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Does the Protection of Minority Groups in Xinjiang Fail?

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Article	Abstract
<p>Keywords: Chinese Communist Party; Human Rights Violations; Uyghur; UDHR;</p> <p>Article History Received: Feb 6, 2020; Reviewed: Jul 8, 2020; Accepted: Jul 19, 2020; Published: Jul 31, 2020.</p> <p>DOI: 10.28946/slrev.Vol4.Iss2.671.pp205-220</p>	<p>Nowadays, many human rights violations related to religion, race or culture exist. In 2018, The Council on Foreign Relations (CFR) estimated around two million Uyghur were arrested by the Chinese government without due process of law and forced to accept the political doctrine of the Chinese Communist Party. These actions include physical torture and restrictions on religious freedom. Article 2 of 1948 UDHR stipulates the prohibition of discrimination against race, colour, sex, language, religion, political or other opinions, national or social origin, property, birth, or another status. The paper aims to analyse human rights violations against the Uyghur and legal efforts to protect freedom of human rights for Uyghur in China. Human Rights have been fully regulated by the 1948 Universal Declaration of Human Rights (UDHR). By using statutory and case approach, the result shows that the actions taken by the Chinese government have violated legal provisions including the Declaration and the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). The government of China is also failing to uphold its responsibility to protect.</p>

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INTRODUCTION

After the end of World War II, the application of human rights values has been developed despite many obstacles and setbacks that happened in the world.¹ There have been many efforts made to protect human rights, including by making some international regulations to avoid violations of human rights. The climax occurred with the adoption of the Universal Declaration of Human Rights by the United Nations General Assembly in 1948 in Paris. The 1948 Universal Declaration of Human Rights is the most important legal basis used as a source of norms relating to the

¹ James Nickles, *Making Sense of Human Right* (Oxford: Blackwell Publishing, 2007).

obligations of each individual to respect human rights.² Even though human rights have been regulated in this Declaration, many people do not always respect and protect human rights. Recently, the issue of human rights violation is becoming a severe problem faced by society. Human rights violation has occurred in various regions of the world in the last few decades.³ The case of human rights violations for Uyghur in China is a clear example of human rights violations that happened in the world. The case of oppression of Uyghur has caught attention to the international community because it is suspected as the crimes against humanity.

Uyghur is an ethnic minority in China that belonged to Turkic ethnic who are commonly found in Central Asia. The majority of Uyghurs embraced Islam and used Turkish as their native language. Uyghurs are very different in terms of language, culture, religion and physicality with the majority ethnic group in China.⁴ Uyghur residents reside in (XUAR) Xinjiang Uyghur Autonomous Region. XUAR is an area located in the far northwest of China which has its capital in Urumqi city. XUAR shares a border with eight countries, *e.g.* Tajikistan, Mongolia, Afghanistan, Russia, Kazakhstan, Pakistan, India and Kyrgyzstan.⁵ The total population in Xinjiang in 2018 was estimated at 24 million based on a population census conducted by the government of China.

The issue of tension between the government of the People's Republic of China and Uyghur has actually been going on for a very long time. In 2009, the riots occurred in the city of Urumqi, which was recorded as one of the greatest riots that ever happened in China. This riot was known as the 2009 Urumqi Riot, where there was a conflict in the form of anarchist demonstrations between Uyghurs and Hans in Urumqi city.⁶ The riot on 5 July 2009 began when an incident occurred in a toy factory in Eastern of Shogun city, Guangdong province. The workers from Han ethnic persecuted Uyghur workers until two people killed and around 70 people were injured. The incident of persecution by Han was caused by rumours about the rape committed by young Uyghurs to a woman from Han ethnic.⁷ Records of the attack spread quickly online and even heated up to Xinjiang province. Then Uyghur students hold demonstrations in the Urumqi region. During the demo, some people claimed the police fired ammunition directly at the demonstrators, which sparked riots. As a result of these events, many Uyghur attacked Han people on the streets of Urumqi in Xinjiang. Chinese authorities reported 150 people, mostly Han people, were killed in the incident and 1,700 others were injured.⁸ The government of China alleges that the riots were planned from abroad by the World Uyghur Congress and its leader Rebiya Kadeer. A few days later, it was the turn of the Han people to take to the streets carrying sticks and iron to take revenge

² Mary Ann Glendon, 'Knowing the Universal Declaration of Human Rights', *Notre Dame Law Review*, 73.5 (1998), 1153.

³ Rudyanti Dorotea Tobing, 'Prevention of Child Marriage Age in the Perspective of Human Rights', *Sriwijaya Law Review*, 2.1 (2018), 1–17 <<https://doi.org/10.28946/slrev.vol2.iss1.107.pp1-17>>.

⁴ Eric Hyers, 'China's Policy towards Uighur Nationalism', *Journal of Muslim Minority Affairs*, 26.1 (2006), 75–86.

