

Court File No. : T-190-22

FEDERAL COURT

BETWEEN :

UYGHUR RIGHTS ADVOCACY PROJECT

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent



NOTICE OF APPLICATION

TO THE RESPONDENT:

A PROCEEDING HAS BEEN COMMENCED by the Applicant. The relief claimed by the Applicant 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 Applicant. The Applicant 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 Applicant's solicitor, or where the Applicant are self-represented, on the Applicant, 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.

LAROCHELLE AVOCATS

Montreal, 3 February 2022

(S) L'ORIGINAL A ÉTÉ SIGNÉ PAR
YANICK GAGNON
HAS SIGNED THE ORIGINAL

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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 People's Republic of China known as Xinjiang Uyghur Autonomous Region, the nature and extent of the Government of Canada's obligations in that respect, and their incidence on the commission of crimes against the Uyghur population, here and abroad.

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, 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*;
- 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 Government 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 People's Republic of China territory;
- A declaration that the Government of Canada, by its acts and omissions, is in breach of Article I of the *Convention on the Prevention and Punishment of the Crime of Genocide*; and
- Any order and any remedy that this Honorable Court considers appropriate in the circumstances.

The grounds for the application are:

Overview

1. It is submitted that by its acts and omissions, the Government of Canada is violating its international obligations, by failing to prevent the ongoing genocide in that region, thereby contributing to the crimes committed against the Uyghur population, here and abroad;

URAP and Mehmet Tohti

2. The Applicant Uyghur Right Advocacy Project (“URAP”) was established in 2020 to promote the rights of the Uyghur population. URAP conducts research and documents the policies of People’s Republic of China (“PRC”) government targeting members of the Uyghur population;
3. URAP also shares its researches and resources with parliamentarians, governments, local and global organisations and advocates for the protection of the Uyghur people;
4. URAP has two full-time staff working from its Ottawa office;
5. URAP collaborates with other Uyghur and human rights organisations, in Canada and abroad, to protect Uyghurs’ rights, including efforts to stem the use of Uyghur forced labour in global supply chains;
6. URAP works with Human Rights Watch and Amnesty International in its advocacy efforts to have the crimes committed against the Uyghur population, in PRC and abroad, acknowledged and fought;
7. 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 against the Uyghur population;
8. Witnesses before the Uyghur Tribunal testified on a myriad of human rights violations and crimes, including sexual abuses, enforced mass sterilization, mass detentions, separation of children from parents and forced labour;
9. The Executive Director of URAP, Mr. Mehmet Tohti, 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;
10. Since March 2000, Mr. Tohti has been promoting Uyghur human rights, exposing the atrocities being committed against Uyghurs to the Canadian government, including religious persecution, discrimination, mass internment/detention purely on ethnic grounds, forced labour and other crimes, committed as part of the genocidal campaign of PRC against its Uyghur population;
11. Since 2002, Mr. Tohti has been the object of multiple incidents of harassment and intimidation for his advocacy on behalf of the Uyghurs;
12. Mr. Tohti organised the first ever Uyghur parliamentary event for the Canadian parliament in May 2005;

13. Since 2006, measures have been taken by the PRC's authorities against the immediate family of Mr. Tohti;
14. After 2006, family members have been denied passports, and cannot leave the PRC since that year;
15. Since 2016, Mr. Tohti 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;
16. Mr. Tohti continues to this date to advocate for the Uyghur people's rights, in particular with members of the Canadian government;
17. In 2020 and 2021, URAP produced "Issue Guides for Federal Election", documenting and assessing the impact of the PRC's authorities policies targeting Uyghurs in the PRC and globally;
18. On 31 May 2021, URAP issued a report entitled "Uyghur Family Destruction – China's Continual Instrument of Genocide" 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;
19. In January 2022, URAP issued a report entitled "Intended and Unending – A Report on China's Transnational Harassment and Intimidation Campaign against Uyghur-Canadian" on the PRC's threats against Uyghur-Canadians;
20. 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;
21. Through their efforts to have the genocide against the Uyghur population recognized and their meetings with members of the Canadian Government to see the country comply with its obligation to prevent and stop this genocide, URAP and Mr. Tohti have seen and heard how the Canadian authorities have ignored his calls, ignored the genocide, and refused to take meaningful efforts to prevent it;
22. There are two thousand (2000) members of the Uyghur population in Canada;
23. Each member of the Uyghur community of Canada has either personally and directly suffered from the genocide being committed by the PRC against them, or has family members who have endured the crimes committed against them by the PRC's authorities and suffered greatly because of it;

