

Launch Event – ACIJ Policy Paper
Challenging Impunity: Why Australia Needs A Permanent,
Specialised International Crimes Unit

**Policy Paper Introduction – Melissa Chen – Senior Lawyer, Australian Centre for
International Justice**

In light of the focus of our work – it is crucial to acknowledge and recognise the atrocities committed against First Nations people of this land, that Australia was founded on the genocide and dispossession of First Nations people, and the courageous efforts made by First Nations people to seek accountability for these crimes, in the face of Australia’s ongoing colonial structures and policies.

ACIJ is a not-for-profit legal centre, dedicated to seeking justice and accountability for victims and survivors of serious human rights violations. We focus on enhancing Australia’s ability to investigate and prosecute international crimes, including by preparing briefs of evidence and making active referrals to the Australian Federal Police. We work with affected communities and partners locally and abroad, and are informed by the values of justice, accountability, human rights, dignity, courage and solidarity.

As one of the authors of our policy paper, I am proud to provide a brief overview of the key aspects of the paper.

Impunity for serious human rights violations is sadly commonplace. There is a gap between the laws that criminalise these atrocities and the actual enforcement of these laws. Investigation by the State on whose territory a crime has been committed is not always possible. Though some look to the International Criminal Court to address the impunity gap, the ICC has limited jurisdiction and a lack of resources. Further, the principle of complementarity lies at the heart of the ICC – domestic investigations and prosecutions retain primacy, and the ICC relies on States taking a rigorous approach to the investigation and prosecution of international crimes at the national level.

Hence the rise, in domestic courts, of universal jurisdiction – a legal concept that allows for the investigation and prosecution of these international crimes regardless of the place where they were committed or the nationality of the perpetrator or the victim. Our policy paper cites research by leading civil society organisations, the EU Genocide Network and other experts to note the year on year rise of national investigations and prosecutions for atrocity crimes. Indeed, in just the past few weeks, Germany has arrested a Syrian national for his involvement in a massacre of civilians in Damascus in 2013; Switzerland has issued an arrest warrant for Bashar Al Assad’s Uncle for his responsibility in the 1982 massacre in Hama, France has arrested a Rwandan ex-official for his alleged role in the 1994 genocide against the Tutsi, and in Sweden there has been the commencement of a trial against the directors of a company charged with complicity in war crimes in Sudan between 1999 and 2003. A common element of these and other States that have contributed to the rise in universal jurisdiction cases

around the world is that they have specialised units to investigate and prosecute these crimes – such units are more effective as they have the resources and systems to investigate complex crimes, develop and retain multidisciplinary expertise over time, engage in int'l cooperation, share information, leads and best practices and engage in ongoing training.

Our paper then turns the spotlight on Australia. Australia's legal framework allows for the investigation and prosecution of international crimes, including under the principle of universal jurisdiction, by virtue of Divisions 268 and 274 of the Commonwealth Criminal Code. The Attorney-General's consent is needed for the commencement of proceedings, but not for the commencement of an investigation.

Australia's institutional capacity, however, is cause for concern. The paper explains that Australia has repeatedly relied on either ad hoc units – such as the Special Investigations Unit to investigate alleged Nazi war criminals or the current Office of the Special Investigator to investigate allegations of war crimes by Australian military personnel in Afghanistan - or the AFP's generalist unit, to lead Australia's investigatory response to international crimes. By outlining case studies of the Balibo Five, Anvil Mining, the AFP's Afghanistan investigations and the disgraceful mishandling of a matter concerning allegations of war crimes and torture committed by retired Sri Lankan General Jagath Jayasuriya, the paper questions Australia's commitment and approach to addressing impunity for international crimes. It outlines the challenges of ad hoc or generalist units including that they are more susceptible to political whims, suffer from the negative effects of the passage of time, waste time and resources, are unable to develop and retain expertise, lack institutional networks and cooperation, have competing priorities, and ultimately put Australia at risk of becoming a safe haven for perpetrators of atrocities.

The paper contains 8 key recommendations, drawing on best practice and international scholarship, relating to how a permanent, specialised unit can be most effective as an independent agency, staffed by personnel with robust training and multidisciplinary expertise, with strong systems and networks for collaboration and cooperation nationally and internationally. But our crucial takeaway is that the Australian government must demonstrate the political willingness to meaningfully investigate and prosecute international crimes, and it can do this through the establishment of a permanent, specialised unit. Such a unit would finally create tangible accountability pathways for victims and survivors of atrocity crimes within Australia and our region.

I hope that this very brief introduction has given you an idea of the issues that we have grappled with in our research and work. We are excited to re-ignite the conversation about how Australia can improve its role in investigating and prosecuting international crimes, but note that our work is built upon decades of advocacy and calls by victim-survivor communities, international criminal law experts, media and civil society organisations – many of whom we are so fortunate to have in this room or joining us online tonight.