

# Nepal: Supporting Women Human Rights Defenders in Pursuing a Human Rights Agenda as Political Actors

A Briefing Paper



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### **I. Introduction**

1. In 2017, Nepal held its first local-level elections after almost twenty years. These elections were the first conducted under the new federal state structure established by the 2015 Constitution. While the Constitution mandates a more participatory mode of governance and greater social inclusion, parts of it – particularly its drawing of federal state boundaries - has also been criticized as reinforcing historical marginalization of Madhesis and ethnic minorities in the southern part of the country, the Terai.
2. These elections were also significant because of the unprecedented number of women who stood as candidates and won. Women in Nepal have experienced systemic discrimination for decades, especially those in rural areas, among ethnic minorities and marginalized groups. Because of special measures established in law, these elections presented them with the opportunity to break through barriers that have prevented them for decades from participating in political and public life.
3. Many of these women are women human rights defenders (WHRDs) who have been working to promote and protect human rights for decades. From 28 to 29 August 2017, the International Commission of Jurists (ICJ), with the cooperation of the National Alliance of Women Human Rights Defenders, organized a Regional Conference on Women Human Rights Defenders as Political Actors in Kathmandu.
4. There were 40 participants at the conference, all of whom were WHRDs recently elected to local bodies (villages and municipalities). They ran under the banner of the various political parties in Nepal. They were joined by Bushra Gohar, a former Member of Parliament in Pakistan, Ahmed Naaif, of the Maldivian Democracy Network, and Sherene Xavier, a filmmaker and WHRD from Sri Lanka.
5. It was the time that these newly-elected WHRDs gathered together to discuss their new roles since being elected. The discussions focused on

how the newly-elected WHRDs can continue advancing their human rights agenda in their new roles as elected officials.

6. This briefing paper lays out the key points that emerged during the conference, which addressed:
  - (a) the challenges WHRDs faced that prevent them from meaningfully participating in local governance; and
  - (b) the opportunities presented to the WHRDs in their new roles as political actors, and how they can use them to pursue their human rights agendas.

This briefing paper will also offer a set of recommendations for follow-up and future action. The recommendations emerged from the discussions and are aimed at supporting WHRDs in their role as political actors pursuing a human rights agenda.

## **II. Background on women's participation in public and political life in Nepal**

7. As early as 1990, when the first People's Movement (*Jana Andolan*) led to the establishment of a constitutional democracy (and ended the *Panchayat* system), the government established laws and measures to improve women's participation in many areas of public and political life. For a short time, there was an increase in women's representation in political bodies. More women, for instance, ran for office during the parliamentary elections in the 1990s. This, however, was not sustained because of the patriarchal attitudes and practices within the political system that subordinated women's participation.<sup>1</sup> In 2011, the CEDAW Committee, in its Concluding Observations on Nepal, welcomed the laws and temporary special measures aimed at increasing the political participation of women. However, it noted with concern that Nepal did not systematically apply these temporary special measures so that they would further the achievement of de facto or substantive equality between men and women, and ending discrimination.<sup>2</sup>
8. Women's representation during the parliamentary elections in 1991, 1994, and 1999, although slightly higher than elections in the past, was still at less than 6%.<sup>3</sup> Women tended to be placed as proxy candidates

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<sup>1</sup> UNFPA (2010) "State of the World Population 2010, from Conflict and Crisis to Renewal: Generations of Change", UNFPA: 88.

<sup>2</sup> Committee on the Elimination of Discrimination Against Women, *Concluding Observations on Nepal of the Committee on the Elimination of Discrimination against Women*, UN Doc. CEDAW/C/NPL/CO/4-5, 29 July 2011, para. 15.

<sup>3</sup> Kiran Chalise, Gender and Political Participation of Women in Nepal, 6 January 2017, available at <https://www.linkedin.com/pulse/gender-political-participation-women-nepal-kiran-chalise/>

for male politicians from privileged castes. Political parties, as gatekeepers in political decision-making, recruited and selected women candidates from within a limited circle of politically elite families. In 1999, many of the female members of parliament either belonged to high-caste families (e.g. Brahmans) or were closely related to male leaders of political parties.<sup>4</sup>