⁵ BBC (2018) Why Do Tensions Continue to Occur between the Chinese Government and the Uyghur. [Online] Available from: <https://www.bbc.com/indonesia/dunia-46601641> (retrieved: December 18th, 2019).

⁶ Gardner Bovingdon, *Autonomy in Xinjiang Han Nationalist Imperatives and Uyghur Discontent* (Washington, DC: East-West Center, 2004).

⁷ Michael Clarke, 'China, Xinjiang and the Internationalisation of the Uyghur Issue', *Global Change, Peace and Security*, 22.2 (2010), 213.

⁸ Clarke.

on the Uyghurs.⁹ After that incident, every riot that occurred in Xinjiang was always responded firmly by the government of China by sending troops to that region.¹⁰ Until now, China's relations with the Uyghur are still coloured by suspicion by the government of China, especially against separatism and terrorism movements that have emerged in the Xinjiang province. In order to avoid separatist movements in various locations in China, the government of China encourages mass immigration by Han ethnic to various regions in China.¹¹ In addition, Chinese government established various security checkpoints and police stations throughout the Xinjiang region by the Chinese government.¹²

Since the beginning of 2018, the Chinese government has implemented repressive policies to combat religious extremism. This policy gave birth to several controversial rules in the Xinjiang region. One of the most controversial policies undertaken by the Chinese government is the re-education camp. The local government stated that the camps were centres of education and training to combat religious extremism.¹³ However, in practice, the camp implemented ideological education, psychological rehabilitation, and correction of behaviour using methods that were often inhumane, both physically and mentally. Besides, Amnesty International and Human Rights Watch (HRW) also added that all prisoners were forced to take oaths of loyalty to Chinese President Xi Jinping. As a result, in August 2018, the UN Committee for the Elimination of Racial Discrimination estimated that Chinese authorities detained around two million Uyghurs.¹⁴ Also, the Chinese government carried out other policies ranging from banning religious attributes, anti-halal product campaigns, mosque destruction and fasting during Ramadan. The actions taken by China violated the norms contained in the 1948 Universal Declaration of Human Rights, which stated the prohibition of discrimination against people based on race, religion, colour, and others.

There are some previous researches discussed this issue, for instance; Taris¹⁵ in his paper on “The Responsibility of the People's Republic of China for Alleged Human Rights Violations against the Uyghurs”. The paper attempted to rely on the role of countries that can be taken to solve the problem of human rights violations in the Uyghur through the Inter-state Complaint Mechanism. The protection of Uyghur has also been explored in prior studies by Gunawan¹⁶ on Responsibility of the People's Republic of China for Minority Based on ICERD: Uyghur Case. The paper is more focused on the implementation of ICERD toward minority groups in China, in particular with Uyghur re-education camp. The paper also reviewed that China also failed to implement the responsibility toward its people in the case of protection from Crimes against Humanity for Uyghurs. In comparison, this research discusses the Uyghur problem in a

⁹ Clarke.

¹⁰ Bovingdon.

¹¹ Chien Peng Chung, ‘China’s War on Terror: September 11 and Uighur Separatism’, *Foreign Affairs*, 8.4 (2002).

¹² China Daily (2009) Fatalities May Climb in Urumqi. [Online] Available from: http://www.chinadaily.com.cn/china/2009xinjiangriot/2009-07/13/content_8417973.htm (retrieved: December 23, 2019).

¹³ BBC (2018) China Uighurs: Xinjiang legalises 're-education' camps. [Online] Available from: <http://www.bbc.com/news/world-asia-45812419> (retrieved: December 23, 2019).

¹⁴ The Independent (2018) Chinese 're-education camps' for Uighur Muslims run like 'concentration camps'. [Online] Available from: <https://www.independent.co.uk/news/world/asia/china-muslims-re-education-camps-amnesty-uyghur-religion-human-rights-watch-a8678156.html>. (retrieved: December 16th, 2019).

¹⁵ Hashfi Taris, ‘The Responsibility of the People’s Republic of China for Alleged Human Rights Violations against the Uighurs’, *Padjajaran Jurnal Ilmu Hukum*, 6.3 (2020), 619.

¹⁶ Yordan Gunawan, ‘Responsibility of People’s Republic of China for Minority Based on ICERD: Uyghur Case’, *Varia Justicia*, 15.2 (2019), 65.

comprehensive-manner which not only focuses on ICERD's violation and also China's failure to implement the Responsibility to Protect. This research also discusses China's failure to protect minorities under the 1982 Constitution of the People's Republic of China, aside of the violation of the International Covenant on Economic, Social and Cultural Rights (ICESCR) which conducted by China.

