

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

SUBMISSION TO THE INQUIRY INTO THE RIGHTS OF WOMEN AND CHILDREN BY THE JOINT  
STANDING COMMITTEE ON FOREIGN AFFAIRS, DEFENCE AND TRADE

### Introduction

*Prosecute; don't perpetrate* is glad to provide this submission to the Subcommittee on Human Rights, to highlight some important cross departmental aspects of Australia's obligations to protect the rights of women and children.

This submission focusses on the rights of women and children in armed conflict which are outlined in General Recommendation 30<sup>1</sup> of the UN Committee on the Elimination of All Forms of Discrimination Against Women as well as the suite of UN Security Council Resolutions on Women, Peace and Security.<sup>2</sup> These international policies have been incorporated into Australia's Second National Action Plan on Women, Peace and Security,<sup>3</sup> and the National Action Plan to Combat Modern Slavery.<sup>4</sup> The obligations to protect women and children from conflict related sexual violence are also outlined in international law in the Rome Statute of the International Criminal Court,<sup>5</sup> the Geneva Conventions<sup>6</sup> and the Genocide Convention.<sup>7</sup> This legal framework has been incorporated into Division 268 of the Commonwealth Criminal Code. But this section of the criminal code has never been used in an Australian criminal case. This needs to change.

This submission will provide context and detail on ending impunity for conflict related sexual violence as it was perpetrated by ISIS against Yazidis, and show the importance of implementing the existing legal framework as a matter of priority for the rights and justice for women and children alive today, within the jurisdiction of Australian law. We will outline specific policy barriers to justice for survivors of conflict related sexual violence, who fall into two categories. The first category is those whose perpetrators were Australian. The second is those who now reside in Australia. The submission will close with recommendations for how to remedy this unreasonable and ongoing failure to help end impunity for conflict related sexual violence.

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<sup>1</sup> <https://www.ohchr.org/sites/default/files/Documents/HRBodies/CEDAW/GComments/CEDAW.C.CG.30.pdf> (accessed 18 Sep 23)

<sup>2</sup> <https://peacemaker.un.org/wps/normative-frameworks/un-security-council-resolutions> (accessed 18 Sep 23)

<sup>3</sup> <https://www.dfat.gov.au/sites/default/files/australias-national-action-plan-on-women-peace-and-security-2021-2031.pdf> (accessed 18 Sep 23)

<sup>4</sup> <https://www.ag.gov.au/crime/publications/national-action-plan-combat-modern-slavery-2020-25> (accessed 18 Sep 23)

<sup>5</sup> <https://www.icc-cpi.int/sites/default/files/RS-Eng.pdf> (accessed 18 Sep 23)

<sup>6</sup> <https://www.icrc.org/en/war-and-law/treaties-customary-law/geneva-conventions> (accessed 18 Sep 23)

<sup>7</sup> [https://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.1\\_Convention%20on%20the%20Prevention%20and%20Punishment%20of%20the%20Crime%20of%20Genocide.pdf](https://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.1_Convention%20on%20the%20Prevention%20and%20Punishment%20of%20the%20Crime%20of%20Genocide.pdf) (accessed 18 Sep 23)

## Background

*Prosecute; don't perpetrate* has been working to help end impunity for conflict related sexual violence since 2016 by calling on governments like Australia to investigate and prosecute their own nationals who travelled to Syria and Iraq and perpetrated sexual violence as war crimes, crimes against humanity and genocide against the Yazidi while fighting with ISIS.<sup>8</sup>

It is estimated over 200 Australians travelled to Syria and Iraq to fight with ISIS and other extremist groups. They were among tens of thousands of foreign fighters from over 80 countries who undertook such journeys. Many of those source countries are States Parties to the Rome Statute of the International Court of Justice, whose principle of complementarity obliges them to investigate and prosecute war crimes, crimes against humanity and genocide within their own domestic court systems. But so far, Germany is the only country to pursue such prosecutions.

