are not the person [you were] anymore". She also said that "if I stopped doing what I am doing, [it would] only give them the courage and the reason they will do this to many more people". She elaborated that many do not understand that "this is a whole system that we are facing". It is not a personal conflict where one can just remove themselves or leave the situation to avoid it. While many have given up their activism due to transnational repression, she said that you cannot "half give-up" or "half hide" – you would have to completely stop everything.

Javad Soleimani shared that "Canadian officials asked me to be silent". He said officials told him that they were concerned about him, that he should not trust others easily, and that he should maintain a low profile to avoid provoking the Iranian regime. He said that if officials have concerns about his safety, they should protect him instead. "Asking me to stop does not protect me", he said.

[917] "Policy Recommendations: Transnational Repression", Freedom House, https://freedomhouse.org/policy-recommendations/transnational-repression. ["Policy Recommendations: Transnational Repression"]

[918] Ibid.

19. Provide Psychological Support Services to Victims

The right to psychological and other support for victims of crime is protected under law. In Ontario, the Victim's Bill of Rights provides for a "victim assistance justice fund account", which is meant to assist victims.[919] This includes both providing direct assistance and giving grants to community agencies working to support victims. There is also a Canadian Victims Bill of Rights[920], but it does not guarantee specific support like the Ontario legislation does. Victims' rights should be expanded to include the right to mental health support.

Victims of transnational repression, even where a crime cannot be proven, should be offered psychological and mental health supports by those who have been trained on issues of transnational repression. One victim told us that due to her activism, she has been cut off from her community supports and feels very alone. She met with a psychologist to help deal with all the threats and harassment she was receiving, who refused to help her or continue meeting with her as her situation was "too political".

Associate Professor Stephanie Carvin explains that one of the most successful tactics of transnational repression is making "people feel very alone", which makes them even more vulnerable. As the threats come from abroad, there is "very little enforcement that can be done".[921]

Facing the wrath of repressive regimes can be traumatizing, and the needs of victims should be centered when responding to transnational repression. Lack of assistance to help individuals deal with and recover from that trauma may have severe consequences. It may affect victims' social participation and ability to integrate into society. There should be mechanisms available for victims to receive psychological assistance. Mental health professionals working with these individuals should be specifically trained on what this harm is and how it works. Additionally, this assistance should be offered in a variety of languages, as some victims may not speak English with enough fluency to describe their trauma with nuance, and/or to feel comfortable.

20. Create a Specialized Victims of Transnational Repression Fund

Another important aspect of victim support is financial. Many victims come from disadvantaged backgrounds, having fled to Canada for their safety, often as refugees or asylum seekers. Many individuals we spoke to said that they could not afford to seek out professional help like therapy, or that replacing a cell phone was a difficult cost to shoulder. Accordingly, the government should create a fund that can be used to assist victims of transnational repression for things like emergency housing, personal security, new phones or laptops, and physical and mental health treatment. The fund should be operated by trusted community leaders who decide when it is to be used and should have very little

[919] Victim's Bill of Rights, 1995, S.O. 1995, c. 6, s. 5.

[920] Canadian Victims Bill of Rights, S.C. 2015, c. 13, s.2.

[921] Christy Somos, supra note 195.

bureaucratic processes to ensure the funding can be accessed immediately during emergencies.

Financial support should also be extended to supporting legal initiatives that victims may undertake. As described above, initiating legal cases, where this is an available option, can become expensive. Even if a plaintiff wins, it is possible that a judgment for damages cannot be enforced.

Most provinces and territories do operate victim compensation funds that may allow some victims of transnational repression to receive some compensation, but a specialized federal fund is warranted for several reasons.

First, existing provincial-level compensation schemes have restrictions on applicability that vary by province. Northwest Territories and Yukon offer only short-term, emergency financial relief, and Nunavut offers only travel support.[922] The provincial schemes tend to offer more in terms of compensation, but their coverage and eligibility requirements vary widely.[923] Newfoundland does not have any provincial compensation scheme, having repealed it in 1992.[924] All provincial-level compensation schemes in Canada – except the scheme in Quebec – require that the crime(s) occurred in the province.[925]

Further, the provincial schemes' guidelines may not be language-accessible for many victims of transnational repression in Canada. Many of the provinces only provide the relevant information in English. Wemmers found that there is program information is not available "in one of Canada's many indigenous languages or minority languages … on any of the provincial websites".[926]

