

22 May 2023

Senator the Hon Penny Wong
Minister for Foreign Affairs

The Hon Mark Dreyfus KC MP
Attorney-General of Australia

Via email

Dear Minister Wong and Attorney-General,

Australia's Support for the Mutual Legal Assistance Treaty

We write to congratulate the Australian Government's expressed support for the adoption of the Convention on International Cooperation in the Investigation and Prosecution of the Crime of Genocide, Crimes against Humanity, War Crimes, and other International Crimes, also known as the Draft Mutual Legal Assistance (MLA) Convention.¹ The expression of this support was timely, given that diplomatic negotiations are under way in Ljubljana, Slovenia and to date, 80 countries have signalled their support to adopt the treaty.² This landmark treaty will help to facilitate the investigation and prosecution of international crimes, at the national level.

Our engagement with the Australian Federal Police (AFP) suggests that ineffective or absent mutual legal assistance agreements can be a significant barrier in the investigation of serious crimes where evidence is located overseas. The MLA Convention is designed to remove such barriers and better facilitate cooperation among investigative and prosecutorial authorities.

We draw your attention to the Draft MLA Convention's emphasis that it is States which have primary responsibility to investigate and prosecute atrocity crimes, and that States must therefore take all necessary legislative and executive measures to affirm their willingness to assuming fully that primary responsibility.³ While Australia has adequate legislative mechanisms to prosecute these crimes, its institutional framework is lacking. This is because Australia does not have a permanent, specialised international crimes unit and the absence of a unit has meant that investigations into international crimes have been inadequate and ineffective. Adopting the treaty without attending to Australia's structural faults institutionally would be a wasted opportunity. Building on the practice and efforts of other organisations and individuals over the past 30 years, the Australian Centre for International Justice has persistently advocated for the creation of such a unit. Australia needs to establish a permanent, specialised international crimes unit to ensure that its investigations involve the requisite level of expertise and resourcing. Only then will Australia be fully compliant with the obligations of the Draft MLA Convention and other international treaties.

Furthermore, we urge you to consider seriously the calls by civil society organisations to amend aspects of the Draft MLA Convention, including amendments concerning victims of atrocity crimes, who play a vital role in the

¹ [Draft Convention on International Cooperation in the Investigation and Prosecution of the Crime of Genocide, Crimes against Humanity, War Crimes, and other International Crimes](#), MLA Diplomatic Conference Ljubljana, Slovenia, (8 May 2023) ('Draft MLA Convention').

² [Towards a Multilateral Treaty for Mutual Legal Assistance and Extradition for Domestic Prosecution of the Most Serious International Crimes](#), Supporting States as of 12/5/2023.

³ Preamble, *Draft MLA Convention*, see above n 1.

investigative and prosecutorial process. We support the requests set out in the Joint NGO Letter dated 10 May 2023, to amend the Draft MLA Convention to extend the protections and rights granted to such victims.⁴

Finally, we urge the Government to encourage the adoption of the treaty by States in the Asia-Pacific region, when the opportunity arises. Impunity for serious international crimes in our region is rife, presenting an ongoing threat to peace, stability and the rule of law. The Draft MLA Convention provides an important opportunity for States in the region to improve the level of cooperation between their investigatory and prosecutorial bodies, thereby providing a meaningful and effective pathway for accountability within domestic courts.

We welcome any opportunity to meet and discuss these issues further.

Sincerely,

Rawan Arraf
Executive Director
Australian Centre for International Justice

Cc:

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⁴ [Joint NGO Letter to the Core Group and Co-Sponsoring States](#), (10 May 2023).