

AUSTRALIAN ■■■■■
■■■■■ **CENTRE**
FOR INTERNATIONAL
JUSTICE ■■■■■

Inquiry into supporting democracy in our region

Submission to the Parliamentary Joint Standing
Committee on Foreign Affairs, Defence and Trade:
Foreign Affairs and Aid Subcommittee

16 December 2022

About the Australian Centre for International Justice

The Australian Centre for International Justice (ACIJ) is an independent and not-for-profit legal centre working to develop Australia's domestic investigations and prosecutions of the international crimes offences in the Commonwealth Criminal Code. ACIJ aims to combat impunity and works with survivors of international crimes to seek justice, redress and accountability.

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1 Introduction

1. The Australian Centre for International Justice (**ACIJ**) welcomes the opportunity to make this submission to the Parliamentary Joint Standing Committee on Foreign Affairs, Defence and Trade – Foreign Affairs and Aid Subcommittee’s (the **Sub-Committee**) Inquiry into how Australia can partner with countries in our region to promote democracy and the international rules-based order (the **Inquiry**). Our submission focuses on the following terms of reference:
 - (b) the importance of stability, democracy and good governance for the wellbeing of all the people of our region;
 - (d) the role of civil society organisations in supporting democracy in our region; and
 - (e) ways in which Australia can assist our neighbours in these objectives.

About ACIJ

2. ACIJ aims to develop and encourage Australia’s domestic investigations and prosecutions of egregious violations of human rights which amount to the international crimes offences in the Commonwealth Criminal Code, namely: torture, war crimes, crimes against humanity and genocide.
3. ACIJ represents victims of atrocity crimes and works with victims and survivor communities and organisations in Australia and abroad. We develop legal strategies to target the perpetrators of grave crimes and hold them to account.

Primary focus of submission

4. ACIJ’s work focuses on seeking avenues for justice and accountability, including through criminal justice for grave human rights abuses. This submission thus focuses on how impunity for grave human rights abuses undermines stability, democracy and good governance in the region, and how Australia can be a leader in the region by enforcing international criminal law and targeted sanctions to combat impunity. Through consistent use of these mechanisms, and close cooperation with civil society organisations throughout the region, Australia can assist our neighbours in the region to uphold the international rule of law.
5. ACIJ welcomes any further opportunity to provide additional commentary or supplementary submissions to the Committee if it would assist its Inquiry.

Recommendations

This submission argues that Australia can promote stability, democracy and good governance in the region by being a leader in combatting impunity for grave human rights abuses, through the consistent application of international criminal law and targeted sanctions. It makes the following recommendations:

Recommendation 1

Australia should establish a permanent, specialist unit to investigate international crimes, so that it can more effectively investigate and prosecute perpetrators of international crimes in the region.

Recommendation 2

Where criminal prosecution is not feasible, Australia should impose sanctions on actors in the region who have committed grave abuses of human rights.

Recommendation 3

Australia should create a clear route and process for the contribution and submission of information from civil society and non-governmental organisations in relation to sanctions.

2 Impunity for grave human rights abuses undermines stability, democracy and good governance in the region

6. Stability, democracy and good governance is underpinned by adherence to the rule of law. One of the key tenets of the rule of law, as acknowledged by the Attorney-General's Department,¹ is that everyone – regardless of a person's status or position – is bound by the law. Where those in positions of power are able to act with impunity, and avoid accountability for legal wrongs including human rights abuses, citizens lose trust in authorities, their justice system and institutions and as a result 'societies are at risk of chaos and conflict'.² As noted by the Office of the High Commissioner for Human Rights, 'impunity is often the primary obstacle to upholding the rule of law'.³
7. Such impunity is a key concern in our region, with numerous commentators and civil society organisations drawing attention to the lack of accountability of those in positions of power.⁴ Myanmar's brutal return to authoritarianism by military rule has been described as 'a direct

¹ 'Rule of law', *Australian Government Attorney-General's Department* (Web Page) <<https://www.ag.gov.au/about-us/what-we-do/rule-law>>.

² Kristin M Lord, 'Six Ways to Repair Declining Social Trust', *Stanford Social Innovation Review* (Article, 31 January 2019) <https://ssir.org/articles/entry/six_ways_to_repair_declining_social_trust#>.

³ 'Impunity and the rule of law', *Office of the High Commissioner for Human Rights* (Report, 2011) <https://www2.ohchr.org/english/ohchrreport2011/web_version/ohchr_report2011_web/allegati/10_Impunity.pdf>.

