

Prosecute; don't perpetrate

Objective

For the government to investigate and prosecute sexual violence perpetrated as war crimes, crimes against humanity and genocide by Australians who travelled to Iraq and Syria to fight with Da'esh.

Asks

1. Raise the issue in your party room
2. Raise the issue in any relevant committees you sit on
3. Ask questions in Question Time and Senate Estimates

The situation

In Iraq and Syria, Da'esh is using sexual violence in war crimes, crimes against humanity and genocide. The UN,¹ Human Rights Watch² and other organisations have released 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.³ 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 over 100 Australians have travelled to Iraq and Syria to fight with Da'esh.⁴

The crimes

When sexual violence is perpetrated as part of an armed conflict, it is a war crime.⁵ When that violence is widespread or systemic, it is a crime against humanity.⁶ When it is used to destroy, in whole or in part, an ethnic, racial or religious group it is genocide.⁷

The context

Sexual violence has always happened in times of war. International campaigns such as Stop Rape Now⁸ seek to bring attention to the issue. But these gendered crimes are often being perpetrated outside the jurisdiction of institutions willing and able to bring the perpetrators to justice.

¹ http://www.ohchr.org/Documents/HRBodies/HRCouncil/ColSyria/A_HRC_32_CRP.2_en.pdf

² <https://www.hrw.org/tag/isis>

³ <http://www.rferl.org/a/foreign-fighters-syria-iraq-is-isis-isil-infographic/26584940.html>

⁴ <http://www.rferl.org/a/foreign-fighters-syria-iraq-is-isis-isil-infographic/26584940.html>

⁵ <https://ihl->

<databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=59F6CDFA490736C1C1257F7D004BA0EC>

⁶ <http://legal.un.org/icc/statute/romefra.htm>

⁷ <http://www.preventgenocide.org/law/convention/text.htm>

⁸ <http://stoprapenow.org/>

Brief for parliamentarians

In 2014, Angelina Jolie and William Hague launched the Preventing Sexual Violence Initiative with projects to aid in the documentation and investigation of sexual violence in conflict. But the crimes are still overlooked.

The legislation

In Australia, war crimes are criminalised in the War Crimes Act 1945 and the Geneva Conventions Act 1957. Genocide and crimes against humanity are outlawed in the International Criminal Court Act 2002. These acts have been incorporated in Division 268 of the Criminal Code Act 1995.

The policy

Australia's National Action Plan on Women, Peace and Security 2012-2018 is designed to implement the suite of UN Security Council resolutions on Women, Peace and Security. It is a whole-of-government policy, coordinated by the Office for Women in the Department of Prime Minister and Cabinet. The Attorney General's Department, Australian Civil-Military Centre, the AFP, DFAT and the Department of Defence all have responsibility for its implementation.

The Security Council Resolutions

There are now eight UN Security Council Resolutions on Women, Peace and Security. The resolutions recognise that men and women experience conflict differently and oblige Member States to ensure the protection of women and children in armed conflict (especially from sexual violence) as well as their participation in the prevention, management, mitigation and resolution of conflict. Ending impunity for sexual violence in armed conflict is a recurring theme.

- UNSCR 1325 (2000)
 - emphasised “the responsibility of all States to put an end to impunity and to prosecute those responsible for genocide, crimes against humanity, and war crimes including those relating to sexual and other violence against women and girls”
- UNSCR 2106 (2013)
 - “calls upon Member States to comply with their relevant obligations to continue to fight impunity by investigating and prosecuting those subject to their jurisdiction who are responsible for such crimes”
 - “encourages Member States to include the full range of crimes of sexual violence in national penal legislation to enable prosecutions for such acts,” and
 - “recognizes that effective investigation and documentation of sexual violence in armed conflict is instrumental both in bringing perpetrators to justice and ensuring access to justice for survivors”
- UNSCR 2242 (2015)
 - reiterated the need for the “implementation of relevant obligations under international humanitarian law and international human rights law” and
 - affirmed “the primary role of Member States to implement fully the relevant provisions of Security Council resolutions on women, peace and security”