

PROSECUTE;
DON'T PERPETRATE
*Ending impunity for sexual
violence in armed conflict*

SUBMISSION TO THE REVIEW A REVIEW INTO THE MIGRATION AND
CITIZENSHIP LEGISLATION AMENDMENT (STRENGTHENING INFORMATION
PROVISIONS) BILL 2020

Introduction

Prosecute; don't perpetrate is glad to provide a submission to the Joint Parliamentary Committee on Intelligence and Security for their review a review into the *Migration and Citizenship Legislation Amendment (Strengthening Information Provisions) Bill 2020*. We have previously made submissions and appearances to this committee in relation to citizenship issues and Australia's obligation to investigate and prosecute individuals who may be responsible for war crimes, crimes against responsible and genocide, in accordance with our own criminal code and the Rome Statute of the International Criminal Court. This submission will provide a brief background, discuss the information management framework of the bill, the issue of citizenship revocation, and the broader policy context. The submission will close with some recommendations

Background

Prosecute; don't perpetrate was established in 2016 as a campaign to help end impunity for conflict related sexual violence. Over 30 000 foreign fighters travelled from 89 countries to Iraq and Syria to fight with ISIS and other extremist groups, perpetrating sexual violence as war crimes, crimes against humanity and genocide. Sexual violence in wartime is often overlooked as too hard to address because it's perpetrated by someone from another country, in another country, against someone from another country. But this time we had a moment to grab onto justice because many of those foreign fighters came from places where war crimes, crimes against humanity and genocide are illegal under domestic legislation. Australia is one of those countries. It's estimated over 120 of our nationals travelled to join ISIS. *Prosecute; don't perpetrate* have made budget submissions and worked across party lines. We have seen multi-party motions passed recognising ISIS genocide of the Yazidis and calling on the government to investigate and prosecute any Australian's responsible for these crimes. But for the most part, policy and practice have not yet caught up.

Information Management Framework

We are supportive of the establishment of a new framework for the management of disclosure of certain sensitive and confidential information between law enforcement, intelligence and court organisations. It is of the utmost importance that various agencies involved in gathering information of relevance to intelligence, security and justice have a secure means of sharing that information. We included a draft business process map for a similar process in our submission to this committee for your review of the operation, effectiveness and implications of sections 33AA, 35, 35AA and 35A of the *Australian Citizenship Act 2007*. We hope that the framework will be suitable not just for migration review decisions, but for other court processes that may involve intelligence, police,

military and home affairs as well. Such information sharing would be vital to successfully prosecuting international crimes under Division 268 of the *Commonwealth Criminal Code 1995*.

Citizenship revocation

We are, however, concerned with the overall intent over the legislation. As we have argued in previous submissions. Citizenship revocation is not a suitable response to individuals who may have perpetrated war crimes, crimes against humanity or war crimes. Evidence shows that is also not an effective security response, but that is not what we will focus on here. Australia has championed international justice from before the establishment of the Rome Statute. The basis of the treaty is complementarity: the agreement that all States Parties who are willing and able will investigate and prosecute perpetrators in their own court system first and foremost. Australia's criminal legislation outlawing the sexual violence perpetrated by members of ISIS as war crimes, crimes against humanity, genocide, and even human trafficking is strong. As a nation we must be prioritising the criminal investigation and prosecution of these individuals rather than revoking their citizenship. It is extremely concerning that the Government has revoked the citizenship of individuals publicly recognised as having committed some of these crimes (such as Khaled Sharrouf and Neil Prakkash), and it is of great concern that they continue to try to pass legislation expanding their right to do so. It is also concerning that the submission from the Australian Federal Police was entirely supportive of the legislation, without any recognition of this fact.

The Minister for Home Affairs advised the Parliamentary Committee on Human Rights that the "The Department relies on confidential information provided by law enforcement and intelligence agencies to assess the character of visa applicants and visa holders..." According to the Minister, the proposed changes would "strengthen the framework for the protection and use of confidential information in the Citizenship Act in substantially the same way as that in the Migration Act, allowing the Department to rely on confidential information provided by law enforcement and intelligence agencies to assess the character of certain citizenship applicants, or persons whose citizenship may be considered for revocation." The idea that a matter as serious as the revocation of citizenship could be determined merely by someone's determination of their character is entirely unacceptable and insufficient.

Insufficient resources have been provided to the AFP to undertake the investigations and prosecutions of international crimes outlined under Division 268, (especially subdivisions B-Genocide, C-Crimes against humanity, D-War crimes), and the sexual slavery subdivisions of Division 270 of the *Commonwealth Criminal Code*. This is especially the case for the war crimes, crimes against humanity, and genocide, including sexual violence, perpetrated by Australians fighting with ISIS in Syria and Iraq. Instead, the government continues to draft legislation like this, making it easier to shirk their obligation to prosecute, by revoking the citizenship of those responsible, leaving them out in the wider world where they can be subject to less scrutiny than they would be under the eyes of Australia's world class intelligence and law enforcement agencies.

Broader context

Australia also has obligations to investigate and prosecute these individuals under the suite of United Nations Security Council Resolutions on Women, Peace and Security. The first of these resolutions was UNSCR 1325, followed by UNSCRs 1820, 1880, 1888, 1889, 1960, 2106, 2122, UNSCR 2242, and 2467. UNSCR 2242 specifically spoke to the relationship between counterterrorism and women peace and security. UNSCR 1888 explicitly recalled State's responsibilities "to end impunity

and to prosecute those responsible for genocide, crimes against humanity, war crimes and other egregious crimes perpetrated against civilians”.

Earlier this year, the Federal Government finally released its second National Action Plan on Women, Peace and Security. It’s a whole of government document, which, for the first time, includes responsibilities for the Department of Home Affairs. Increasing access to justice and law and justice responses to crisis are both actions under outcomes two and three of the new National Action Plan. This legislation, with it’s increasing ability to revoke the citizenship of those who allegedly perpetrated sexual violence in armed conflict would continue to undermine that objective and erode women’s rights to justice and accountability for egregious violence they experience.

Recommendations

- Ensure the proposed information management framework is applicable for criminal court contexts as well as citizen and migration proceedings.
- Remove the citizenship revocation elements of the legislation
- Ensure the legislation is aligned with obligations under the Women, Peace and Security agenda