⁴ See, for example, Joshua Kurlantzick, 'Impunity – The Obstacle in Southeast Asia', *Council on Foreign Relations* (Blog Post, 6 December 2010) <<https://www.cfr.org/blog/impunity-obstacle-southeast-asia>>; 'Southeast Asia: ASEAN governments' must address impunity to ensure justice and accountability for past human rights violations', *Amnesty International* (Public Statement, 5 August 2016) <<https://www.amnesty.org/en/documents/asa03/4621/2016/en/>>; Priya Pillai, 'International justice: tackling impunity in Asia', *The Interpreter* (Article, 29 November 2018) <<https://www.lowyinstitute.org/the-interpreter/international-justice-tackling-impunity-asia>>; Vince Angelo C Ferreras, 'Southeast Asian journalists flag culture of impunity', *Business World* (online, 4 November 2018) <<https://www.bworldonline.com/editors-picks/2018/11/04/197045/southeast-asian-journalists-flag-culture-of-impunity/>>; Joshua Kurlantzick, 'Why Democracy in Southeast Asia Will Worsen in 2023', *Council on Foreign Relations* (Blog Post, 9 September 2022) <<https://www.cfr.org/blog/why-democracy-southeast-asia-will-worsen-2023>>; Abby Seiff, 'Rule by law in Southeast Asia', *International Bar Association* (Article) <<https://www.ibanet.org/article/0d6806b6-402c-493c-bcee-64b858400396>>; Christoph Sperfeldt and Emma Palmer, '(Not) All Roads Lead to Rome: Ending Impunity for International Crimes in Southeast Asia', *Torkel Opsahl Academic EPublisher* (Article, 2016) <<https://www.toaep.org/pbs-pdf/66-sperfeldt-palmer>>.

corollary of a military that for years has faced few to no consequences for its crimes'.⁵ Former President Rodrigo Duterte's 'war on drugs' was responsible for thousands of extrajudicial killings, which when combined with a crackdown against journalists and activists, created a 'cycle of impunity' in the Philippines,⁶ although there is an opportunity for new President Ferdinand Marcos Jr to take a different approach.⁷ Democracy protests in Thailand have been met with restrictions on freedom of expression and politicised legal proceedings, while accountability for state-sponsored abuse and killings remains lacking.⁸ The Sri Lankan government has consistently obstructed investigations and prosecutions, including in emblematic cases, and transitional justice mechanisms have not been effectively implemented, indicating that 'domestic initiatives for accountability and reconciliation have repeatedly failed to produce results, more deeply entrenching impunity, and exacerbating victims' distrust in the system'.⁹ Torture and extrajudicial killings remain rife amongst police and security forces in India.¹⁰ It is particularly significant, in terms of the potential impact on equitable participation in democracy and an open, free and independent media sector, that impunity for crimes against journalists is so persistent.¹¹

⁵ Shayna Bauchner, 'This Is What Impunity Looks Like', *Human Rights Watch* (Blog Post, 27 September 2021) <<https://www.hrw.org/news/2021/09/27/what-impunity-looks>>.

⁶ Nick Aspinwall, 'UN Rights Office Criticizes 'Impunity' and 'Systematic' Violence of Philippines Drug War', *The Diplomat* (online, 2 July 2020) <<https://thediplomat.com/2020/07/un-rights-office-criticizes-impunity-and-systematic-violence-of-philippines-drug-war/>>; 'Philippines Events of 2021', *Human Rights Watch* (Report, 2021) <<https://www.hrw.org/world-report/2022/country-chapters/philippines>>.

⁷ 'Philippines: Marcos Should Focus on Rights Issues', *Human Rights Watch* (Article, 22 July 2022) <<https://www.hrw.org/news/2022/07/22/philippines-marcos-should-focus-rights-issues>>.

⁸ 'Thailand Events of 2021', *Human Rights Watch* (Article, 2021) <<https://www.hrw.org/world-report/2022/country-chapters/thailand>>.

⁹ Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General, 'Promoting reconciliation, accountability and human rights in Sri Lanka – Report of the United Nations High Commissioner for Human Rights' (9 February 2021) A/HRC/46/20 <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G21/028/52/PDF/G2102852.pdf?OpenElement>> [52].

¹⁰ 'India – Events of 2021', *Human Rights Watch* (Web Page) <<https://www.hrw.org/world-report/2022/country-chapters/india>>.

