

# Sexual and gender based violence perpetrated by Australians in Iraq and Syria

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## Prosecute; don't perpetrate

The *prosecute; don't perpetrate* campaign calls on States to investigate and prosecute their own nationals for sexual violence perpetrated as war crimes, crimes against humanity and genocide while fighting with Da'esh and other extremist groups in Iraq and Syria.

## Introduction

The Office of the High Commissioner for Human Rights<sup>1</sup>, Human Rights Watch<sup>2</sup>, Amnesty International and other organisations have released comprehensive reports that Da'esh is using sexual violence as war crimes, crimes against humanity and genocide in Iraq and Syria. There are also reports that Da'esh have developed a comprehensive infrastructure for the trafficking of women and girls for sexual slavery.

Over 30 000 foreign fighters have travelled from 89 countries to Iraq and Syria to fight with Da'esh and other extremist groups.<sup>3</sup> Many of those fighters come from places where war crimes, crimes against humanity and genocide are illegal under domestic legislation. Furthermore, these crimes are covered by the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) and domestic legislation against human trafficking.

Australia is one of these countries. The International Centre For The Study Of Radicalisation And Political Violence estimates over 100 Australians have travelled to Iraq and Syria to fight with Da'esh.<sup>4</sup> Details on individuals are limited, with the majority of information being classified. However, some cases have been revealed through investigative journalism in Syria, Iraq and here in Australia.

## Australian legal context

### War Crimes

When sexual violence is perpetrated as part of an armed conflict, it is a war crime.<sup>5</sup> In Australia, war crimes are legislated against in the *War Crimes Act 1945* and the *Geneva Conventions Act 1957*. Acts (and all the war crimes from the International Criminal Court Statute) have been incorporated in Division 268 of the *Criminal Code Act 1995*.

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<sup>1</sup> [http://www.ohchr.org/Documents/HRBodies/HRCouncil/CoISyria/A\\_HRC\\_32\\_CRP.2\\_en.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/CoISyria/A_HRC_32_CRP.2_en.pdf)

<sup>2</sup> <https://www.hrw.org/tag/isis>

<sup>3</sup> <http://www.rferl.org/a/foreign-fighters-syria-iraq-is-isis-isil-infographic/26584940.html>

<sup>4</sup> <http://www.rferl.org/a/foreign-fighters-syria-iraq-is-isis-isil-infographic/26584940.html>

<sup>5</sup> <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=59F6CDFA490736C1C1257F7D004BA0EC>

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## Crimes against Humanity

When sexual violence is widespread or systemic against the civilian population, it is a crime against humanity.<sup>6</sup> In Australia, crimes against humanity are outlawed in the *International Criminal Court Act 2002*. This Act has been incorporated in Division 268 of the *Criminal Code Act 1995*.

## Genocide

When sexual violence is used to destroy, in whole or in part, an ethnic, racial or religious group it is genocide.<sup>7</sup> Genocide is outlawed by the *International Criminal Court Act 2002*. This Act has been incorporated in Division 268 of the *Criminal Code Act 1995*.

## Sex Trafficking

Australia's human trafficking and slavery laws comprise the *Criminal Code Amendment (Slavery and sexual servitude) Act 1999* and the *Criminal Code Amendment (Trafficking in Persons Offences) Act 2005*. They are contained in Divisions 270 and 271 of the Commonwealth *Criminal Code Act 1995*. The 2005 amendments were designed to give effect to Australia's obligations under the *United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children*. Slavery and sexual servitude can also be war crimes and crimes against humanity.

The legislation outlaws slavery and slavery-like practices, including forced marriage, servitude (including sexual servitude), forced labour, and deceptive recruiting for labour or services. The slavery offences in Division 270 have universal jurisdiction. The slavery-like practices in Division 270 have extended geographical jurisdiction.