Actually, Since the early 90s, China has played an active role in upholding the international human rights system.¹⁷ Unlike the UDHR, the Convention is an international human rights instrument that is legally binding. The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) is one of the conventions which ratified by China in 1981.¹⁸ This Convention regulates the obligations of all parties that sign it to provide full protection to its citizens without carrying out discrimination based on race. China also ratified The International Covenant on Economic, Social and Cultural Rights (ICESCR) in 2001, which regulates the state's responsibility to protect the rights of citizens from various aspects such as social and economic.¹⁹ Nevertheless, based on the actions that they have committed, China also has violated these two human rights conventions which they ratified. Besides, China also failed to apply the principle of responsibility to protect by allowing crimes against humanity for Uyghurs happened in Xinjiang until today. Based on those facts, this paper is intended to analyse the failure of China's Government in implementing the Conventions relating to the human rights in China and the perspective of the Principle of Responsibility to Protect (R2P) in dealing with crime against humanity for Uyghurs in Xinjiang Province, China.

RESEARCH METHODS

The Type of Research is normative legal research. By using statute approach, the research highlights some particular regulations such as Constitution of China, Universal Declaration of Human Rights, International Convention on the Elimination of All Forms of Racial Discrimination and the International Covenant on Economic, Social and Cultural Rights. The research also uses case approach by reviewing others related case. Authors collected the data through literature learning in order to find the regulations and theories related to the object of the research. Data collection is conducted by analysing and making a conclusion from various sources such as conventions, books, articles, magazines and other related sources. The data were analysed systematically through the juridical qualitative method. Systematically means the data were analysed based on International Law and the Constitution of China. Juridical qualitative means it would be connected to the Principle of Law, Convention, and other related regulations.

ANALYSIS AND DISCUSSION

Freedom of Expression

Besides the violation of freedom of religion, the Chinese government also violates several freedoms, *e.g.* the freedom of association and opinion, freedom to get an education and also freedom of expression. Freedom of expression is a fundamental human right which creates

¹⁷ Ulla Liukkunen, *Fundamental Labour Rights in China - Legal Implementation and Cultural Logic* (Cham: Springer International Publishing A G, 2015).

¹⁸ James D. Seymour and Patrick Yuk-tung Wong, 'China and the International Human Rights Covenants', *Critical Asian Studies*, 47.4 (2015), 514.

¹⁹ Liukkunen.

enjoyment for all human being. The freedom of expression is essential in the life of a democratic society.²⁰ However, it is not an absolute right that every individual possessed. Under international provisions, the government can limit certain forms of expression for reasons of national security and protect national unity. China truly limits freedom of expression to the level where it receives a bad name in the world community. According to the annual "World Press Freedom Index" report, which aims to measure how the public enjoys much freedom of the press and media, media and journalists in each country. China is ranked 176 out of 180 countries, which indicates that China is a country that is very bad in freedom of expression.²¹

The Constitution of China (*Zhonghua Renmin Gongheguo Xianfa Xiuzheng*) fully guarantees freedom of expression to every individual in China. Freedom of expression is regulated under Article 35 of the Chinese Constitution. In this article, it is clearly stated that "*Citizens of the People's Republic of China enjoy the freedom of speech, of the press, of assembly, of association, the procession and demonstration.*"²² clearly, the article states that every citizen has the right to freedom of expression and must automatically be protected by the Chinese government.²³ but in its application, this article does not entirely run because of a lot of actions taken by the Chinese government as a form of violation of freedom of expression. The action of China Government actions is against the obligations to protect the people under the Constitution. This fundamental freedom is often limited by the Chinese government which include laws on media restrictions, having the most sophisticated censorship tools for restrictions on freedom of the press, harassment of people who voice their opinions and blocking of various world sites. The re-education camp existing in Xinjiang also has violated the right of freedom of every citizen, because minorities, especially Uyghurs, will be detained without clear charges. The act also violates the freedom of expression, religion and thought which every citizen should have without any difference. Uyghurs were forced to go to political indoctrination in camps where they were forced to accept the doctrines of the Chinese communist party and were not allowed to practice their religion.²⁴

The treatments given by the Chinese government to ethnic Uyghurs in Xinjiang have raised concerns about the potential risk of crime in all parts of China.²⁵ Therefore, the government of China implements systems which monitoring the daily lives of Uyghur such as the communications and interaction of the people.²⁶ The government of China also reportedly installs a GPS tracking system on every vehicle, collect DNA during medical check-ups, and monitor all

²⁰ Kumi Naidoo, *Undermining Freedom of Expression in China: The Role of Yahoo!, Microsoft, and Google* (London: Amnesty International UK, 2006).

²¹ Lilleby, Caroline Syversen. *The Right to Freedom of Expression in China and the West: China's Right to a Cultural Specific Freedom of Expression Orientation* (Norway: Norwegia University of Life Science, 2016).

²² The 1982 Constitution of the People's Republic of China.

²³ Liza Negri, *The Past, Present, and Future of Freedom of Speech and Expression in the People's Republic of China* (Denver: University Denver, 2009).

