SUBMISSION TO THE COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN

IN PREPARATION FOR THE GENERAL DISCUSSION ON WOMEN IN CONFLICT AND POST-CONFLICT SITUATIONS

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Around the world, conflict and instability leave an indelible mark on women's bodies and lives.[*] From widespread rape of women in the eastern Democratic Republic of the Congo to spiraling rates of maternal death in Afghanistan, the rise of violence and breakdown of communities lead to violations of women's fundamental human rights, including their sexual and reproductive rights. While much is often made of the number of deaths directly caused by conflict, very little is mentioned of the deaths and disabilities that result from the lack of access to crucial sexual and reproductive health services and women's limited means to make decisions about their reproductive lives in these contexts. The Convention on the Elimination of all forms of Discrimination against Women (CEDAW) is one of several human rights treaties that establish women's sexual and reproductive rights in international law and provide a basis for protecting and promoting these rights during and after conflict. The recent decision by the Committee on the Elimination of Discrimination against Women (CEDAW Committee) to adopt a general recommendation on the protection of women's human rights in conflict and post-conflict contexts is an opportunity for the Committee to highlight the particular challenges that women face in exercising these rights during times of extreme insecurity and to reinforce the fundamental connection between reproductive and sexual rights and women's bodily integrity and autonomy.

In the concept note for the upcoming General Discussion on the general recommendation, the CEDAW Committee identifies four thematic areas to structure the dialogue: access to justice, women's participation in peace-building processes, violence against women and women's economic opportunities post-conflict. The Center for Reproductive Rights (the Center) urges the Committee to elaborate upon the linkages between each of these issues and women's sexual and reproductive rights. Women's sexual and reproductive rights are not only an area of priority concern for women in conflict and post-conflict settings; they are also an essential pre-condition

[*] Unless otherwise noted, the term "women" is used to refer to women and girls throughout this submission.

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for women's full participation in peace-building processes and the political, economic and social reconstruction of their communities.

This submission seeks to highlight some of the sexual and reproductive rights issues that the Center believes are critical to the effective discussion of the proposed thematic areas. The submission begins by reviewing international legal and political obligations to protect women's sexual and reproductive rights in conflict and post-conflict settings. It then examines women's sexual and reproductive health in conflict and post-conflict situations and provides examples of common barriers for women in exercising their reproductive rights in these situations. The submission continues by examining the linkages between states' sexual and reproductive rights obligations and the four priority themes for the Committee's General Discussion, and provides a brief discussion of donor accountability in conflict and post-conflict settings. It concludes with recommendations for the Committee to consider during the general recommendation drafting process.

I. <u>International obligations around sexual and reproductive rights in conflict and post-conflict settings</u>

Sexual and reproductive rights are grounded in international guarantees of life, liberty and security of the person, privacy, health, freedom from discrimination, self-determination, access to information, and the right to enjoy the benefits of scientific progress, among others.[1] The 1994 International Conference on Population and Development's (ICPD) Programme of Action confirms the range of rights that are implicated in sexual and reproductive rights:

> [R]eproductive rights embrace certain human rights that are already recognized in national laws, international human rights documents and other consensus documents. These rights rest on the recognition of the basic right of all couples and individuals to decide freely and responsibly the number, spacing and timing of their children and to have the information and means to do so, and the right to attain the highest standard of sexual and reproductive health. It also includes their right to make decisions concerning reproduction free of discrimination, coercion and violence, as expressed in human rights documents.[2]

States are obligated to guarantee sexual and reproductive rights both in times of peace and in times of conflict. The CEDAW Committee has made it clear that access to healthcare, including reproductive healthcare, is a basic right[3] and that states are obligated to respect, protect and fulfill women's rights even during times of conflict or states of emergency.[4] The obligation to respect, protect and fulfill rights includes the obligations to restrain from obstructing rights, to prevent and sanction violations of rights, and to take appropriate measures to ensure that rights

are realized.[5] Under CEDAW, states are required to take "all appropriate measures" to eliminate discrimination against women in healthcare in order to ensure access to health services, including family planning, on a basis of equality between men and women.[6] Additionally, CEDAW obligates states to ensure "appropriate services" to women related to pregnancy and the post-natal period, including free services "where necessary",[7] and the Committee has confirmed that it is discriminatory for states to refuse to legally provide for "certain reproductive health services" for women.[8] CEDAW also mandates states to take measures to ensure that women are able to "decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means" to do so on a basis of equality with men.[9] The CEDAW Committee has noted that states should ensure without discrimination the right to sexual health information, education and services for all women and girls.[10]

