

## SUBMISSION BY JUSTICE RAPID RESPONSE

### Accountability for serious human rights violations and atrocity crimes of sexual and gender-based violence (SGBV)

#### 1. What are international gender equality priorities for accountability?

Gender equality, women's rights and women's empowerment are essential ingredients in creating a more equitable and just world for all and leave no one behind. These basic principles are at the heart of the foundational international legal instruments and declarations that lead global efforts to practically achieve gender equality. Key reference points are the Beijing Declaration and Platform for Action, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and the 2030 Agenda. The 17 Sustainable Development Goals (SDGs) include SDG 5 to achieve gender equality and empower all women and girls and has gender equality targets and indicators in many of the other Goals. In addition, the Agenda explicitly states that the systematic mainstreaming of a gender perspective in its implementation is crucial.

A robust set of internationally agreed norms and standards then emphasize the importance of the participation of women and the inclusion of gender perspectives specifically in peace negotiations, humanitarian planning, peacekeeping operations, and post-conflict peacebuilding and governance. Since the adoption of landmark Resolution 1325 (2000) by the UN Security Council, and its nine following Resolutions, the women, peace and security (WPS) agenda guides international efforts to promote gender equality and strengthen women's participation, protection, and rights across the conflict cycle, from conflict prevention to post-conflict reconstruction.

In the current global peace and security context, with prolonged conflicts and many new and emerging threats undermining the rule of law, the key international priority towards gender equality is that States effectively translate the WPS agenda from policy into practice. A significant step in this direction is to improve women's access to justice in conflict and post-conflict settings, and work towards ending impunity for sexual and gender-based crimes, to ultimately prevent their reoccurrence. This can practically be tackled through supporting existent efforts that strengthen accountability for international crimes and serious human rights violations, including a specific focus on conflict-related and sexual and gender-based violence and via actions that enhance the protection of survivors of those crimes.

In recent years, the international community's willingness to address SGBV crimes in conflict situations and as crimes under international criminal law has grown steadily and there is now demand for justice from SGBV victims and survivors themselves. Yet investigations often overlook those crimes, notably due to a gap in the capacity of international and national courts and investigative processes to effectively use the existing international legal framework to deliver justice to victims and survivors of those crimes.

Taking practical steps towards reducing SGBV, and ending impunity, must be further prioritized by the international community, to rebuild peaceful societies and strong, credible institutions that foster justice for all victims and survivors, restore faith in the rule of law, and ultimately break the recurring cycles of violence. There is also an understanding that impunity for atrocity crimes undermines international peace and security, hampers peacebuilding, and ultimately impedes sustainable development and the achievement of Sustainable Development Goal 16.<sup>1</sup>

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<sup>1</sup> Sustainable Development Goal 16: Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels.

## 2. What are the most effective approaches towards fighting impunity for SGBV?

Fighting impunity starts with accountability. Impunity emboldens perpetrators and perpetuates violence. When it comes to SGBV, an effective approach in the fight against impunity is putting the spotlight on the differential impact of violations in conflict on women and girls and addressing the context of gender inequality and injustice as part of the root causes of conflict. International and national investigations and processes and transitional justice mechanisms are the key avenues via which the occurrence of SGBV can be recognized. Based on their mandates, these entities can also take measures to respond to gender-based violence, including by making perpetrators accountable for such crimes and making available appropriate remedies to victims.

The sensitivities surrounding SGBV crimes, and the vulnerabilities experienced by victims and survivors, have meant that specific expertise is needed within investigative teams for a reliable collection of evidence and analysis of SGBV crimes and violations. This includes specialist skills in recognizing red flags signifying the potential existence of SGBV crimes, methods for gathering information that will “do no harm”, interviewing vulnerable groups and establishing adequate referrals, understanding the evidence needed to prosecute SGBV crimes under international law, and carrying out a gender analysis. Of particular importance is also the ability to adopt an intersectional approach. By their nature, international core crimes, including those of a sexual and gender-based nature, are societal crimes since their effects have lasting impacts on a society as a whole. Therefore, an intersectional approach is key in understanding the full impact of a crime or violation as it enables investigations to better reflect the interaction of multiple categories of vulnerability among victims of international crimes and uncover gender interplaying with other forms of discrimination.

Furthermore, the expertise relied upon by accountability actors needs to be available rapidly, in a matter of weeks or even days, especially when a new conflict erupts, to ensure that SGBV investigative lines are included from the start of an investigation, thus increasing the chances that justice for these crimes is effectively realized.