## Case studies

### Neil Prakash

Neil Prakash, formerly of Melbourne, was arrested in Turkey in November in 2016. The Australian Federal Police (AFP) promulgated a warrant for his arrest in 2015 for being a member of a terrorist organisation and for incursions into a foreign state with the intention of engaging in hostile activities. Australia is currently seeking his extradition. Reports suggest he may also face charges relating to foreign fighting, recruitment and planning attacks.

If this is the case, given the widespread and systemic operational use of sexual violence, Prakash may be responsible for sexual violence in war crimes, crimes against humanity and genocide. Prakash has made public statements that could be considered as inciting genocide.<sup>8</sup> Australia, under the principle of complementarity of the Rome Statute, and our own legislation, has a responsibility to investigate and prosecute war crimes, crimes against humanity, genocide and human trafficking.

### Khaled Sharrouf

The former Sydney-based convicted terrorist was fighting with Da'esh in Iraq. He was a close associate of Mohamed Elomar, with propaganda images depicting the pair's bloody exploits while cruising around Islamic

<sup>6</sup> <http://legal.un.org/icc/statute/romefra.htm>

<sup>7</sup> <http://www.preventgenocide.org/law/convention/text.htm>

<sup>8</sup> <https://www.lowyinstitute.org/the-interpreter/neil-prakash-more-just-terrorist>

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State held territory in a luxury car. Sharrouf, who in 2014 posted a photo on the internet of his young son holding up a severed head, was on a terrorist watch list and used his brother's passport to leave Australia.

Witnesses report Sharrouf buying slaves from a slave market in Raqqa. Four of those witnesses identified one of their captors as Khaled Sharrouf, who repeatedly raped and threatened to kill them and their friends. They said that they want the Australian Government to avenge them, "If those terrorists are ever caught, they must make sure they will never escape. I want them to punish those terrorists."<sup>9</sup>

In February this year, a spokesperson for the Department of Immigration and Border Protection confirmed that the Immigration Minister had revoked Khaled Sharrouf's citizenship, making him the first person subjected to a 2015 anti-terror law allowing the Minister to do so.

### Abraham Succarieh

Abraham Succarieh, formerly of Brisbane, is believed to be fighting for terror group Jabhat al-Nusra in Syria.<sup>10</sup> He is now believed to be commanding a unit of 50 foreign fighters, including Australians. His case is notable because military commanders can also be held responsible for sexual violence perpetrated by their subordinates.

## Additional policy context

### Australia's National Action Plan on Women, Peace and Security

Australia's National Action Plan on Women, Peace and Security 2012-2018 is designed to implement the suite of UN Security Council resolutions on Women, Peace and Security. It is a whole-of-government policy, coordinated by the Office for Women in the Department of Prime Minister and Cabinet. The Attorney General's Department, Australian Civil-Military Centre, AFP, Department of Foreign Affairs and Trade, and Department of Defence all have responsibility for its implementation.

### General Recommendation 30

Australia ratified CEDAW in 1980 and acceded to the Optional Protocol to CEDAW in 2008. The CEDAW Committee made General Recommendation 30 on women in conflict prevention, conflict and post-conflict situations after the launch of Australia's first National Action Plan on Women, Peace and Security. As such, this General Recommendation has minimally been integrated into Australian policy and practice.

### United Nations Security Council Resolutions

#### UNSCR 2106

Australia was on the Security Council advocating on the Women, Peace and Security (WPS) Agenda when resolution 2106 was passed, calling to end impunity for sexual violence in armed conflict. It called "upon Member States to comply with their relevant obligations to continue to fight impunity by investigating and prosecuting those subject to their jurisdiction who are responsible for such crimes."<sup>11</sup>

<sup>9</sup> <http://www.abc.net.au/7.30/content/2015/s4166965.htm>

<sup>10</sup> <http://www.news.com.au/news/australian-jihadists-are-being-martyred-in-the-middle-east-heres-a-few-of-those-we-know-most-about/news-story/ba354ff8ea1406bfb9a8aebf9e995323>