¹¹ See, for example, Kamal Ahmed, 'When will impunity for crimes against journalists end?': Daily Star contributor, *The Straits Times* (online, 2 November 2022) <<https://www.straitstimes.com/asia/south-asia/when-will-impunity-for-crimes-against-journalists-end-daily-star-contributor>>; 'South Easia: SAMSN members urge South Asian governments to support UN Convention on the safety of journalists', *International Federation of Journalists* (Press Release, 2 November 2022) <<https://www.ifj.org/media-centre/news/detail/category/end-impunity-2022/article/south-asia-samsn-members-urge-south-asian-governments-to-support-un-convention-on-the-safety-of-jou.html>>; Bill Hayton, 'Journalists face their own story of violence and intimidation', *Southeast Asia Globe* (online, 2 November 2021)

8. Australia has taken steps to address impunity for human rights violations including by ratifying the Rome Statute of the International Criminal Court, by setting up an investigative body to examine possible war crimes by its own military forces,¹² and by introducing Magnitsky-style sanctions to the *Autonomous Sanctions Act 2011* (Cth).¹³ But there is much more that Australia can do to address the issue of impunity in the region. This submission argues that there are two ways in which Australia can help to combat impunity and thus to assist our neighbours in achieving stability, democracy and good governance: firstly, through using international criminal law; and secondly, imposing targeted sanctions. These submissions outline how Australia can do so effectively, while engaging meaningfully with civil society organisations, and makes recommendations as to the steps Australia can take to improve its ability to combat impunity in the region. If these recommendations are adopted, Australia will not only enhance the rule of law, but will also help to ensure pathways to justice for survivors and affected communities, both for those who remain in their home countries, and those in Australia's diaspora communities.

3 Combatting impunity for grave human rights abuses by investigating and prosecuting international crimes

Recommendation 1

Australia should establish a permanent, specialist unit to investigate international crimes, so that it can more effectively investigate and prosecute perpetrators of international crimes in the region.

<<https://southeastasiaglobe.com/international-day-to-end-crimes-against-journalists/>>; Vince Angelo C Ferreras, 'Southeast Asian journalists flag culture of impunity', *BusinessWorld* (online, 4 November 2018) <<https://www.bworldonline.com/editors-picks/2018/11/04/197045/southeast-asian-journalists-flag-culture-of-impunity/>>; Joshua Kurlantzick, 'Southeast Asian Governments Squeeze Freedom of the Press', *Council on Foreign Relations* (Blog Post, 27 January 2020) <<https://www.cfr.org/blog/southeast-asian-governments-squeeze-freedom-press>>.

¹² 'About us', *Australian Government Office of the Special Investigator* (Web Page) <<https://www.osi.gov.au/about>>.

¹³ 'Autonomous Sanctions Amendment (Magnitsky-style and Other Thematic Sanctions) Act 2021', *Australian Government Department of Foreign Affairs and Trade* (Web Page, 8 December 2021) <<https://www.dfat.gov.au/news/news/autonomous-sanctions-amendment-magnitsky-style-and-other-thematic-sanctions-act-2021>>.

9. Australia must investigate and prosecute perpetrators of grave human rights abuses, in order to comply with its obligations under international law. These obligations exist by virtue of the treaties to which Australia is a party. The four Geneva Conventions mandate that Australia is obligated to search for persons alleged to have committed any grave breaches of the Geneva Conventions, and bring those persons, regardless of their nationality, before its own courts.¹⁴ The Convention Against Torture requires that Australia take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction, as well as take measures to establish jurisdiction when the alleged offender or victim is a national, or where the alleged offender is present in any territory under its jurisdiction.¹⁵ The Preamble of the Rome Statute recalls that it is the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes, and emphasises that the International Criminal Court is complementary to national criminal jurisdiction.¹⁶
10. Australia's codification of the crimes of the Rome Statute and the Convention Against Torture, through Divisions 268 and 274 of the *Criminal Code Act 1995* (Cth) Schedule ('**Commonwealth Criminal Code**') was a first step in implementing Australia's international law obligations. Section 3(3) of the *International Criminal Court Act 2002* (Cth), consistent with the Preamble of the Rome Statute and the cornerstone principle of complementarity, emphasises the primacy of domestic jurisdiction over international crimes.
11. In addition to these legal obligations, Australia has evinced a clear intention to recognise and uphold the principle of universal jurisdiction. In its statement to the UN's Office of Legal

¹⁴ *Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field*, opened for signature 12 August 1949, 75 UNTS 31 (entered into force 21 October 1950) article 49; *Geneva Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of the Armed Forces at Sea*, opened for signature 12 August 1949, 75 UNTS 85 (entered into force 21 October 1950) article 50; *Geneva Convention relative to the Treatment of Prisoners of War*, opened for signature 12 August 1949, 75 UNTS 135 (entered into force 21 October 1950) article 129; *Geneva Convention relative to the Protection of Civilian Persons in Time of War*, opened for signature 12 August 1949, 75 UNTS 287 (entered into force 21 October 1950) article 146.