There is one federal compensation scheme for victims in existence – the Canadians Victimized Abroad Fund (CVAF) – but this would not apply to compensate for transnational repression occurring in Canada. The CVAF is only available to Canadian citizens who have been victims of specified serious violent crimes abroad[927], and where no other source of financial assistance is available to them. Further, the CVAF may only help to cover (1) travel expenses to return to the State where the crime occurred in order to participate at the preliminary hearing and/or the trial or equivalent process; (2) travel expenses for a support person to be with a Canadian victimized abroad, during the immediate aftermath of the crime; (3) expenses for a

[922] Jo-Anne Wemmers, "Compensating Crime Victims: Report prepared for the Office of the Federal Ombudsman for Victims of Crime", Office of the Federal Ombudsman for Victims of Crime, March 2021. [Wemmers]
[923] Ibid.
[924] Ibid; "Victims' Rights in Canada", Canadian Resource Centre for Victims of Crime (CRCVC), February 2015, https://crcvc.ca/wp-content/uploads/2021/09/victims-rights_paper_DISCLAIMER_Feb2015.pdf.
[925] Wemmers, supra note 922.
[926] Ibid.
[927] The serious violent crimes specified are homicide; sexual assault; aggravated assault; and other serious personal violence offences including against a child (this includes assault causing bodily harm, assault with a weapon, kidnapping, hostage taking, human trafficking, and forced marriage).

Canadian victim of crime to return to Canada; (4) hospital and medical expenses due to being victimized; (5) expenses to replace stolen official documents; (6) upon return to Canada, financial assistance for professional counselling; (7) funeral expenses if the crime resulted in the death of the victim; and (8) out-of-pocket expenses due to being a victim of a violent crime.[928]

The CVAF also contains several eligibility restrictions. The victim or applicant "must be a Canadian citizen at the time of the criminal victimization in another country".[929] There are also residency requirements, such that Canadian citizens who were residing abroad at the time of the criminal victimization are ineligible unless they were enrolled full-time or part-time in an educational institution or program, had a valid temporary work permit, or maintained a residence in Canada and intended to return to Canada to reside within 6 months of the criminal victimization.[930]

21. Build Community Resilience

In addition to providing services to targeted individuals, support should be provided to build greater resilience within communities, reducing the vulnerability of potential targets. Measures must be taken to limit authoritarian regimes' capacity to target and attack individuals.

There are many ways that the Canadian government could invest in resources and infrastructures to improve the resilience of diaspora communities. On top of providing funding to communities to deal with incidents of transnational repression, communities should be given resources to build social connection. Many are completely disconnected from their families and communities back home. Mehmet Tohti said that "it affects your health; it affects everything in your daily life". He said that to be an activist against a regime like China, "you are going to sacrifice everything". He continued that "the price we pay is enormous. It is beyond imagination".

Strong community ties can help ease some of the stress and isolation these individuals feel. Organizations should receive funding to host community and cultural events. Communities should be supported to preserve their languages and cultures and develop organizations and institutions to do so. Mechanisms should be implemented that encourage social and political engagement.

Freedom House also recommends funding "civil society organizations that monitor

[928] Sarah Teich, "Part II - Analysis of the Five Eyes' Systems for Addressing Cross-Border Victims' Needs - Discerning Best Practices And Proposing Targeted Recommendations For Canada", in Developing a modernized federal response plan for Canadians victimized abroad in acts of mass violence: How Canada can address the needs of cross-border victims based on international best practices (Office of the Federal Ombudsman for Victims of Crime, 2021).
[929] "Program Guidelines on Financial Assistance to Canadians Victimized Abroad", Government of Canada, September 2017, section 3.5, https://www.justice.gc.ca/eng/fund-fina/cj-jp/fund-fond/guide_abr-ligne_etr.html#s3.
[930] Ibid.

incidents of transnational repression or that provide resources to targeted individuals and groups" to help combat transnational repression.[931]

In the US, there is a mechanism to provide funding to human rights defenders to conduct research and document human rights abuse experiences. Documenting these incidents helps lawmakers shape policy. In Canada, there is no such mechanism. Instead, we push this type of work onto individual communities, asking them to dispense their time and resources to do so. Their work is not compensated, and so cannot be worked on full-time. Spending their free time documenting these incidents prevents victims from engaging in other activities crucial to a well-balanced life. Victim communities are untapped resources for information and solutions. The government must work with them to implement real change.

