

Submissions of the Australian Government Draft General Recommendation No. 35 on the Gender-related dimensions of Disaster Risk Reduction in a Changing Climate

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 the 'Draft General Recommendation No. 35 on the Gender-related dimensions of Disaster Risk Reduction in a Changing Climate' (the draft General Recommendation).¹
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 All Forms of Discrimination against Women (the Convention) and the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women and is firmly committed to upholding its obligations.

Objective of the General Recommendation

3. As an overarching comment, the Australian Government considers that the draft General Recommendation would benefit from ensuring its objectives are closely aligned with the object and purpose of the Convention, which according to the Preamble is to promote the equal rights of men and women.
4. The draft General Recommendation states that one of its objectives is to:

improve coherence, accountability and the mutual reinforcement of different international agendas on disaster risk reduction, climate change, sustainable development and human rights, in particular women's human rights.²
5. Rather than commenting on different international agendas, the objective of this General Recommendation should, consistent with the object and purpose of the Convention, be to make recommendations based on examination of reports and information from States Parties in relation to the implementation of their obligations.³ In this regard, the Committee is better placed providing guidance on how States Parties can implement their obligations in ways that address the vulnerabilities of women in the context of disaster risk reduction in a changing climate. Through its General Recommendations the Committee can assist States Parties in the implementation of their obligations under the Convention and provide States Parties with suggestions as to how women's rights are best realised.

¹ Committee on the Elimination of Discrimination against Women, 'Draft General Recommendation No. 35 on the Gender-related dimensions of Disaster Risk Reduction in a Changing Climate' dated 11 October 2016.

² Paragraph 9 of the draft General Recommendation.

³ *Convention on the Elimination of All Forms of Discrimination against Women*, Article 21.

States Parties' Obligations

6. Australia considers the draft General Recommendation would benefit from being less prescriptive⁴ when it provides 'guidance to States parties on the implementation of their obligations under the Convention'.⁵ Australia submits that a preferable approach would be to provide examples of best practice of the ways in which States Parties could realise gender equality in their disaster risk reduction and climate change mitigation activities. The Committee 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 enhancing the principles of gender equality and non-discrimination in their disaster risk reduction and climate change mitigation activities, and would also recognise the different circumstances that States face. In line with this approach, Australia welcomes the draft General Recommendation's characterisation of the content in paragraphs 30 and 60 as 'recommendations', and would suggest the Committee take the same approach in making suggestions regarding the key Convention provisions and thematic areas of concern arising from State reporting.
7. Australia considers that some parts of the draft General Recommendation purport to extend the responsibilities of States Parties beyond the legal obligations in the text of the Convention.⁶
8. Australia invites the Committee to clarify the statements in the draft General Recommendation regarding the scope of the legal obligations of States Parties under the Convention, particularly the following:

Obligations to take concrete steps

9. The draft General Recommendation states that:

State parties and other stakeholders have obligations under the Convention on the Elimination of All Forms of Discrimination Against Women to take concrete steps to address the gender-related dimensions of disaster risk reduction in a changing climate through the adoption of targeted, country specific policies, strategies, legislation, budgets and other measures.⁷

⁴ See for example paragraph 25 of the draft General Recommendation that states that 'States parties should take concrete, targeted and measurable steps ...'. Australia also notes that at paragraphs 64 and 66 the draft General Recommendation states that States Parties should take action in accordance with the Committee's prior General Recommendations, rather than obligations found in the Convention itself. See also paragraph 60(c) of the draft General Recommendation which states that 'women must be active participants in planning, implementing and monitoring housing'. Australia submits that recommendations that encourage States to provide participation opportunities for women would be more appropriate, rather than the Committee using language which proscribes the actions of women.

⁵ Paragraph 9 of the draft General Recommendation.

⁶ For example, the Australian Government does not consider that the Convention, General Recommendation No. 26 on Women Migrant Workers or General Recommendation No 32. on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women provides a basis for the prescriptive action paragraphs 68(b) and 68(c) of the draft General Recommendation states States Parties should take.

⁷ Paragraph 7 of the draft General Recommendation. See also paragraph 21 that states that 'States parties have an obligation under Article 1 of the Convention to take targeted and concrete measures to guarantee equality between

10. The Australian Government notes that States Parties to the Convention are obliged to implement obligations in the Convention in all circumstances, not simply in response to disaster risks or climate change. Australia does not consider that the Convention contains specific obligations regarding these particular circumstances, but acknowledges that such circumstances can exacerbate gender inequality. In this respect, Australia reiterates its commitment to take all appropriate measures in all fields to ensure the full development and advancement of women.⁸

Obligations found in other human rights instruments

11. In a number of places, the draft General Recommendation refers to the views of treaty bodies responsible for overseeing the implementation of other human rights treaties. In particular, the Committee notes that the Committee on Economic, Social and Cultural Rights, the Committee on the Rights of the Child, and the Human Rights Council ‘are increasingly referring to the human rights impact of climate change, environmental degradation and disasters’.⁹ Australia supports the Committee adopting an approach that seeks to align its views with those expressed by other Committees.¹⁰

Climate change and environmental instruments

12. The draft General Recommendation refers to a range of other international instruments on disaster risk reduction, climate change, humanitarian assistance and sustainable development that also address gender equality.¹¹ Australia submits that States Parties’ obligations in respect of gender equality in any context are most clearly elaborated in the Convention itself. These other instruments, often constituting soft law, are useful in that they emphasise the applicability of and need for gender equality in the context of responding to climate change and managing disasters, but States Parties are not required to interpret the Convention consistently with those instruments.

women and men, including the adoption of participatory and gender-sensitive policies related to disaster risk reduction strategies and programmes across every sector’ and paragraph 10 that states that the draft General Recommendation ‘focuses on the obligations of States parties and other stakeholders under the Convention to take effective measures to anticipate and respond to new hazards and disaster risks that have emerged as a result of climate change’.