¹⁵ *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, opened for signature 10 December 1984, 1465 UNTS 85 (entered into force 26 June 1987) ('**Convention Against Torture**') articles 2, 5 to 7.

¹⁶ Preamble to the *Rome Statute of the International Criminal Court*, opened for signature 17 July 1998, 2187 UNTS 90 (entered into force 1 July 2002) ('**Rome Statute**').

Affairs of the United Nations in May 2016, the Permanent Mission of Australia to the United Nations provided:

Australia recognises universal jurisdiction as a well-established principle of international law, and a key element of efforts to ensure accountability for the most serious crimes of international concern. We welcome the opportunity to reaffirm our views on the scope and application of the principle.

...

Australia believes that, as a general rule, the State in which a crime took place (the territorial State) and the State of nationality of the perpetrator (the national State) have primary jurisdiction and responsibility to hold perpetrators to account. Each State should prohibit serious crimes under their domestic law, and exercise effective jurisdiction over those crimes when they are committed on their territory or by their nationals. In particular, the territorial State is often best placed to obtain evidence, secure witnesses, enforce sentences, and to deliver the 'justice message' to perpetrators, victims and affected communities. Nonetheless, it is a fact that many serious crimes of international concern go unpunished in the territorial and national jurisdiction, including because alleged perpetrators are allowed to leave the jurisdiction.

...

The Australian Parliament has ensured that serious crimes of international concern, including genocide, war crimes, crimes against humanity, piracy, slavery and torture (and secondary and inchoate offences relating to these crimes such as attempt, incitement, complicity, aiding and abetting), are comprehensively criminalised under Australian law, and that Australia has the legal capacity to investigate and prosecute those crimes in accordance with the principle of universal jurisdiction.¹⁷

12. Internationally, there is a growing practice of national prosecutions bringing perpetrators to account for war crimes, crimes against humanity and genocide using the principle of universal jurisdiction.¹⁸ In its Universal Jurisdiction Annual Review 2022, TRIAL International found that in the preceding year, 16 countries had brought a total of 125 international criminal

¹⁷ 'Australian Views on the Scope and Application of the Principle of Universal Jurisdiction', *Permanent Mission of Australia to the United Nations* (Note, 3 May 2016) <http://www.un.org/en/ga/sixth/71/universal_jurisdiction/australia_e.pdf>.

¹⁸ Karolina Aksamitowska, 'War Crimes Units: Legislative, Organisational and Technical Lessons', *Asser Institute Centre for International and European Law* (Report, September 2021) <<https://www.asser.nl/media/795205/karolina-aksamitowska-war-crimes-units-legislative-organisational-and-technical-lessons-eng.pdf>> 7.

charges, with 17 accused on trial, 15 convictions and 0 acquittals.¹⁹ Australia has the legal capacity and stated commitment to investigate and prosecute serious international crimes. There appears, however, to be a gap between Australia's legal capacity to investigate and prosecute these crimes, and its structural ability and willingness to do so.

13. Australia, unlike other countries such as the Netherlands, Sweden, Germany, the USA and the UK, does not have a permanent, specialised unit dedicated to the investigation of war crimes and other international crimes. While the Office of the Special Investigator ('OSI') has been established to investigate potential war crimes during Australia's engagement in Afghanistan, it is a temporary unit with a narrow remit.²⁰ The absence of a permanent, specialised investigations unit for war crimes and other international crimes means that the Australian Federal Police ('AFP') may lack the expertise, resources and support services necessary to consistently and appropriately investigate these crimes. This likely contributed to the AFP's mishandling of a request submitted in October 2019 by ACIJ, the International Truth and Justice Project ('ITJP') and Human Rights Law Centre to investigate retired General Jagath Jayasuriya for serious allegations of torture, war crimes and crimes against humanity committed under his command in the final phase of the Sri Lankan civil war in 2009.²¹ Notwithstanding multiple requests for an update in relation to the request, it was not until 1 September 2021 (two years after the initial request was made) that the AFP provided a written response which stated that the matter had not been allocated to an investigations team for review due to an 'administrative oversight'. Shortcomings in Australia's capacity to investigate international crimes and serious human rights abuses reinforces impunity and denies access to justice to victims present in the region and within Australia's diaspora communities.
14. With this in mind, it is our submission that Australia can support stability, democracy and good governance in the region by combatting impunity through the enforcement of the international criminal law provisions in the Commonwealth Criminal Code. It can do this

