

2022 ANNUAL REPORT

2022



We acknowledge the Traditional Owners and Custodians of the lands on which we work and pay our respects to Indigenous Elders past, present and future.

We acknowledge that this land - which we benefit from occupying - was stolen, and that sovereignty was never ceded.

It always was and always will be Aboriginal and Torres Strait Islander land.

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Cover Image: Kabul, December 2013, © Andrew Quilty

INTRODUCTION

Our Purpose

The Australian Centre for International Justice (**ACIJ**) is a specialist legal centre working to develop Australia's capacity to investigate and prosecute grave crimes and develop a universal jurisdiction practice. ACIJ aims to provide access to justice to survivors of serious and egregious violations of human rights, in particular where these violations amount to the crimes of torture, war crimes, crimes against humanity and genocide.

ACIJ works to combat the impunity of perpetrators and to seek justice, redress and accountability for the survivors of these crimes.

Australia has criminalised international crimes and has the legal framework to prosecute them, but the practical legal implementation of international crimes investigations and prosecutions in Australia is still in its infancy. There have been only limited investigations and minimal international coordination of strategy. We engage critically and constructively with Australian authorities through legal action, submissions, policy change and community engagement.

ACIJ endeavours to place Australia as a new avenue for accountability on the global stage and contribute to ending the impunity of those responsible for committing grave crimes. We work with partners locally and abroad to help ensure Australia's conduct is consistent with international human rights law and international humanitarian law.

Our Mission

The Australian Centre for International Justice is an independent not-for-profit legal centre dedicated to seeking justice and accountability for victims and survivors of serious human rights violations.

We work towards developing Australia's role in investigating, prosecuting and providing remedies for these violations.

We work with affected communities and partners locally and abroad in the global fight to end the impunity of those responsible for these violations. Our work is informed by the values of justice, accountability, human rights, dignity, courage and solidarity.

Our Values

JUSTICE - ACCOUNTABILITY - HUMAN RIGHTS - DIGNITY - COURAGE - SOLIDARITY

WELCOME NOTE

People who are subjected to violence and oppression are in many cases burdened with an additional injury – having to witness the ongoing impunity of their tormentors, who move around the world freely and whose actions appear to have no consequences.

Part of our core work, therefore, is working with survivors and activists to find pathways to accountability and to ensure that Australia is not a safe haven for those responsible for grave human rights abuses.

This was the basis of our legal action against a retired Sri Lankan General, who oversaw torture, war crimes and crimes against humanity in the final phase of the Sri Lankan civil war in 2009 and who was making regular visits to Australian shores. We worked with the International Truth and Justice Project to compile an extensive dossier of evidence and to warn police that further visits were imminent.

In 2022 it became clear that Australian authorities had utterly failed to properly investigate the matter. ACIJ's high-profile advocacy on the case highlighted how Australia has a lot of work to do to meet its international obligations and provide meaningful access to justice to survivors of serious human rights abuses.

Australia has the potential to play a key role in the fight against impunity, especially in the Asia-Pacific region. This year we worked with members of the Indian diaspora and civil society to seek sanctions under Australia's new Magnitsky-style sanctions framework for individuals responsible for torture and other grave human rights abuses in the Indian state of Uttar Pradesh.

Closer to home, ACIJ focused on the legacy of Australia's military engagement in Afghanistan. In November 2022, two years after a damning report on war crimes by Australian forces in Afghanistan, we published a report highlighting shortcomings in the government's response. We continue to work with civil society and activists from Afghanistan to help ensure that their perspectives are heard.

Access to justice is beyond reach for so many people affected by torture, war crimes and other international crimes. ACIJ will continue to fight to establish pathways to justice and meaningful remedies.



Fiona Nelson
Acting Executive Director
(June to December 2022)

SRI LANKA

Australia - A safe haven for war criminals?

For several years, ACIJ has been working with affected groups to find pathways to accountability for human rights violations suffered by the Tamil minority in Sri Lanka. In 2022, this work made headlines after Australia failed to act to investigate an accused war criminal and former Sri Lankan General who has been regularly travelling to and from Australia.