Another component of building resilience is community education. Educational materials for targeted victim communities in Canada should be prepared, published and distributed, to raise awareness on the nature of transnational repression, its characteristics, and relevant Canadian and international laws. Such materials could serve to build community resilience by communicating to community members the unlawful and unaccepted nature of such behaviour in simple, clear and concise language. These materials should be provided in multiple languages, contain examples of incidents of transnational repression, and provide guidance on what individuals can do in response.

Victims, communities and those at-risk should also be taught about their legal rights, including for seeking protection, justice, and reparations. Victims and communities identified as at-risk should also be briefed on supports available and cyber security. Any education offered should be provided in multiple languages.

22. Train Law Enforcement Officers

All law enforcement officers should be trained on responding to incidents of transnational repression. Safeguard Defenders suggests that host states ensure that all local law enforcement officers are aware of the particular threats that these communities face.[932]

Where police must physically respond to incidents, clear standards should be established to ensure that police responses are legally justified. There should be specific training to ensure that law enforcement does not breach the Charter rights of either victims or alleged perpetrators. It is possible for law enforcement officers to unwittingly become involved in further human rights abuses against targeted individuals.[933]

Deliberate, serious, or repeated breaches of these rights should be met with disciplinary

[931] "Policy Recommendations: Transnational Repression", supra note 917.
[932] Safeguard Defenders, "14 governments launch investigations into Chinese 110 overseas police services stations", 7 November 2022.
[933] Kate Weine, "US Lawmakers Tackle Transnational Repression", Human Rights Watch, 24 March 2023.

consequences. In addition, government and police responses to incidents of transnational repression should be subject to independent civilian oversight. This type of oversight may strengthen public confidence in Canadian law enforcement officials.

More funding to police services and the establishment of new criminal legislation may unwittingly result in the criminalization of immigrants and refugees, and the targeting of diaspora communities. Civil society organizations and refugee organizations must be consulted to ensure that adequate safeguards are in place to avoid targeting and further harming refugees and others vulnerable to transnational repression.

Training should also be provided to RCMP and CBSA officers, and to officials at Canadian diplomatic missions, on the nature and scope of transnational repression and foreign interference.

23. Train Campus Security Officers

All campus security officers should similarly be trained on responding to incidents of transnational repression on campus. These officers should be made aware of the particular threats that these communities face on campus, and how best to respond.

24. Implement Additional Safeguards for Asylum Seekers

Canada should implement additional safeguards for asylum seekers. Among other things, Canada should ensure that every single asylum request from a national of a state that is a perpetrator of transnational repression, including China, Russia, and Iran, consider their history of transnational repression. This should also apply in all cases of extraditions and deportations.

Additionally, Freedom House suggests that governments strengthen their existing refugee resettlement programs and limit the use of "temporary and subsidiary forms of protection for asylum seekers", instead granting these individuals refugee status.[934] Canada should also include details on transnational repression in National Documentation Packages, which are a compilation of public documents providing information on country conditions and consulted throughout an individual's refugee application.

Further, victims of INTERPOL abuse who become endangered abroad should be prioritized in IRCC's "Global Human Rights Defenders Stream", and the allocated quota of the two-hundred and fifty (250) for this stream should be doubled in number.

25. Engage in Increased Multilateralism

No one state can take on the threat posed by Russia, China, Iran, and others. Rather, Canada must work with our allies to coordinate responses and track transnational repression worldwide. Canada should partner with our allies' government agencies, as well as their civil liberties and expert organizations.

[934] "Policy Recommendations: Transnational Repression", supra note 917.

Nate Schenkkan of Freedom House explains that:

> "Better defenses against transnational repression are a matter of strengthening and increasing connections, not cutting them. Building networks of support and trust, especially among civil society groups, strengthens the sources of resilience that diasporas rely on to push back against transnational repression."[935]

Canada has already developed some multilateral relationships to respond to foreign interference. These relationships could be further developed through both wide-reaching agreements on general issues of transnational repression, as well as on specific, focused issues.

For example, in September 2022, members of a European Parliament committee examining foreign interference began urging the creation of a permanent system to share threat information and practices between democratic countries.[936] Raphael Glucksmann, a French member of the EU Parliament, told The Strategist that Europe is dealing with both Russian and Chinese interference, both of whom pose a threat to democracy and human rights.[937] He concluded that "[o]ur response should be common, and it should be swift, because otherwise we are not winning this battle".[938]

Canada should support this type of information sharing development.

26. Learn from Our Allies

The Canadian government should study our allies' responses to transnational repression, both positive and negative, both effective and non-effective, in order to better inform our responses.