24. The efforts of the PRC to destroy the group has caused great trauma and post-traumatic stress disorders to members of the Uyghur population of Canada;
25. For many members of the Uyghur population of Canada, these damages are exacerbated by the harassment and intimidation campaign pursued by the authorities of the PRC against them, in Canadian territory;
26. The evidence adduced in support of this application demonstrates that not only the PRC's authorities are committing genocide against the Uyghur population, but also deploys considerable efforts to try to silence those who denounce it;
27. 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, it is submitted that the Government of Canada is not only in breach of its obligation to prevent genocide under Article I of the *Convention on the Prevention and Punishment of the Crime of Genocide* ("*Genocide Convention*"), but is also contributing to the harm suffered by members of the Uyghur population, here and abroad;

A. THE CONVENTION ON THE PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE

28. Canada became a Contracting State to the *Genocide Convention* upon its ratification on 3 September 1952;
29. Under Article I of the *Genocide Convention*, Canada is required to prevent and to punish the crime of genocide;
30. 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

31. 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

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.

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

32. The nature of the obligation to prevent is one of conduct, not result. As the ICJ put it:

“[I]t is clear that the obligation in question is one of conduct and not one of result, in the sense that a State cannot be under an obligation to succeed, whatever the circumstances, in preventing the commission of genocide: the obligation of States parties is rather to employ all means reasonably available to them, so as to prevent genocide so far as possible. A State does not incur responsibility simply because the desired result is 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 critical importance.”³

33. Under the obligation, a contracting State has a responsibility to employ all measures within its power which might contribute to the prevention of genocide. Whether the actions of a single State is sufficient to prevent genocide on their own is irrelevant to the obligation to act, especially when “the combined efforts of several States, each complying with its obligation to prevent, might have achieved the result — averting the commission of genocide — which the efforts of only one State were insufficient to produce.”⁴

34. 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;⁵

35. 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

² *Ibid.*, para. 431.

³ *Ibid.*, para. 430.

⁴ *Ibid.*

⁵ *Ibid.*

contracting States under a positive obligation to do their best to ensure that the prohibited acts listed in the *Genocide Convention* do not occur;⁶

B. THE ONGOING GENOCIDE AGAINST THE UYGHUR POPULATION

36. 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;
37. Crimes such as mass internment of Uyghurs in detention and forced labour camps, mass sterilization and forced birth prevention measures, torture and other ill-treatment, measures taken to root out religious traditions, cultural practices and local languages, including destruction of Uyghur sacred sites, mosques, and way of life, have been well documented and described by countries, world leaders and international organisations alike;
38. The refusal of Canadian authorities to call the totality of these destructive campaigns by their name, i.e. genocide, contributes to their commission;
39. The failure of the Canadian authorities to formally recognize that genocide is currently being committed by the PRC's authorities against the Uyghur population and the failure to adopt measures at their disposal to prevent the commission of genocide constitute a violations of their obligations under the *Genocide Convention*;
 - a. Canada
40. In Canada, the Standing Committee 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 (the "Report");
41. The Committee began compiling evidence on human rights violations against the Uyghur population in 2018, following which it produced a report on 19 December 2018;
42. The 2018 report describes how the PRC's 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 XUAR, where surveillance is pervasive and constant, a large scale extrajudicial detention network where political re-education takes place, isolation from the outside world of Uyghurs in XUAR and harassment of Uyghurs overseas, and forcible return of Uyghur and Turkic Muslims from abroad;

⁶ *Ibid.*, para. 432.

