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To: Joint Standing Committee on Foreign Affairs, Defence and Trade
Foreign Affairs and Aid Sub-Committee

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Additional Information from the Australian Centre for International Justice for the Inquiry into Supporting Democracy in our Region

Thank you for the opportunity to appear at the Public Hearing – Roundtable before the Foreign Affairs and Aid Sub-Committee of the Parliamentary Joint Standing Committee on Foreign Affairs, Defence and Trade (the **Committee**) in relation to the Inquiry into supporting democracy in our region (the **Inquiry**) on 4 April 2023.

In the course of the hearing, the Australian Centre for International Justice (**ACIJ**) took questions on notice. These supplementary submissions respond to those questions and provide clarifying information relating to other matters raised in the course of the hearing. Specifically, our supplementary submissions:

- provide information supporting ACIJ’s additional recommendation that Australia should encourage States in our region to accede to the Rome Statute of the International Criminal Court (**ICC**);
- outline examples of how specialised units overseas have been successful in investigating international crimes;
- detail evidence of why Australia needs a permanent, specialised international crimes unit; and
- address the question of sovereignty and who is best placed to investigate and prosecute international crimes.

Additional recommendation in relation to encouraging ICC membership in the region

During the hearing, ACIJ raised an additional recommendation that Australia should work towards assisting States in the region to accede to the Rome Statute of the ICC. The Committee enquired as to which States were parties to the Rome Statute and whether there was currently any campaign or movement to have States become parties to the Rome Statute. ACIJ took this question on notice.

There are currently 123 States Parties to the Rome Statute of the ICC. The ICC website currently lists 19 States in the Asia-Pacific as being States Parties to the Rome Statute:¹

- Afghanistan
- Bangladesh
- Cambodia
- Cook Islands
- Cyprus
- Fiji
- Japan
- Jordan
- Kiribati
- Maldives
- Marshall Islands
- Mongolia
- Nauru
- Republic of Korea
- Samoa
- State of Palestine
- Tajikistan
- Timor-Leste
- Vanuatu

¹ See ‘Asia-Pacific States’, International Criminal Court (Web Page) <<https://asp.icc-cpi.int/states-parties/asian-states>>.

Note that Australia and New Zealand are listed as States Parties under the title of Western European and Other States.²

Asia-Pacific States are the most underrepresented of all States Parties to the ICC of any regional grouping around the world. A 2022 ICC publication titled 'Joining the ICC: Asia-Pacific States' provides that the Asia-Pacific group of States comprises 53 States, yet only 35% of States in this group are parties to the Rome Statute, as opposed to 75% of States from all other regions of the world.³ Notable absences from our region include:

- Bhutan
- Bruni
- China
- India
- Indonesia
- Laos
- Malaysia
- Myanmar
- Nepal
- New Caledonia
- North Korea
- Pakistan
- Palau
- Papua New Guinea
- Philippines
- Singapore
- Solomon Islands
- Sri Lanka
- Thailand
- Tonga
- Tuvalu
- Vietnam

Thailand signed the Statute on 2 October 2000 but has not ratified the Statute. The Philippines signed on 28 December 2000 and ratified on 30 August 2011 but notified the Secretary-General of their decision to withdraw from the Rome Statute on 17 March 2018 with effect from 17 March 2019.⁴ The ICC still has jurisdiction to consider crimes committed before the Philippines withdrawal, which is why the ICC continues to investigate the extrajudicial killings and other crimes during former President Rodrigo Duterte's reign as mayor and president,⁵ on the basis that these crimes were allegedly committed prior to the Philippines withdrawal from the Rome Statute. The Philippines has filed a notice of appeal in relation to the ICC's jurisdiction.⁶