The CEDAW Committee has drawn particular attention to the health needs and rights of certain vulnerable groups, including migrant women, girl children, indigenous women, refugees and internally displaced women, among others.[11] Furthermore, CEDAW places an emphasis on the problems faced by rural women and calls on states to ensure that these women "have access to adequate health care facilities, including information, counselling and services in family planning…."[12] The CEDAW Committee has also noted that states should ensure "adequate protection and health services" for women in situations of armed conflict and women refugees[13] and urged states to take measures to address the "particular needs of women" during armed conflict and states of emergency.[14] Importantly, states' obligations under CEDAW apply equally to citizens and non-citizens, including refugees and stateless persons.[15]

International political commitments reaffirm states' obligations to guarantee sexual and reproductive rights in conflict and post-conflict settings. The ICPD Programme of Action was one of the first international consensus documents to recognize that displaced persons are particularly vulnerable to violations of their reproductive rights[16] and to mandate states to ensure that refugees and internally displaced persons (IDPs) receive basic healthcare services, including reproductive health services and family planning.[17] The outcome document for the ICPD five-year review reinforced states' obligations to provide for refugees' reproductive health needs[18] and urged the United Nations and donors to support governments in ensuring that refugees and "all other persons in humanitarian situations" receive appropriate sexual and reproductive healthcare and information.[19]

The U.N. Security Council has also been active in recognizing that women face particular vulnerabilities with regard to their sexual and reproductive rights in conflict and post-conflict settings. The Security Council's first resolution on women, peace and security (Resolution 1325), for example, stressed the urgent need to protect women from sexual violence during conflict and to end impunity for perpetrators.[20] The resolution also urged parties to armed conflict to fully respect international legal obligations concerning women and girls, including CEDAW,[21] and called upon all parties to take into account the particular needs of women and

girls in refugee camps and settlements.[22] A follow-up resolution (Resolution 1820) reinforced the urgency of protecting women from sexual violence and urged U.N. member states, U.N. entities and financial institutions to support and strengthen national institutions, including the health system, to provide "sustainable assistance" to survivors of sexual violence in conflict and post-conflict settings.[23] Finally, in Resolution 1889, the Security Council recognized reproductive health as a "particular [need]" of women in post-conflict situations,[24] and urged member states in post-conflict situations to work with women to develop concrete strategies to address their needs and priorities, including increased physical security and better socio-economic conditions.[25] Notably, the Security Council specifically identified sexual and reproductive health services and reproductive rights as a key part of addressing women's needs in post-conflict settings.[26]

Clearly, states have assumed both legal obligations and political commitments to promote women's sexual and reproductive rights and to address their particular needs in conflict and post-conflict settings. The following section examines many of the sexual and reproductive rights violations that women face in these contexts and that states are obligated to address.

II. Women's sexual and reproductive health in conflict and post-conflict settings

Conflict-affected women require and are entitled to the same comprehensive sexual and reproductive healthcare as women in other circumstances. Yet the evidence shows that many women in conflict and post-conflict settings have less access to these services and face increased vulnerability in terms of their sexual and reproductive health. This section describes many of the barriers that conflict-affected women face when attempting to exercise their reproductive rights and the devastating consequences for their health and lives.

In many conflict-affected settings, comprehensive sexual and reproductive health services are not available due to the destruction of health systems and the breakdown of services. In northern Uganda, for example, the long-running civil conflict led to the destruction of much of the health system, forced agencies such as the Family Planning Association of Uganda to shut down and left health units in IDP camps to struggle to meet the demand for reproductive health services.[27] This situation has had a real impact on women's access to sexual and reproductive health services in the north: according to data from 2006, for example, only 19 percent of the demand for contraceptives in northern Uganda was met compared to 68 percent in the capital, Kampala, and 37 percent for the entire population.[28] Unmet need for contraceptives contributes to unplanned pregnancies, a situation that is particularly hazardous for women in conflict and post-conflict settings where the health system is often not equipped to provide essential services such as antenatal care, skilled delivery services, emergency obstetric care, or post-abortion care. Unmet need for contraceptives has been linked to northern Uganda having the highest rates of unsafe abortion in the country, which in turn heightens women's vulnerability to maternal mortality.[29]