43. More witnesses were heard on 20 and 21 July 2020, and the Committee issued a new report in March 2021;
44. The second chapter of the Committee 's March 2021 Report offers detailed evidence of the comprehensive mechanisms of suppression against Uyghurs, both inside and outside of the PRC;
45. The Report observes that concentration camps and their conditions, sexual violence, forced birth control, separation of children from their family, forced labour, state surveillance and its chilling effects, and population control are all part of the arsenal through which the PRC authorities are committing genocide against the Uyghur population;
46. The third chapter of the Report 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;
47. The Report 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*;
48. 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 its perpetrators;
49. Based on the findings of this Report, the Committee issued fifteen (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;
50. 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";
51. Within hundred and twenty (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;
52. The failure of the Government of Canada to have implemented the recommendations of the Committee to this date amounts to a violation of its obligation to prevent genocide under the *Genocide Convention*;

b. The Uyghur Tribunal

53. The Uyghur Tribunal was launched on 3 September 2020. It heard witnesses between 4-7 June 2021, and 10-13 September 2021;
54. It then issued a Judgment on 9 December 2021;⁷
55. 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;
56. In its factual analysis, the Judgment describes in details the evidence heard, and provides important details about the existence of a plan to commit genocide against the Uyghur population, the leadership and central government responsibility in those crimes, torture, rape and sexual violence, religious and cultural destruction, imprisonment and disappearance, birth control, transfer of children and forced labour transfer;
57. In its legal analysis, the Judgment concludes that torture and crimes against humanity have been committed, moreover concluding that the crime of genocide is being committed against the Uyghur population, in particular through the measures intended at reducing the population of that group;

c. The Leaked Files

58. In reaching these conclusions, the Judgment refers to several leaks of genuine PRC documents;
59. These documents contain, *inter alia*, thousands of police files and a database used by the Urumqui City Public Security Bureau and the wider Xinjiang Public Security Bureau which forms, according to Amnesty International, the most comprehensive source of documentary evidence about the government's actions and intentions with respect to the system of persecution and mass internment in Xinjiang;

d. The United Nations

60. On 21 October 2021, France delivered a joint statement on behalf of forty-three (43) countries denouncing human rights abuses in the XUAR. 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 independent observers to monitor the situation;

⁷ Judgment currently available in summary form at <https://uyghurtribunal.com/>.

61. The CERD observations of 2018 itself reported acts of the PRC's authorities, notably the detention of large number of ethnic Uyghurs, mass surveillance disproportionately targeting Uyghurs, mandatory collection of extensive biometric data of Uyghur residents of XUAR, confiscation of travel documents, and prohibited refoulement of numerous Uyghurs to the PRC;
- e. United States of America ("USA")
62. The declarations and measures adopted by the USA provide an interesting benchmark against which Canada's inaction with regards to the Uyghur genocide can be measured;
63. The measures adopted by the US Government are becoming gradually more severe as evidence of the genocide being committed by the PRC's authorities accumulate, and the necessity to prevent and stop that genocide imposes itself on the international community;
64. As can be seen from these measures, they are very similar to the recommendations issued in March 2021 by Canada's Committee, and call on close allies of the USA, such as Canada, to implement similar measures in order to prevent the genocide and dissuade the PRC's authorities to persist in their genocidal policies against the Uyghurs;
- i. *The Uyghur Human Rights Policy Act of 2020 – 17 June 2020*
65. The latest version of the *Uyghur Human Rights Policy Act* was passed by the Senate and the House of Representatives on 17 June 2020;
66. The bill reports that more than a million (1,000,000) Uyghurs, ethnic Kazakhs, Kyrgyz and members of other Muslim minority groups have been detained in internment camps since 2014, whereas the XUAR total ethnic minority population was approximatively thirteen million (13,000,000) at the time of PRC's census of 2010;
67. 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 PRC authorities have been threatening and harassing Uyghurs outside of the PRC, mentioning the importance of protecting asylum seekers from the region;
68. 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;
69. 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 PRC's authorities 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;
70. The bill directs the Director of National Intelligence, the Federal Bureau of Investigation and the United States Department of State to report on the PRC's crackdown on Uyghurs in Xinjiang;
- ii. *The determination of genocide by the Department of State – 19 January 2021*
71. On 19 January 2021, the Secretary of State of the USA declared that genocide is being committed since at least March 2017 by the authorities of the PRC in XUAR against the Uyghur population and other ethnic and religious minority groups;
72. The determination listed the crimes as ongoing including:
- “the arbitrary imprisonment or other severe deprivation of physical liberty of more than one million civilians, forced sterilization, torture of a large number of those arbitrarily detained, forced labor, and the imposition of draconian restrictions on freedom of religion or belief, freedom of expression, and freedom of movement;”⁸
- iii. *The Uyghur Forced Labour Prevention Act (H.R. 6256) – 23 December 2021*
73. The *Uyghur Forced Labour Prevention Act* aims at ensuring that goods made with forced labor in XUAR do not enter the United States market;
74. The bill was passed by the House on 14 December 2021, the Senate on 16 December 2021 and signed by the President on 23 December 2021.
75. The first section of the *Act* is the statement of the policy of the United States henceforth to make sure goods made with forced labor in the XUAR do not enter the United States market;
76. At Section 1(3) of the *Act*, a policy of coordination is enacted with Canada and Mexico to effectively implement Article 23.6 of the *Canada-United States-Mexico Agreement (“CUSMA”)*, which prohibits the importation of goods produced in whole or in part by forced or compulsory labor, including those goods mined, produced or manufactured wholly or in part in the XUAR;
77. Article 23.6 of *CUSMA* reads as follows:

⁸ U.S. Department of State, “Détermination of State on Atrocities in Xinjiang”, January 19, 2021, online : <https://2017-2021.state.gov/determination-of-the-secretary-of-state-on-atrocities-in-xinjiang/index.html>

“(1) The parties recognize the goal of eliminating all forms of forced or compulsory labor, including forced or compulsory child labor. Accordingly, each Party shall prohibit the importation of goods into its territory from other sources produced in whole or in part by forced or compulsory labor, including forced or compulsory child labor (2) To assist in the implementation of paragraph 1, the Parties shall establish cooperation for the identification and movement of goods produced by forced labor as provided for under Article 23.12.5(c) (Cooperation).”

78. The second section of the *Act* lays out a strategy to enforce the prohibition on importation of goods made through forced labor in the XUAR;
79. The strategy encompasses, amongst other objectives, identifying (1) the various programs enacted by the authorities of the PRC that facilitate forced labor of Uyghurs and other persecuted groups, (2) the entities in the XUAR that mine, produce or manufacture, wholly or in part, goods, wares, articles and merchandise with forced labor, (3) the entities working with the government of the XUAR to recruit, transport, harbor or receive forced labor of Uyghurs and other persecuted groups (4) the products that are mined, produced or manufactured in whole or in part by the above mentioned entities, (5) the entities that export these products;
80. The third section of the *Act* creates a rebuttable presumption that certain products mined, produced, or manufactured in the XUAR are the result of forced labor;
81. Recommendations 4 to 6 of Canada’s Committee contained propositions dealing with the pervasive presence of goods produced in whole or in part through forced labor of Uyghurs in XUAR;
82. Canada’s failure to enact similar laws also undermines the respect of its international commercial obligations, inasmuch as goods produced through forced labor of Uyghurs in XUAR could easily circumvent USA’s efforts to prohibit such products by transiting through Canada before hitting USA’s market;
83. The fourth section of the *Act* calls for a diplomatic strategy to address forced labor in the XUAR;
84. Section 4(b)(1) of the *Act* indicates that the strategy shall include enhancement of bilateral and multilateral coordination with partners and allies (such as Canada) to end forced labor of Uyghurs and members of other persecuted groups in XUAR;
85. Following Section 4(b)3(B) of the *Act*, the strategy also has to include a plan to provide humanitarian assistance, resettlement and advocacy for the imprisoned family members of Uyghurs in the numerous internment camps of the XUAR;