ACIJ is not aware of Australia's involvement in any current campaign or movement designed to encourage States, in the region or otherwise, to accede to the Rome Statute. In 2012, an ABC news article reported comments from former President of the ICC, Judge Sang-Hyun Song, for Australia to use its influence to encourage States in the region to become signatories to the ICC.⁷ The article also included comments from the Department of Foreign Affairs (DFAT), who stated that they were 'convening a roundtable aimed at encouraging Pacific Islands states to accede to the Rome Statute, and those already party to the Statute to implement their obligations'.⁸

More recently, civil society organisations have recommended that major States which have ratified the Statute, including Australia, have an important role to play in encouraging non-member States in the region to accede to

² See 'Western European and Other States', *International Criminal Court* (Web Page) <<https://asp.icc-cpi.int/states-parties/western-european-and-other-states>>.

³ International Criminal Court, 'Joining the ICC: Asia-Pacific States' (2022) (Web Page) <<https://www.icc-cpi.int/sites/default/files/2022-09/universality-asia-eng-v.11-web.pdf>>.

⁴ 'Rome Statute of the International Criminal Court, Rome, 17 July 1998', *UN Treaties* (Web Page) <<https://www.icc-cpi.int/victims/republic-philippines>>.

⁵ 'International Criminal Court's Philippines Investigation: Questions and Answers from Human Rights Watch', Human Rights Watch (Web Page, 13 February 2023) <<https://www.hrw.org/news/2023/02/13/international-criminal-courts-philippines-investigation#didntthe>>.

⁶ 'Information for Victims – Republic of the Philippines – The situation in the Philippines', International Criminal Court (Web Page) <<https://www.icc-cpi.int/victims/republic-philippines>>.

⁷ Lexi Metherell, 'Australia urged to seek Asian recruits for ICC', *ABC News* (online, 14 February 2012) <<https://www.abc.net.au/news/2012-02-14/australia-urged-to-help-boost-icc-members/3830038>>.

⁸ Lexi Metherell, 'Australia urged to seek Asian recruits for ICC', *ABC News* (online, 14 February 2012) <<https://www.abc.net.au/news/2012-02-14/australia-urged-to-help-boost-icc-members/3830038>>.

the Rome Statute.⁹ The Committee may consider making enquiries with DFAT or the Attorney-General's Department as to whether the Australian Government is currently involved in any activities aimed at encouraging States in the region to accede to the Rome Statute.

There are some organisations globally who are focused on universal adoption of the Rome Statute. This includes the Coalition for the International Criminal Court (CICC), a global civil society network of member organisations across 150 countries. The CICC led the successful campaign to set up the ICC, urging over 120 States to ratify the Rome Statute. One of their key commitments is advocating for universal ratification and implementation. The CICC recognises the underrepresentation of states in the Asia-Pacific region and works with a network of civil society organisations across the region to 'dispel myths about the impact of the ICC on state sovereignty and mainstream accountability throughout the region'.¹⁰

Another organisation, the Parliamentarians for Global Action (PGA), has campaigned since 1998 for the universal ratification of the Rome Statute.¹¹ In 2019, they organised a Pacific Islands Roundtable in relation to the ratification and implementation of the ICC.¹² The PGA played a key role in the most recent accession of Kiribati to the Rome Statute.¹³ They have an Asia-Pacific working group in recognition that the Asia-Pacific region remains amongst the most under-represented in the Rome Statute system.¹⁴ The existence of organisations like the PGA indicates that there is opportunity for Australia to play an active role and use its influence in the region by encouraging ICC accession and implementation.

The importance of universal ratification and accession

Broadening the jurisdiction of the ICC ensures access to justice is within reach for victims of international crimes, and that perpetrators of these crimes do not enjoy impunity through limiting the number of safe havens available to them. It provides obligations upon States Parties to cooperate with the ICC, for example, to act upon warrants for the arrest of suspects. The ICC currently lists 14 defendants as being "at large", subject to outstanding arrest warrants issued by the ICC,¹⁵ which does not include the most recent arrest warrants issued against Russian President Vladimir Putin and Commissioner for Children's Rights Maria Lvova-Belova for alleged crimes committed in Ukraine.¹⁶

Our recommendation that Australia encourage States in the region to accede to the Rome Statute does not dispense with our primary recommendation, that Australia establish a permanent, specialised international crimes

⁹ Asia-Pacific Centre for the Responsibility to Protect and the University of Queensland, 'The Rome Statute in the Asia-Pacific', *Asia-Pacific Centre for the Responsibility to Protect* (Report, August 2021)

<https://r2pasiapacific.org/files/7362/2021_THE_ROME_STATUTE_IN_THE_ASIA_PACIFIC.pdf> 23.