This is precisely where initiatives such as Justice Rapid Response (JRR) play a key role. The JRR Roster of more than 700 criminal and human rights experts bridges this expertise gap by swiftly providing justice actors with pre-vetted and highly skilled experts, including in the investigation and prosecution of SGBV crimes and gender mainstreaming. As part of its strategy, JRR injects gender and SGBV-related expertise to international accountability mechanisms, national authorities, and civil society organizations, to bring about positive success stories and a high-standard documentation and investigation of conflict-related and sexual and gender-based violence. JRR is also involved in policy work, including in relation to sexual exploitation and abuse, and gathers roundtables and a gender advisor’s community of practice to share lessons learned and best practices on topics around gender justice.

Through the strategic provision of thematic and niche expertise, and the gathering of lessons learned, JRR has an impact at different levels of the justice chain and meaningfully contributes to the global fight against impunity and the promotion of the rights and access to justice for victims and survivors, with SGBV being a top priority of its projects.

By way of example, Myanmar is a country context in the Asia Pacific region where JRR provided extensive support to fight impunity for SGBV perpetrated against the Rohingya population, as it has been actively involved in all of the main avenues and mechanisms for accountability established to date. In fact, JRR provided niche expertise, including focusing on SGBV, to the UN Fact Finding Mission (FFM) on Myanmar; the Independent Investigative Mechanism for Myanmar (IIMM); the *The Gambia v Myanmar* case before the International Court of Justice – through the provision of expertise to a civil

society partner who is directly assisting The Gambia legal team; and a victims' submission – led by a civil society partner – to the International Criminal Court.<sup>2</sup> Expertise provided by JRR to these entities contributed to:

- Include SGBV findings in the FFM on Myanmar reports, highlighting the “egregious and recurrent” sexual and gender-based violence by Myanmar military against civilian populations in Rakhine, Kachin and Shan States;
- Enhance the IIMM’s capacity to collect evidence, including on SGBV, and to cooperate with national, regional and international tribunals or Courts with compatible jurisdiction;
- Assist the Gambia legal team in the identification of the broad scope and nature of any relevant crime likely to fall within the jurisdiction of the ICJ;
- Enable a CSO to collect witness statements for a victim’s submission to the ICC on behalf of 500 Rohingyas.

Nationally, JRR works with authorities in several countries, to ensure national Prosecutor’s Offices investigate and prosecute SGBV nationally up to the highest standard. JRR’s efforts with entities such as the Colombia Special Jurisdiction for Peace (the JEP), shows the impact that injecting SGBV expertise can have in national jurisdictions. JRR experts ensure the JEP has a crosscutting view of patterns of SGBV and opens cases on sexual violence. The JEP issued a decision in July 2022 which orders the clustering of SGBV cases to start preparing the evidence for the official opening of a macro-case on sexual violence (Case 011). This decision is a significant step that aims to ensure accountability for the different forms of GBV that occurred during the armed conflict, such as reproductive violence.

JRR further supports civil society organizations in their technical capacity to document SGBV up to international standards. JRR partners with organizations such as Yazda to boost their ability to bring about justice for the Yazidis. In 2022, Germany convicted German ISIL returnee with aiding and abetting genocide, in addition to crimes against humanity and war crimes for the enslavement and abuse of a young Yazidi woman. This milestone case, to which JRR Roster experts contributed, is the second known genocide conviction for crimes perpetrated by ISIL against Yazidis.

Overall, JRR’s efforts are demonstrating to be effective in the fight against impunity for SGBV. Projects focused on making SGBV expertise available have resulted in robust reporting, useful in the short-term to highlight under-documented violations during conflict and in peace times and recount victim’s voices by different accountability actors. In the long-term, robust SGBV reporting can open avenues for justice processes to try perpetrators and end impunity. The recent case filed jointly by Canada and The Netherlands at the International Court of Justice against Syria relies heavily on the UN Commission of Inquiry on Syria reports, and specifically on the thematic reports of the COI on SGBV and children, which experts deployed by JRR to the COI were instrumental for.

### **3. How can Australia best support efforts to achieve gender equality internationally?**

UNSCR 1325 emphasizes on the responsibility of all States to put an end to impunity and to prosecute those responsible for genocide, crimes against humanity, and war crimes including those relating to sexual and other violence against women and girls.