²⁴ Human Rights Watch (2018) Submission to the CERD Review of China: 96th session of the Committee on the Elimination of Racial Discrimination. [Online] Available from <https://www.hrw.org/news/2018/06/21/submission-cerd-review-china>, (retrieved: January 7th, 2020)

²⁵ Global Center for Responsibility to Protect, (2019) The Persecution of the Uyghurs and Potential Crimes against Humanity in China. [Online] Available from: <http://www.globalr2p.org/media/files/2019-april-uyghurs-brief.pdf> (retrieved: December 20th, 2019).

²⁶ Shih, Gerry (2017) In Western China, thought police Instill fear. [Online] Available from: <http://www.globalr2p.org/media/files/2019-april-uyghurs-brief.pdf>, (retrieved: December 17th, 2019).

mobile and online communications.²⁷ This was done by China as a form of efforts to maintain security and to keep the Uyghur under the Chinese government's control. In addition, the Internet in China is very restricted by government because it is considered as threat and forum for voicing separatist actions in this country. The government argued that the Internet has the potential to expand freedom of expression that has been rejected by Chinese people, and make the government more repressive to freedom of expression.²⁸ As results, the government have to make legal restrictions for users of the Internet. Chinese internet users are blocked by the "Great Firewall" which aims to monitor domestic social media networks and supervise international journalists. The blocking of various world sites was carried out as a form of anticipation to avoid propaganda and lousy influence from various world parties. At this time, the government uses four components to control Internet: markets, infrastructure, social norms and law. These components can control contents on the Internet which are suitable for publishing.²⁹ The Chinese government believes that there will be much outside encouragement to expose the Uyghur liberation campaign, which will later lead to a separatist movement in the realisation of the East Turkistan state.

According to the Report of Amnesty International, Xinjiang is the only province in China that allows the death sentence for political prisoners.³⁰ The exact number of victims of political prisoners sentenced to death was hidden by China. However, according to East Turkestan, the number of deaths due to the death penalty or torture by the government of China reached 2,500 people from 1999 to 2000.³¹

International Human Rights Law Perspective

In 10 December 1948, The UDHR was implemented by General Assembly of United Nations by resolution of 217A, with the forty-eight state in favour and eight abstaining. The UDHR is a non-binding instrument in International, and it is not a treaty. It is a general assembly recommendation to member state, which possesses moral and political influence over the signatories rather than any legally enforceable decision.³² The Universal Declaration of Human Rights consists of 30 Articles which regulate the rights that are possessed by every human being without exception. As a country that recognises the 1948 Universal Declaration of Human Right, China is obliged to protect the human rights of every individual in China. China must ensure freedom and equal rights between all citizens without differences from one another. In reality, China has violated 1948 UDHR, which contains regulations about respecting and protecting human rights. Based on this regulation, China has discriminated Uyghurs under Article 2 of UDHR, which states that:

"Everyone is entitled to all the rights and freedoms set forth in this Declaration without distinction of any kind, such as race, colour, sex, language, religion, political or other opinions, national or social origin, property, birth or another status. Furthermore, no distinction shall be made based on the political, jurisdictional or international

²⁷ Wong, Edward (2017) "Western China Region Aims to Track People by Requiring Car Navigation". [Online] Available from <https://www.uyghurcongress.org/en/western-china-region-aims-to-track-people-by-requiring-car-navigation/> (retrieved: December 17th, 2019).

²⁸ Negriff.

²⁹ Zhang Qianfan, *The Constitution of China: A Contextual Analysis* (Oxford: Hard Publishing, 2012).

³⁰ Philipp Bruckmayr and others, *Historical & Contemporary Perspective on Islam and Identity in Southeast Asia and China* (Herndon: International Institute of Islamic Thought (IIIT), 2006).

³¹ Harun Yahya, *Communist China's Policy of Oppression in East Turkestan* (Istanbul: Global Publishing, 2004).

³² Abass Ademola, *International Law; Text, Cases, and Materials* (New York: Oxford University Press, 2012).

status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty."³³

The minority rights that should be owned by the Uyghur have been violated by China through the existence of a re-education camp in the XUAR region (Xinjiang Uyghur Autonomous Region).³⁴ There were many activities carried out in the camp ranging from military training, singing the Chinese national anthem, writing personal statements stating that they would become new people who would obey the Chinese government. Then Uyghur women are ordered to replace their burqas with more modern Uyghur ethnic clothes without the nuances of Islam and also forced to have a secular lifestyle. The re-education methods are divided into four groups. Group A is a massive prisoner who will receive training for 20 days; Group B is stubborn of thinking group who will get 15 days of training, group C receives seven days training and Group D receives four days training.³⁵ Because of it, the Chinese government has got many criticisms concerning the existence of re-education camp. Ordinarily, the actors who commit crimes against humanity are members or governments of the country themselves as happened in China, where they do not carry out their responsibilities towards those in terms of protection from mass crimes. In addition, every country is obliged to uphold the concept that all countries are fully responsible for protecting its citizens from war crimes, genocide and crimes against humanity.³⁶ Every country must fully protect its population from a variety of cruel mass crimes for the sake of creating peace and avoiding harm to the country and its people.