For example, in reference to Australia's legislative response to foreign influence activities, Daniel Ward, a Senior Fellow at the Australian Strategic Policy Institute, argues that Australia went wrong in adopting a "country-agnostic stance", or treating all foreign influence activities the same way, regardless of the perpetrating state.[939] He explains that "[g]reater stringency is needed where the source is a jurisdiction in which the ruling party's control permeates the entire society, allowing it to exert power through public and 'private' entities alike", and the laws must "apply to a broad range of conduct and entities".[940] However, if the same legal net is applied to liberal democracies as to authoritarian regimes, "we wind up regulating a lot of activity that doesn't have a foreign government as its ultimate puppetmaster".[941]

In the US, a bipartisan group of senators introduced the Transnational Repression Policy Act in March 2023, which aims "to

935 Nate Schenkkan, supra note 343.
936 Brendan Nicholson, "EU looks to Australia for help on fighting foreign interference", Australian Strategic Policy Institute, 21 September 2022.
937 Ibid.
938 Ibid.
939 Daniel Ward, "Making Australia's foreign influence laws work", Australian Strategic Policy Institute, 22 July 2021.
940 Ibid.
941 Ibid.

hold foreign governments and individuals accountable when they stalk, intimidate, or assault people across borders, including in the United States". The Act would require the Secretary of State to submit a report to Congress on a government strategy to combat transnational repression, and the State Department to include a section in its Annual Human Rights Report on transnational repression.

Additionally, the Act would create a tip line for victims and witnesses and require the president to submit to Congress a list of individuals that should be sanctioned for engaging in transnational repression. It would also direct the intelligence community to identify and share information and require training for relevant government employees on transnational repression. Human Rights Watch says that this "new legislation, if passed, would be a significant step for the US toward greater protections for dissidents and others targeted in this way".[942] Canada could also enact wide-reaching legislation, studying what our allies have done to combat transnational repression.

27. Close Foreign States' Police Stations in Canada

The at least seven alleged Chinese police stations illegally operating on Canadian soil, first identified by the Madrid-based NGO Safeguard Defenders, should be closed. While China has claimed that they are service centres for overseas nationals, they are not considered official channels. Safeguard Defenders stated that the police stations "eschew official bilateral police and judicial cooperation and violate the international rule of law".[943]

The RCMP is investigating the allegations. However, there should be stronger mechanisms in place to respond to this type of interference. For example, soon after discovering a police station in Dublin, the Irish Department of Foreign Affairs stated that no Chinese authorities had sought permission to do so, raised the issue with the Chinese authorities, and told them to close all operations at the station.[944] One key point to note, however, is that the station in Ireland "is so far the only country where the police station was explicitly advertised as such".[945] In Canada, China's embassy has maintained that the stations are not staffed by police officers but are rather "service stations" staffed by volunteers "not involved in any criminal investigation or relevant activity".[946]

Conservative lawmaker and foreign affairs critic Michael Chong responded by saying the federal government must "haul in ambassador [Cong Peiwu] for a démarche", or an official diplomatic reprimand.[947] He said that the government should review all Chinese diplomats in Canada to ensure that they are not involved with the police

[942] Kate Weine, "US Lawmakers Tackle Transnational Repression", Human Rights Watch, 24 March 2023.

[943] Safeguard Defenders, "110 Overseas", supra note 99 at p. 3.

[944] Shane Harrison, "Chinese 'police station' in Dublin ordered to shut, BBC News, 27 October 2022.

[945] Leyland Cecco, supra note 840.

[946] Ibid.

[947] Ibid.

stations, as well as the immigration status of all those working out of the offices who are involved in "intimidation operations".[948]

Diplomats conducting illegal activity in Canada can be declared persona non grata and removed. Employees of the service stations conducting illegal activity, who are not diplomats, and thus do not benefit from diplomatic immunity, may be prosecuted under Canadian criminal law.

28. Publicly Speak Out Against Transnational Repression

The federal government should take every opportunity to publicly speak out against transnational repression, and to publicly call out perpetrators of transnational repression. There may be a variety of ways to do this. For example, Canada could include data on transnational repression in human rights reports. Canada can also raise issues relating to transnational repression at the next UN Human Rights Council session pursuant to standing agenda item 4 ("Human rights situations that require the Council's attention").

Javad Soleimani believes that the Iranian regime does still respond to international condemnation. Other repressive states do as well. Calling out the bad behaviour of states, through a variety of mechanisms, may lead to changes.