In other countries, healthcare facilities and medical personnel have been deliberately targeted by armed groups as a strategy of war, making it even more difficult for women to access sexual and reproductive health services.[30] Even when these services are available, conflict-affected women often find it difficult to access them due to the security situation. During Nepal's civil conflict, for example, women often faced road blocks, politically-motivated strikes, ambushes and destroyed roads while attempting to reach health facilities.[31] Many pregnant women died trying to reach a health facility to give birth,[32] while other women resorted to unsafe abortions and died from the resulting complications.[33] It is unsurprising, given women's lack of access to health services, that conflict-affected countries have some of the highest rates of maternal mortality in the world. In 2000, in the midst of the civil conflict, Nepal was estimated to have one of the highest maternal mortality ratios (MMR) in the South Asia region with 550 deaths per 100,000 live births.[34] In Afghanistan, where access to skilled delivery services is rare, the numbers are even starker, with the MMR estimated at 1,400 deaths per 100,000 live births. These numbers are in contrast to Sweden – a country with widespread, equitable access to sexual and reproductive healthcare – which has an MMR of 5 deaths per 100,000 live births.[35]

The insecurity of conflict and post-conflict settings can also increase women's vulnerability to contracting HIV or other sexually transmitted infections (STIs). Studies indicate that situations arising from conflict such as forced migration, increased sexual violence or risky sexual activity, commercial sex and the breakdown of health services often heighten the risk of infection.[36] Forced migration arising from conflict often brings together populations with differing prevalence levels, and interactions between these populations can lead to increased rates of infection. Thus, HIV prevention and treatment efforts aimed at refugee or IDP populations may be insufficient in protecting women's reproductive health if they do not also focus on the host communities and other populations with which these women interact.

Aid agencies play an important role in facilitating – or restricting –women's access to sexual and reproductive health services and information in conflict-affected settings. Prior to ICPD in 1994, humanitarian aid programs did not generally recognize reproductive healthcare as a priority. Since then, family planning and safe delivery services have become well-established in stable refugee settings and widely accepted as an important component of humanitarian response to crisis.[37] Availability of other services such as emergency contraception, safe abortion and post-abortion care, however, continues to lag behind.[38] Provision of safe abortion services in refugee settings can be complicated by restrictive abortion laws in the host country, but even when services are legal, some aid organizations may decline to provide them. One aid organization, for example, has refused to provide women with access or referrals for emergency contraception based on conscientious objection.[39] The unavailability or outright denial of these reproductive health services violates women's rights and threatens their health. Indeed, the United Nations Population Fund (UNFPA) has estimated that 25 to 50 percent of maternal deaths in refugee settings are due to complications of unsafe abortion.[40]

While humanitarian aid programs for refugees increasingly provide some reproductive healthcare services, studies suggest that service provision for internally displaced women is severely lacking.[41] In Colombia, women forced to flee their homes due to the civil conflict have extremely limited access to services and some of the worst reproductive health indicators in the country. Pregnant IDPs have the lowest rate of access to prenatal care in health centers at 44 percent, and 81 percent of sexually active young IDPs do not use any contraceptive method.[42] Adolescent IDPs are particularly vulnerable: one third of displaced adolescents are pregnant or parenting compared to about 20 percent of non-displaced adolescents.[43] Internally displaced women in Colombia generally live in extreme poverty, tend to have a low level of education and are often ethnic minorities. These factors, combined with their displaced status, make it extremely difficult for them to access sexual and reproductive health information and services.[44] Barriers to access for displaced women include lack of awareness and appropriate information regarding available sexual and reproductive health services; lack of services targeted to adolescents and unmarried or co-habiting women; censorship of sexual and reproductive health information; and inability to pay for services.[45]

It is important to note that conflict-affected women are a diverse group, and they do not all face the same barriers to exercising their reproductive rights. Many women are displaced by conflict but have different legal statuses (i.e. refugee, IDP, stateless person) based on their reasons for flight and final destination that can facilitate or limit their access to reproductive health services. Other women remain in their homes and are subject to the consequences of conflict while receiving few if any benefits of humanitarian aid. Women who are members of armed forces, rural women, indigenous women and war widows may also face particular violations of their sexual and reproductive rights due to conflict. After conflict, women's social and legal positions may continue to change – refugee women may become returnees, for example – in ways that affect their ability to exercise their sexual and reproductive rights. The CEDAW Committee's general recommendation is an excellent opportunity to highlight the diversity of women's experiences in conflict and post-conflict settings and to examine the application of the Convention in these different situations.