¹⁹ 'Universal Jurisdiction Annual Review 2022', *TRIAL International* (Report, 2022) <<https://trialinternational.org/latest-post/2021-highlights-in-the-universal-jurisdiction-annual-review-ujar-released-today/>>.

²⁰ See 'Inquiry into Australia's Engagement in Afghanistan – Submission to the Senate Foreign Affairs, Defence and Trade References Committee', *Australian Centre for International Justice* (Submission, 13 October 2021) <https://acij.org.au/wp-content/uploads/2021/10/Australian-Centre-for-International-Justice-Inquiry-Submission-Australias-Engagment-in-Afghanistan_.pdf> 20.

²¹ 'The Case Against Jagath Jayasuriya', Australian Centre for International Justice (Web Page) <<https://acij.org.au/our-work/international-accountability/sri-lanka/accountability-for-crimes-in-sri-lanka/case-against-sri-lankan-general-jagath-jayasuriya/>>.

more effectively by establishing a specialist, permanent investigations unit that is primarily tasked with investigating the international crimes offences in the Commonwealth Criminal Code – something that ACIJ has long called for.²² Such a unit should adopt the best practices of similar units around the world, particularly in respect of committing to the principles of transparency, independence, cooperation with international agencies and civil society organisations, and having a victim-centric approach where possible through providing witness protection and a nuanced gender, cultural and trauma informed practice. This would ensure that Australia is fully compliant with its international obligations to investigate and prosecute serious international crimes; retains the knowledge and experience of complex international crimes investigations gained through the work of the OSI; provides a clearer mechanism to break the cycle of impunity currently enjoyed by perpetrators in the region; and, most importantly, creates an avenue for survivor communities in the region and in Australia’s diaspora communities to seek justice.

4 Combatting impunity for grave human rights abuses through targeted sanctions

Recommendation 2

Where criminal prosecution is not feasible, Australia should impose sanctions on actors in the region who have committed grave abuses of human rights.

Recommendation 3

Australia should create a clear route and process for the contribution and submission of information from civil society and non-governmental organisations in relation to sanctions.

²² ‘Inquiry into Australia’s Engagement in Afghanistan – Submission to the Senate Foreign Affairs, Defence and Trade References Committee’, *Australian Centre for International Justice* (Submission, 13 October 2021) <https://acij.org.au/wp-content/uploads/2021/10/Australian-Centre-for-International-Justice-Inquiry-Submission-Australias-Engagment-in-Afghanistan_.pdf> 20; Rawan Arraf, ‘Australia needs a Permanent War Crimes Investigation Unit’, *The Sydney Morning Herald* (online, 7 October 2020); ‘Advancing International Justice in Australia Structural and Institutional Reform’, *Australian Centre for International Justice* (Web Page) <<https://acij.org.au/our-work/policy-and-law-reform/advancing-international-justice-in-australia/>>.

15. Sanctions are an important tool for holding human rights violators accountable.²³ As acknowledged in ACIJ's submissions to the Inquiry into whether Australia should examine the use of targeted sanctions to address human rights abuses,²⁴ criminal investigations and prosecutions are not always feasible in all situations and in circumstances where perpetrators may otherwise enjoy impunity, 'targeted sanctions can be a powerful and transformative tool in an architecture of accountability'. This is because, as Professor Ben Saul notes, targeted sanctions 'are important in stigmatising and deterring violators, bringing pressure for accountability, expressing solidarity with victims, and reaffirming a global commitment to human rights'.²⁵
16. On 8 December 2021, Australia's Magnitsky-style thematic sanctions regime came into effect. The amendments to the *Autonomous Sanctions Act 2011* (Cth) mean that the autonomous sanctions regime, established under the *Autonomous Sanctions Regulations 2011* (Cth), can now address themes including serious violations or serious abuses of human rights and activities undermining good governance or the rule of law.²⁶
17. There are two ways that Australia could more effectively use this targeted sanctions regime to promote democracy and the international rules-based order in our region.
18. Firstly, Australia should impose targeted sanctions on individuals and entities in the region. It is notable that to date, thematic sanctions have only been imposed on two occasions since the commencement of the new regime. This was in respect of Russian individuals responsible for

²³ See, for example, European Parliament Resolution 2019/2580 (RSP) of 14 March 2019, on a European Human Rights Violations Sanctions Regime <www.europarl.europa.eu/doceo/document/TA-8-2019-0215_EN.html> [12].

