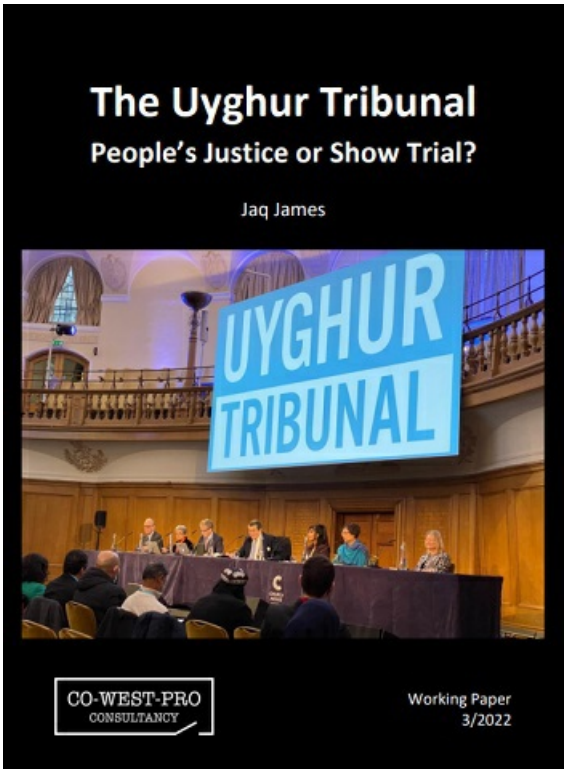
How to tell a real inquiry from a show-trial: a case study of the ‘Uyghur Tribunal’

In the McCarthyite political climate that prevails in Australia and throughout the Anglo-American-dominated “West” today, China is presumed guilty on any and all charges, however implausible, until (and usually even after) they are disproven. Those people who unquestioningly accept the word of the governments, intelligence agencies and mainstream media that have lied their way into one war after another for decades, and denounce anyone who demands some actual evidence this time as a traitor or “genocide denier”, are likely beyond help. But for anyone still capable of critical thought, a new paper by Australian independent legal scholar and analyst Jaqueline James titled “The Uyghur Tribunal: People’s justice or show trial?”[1] provides a useful framework by which to assess the adherence to procedural fairness, and thus the motives, of those who purport to convict China (and other target nations) of atrocities through pseudo-legal processes.

The Uyghur Tribunal was established in London in September 2020, and handed down its “final determination”, which pronounced the government of the People’s Republic of China (PRC) guilty of genocide against the Uyghur people of China’s northwestern Xinjiang region, in December 2021. As the *Australian Alert Service* reported at the time, this conclusion was apparently predetermined, given the Tribunal had pre-announced it at its final round of hearings two months earlier.[2] By definition such “people’s tribunals” are without legal standing. Ms James suggests that they do, however, arguably have a legitimate place as an “innovative [form] of legal resistance by civil society groups” against the depredations of governments, international organisations and corporations, and occasionally individual persons whose wealth, power and/or political influence puts them effectively outside or above the law. As she puts it, people’s tribunals “are set up against a reality that not all actors can be brought before a court of law, and not all international law advocates have access to a competent and good-faith legal arena”. Thus whilst under the present international system they do not and cannot have any legal authority, they *may* at least claim *moral* authority. “However, it is the form that a people’s tribunal takes”, writes James, “that determines whether claims to legitimacy extend beyond foundational conceptualisation to their execution in practice”.

Establishing a standard



In contrast to her previous reports, which comprehensively debunked anti-China propaganda by the Australian Strategic Policy Institute (ASPI)[3] and international NGOs Human Rights Watch (HRW) and Amnesty International,[4] the question in her new paper’s title is one which Ms James deliberately does not answer. Rather, she states at the outset, her paper “attempts to side-step the standard approach of think tanks, human rights organisations and the mainstream media of instructing the public what to think instead of how to think”, by instead providing a framework by which readers may assess the Uyghur Tribunal for themselves.