29. Update Travel Advisories

Canada could also issue travel advisories for states that engage in transnational repression, as we do for some other human rights abuses. The federal government recommends that Canadians "avoid all travel" to Russia, and Iran, and exercise a "high degree of caution" in China. While the travel advisory information for each state discusses some of their repressive tactics against foreigners, it does not explicitly mention that any of these states are perpetrators of transnational repression.

Currently, the federal government recommends that Canadians exercise a high degree of caution in China "due to the risk of arbitrary enforcement of local laws".[949] Regarding the Uyghur region, the advisory information states:

> "Local authorities have put in place invasive security measures in the Xinjiang Uyghur Autonomous Region. Chinese authorities are increasingly detaining ethnic and Muslim minorities in the region without due process. There are reports of extrajudicial internment and forced labour camps. Family members of Canadian citizens with Chinese citizenship have been detained. You may be at risk of arbitrary detention if you have familial or ethnic ties to the Xinjiang Uighur Autonomous Region.
>
> The situation in the region is tense and accurate information is hard to obtain. Authorities may impose

[948] Ibid.

[949] "China travel advice", Government of Canada, https://travel.gc.ca/destinations/china.

curfews and restrictions on short notice."[950]

The site also states that "China blocks access to several websites, social media, search engines and online services within its territory", and that one "shouldn't expect internet privacy. Your communications may be monitored at any time, and authorities may review the content stored or consulted on your electronic devices". It also does highlight that foreign journalists "face considerable restrictions in the context of their work", and may be subject to, among other things, surveillance, public smear campaigns, intimidation and harassment, and arrest.[951]

With respect to Russia, the Canadian government recommends that Canadians avoid all travel to Russia, "due to the impacts of the armed conflict with Ukraine, including partial military mobilization, restrictions on financial transactions and increasingly limited flight options".[952]

The website states that "Communications related to the current situation are scrutinized by local authorities. You may face heavy consequences if you discuss, share or publish information related to the Russian invasion of Ukraine. Foreign journalists and other media workers in Russia may also face considerable risks." The site also states that "[a]uthorities may place foreigners under surveillance. Hotel rooms, telephones, fax machines and e-mail messages may be monitored. Personal possessions in hotel rooms may be searched".[953]

With respect to Iran, the Canadian government recommends that Canadians avoid all travel to Iran "due to the volatile security situation, the regional threat of terrorism and the possibility of arbitrary detention".[954] The site also states:

> "There is no resident Canadian government office in the country. The ability of Canadian officials to provide consular assistance is extremely limited.
>
> Canadians in Iran may be closely watched by Iranian authorities. Seemingly innocuous behaviours, such as the use of cameras in public places, travel beyond well-established tourist attractions or casual interactions with Iranian friends, may be misinterpreted and may lead to investigation."[955]

These travel advisories should be updated to explicitly include the risk of transnational repression and mention specific communities at risk. Victims of transnational repression in Canada are also at risk when travelling to unsafe third countries and should be made well-aware of those risks. Updating the travel advisories would also be another way for Canada to communicate that they are aware of transnational repression and take it seriously, both to

[950] Ibid.
[951] Ibid.
[952] "Russia travel advice", Government of Canada, https://travel.gc.ca/destinations/russia.
[953] Ibid.
[954] "Iran travel advice", Government of Canada, https://travel.gc.ca/destinations/iran.
[955] Ibid.

diaspora communities and the perpetrating states.

30. Implement Targeted Sanctions

Another option that may be available to the Canadian government is to implement targeted sanctions on individuals and entities engaged in certain acts of transnational repression. The relevant pieces of Canadian legislation are the Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law) and the Special Economic Measures Act (SEMA).

The Sergei Magnitsky Law allows for the implementation of sanctions on foreign nationals who have engaged in significant corruption or gross violations of internationally recognized human rights. Specifically, the following foreign nationals may be subjected to sanctions:

a. Foreign nationals responsible for or complicit in extrajudicial killings, torture, or other gross violations of internationally recognized human rights committed against individuals in any foreign state who seek (i) to expose illegal activity carried out by foreign public officials, or (ii) to obtain, exercise, defend, or promote internationally recognized human rights and freedoms;
b. Foreign nationals acting as agent of or on behalf of a foreign state in a matter relating to an activity described in point [a] above;
c. Foreign public officials or associates of such officials responsible for or complicit in ordering, controlling, or otherwise directing, acts of significant corruption, including bribery, expropriation of private or public assets for personal gain, corruption related to government contracts or the extraction of natural resources, or the transfer of the proceeds of corruption to foreign jurisdictions;
d. Foreign nationals materially assisting, sponsoring, or providing financial, material or technological support for or goods or services in support of an activity described in point [c] above.[956]