The persecution carried out by the government of China on Uyghur ethnic also has violated International Conventions that related to human rights issues, namely International Convention on the Elimination of All Forms of Racial Discrimination (ICERD).³⁷ ICERD is very important as a general instrument that develops the basic norms of the UN Charter, which proven by the acceptance of this Convention in the corpus of customary International Law.³⁸ ICERD (The International Convention on the Elimination of All Forms of Racial Discrimination) is an International Convention designed to protect every human being from any racial discrimination. This Convention was adopted on December 21st, 1965 and then came into force on January 4th, 1969. The Convention consisted of 181 state parties and 88 signatories.³⁹ The Convention consists of a preamble and 25 articles that have three parts, the definition and scope of racial discrimination itself, the states parties' obligations, the monitoring body and its duty, and the last is about technical matters. The monitoring body also issued General Recommendations in order to assist

³³ The 1948 Universal Declaration of Human Rights.

³⁴ Human Rights Watch. *Note*.

³⁵ Adrian Zenz, 'Thoroughly Reforming Them Towards A Healthy Heart Attitude: China's Political Re-Education Campaign in Xinjiang', *Central Asian Survey*, 38.1 (2019), 102.

³⁶ Antonia Cassese and others, *International Criminal Law: Cases & Commentary* (New York: Oxford University Press, 2011).

³⁷ Sophia Woodman, 'Human Rights As "Foreign Affairs": China's Reporting Under Human Rights Treaties', *Hong Kong Law Journal*, 35.1 (2005), 179.

³⁸ Theodor Meron, 'The Meaning and Reach of the International Convention on the Elimination of All Forms of Racial Discrimination', *Cambridge University Press*, 79.2 (1985).

³⁹ United Nations Treaty Collection, (2019), International Convention on the Elimination of All Forms of Racial Discrimination. [Online] Available from <https://treaties.un.org>, (retrieved: January, 7th, 2020).

state to interpret the Convention.⁴⁰ ICERD discusses race which covers colour, descent, and national or ethnic origin. ICERD obliges states parties to make sure that there is no discrimination to the enjoyment of the rights. To make sure that every country implements all the program, there should be some particular program made by a unique institution for all party. The Committee on the Elimination of Racial Discrimination (CERD) was created in 1970 and began to implement the ICERD. The Committee consists of 18 independent experts formed to facilitate the ICERD implementation. The Committee was elected by secret ballot of those states' parties to the Convention.

As a country that has ratified the Convention, the People's Republic of China has not been successfully implemented International Convention on the Elimination of All Forms of Racial Discrimination. In practice, China still violates this Convention by detaining Uyghur without proper legal procedures. Uyghur is forced to learn China Communist Party speech, and they are forbidden to pray. Also, Uyghur is challenging to compete with Han Chinese to get jobs because Uyghur uses their language to speak. Article 1 of the Convention states that "the term racial discrimination shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life."⁴¹ This The Convention guarantees protection against acts of discrimination for groups of minority and the prohibition against slavery, torture, extermination and other criminal acts. In reality, China has made an unpleasant treatment to Uyghur by limiting religious freedom, freedom of expression based on racial and ethnic differences. The government banned the development of Uyghur cultures in Xinjiang, the use of Turkish as their native language and the prohibition in practising the Islamic religion, which is embraced by the majority of the Uyghur.⁴²

Another Convention that violates by the government of China is the International Covenant on Economic, Social and Cultural Rights. This Convention created by United Nations through General Assembly resolution 2200A (XXI) on 16 December 1966 and entered into force on 3 January 1976.⁴³ The content of this Convention is under UDHR which states that "the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights." It is related with Article 1 of the ICESCR that states "All peoples have the right of self-determination. Under that right, they freely determine their political status and freely pursue their economic, social and cultural development."

Government of China has discriminated Uyghurs in economic, cultural and social aspects. Uyghur have difficulty getting work in their place, get many violent actions, and most Uyghur

⁴⁰ Daisuke Shirane, (2011), ICERD and CERD: A Guide for Civil Society Actors. The International Movement Against All Forms of Discrimination and Racism (IMADR). [Online] Available from: <https://issuu.com/dhrpraxis/docs/icerdmanual>, (retrieved: January 7th, 2020)

⁴¹ The 1963 International Convention on the Elimination of All Forms of Racial Discrimination.

⁴² Human Right Watch (2018) "Eradicating Ideological Viruses"
China's Campaign of Repression Against Xinjiang's Muslims. [Online] Available from: <https://www.hrw.org/report/2018/09/09/eradicating-ideological-viruses/chinas-campaign-repression-against-xinjiangs> (retrieved: December 16th, 2019)

⁴³ Malcolm N. Shaw, *International Law, Eight Ed* (Cambridge: University of Cambridge Press, 2017).