The CEDAW Committee's general recommendation provides an important opportunity to affirm the right of conflict-affected women to sexual and reproductive health services and information, to explicitly highlight the vulnerabilities and challenges faced by women during conflict and to recognize the range of services that women need and are entitled to under international law. The following section examines how state obligations around women's sexual and reproductive rights in conflict and post-conflict settings are critical to a discussion of the the themes laid out in the CEDAW Committee's concept note for the general recommendation.

III. Women's sexual and reproductive rights and intersecting issues

The protection and promotion of sexual and reproductive rights is an important part of addressing the gender specific impact of conflict and ending discrimination against women in all aspects of public and private life. This section explores the ways in which sexual and reproductive rights intersect with the key themes for the CEDAW General Discussion on women in conflict and post-conflict contexts: violence against women, access to justice, women's participation in peace-building processes and women's economic opportunities post-conflict.

A. *Violence against women*

Violence against women is a serious human rights violation with consequences for women's enjoyment of their full range of rights. Women are particularly vulnerable to sexual violence as community and family structures break down during conflict,[46] and research suggests that women and girls continue to face an increased risk of sexual violence after conflicts have ended.[47] Sexual violence encompasses a range of violations, including rape, sexual slavery, enforced prostitution and forced pregnancy, among others.[48] In conflicts ranging from Afghanistan to Liberia, young girls have been abducted and/or forced into marriage by armed groups. These girls face numerous sexual and reproductive rights violations as a result of abductions and forced marriage, including rape, enslavement, forced pregnancy, and increased risk of death or injury during childbirth due to a lack of access to health services.[49]

Sexual violence has serious implications for women's sexual and reproductive health and rights. All acts of sexual violence deprive women of their bodily integrity, and forced acts of marriage, impregnation and prostitution strip them of their ability to make autonomous decisions about their sexual and reproductive lives. Sexual violence in all contexts exposes women to greater risks of unplanned pregnancy and transmission of HIV or other STIs, but these risks are heightened in conflict and post-conflict settings where women may be exposed to frequent violations and preventive health services such as emergency contraception and prophylaxis for the prevention of HIV transmission are often lacking. Survivors often lack access to safe and legal abortion and in many conflicts women are forced to continue pregnancies resulting from rape or undergo unsafe abortions that threaten their lives and health.[50] Furthermore, sexual violence can cause severe reproductive injuries such as in the Democratic Republic of the Congo (DRC) where women have experienced traumatic fistula as a result of gang rape and other forms of sexual violence. [51] A fistula is an abnormal hole between a woman's reproductive tract and one or more of the woman's internal organs that renders her unable to control her bodily functions. Surgery to correct fistula can be expensive and difficult for survivors to obtain. Survivors of sexual violence in conflict settings have reported other reproductive health problems such as vaginal and reproductive-tract problems, STIs, difficult births and sterility, as well as mental health problems such as depression, low self-esteem, insomnia, anxiety and shame.[52]

Sexual violence can have particularly devastating sexual and reproductive health consequences for adolescent girls. Girls conscripted and/or forced to marry into an armed group, for example, often have no access to contraceptives to prevent pregnancy or maternal healthcare to ensure a healthy pregnancy and safe delivery. Pregnancy is dangerous for adolescents as their bodies are not yet fully developed. Indeed, girls aged 15 years and younger are five times more likely to die during child birth than adult women between the ages of 20 and 24 years old.[53] These factors combined place adolescent survivors of sexual violence at a serious risk of maternal death or injury in conflict settings.

The CEDAW Committee has recognized that wars, armed conflicts and the occupation of territories often lead to increased sexual assault of women, "which require[s] specific protective and punitive measures."[54] Access to sexual and reproductive healthcare is clearly a pressing need for women in conflict and post-conflict settings, particularly given their vulnerability to sexual violence and the range of adverse outcomes for their health and survival if services are not available and accessible. The Center urges the Committee in its general recommendation to elaborate on specific measures needed to protect the reproductive health and rights of these women, including access to family planning, emergency contraception, safe and legal abortion, services for the prevention and treatment of STI transmission, and treatment for fistula, among others.