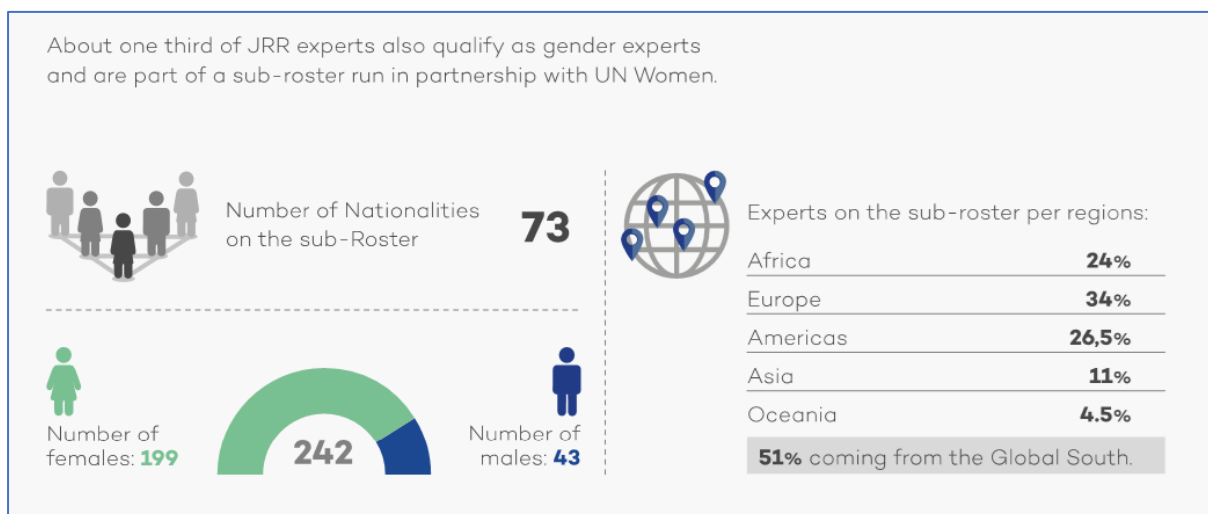
To contribute to the effective implementation of this Resolution, Australia can keep positioning itself internationally as a strong advocate of justice and accountability for conflict-related and sexual and gender-based violence. Australia can also make institutional arrangements, and announcements to host, chair, or join existing global initiatives on women, peace and security. Further, Australia can make

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<sup>2</sup> The latter two upon request from Legal Action Worldwide (LAW).

funding pledges to allocate dedicated resources in support of practical initiatives and projects aimed at reducing sexual and gender-based violence and securing justice for individual women’s human rights violations, and mainstreaming gender perspectives in justice processes.

Internationally, human rights investigations carried out by United Nations-mandated entities, such as International Commissions of Inquiry and Fact-Finding Missions mandated by the UN Human Rights Council, or other UN investigative bodies, are amongst the key existing efforts to achieve accountability for human rights violations and mass atrocities, including of a sexual and gender-based nature. In the past 12 years, JRR has partnered with UN Women on a standalone project aimed at the systemic provision of gender advisers and SGBV investigators to these UN mandated mechanisms. Together, JRR-UN Women run the SGBV Justice Experts Roster (hosted within the broader JRR Roster) of about 240 gender and SGBC experts who stand ready to investigate and document such atrocities. Providing support to JRR would help in further strengthening the JRR Roster, and SGBV Justice Experts Roster, by consolidating the expertise already existing, but also by ensuring JRR can continue recruiting gender and SGBV experts to keep supporting justice and accountability worldwide. Specifically, Australia’s support could be essential for the Roster to become stronger in expertise from the Asia and Oceania region, including expertise familiar with regional dynamics and justice and accountability avenues for countries under regimes with little or no recourse to justice, such as Myanmar. This aligns with the current JRR 4 years strategy, which includes Myanmar as one of the countries to specifically focus on to boost access to justice for victims and survivors, including the most vulnerable categories of victims and overlooked violations affecting them.



Australia’s financial contributions to JRR could also contribute to the delivery of expert deployments to accountability bodies, including with a specific SGBV focus. To date, JRR has delivered more than 200 deployments where SGBV was the main focus, allowing the collection of evidence for SGBV crimes, and highlighting the gendered impact of conflicts, especially on women and girls, but also on men and boys and gender-nonconforming individuals. Specifically, the partnership with UN Women has enabled the inclusion of dedicated SGBV expertise to almost all UN human rights accountability mechanisms created to date. Most recently, JRR experts were instrumental for the UN Commission of Inquiry on Ukraine to uncover that Russian authorities have committed sexual violence during house searches and against victims they had confined; and to conclude that the transfer and deportation of children within Ukraine and to Russia amount to a war crime. JRR is further contributing to boosting the

International Criminal Court, Office of The Prosecutor’s Gender and Children Unit, and the Office’s investigations and policy work, including on gender persecution and ICC policies on SGBC and crimes affecting children. JRR is also active internationally in the Inter-American system and is looking at expanding its work in the Asia-Pacific (with Myanmar as a priority in the region).

JRR’s added value to justice and accountability is highlighted, for example, in its film “[Evidence of Hope](#)”, where Yazidi survivors of sexual violence in Iraq speak of the critical role of JRR’s SGBV Investigator in giving them a voice, and hope for justice. JRR is also proud to have contributed to the first ICC confirmation of the charge of gender-based persecution (Al Hassan case, Mali) and that a Rostered expert was then appointed as the ICC Special Adviser on Gender Persecution, leading to the recent ICC Policy on this crime.