Muslims do not get strategic employment compared to the Han.⁴⁴ Another discrimination that experienced by Uyghur Muslims is the policy of the Government of China who wants the realisation of One China Policy. Government of China policy to make large-scale displacement of Han ethnic who is ethnic majority to the Xinjiang regions, this massive migration aimed at ethnic cleansing to get rid of Uyghur Muslims Xinjiang regions slowly.⁴⁵

The Role of the World Uyghur Congress

In the 1990s, various kinds of Uyghur nationalist movements emerged and were known by the international community. These organisations are divided into different categories according to their respective agendas. It is happened because of the fall of China in the communist regime, which shut down the potential for ethnic separatism in all regions of China with strict controls. The Chinese Communists want all those in their power to be in unity in terms of race, religion, language, and others. Therefore, an Uyghur liberation organisation was established in Germany which has credibility, concepts, and works to organise groups that are scattered in the world to achieve their goals, namely the World Uyghur Congress (WUC). World Uyghur Congress (WUC) was established in April 2004. WUC's head office is located in the city of Munich, Germany. WUC is an international umbrella organisation focused on liberating Uyghurs with a network of 33 affiliates in 18 countries around the world.⁴⁶

It is an international organisation that is fully responsible for the interests of the Uyghur people in East Turkistan and around the world. The purpose of forming this international organisation is to protect freedoms and also human rights for Uyghur by peaceful means without physical or non-physical violence and democratic life for the future of Uyghurs. Officially, WUC said on the website; "The main objective of the WUC is to promote democracy, human rights and freedom for the Uyghur people and use peaceful, non-violent, and democratic means to determine their political future."⁴⁷ From this statement, we can find out the reason why this organisation was not founded in China or Xinjiang. Chinese policy is very hard on anyone who voices independence or who tries to intervene in the political policies of the government of China itself. So the establishment of the World Uyghur Congress can only be done outside of Chinese territory. Germany is home to most of the Uyghurs who fled from China, which makes German as the most prominent place for them to live in the world.

The World Uyghur Congress itself does not express an open campaign of secession but demands the establishment of democracy and the right to determine the destiny and future of the Uyghur. As a state, this organisation will always support every movement that fights for freedom and rights for Uyghur in China. Nevertheless, the good intentions of the WUC faced considerable obstacles in defending the Uyghur ethnic community. The government of China has labelled it by

⁴⁴ Blaine Kaltman, *Under the Heel of the Dragon: Islam, Racism, Crime, and the Uighur in China* (Athens: Ohio University Press, 2007).

⁴⁵ Rukiye Turdush (2018) China is Trying to Erase the Uighurs and Their Culture. [Online] Available from: <https://www.aljazeera.com/indepth/opinion/china-erase-uighurs-culture-181012155613937.html> (retrieved: December 22th, 2019).

⁴⁶ Yu-Wen Chen, 'A Network Approach to the Study of the World Uyghur Congress' Global Outreach: A Methodological Note', *Journal of Chinese Political Science*, 17.1 (2011).

⁴⁷ World Uyghur Congress (2004) Who We are. Website. [Online] available from: <https://www.uyghurcongress.org/en/introducing-the-world-uyghur-congress/> (retrieved: December 26th, 2019).

saying that what the Uyghur nationalist movement is doing is an act of terrorism, with the result that the sympathy of the international community was reduced.⁴⁸

It began in 2000, the government of China alleged that the formation of a large organisation called the East Turkestan National Center planned to liberate Xinjiang. This organisation was intended to shelter Uyghur, and all Uyghur nationalist movements by Uyghur leaders gathered in Istanbul. Although the organisation of Turkestan National Center formed in 1998, it has been realised by China. Thus, the official of China prevented the ethnic or organisation from getting sympathy or pity for the Uyghur ethnic by saying that the organisation had the intention to divide China, called separatists. With such conditions, the struggle carried out by the Uyghur nationalist movement to fight for their rights can only be done outside of Chinese territory. There is no room for them to voice their opinions under the Communist regime. For this reason, the Chinese government also tried to stem the nationalist movement in various ways.

WUC has taken many actions to free the Uyghurs. Efforts that have been made by WUC can be in the form of making annual reports, attending International Conferences or conducting Lobbying to developed countries. In 2014 WUC released a report titled WUC report on Human Rights Violations in East Turkestan. In this report, WUC delivered several reports, including increasing mediation of dialogue with the Chinese government so that this conflict can be resolved internationally.⁴⁹ Then WUC also voiced the Chinese government to ratify the international human rights treaty, ICCPR (International Convention on Civil and Political Rights). November 2015, WUC, in collaboration with the Uyghur Human Rights Project, released an alternative report on the development of the Uyghur conflict with the Chinese government.⁵⁰ This report contains challenges and violence implemented in Chinese law that need to be reviewed. WUC is aware that China, as a superpower country, will only respond to Uyghur ethnic problems if faced with the United Nations, countries in the world, and human rights enforcement organisations. Therefore, WUC is trying to lobby countries such as the United States, Norway, Turkey, Japan, Germany and several other European Union countries. Besides, WUC is also active in various meetings at the international level and takes part in activities carried out by the United Nations, the European Union, and other non-governmental organisations such as the MRG (Minority Rights Group), Unrepresented Nations and People Organisations and HRIC (Human Rights in China).⁵¹ as one of the superpowers that have a significant influence in the world, China's power is so durable that it is challenging for WUC to carry out its mission to free the Uyghur. As a result, Until 2020, WUC is still struggling in gaining freedom rights for Uyghurs in China.

