

PROSECUTE;
DON'T PERPETRATE
*Ending impunity for sexual
violence in armed conflict*

Funding Australia's obligations to end impunity for conflict related sexual violence

A PRE-BUDGET SUBMISSION

Introduction

This submission provides five proposals that will help the government end impunity for conflict related sexual violence by supporting the investigation and prosecution of sexual violence perpetrated as war crimes, crimes against humanity and genocide by members of Da'esh while fighting in Syria and Iraq. Such activities would support Australia's implementation of the Sustainable Development Goals, especially goal 5 on gender equality and goal 16 on peace and justice. They would also support the implementation of the Women, Peace and Security agenda and can be written into the forthcoming second National Action Plan on Women, Peace and Security. Both houses of Federal Parliament have condemned these crimes and called for the government to investigate and prosecute. As a state party to the Rome Statute of the International Criminal Court, Australia is in fact obliged to investigate and prosecute these crimes which are outlined in Chapter 8 of the Commonwealth Criminal Code. Ending impunity for conflict related sexual violence requires effort from a range of government agencies. Suggested lead agencies are provided in each proposal.

Summary

		FY 19/20	FY20/21
1	Multiagency workshop	\$ 17,100.00	-
2	Testimony project	\$ 75,364.28	\$ 75,364.28
3	Dedicated investigative unit	\$1,091,125.00	\$1,091,125.00
4	Protecting mass graves	\$2,500,500.00	\$2,500,500.00
5	Processing mass graves	\$1,750,000.00	\$1,750,000.00
	TOTAL	\$5,434,089.28	\$5,416,989.28

Context

When sexual violence is perpetrated as part of an armed conflict, it is a war crime. When that violence is widespread or systemic, it is a crime against humanity. When it is used to destroy, in whole or in part, an ethnic, racial or religious group it is genocide. In Iraq and Syria, Da'esh used sexual violence in war crimes, crimes against humanity and genocide. The UN, Human Rights Watch and other

organisations published comprehensive reports of these crimes. Over 30 000 foreign fighters have travelled from 89 countries to Iraq and Syria to fight with Da’esh and other extremist groups. Many of those fighters come from places where war crimes, crimes against humanity and genocide are illegal under domestic legislation. Australia is one of those countries. By some estimates nearly 200 Australians have travelled to Iraq and Syria to fight with Da’esh.

1 Multi-agency workshop

A one-day workshop of key specialised staff from a range of government agencies responsible for the policy, investigation and prosecution of Australians who perpetrated sexual violence as international crimes in Syria and Iraq. The concept note for the workshop is provided as an annex to this pre-budget submission. The purpose of the workshop is to identify and overcome practical and policy barriers to investigating and prosecuting Australian foreign fighters who perpetrated sexual violence as war crimes, crimes against humanity and genocide while fighting with terrorist organisations such as Da’esh in Syria and Iraq. The workshop will have two key outcomes:

1. An eight-page report on overcoming the barriers to investigation and prosecution, to be launched by parliamentarians.
2. A proposed business process map for sign on by each stakeholder agency.

Item	Cost	Notes
Business process mapping	\$ 1,000.00	Consulting – 2 x ½ days
Multi-agency liaison	\$ 2,000.00	Consulting – 8 x ¼ days
Other workshop preparation	\$ 2,000.00	Consulting - 2 x 1 days
Event space	\$ -	Hosted at ACMC, DFAT or PMC
Discussion paper	\$ 3,600.00	Draft, design and publication of 60 copies
Workshop facilitation	\$ 3,000.00	Consultants – 2 x 1 days
Catering workshop	\$ 1,200.00	Approx \$40 p/p for 30 x tea coffee and lunch
Final report	\$ 4,300.00	Draft, design and publication 200 copies
Total	\$ 17,100.00	

This proposal is a one-off activity that should be undertaken as soon as possible. Funding could come through the Office for Women, Department of Foreign Affairs and Trade, Home Affairs or the Australian Civil-Military Centre. The outcomes of the activity should affect government business for the near future, including through the other proposals in this submission.

