



## Australian Government

### **Subject: Draft General Recommendation on accelerating elimination of gender-based violence against women**

The Australian Government presents its submission concerning Draft General Recommendation on accelerating elimination of gender-based violence against women

1. The Australian Government presents its compliments to the United Nations Committee on the Elimination of Discrimination against Women (the Committee) and has the honour to refer to the Committee's invitation for written comments on draft General Recommendation No. 19 on accelerating elimination of gender-based violence against women.<sup>1</sup>
2. The Australian Government thanks the Committee for the opportunity to provide a written submission on the draft General Recommendation. Australia is a longstanding party to the Convention on the Elimination of Discrimination against Women (the Convention) and to the Optional Protocol to the Convention on the Elimination of Discrimination against Women and is firmly committed to upholding its obligations.

#### Consistency of terminology

3. As an overarching comment Australia notes that varied terminology is used in the Committee's and other United Nations documents, which refer alternately to 'gender-based violence',<sup>2</sup> 'sexual and gender-based violence', 'gender-based violence against women'<sup>3</sup> and 'violence against women'. The Australian Government notes the value of consistent terminology to ensure that the United Nations Committees' views as to how to eliminate this conduct are consistent and cohesive. Australia opposes the perpetration of gender-based violence in all its forms. However, in Australia's view the draft General Recommendation's focus on violence perpetrated against women and girls is appropriate given the Convention's own emphasis on women and girls.<sup>4</sup>

#### Gender-based violence against women

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<sup>1</sup> Committee on the Elimination of Discrimination against Women, draft General Recommendation no. 19 on accelerating elimination of gender-based violence against women dated 28 July 2016 (draft General Recommendation).

<sup>2</sup> This phrase is used in Committee on the Elimination of Discrimination against Women, 'General Recommendation No. 19 on violence against women' adopted by the Committee at its eleventh session in 1992 (1992 General Recommendation No. 19).

<sup>3</sup> This phrase is used consistently throughout the draft General Recommendation.

<sup>4</sup> See for example paragraph 9 of the draft General Recommendation.

4. The Convention is directed at ‘bringing the female half of humanity into the focus of human rights concerns’<sup>5</sup> and at ‘enlarging our understanding of the concept of human rights, as it gives formal recognition to the influence of culture and tradition on restricting women’s enjoyment of their fundamental rights’.<sup>6</sup>
5. The Committee defines gender-based violence against women as violence ‘directed against a woman because she is a woman or that affects women disproportionately’ and includes ‘acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty’.<sup>7</sup>
6. Australia notes the Committee’s long-held view that gender-based violence against women is a form of discrimination that inhibits women’s ability to enjoy rights and freedoms equally with men<sup>8</sup> and is prohibited as a matter of international law under Article 1 of the Convention.<sup>9</sup>
7. The Committee has stated that gender-based violence against women can have the effect of impairing or nullifying the enjoyment by women of human rights, which are predominantly found in the International Covenant on Civil and Political Rights (the ICCPR) and the Convention, including:
  - the right to life<sup>10</sup>
  - the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment<sup>11</sup>
  - the right to liberty and security of person<sup>12</sup>
  - the right to equal protection under the law<sup>13</sup>
  - the right to equality in the family,<sup>14</sup> particularly the right to enter into marriage with free and full consent<sup>15</sup> and
  - the right to the highest attainable standard of health.<sup>16</sup>
8. Australia notes that human rights treaties other than the Convention also contain obligations in respect of gender-based violence against women.<sup>17</sup>
9. Australia acknowledges that it has a responsibility to address violence against women, including through its international human rights law obligations, and has done so in a variety of means

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<sup>5</sup> Introduction to the Convention.

<sup>6</sup> Ibid.

<sup>7</sup> 1992 General Recommendation No. 19, paragraph 6.

<sup>8</sup> Ibid, paragraph 1.

<sup>9</sup> Article 3 of the Convention and 1992 General Recommendation No. 19, paragraph 7.

<sup>10</sup> Article 6 of the ICCPR.

<sup>11</sup> Article 7 of the ICCPR.

<sup>12</sup> Article 9 of the ICCPR.

<sup>13</sup> Article 16 of the ICCPR and Articles 2(c) and 15 of the Convention.

<sup>14</sup> Article 23 of the ICCPR and Article 16 of the Convention.

<sup>15</sup> Article 23(3) of the ICCPR and Article 16(b) of the Convention.

<sup>16</sup> Article 12 of the International Covenant on Economic, Social and Cultural Rights and Articles 10(h), 11(1)(f), 12, 14(2)(b) and 16(1)(e) of the Convention.