Responsibility To Protect (R2P)

The responsibility to Protect (R2P) is a principle in international relations aims at preventing genocide, war crimes, ethnic cleansing and crimes against humanity in appropriate and necessary

⁴⁸ Bhattacharji Preeti (2009) Uighurs and China's Xinjiang Region. [Online] Available from: http://www.cfr.org/publication/16870/uighurs_and_chinas_xinjiang_region.html (retrieved: December 17th, 2019).

⁴⁹ World Uyghur Congress (2014) "Report on Human Rights Violent in East Turkestan". [Online] Available from: <https://www.uyghurcongress.org/en/wp-content/uploads/WUC-report-2014.pdf> (retrieved: July 10th, 2020).

⁵⁰ World Uyghur Congress (2015) "World Uyghur Congress and Uyghur Human Rights Project, Alternatives Report Submission to The United Nations Committee Against Torture (CAT) In Consideration of CAT/C/CHN/5-56th Session 9 November 2015 - 9 December 2015". [Online] Available from: <https://www.uyghurcongress.org/en/wpcontent/uploads/WUC-UHRP-Alternative-Report-to-CAT-56-4.pdf> (retrieved: July 10th, 2020).

⁵¹ World Uyghur Congress (2012) " World Uyghur Congress". [Online] Available from <https://www.uyghurcongress.org/en/introducing-the-world-uyghurcongress/who-we-are/> (retrieved: July 10th, 2020).

ways. This principle states that each country must protect its people from various human rights violations and crimes.⁵² The background to the birth of the R2P principle was that in the 1990s, the world was shocked by the mass killings that occurred in Bosnia and Rwanda. More than a million people were killed, and the international community failed to prevent mass destruction. The R2P principle was made as a result of several failures by the international community to stop mass killings in Rwanda and Bosnia. The idea of "Responsibility to Protect" initially developed from the field of work undertaken by a Sudanese diplomat who was the UN Special Representative, Francis Deng for the internal Refugees Issues during the 1990s and also many other experts working in the same field.⁵³ A few years after the 2005 World Summit agreement on R2P, some progress was made.

The UN Secretary-General in the office at the time, Ban Ki-moon, had explained the R2P by emphasising the three pillars to implement this principle. The three pillars are:⁵⁴ 1) The responsibility of the state to protect its people from war crimes, genocide, ethnic cleansing, crimes against humanity, and from all kinds of criminals actions; 2) Commitment of the international community to help countries carry out their responsibilities; 3) The International Community has the responsibility to use diplomatic, humanitarian approaches etc. aimed at protecting the public from these four types of crime.

R2P applies in situations of mass atrocities. The mass atrocities are genocide, war crimes, ethnic cleansing and crimes against humanity. The context of the mass is not only interpreted on a large scale and a large number of victims but also the systemic oppression of the government to its people.⁵⁵ It can be categorised that the state does not want to protect or neglect human rights violations. There are even cases of human rights violations whose mass movements are carrying out oppression supported by the government. Historically the principle of Responsibility to Protect (R2P) is closely linked to Human Rights. In the context of human rights enforcement, the country is also the subject of major legal subjects. States are given obligations through declarations and conventions on human rights as the central entity that is fully responsible for protecting, enforcing, and advancing the human rights of its citizens.⁵⁶ The responsibilities of these countries can be seen in UDHR 1948, the International Covenant on Civil and Political Rights (ICCPR) 1966, and International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966. In the preamble UDHR 1948 states that;

“As a common standard of achievement for a people and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their

⁵² Roland Paris, ‘The “Responsibility to Protect” and the Structural Problems of Preventive Humanitarian Intervention’, *International Peacekeeping*, 21.5 (2014).

⁵³ Anne Orford, *International Authority and the Responsibility to Protect* (Cambridge: Cambridge University Press, 2011).

⁵⁴ ICRTOP (2005) Ban Ki-Moon explained the three pillars of R2P in the 2005 World Summit. [Online] Available from: <http://responsibilitytoprotect.org/index.php/component/content/article/35-r2pcs-topics/398-generalassembly-r2p-excerpt-from-outcome-document> (retrieved: July 10th, 2020).

⁵⁵ Gareth Evans, *The Responsibility to Protect* (Washington: Brookings Institution Press, 2008).