B. *Access to justice*

In the wake of conflict, many countries have established transitional mechanisms aimed at securing justice for violations of human rights. Unfortunately, the violations experienced by women during conflict – particularly violations of their sexual and reproductive rights – are often overlooked or marginalized in these transitional justice processes. This marginalization is due at least in part to the fact that women's sexual and reproductive rights are often excluded from public discourse in conflict and post-conflict countries. It is clear, however, that under international law conflict-affected women are entitled to access justice for violations of their sexual and reproductive rights. Under CEDAW, states parties are required to ensure appropriate remedies to women who are subjected to discrimination contrary to the Convention and to provide reparations, which may include "monetary compensation, restitution, rehabilitation and reinstatement; measures of satisfaction, such as public apologies, public memorials and guarantees of non-repetition; changes in relevant laws and practices; and bringing to justice the perpetrators of violations of human rights of women."[55]

Truth-telling mechanisms such as truth and reconciliation commissions can help ensure access to justice by documenting a range of women's experiences during the conflict and recommending measures to redress violations of their human rights. Sierra Leone's Truth and Reconciliation Commission, for example, documented the impact of the country's civil conflict on women's reproductive health, including the prevalence of injuries due to sexual violence, high rates of

maternal mortality due to inability to access healthcare services, and unplanned and unwanted pregnancies due to sexual slavery and violence and the lack of available abortion services, among others.[56] The extensive documentation of reproductive rights violations established the basis for the Commission to recommend that the Government of Sierra Leone prioritize the provision of psychosocial support and reproductive health services to women affected by the conflict in its final report.[57]

Reparations programs are another mechanism for ensuring access to justice for women who suffered violations of their sexual and reproductive rights during conflict. Such programs often provide monetary compensation and rehabilitation services directly to victims and may also compensate entire communities affected by conflict through social investment programs.[58] Guatemala's national reparations program (*Programa Nacional de Resarcimiento*) included monetary compensation to survivors of torture, rape and sexual violence as well as psycho-social measures such as counseling and services for physical and/or mental rehabilitation.[59] Sierra Leone's reparations program has provided survivors of sexual violence with surgery to correct fistula, among other measures.[60]

Violations of women's sexual and reproductive rights during conflict often stem at least in part from discriminatory structures and practices that existed prior to the conflict. Thus, as the U.N. Special Rapporteur on violence against women has pointed out, reparations must strive to address the structural discrimination that created the conditions for these violations to happen in the first place.[61] Guarantees of non-repetition, which include law reform to eliminate laws, policies and practices that contributed to gross human rights violations during the conflict, can be powerful tools to address structural discrimination and transform women's positions in society.[62] In the context of sexual and reproductive rights violations, such measures could include law reform to prevent, punish and redress acts of sexual violence, to decriminalize vital reproductive health services such as abortion, or to guarantee women's right not to be discriminated against in access to reproductive health services due to poverty. (See Section C below for a further discussion of law reform in the post-conflict context.)

The CEDAW Committee, in the concept note for the general recommendation, recognizes that women face particular challenges in accessing justice in conflict and post-conflict settings. The Committee also acknowledges that reparations in the post-conflict period should be transformative in addressing gender-specific violations. The Center urges the Committee in its general recommendation to emphasize the need for state reparations programs to address the full range of sexual and reproductive violations that women face in conflict and to undertake law reform measures that will correct structural inequality and enable women to exercise their sexual and reproductive rights in the future free of discrimination.

C. *Women's participation in peace-building processes*

Women's participation in peace-building processes has been recognized as a priority in conflict and post-conflict settings. International political commitments such as U.N. Security Council Resolution 1325 and its follow-up resolutions emphasize the importance of women's full and equal participation in conflict resolution, peace-building and post-conflict reconstruction. CEDAW is also notable in the special importance that it places on women's participation in the public life of their country,[63] and the CEDAW Committee has expressed concern that crucial decisions around peacemaking and conflict resolution are often taken without women's participation.[64]

Women's participation in the peace-building process can set the stage for transformative measures to ensure women's equality and entrench human rights – including sexual and reproductive rights – in the post-conflict society. In Nepal, for example, women mobilized to ensure that gender issues were incorporated into the country's post-conflict interim constitution. The interim constitution states that no one shall be discriminated against for being a woman and guarantees women the right to reproductive health.[65] It also guarantees citizens the right to access basic health services free of cost, meaning that women should not be denied sexual and reproductive health services due to their inability to pay.[66] These constitutional provisions formed part of the basis for a recent Supreme Court case that found that the government must guarantee access to safe and affordable abortion services and that the right to an abortion is an essential component of reproductive rights.[67]

While the post-conflict period provides a key opportunity to secure sexual and reproductive rights in the legal framework, the guarantee of these rights is also an important pre-condition to women's participation in peace-building processes. Access to contraceptives and related information as well as the means to make autonomous decisions about when and if to have children empowers women to plan the number and spacing of their pregnancies and to safeguard their health. This in turn can facilitate women's full and equal participation in community activities and political processes.[68]