²⁴ 'Submission: Australian human rights sanction regime', *Australian Centre for International Justice* (Submission, 23 March 2020) <<https://acij.org.au/submission-australian-human-rights-sanctions-regime-magnitsky/>> [33]; Australian Centre for International Justice, 'Inquiry into an Australian Human Rights Sanctions Regime', *Joint Standing Committee on Foreign Affairs, Defence and Trade* (Submission, 28 February 2020) <https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Foreign_Affairs_Defence_and_Trade/MagnitskyAct/Submissions> [33].

²⁵ Ben Saul, 'Opinion: What Australia can do about Iran's killing, torture and rape of brave women', *The Sydney Morning Herald* (online, 27 November 2022) <<https://www.smh.com.au/world/middle-east/what-australia-can-do-about-iran-s-killing-torture-and-rape-of-brave-women-20221124-p5c14u.html?btis>>.

²⁶ 'Autonomous Sanctions Amendment (Magnitsky-style and Other Thematic Sanctions) Act 2021', *Australian Government Department of Foreign Affairs and Trade* (Web Page, 8 December 2021) <<https://www.dfat.gov.au/news/news/autonomous-sanctions-amendment-magnitsky-style-and-other-thematic-sanctions-act-2021>>.

the corruption identified and exposed by Ukrainian-born Russian lawyer and tax advisor Sergei Magnitsky, and those complicit in Mr Magnitsky's subsequent mistreatment and death in custody in November 2009;²⁷ and more recently, against Russian individuals involved in the attempted assassination of former opposition leader Alexei Navalny, and individuals and entities in Iran involved in the violent crackdown on protests following the death of Mahsa 'Jina' Amini.²⁸

19. In March 2022, after the AFP confirmed that they would not be commencing a criminal investigation into Jagath Jayasuriya (as referenced above at paragraph 13 of this submission), ACIJ and the ITJP made a request through the Department of Foreign Affairs and Trade for Australia to impose sanctions against the retired General for his serious violations and abuses of human rights in Sri Lanka.²⁹ To date, no such sanctions have been imposed on this individual. In fact, no thematic sanctions for serious violations or serious abuses of human rights have been imposed on perpetrators in the region, with only a handful of individuals from Myanmar subject to 'country-specific' sanction designations in 2018.³⁰ This is despite repeated calls from civil society organisations, such as Amnesty International and Human Rights Watch, that action must be taken to bring perpetrators in the region to account through targeted sanctions.³¹ . Indeed, Australia's failure to impose sanctions in the region appears to

²⁷ Anton Moiseienko, 'One can't be too careful? Australia's cautious sanctions policy', *ANU College of Law* (Essay, 5 December 2022) <<https://law.anu.edu.au/research/essay/cipl-discussion-paper-series/australia-sanctions>>; 'Australia's first Magnitsky-style sanctions', *Minister for Foreign Affairs* (Statement, 29 March 2022) <[https://www.foreignminister.gov.au/minister/marise-payne/media-release/australias-first-magnitsky-style-sanctions#:~:text=In%20this%20first%20tranche%2C%20the.of%20his%20abuse%20and%20death.](https://www.foreignminister.gov.au/minister/marise-payne/media-release/australias-first-magnitsky-style-sanctions#:~:text=In%20this%20first%20tranche%2C%20the.of%20his%20abuse%20and%20death.;)>; information available from the sanctions Consolidated List produced by the Department of Foreign Affairs and Trade: 'Consolidated List', *Australian Government Department of Foreign Affairs and Trade* (Web Page) <<https://www.dfat.gov.au/international-relations/security/sanctions/consolidated-list>>.

²⁸ Minister and Assistant Minister for Foreign Affairs, 'Targeted sanctions in response to Iranian and Russian human rights violations and invasion of Ukraine', *Minister for Foreign Affairs* (Joint Media Statement, 10 December 2022) <<https://www.foreignminister.gov.au/minister/penny-wong/media-release/targeted-sanctions-response-iranian-and-russian-human-rights-violations-and-invasion-ukraine>>.