¹⁰ Coalition for the International Criminal Court, 'Asia-Pacific: A Region with a lot to Offer' (Online)

<<https://www.coalitionfortheicc.org/countries/asiapacific>>.

¹¹ Parliamentarians for Global Action, 'The Challenge: Fighting Against Impunity for International Crimes', *Campaign for the Universality and Effectiveness of the Systems of the Rome Statute of the International Criminal Court (ICC)* <<https://www.pgaction.org/ilhr/rome-statute/>>.

¹² 'Pacific Islands Roundtable on Ratification and Implementation of the Rome Statute, Port Vila, 31 May 2019', *International Criminal Court* (Article, 31 May 2019) <<https://www.icc-cpi.int/about/cooperation/pacific-islands-roundtable-ratification-and-implementation-rome-statute-port-vila>>.

¹³ Parliamentarians for Global Action, 'Pacific Island State Affirms Its Commitment to International Justice and Accedes to the Rome Statute of the International Criminal Court Following Determined Action by Parliamentarians' (Press Release, 26 November 2019)

<<https://www.pgaction.org/news/kiribati-accedes-to-rome-statute.html>>.

¹⁴ Parliamentarians for Global Action, 'Why the Asia-Pacific', *Asia-Pacific Working Group* (Web Page) <<https://www.pgaction.org/ilhr/rome-statute/asia-pacific-working-group.html>>.

¹⁵ 'Defendants', *International Criminal Court* (Web Page) <https://www.icc-cpi.int/defendants?f%5B0%5D=accused_states%3A329>.

¹⁶ 'Situation in Ukraine: ICC judges issue arrest warrants against Vladimir Vladimirovich Putin and Maria Alekseyevna Lvova-Belova', *International Criminal Court* (Press Release, 17 March 2023) <<https://www.icc-cpi.int/news/situation-ukraine-icc-judges-issue-arrest-warrants-against-vladimir-vladimirovich-putin-and>>.

unit which has the ability to undertake investigations of serious international crimes under the principle of universal jurisdiction. Combatting impunity in an effective and meaningful way requires a multi-pronged strategy, in which both domestic and international investigations and prosecutions can play a role. Increased ICC accession throughout the region is an admirable goal, but could involve a lengthy and sustained effort which is ultimately dependent on the cooperation and acceptance by State leaders in the region. Domestic investigations and prosecutions in Australian courts using the principle of universal jurisdiction are a mechanism which can be accommodated within our current system, should the AFP be allocated sufficient resources to establish a specialised unit.

Evidence of effectiveness of specialised investigatory units overseas

The Committee sought more information about the effectiveness of specialised international crimes investigatory units that have been established overseas. Paragraph 12 of our written submissions notes the growing practice of national prosecutions bringing perpetrators to account for war crimes, crimes against humanity and genocide using the principle of universal jurisdiction, and includes statistics from TRIAL International about the number of countries, charges, trials, convictions and acquittals as part of its 2022 Universal Jurisdiction Annual Review.¹⁷ The 2023 Universal Jurisdiction Annual Review, released on 17 April 2023, further highlights the increase in domestic investigations and prosecutions for serious international crimes, utilising the principle of universal jurisdiction.¹⁸

Some notable, recent examples of universal jurisdiction investigations and prosecutions by States which have specialised investigatory units include:

- In **Sweden**, the investigation, prosecution and conviction of a former Iranian prosecutor involved in the mass execution of prisoners in Iran in 1988;¹⁹
- In **Germany**, the structural investigation into international crimes committed by Syrian military intelligence services, which has so far resulted in the conviction of two former members of the Syrian intelligence services, the ongoing prosecution of a former doctor who had worked for the Syrian intelligence services, and the issuing of an arrest warrant against the former head of one of the Syrian intelligence services, Jamil Hassan;²⁰
- In the **United Kingdom**, the arrest and investigation by the Metropolitan Police War Crimes team of an individual suspected of the war crime of murder of a Sri Lankan Tamil journalist in 2000, 22 years after the crime occurred in Sri Lanka;²¹

¹⁷ '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/>>.

¹⁸ 'Universal Jurisdiction Annual Review 2023', *TRIAL International* (Report, 2023) <https://trialinternational.org/wp-content/uploads/2023/04/01_TRIAL_UJAR_2023_DIGITAL_27_03.pdf>.

¹⁹ David Gritten, 'Swedish court convicts Iranian ex-official over 1988 executions', *BBC News* (online, 14 July 2022) <<https://www.bbc.com/news/world-europe-62162676>>.

²⁰ '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/>> 52.

²¹ 'Rights Groups Welcome Arrest in the UK of Suspected Killer of BBC Journalist in Sri Lanka 22-years ago', *Redress* (Press Release, 25 February 2022) <<https://redress.org/news/rights-groups-welcome-arrest-in-the-uk-of-suspected-killer-of-bbc-journalist-in-sri-lanka-22-years-ago/>>.

- In **France**, the conviction of a former Liberian rebel commander for complicity in crimes against humanity for acts committed during Liberia's first civil war more than 25 years ago,²² and the issuing of three international arrest warrants against three senior advisers to Syria's Bashar al-Assad for complicity in crimes against humanity and war crimes.²³

Furthermore, there are a number of studies which have assessed the effectiveness of specialised international crimes units. The EU Genocide Network and Eurojust's 2022 Report concerning developments in the fight against impunity for core international crimes in the EU noted that "specialised units are much better equipped to deal with the specific challenges posed by the investigation and prosecution of core international crimes. Specialised units gradually gain experience and retain knowledge within the same team, which ultimately facilitates the identification, investigation and prosecution of alleged perpetrators".²⁴ Likewise, the International Center for Transitional Justice's 2022 Report, which analysed the practice of specialised investigative and prosecutorial international crimes units globally, stated that "countries with specialized units are likely to achieve considerably more success in investigating and prosecuting crimes of the past and international crimes when compared with countries without dedicated capacities".²⁵

Evidence of the need for a specialised investigatory unit in Australia

The Committee sought more information about whether there was sufficient evidence justifying the need to establish a specialised investigatory unit within Australia. Paragraph 13 of our written submissions highlights just one example of where credible allegations of war crimes and crimes against humanity against a high-ranking Sri Lankan General present in Australia, could have paved the way to combat the impunity he enjoys, within Australia's domestic court system, had the AFP been resourced with a specialised unit to properly consider our referred dossier of evidence.

Yet, there exists many other examples of Australia being a safe haven for perpetrators of serious international crimes. As noted in a 2009 Lowy Institute Policy Brief, it is likely that Australia is home to suspected war criminals from countries of the former Yugoslavia, Cambodia, and possibly Rwanda and East Timor.²⁶ Dual Australian-Serbian citizen Dragan Vasiljkovic lived for decades in Australia before his extradition and subsequent conviction for war crimes,²⁷ as did Zoran Tadic before he fled to Serbia, to escape extradition to Croatia for his participation and involvement in the murder and torture of 43 villagers in 1991.²⁸ As recently as 2022, there have been reports that

²² Kim Willsher, 'French court convicts former Liberian rebel commander over atrocities', *The Guardian* (online, 3 November 2022) <<https://www.theguardian.com/world/2022/nov/02/french-court-convicts-former-liberian-rebel-commander-over-atrocities>>.