When sexual violence is perpetrated as part of an armed conflict, it is a war crime.<sup>9</sup> When that violence is widespread or systemic, it is a crime against humanity.<sup>10</sup> When it is used to destroy, in whole or in part, an ethnic, racial or religious group it is genocide.<sup>11</sup> Under Australian law, these offences, their attempt, complicity, incitement or conspiracy is punishable with imprisonment for 25 years to life depending on the specifics of the charge.

### Parliamentary and policy context

By 2018 both houses of the Australian Parliament had passed multi-party motions recognising ISIS' genocide of the Yazidi and calling for the government to investigate and prosecute Australians who perpetrated these crimes.<sup>12</sup> Minister Dutton publicly stated such investigations would be prioritised. But privately, the Minister of Home Affairs and his Department began revoking the citizenship of Australians who were known to have perpetrated these crimes.

*Prosecute; don't perpetrate* testified before the Joint Parliamentary Committee on Intelligence and Security (JPCIS) against citizenship revocation legislation arguing, among other things, it deprived survivors of conflict related sexual violence access to justice because criminal prosecutions cannot be undertaken in absentia.<sup>13</sup> Perpetrators must be in the custody of the Australian Federal Police. When the High Court ruled Ministerial revocation of citizenship was unconstitutional in *Jones v Commonwealth of Australia & Ors*<sup>14</sup>, we hoped the practice would end. But the Minister for Home Affairs has said she intends to update the legislation and the JPCIS has opened a new inquiry about fresh legislation.

Even when an individual who was publicly recognised as having committed an act in breach of Division 268 of the Commonwealth Criminal Code, state police would often only compile a file of terrorism-based offences against the individual concerned, never the gender-based offences under international law. This occurred when the arrest warrant was issued for Neil Prakash for terrorism offences, but not genocide related

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<sup>8</sup> <https://www.theguardian.com/commentisfree/2016/nov/25/is-a-in-war-and-peace-australia-must-step-up-and-prosecute-war-crimes> (accessed 18 Sep 23)

<sup>9</sup> <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=59F6C DFA490736C1C1257F7D004BA0EC>

<sup>10</sup> <http://legal.un.org/icc/statute/romefra.htm>

<sup>11</sup> <http://www.preventgenocide.org/law/convention/text.htm>

<sup>12</sup> <https://www.lowyinstitute.org/the-interpretor/pain-hearing-australia-s-parliament-recognises-yazidi-genocide> (accessed 18 Sep 23)

<sup>13</sup> <https://youtu.be/z2YFGye1jN0?si=Td4e2P3OFBjVX4o9> (accessed 18 Sep 23)

<sup>14</sup> [https://www.hcourt.gov.au/cases/case\\_b47-2022](https://www.hcourt.gov.au/cases/case_b47-2022) (accessed 18 Sep 23)

offences.<sup>15</sup> There remain bureaucratic resourcing and multi-agency cooperation issues regarding who can and should be doing what to bring about justice for these crimes.

It was very disappointing that neither the Australian Federal Police, nor the Department of Home Affairs referenced either the Second National Action Plan on Women, Peace and Security; nor the National Action Plan to Combat Modern Slavery in their submissions to this inquiry. This is the first time Home Affairs have been included in the Women, Peace and Security National Action Plan. There are several 'outcomes' of this National Action Plan that require significant input by Home Affairs, but so far, the department has failed to provide the required input and response. This includes the provision of justice for conflict related sexual violence.

## ISIS' treatment of the Yazidis

### Context

When ISIS swept through northern Iraq in August 2014 they kidnapped Yazidi women and girls and sold them into sexual servitude; they forced young boys into service as child soldiers, forcibly converting them to Islam; and killing the men *en masse*.<sup>16</sup>

Yazidis are an ethno-religious minority who have resided in the region for millennia. Their faith is one of the world's first monotheistic religions. Although they believe in the same God as Christians and Muslims, ISIS believed they worshiped the devil. Under Sharia law, they are not offered the same protections as the other Abrahamic faiths. Yazidis pray in the direction of the sun, not Mecca, and they believe God sent his favourite angel to earth in the form of a peacock. Yazidis have a similar relationship with this angel, called Tawusi Malek, that Catholics have to the Virgin Mary. But ISIS consider their prayers blasphemous and set out to destroy the Yazidis.