⁵⁶ N Nurhidayatuloh and others, ‘Forsaking Equality: Examine Indonesia’s State Responsibility on to the Marriage Rights in CEDAW’, *Jurnal Dinamika Hukum*, 2018 <<https://doi.org/10.20884/1.jdh.2018.18.2.810>>; Nurhidayatuloh & Febrian, ‘ASEAN and European Human Rights Mechanisms, What Should Be Improved?’, *Padjadjaran Journal of Law*, 6.1 (2019), 151–67 <<https://doi.org/10.22304/pjih.v6n1.a8>>.

universal an effective recognition and observance, both among the peoples of member states themselves and among the peoples of territories under their jurisdiction.”⁵⁷

The R2P principle applies to all countries in the world. China is no exception. In International level, China has supported Responsibility to Protect (R2P) twice at the United Nations, first in 2005 at the World Summit and then the second at Security Council Resolution 1674.⁵⁸ Since then, China has supported and fully recognised the Responsibility to Protect principle to increase the capacity of the United Nations to prevent human rights crimes through humanitarian, diplomatic and peaceful means. China has a vital role in preventing conflicts of human rights crimes in the world as a form of manifestation of China against the principle of R2P. China also believes that the best form of protection is prevention. Therefore protection is needed early before inevitable conflicts occur. Throughout history, China has played an essential role in efforts to realise R2P principles such as participating in mediating the Darfur peace plan in 2006 and in 2007 China also secured the visit of the UN special envoy to Yangon.⁵⁹

Then at the domestic level, Chinese law indirectly regulates the application of the Responsibility to Protect principle. The same concept related to the R2P principle is regulated in the 1982 Chinese Constitution, where there is an obligation for the state as the highest authority to provide full protection to its people. Article 4 (1) of the 1982 Chinese Constitution provides the basic principles of protection, non-discrimination and equality for all citizens. It states “All nationalities in the People's Republic of China are equal. The state protects the lawful rights and interests of the minority nationalities and upholds and develops the relationship of equality, unity, and mutual assistance among all of China's nationalities.”⁶⁰

The provisions stipulated in article 4 (1) of the PRC Constitution must explicitly provide full protection to its citizens, the Uyghur is no exception. The Chinese government has the responsibility to protect and fulfil the rights of the Uyghurs, as clearly regulated by domestic law.⁶¹

In this case, it can be seen that China is quite firm in implementing R2P principles at the International level. However, the Chinese government does not carry out its domestic level obligations. The Chinese government does not provide concrete policies relating to the principle of R2P to its citizens. The case of Crimes against Humanity that happened to the Uyghurs in China is a clear example of China's failure to implement this principle. Crimes committed by China can be seen as arresting Muslims in re-education camps, prohibitions on wearing religious attributes, prohibitions on fasting during the month of Ramadan and others. The Chinese Communist Party, as the highest authority in China, is unable to prevent the crime. The Chinese government also cannot provide concrete solutions to reduce these crimes. The principle of R2P should be implemented first in the country itself with the intent as a form of prevention. China does not apply this principle to its citizens, especially the Uyghur cause. Various countries in the world gave many condemn for their actions against Uyghur, but China did not respond to that. UN as the largest

⁵⁷ The 1948 Universal Declaration of Human Rights

⁵⁸ Andrew Garwood-Gowers, ‘China’s ‘responsible Protection’ Concept: Reinterpreting the Responsibility to Protect (R2P) and Military Intervention for Humanitarian Purposes’, *Asian Journal of International Law*, 6.1 (2016).

⁵⁹ Garwood-Gowers.

⁶⁰ The 1982 Constitution of the People's Republic of China.

⁶¹ M. Rayila, ‘The Pain of a Nation: The Invisibility of Uyghurs in China Proper’, *The Equal Rights Review*, 6.47 (2011).

organisation in the world also cannot act further in handling this case, so this case still occurs today in China.

CONCLUSION

Based on the International Human Rights Law, the China Government has violated Conventions and Declaration relating to human rights and failure to protect the Uyghur ethnics. The actions taken by China have violated the norms contained in the 1948 Universal Declaration of Human Rights, which states the prohibition of discrimination against people based on race, religion, colour and others. China also violates International Conventions which have been ratified by China, e.g. International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). Human rights violations committed by the Chinese government can be seen in forms of restrictions on freedom of expression, freedom of associates, freedom of speech and freedom of religion. Besides, China as a country that recognises the Responsibility to Protect (R2P) Principle has failed to implement the R2P principle at the domestic level. The actions that were carried out by the Chinese government such as re-education camps, banning religious attributes, destruction of mosques, prohibiting fasting on Ramadan month are the real examples of China's failure to protect its citizens, especially minorities. The 1982 Chinese Constitution has stipulated the state's obligation to protect citizens from all forms of discrimination, crimes and other unlawful acts. In fact, the crimes against humanity for Uyghur still occur until today. Therefore, it can be said that the Chinese government cannot fulfil the principle of Responsibility to Protect and violates the International Convention on Human Rights, which they have ratified.

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