The case of Jagath Jayasuriya

In 2019, ACIJ partnered with the International Truth and Justice Project – Sri Lanka (ITJP) and the Human Rights Law Centre (HRLC) to submit a formal request to the Australian Federal Police (AFP) to investigate retired General Jagath Jayasuriya. The request contained an extensive brief of evidence revealing serious allegations of torture, war crimes and crimes against humanity committed under Jagath Jayasuriya's command while he was the Security Force Commander of operations in the Vanni region in the final phase of the Sri Lankan civil war in 2009.

This final phase of the conflict was marked by serious violations of international humanitarian law and human rights law by the Sri Lankan military as they launched a massive offensive on the areas in the north of Sri Lanka controlled by the Liberation Tigers of Tamil Eelam. Violations included the targeted bombing and shelling of civilians, hospitals, medical facilities and humanitarian convoys, including through the use of white phosphorus and cluster munitions as well as extrajudicial killings, torture, rape and other forms of sexual violence.

Criminal complaints against Jayasuriya, based on the principle of universal jurisdiction, had been filed in Brazil, Colombia and Chile in 2017. Jayasuriya, who was Sri Lanka's Ambassador to Latin America at the time, fled Brazil and returned to Sri Lanka. Our request to the AFP was submitted with the knowledge that Jayasuriya had been present in Australia in May and June 2019. We advised the AFP that Jayasuriya was likely to be present in Australia again in the near future.

SRI LANKA

The case of Jagath Jayasuriya (continued)

Despite this, the AFP failed to take any meaningful steps to investigate the serious allegations against Jayasuriya. Despite multiple attempts at seeking updates from the AFP, no action was taken, and Jayasuriya was able to visit Australia again in October 2019, as foreshadowed in our submissions to the AFP.

In September 2021, after we sought a further update in relation to the case, the AFP admitted that their office had made an “administrative oversight” and that the request had not been allocated to an investigations team for review.

Finally, in January 2022, the AFP stated that they would not be investigating the matter, relying on spurious grounds including that Australia supported a domestic (Sri Lankan) determined inquiry process. This is despite broad international recognition – including by the UN High Commissioner for Human Rights – that domestic Sri Lankan procedures have repeatedly failed victims and have served only to more deeply entrench impunity.



We have been working with ACIJ on justice and accountability avenues for communities affected by atrocities in Sri Lanka since 2019.

We partner with ACIJ to track perpetrators of grave crimes from the Sri Lankan military and submit referrals for investigation based on the principle of universal jurisdiction, Magnitsky sanctions files and broader advocacy to advance the rights of affected communities we represent access avenues for accountability. We value their partnership and strategic input.

FRANCES HARRISON,
International Truth & Justice Project

ACCOUNTABILITY - WAR CRIMES - SANCTIONS

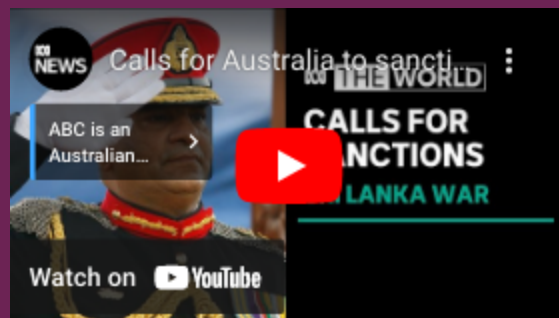
SRI LANKA

Jagath Jayasuriya: A case for sanctions

Following Australian authorities' failure to investigate, ACIJ and ITJP pursued an alternative path to accountability. On 4 March 2022, we made a submission to the Department of Foreign Affairs and Trade (DFAT), seeking that Jagath Jayasuriya be made subject to targeted, Magnitsky-style sanctions under Australia's new human rights sanctions regime.

PRESS COVERAGE

Our work seeking accountability through a criminal investigation and, when this was unsuccessful due to the AFP's serious failures in the handling of the case, the use of targeted sanctions, was widely reported and featured in [The Guardian](#), [AAP](#), [The Australian](#) and [JDSlanka](#).



ACIJ's Executive Director Rawan Arraf made an appearance on [ABC's The World](#) (above) and the AFP and DFAT were challenged about their mishandling of the case during Senate Estimates hearings on [31 March 2022](#) and [1 April 2022](#).

More information about this case is available on our [website](#).