The act of genocide is defined as any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- a) Killing members of the group;
- b) Causing serious bodily or mental harm to members of the group;
- c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- d) Imposing measures intended to prevent births within the group;
- e) Forcibly transferring children of the group to another group.

This definition comes from the *Convention on the Prevention and Punishment of the Crime of Genocide*, but has been included in article 6 of the *Rome Statute of the International Criminal Court*. Each of these individual acts is a specific criminal offence within Division 268 of the Commonwealth Criminal Code, Subdivision B—Genocide. Each act comes with a penalty of life imprisonment. The legislation specifies rape and sexual violence as examples of causing serious bodily or mental harm. It also includes the expulsion of people from their homes as an example of deliberately inflicting conditions of life calculated to bring about physical destruction.

### Women

ISIS established an entire infrastructure for the sale and capture of sexual slaves they had kidnapped from Yazidi villages. They were transported on buses to warehouses where they were displayed, often naked, with

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<sup>15</sup> <https://www.lowyinstitute.org/the-interpretor/neil-prakash-more-just-terrorist> (accessed 19 Sep 23)

<sup>16</sup> [https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/ColSyria/A\\_HRC\\_32\\_CRP.2\\_en.pdf](https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/ColSyria/A_HRC_32_CRP.2_en.pdf) (accessed 19 Sep 23)

price tags attached.<sup>17</sup> ISIS had ledgers and receipts for the sale of these people.<sup>18</sup> The women and girls were raped, forced to take contraceptives and abortions and forced to undertake a range of tasks. Many were subject to a range of other violent acts. Some gave birth to children born of the rape they experienced. These slaves were sold and resold from Iraq and Syria across the region. Some have turned up in Turkey and further afield. Failure to free these women as part of international security operations in the battles for Raqqa and Mosul has left the Yazidi community with little option but to try to buy these women back themselves. Furthermore, this failure to free these women and girls contributed an estimated \$USD110 million to the economy of ISIS at a time when the organisation needed funds to regroup and support ongoing international operations.<sup>19</sup>

### Children

Yazidis who were young girls when they were first kidnapped and sold into slavery are now young women, some of whom have children of their own. The trauma these women have experienced is exacerbated by the tension some feel between their desire to remain with these children, and to return to the Yazidi community that does not necessarily want to welcome children born of ISIS fathers.

Many Yazidi families have been devastated by the loss of boy children who were kidnapped and forced to join ISIS. These boys were taken to training camps, forced to convert to Islam and many never saw their families again. Forcing someone into an armed group that operates against their own community is a war crime, under Division 268.30 of the criminal code if the person forced into service is part of protected group, such as being a child. This crime is punishable by a term of ten years' imprisonment. The forcible transfer of children under the age of 18 of one ethnic or religious group, when the perpetrator is intending to destroy that group, is also an act of genocide under Division 268.7 of the criminal code. This crime is punishable with life imprisonment.

It is believed Abraham Succarieh, formerly of Brisbane, was responsible for a unit of fifty fighters, including other Australians. If this is true, he would likely have been in situations where he was responsible for crimes like this, and would also have Command Responsibility for the acts of his subordinates. Abraham Succarieh's passport has been revoked and his assets have been frozen.<sup>20</sup> Several of his relatives have been subject to other terrorism related investigations.<sup>21</sup> But it would appear that no investigations of Division 268 crimes have been undertaken.