⁸ *Convention on the Elimination of All Forms of Discrimination against Women*, Article 3.

⁹ Paragraph 8 of the draft General Recommendation.

¹⁰ However Australia notes that paragraph 66 of the draft General Recommendation refers to commentary by the Committee on the Protection of the Rights of Migrant Workers and their Families. The Australian Government respectfully notes that Australia is not a party to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

¹¹ The draft General Recommendation highlights the Sendai Framework on Disaster Risk Reduction, the Lima Work Programme on Gender, the Paris Agreement, and the UN Sustainable Development Goals, as well as several multilateral environmental conferences.

Business actors and extraterritorial obligations

13. The Australian Government does not accept paragraphs 41 and 42 in section D of the draft General Recommendation.
14. There are no obligations in the Convention that oblige States Parties to ‘take immediate steps to manage water and other shared natural resources and to limit the impact of carbon emissions and transboundary pollution’.¹²
15. More broadly, Australia notes that the Convention itself does not have a territorial clause or a reference to its territorial application.¹³ In Australia’s view human rights obligations are primarily territorial and a high standard of control is required to be met and substantiated for human rights obligations to apply extraterritorially.
16. The draft General Recommendation also states that States Parties should ‘regulate the activities of non-State actors within their jurisdiction including when they operate extraterritorially’.¹⁴ A State will only be responsible for human rights abuses by private actors where it fails to take appropriate steps to protect, prevent, investigate and punish such human rights abuses. The Australian Government reiterates its comments in paragraph 15 that a high standard of control is required to be met and substantiated for human rights obligations to apply extraterritorially, including with respect to non-State actors. It also draws the Committee’s attention to the ‘Guiding Principles on Business and Human Rights — Implementing the United Nations “Protect, Respect and Remedy” Framework’ which sets out a more appropriate, nuanced and cogent approach to a State’s duty to protect human rights, which accurately reflects the state of human rights law.¹⁵

Disaster remedies

17. Paragraph 19(c) of the draft General Recommendation states that a ‘cross-cutting’ principle of the Convention is:

[a]ccountability and access to justice, which require the provision of appropriate and accurate information and mechanisms to ensure that all women and girls whose rights have been affected by disasters are provided with adequate and timely remedies.¹⁶

¹² Paragraph 42 of the draft General Recommendation.

¹³ For example, the *Convention against Torture and other Cruel, Inhuman or Degrading Treatment* [1989] ATS 21 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*’.

¹⁴ Paragraph 41 of the draft General Recommendation. Australia further submits that ‘business enterprises’ is a preferable term to ‘non-State actors’ in this context because ‘non-State actors’ is a term specific to the law of armed conflict. Australia suggests ‘business enterprises’ so that the draft General Recommendation’s language is in line with the United Nations Human Rights Office of the High Commissioner’s 2011 ‘Guiding Principles on Business and Human Rights’.

¹⁵ ‘Guiding Principles on Business and Human Rights — Implementing the United Nations “Protect, Respect and Remedy” Framework’, pages 3–4.

¹⁶ See also paragraph 31 of the draft General Recommendation.

18. In Australia's view this requirement is not supported by the text of the Convention. Article 15 of the Convention recognises the right of women to equality with men before the law, and requires that States Parties 'accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity'.¹⁷ However, the Convention is not prescriptive as to the mechanisms through which women should exercise that capacity, and it also does not prescribe the provision of remedies. Australia submits that the Committee should delete the reference to 'cross-cutting principles' in paragraph 19(c).

Rural women

19. Paragraph 29 of the draft General Recommendation states that the obligation in Article 14 of the Convention includes the right of women to participate in agricultural reform activities. The Australian Government submits that this right is actually encompassed in the right to engage in the formation of government policy.¹⁸ Article 14(g) instead provides that rural women should be given 'equal treatment in land and agrarian reform'.

Nutrition, food production and consumption

20. Paragraph 50 of the draft General Recommendation states that 'Articles 12 and 14 of the CEDAW Convention ... contain specific guarantees on nutrition and women's equal participation in decision-making about food production and consumption'. The Australian Government does not view either Article 12 or 14 of the Convention as reflecting the specific guarantees to which the Committee refers. The Australian Government therefore invites the Committee to be more specific in outlining the foundation for its assertion that there is a right to equal participation in decision-making about food consumption.¹⁹

Prioritisation

21. In a number of places the draft General Recommendation suggests that States Parties should prioritise the rights of certain groups within the broader category of women when fulfilling their obligations under the Convention.²⁰ The Australian Government respectfully submits that the Convention's obligations apply to all women equally. However, as a matter of policy or practice, particular groups of women may require greater assistance or support to realise their rights.

22. 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.

¹⁷ *Convention on the Elimination of All Forms of Discrimination against Women*, Article 15(2).

¹⁸ *Convention on the Elimination of All Forms of Discrimination against Women*, Article 7(b).

¹⁹ The Australian Government notes that the Committee recommended that States Parties 'should ensure the realization of the right to food and nutrition of rural women within the framework of food sovereignty and ensure that they have the authority to manage and control their natural resources' in its 'General Recommendation No. 34 on the rights of rural women' adopted by the Committee on 7 March 2016 at paragraph 64.

²⁰ See, for example, paragraph 19 of the draft General Recommendation which states 'with priority being accorded to the most marginalized groups of women and girls'.