OBLIGATION TO INVESTIGATE TORTURE

Submission to the UN Special Rapporteur on Torture

In November 2022, ACIJ made a submission to the UN Special Rapporteur on Torture and other cruel, inhuman or degrading treatment or punishment, Alice Edwards, on the duty to investigate crimes of torture in national law and practice. ACIJ's submission raised issues of concern arising from Australia's practice to date, including the AFP's mishandling of the case of Jagath Jayasuriya.

Our [submission](#) noted institutional shortcomings in Australia's capacity to investigate torture and other international crimes, and recommended the establishment of a permanent, specialist unit dedicated to the investigation of core international crimes.



ACIJ Senior Lawyer, Melissa Chen speaking at University of New South Wales, November 2022.

REDRESS FOR YAZIDI SURVIVORS

Freedom of information access requests

Throughout 2021 ACIJ assisted legal representatives of five Yazidi survivors seek access to information from several Federal departments and agencies about information relating to assets recovered or frozen from a presumed deceased Islamic State perpetrator who held them as slaves.

The survivors had since 2019 unsuccessfully attempted to access reparations and compensation in NSW but were denied in appeals all the way to the High Court. The survivors are now appealing to the UN Committee Against Torture to remind Australia of its legal obligations to provide redress to victim-survivors of torture.

In 2021 in response to one of our requests, DFAT advised that it was aware that property previously owned by the perpetrator was held by the NSW Government subsequent to proceedings initiated by the NSW Crime Commission to confiscate property pursuant to criminal assets recovery legislation. DFAT advised us to contact NSW authorities about the current status of those assets.

Following that advice, in 2021 ACIJ filed a request to access information held by the NSW Crime Commission about a recovered property in the name of the perpetrator. The access request was refused on the basis that information released will reveal the agency's investigative functions. We appealed to the NSW Civil and Administrative Tribunal and in 2022, the Tribunal affirmed refusal to grant access and denied our arguments that accessing information on assets already seized will not impact on any investigation given the perpetrator is understood to be dead, and that release of the information would be in the public interest given it relates to a desire by the Yazidi survivors to obtain justice.

REDRESS FOR YAZIDI SURVIVORS

Freedom of information access requests (continued)

The case speaks about the broader principle underlying the need to have clear and transparent information about asset seizures by government authorities applying decisions to impose UN and domestic sanctions. Survivors and the public have a right to know the volume and value of assets seized and to transparency of accounting for frozen assets as a result of confiscation especially in the context of victims' rights to reparations.

ACIJ will continue to advocate for meaningful redress pathways for victim-survivors of international crimes in Australia.



The work of the Australian Centre for International Justice in this case has been instrumental in supporting the right of survivors of sexual violence in conflict and torture to reparations and shows how they could be financed.

Our collaborative work continues as we take this case forward to the UN Committee on Torture.

— **YASMIN WALJEE OBE,**
Partner, International Pro Bono, Hogan Lovells

AFGHANISTAN

Accountability for Australian war crimes in Afghanistan

This year ACIJ continued to develop its work to ensure that Australia's response to war crimes by Australian forces in Afghanistan complies with its international legal obligations.

In April 2022, ACIJ published a [statement](#) highlighting major gaps in the final report of the Senate inquiry into Australia's engagement in Afghanistan report, in particular the report's failure to address war crimes and redress for victims. ACIJ's media release was covered by [The Canberra Times](#).

ACIJ also released a [statement](#) providing an update about the first arrest related to allegations of Australian war crimes in Afghanistan. The arrest was on charges of obstructing and causing harm to an investigator.

Two-year anniversary of release of Brereton Report

In November 2022, ACIJ published a report, [Afghanistan Inquiry: Assessing the Australian Government's Response](#), to the Afghanistan Inquiry Report (commonly known as the Brereton Report). The Afghanistan Inquiry Report, published two years earlier, found extensive evidence of war crimes by Australian special forces in Afghanistan and made 143 recommendations based on its findings.

ACIJ's 2022 report assessed the extent to which Australia has addressed and implemented the recommendations of the Afghanistan Inquiry, with a particular focus on accountability— those recommendations addressing criminal investigations and prosecutions as well as redress for victims and their families.