### Yazidi homeland

Thousands of Yazidis fled in the conflict with ISIS. Despite some reconstruction efforts, the Yazidi homelands remain unsafe for the community to return. Ninevah, the governorate in northern Iraq where most Yazidis live is still covered with the rubble of war, while many people simply can't face the trauma of returning to live among the families who allowed ISIS to commit genocide against them. There also remain unexploded ordinance across northern Iraq. Ongoing Turkish offensive operations have included rocket and other aerial attacks against Yazidi villages in both Iraq and Syria for several years. ISIS sympathisers remain in refugee and IDP camps in both Iraq and Syria where many Yazidis have to live in conditions which lead to fires and other household disasters and little to no education, or economic opportunity.<sup>22</sup>

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<sup>17</sup> <https://www.aspistrategist.org.au/theres-one-battle-raqqa/> (accessed 19 Sep 23)

<sup>18</sup> <https://www.nytimes.com/2015/08/14/world/middleeast/isis-enshrines-a-theology-of-rape.html? r=1> (accessed 18 Sep 23)

<sup>19</sup> <https://academic.oup.com/jogss/article-abstract/5/2/379/5775692> (accessed 18 Sep 23)

<sup>20</sup> <https://jade.io/j/?a=outline&id=812728> (accessed 19 Sep 23)

<sup>21</sup> <https://www.9news.com.au/national/succarieh-found-guilty-of-extortion/6ec4e2f0-b50b-4693-af53-06c2fc3c66fc> (accessed 19 Sep 23)

<sup>22</sup> [https://irp.cdn-website.com/16670504/files/uploaded/Yazda\\_Publication\\_2022-01\\_MappingYazidiDiasporaAustralia\\_2501202\\_Download\\_EN\\_vf.pdf](https://irp.cdn-website.com/16670504/files/uploaded/Yazda_Publication_2022-01_MappingYazidiDiasporaAustralia_2501202_Download_EN_vf.pdf) (accessed 18 Sep 23)

## The need for justice

Individual Yazidis, and the community as a whole, have been campaigning for justice for what they experienced. Nadia Murad was awarded the Nobel Peace Prize for her advocacy for survivors of conflict related sexual violence. Yazda is a rights-based organisation that was founded with a focus on Yazidi rights and has branches in Australia as well as Germany and the US. Yazda worked with *prosecute; don't perpetrate* on the parliamentary recognition of the Yazidi genocide, the three motions of which also called for investigation and prosecution of offenders. UK based charity The Lotus Flower supported a group of five women who were victims of Khaled Sharrouf and sought access to victims of crime support through the NSW Civil and Administrative Tribunal.<sup>23</sup>

While Germany is the only nation state to currently have pursued prosecution of ISIS fighters, including of gender related crimes,<sup>24</sup> there are other investigative bodies gathering evidence for the time when other prosecutions will occur. Perhaps one day, crimes that occurred in Syria will be able to be heard before the International Criminal Court. The UN has an Investigative Team for crimes perpetrated by ISIS in Iraq, that gathers evidence to support prosecutions by Iraqi and other courts. Yazda also shares evidence with investigative organisations who can undertake prosecutions.

Australia should work with civil society to develop a culturally appropriate mechanism for the AFP to collect legal testimony to share with these investigative organisations for the specific purpose of prosecutions. This would likely entail developing a suitable proforma that would work for the International Criminal Court and other prosecutorial systems. This process must not simply be about telling stories again, but must be undertaken with purpose. Developing the process for the Yazidi community should be a pilot program with the intention that the program can be expanded for other communities as part of normal migration program support for people coming from places subject to similar crimes. Such communities may include DR Congo, Mali, Bangladesh and Sri Lanka.

## Yazidi connection to Australia

Over 4000 Yazidis have migrated to Australia since 2014.<sup>25</sup> They primarily live in regional centres of Wagga Wagga, Toowoomba and Coffs Harbour. Some of these new Australians are the direct survivors of ISIS' crimes, having been held in sexual servitude themselves. Many had family members who were killed, and others have family members who are still missing. But genocide is a communal crime and has affected the entire community. The community here has organised several protests marching at Australian Parliament House calling for the government to work with international allies to free Yazidi women who were still held captive during the battle for Raqqa, and holds regular memorial marches on the August anniversary of the genocide.