For her “Legitimate Process Criteria”, James draws mainly upon the work of retired Justice of the High Court of Australia Michael Kirby, one of the most eminent supporters of and previous participants in people’s tribunals. Kirby, she says, submits that if they are to “enjoy and deserve respect”, people’s tribunals must “observe principles of procedural fairness (natural justice) and due process”. As summarised by James, Kirby prescribes that this should include: “the relevant accusation being provided to the accused ‘in good time with full and adequate particulars’; an opportunity provided to the accused to attend the hearing; in the accused’s absence, ‘skilled legal counsel’ being appointed to represent the accused and submit evidence in support of the accused’s imputed case; witnesses submitted to questioning and cross-examination; and the tribunal observing ‘care in the conduct of its deliberations and in the open publication of its findings and verdict’.” To these James adds further “criteria for process legitimacy that can be identified across the literature [which] include: relying on the language of international law (as the more a tribunal seeks to depart from that standard, the more their process legitimacy may suffer); tribunal members possessing expertise and community standing (particularly appointing lawyers and current or former judges); attempting to crowdfund tribunals to help avoid the phenomenon of ‘he who pays the piper calls the tune’ (also pejoratively referred to as donor’s justice); and following recognised practices in gathering and assessing credible evidence from

a multiplicity of sources." Compliance with these two sets of criteria, James writes, "can help guard against accusations of people's tribunals being mere show trials, and make their findings more persuasive in the eyes of the public."

Conversely, however, "What is notably absent in the literature … is how to identify when international people's tribunals are actually illegitimate geopolitical devices designed to merely damage and tarnish 'enemy states'; that is, 'show people's tribunals'." The most comprehensive work on the subject of show trials, she writes, and also the most apt source for analysing people's tribunals from that perspective, is a 2007 article in the *Harvard International Law Review* titled "Unpacking Show Trials: Situating the Trial of Saddam Hussein", by then law clerk, now US Federal Court magistrate Jeremy Peterson. Writes James, "The characteristics Peterson identifies for show trials include: denying the accused the opportunity to tell their side of the story; denying the accused the right to counsel; denying the accused the opportunity to obtain exculpatory evidence; denying the accused the opportunity to challenge the prosecution's evidence; failing to limit the record to relevant evidence or failing to admit relevant evidence; not providing a clear definition of the crime attributed to the accused; lacking sufficient proof requirements; and diminished independence or competence of decisionmakers." Put simply, "If a trial lacks 'risk' (meaning there is no risk of the accused being found 'not guilty') and the 'show' is what preoccupies the participants' minds, then Peterson submits there is a lack of legitimacy."

Found wanting

Measure the Uyghur Tribunal against these two sets of criteria, and it immediately becomes apparent that whether or not it was a deliberate show trial, it cannot be said to have lived up to the high standards that Justice Kirby and other proponents prescribe if people's tribunals are to be seen as legitimate exercises in "people's justice". As James puts it, "some 'legitimate process criteria' were satisfied by the Uyghur Tribunal, such as inviting the PRC government to present its case (which was not accepted) and having open hearings. Yet, it is submitted that important 'legitimate process criteria' were not satisfied. It is further submitted that some aspects of the Uyghur Tribunal met 'illegitimate process criteria', thereby delegitimising the Uyghur Tribunal by having show trial characteristics and elements."

First is the question of "donor's justice". The Uyghur Tribunal was instigated by, and received its initial US$115,000 in funding from the Germany-based World Uyghur Congress (WUC), which James aptly describes as not a human rights group but rather "a secessionist organisation that views Xinjiang as being a separate country, called East Turkistan, occupied by the PRC government." (Furthermore, as American investigative journalist Ajit Singh reported 5 March 2020 for independent news site The Grayzone, the WUC was established in 2004 and continues to be funded by the US National Endowment for Democracy, Washington's pseudo-NGO for fomenting internecine strife in countries whose governments it aims to overthrow. Which is to say, the real sponsor of the Uyghur Tribunal was the US government.)

Secondly, none of the witnesses—including "expert" witnesses—appears to have given sworn testimony, such as by signing a statutory declaration *in lieu* of the official swearingin conducted by state courts, and thus risked no legal consequences for lying. Nor were any of them cross-examined, not least because no defence counsel was appointed to represent the PRC—something which would delegitimise any trial at the best of times, let alone in a case such as this where, as James puts it, "some of the fact witnesses may have been supporters for seceding Xinjiang from China and some of the expert witnesses' ideological opposition to communism and the ruling Communist Party of China may have induced a 'means justifies the ends' calculation to exaggerate or misrepresent human rights abuse claims against the PRC government." Indeed, the *AAS* would suggest here that the qualifying phrase "may have" is too charitable, given the roster of "fact" witnesses comprised entirely members or supporters of the WUC and affiliated or like-minded groups. Meanwhile, as James points out, the "expert" witnesses included such luminaries as Australian Strategic Policy Institute satellite image analyst Nathan Ruser, whom James and others have previously exposed as having misrepresented shopping centres, schools and other public buildings across Xinjiang as Uyghur "internment camps"; and who at 22 years of age undoubtedly lacked the nine years' relevant experience that is the International Criminal Court's minimum qualification to be called as an "expert" witness. Another "expert" was Adrian Zenz of the US government-sponsored Victims of Communism Memorial Foundation, a fundamentalist Christian zealot who has publicly declared himself "led by God" on a "mission" against China, and whose testimony rehashed his long since debunked use of fraudulent statistical analysis to portray Chinese government family planning regulations (which apply throughout the PRC) and the use by Xinjiang women of intrauterine contraceptive devices as evidence of "genocide".