9. After the signing of the Comprehensive Peace Accord (CPA) in November 2006, Nepal saw a significant increase in women's representation in political bodies. The 2007 Interim Constitution was adopted, wherein political parties were required, in selecting candidates for the Constituent Assembly, to "take into account the principle of inclusiveness" and to "ensure proportional representation of the women, Dalit, oppressed communities/indigenous peoples, backward regions, Madhesi, and other classes."<sup>5</sup> The Interim Constitution also required that women account for at least one-third of candidates nominated.<sup>6</sup> This paved the way for the election of 197 women to the Constituent Assembly (CA) or 32.78% of the CA's membership in 2008. Many of the women came from a variety of backgrounds and represented marginalized communities, such as the Dalits, Janajatis, and Madhesi.<sup>7</sup>
10. On 15 September 2015, Nepal adopted a new Constitution that expressly stated that the principle of proportional inclusion will be adopted in all state mechanisms.
11. In January 2017, the parliament of Nepal passed the Local Level Election Act of 2017, which requires political parties to field female candidates for half of the executive posts (e.g., mayor/deputy mayor) and at least 40% of posts on local community councils. The law also stated that of the two seats reserved for women at the ward level, at least one seat must be reserved for a Dalit.
12. The 2017 local-level elections were held in three phases because of political disagreements about demarcation of local, provincial, and federal boundaries and the devolution of power to provinces.<sup>8</sup> The first phase was held on 14 May 2017, the second phase on 28 June 2017, and the third on 18 September 2017.

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<sup>4</sup> Asian Development Bank, *Overview of Gender Equality and Social Inclusion in Nepal* (2010), page 17.

<sup>5</sup> 2007 Interim Constitution of Nepal, Article 63(4).

<sup>6</sup> 2007 Interim Constitution of Nepal, Article 63(5).

<sup>7</sup> International Institute for Democracy and Electoral Assistance, *Women Members of the Constituent Assembly: A study on contribution of women in constitution making in Nepal* (2011), page 61.

<sup>8</sup> International Foundation for Electoral Systems (IFES), *Elections in Nepal: 2017 Local Elections, Frequently Asked Questions*, 10 May 2017, available at <http://www.ifes.org/faqs/elections-nepal-2017-local-elections>

13. During the first phase alone, approximately 20,000 women, including women human rights defenders, stood for elections for mayor, deputy mayor, and ward chairpersons. Most of the women candidates, however, were fielded by political parties for secondary positions, such as deputy mayor and vice chairperson. At least 92% of the candidates fielded for the mayoral and chairperson posts were men.

<b>Position</b>	<b>Male</b>	<b>Female</b>
Mayor/ Chair	245	12
Deputy Mayor/ Vice-Chair	24	231
Other positions	6903	4630

*Source: Election Commission of Nepal (as of 29 May 2017, results are of first round of elections only)*

### **III. International legal framework on the right of women to participate in political and public life**

14. The right to participate in all areas of political and public life is an essential prerequisite for the fulfillment of many other rights.<sup>9</sup> The International Covenant on Civil and Political Rights (ICCPR)<sup>10</sup> guarantees the equal right of every citizen to take part in the conduct of public affairs, including direct participation as well as participation through freely chosen representatives.<sup>11</sup> The ICCPR further obliges States to ensure that women and men are able to exercise such rights equally without discrimination.<sup>12</sup> The State must also more generally establish measures to “prohibit any discrimination and must guarantee all persons equal and effective protection against discrimination on any ground, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”<sup>13</sup> This includes that States are required “to act against discrimination by public and private agencies in all fields” and “should review their legislation and practices and take the lead in implementing all measures necessary to eliminate discrimination against women in all fields, for example by prohibiting

<sup>9</sup> Report of the Working Group on the issue of discrimination against women in law and practice, UN Doc. A/HRC/35/29 (2017), paragraph 30.

<sup>10</sup> Nepal acceded to the ICCPR in 1991.

<sup>11</sup> Article 25 of the International Covenant on Civil and Political Rights (hereinafter ICCPR).

<sup>12</sup> Articles 2(1) and 3 of the ICCPR. UN Human Rights Committee, General Comment No. 25 on the right to participate in public affairs, voting rights, and the right of equal access to public service (Article 25), UN Doc. CCPR/C/21/Rev.1/Add.7 (1996), paragraph 3. Human Rights Committee, General Comment No. 28, Article 3 (The equality of rights between men and women) (2000), para 29.