There are other survivors outside Australia, like those who survived time with Khaled Sharrouf, that are victims of gendered international crimes perpetrated by other Australians. For example, a recent investigation by ABC's Foreign Correspondent identified women who identified Mohammed Ahmad (a.k.a Abu Omar) as the Australian man who held them in sexual servitude while he and his son were foreign fighters with ISIS.<sup>26</sup> Yazda and UNITAD and other organisations have records of Australian perpetrators. The government needs to

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<sup>23</sup> <https://thelotusflower.org/blog1/2019/9/26/new-press-release-fury-as-tribunal-suggests-yezidi-slavery-and-rape-were-part-of-is-law?fbclid=IwAR0syX7FNuB1VTsA1SIPNEw9teDYzdu0VrXgGq6mU-rO0bD0kyhHXto8oos> (accessed 18 Sep 23)

<sup>24</sup> <https://www.doughtystreet.co.uk/news/german-court-hands-down-second-genocide-conviction-against-isis-member-following-enslavement> (accessed 19 Sep 23)

<sup>25</sup> [https://www.abs.gov.au/articles/religious-affiliation-australia#:~:text=Yezidis%20\(or%20Yazidis\)%20are%20an,an%20increase%20of%206%2C444%25](https://www.abs.gov.au/articles/religious-affiliation-australia#:~:text=Yezidis%20(or%20Yazidis)%20are%20an,an%20increase%20of%206%2C444%25) (accessed 18 Sep 23)

<sup>26</sup> <https://www.internationalaffairs.org.au/australianoutlook/the-fight-for-justice-for-isis-victims-in-australia/> (accessed 18 Sep 23)

pursue cases, accepting evidence from these organisations and working to build effective cases for prosecution within our own court systems.

## Conclusion

The suite of UN Security Council resolutions on Women, Peace and Security reiterated the international legal obligation to investigate and prosecute conflict related sexual violence. Ending impunity for this violence and protecting women and children during times of armed conflict are key pillars of the Women, Peace and Security Agenda. Improving access to justice is included in two of the outcomes of Australia's Second National Action Plan on Women, Peace and Security. Australia has a sound legislative framework from which to undertake such prosecutions.

But the bureaucratic will and political support to provide the resources and direction to the relevant agencies has so far meant that perpetrators within Australia's jurisdiction have experienced impunity for these crimes, and the women and children who have been their victims have not experienced the justice they deserve and have asked for. Each year, in April and October at the respective Open Debates on Sexual Violence in Conflict; and Women, Peace and Security at the Security Council, Australia stands up to make some progressive statement in support of the agenda. Over the past decade, the space for women's rights and gender equality internationally has eroded drastically. It is not OK to merely stand up and make a progressive statement. In the 2016 Open Debate on Women, Peace and Security, the German representative put it most succinctly, "the shortcomings in the implementation of the women and peace and security framework are due not to a lack of words, but to a lack of action."<sup>27</sup>

The issues raised in this submission can be readily addressed within the bureaucracy of the Australian Government with the following recommendations.

## Recommendations

1. Task the Australian Civil-Military Centre to undertake or commission a multiagency workshop in partnership with the Department of Home Affairs on information sharing for the purposes of criminal accountability for conflict related sexual violence.
2. Establish and provide sufficient resources to a permanent international crimes unit within the Australian Federal Police, with a remit and specialised staff to investigate gendered crimes such as conflict related sexual violence.
3. Develop, in partnership with civil society, a pilot program for the gathering of legal testimony, in a culturally appropriate fashion, aligned with the Murad Code,<sup>28</sup> for the purposes of sharing with international investigative mechanisms, from survivors who are resident in Australia. This pilot would begin with Yazidi survivors, with the intention that such a program could be expanded out to other migrant communities coming from places experiencing war crimes, crimes against humanity or genocide.
4. Cease the revocation of citizenship of individuals who may have perpetrated conflict related sexual violence, in order that they may be arrested by Australian authorities and prosecuted for these crimes.
5. Undertake training and awareness raising for state and federal police working on terrorism and other international criminal cases to ensure that conflict related sexual violence is included in files for prosecution and extradition.

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<sup>27</sup> <http://www.peacewomen.org/sites/default/files/WPS%20Meeting%20Record.pdf> (accessed 19 Sep 23)

<sup>28</sup> <https://www.muradcode.com/> (accessed 18 Sep 23)