As James notes, even the Uyghur Tribunal itself acknowledged that "[l]oyalty to a cause, or to others seen as victims, may encourage overstatement of events and desire for other … benefits such as presence by being a witness in a country in which asylum might be sought … could lead to people making overstated or false allegations". The Tribunal sought to absolve itself of its failure to take any precautions against their doing so, however, by claiming that "without a contrary case on the basis of which to cross-examine any witness, all that can be done, as was done, is to explore critically what a witness says". James responds that if the Tribunal's organisers "genuinely did not have the capacity to imagine a contrary case to the one presented by the witnesses, then the hearings should never have

gone ahead until a skilled legal counsel with the capacity to anticipate the PRC government's case was found and recruited." The lack of a defence counsel also allowed the prosecution to get away with asking legally objectionable questions that no court would have allowed, which among other things presumed facts not in evidence; elicited hearsay, opinion, speculation and guesses; and prompted witnesses to answer in the manner desired by the questioner (called "leading" questions).

The only thing *AAS* would add to Ms James's report is that whilst the selection of senior London barrister Sir Geoffrey Nice QC (now KC) as the Tribunal's chair, and experienced human rights lawyer Hamid Sabi as its counsel assisting, might appear to satisfy the "legitimate process criterion" of relevant expertise among participants, the presence of Nice in particular actually counts as a point against it. As we have previously reported,[5] Nice has made a career of peddling false charges against Anglo-American political targets. In 2001, as deputy prosecutor for the International Criminal Tribunal for the former Yugoslavia, he led its prosecution of deposed Serbian/Yugoslav President Slobodan Milosevic for war crimes and genocide in the 1990s Balkans wars. Milosevic died in custody of a heart attack in 2006, only to be posthumously exonerated of all charges by the UN War Crimes Tribunal in 2017. In 2014 Nice was co-author of the "Caesar Report", a photographic catalogue of 11,000 people allegedly murdered by the Syrian government in 2011-13 but which even HRW admitted in 2015 consisted largely of casualties of war, including Syrian Army soldiers. And most recently, Nice chaired the 2019 "China Tribunal" in London upon which the Uyghur Tribunal was modelled, which in June of that year purported to convict the Chinese government of systematically mass-murdering Falun Gong practitioners to harvest their bodily organs— on the basis of allegations founded upon hearsay and ludicrous statistical projections, which had already been investigated and dismissed by both the International Red Cross and the US Congressional Research Service.

That said, and as already stated above, James's paper does not set out to conclude whether the Uyghur Tribunal was a legitimate exercise in "people's justice", a mere show trial, or anything in between. What she does insist upon, however— and the *AAS* agrees—is that it is incumbent upon all those who "truly value the concept of international people's tribunals ... [to] endeavour to ensure they comply with 'the highest principles of international law and justice' in every way possible, and close off the doors to the accusation of them being a 'motley collection of vigilantes'. ... Moreover, the 'rule of law' dictates that such a process starts from the premise of viewing the PRC government as 'innocent until proven guilty', with the standard of proof being 'beyond reasonable doubt' and the onus of proof being on the accusers. Anyone who is quick to weaponise people's scepticism against them and crudely push for unanimous consensus is far from a good-faith actor."

Footnotes:

1. See https://www.cowestpro.co/cowestpro_3-2022.pdf
2. "Huge holes in US-British Uyghur Tribunal's 'evidence' of genocide", *AAS*, 20 Oct. 2021.
3. "Independent legal analyst shreds ASPI's Uyghur 'forced labour' claims", *AAS*, 12 Jan. 2022.
4. "Human rights mafia's 'junk research' exposed", *AAS*, 18 May 2022.
5. "Aus-British 'China Tribunal' revives organ harvesting smear", *AAS*, 3 July 2019.

By Richard Bardon, Australian Alert Service, 30 November 2022