The Sergei Magnitsky Law permits the government to implement property-blocking and immigration sanctions on listed individuals. In addition, the governor in council may prohibit "any person in Canada [and] Canadians outside Canada" from:

a. Dealing, directly or indirectly, in any property, wherever situated, of the listed foreign national;
b. Entering into or facilitating, directly or indirectly, any financial transaction related to a dealing described above;
c. Providing or acquiring financial or other related services to, for the benefit of, or on the direction or order of the listed foreign national;
d. Making available any property, wherever situated, to the listed

[956] Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law) S.C. 2017, c. 21, s. 4 (2) (paraphrased).

foreign national or to a person acting on behalf of the listed foreign national.[957]

The Sergei Magnitsky Law also amended the IRPA to designate these foreign nationals inadmissible to Canada on grounds of human or international rights violations.

Similarly, sanctions may be implemented under Section 4 (1.1) of SEMA if "an international organization of states or association of states … has made a decision or a recommendation [that its members implement sanctions]"; if "a grave breach of international peace and security has occurred that has resulted in or is likely to result in a serious international crisis"; if "gross and systematic human rights violations have been committed in a foreign state"; or if a foreign official or associate of a foreign official "is responsible for or complicit in … acts of significant corruption".[958]

If one of these circumstances applies, the governor in council may order that property situated in Canada be seized, frozen, or sequestrated, if such property belongs to the foreign state, any person in that state, or a national of that state who does not ordinarily reside in Canada. The governor in council may also restrict or prohibit dealing with the foreign state in a variety of ways, including restricting or prohibiting Canadians (or persons in Canada) from dealing in property held by nationals of that foreign state.

[957] Ibid at s. 4 (3) (paraphrased).

SEMA is wider than the Sergei Magnitsky Law in several respects, including in that legal entities may also be sanctioned, whereas the Sergei Magnitsky Law may only be used to list and sanction individuals.

Since the passage of the Budget Implementation Act 2022, property belonging to an individual or entity sanctioned under the Sergei Magnitsky Law and/or SEMA may be repurposed, with proceeds used to compensate victims, if the government applies for an order from the Federal Court of Canada and if the Federal Court of Canada so orders.

The Sergei Magnitsky Law and SEMA may cover some acts of transnational repression. This would have to be evaluated on a case-by-case basis, to discern if the actions of a particular foreign national or entity rise to the level of gross violations of human rights and/or significant corruption. Alternatively, and for clarity, the Sergei Magnitsky Law and/or SEMA may be amended to specifically permit the implementation of targeted sanctions in response to incidents of transnational repression.

31. Request that INTERPOL Amend Its Rules

Canada should not be cooperating with authoritarian regimes on criminal matters. In particular, Canada should not be cooperating with authoritarian regimes in efforts to remove from Canada someone an authoritarian regime claims has committed a crime.

[958] Special Economic Measures Act, S.C. 1992, c. 17 at s. 4 (1.1).

Even where there is evidence of a wrongful act, the individual accused may be targeted as a form of blame shifting. Because authoritarian regimes are not subject to the rule of law, they either unable or unwilling to distinguish between the guilty and the innocent.

Countries with whom Canada has extradition treaties are presumed to conduct fair trials. There should be no such presumption for other countries. Cooperation in criminal matters with states with whom Canada does not have extradition treaties circumvents the Canadian extradition regime and should not occur.

Regarding INTERPOL, as detailed above, the Red Notice and Diffusion systems are abused by repressive states to harass and intimidate their targets overseas. The distinction between accusations of commission of ordinary law crimes and accusations that are political is difficult to draw when the accusations are made by repressive regimes, since these regimes often shift blame for their own wrongdoing to powerless scapegoats, accusing them of ordinary law crimes. The accusations are politically motivated, but the allegations are that crimes were committed which are not, in themselves, political.

Red Notices and Diffusions can cause problems to the targets, even if there is no extradition treaty between the source country and the country where the target resides, because of the endless rounds of security screening, secondary examinations and possible bars to entry when the targets travel.