86. That part of the USA strategy is in line with Recommendations 8 to 10 of Canada's Committee, which the Government has yet to enact;
 - iv. The *America Competes Act* of 2022 (H.R. 4521) – 25 January 2022
87. The *America Competes Act* contains multiple provisions dealing with the ongoing genocide against the Uyghur population, and calling on partners and allies to adopt measures aimed at stopping that genocide;
88. Sections 30242, 30243 and 30244 of the *Act* specifically deal with Canada, stating that the USA should enhance cooperation with it in dealing *inter alia* with the PRC human rights situation;
89. Section 30243 of the *Act* denounces the PRC's arbitrary detention and abusive treatment of Canadian nationals Michael Spavor and Michael Kovrig;
90. Section 30305 of the *Act* lists findings by the Congress on the treatment of Uyghurs in the XUAR, recalling the intensification of the repression of the Uyghur population, the detention of approximately one and a half million (1,500,00) Uyghurs or 12,5% of the official Uyghur population of the XUAR since 2015, and the reports of medias, ONGs and the United Nations revealing the different facets of the genocide against Uyghurs;
91. Section 30305 of the *Act* also recalls the various occasions on which the US department of State has publicly qualified the crimes committed by the authorities of the PRC against the Uyghur population of genocide since 19 January 2021, and the importance denouncing and investigating these crimes, and allowing the United Nations Office of the High Commissioner for Human Rights unfettered access to the XUAR to investigate the crimes committed in that area;
92. Section 30306 of the *Act* recalls some of the crimes suffered by the Uyghurs, and concludes that these crimes amount to a violation of the *Genocide Convention*, which the PRC has signed and ratified;
93. Subsection (c) designates certain inhabitants of the XUAR who have been the victims of the crimes committed by the PRC's authorities in that region as "Populations of Special Humanitarian concern", and specifies the procedure for admission as refugee for these individuals;
94. Subsection (c) aligns with Recommendation 9 of Canada's Committee, which calls for the creation of an exceptional stream to expedite entry into Canada for Uyghurs and other Turkic Muslims in need of protection;

95. Section 30318 of the *Act* adds the crimes of systematic rape, coercive abortion, forced sterilization or involuntary contraceptive to those whose authors may be targeted by sanctions under Section 6 of the *Uyghur Human Rights Policy act of 2020*;

96. Section 30323 of the *Act* requires the Department of State to establish the position of United States Special Envoy for Xinjiang Province, whose duties will be to coordinate efforts to respond to the gross violations of human rights occurring in the XUAR;

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

97. 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;

98. This ability to act can be measured against the fifteen (15) Recommendations made by the Committee to Canada to start meeting its international obligations, in its Report of March 2021;

a. Naming the Genocide

99. Recommendation 11 recommends that the House of Commons adopt a motion to recognize the Genocide against the Uyghur people in XUAR, and Recommendation 12 recommends that the Government 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;

100. When the House of Commons adopted a motion to accuse the PRC's Government of committing genocide against the Uyghurs and other Turkic people on 22 February 2021, Foreign Affairs minister Marc Garneau abstained "on behalf of the Government of Canada";

101. In its response to the Committee's recommendation to denounce the Government of the PRC for the commission of genocide, the Government of Canada answered that "it will continue to work with the international community to establish whether genocide or crimes against humanity are being committed";

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

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

104. The Government of Canada is thus violating the *Genocide Convention* by refusing to name and denounce to the world and to the PRC's authorities the genocide they are committing against the Uyghurs;

b. Denouncing the genocide

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

106. 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;

107. Just as Canada is violating the *Genocide Convention* by not naming the crime of genocide in its official communications, it is also violating it 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 systematic forced birth prevention campaigns targeting the Uyghurs and other indigenous peoples;

c. Investigating the genocide

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

109. 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 United Nations, but offers no indication that these efforts yielded results, and crucially gives no information on how these efforts were received by the PRC;

110. 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 PRC at the Security Council of the United Nations, which would allow it to block any meaningful and binding resolution before that body;

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

112. 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;

d. Protecting the victims of genocide

113. Recommendations 8 to 10 suggest measures concerning victims of the Uyghur genocide;
114. 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 population that are trying to survive the ongoing genocide and escape the PRC;
115. The Committee also raises the specific case of Huseyn Cecil, a Uyghur who was arbitrarily arrested in 2006 in Uzbekistan, and then deported to PRC where he has been sentenced to life in prison;
116. Canada is violating the *Genocide Convention* by failing to adopt measures aimed at protecting the members of the targeted group;

e. Sanctioning the perpetrators

117. Recommendation 15 aims at imposing *Magnitsky* sanctions against designated Xinjiang or CCP officials;
118. Canada has so far targeted four (4) individuals for sanctions, whereas the genocide against the Uyghurs has targeted a whole population for many years;
119. 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;
120. Despite this fact, Canada has targeted a handful of individuals, thus failing to prevent the genocide by targeting its all of its known perpetrators;

f. Facilitating the genocide

121. Recommendation 7 concerns the exportation of goods that may be used by the authorities of the PRC in the commission of genocide against the Uyghur people;
122. 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;
123. 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;