<sup>17</sup> See, for example, Articles 10, 14, 15 and 16 of the Convention on the Rights of Persons with Disabilities.

outlined in its reports on the implementation of the Convention. Australia's position is that violence against women undermines a community's social fabric and prevents women from achieving social and economic equality.<sup>18</sup>

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<sup>18</sup> Australian Government Department of Foreign Affairs and Trade, Gender equality and women's empowerment strategy, February 2016: <http://dfat.gov.au/about-us/publications/Documents/gender-equality-and-womens-empowerment-strategy.pdf>.

## States Parties' Obligations

10. Australia considers the draft General Recommendation would benefit from being less prescriptive in relation to its attempt to provide 'further clarification of [States Parties'] obligations'<sup>19</sup> under the Convention. Australia submits a preferable approach would be to provide examples of best practice in the ways in which States Parties could act to accelerate the elimination of gender-based violence against women. It could do so by referring to measures instituted by countries in different regions, including developed and developing countries. These examples would assist States Parties in identifying avenues for eliminating gender-based violence against women and would also recognise the different circumstances each State faces.
11. To this end Australia welcomes the draft General Recommendation's categorisation of the content in paragraph 15 as 'recommendations'. Australia's view is that the draft General Recommendation can provide 'further and comprehensive guidance aimed at accelerating the elimination of gender-based violence against women'<sup>20</sup> to States Parties given the time that has passed since General Recommendation No. 19 was adopted in 1992. However, Australia notes that the draft General Recommendation should continue to be framed as suggestions to States Parties.<sup>21</sup> Australia also notes that the Committee could use the draft General Recommendation to encourage States Parties to adopt evidence-based measures.
12. Australia invites the Committee to clarify the following statements in the draft General Recommendation regarding the scope of the legal obligations of States Parties under the Convention:

### *Within their territories*

13. The draft General Recommendation states that States Parties' obligations are 'obligations to all women within their territories'.<sup>22</sup> Previously the Committee has made statements that suggest it applies a different test of jurisdiction to determine whether a State Party's obligations are engaged.<sup>23</sup> Australia notes the Convention does not itself have a territorial clause or a reference to its territorial application.<sup>24</sup> Australia's position is that human rights obligations are primarily territorial and that a high degree of control is required for human rights obligations to apply extraterritorially.

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<sup>19</sup> Paragraph 6 of the draft General Recommendation.

<sup>20</sup> Paragraph 5 of the draft General Recommendation.

<sup>21</sup> The 1992 General Recommendation No. 19 makes comments on specific articles in paragraphs 10 to 23 and recommendations in paragraph 24. It does not attempt to reframe obligations.

<sup>22</sup> Paragraph 6 of the draft General Recommendation.

<sup>23</sup> Committee on the Elimination of Discrimination against Women, 'General recommendation No. 28 on the core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women' adopted by the Committee on 16 December 2010, paragraph 12 and 26.

<sup>24</sup> For example, the Convention against Torture states in article 2(1) that '[e]ach State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture *in any territory under its jurisdiction*'.

*State responsibility and reparations to victims/survivors of gender-based violence against women*

14. Paragraph 13(b)(ii) of the draft General Recommendation states that ‘a failure to investigate and punish, and provide reparation to victims/survivors of [gender-based violence against women] ... constitute human rights violations’.<sup>25</sup> In Australia’s view, States’ human rights obligations (including under the Convention) comprise obligations to respect, protect and fulfil human rights and fundamental freedoms of individuals. This includes a duty to protect against human rights abuses by private actors. However, a State will not be responsible for human rights abuses by private actors *per se* except where it fails to take appropriate steps to protect, prevent, investigate and punish such human rights abuses. This includes where private bodies are providing public services.<sup>26</sup>
15. The draft General Recommendation also states that ‘according to article 2(c), (d) and (f) and article 5(a) ... State parties should provide accessible, affordable and adequate services to protect women from gender-based violence and provide reparation to all its victims/survivors’.<sup>27</sup> Australia notes in particular that articles 2 and 5 of the Convention do not necessarily oblige a State Party to provide reparations. Further, States generally have discretion in deciding on the most appropriate response to violations of human rights obligations. Whether or not a remedy is a suitable form of redress will depend on the circumstances of each individual case.
16. Australia reiterates its support for the work of the Committee and avails itself of this opportunity to renew to the Committee the assurances of its highest consideration.

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<sup>25</sup> See also paragraph 14(a) of the draft General Recommendation, which states that ‘legislation prohibiting all forms of gender-based violence against women [should include] ... sanctions and reparation in cases of such violence’.

<sup>26</sup> Paragraph 13(a)(i) and 14 of the draft General Recommendation.

<sup>27</sup> Paragraph 14(b) of the draft General Recommendation.