2 Testimony project

The Australian Government and civil society will work in partnership to develop a culturally-appropriate and psychologically sound process for the collection of the testimonies from Yazidis who now call Australia home about war crimes, crimes against humanity and genocide, including sexual violence they witnessed and/or experienced at the hands of Da’esh. These testimonies will be collected for the explicit purpose of using them in investigations by international mechanisms (such as the UN Investigative Team for Accountability of Da’esh/ISIL) and national prosecutors to support the prosecution of war crimes, crimes against humanity and genocide in courts around the world. The concept note for this project is provided as an annex to the pre-budget submission.

Item	Cost	Notes
Remuneration (14 hrs per week)	\$ 34,236.00	Level 6.1 of the Social, Community, Home Care and Disabilities Industry Award 2010, including salary, superannuation, leave loading, projected pay increases under the Award, and portable long service leave levy, ACT
On costs	\$ 3,522.00	staff amenity, workers compensation, recruitment costs, employee support, and insurance
Office facilities	\$ 15,077.00	\$12,000 rent – at higher end of estimate – plus utilities, phone and teleconference, laptop and computer expenses
Travel	\$ 8,939.00	estimated on up to three trips to or from Brisbane/Canberra depending on location of worker, and up to six trips to regional centres
Management	\$ 13,590.28	22% on top includes supervision, finance, admin, contractors and contract management
Total FY19/20	\$ 75,364.28	
Total FY20/21	\$ 75,364.28	

The budget for this activity covers the cost of funding the civil society component of this project for two years. It is suggested this funding be processed through the Department of Home Affairs. Some staff time and travel will also be required by the Australian Federal Police and Department of Home Affairs. Psychosocial assistance and interpreting services will also need to be paid for. These have not been calculated. It is hoped that two years will provide enough time to gather the testimony of Yazidis who now call Australia home. After the two-year period, it is hoped a similar project may begin targeting other community groups who have come from conflicts where similar crimes have been perpetrated. Eventually it is hoped that an appropriate method for gathering testimony can be normalised into Australia's settlement programs for all humanitarian arrivals.

3 Dedicated investigative unit

The Australian Federal Police (AFP) are the investigative authority for war crimes, crimes against humanity and genocide. However, the AFP are not currently resourced to undertake this task. For several decades the AFP had a dedicated unit for the investigation and prosecution of these crimes but it was disbanded. Now that parliament has shown there is sufficient political will to meet our obligations under the Rome Statute, the AFP need to be provided with the resources to maintain a dedicated team for investigations that can prepare the Commonwealth Directorate of Public Prosecutions for successful prosecutions. The team needs to be given a mandate to pay particular attention to sexual and gender-based crimes and needs to include relevant expertise to help them do so.

Item	Cost	Notes
Director	\$ 120,000.00	Possibly a senior prosecutor, or a strategist
Prosecutor	\$ 110,000.00	If the Director isn't a prosecutor, then this role needs to be filled by a senior prosecutor, possibly seconded from CDPP
Lawyer	\$ 100,000.00	
Lawyer	\$ 90,000.00	Possible secondment from AGD
Investigator	\$ 85,000.00	Possible secondment from ADF
Analyst-military	\$ 85,000.00	Possible secondment from ASD
Analyst-military	\$ 85,000.00	Possible secondment from ACIC

Analyst-criminal	\$ 85,000.00	
Analyst-criminal	\$ 85,000.00	Possibly existing AFP personnel
Translator	\$ 75,000.00	210 days from translation panel: Kurmanji, Kurdish, Arabic
Interpreter	\$ 80,000.00	210 days from translation panel: Kurmanji, Kurdish, Arabic
Administration officer	\$ 75,000.00	Managing travel, leave, budgets
On costs	\$ 16,125.000	
Total FY19/20	\$ 1,091,125.00	
Total FY20/21	\$ 1,091,125.00	

