

Opening Statement – Melissa Chen – Australian Centre for International Justice
Parliamentary Joint Standing Committee on Foreign Affairs, Defence and Trade
Foreign Affairs and Aid Sub-Committee

Public Hearing – Roundtable
Tuesday 04 April 2022 – SMC, 66 Goulburn St, Sydney, Northcote Room

Inquiry into supporting democracy in our region

Introduction:

Thank you to the Chair and the Foreign Affairs and Aid Sub-Committee for the opportunity to address this Inquiry.

ACIJ's mission is to seek justice and accountability for victims and survivors of serious human rights violations. We do this by collaborating with communities and civil society organisations locally and abroad, working towards developing Australia's role in investigating and prosecuting the perpetrators of these violations, as well as pursuing other remedies to end impunity.

Democracy is underpinned by the rule of law. The Office of the High Commissioner for Human Rights has noted that, "impunity is often the primary obstacle to upholding the rule of law". This is why our opening statement and written submission focus on how Australia can combat impunity in the region through two mechanisms: – first, ensuring that perpetrators of the most serious international crimes face a court of law and, secondly, where criminal prosecution is not feasible, imposing targeted sanctions against them.

Combatting impunity through criminal investigations and prosecutions:

Australia has the legislative tools to address impunity in the region by investigating and prosecuting those responsible for grave human rights abuses that amount to international crimes. Australia has ratified the Rome Statute of the International Criminal Court, and has complied with its international law obligations by implementing the offences of crimes against humanity, war crimes, and genocide within its domestic legislation. These crimes are so egregious that Australia and the international community has recognised that perpetrators can be investigated and prosecuted in any jurisdiction that criminalises the offences, regardless of where the crimes occurred or whether the perpetrator or victims have the nationality of the prosecuting state, under a principle known as 'universal jurisdiction'.

Yet, Australia lacks a robust institutional framework to combat impunity through criminal prosecution, as it does not have a permanent, specialised international crimes unit to

undertake the complex investigatory work to get these cases off the ground. In 2019 the Australian Federal Police failed in their duty to investigate credible allegations of serious war crimes and crimes against humanity, neglecting to apprehend a retired Sri Lankan General Jagath Jayasuriya who visited Australia twice. Australia should establish a permanent, specialised international crimes unit within the AFP to investigate these crimes, be ready to respond to referrals from civil society organisations and the community, and provide an avenue of accountability through its domestic court processes against perpetrators who would otherwise continue to enjoy impunity. European legal systems are proactively undertaking their obligations in this regard, and Australia's ability to undertake these same processes here, would help close a dangerous gap for perpetrators in our region.

Combatting impunity through targeted human rights sanctions:

ACIJ acknowledges, however, that criminal investigations and prosecutions are not always possible. In such circumstances, Australia should consider the use of its targeted human rights sanctions regime. While Australia has used this regime on a handful of occasions, there is greater scope for these sanctions to be utilised in a more consistent and effective way, and for Australia to establish a clear route and process for civil society submissions, thereby working meaningfully with civil society organisations – who have key information about human rights abuses.