<sup>11</sup> UNSCR 2106, operative paragraph 2

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### UNSCR 2242

The most recent of the WPS resolutions, resolution 2242 connected the WPS agenda with countering violent extremism and counter-terrorism. It urged Member States to analyse impacts of counter-terrorism strategies on women's human rights and women's organisations.<sup>12</sup> The Security Council "urges Member States to strengthen access to justice for women in conflict and post-conflict situations, including through the prompt investigation, prosecution and punishment of perpetrators of sexual and gender-based violence."<sup>13</sup>

### UNSCR 2331

Resolution 2331 was passed in 2016, and states "that trafficking in persons undermines the rule of law and contributes to other forms of transnational organized crime, which can exacerbate conflict and foster insecurity and instability and undermine development." It goes on to encourage "Member States to ensure that existing national strategic frameworks and national action plans against trafficking in persons...and... national counterterrorism strategies are complementary and mutually reinforcing"

### International Protocol on the Documentation and Investigation of Sexual Violence in Armed Conflict

Australia supported the development of the International Protocol providing a basic set of standards of best practice on the documentation of sexual violence as a crime under international law, with the hope that it would "be part of a new global effort to shatter this culture of impunity, helping survivors and deterring people from committing these crimes in the first place."<sup>14</sup> However, no training or policy has been developed or implemented to operationalise the document for law enforcement or other relevant agencies.

## Perceived barriers to justice

### Experience using the laws

The last time the war crimes legislation was used was for crimes committed in wars in the Balkans. The most commonly known case was nearly two decades ago, against 'Captain Dragan,' who was imprisoned for over nine years. Croatia's extradition request was finally agreed and he faced new charges in Croatia in 2016.

### Investigative authority

The AFP is the relevant investigative authority. During the Dragan case, there had been a dedicated unit within the AFP to investigate such crimes. Their work also covered crimes as far back as World War II. Over the years the political will waned for the maintenance of that dedicated unit, and there were issues with jurisdiction due to the gaps in legislation. The unit now responsible is also tasked with investigations into political scandals. Political will is needed to provide direction and resources for the investigation and prosecution of these crimes.

### Accessing evidence

Accessing evidence of crimes committed by perpetrators from a range of jurisdictions, in the middle of an active war zone, is an incredibly complex undertaking. However, minimal to no effort seems to be made to attempt the task.

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<sup>12</sup> UNSCR 2242, operative paragraph 12

<sup>13</sup> UNSCR 2242, operative paragraph 14

<sup>14</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/319054/PSVI\\_protocol\\_web.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/319054/PSVI_protocol_web.pdf)

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It is necessary to operationalise the *International Protocol on the Documentation and Investigation of Sexual Violence in Armed Conflict*. Those first on the ground, including military forces have not been trained in the International Protocol, nor have efforts been made to enable humanitarian responders to undertake such reporting. Australian mentors, including the brigadier seconded to work hand in hand with Iraqi security forces should be trained and incorporate considerations of evidence and documentation into their operational planning and conduct.

The gathering and sharing of evidence across jurisdictions will greatly facilitate the justice processes. Australia could cooperate with likeminded countries to gather and share evidence between countries undertaking investigations and prosecutions.

### Revoking of citizenship

At the end of 2015, the Australian Government passed laws allowing the Immigration Minister to revoke the citizenship of any dual national involved in terrorism. Revoking of citizenship takes perpetrators further from the Australian justice system and is contrary to principles of justice for women affected by crimes of sexual and gender based violence perpetrated by these individuals in Iraq and Syria, and Australia's responsibilities under international law.

### Suggested recommendations for the Australian Government

1. Prioritise the investigation, charging and prosecution of Australian perpetrators of sexual violence in Iraq and Syria.
2. Provide direction and resources to the relevant investigative authorities.
3. Seek international cooperation for evidence gathering and sharing for similar investigations and prosecutions.
4. Deliver training on the *International Protocol on the Documentation and Investigation of Sexual Violence in Armed Conflict* to the relevant military, police and other government staff, including those working with the Iraqi military in the fight against Da'esh.