This proposal estimates the salary costs for a dedicated investigative unit with the Australian Federal Police for a two-year period. It is thought that some staff could be seconded from other relevant government agencies such as the Australian Signals Directorate, Australian Criminal Intelligence Commission and Australian Defence Force but presumed such staff would still need to be accounted for between agencies. This budget has not calculated accommodation or travel expenses, which would likely include international as well as domestic travel. In the two year time frame, it is expected the unit can focus on crimes perpetrated by Da'esh. However, it is expected that the unit remain in place for the long term and investigate all crimes under Chapter 8 of the Criminal Code Act.

4 Protecting mass graves

Peak human rights and Yazidi NGOs have been calling for years for the sites of mass graves in northern Iraq to be protected and preserved for evidence in future prosecutions of the Yazidi genocide. Most of the remains in the mass graves are believed to be Yazidi victims of Da'esh's attacks in August 2014. Protecting these sites has not yet been made a priority by the international community but is integral to international justice and healing for the Yazidi community. Protecting mass graves may involve the use of defence force personnel, police, private security companies or locally employed staff.

Item	FY19/20	FY20/21
Protecting mass graves	\$2,500,500.00	\$2,500,500.00

This figure is an estimate for what the Australian government could contribute to such efforts. This funding could be administered by the Department of Foreign Affairs and Trade or the Attorney General's Department. Implementing this proposal would require negotiation with the government of Iraq. It is also suggested that this proposal be discussed with the Head of the Investigative Team established by Security Council resolution 2379 (2017) to collecting, preserving, and storing evidence in Iraq of acts that may amount to war crimes, crimes against humanity and genocide committed by the terrorist group.

5 Processing mass graves

Australia has notable international experience supporting forensic processing in mass casualty situations. Such assistance is in dire need to forensically process the mass grave sites in northern Iraq. Such assistance could be provided through or alongside the UN Investigative Team established by Security Council resolution 2379 (2017) to collecting, preserving, and storing evidence in Iraq of acts that may amount to war crimes, crimes against humanity and genocide committed by the terrorist group.

Item	FY19/20	FY20/21
Processing mass graves	\$1,750,000.00	\$1,750,000.00

This figure is an estimated cost of what the Australian government might contribute to support the forensic processing of mass graves in northern Iraq. This funding could be administered by the Department of Foreign Affairs and Trade or the Attorney General's Department. It is suggested that this proposal be discussed with the Head of the Investigative Team established by to Security Council resolution 2379 (2017).

Annexes:

1. Overcoming the barriers workshop – concept note
2. Testimony project – concept note

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'Overcoming the Barriers'

CONCEPT NOTE

Overview

A one-day workshop of key specialised staff from a range of agencies responsible for the policy, investigation and prosecution of Australians who perpetrated sexual violence as international crimes in Syria and Iraq.

Purpose

To identify and overcome practical and policy barriers to investigating and prosecuting Australian foreign fighters who perpetrated sexual violence as war crimes, crimes against humanity and genocide while fighting with terrorist organisations such as Da'esh in Syria and Iraq.

Outcomes

1. An eight page report on overcoming the barriers to investigation and prosecution, to be launched by parliamentarians.
2. A proposed business process map for sign on by each stakeholder agency as an agreement for business processes moving forward with the investigation and prosecution of these crimes.

Draft agenda

	Possible working breakfast	
0830	Welcome	Lecture
0840	Opening address	Lecture
0900	Ice breaker	Participatory activity
0930	Setting the scene	Powerpoint
1000	What do you see as the key barrier to investigation and prosecution?	Small group discussions
1100	Morning tea	
1130	Testimony, physical and digital evidence	Small group discussions
1330	Lunch	
1430	Plenary	Group discussion
1530	Thank you	
1540	Closing address	Lecture
	Possible public keynote and dinner	

Context

The Foreign Minister, Attorney General and both houses of parliament have committed that Australia will investigate and prosecute any nationals who have allegedly perpetrated sexual violence as war crimes, crimes against humanity and genocide while fighting with armed extremist groups such as Da'esh in Syria and Iraq.