²³ 'France to try Syrian regime officials for crimes against humanity', *Al Jazeera* (online, 5 April 2023) <<https://www.aljazeera.com/news/2023/4/5/france-to-try-syrian-regime-officials-for-crimes-against-humanity>>.

²⁴ EU Genocide Network and Eurojust, '20 Years On: Main Developments in the Fight Against Impunity for Core International Crimes in the EU', *EUROJUST* (Report, May 2022) <<https://www.eurojust.europa.eu/sites/default/files/assets/developments-in-the-fight-against-impunity-for-core-international-crimes-in-the-eu.pdf>> 10.

²⁵ Howard Varney and Katarzyna Zdunczyk, 'Gearing Up the Fight Against Impunity: Dedicative Investigative and Prosecutorial Capacities', *International Center for Transitional Justice* (Report, March 2022) <https://www.ictj.org/sites/default/files/2022-03/ICTJ_Report_Specialized_Units_Web.pdf> 57.

²⁶ Fergus Hanson, 'Confronting Reality: Responding to War Criminals Living in Australia', *Lowy Institute* (Policy Brief, February 2009) <https://www.lowyinstitute.org/sites/default/files/pubfiles/Hanson%2C_Confronting_reality_1.pdf> 4.

²⁷ Sacha Payne, 'Australia could have 'hundreds, if not thousands' of war criminals like Vasiljkovic', *SBS News* (online, 27 September 2017) <<https://www.sbs.com.au/news/article/australia-could-have-hundreds-if-not-thousands-of-war-criminals-like-vasiljkovic/t101h1y1y>>; 'Ex-Serbian commander Captain Dragan sentenced to 15 years over murder, torture, war crimes', *ABC News* (online, 26 September 2017) <<https://www.abc.net.au/news/2017-09-26/ex-serbian-commander-jailed-over-murder-torture-war-crimes/8990960>>.

²⁸ Jarni Blakkarly, 'Australian man to face 'shocking' war crimes charges in Croatia', *SBS News* (online, 4 February 2019) <<https://www.sbs.com.au/news/article/australian-man-to-face-shocking-war-crimes-charges-in-croatia/gl463g50r>>;

the AFP knew of 70 suspected Yugoslav war criminals present in Australia.²⁹ The Australian Government and AFP's "scandalous, do nothing"³⁰ approach to investigating international crimes has been highlighted repeatedly in the media and civil society.³¹

Calls for a permanent, specialised international crimes unit have been persistent.³² These calls continue to be unheeded.

Australia has significant standing and influence in the region. In a similar way in which European court systems have used domestic processes to combat impunity for international crimes, Australia has the ability to meaningfully