<sup>13</sup> Article 26 of the ICCPR.



discrimination by private actors in areas such as ... political activities.”<sup>14</sup> The fact that political parties may not themselves necessarily be State institutions does not exclude them from the reach of the State’s obligations under the ICCPR to act against discrimination.

15. The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)<sup>15</sup> establishes that States have the obligation to respect, protect and fulfill the right of women to non-discrimination and to the enjoyment of equality in all fields. The scope of CEDAW includes and goes beyond de jure discrimination, requiring nothing less than substantive equality, or women’s full de facto enjoyment of their rights. The Convention requires active measures to combat patriarchal attitudes and stereotypes that shape an environment in which discrimination against women is tolerated and normalized, both in the law and in the application of the law.<sup>16</sup>
16. Under the CEDAW, the right of women to equal participation in political and public life includes the right to “vote in all elections and public referenda” and to be “eligible for election to all publicly elected bodies.”<sup>17</sup> It also states that this right encompasses the right to participate in the formulation and implementation of government policy and “to hold public office and perform public functions at all levels of government.”<sup>18</sup>
17. The Committee on the Elimination of Discrimination against Women (CEDAW Committee), in its General Recommendation No. 23 (1997), emphasized that the term “political and public life” covers “the exercise of legislative, judicial, executive, and administrative powers; including all aspects of public administration and the formulation and implementation of policy at the international, national, regional, and local levels.”<sup>19</sup>
18. States Parties are obliged under the CEDAW to adopt temporary special measures “aimed at accelerating de facto equality between men and women.”<sup>20</sup> The CEDAW Committee explains that temporary special measures that have “a purely legal or programmatic approach” are not

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<sup>14</sup> Human Rights Committee, General Comment No. 28 (2000), para 31.

<sup>15</sup> Nepal ratified CEDAW in 1991.

<sup>16</sup> Report of the Working Group on the issue of discrimination against women in law and practice, UN Doc. A/HRC/35/29, paragraph 27.

<sup>17</sup> Article 7(a) of the Convention on the Elimination of All Forms of Discrimination Against Women (hereinafter CEDAW).

<sup>18</sup> Article 7(b) of the CEDAW.

<sup>19</sup> UN Committee on the Elimination of Discrimination Against Women (hereinafter CEDAW Committee), *CEDAW General Recommendation No. 23: Political and Public Life*, 1997, UN Doc. A/52/38, paragraph 5.

<sup>20</sup> Article 4(1) of the CEDAW.

enough to achieve women's de facto equality with men.<sup>21</sup> States Parties should also address the underlying causes of discrimination against women and of their inequality, taking into consideration that certain groups of women suffer from multiple forms of discrimination (i.e. based on race, ethnic or religious identity, caste, class, age, etc.). Specific temporary special measures should also be taken by States Parties to eliminate multiple forms of discrimination against women and the compounded negative impact on them.<sup>22</sup>

19. In 2012, the UN General Assembly dedicated a resolution to promote women's political participation to highlight the reality that women in every part of the world continued to be largely marginalized from the political sphere.<sup>23</sup>

#### **IV. Women's participation in public and political life during periods of transition**

20. During periods of political transition, States have the obligation, and the opportunity, to advance women's equal representation in reformed State institutions. Political transitions may also pose a danger of undermining or reversing human rights and women's gains in public and political life achieved under the previous regime.<sup>24</sup> In Nepal, gains achieved by WHRDs during the country's democracy movements continue to be undermined or weakened because of the deeply entrenched patriarchy and discrimination against women. As noted by the CEDAW Committee, "patriarchal attitudes and deep-rooted stereotypes that discriminate against women remain entrenched in the social, cultural, religious, economic, and political institutions and structures of Nepalese society."<sup>25</sup>

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<sup>21</sup> UN Committee on the Elimination of Discrimination Against Women (CEDAW), *General recommendation No. 25, on article 4, paragraph 1, of the Convention on the Elimination of All Forms of Discrimination against Women, on temporary special measures* (2004), paragraph 8, available at:

<http://www.refworld.org/docid/453882a7e0.html>

<sup>22</sup> UN Committee on the Elimination of Discrimination Against Women (CEDAW), *General recommendation No. 25, on article 4, paragraph 1, of the Convention on the Elimination of All Forms of Discrimination against Women, on temporary special measures* (2004), paragraph 12, available at:

<http://www.refworld.org/docid/453882a7e0.html>

<sup>23</sup> UN General Assembly, Resolution on women and political participation, UN Doc. A/RES/66/130 (2011), available at

[http://www.un.org/en/ga/search/view\\_doc.asp?symbol=%20A/RES/66/130](http://www.un.org/en/ga/search/view_doc.asp?symbol=%20A/RES/66/130).