²⁹ 'The Case Against Jagath Jayasuriya', Australian Centre for International Justice (Web Page) <<https://acij.org.au/our-work/international-accountability/sri-lanka/accountability-for-crimes-in-sri-lanka/case-against-sri-lankan-general-jagath-jayasuriya/>>.

³⁰ Information available from the sanctions Consolidated List produced by the Department of Foreign Affairs and Trade: 'Consolidated List', *Australian Government Department of Foreign Affairs and Trade* (Web Page) <<https://www.dfat.gov.au/international-relations/security/sanctions/consolidated-list>>.

³¹ 'Australia: Use Magnitsky-Style Sanctions to Target Abusers', *Human Rights Watch* (Article, 5 December 2022) <<https://www.hrw.org/news/2022/12/05/australia-use-magnitsky-style-sanctions-target-abusers>>; 'Joint NGO Letter: Targeted Sanctions Against Myanmar's Military Leaders and Their Business Interests', Human Rights Watch (Letter, 17 January 2022)

reflect a broader trend in the use of Magnitsky sanctions globally, whereby abuses in South and Central Asia have ‘mostly been overlooked’.³²

20. Australia should overcome its ‘apparent reluctance’³³ and use the new thematic sanctions regime to hold actors in the region accountable for human rights abuses, thus undermining the cycle of impunity. This would also assist in ensuring that the use of sanctions tools globally is more equitable.³⁴ Targeted sanctions should not be deployed solely against perpetrators from “adversary” nations.³⁵ This would ensure that Australia’s ‘human rights diplomacy is

<https://www.hrw.org/sites/default/files/media_2022/01/220117%20Joint%20Letter%20to%20Foreign%20Minister%20-%20Targeted%20Sanctions%20Against%20Myanmar%E2%80%99s%20Military%20Leaders%20and%20Their%20Business%20Interests.pdf>; Erin Handley, ‘Australia under pressure to sanction Myanmar military after Amnesty International report and leaked ANZ Bank transactions’, *ABC News* (online, 4 November 2022) <<https://www.abc.net.au/news/2022-11-04/myanmar-australia-anz-amnesty-jet-fuel-sanctions/101617706>>; ‘Deadly Cargo: Exposing the Supply Chain that Fuels War Crimes in Myanmar’, *Amnesty International* (Report, 2022) <https://www.amnesty.org.au/wp-content/uploads/2022/11/Amnesty-DEADLY-CARGO-Myanmar-report_EMBARGO-27.10.2022-3.pdf>; Daniel Hurst, ‘Albanese government urged to keep focus on human rights as it rebuilds relationships in Asia’, *The Guardian* (online, 16 June 2022) <<https://www.theguardian.com/australia-news/2022/jun/16/albanese-government-urged-to-keep-focus-on-human-rights-as-it-rebuilds-relationships-in-asia>>; Elaine Pearson and Teppei Kasai, ‘Japan and Australia should Sanction the Myanmar Military’, Human Rights Watch (Article, 27 March 2022) <<https://www.hrw.org/news/2022/03/28/japan-and-australia-should-sanction-myanmar-military>>; Daniel Hurst and Ben Doherty, ‘Australia to face pressure to use new Magnitsky-style laws against Myanmar and Chinese officials’ *The Guardian* (online, 2 December 2021) <<https://www.theguardian.com/australia-news/2021/dec/02/australia-to-face-pressure-to-use-new-magnitsky-style-laws-against-myanmar-and-chinese-officials>>.

³² Human Rights First, Open Society Foundations, Raoul Wallenberg Centre for Human Rights and Redress, ‘Multilateral Magnitsky Sanctions at Five Years’, *Human Rights First* (Report, November 2022) <<https://humanrightsfirst.org/wp-content/uploads/2022/11/Multilateral-Magnitsky-Sanctions-at-Five-Years-November-2022.pdf>> 8.

³³ Anton Moiseienko, ‘One can’t be too careful? Australia’s cautious sanctions policy’, *ANU College of Law* (Essay, 5 December 2022) <<https://law.anu.edu.au/research/essay/cipl-discussion-paper-series/australia-sanctions>>; see also ‘Australia: Use Magnitsky-Style Sanctions to Target Abusers’, *Human Rights Watch* (Article, 5 December 2022) <<https://www.hrw.org/news/2022/12/05/australia-use-magnitsky-style-sanctions-target-abusers>>.