124. 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;
- g. Prohibiting undue gains from the genocide (Applying existing laws)
125. Recommendations 4 to 6 suggests measures aimed at preventing the sale of merchandises produced through forced labour of the Uyghur population;
126. Despite the difficulties in monitoring supply lines, multiple reports exist documenting the recourse to forced labour in the production of a variety of goods;
127. The Committee heard evidence that products manufactured through forced labour were sold in Canada;
128. 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;
129. 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;
130. Faced with Canada's failures, it is submitted that this Honorable Court's intervention is required, now more than ever, to give a voice to the Uyghur people, here and abroad, and finally give a name to their plight : genocide.

This application will be supported by the following material:

- *Convention on the Prevention and Punishment of the Crime of Genocide;*
- Affidavit of Mehmet Tohti;
- Affidavit of Tursunjan Rouzi;
- Affidavit of Sabiha Tursun;
- Affidavit of Erkin Kurban;
- Affidavit of Yaermaimaiti Zulihumar;
- Affidavit of GU;

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- Affidavit of Tuyghun Abduweli
 - Affidavit of Turnisa Matsedik-Qira;
 - Affidavit of Aniwa Dilinuer;
 - Independent Expert Report, *The Uyghur Genocide: An Examination of China's Breaches of the 1948 Genocide Convention*, Produced by the Raoul Wallenberg Centre for Human Rights and New Lines Institute for Policy and Strategy, March 2021, available in English and French at <https://newlinesinstitute.org/uyghurs/the-uyghur-genocide-an-examination-of-chinas-breaches-of-the-1948-genocide-convention/>
 - *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;
 - *What we heard: A summary of testimony on the Human Rights Situation of Uyghurs and other Turkic Muslims*, Report of the Standing Committee on Foreign Affairs and International Development – Subcommittee on International Human Right, 19 December 2018;
 - *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;
 - 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 Ouïghour au Xinjiang, en Chine »;
 - Uyghur Tribunal Judgment – Summary form- 9 December 2021;
 - *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;>
 - Committee on the Elimination of Racial Discrimination, *Concluding 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;
 - *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;

- Declaration of the Secretary of State of the United States of America on 19 January 2021;
- *The Uyghur Forced Labour Prevention Act* (H.R. 6256), 23 December 2021;
- *Canada-United States-Mexico Agreement ("CUSMA")*;
- *The America competes Act of 2022* (H.R. 4521) – 25 January 2022;
- The Leaked files;
- House of Commons Unanimous Motion;
- UK Parliament Unanimous Motion;
- Netherlands Parliament Motion;
- Lithuania Parliament Resolution;
- France's National Assembly Resolution;

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:

- Copies of all correspondences exchanged between Canadian and People's Republic of China authorities regarding the genocide or other crimes committed against the Uyghur population;
- Copies of all human rights memorandums concerning the ongoing genocide against the Uyghur population taking place in the People's Republic of China;
- Copies of all information detained by Global Affairs Canada regarding the genocide against the Uyghur population taking place in the People's Republic of China;
- Copies of any CBSA, Global Affairs, or any other agency report concerning the existence of Uyghur forced labour in the People's Republic of China.

Montreal, 3 February 2022

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T-190-22

FEDERAL COURT

Between:

UYGHURS RIGHTS ADVOCACY PROJECT Applicant

And

ATTORNEY GENERAL OF CANADA Respondent

NOTICE OF APPLICATION

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Our reference : PL.3224.0002

LAROCHELLE AVOCATS

I HEREBY CERTIFY that the above document is a true copy of the original issued out of / filed in the Court on the 3rd day of February A.D. 2022

Dated this 3rd day of February 2022

[Signature]
 YANICK GAGNON
 AGENT DU GREFFE
 REGISTRY OFFICER