Two-year anniversary of release of Brereton Report (continued)

Our report found that while some progress has been made, there are a number of shortcomings that need to be resolved to deliver an effective response to the Afghanistan Inquiry's findings and further reports of possible war crimes that continue to emerge. ACIJ's report emphasised that for Australia's response to be relevant and meaningful for Afghan victims and broader accountability processes, Australian authorities must develop mechanisms for informing, engaging and consulting with victims and their families and communities.

ACIJ's report includes an **expert opinion** by Professor Carla Ferstman, which sets out Australia's obligations under international law to provide reparations to victims and their families and outlines operational steps to aid with the prompt determination and delivery of reparations. Professor Fertsman's assessment found that international human rights standards require that reparations programmes must be responsive to the needs and priorities of victims. The opinion emphasised that victims and victim communities should be adequately engaged in the design and implementation of such programmes.



Engagement with survivors, local witnesses and members of Afghan civil society is crucial in all aspects of Australia's response.

The investigation, prosecution and trial processes must go beyond its existing narrow focus of alleged perpetrators and provide space for victim participation. A victims-centric approach will help survivors, their families and communities to heal.

**— HADI MARIFAT,
Executive Director, Afghanistan Human Rights and Democracy
Organization**

Our report was covered in [The Guardian](#). You can read ACIJ's media release [here](#) and the full report [here](#).

Art, law and conflict: Reckoning with past wrongs

In November 2022, ACIJ participated in Hunar Symposia's Art/Conflict **conference** in Sydney. On a panel with founding members of ArtLords – a grassroots movement of artists and activists that originated in Afghanistan – ACIJ's Fiona Nelson discussed the roles of art and law in the overall process of reckoning with the legacy of war in Afghanistan.



From Left: Fiona Nelson (ACIJ), Kabir Mokamel (ArtLords), Dr Bilquis Ghani, Hunar Symposia, UTS Sydney.

No truth without whistleblowers

Whistleblowers – along with journalists, Afghan survivors and civil society groups – have played a critical role in bringing to light the truth about war crimes in Afghanistan. In October, ACIJ issued a **joint statement** with the HRLC, calling for an end to the unjust prosecution of war crimes whistleblower David McBride. ACIJ lawyer Kobra Moradi co-authored an **article** with HRLC's Kieran Pender for *The Guardian*, arguing that instead of punishing McBride for telling the truth, Australia should prioritise accountability for the alleged perpetrators of war crimes and providing Afghan victims and their families access to justice and redress.

The long road to accountability

Afghanistan-related advocacy continued in December, with ACIJ's Fiona Nelson providing media **commentary** about the legal liability of Australian commanders for possible war crimes committed by their subordinates. ACIJ also spoke with **3CR Radio** about the Australian Government's failure to release a compensation plan and deliver other forms of redress.

INDIA

Advocacy for targeted sanctions

ACIJ worked with civil society organisations and diaspora groups to advocate for action on serious human rights violations in India.

On 25 October 2022, ACIJ made a submission to the Minister for Foreign Affairs, through DFAT, recommending that three individuals – Yogi Adityanath, Om Prakash Singh and Sanjeev Tyagi be made ‘designated persons’ under the *Autonomous Sanctions Regulations 2011* (Cth). This would make them subject to targeted ‘Magnitsky-style’ sanctions for their involvement in serious abuses of human rights in the state of Uttar Pradesh, India.

Violent crackdowns on protesters were common across India following the introduction of the discriminatory *Citizenship Amendment Act* in December 2019. Police crackdowns were particularly brutal in the state of Uttar Pradesh in northern India.

There is extensive evidence of torture and the inhuman treatment of persons detained during the protests as well as of extrajudicial killings by police in what are known as “encounter killings”.

ACIJ worked with experts from India to document the responsibility borne by each of the three named individuals for human rights violations in Uttar Pradesh.

Our 75-page submission set out the relevant evidence of the individuals' respective involvement in violations of the right to life and the right not to be subjected to torture or cruel, inhuman or degrading treatment. It argued that domestic accountability for these abuses is highly unlikely and that efforts by survivors and the families of victims to seek justice in India have been met with intimidation, threats and harassment by police.

Given the lack of any prospects of justice in India and ongoing obstacles to accountability at the international level, ACIJ's submission calls on the Australian government to make use of its targeted human rights regime and to sanction individuals who are responsible for serious abuses of human rights in Uttar Pradesh.

You can read more about our submission [here](#).