- ²⁹ James Baylis, 'Securing Australia from the perpetrators of atrocities', *The Strategist* (online, 20 May 2022) <<https://www.aspistrategist.org.au/securing-australia-from-the-perpetrators-of-atrocities/#:~:text=In%202022%2C%20GB%20examined%20a,the%20country%20and%20seeking%20citizenship>>; Rawan Arraf, 'Is Australia a safe haven for war criminals and torturers?', *Right Now* (online, 31 July 2020) <<https://rightnow.org.au/opinion/australia-a-safe-haven-for-war-criminals-and-torturers/>>.
- ³⁰ Mark Corcoran, 'Lack of War Crimes Investigations 'A Scandal'', *ABC* (online, 2 April 2012) <<https://www.abc.net.au/news/2012-03-30/experts-slam-lack-of-war-crimes-investigations/3922954>>.
- ³¹ See, for example, Tom Hyland, 'Haven for war suspects', *The Age* (online, 14 January 2007) <<https://www.theage.com.au/national/haven-for-war-suspects-20070114-ge3zje.html>>; Christopher Knaus, 'Wanted Croatian war crimes suspect lived openly under Australian government's nose', *The Canberra Times* (online, 23 April 2018) <<https://www.canberratimes.com.au/story/6077966/wanted-croatian-war-crimes-suspect-lived-openly-under-australian-governments-nose/>>; James Baylis, 'Securing Australia from the perpetrators of atrocities', *The Strategist* (online, 20 May 2022) <<https://www.aspistrategist.org.au/securing-australia-from-the-perpetrators-of-atrocities/#:~:text=In%202022%2C%20GB%20examined%20a,the%20country%20and%20seeking%20citizenship>>; Mark Aarons, *War Criminals Welcome: Australia, a Sanctuary for Fugitive War Criminals since 1945* (2020, Black Inc); Fergus Hanson, 'Confronting Reality: Responding to War Criminals Living in Australia', *Lowy Institute* (Policy Brief, February 2009) <https://www.lowyinstitute.org/sites/default/files/pubfiles/Hanson%2C_Confronting_reality_1.pdf>; Fergus Hanson and Mark Ierace, 'Legal haven for war criminals', *The Sydney Morning Herald* (online, 7 November 2009) <<https://www.smh.com.au/politics/federal/legal-haven-for-war-criminals-20091106-i22l.html>>; 'Australia a war criminals safe haven', *The Age* (online, 5 December 2005) <<https://www.theage.com.au/national/australia-a-war-criminals-safe-haven-20051205-ge1dbj.html>>; Branko Miletic, 'Welcome to Australia, beautiful one day, full of war criminals the next', *Independent Australia* (online, 31 January 2019) <<https://independentaustralia.net/life/life-display/welcome-to-australia-beautiful-one-day-full-of-war-criminals-the-next.12331>>.
- ³² See, for example, Rawan Arraf 'Australia needs a permanent war crimes investigation unit', *The Age* (online, 7 October 2020) <<https://www.theage.com.au/politics/federal/australia-needs-a-permanent-war-crimes-investigation-unit-20201005-p562a2.html>>; 'Media Release: The establishment of the Office of the Special Investigator is welcome and should be made permanent', *Australian Centre for International Justice* (Media Release, 12 November 2020) <<https://acij.org.au/media-release-the-establishment-of-the-office-of-the-special-investigator-is-welcome-and-should-be-made-permanent/>>; '2019 – 2010 Pre-Budget Submission', *Australian Centre for International Justice* (Submission, 28 February 2019) <https://acij.org.au/wp-content/uploads/2019/07/ACIJ-Pre-Budget-Submission_Rev2.pdf>; Human Rights Law Centre and Australian Centre for International Justice, 'Reform required to end corporate impunity: Submission to the Australian Law Reform Commission's Review into Australia's corporate criminal responsibility regime', *Australian Centre for International Justice* (Submission, 31 January 2020) <<https://acij.org.au/wp-content/uploads/2020/02/HRLC-and-ACIJ-ALRC-Corporate-Criminal-Responsibility-Submission.pdf>>; 'UN Universal Periodic Review of Australia's human rights performance: Joint NGO report', *Australian Centre for International Justice* (Media Release, 22 July 2020) <<https://acij.org.au/un-universal-periodic-review-of-australias-human-rights-performance-joint-ngo-report/>>; '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/advancinginternational-justice-in-australia/>; Bruce Jones, 'War Crimes Unit 'Must Be Retained'', *The Sun-Herald* (online, 15 May 1994) <link.gale.com/apps/doc/A296259917/STND?u=unimelb&sid=bookmark-STND&xid=c61600e4>; Gideon Boas and Pascale Chifflet, 'Suspected War Criminals in Australia: Law and Policy' (2016) 40(1) *Melbourne University Law Review* 46; Konrad Kwiet, 'A Historian's View: The War Crimes Debate Down Under' (2010) 24 *Dapim: Studies on the Shoah* 319; John Stapleton's 2009 Lowy Institute Report, as referenced by Eliana Chiovetta, 'Essay: A Sad Legacy', *Australia/Israel & Jewish Affairs Council* (Essay, 1 September 2022) <<https://aijac.org.au/australia-israel-review/essay-a-sad-legacy/>>; Gideon Boas and Pascale Chifflet, 'Inconsistency bedevils Australia's prosecution of war criminals', *The Conversation* (online, 4 October 2016) <<https://theconversation.com/inconsistency-bedevils-australias-prosecution-of-war-criminals-66039>>; David Macgregor, 'Bringing War Criminals to Justice in Australia' (2007) 32(3) *Alternative Law Journal* 154; Mark Ierace SC, 'Proposal: An Australian War Crimes Unit' (9 March 2014); Tim McCormack, 'If I Were Attorney-General', *Human Rights Law Centre* (Bulletin Number 50, June 2010); Fergus Hanson, 'Confronting Reality: Responding to War Criminals Living in Australia', *Lowy Institute* (Policy Brief, February 2009) <https://www.lowyinstitute.org/sites/default/files/pubfiles/Hanson%2C_Confronting_reality_1.pdf>.