#### **4. What should the government/DFAT consider when developing the new international gender equality strategy?**

The Australian Government has shown a steadfast commitment to women and girls’ empowerment, which is also at the heart of the United Nations Security Council’s Women, Peace and Security agenda. In 2012, the adoption of the first Australian National Action Plan on Women, Peace and Security (NAP) played a pivotal role in a successful campaign for a non-permanent seat on the Security Council (2013–2014), while this membership, in turn, presented a unique opportunity to secure global leadership.<sup>3</sup>

When developing its new strategy going forward, Australia should try obtaining a seat to become a member of the Commission on the Status of Women. The CSW is instrumental in promoting women’s rights, documenting the reality of women’s lives throughout the world, and shaping global standards on gender equality and the empowerment of women. Australia’s presence in this forum is an essential addition to the Asia-Pacific States currently represented.

Australia can consider presenting a candidate in the election for a new seat at the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) committee, considering the current Oceania representative’s mandate will come to an end in 2024. The CEDAW committee monitors state compliance with the Convention through periodic reporting, and its experts assess state and non-governmental organisation reports on the condition of women in each country, and the measures that have been implemented to progress gender equality. Another seat at the CEDAW Committee would be vital to keep monitoring the implementation of gender equality measures nationally and be a direct actor in recommending solutions to specific countries, including on global or cross-border issues, such as violence against women.

Australia should also consider playing an active role in advocating for UN Security Council briefings, including from civil society, to become more gender inclusive, and to enhance gender perspectives in debates and resolutions and in all Council products. In practical terms, Australia could include in its strategy to systematically request that all briefers (and not only UN briefers) to the UNSC include gender analyses in their presentations, ahead of country specific meetings. Australia could advocate to bring an Asia-Pacific perspective to all debates of the UNSC, including by recommending the invitation of women briefers from the region. Signing statements of commitments on WPS that Presidencies of the UNSC may circulate is also particularly important to show dedication to gender equality in international fora.

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<sup>3</sup> [Norm Negotiation in the Australian Implementation of UNSCR 1325 - AIIA - Australian Institute of International Affairs.](#)

Finally, Australia should consider (re)committing to support the JRR intergovernmental initiative, as part of its projects on ending gender-based violence, women peace and security and gender equality. Contributing to strengthening the quality of the JRR Roster and to funding expert deployments focusing on ending impunity for SGBV crimes can practically contribute to the achievement of the long-term ambition of Australia's National Action Plan on Women, Peace and Security – of gender equality, the human rights of women and girls, and enduring peace – and its final outcomes and associated mid-term outcomes. Specifically, it can advance outcomes (ii) reducing sexual and gender-based violence, including addressing harmful gender norms, women's and girls' safety and security, and access to justice; and (iii) supporting resilience, crisis, security, law and justice efforts to meet the needs and rights of all women and girls, including in relation to violent extremism, humanitarian action and disaster management. Expert deployments of gender, as well as of child rights and other niche expertise, catalyse the ability of international and national mechanisms to secure accountability for mass atrocities and justice for victims and survivors. Indeed, they contribute to ensuring that justice processes effectively investigate SGBV crimes committed during conflict and under political regimes with no recourse to justice, thereby increasing the likelihood that victims and survivors will see justice done.

JRR is also well placed to contribute to Australia's NAP outcome (iv) demonstrating global leadership and accountability for results on WPS, considering that JRR contributions to SGBV investigations and to the advancement of WPS more broadly has been directly recognized by two reports of the UN Secretary General on Women, Peace and Security (UN SG 2019 and 2022 Reports on WPS), and by several States and UN Security Council members during the annual UNSC Open Debates on WPS and on Sexual Violence in Conflict. In those Open Debates, the JRR-UN Women SGBV Justice Experts Roster is often mentioned as a concrete tool to end impunity for SGBV crimes by several Member States, who "value the work of Justice Rapid Response aimed at strengthening accountability." In 2019, [the SG report on WPS \(S/2019/800\)](#) recognized the role of international human rights bodies and mechanisms in holding States accountable for all human rights obligations, including in relation to sexual and gender-based violence, and specifically mentioned Justice Rapid Response and its deployments of gender experts in support to FFM and COIs as an "effective collaboration between UN-Women, OHCHR and the Justice Rapid Response" that "ensures that all investigations mandated by the Human Rights Council benefit from the expertise of a gender adviser or investigator on sexual and gender-based violence" and then highlighted reports from UN investigations in Burundi, the Kasai Regions of the Democratic Republic of the Congo, Myanmar, South Sudan, the Syrian Arab Republic, Yemen and the Occupied Palestinian Territory describing a wide range of women's human rights violations, also thanks to JRR gender experts.