INTERPOL's Commission for Control can in theory decide that INTERPOL should withdraw a Red Notice on the basis that the accusation made is political in substance. However, decisions of this nature by the Commission are few and far between because of the difficulty of establishing the necessary facts in countries where the legal systems do not operate with full disclosure.

The Red Notice and Diffusion systems need to be changed so that INTERPOL does not accede to requests to send out Red Notices or Diffusions where the requests emanate from states not subject to the rule of law. Repressive states, of course, have real criminals in their midst besides the people in power. However, the absence of the rule of law makes it impossible to tell which accusations are real and which are just political fictions fabricated by those in charge.

While the abuse of INTERPOL is global, it has a particular Canadian impact because of the large number of persons in Canada who are nationals of repressive states. Consequently, Canada should be taking the initiative with INTERPOL to try to end the abuse. Canada should ask INTERPOL to amend its Rules on the Processing of Data to provide that INTERPOL will not send out Red Notices or Diffusions on request from states not subject to the rule of law.

32. Limit Mutual Legal Assistance with Repressive Regimes under the Convention on Cooperation in International Crimes

Another aspect of limiting mutual legal assistance with authoritarian regimes relates to the Ljubljana-The Hague Convention on

International Cooperation in the Investigation and Prosecution of the Crime of Genocide, Crimes against Humanity, War Crimes and Other International Crimes (Convention on Cooperation in International Crimes).[959] This Convention is recent, dating from May 2023. It is now open for signature.

The Convention obligates states parties to assist each other in bringing perpetrators of grave international crimes to justice.

A note of caution is in order, in light of the Canadian experience with foreign interference. The Convention provides, in Article 30, that mutual legal assistance may be refused if the requested state has substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person on account of that person's race, gender, color, mental or physical disability, sexual orientation, religion, nationality, ethnic origin, political opinions or belonging to a particular social group.

Yet, there is a similar provision in INTERPOL and the INTERPOL Red Notice system is commonly abused by tyrannical states to go after their chosen targets. The INTERPOL Constitution provides in Article 3 that "[i]t is strictly forbidden for the Organization to undertake any intervention or activities of a political, military, religious or racial character".[960] In theory, there is a Commission for Control of INTERPOL's files which exercises a supervisory function. Yet, as noted, that supervision works, in most cases, in name only.

The problem that INTERPOL faces is that tyrannical regimes are sophisticated enough to know not to accuse their targets of offences which are based on internationally prohibited grounds. They rather accuse their targets of standard criminal offences and generate a facade of evidence through tyrannical means to give an air of reality to the accusations.

Moreover, many of the targets of tyrannical regimes are not chosen because of identity characteristics quoted above. The accused may be targeted simply as outsiders, to shift the blame for criminal behaviour from the powerful to the powerless.

Complicating adherence to this mutual legal assistance Convention is the fact that reservations are limited. The Convention provides (in Article 92) that there can be no reservations to the Convention other than those specifically allowed by the Convention.

The reservation that would make the most sense for Canada is to limit the obligations that Canada owes under the Convention only to those states parties with which Canada has operative extradition treaties. That way Canada cannot be roped into providing legal assistance to tyrannical

[959] Ljubljana-The Hague Convention on International Cooperation in the Investigation and Prosecution of the Crime of Genocide, Crimes against Humanity, War Crimes and Other International Crimes, https://www.gov.si/assets/ministrstva/MZEZ/projekti/MLA-pobuda/The-Ljubljana-The-Hague-MLA-Convention.pdf.

[960] The Constitution, INTERPOL, https://www.interpol.int/en/Who-we-are/Legal-framework/Legal-documents.

regimes in going after their chosen targets. Yet, it is not clear that the Convention allows for such a reservation.

Nonetheless, if Canada is to sign the Convention at all, such a reservation is advisable. If it turns out that the reservation is not acceptable to the other states parties, Canada should withdraw from the Convention.

33. Terminate the Treaty Between Canada and the People's Republic of China on Mutual Legal Assistance in Criminal Matters

Canada should not have agreed to the Treaty Between Canada and the People's Republic of China on Mutual Legal Assistance in Criminal Matters.[961] The treaty has a termination provision on six months' notice.[962] Canada should terminate the treaty. There should not be similar treaties with other countries not subject to the rule of law.

34. Encourage the Appointment of a UN Special Rapporteur on Transnational Repression

Canada should encourage the appointment of a UN Special Rapporteur on Transnational Repression. This could provide a central focal point globally for victims of transnational repression and enable deeper investigation into and combatting of this issue at the UN level.