TACKLING IMPUNITY IN OUR REGION

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

In December 2022, ACIJ made a **submission** to the Foreign Affairs and Aid Subcommittee of the Parliamentary Joint Standing Committee on Foreign Affairs, Defence and Trade to assist in their “inquiry into supporting democracy in our region”.

The submission drew upon our areas of expertise, focusing on how impunity for grave human rights abuses undermines stability, democracy and good governance in the region, and how Australia has the ability to be a leader in the region by enforcing international criminal law and consistently utilising targeted sanctions for human rights abuses. The submission emphasised that Australia’s pursuit of these goals would not only assist our neighbours in the region to uphold the rule of law but importantly, ensure pathways to justice for survivors and affected communities, including those who remained in their home countries or had become part of Australia’s diaspora communities.

SOLIDARITY - GRAVE CRIMES - DIVESTMENT - ARMS EXPORTS

YEMEN

Call for Future Fund to divest from arms companies

In January 2022, the Future Fund, Australia’s sovereign wealth fund was exposed for having invested millions of dollars in arms companies involved in serious violations of international humanitarian law in Yemen. This followed increasing pressure on the fund for investments in arms companies linked to China and abuses in Myanmar. ACIJ and Yemen based human rights group Mwatana, provided comment on the \$90 million investment in US arms firm, Raytheon to [The Guardian](#).

PALESTINE

Exposing Australian links with grave crimes in Palestine

In March 2022, it emerged that the Future Fund had excluded Elbit Systems Limited from its investment portfolio because of allegations of the company's involvement in the production of cluster munitions.

ACIJ coordinated a [civil society media release](#) welcoming the exclusion and calling on the Victorian Government to cease its partnership with Elbit Systems Australia, a wholly owned subsidiary of Elbit Systems, on account of Elbit's alleged complicity with serious human rights and crimes under international law. Victoria has partnered with Elbit to establish a research "Centre of Excellence". The media release, signed by 20 civil society organisations, called on Victoria to end its partnership with Elbit or risk complicity in serious violations of international law. [The Guardian](#) reported on the story.

More human rights organisations recognise apartheid in Palestine

Following Amnesty International's release of its landmark report on Israeli Apartheid in early 2022, ACIJ [issued a statement](#) calling on the Australian Government to confront the reality of Israel's apartheid regime and do more to combat Israel's impunity and egregious violations of Palestinian human rights.

You can read more about ACIJ's work on Palestine [here](#).

APPEARANCES & PUBLICATIONS

LECTURES / PANELS / WORKSHOPS

Avenues To Accountability: Universal Jurisdiction and Asia, Asia Justice Coalition, 26-28 April 2022, Rawan Arraf

Understanding Israeli Apartheid, Amnesty International, 30 May 2022, Rawan Arraf ([Watch here](#))

Universal Jurisdiction in Australia, Greens List Seminar, 3 August 2022, Fiona Nelson

Public Interest Litigation, Guest Lecture, UNSW Faculty of Law and Justice, 6 October 2022, Fiona Nelson

ArtLords in Conversation with Fiona Nelson, Hunar Symposia Conference, UTS Sydney, 18 November 2022, Fiona Nelson

Recent Developments in International Criminal Law in Australia and Beyond, Panel Presentation, International Criminal Law Workshop, UNSW Faculty of Law and Justice, 21 November 2023, Melissa Chen

PUBLICATIONS

'The Prosecution of David McBride for Exposing Australian War Crime Allegations is an Outrageous Injustice', Kobra Moradi (with Kieran Pender), *The Guardian*, 27 October 2022 ([Read here](#))

'The Role of Transparency in Australia's Response to War Crimes in Afghanistan', Fiona Nelson and Kobra Moradi, *Opinio Juris*, 4 November 2022 ([Read here](#))

OUR TEAM

STAFF

Rawan Arraf – Principal Lawyer and Executive Director

Fiona Nelson – Senior Legal Advisor (Until June 2022) / Acting Executive Director
(from June to December 2022)

Kobra Moradi – Lawyer (from June 2022)

Melissa Chen - Senior Lawyer (from September 2022)

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Our Advisory Council provides strategic guidance and advice only and is not responsible for the work and advocacy of ACIJ.

THANK YOU

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Interns

Nuria Yu (Melbourne Law School Clinic).

Thank You

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