In contrast, violations of women's sexual and reproductive rights can severely hinder women's participation in public life. As discussed above, many conflict-affected women experience traumatic fistula as a result of sexual violence; other women may experience obstetric fistula due to lack of appropriate health services during delivery. Many survivors cannot afford the surgery that is required to correct the fistula, and the condition often leads to stigma and social rejection that prevent these women from participating in rebuilding their communities.[69] The CEDAW Committee in its general recommendation on violence against women recognized that family violence impairs women's ability to participate in public life on a basis of equality.[70] The Committee's general recommendation is a key opportunity for the Committee to similarly recognize that violations of women's sexual and reproductive rights have the potential to

significantly compromise women's physical and mental integrity and survival, and thereby pose a significant barrier to women's full and equal participation in conflict resolution, peace-building and post-conflict reconstruction.

D. *Women's economic opportunities in the post-conflict context*

As with women's participation in peace-building processes, the promotion of women's sexual and reproductive rights is an important pre-condition for ensuring women's economic opportunities in post-conflict settings. Indeed, as noted in Part I, U.N. Security Council Resolution 1889 recognizes that reproductive health and rights are key to addressing women's needs and priorities post-conflict, including the need for better socio-economic conditions.

Women in conflict and post-conflict settings are clearly vulnerable to violations of their sexual and reproductive rights that have long-lasting consequences for their health and their lives. Debilitating injuries such as fistula that are sustained during a delivery without access to quality obstetric services may make it physically and/or socially difficult for women to secure and maintain full-time employment. Additionally, unplanned pregnancies due to lack of access to contraceptives can place an undue physical burden on a woman and make it difficult for her to seek or hold a job. In these contexts, the state's failure to ensure access to comprehensive reproductive health services in both conflict and post-conflict settings can hamper efforts to promote gender equality and serve as a barrier to ending discrimination against women in the field of employment (art. 11). The Committee's concept note proposes that states must ensure an enabling environment for women's gender equality in formal and informal employment post-conflict; the upcoming general recommendation is a key opportunity for the Committee to recognize that the protection and promotion of sexual and reproductive rights in conflict and post-conflict settings is a vital part of cultivating this enabling environment.

IV. The role of donors in conflict and post-conflict settings

International human rights law traditionally focuses on the obligations that states owe to their citizens or to other persons within their jurisdiction. However, in many conflict and post-conflict settings, donor governments and their agencies play a significant role in funding health systems and services and influencing national-level policy through their aid decisions. This situation raises important questions about the accountability of these actors for ensuring that women are able to fully exercise their sexual and reproductive rights. For example, between 2003 and 2006, official development assistance (ODA) for reproductive health to 18 conflict-affected countries increased by nearly 78 percent but funding for direct reproductive health services excluding activities around HIV/AIDS, dropped by 36 percent.[71] During this period, less than two percent of the annual funding went to family planning services in these countries, further indicating the disparity in funding levels for different reproductive health services.[72] International funding for

reproductive health services in developing countries has come under political threat in the last decade as well. Under the presidency of George W. Bush, for example, the United States cut its contribution to UNFPA, forbid federal funds to go to international NGOs that provide abortion services or information as part of their reproductive health programs, and terminated financial support for the Reproductive Health Response in Crisis Consortium, a leading coalition of NGOs promoting women's reproductive health in conflict and other crisis settings.[73] Research indicates that these policies had devastating consequences for the sexual and reproductive rights of women in many developing countries.[74] These policies raise the question: if aid decisions hinder women's ability to exercise their sexual and reproductive rights free from discrimination, how are donor states to be held accountable?

Three international treaties – the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Rights of the Child (CRC) and the Convention on the Rights of Persons with Disabilities (CRPD) – recognize that the right to health includes a responsibility of international assistance and cooperation in health, including sexual and reproductive health.[75] The Committee on Economic, Social and Cultural Rights (ESCR Committee) has interpreted state obligations with regard to international assistance and cooperation and the right to health to mean that states must respect, protect and fulfill the right to health in other states. The obligation to respect this right is unqualified, while the obligations to protect and fulfill the right to health in other states are limited by the state's influence and available resources.[76] While CEDAW does not contain such a provision, the Committee has acknowledged obligations of international assistance and cooperation by recommending that states seek international assistance, as necessary, to comply with their obligations under the Convention.[77]