When sexual violence is perpetrated as part of an armed conflict, it is a war crime; when that violence is widespread or systematic, it's a crime against humanity; and when it's used to destroy in whole or in part, an ethnic, racial or religious group, it is genocide. Each of these acts are criminalised under section 268 of the *Australian Criminal Code*. Sexual slavery is also criminalised under Divisions 270 and 271 of the Criminal Code relating to human trafficking, and Division 274 relating to torture.

However, the last time a war crimes case was successfully prosecuted in the Australian court system was 1951. The AFP no longer has a dedicated team for such investigations. Systems for gathering and sharing information are not set up to facilitate investigations and prosecutions of these crimes. The law has developed significantly since the last war crimes prosecutions and intelligence reporting is now admissible in court, but there are still a range of practical barriers to overcome, in order for Australia to meet its obligations to end impunity for conflict related sexual violence.

In 2012, the Australian government launched its first National Action Plan on Women, Peace and Security. That whole-of-government policy was designed to ensure government agencies implemented the suite of United Nations Security Council resolutions on Women, Peace and Security.

In 2013, Australia's Foreign Minister and Chief of Army attended the Global Summit to end Sexual Violence in Conflict hosted by William Hague and Angelina Jolie in London. The outcome document of that event was an International Protocol on the Documentation and Investigation of Sexual Violence in Conflict. It was designed as a practical tool to help end impunity for conflict related sexual violence. The Hon. Julie Bishop MP is still a 'champion' of the Prevention of Sexual Violence Initiative.

Background reading

- [International Protocol on the Documentation and Investigation of Sexual Violence in Conflict](#)
- [Supplement to the International Protocol on the Documentation and Investigation of Sexual Violence in Conflict: Iraq](#)
- ['Overlooking forensic evidence? A review of the 2014 International Protocol on the Documentation and Investigation of Sexual Violence in Conflict'](#)
- [Security Council Resolution 1888 \(2009\) on Women, Peace and Security](#)
- [Prosecution policy of the Commonwealth Directorate of Public Prosecutions](#)

Possible keynote speakers

- Dr Helen Durham
- Foreign Minister
- Iraqi Ambassador to Australia
- UN Special Representative for Sexual Violence in Conflict
- Amal Clooney

Proposed attendees

Organisation	Position	Name
Australian Criminal Intelligence Commission		
Directorate of Commonwealth Public Prosecutions		
Australian Secret Intelligence Service		
Australian Signals Directorate		
Defence Intelligence Organisation		
Joint Operations Command		
Joint Health Command		
CIMIC		
Australian Defence Force Investigative Service		
Australian Federal Police	Dept Commissioner Ops/National Manager International Ops	Leanne Close/Scott Lee
Australian Federal Police	Gender Policy Advisor	Leanne Lomas
NSW Police	Child Abuse and Sex Crimes Squad	
Victoria Police		
Attorney-General's Department	First Assistant Secretary	
Attorney-General's Department	First Assistant Secretary	
Department of Foreign Affairs and Trade	Gender team	
Department of Foreign Affairs and Trade	Humanitarian team	
Office for Women		Sian Phillips
Health Department	Tawoomba Hospital	
Queensland Program of Assistance to Survivors of Torture and Trauma		
International Committee of the Red Cross		Leonard Blazeby
Care		Roslyn Dundass
ActionAid		Michelle Higelin
UNFPA		
SPRINT (International Planned Parenthood Federation)		
Melbourne Law School		Tim McCormack
Commission for International Justice and Accountability	Director of Investigations	Bill Wiley
LaTrobe Law School		Magda Karagiannakis
ANU College of Law		Prof. Geoff Skillen
Australian Human Rights Commission		Matthew Nelson
		Nikki Marczak