combat impunity in the region, thereby bolstering democracy and the rule of law. This can be accommodated within its existing legislative frameworks, so long as the AFP's institutional capacity to effectively undertake these investigations is supported.

Addressing the question of sovereignty and who is best placed to investigate and prosecute international crimes

The Chair of the Committee raised questions about whether the investigation and prosecution in Australia of international crimes that were committed overseas would be consistent with the principle of sovereignty. Ordinarily, it is a matter for the State in which a crime has occurred to investigate and prosecute crimes within its territorial jurisdiction. Nonetheless, the international community has recognised that universal jurisdiction for crimes such as crimes against humanity, genocide and war crimes is necessary, given the egregious nature of these crimes. Australia has accepted this principle, as evidenced by its ratification of the Rome Statute of the ICC and other international treaties. Consistent with its international obligations, Australia's domestic legislation specifically provides for the ability to investigate and prosecute, under Australian law, crimes against humanity, war crimes and genocide, even where these crimes have occurred outside Australia.³³

A secondary concern raised by the Chair of the Committee was in relation to whether other organisations are better placed to undertake investigations and prosecutions for international crimes. While it is generally acknowledged that the territory in which a crime occurred is often best placed to collect evidence and undertake investigations and prosecutions, Australia's Permanent Mission to the United Nations has recognised that "many serious crimes of international concern go punished in the territorial and national jurisdiction, including because alleged perpetrators are allowed to leave the jurisdiction", thereby reaffirming Australia's commitment to universal jurisdiction as a "key element of efforts to ensure accountability".³⁴ This is especially the case where States remain in protracted conflict or where individuals who perpetrated crimes remain in positions of power and influence. Furthermore, international institutions such as the ICC do not always have the ability to investigate and prosecute international crimes due to lack of jurisdiction; the limited number of State signatories to the Rome Statute in our region emphasises this impediment. The investigation and prosecution of international crimes domestically, including within Australia, would provide an effective mechanism to close the impunity gap in our region.

There is no doubt that evidence collection for crimes that have been committed overseas is difficult. This is why a permanent, specialised international crimes investigatory unit is best-placed to undertake this complex task. Domestic specialised investigations units in Europe regularly collaborate and cooperate with one another, and work closely with regional and international organisations tasked with investigations and evidence collection. The establishment of such a unit could provide a tangible opportunity to address impunity in the region by providing a concrete avenue for accountability of perpetrators of serious international crimes, thereby enhancing democracy and the rule of law.

Conclusion

We thank the Committee for the opportunity to provide these supplementary submissions. If there are any questions in relation to any of the matters raised, ACIJ is able to provide further clarification.

³³ *Criminal Code Act 1995* (Cth) Schedule s 268.117.

³⁴ 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) <https://www.un.org/en/ga/sixth/71/universal_jurisdiction/australia_e.pdf>.