According to the CEDAW Committee, the obligation to respect the right to health means that states must refrain from obstructing action taken by women "in pursuit of their health goals".[78] In certain conflict or post-conflict countries where the state has limited capacity, the decision by one or more donor governments to withhold or dramatically reduce funding for certain legal sexual or reproductive health services could effectively make those services unavailable and thus obstruct women from exercising their right to make decisions about their sexual and reproductive health. Donor governments play a crucial role in health policy and funding in many conflict and post-conflict countries, making donor accountability a particularly pressing issue for the fulfillment of sexual and reproductive rights. The CEDAW Committee's new general recommendation provides an opportunity for the Committee to develop an analysis of donor accountability to ensure that women are able to exercise their rights free of discrimination in conflict and post-conflict settings.

V. Recommendations

The decision to draft a general recommendation on the protection of women's human rights in conflict and post-conflict settings is a welcomed opportunity for the CEDAW Committee to prioritize and further elaborate on states' responsibilities to respect, protect and fulfill women's sexual and reproductive rights in these contexts. The Center hopes that the Committee will consider the following recommendations during its General Discussion and in the process of drafting the general recommendation:

1. Recognize access to comprehensive sexual and reproductive health services and information as a fundamental and urgent need for women in conflict and post-conflict settings in order to prevent devastating health consequences and to promote their ability to lead full and healthy lives. Affirm that comprehensive sexual and reproductive healthcare includes access to family planning services, including emergency contraception; maternal health services including antenatal care, skilled delivery services and emergency obstetric care; safe and legal abortion; post-abortion care; prevention and treatment of HIV and other STIs; and care to treat injuries such as fistula arising from sexual violence, complications of delivery or other reproductive health complications, among others. Re-affirm that access to sexual and reproductive health information and the means to make autonomous decisions about one's sexual and reproductive life are fundamental rights of all women, including those in conflict and post-conflict settings.

2. Recognize that women in conflict and post-conflict settings face numerous and specific barriers to exercising their sexual and reproductive rights. Reaffirm that states are obligated to address these barriers as part of their obligations to respect, protect and fulfill human rights even during times of conflict and instability.

3. Affirm that the category of conflict-affected women does not just include refugees and IDPs but also women who are trapped in conflict zones or who are otherwise affected by the conflict. Urge states to collect information on and address the sexual and reproductive health needs of all groups of women affected by conflict.

4. Recognize the range of violence experienced by women during conflict and the particular sexual and reproductive health needs of survivors in conflict and post-conflict settings. Urge states to address these needs as part of efforts to prevent, punish and redress violence against women.

5. Emphasize the need for women to have access to justice for a full range of sexual and reproductive violations in the post-conflict period. Urge states to provide reparations to women who experienced violations of their sexual and reproductive rights during conflict, including medical services to address sexual and reproductive injuries sustained during the conflict. Urge states to undertake law reform measures to confront structural

discrimination and enable women to exercise the full range of rights protected in the Convention, including their sexual and reproductive rights.

6. Recognize sexual and reproductive rights as an important pre-condition for women's full participation in peace-building processes and in the economic lives of their communities.

7. Consider the important role of donor states and their agencies in promoting and protecting women's sexual and reproductive rights in conflict and post-conflict settings and further elaborate on their obligations in these contexts.

[1] For an overview of the international human rights framework around sexual and reproductive rights, *see* CENTER FOR REPRODUCTIVE RIGHTS, REPRODUCTIVE RIGHTS ARE HUMAN RIGHTS (2009), *available at* http://reproductiverights.org/sites/crr.civicactions.net/files/documents/RRareHR_final.pdf.

[2] *Programme of Action of the International Conference on Population and Development*, Cairo, Egypt, Sept. 5-13, 1994, para. 7.3, U.N. Doc. A/CONF.171/13/Rev.1 (1995) [hereinafter *ICPD Programme of Action*].

[3] Committee on the Elimination of Discrimination against Women, *General Recommendation No. 24: Article 12 of the Convention (women and health)*, (20th Sess., 1999), *in* Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, at 358, para. 1, U.N. Doc. HRI/GEN/1/Rev.9 (Vol. II) (2008) [hereinafter *CEDAW Committee, General Recommendation No. 24*].

[4] Committee on the Elimination of Discrimination against Women, *General Recommendation No. 28 (art. 2)*, para. 11, U.N. Doc. CEDAW/C/GC/28 (2010) [hereinafter *CEDAW Committee, General Recommendation No. 28*].