<sup>24</sup> Report of the Working Group on the issue of discrimination against women in law and in practice, UN Doc. A/HRC/23/50 (2013), para. 32.

<sup>25</sup> Committee on the Elimination of Discrimination Against Women, Concluding observations of the Committee on the Elimination of Discrimination against Women, UN Doc. CEDAW/C/NPL/CO/4-5 (2011), paragraph 17.

21. During post-conflict transitions, such as in Nepal, reforms often focus on a narrow understanding of State-building that focuses on developing the institutional capacities and legitimacy of state institutions.<sup>26</sup> But even more importantly, it is during these post-conflict periods that State and non-State actors engage in the renegotiation of the balance of power, and that the identity of the nation is contested. In Nepal, where State and non-State institutions privilege men, these processes almost always exclude women. It is significant to note that women were not included in the 2006 peace negotiations.<sup>27</sup>
22. In 2011, the government adopted a National Action Plan (NAP) to implement UN Security Council Resolutions 1325 and 1820. The main objective of the NAP was to “ensure proportional and meaningful participation of women at all levels of conflict transformation and peace processes; and protection of women and girls’ rights.”<sup>28</sup> While the adoption of the NAP was welcomed by the CEDAW Committee, it noted with concern that “cases of sexual violence, including rape allegedly committed by both security forces and Maoist combatants during the conflict, are not being investigated and perpetrators have not been brought to justice.” The Committee also noted that women still face difficulties in accessing justice and that the statute of limitations for filing complaints for rape and other sexual violence further impede access to justice for the victims of these crimes.<sup>29</sup>
23. Furthermore, in a post-conflict situation where there is significant debate on the direction and identity of the nation, WHRDs often become vulnerable because their values, roles, and behaviors do not conform to the patriarchal institutions’ idealized imagery of womanhood.<sup>30</sup> Several participants at the conference revealed that their own communities often look at them with suspicion because of their identity and work as WHRDs. They are often viewed as “troublemakers”.
24. WHRDs in Nepal are more vulnerable to risks and face great challenges because of their work promoting and protecting human rights in this

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<sup>26</sup> Organization for Economic Cooperation and Development, “Concepts and Dilemmas of State building in fragile situations: from fragility to resilience,” *Journal on Development*, vol. 9, No. 3 (2008), p. 14.

<sup>27</sup> Women’s International League for Peace and Freedom, National Action Plan: Nepal, available at <http://peacewomen.org/nap-nepal>

<sup>28</sup> Ministry of Peace and Reconstruction, National Action Plan on the Implementation of UN Security Resolutions 1325 and 1820, 1 February 2011, page 11, available at [http://www.peacewomen.org/assets/file/nepal\\_-\\_nap.pdf](http://www.peacewomen.org/assets/file/nepal_-_nap.pdf)

<sup>29</sup> Committee on the Elimination of Discrimination Against Women, Concluding observations of the Committee on the Elimination of Discrimination against Women, UN Doc. CEDAW/C/NPL/CO/4-5 (2011), paragraph 35.

<sup>30</sup> Report of the Working Group on the issue of discrimination against women in law and in practice, UN Doc. A/HRC/23/50 (2013), para. 33.

period of political transition. As WHRDs, they suffer discrimination twice - for being women and for being human rights defenders, making them particularly vulnerable to violence by both State and non-State actors. Often, the main sources of discrimination, harassment, and violence against WHRDs are their own family members, male colleagues, and community members. Furthermore, the legitimacy, credibility, and importance of their work as WHRDs are not often recognized, even when they are operating in difficult and risky settings.<sup>31</sup>

25. The participants at the conference shared that the risks and challenges that they face have become even more acute now that they occupy positions of authority. In the context of Nepal, women who claim and occupy space beyond the domestic sphere are always vulnerable to threats, physical violence, and even death. However, they remain positive and recognize that their positions offer new opportunities. As one participant said, "We now have new roles, and so we also face new challenges."