³⁴ Human Rights First, Open Society Foundations, Raoul Wallenberg Centre for Human Rights and Redress, ‘Multilateral Magnitsky Sanctions at Five Years’, *Human Rights First* (Report, November 2022) <<https://humanrightsfirst.org/wp-content/uploads/2022/11/Multilateral-Magnitsky-Sanctions-at-Five-Years-November-2022.pdf>> 8.

³⁵ ‘Friends Like These: US Security Partners and Selectivity in the Global Magnitsky Sanctions Program’, *Human Rights First* (Report, November 2022) <<https://humanrightsfirst.org/wp-content/uploads/2022/11/Friends-Like-These-U.S.-Security-Partners-and-Selectivity-in-the-Global-Magnitsky-Sanctions-Program.pdf>> 4.

principled, consistent and credible'.³⁶ The impact of targeted sanctions may be even more pronounced when used against individuals and entities in the region since, as Human Rights Watch points out, 'there is a stronger likelihood that they have assets in Australia or might travel to Australia'.³⁷ Where possible, Australia should work in coordination with other jurisdictions who have Magnitsky-style sanctions regimes so that targeted sanctions are more effective³⁸ and 'to ensure the greatest impact on perpetrators'.³⁹

21. Secondly, Australia should create a clear process for the contribution and submission of information from survivor communities, civil society and non-governmental organisations in relation to potential sanctions. This will assist in allowing such organisations – who have access to key information about situations of rights abuses – to contribute meaningfully to decisions about who should be the subject of targeted sanctions. Such a move would be consistent with the recommendations set out in the November 2022 report 'Multilateral Magnitsky Sanctions at Five Years', which notes that 'civil society often plays a significant role in identifying situations of sanctionable abuses and recommending potential sanctions targets to jurisdiction'⁴⁰ and that relationships with civil society should be strengthened and governments should use civil society submissions as bases for sanctions.⁴¹

³⁶ Ben Saul, 'Opinion: What Australia can do about Iran's killing, torture and rape of brave women', *The Sydney Morning Herald* (online, 27 November 2022) <<https://www.smh.com.au/world/middle-east/what-australia-can-do-about-iran-s-killing-torture-and-rape-of-brave-women-20221124-p5c14u.html?btis>>.

³⁷ 'Australia: Use Magnitsky-Style Sanctions to Target Abusers', *Human Rights Watch* (Article, 5 December 2022) <<https://www.hrw.org/news/2022/12/05/australia-use-magnitsky-style-sanctions-target-abusers>>.

³⁸ 'Australia: Use Magnitsky-Style Sanctions to Target Abusers', *Human Rights Watch* (Article, 5 December 2022) <<https://www.hrw.org/news/2022/12/05/australia-use-magnitsky-style-sanctions-target-abusers>>.

³⁹ Human Rights First, Open Society Foundations, Raoul Wallenberg Centre for Human Rights and Redress, 'Multilateral Magnitsky Sanctions at Five Years', *Human Rights First* (Report, November 2022) <https://humanrightsfirst.org/wp-content/uploads/2022/11/Multilateral-Magnitsky-Sanctions-at-Five-Years_November-2022.pdf> 8.

⁴⁰ Human Rights First, Open Society Foundations, Raoul Wallenberg Centre for Human Rights and Redress, 'Multilateral Magnitsky Sanctions at Five Years', *Human Rights First* (Report, November 2022) <https://humanrightsfirst.org/wp-content/uploads/2022/11/Multilateral-Magnitsky-Sanctions-at-Five-Years_November-2022.pdf> 10.

⁴¹ Human Rights First, Open Society Foundations, Raoul Wallenberg Centre for Human Rights and Redress, 'Multilateral Magnitsky Sanctions at Five Years', *Human Rights First* (Report, November 2022) <https://humanrightsfirst.org/wp-content/uploads/2022/11/Multilateral-Magnitsky-Sanctions-at-Five-Years_November-2022.pdf> 8.

5 Conclusion

22. Any efforts to support stability and the international rule of law in the region will be incomplete if they do not also address the issue of impunity for international crimes and serious human rights abuses.
23. Australia should seek to combat this impunity by effectively enforcing the international criminal laws on its books and by consulting on and consistently applying targeted sanctions in cases of grave human rights abuses.