[5] *CEDAW Committee, General Recommendation No. 24*, *supra* note 3, paras. 14-17 (elaborating on states' obligations to respect, protect and fulfill rights protected in the Convention).

[6] Convention on the Elimination of All Forms of Discrimination against Women, *adopted* Dec. 18, 1979, art. 12, para. 1, G.A. Res. 34/189, UN GAOR, 34th Sess., Supp. No. 46, at 193, U.N. Doc. A/34/46, U.N.T.S. 13 (*entered into force* Sept. 3, 1981) [hereinafter CEDAW].

[7] *Id.* art. 12(2).

[8] *CEDAW Committee, General Recommendation No. 24*, *supra* note 3, para. 11.

[9] CEDAW, *supra* note 6, art. 16(1)(e).

[10] *CEDAW Committee, General Recommendation No. 24*, *supra* note 3, para . 18.

[11] *Id.* para. 6.

[12] CEDAW, *supra* note 6, art. 14(2)(b).

[13] *CEDAW Committee, General Recommendation No. 24*, *supra* note 3, para .16.

[14] *CEDAW Committee, General Recommendation No. 28*, *supra* note 4, para. 11.

[15] *Id.* para. 12.

[16] *ICPD Programme of Action*, *supra* note 2, para. 7.11.

[17] *Id.* paras. 9.22, 10.25.

[18] G.A. Res. S-21/2, *Key actions for the further implementation of the Programme of Action of the International Conference on Population and Development*, U.N. GAOR, 21st Sess., U.N. Doc. A/RES/S-21/2, at para. 29 (Nov. 8, 1999).

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[20] S.C. Res. 1325, paras. 10-11, U.N. Doc. S/RES/1325 (Oct. 31, 2000).

[21] *Id.* para. 9.

[22] *Id.* para. 12.

[23] S.C. Res. 1820, para. 13, U.N. Doc. S/RES/1820 (June 19, 2008).

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[26] *Id.*

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[39] The aid organization World Vision US has stated that they oppose any form of emergency contraception and will not refer women to clinics where it is offered. Françoise Girard & Wilhelmina Waldman, *Ensuring the Reproductive Rights of Refugees and Internally Displaced Persons: Legal and Policy Issues*, 26 INT'L FAM. PLAN. PERSP. 167, 171 (Dec. 2000).
[40] United Nations Population Fund, *Reproductive Health for Refugees and Displaced Persons in* STATE OF THE WORLD'S POPULATION (1999), *available at* http://www.unfpa.org/swp/1999/chapter3f.htm.
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[44] Mónica M. Alzate, *The sexual and reproductive rights of internally displaced women: the embodiment of Colombia's crisis*, 32 DISASTERS 131, 134-135 (2008).
[45] *Id.* at 137.
[46] *See* PHYSICIANS FOR HUMAN RIGHTS, WAR-RELATED SEXUAL VIOLENCE IN SIERRA LEONE: A POPULATION-BASED ASSESSMENT (2002), *available at* https://s3.amazonaws.com/PHR_Reports/sierra-leone-sexual-violence-2002.pdf (finding that one out of every eight household members reported one or more incidents of war-related sexual violence and that 53 percent of respondents reporting "face to face" contact with the Revolutionary United Front (RUF) rebels reported experiencing sexual violence); *see also* ACROSS THE LINES, *supra* note 33, at 45-56

(while statistics on the prevalence of sexual violence in Nepal during the civil conflict are not available, this report documents numerous incidents of sexual violence committed by parties to the conflict).

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[52] *See* Colleen Duggan et al., *Reparations for Sexual and Reproductive Violence: Prospects for Achieving Gender Justice in Guatemala and Peru*, 2 INT'L J. OF TRANSITIONAL JUST. 192, 195 (2008) [hereinafter *Reparations for Sexual and Reproductive Violence*].

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[56] SIERRA LEONE TRUTH & RECONCILIATION COMMISSION, WITNESS TO TRUTH: REPORT OF THE SIERRA LEONE TRUTH & RECONCILIATION COMMISSION, VOL. 3B, paras. 447-474 (2004).

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[58] *See Reparations for Sexual and Reproductive Violence*, *supra* note 52, at 206-07 (2008).

[59] *Id.* at 200.

[60] *In Sierra Leone, NaCSA Certifies Female War Victims*, AWARENESS TIMES, Mar. 17, 2011, *available at* http://www.peacewomen.org/news_article.php?id=3249&type=news (last visited June 29, 2011).

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