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Dear CEDAW Committee members,

We are writing from Human Rights Watch in advance of your July 18, 2011 general discussion on “women in conflict and post-conflict situations” and the development of a General Recommendation on CEDAW obligations in the context of conflict and post-conflict.

First of all, we would like to thank the Committee for taking on the specific needs of women in conflict and post-conflict situations, and for the very helpful concept note published on this topic. Human Rights Watch’s experience shows that women and girls are affected differently than men and boys by conflict, and that they face specific challenges in conflict and post-conflict settings.

At this stage in the deliberations, Human Rights Watch would like to raise three key issues: 1) the indivisibility of human rights in the context of conflict and post-conflict; 2) the implications of conflict and post-conflict on the enjoyment of rights of specific groups of women; and 3) the obligations of non-state actors with quasi-state control over a territory.

Indivisibility of rights

We welcome the concept paper published in advance of this day of discussion. In particular, we welcome the sense in the document that the convention must be applied as a whole, in specific contexts of upheaval.

We are, however, concerned that the invite to the general discussion—and thus potentially the General Recommendation—is framed as if only a limited number of convention rights are relevant to women in conflict and post-conflict situation. It is almost two decades since the international community came together in Vienna to declare that “[a]ll human rights are universal, indivisible, interdependent and interrelated.” Reflecting this fact, the rights protected by CEDAW remain closely related, and the categories

frequently overlap. The prohibition against discrimination is crosscutting and applies in all rights categories.

We are particularly concerned about the potential exclusion of rights that hold special importance to women in conflict and post-conflict situations. The right to equal enjoyment of rights (art. 3), the obligation to implement special temporary measures (art. 4), the obligation to ensure the rights of rural women (art. 14), and specific protections of marriage equality and equality in legal capacity and freedom of movement (arts. 15 (2-4) and 16) all take on special meaning and content in the context of conflict and post-conflict. We urge the Committee to contemplate the application of all the Convention's provisions as a whole to women in situations of upheaval, and are pleased that the concept note is inclusive of all the substantive rights in the convention.

Intersecting discrimination in conflict and post-conflict settings

The stated objective and purpose of the Convention is to eliminate discrimination against all women. At times this will require particular protections for sub-segments of women, such as (in the context of conflict and post-conflict situations) girls, refugee or internally displaced women, and women with disabilities. These discrete protections have arisen in part as recognition that each of these populations may be particularly vulnerable to abuse or exploitation as a result of marginalization or discrimination, and may suffer particular consequences in a conflict and have specific needs in post-conflict or humanitarian crises settings. Recognizing this basic fact should be prominent in the General Recommendation.

We hope the General Recommendation will convey a concern not simply limited to women's rights in the abstract. In fact, our research and experience tell us that how policymakers strive to eliminate discrimination against women—the terms, breadth, and scope of their measures—matters profoundly. Failure to be comprehensive and inclusive can have devastating consequences for women trying to live their lives in dignity.

In this sense, we know that government reconstruction plans often fail to take into account women who acquired disabilities due to the war or who already had disabilities before the war. Women with disabilities—physical, sensory, mental and intellectual—face an even more complex and grueling process of return and relocation than their neighbours because of the erosion of community networks as a result of conflict or disaster. In this context, women with disabilities are often highly vulnerable to sexual violence and denied access to justice and health care because of physical, communication and attitudinal barriers. Discrimination remains a major obstacle to the full inclusion of women with disabilities in efforts to build a functioning society.

Obligations of non-state actors in situations of upheaval

We very much support the inclusive definition of the application of the proposed General Recommendation on page 4 of the concept paper: “situations of armed conflict and political crises, prevention and resolution of conflicts, peace-building and post-conflict reconstruction processes.” We would suggest including also humanitarian crises (potentially caused by climate change), as many of the key recommendations will be similar.

In this sense, we believe a major contribution of this General Recommendation will be a section on the obligations of non-state actors and state-like actors. While this is acknowledged in the beginning of the concept paper, the General Recommendation would need to go into much more detail than is given there.

In Human Rights Watch’s research and experience, a key barrier to protecting human rights generally (and women’s human rights specifically) in contexts of upheaval is the collapse of the obligation-holder. The General Recommendation would need to set out clear guidance and suggestions for accountability structures for actors that carry out a quasi-governmental role with regard to the provision of certain services or the control over certain populations (these actors would include, for example, insurgent groups, humanitarian groups, United Nations entities, donors, etc).

While states parties to the Convention are ultimately accountable for compliance with CEDAW provisions, the General Recommendation should take the special conditions that apply during times of upheaval into account. The state’s legal obligations in this regard include the duty to protect individuals and communities from human rights abuses committed by non-state actors. Where other actors fulfill the main quasi-governmental role, these actors should be held to the same standards the state would have been held to in the analogue circumstance. Throughout, it is key to establish and maintain transparent and effective processes of oversight and accountability.

In closing, we urge the Committee to consult and coordinate throughout the drafting phase with other treaty-monitoring bodies with relevant expertise, such as the Children’s Rights Committee, the Committee on Economic, Social, and Cultural Rights, the Human Rights Committee, the Committee on the Rights of Persons with Disabilities, and the Committee on the Elimination of Racial Discrimination.

We also urge the Committee to seek input from various parts of the UN secretariat and entities with expertise on women in conflict. The past four years have seen a proliferation of attention to certain aspects of women and girls in conflict, including through the adoption of four new Security Council resolutions on Women, Peace, and Security, the establishment of a Special Representative mandate on sexual violence in conflict at the UN Secretariat in New York, the establishment of a UN team of

experts on the rule of law with regard to sexual violence in conflict, special attention given to the issues of sexual violence and women's participation in conflict at the Human Rights Council, and the development of a consolidated strategic framework for the implementation of women, peace, and security obligations throughout the UN system over the next 10 years. The existing expertise and experience of the UN family, understood broadly, could and should helpfully be harnessed as input to the Committee's deliberations.

We look forward to continuing our collaboration and to a frank and fruitful discussion on July 18.

Many regards,

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