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Testimony project

Overview

The Australian Government and civil society will work in partnership to develop a culturally-appropriate and psychologically sound process for the collection of the testimonies from Yazidis who now call Australia home about war crimes, crimes against humanity and genocide, including sexual violence they witnessed and/or experienced at the hands of Da'esh. These testimonies will be collected for the explicit purpose of using them in investigations by international mechanisms (such as the UN Investigative Team for Accountability of Da'esh/ISIL) and national prosecutors to support the prosecution of war crimes, crimes against humanity and genocide in courts around the world.

How

The project will initially take place over a two-year time frame. The Department of Home Affairs will provide funding for a civil society liaison who, it is proposed, would be hosted by the Australian Women Against Violence Alliance (AWAVA). The department as well as the Australian Federal Police will work in partnership with civil society, through the AWAVA liaison officer, to develop a culturally and psychologically-sensitive and appropriate process for collecting the testimony of Yazidis that will be prepared, recorded and stored in a manner that meets the requirements of the relevant international investigative mechanisms. Once a suitable process has been agreed, these three key partners will collect the testimonies and share them with the appropriate international investigative mechanisms. All testimonies and other evidence collected as part of the project will be shared and used consistently with the consent and other wishes of the testimony-provider.

Key participants in the process

In addition to Home Affairs, AFP and AWAVA, there are several important groups who will need to be engaged in this process. They include:

- service providers (e.g., settlement services and counselling services)
- interpreters
- Yazidi community leaders
- refugee rights groups (e.g., Yazidi community groups and the Harmony Alliance)
- Inter-Departmental Working Group on Women, Peace and Security
- relevant state (principally, NSW & Queensland) authorities
- individual support and care/social workers

Legal and policy context

The Australian Government is currently in the process of developing the second National Action Plan (NAP) on Women, Peace and Security. Under the current NAP, Australia is committed to ending impunity for conflict-related sexual violence. Under the new machinery of government, it is hoped that this project could form part of the contribution of the Department of Home Affairs to the new NAP.

Australia, as a signatory to the Rome Statute of the International Criminal Court and under international law, is under an obligation to investigate and prosecute crimes for which Australia can exercise jurisdiction, including war crimes, crimes against humanity and genocide. In addition, in September 2017 the UN Security Council unanimously passed [Resolution 2379](#) calling for all UN member states to support UNITAD, including by sharing evidence of crimes committed by Da'esh against the Yazidis in Iraq to support such prosecutions.

Political will

Both houses of the Australian Parliament have called for the investigation and prosecution of these crimes. In multi-party motions in the Senate and the House of Representatives, parliamentarians have recognised the sexual violence and other war crimes, crimes against humanity and genocide committed by Da'esh against the Yazidis, and called on the government to investigate and prosecute accordingly. The previous Foreign Minister and Attorney General both expressed their support for this objective. The current Assistant Minister for Home Affairs has strongly supported the objective and was co-sponsor of the Senate Motion on the issue.

Future of the project

While the impetus for this project is the need to end impunity for conflict-related sexual violence, it is expected that testimonies recorded by the project may include other crimes experienced and witnessed by the Yazidi community in Iraq and Syria.

It is hoped that having developed a process and gathered the testimony of Yazidis in Australia, that phase two of the project may be to include other communities who came to Australia under the humanitarian program. Minor adjustments would need to be made to the process to ensure its cultural suitability, but large parts of the process should remain relevant. This may include Sudanese, Congolese and Rohingya communities in Australia, many of whom have experienced similar and other crimes in conflicts affecting their countries of origin.

Thereafter, it is hoped the Department will consider mainstreaming such a process into their humanitarian settlement program as a means of supporting Australia's obligations to investigate and prosecute war crimes, crimes against humanity and genocide under the Rome Statute and under international law, so that it can lead the international community in the investigation and prosecution of these atrocity crimes.