This is not a novel proposal. Dr. Dana Moss, who coined the term transnational repression, has also called for a UN special rapporteur on the issue.[963] She says that "we need more international coordination" to face these threats, and that the current response is "very ad hoc".[964] Further, in their recommendations to the US government, Freedom House has also suggested that the US and its allies call for the creation of a UN special rapporteur, and work with international organizations and bodies to "highlight the threat of transnational repression and establish norms for addressing it".[965]

35. Encourage the Creation of a Specific Treaty on Transnational Repression

For these same reasons, Canada should work with its allies to encourage the creation of an international treaty to combat transnational repression. This could contain provisions obligating states parties to take various actions to combat transnational repression including many of the suggestions contained herein. This could provide definitions for the relevant terms, which as detailed above, is needed.

[961] Treaty Between Canada and the People's Republic of China on Mutual Legal Assistance in Criminal Matters (E101640 - CTS 1995 No. 29), https://www.treaty-accord.gc.ca/text-texte.aspx?id=101640.

[962] Ibid at Article 25.

[963] Stockholm Center for Freedom, "[Interview] Dr. Dana Moss calls on the UN to appoint a special rapporteur on transnational repression", 28 December 2022.

[964] Ibid.

[965] "Policy Recommendations: Transnational Repression", supra note 917.

36. Implement Human Rights Watch's 12-point Code of Conduct for Universities and Colleges

In March 2019, Human Rights Watch released a 12-point Code of Conduct for universities and colleges to adopt to respond to threats by the Chinese government, urging institutions to resist the CCP's efforts to undermine academic freedom abroad.[966] Canadian institutions should implement this Code and apply it to other perpetrators of transnational repression as well.

The Code states that all institutions of higher education should:

1. Speak out for academic freedom.
2. Strengthen academic freedom on campus.
3. Counter threats to academic freedom.
4. Record incidents of Chinese government infringement of academic freedom.
5. Join with other academic institutions to promote research in China.
6. Offer flexibility for scholars and students working on China.
7. Reject Confucius Institutes.
8. Monitor Chinese government-linked organizations.
9. Promote academic freedom of students and scholars from China.
10. Disclose all Chinese government funding.
11. Ensure academic freedom in exchange programs and on satellite campuses.
12. Monitor impact of Chinese government interference in academic freedom.[967]

37. Sanction and/or Ban Surveillance Companies Complicit in Transnational Repression

The federal government should sanction corporations, particularly surveillance technology companies, that assist foreign states in their perpetration of transnational repression and foreign interference. These companies may be sanctionable under SEMA, as described above, and any assets they have in Canada may be repurposed to compensate victims. Short of implementing sanctions, Canada can and should place restrictions on these companies' operations in Canada.

In 2019, the US placed trade restrictions on Hikvision and other Chinese companies, banning them from importing US technology over allegations that they were involved in human rights abuses in the Uyghur region.[968] In 2021, the US Commerce Department's Bureau of Industry and Security placed four foreign companies to its Entity List, blacklisting them for their "malicious cyber activities".[969]

[966] Human Rights Watch, "Resisting Chinese Government Efforts to Undermine Academic Freedom Abroad", March 2019.
[967] Ibid.
[968] Michelle Toh, "UK bans Chinese surveillance cameras from 'sensitive' sites", CNN, 25 November 2022. [Michelle Toh]
[969] Leyland Cecco, "'Asleep at the wheel': Canada police's spyware admission raises alarm", The Guardian, 7 July 2022.

In November 2022, the UK banned its authorities from using technology that is produced by companies subject to China's National Intelligence Law, which requires citizens and organizations to cooperate with China's intelligence and security services.[970] Months earlier, UK lawmakers had called for a ban on technology by Hikvision and another Chinese surveillance technology firm over allegations they were involved in human rights abuses in the Uyghur region.[971]

Canada should follow suit and sanction and/or ban such companies with ties to repressive states, particularly surveillance technology companies where there is evidence of their involvement in transnational repression.

This is a pressing problem in Canada. As detailed above, several companies with close ties to the CCP have been operating in Canada's surveillance sector. For example, Hikvision, which has been sanctioned in the US and UK, still operates in Canada. Their video cameras are used across the country, including on government buildings.[972]

[970] Michelle Toh, supra note 968.
[971] Ibid.
[972] Conor Healy and Margaret McCuaig-Johnston, "Canada is being naïve about the risks of Chinese technology", The Globe and Mail, 13 December 2022.