## **V. Meaningful participation in local governance**

26. As mentioned above, the provisions in the Local Elections Act required political parties to field female candidates for half of the executive posts and 40% of local community council positions. This allowed many WHRDs to present themselves as candidates and get elected. During the conference, many of the participants said that their work as WHRDs made them well-known in their respective communities. They believe that political parties were drawn towards them because of their prominence in their communities. One of the participants, for instance, said that she worked for thirty years as a community leader before she was selected as a candidate by a political party.
27. However, when they assumed office, many of the participants said that it became clear to them that political parties never intended for them to meaningfully participate in the work of the local bodies to which they were elected.
28. The participants revealed that their male colleagues refuse to listen to them and that they are not involved in or allowed to contribute to decision-making processes. "Most of the time, we are ignored. We are not informed of or asked to attend meetings," said one participant. During events and ceremonies, only their male colleagues are greeted and recognized by the organizers. In some cases, the women are given

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<sup>31</sup> WOREC Nepal, Proceedings of the National Consultation with the UN Special Rapporteur on the situation of human rights defenders, November 2010, Kathmandu, Nepal.

only a single task, which is to offer arriving visitors ceremonial scarves. One participant shared that when she insisted that she be informed of the meetings so that she can participate in all of them, her male colleagues started scheduling discussions during the hours when women are unable to come, e.g. in the morning when women are still at home doing household chores or late at night when the men go out to drink.

29. Many of the participants noted the role of political parties in perpetuating discrimination against women and reinforcing patriarchal politics. "There is discrimination from the very beginning when political parties only allow women to run for secondary positions," said one participant. According to her, there was no political party that dared to upend the stereotype that women are subordinate to men. Most of the time, the women were included in the candidate lists to merely fulfill the requirements under the law. During the campaign, political parties do not provide female candidates the same amount of resources given to the male candidates. Female candidates, therefore, have to rely on their own funds and resources in order to conduct their campaign.
30. The UN Working Group on the issue of discrimination against women in law and practice has emphasized that "effective political participation of women requires not only admission to political institutions but also integration into their decision-making forums."<sup>32</sup> Effective political participation of women requires that they are integrated into positions with decision-making power across the spectrum of issues dealt with by key institutions to which they have been elected or appointed.<sup>33</sup>
31. Quota systems and other temporary measures that are usually adopted as part of the rebuilding of political systems and institutions after years of conflict and authoritarianism, such as in the case of Nepal, are necessary to achieve equality between men and women in political and public life. In the context of Nepal, it is also important to note that quotas introduced at the local level are vital for equality outcomes on the ground.<sup>34</sup> These, however, are not enough to ensure genuine political participation of women. The number of women in office alone will not be able to give an accurate picture of the advancement of gender equality in society.<sup>35</sup>
32. Complementary measures must be introduced to ensure the meaningful political participation of women. These complementary measures should integrally involve civil society organizations and should directly address the patriarchal context and women's historical disenfranchisement and

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<sup>32</sup> Report of the UN Working Group on the issue of discrimination against women in law and in practice, UN Doc A/HRC/23/50 (2013), paragraph 41.

<sup>33</sup> Ibid.

<sup>34</sup> Ibid, paragraph 40.

<sup>35</sup> Ibid, paragraph 44.

ongoing discrimination.<sup>36</sup> In the case of Nepal, and according to the testimonies shared by the participants at the regional conference, there is a need as well for measures aimed at demolishing stereotypes associated with women's gender roles for women to be able to fully participate in political and public life.

33. Political parties likewise have a significant role as "key determinants" in ensuring that women are able to participate equally in political and public life. They are the "gatekeepers in political decision-making". The UN Working Group on the issue of discrimination against women in law and practice observed that political parties "tend to be exclusionary towards women" and often, women are not able to access funding and financial resources from political parties for their election bids and campaigns." The Working Group therefore emphasizes that to ensure equal participation of women in political and public life, political parties must "guarantee rotation of power, accountability and parity membership between women and men on their governing boards."<sup>37</sup>

## **VI. Opportunities for WHRDs under the Local Level Governance Act**

34. Most of the WHRDs who participated in the conference were involved in issues related to women's access to health services and gender-based violence. Many of them intend to use their new roles as elected officials to address these issues. Certain provisions in the Local Level Governance Act, which was passed on October 2017, will allow them to pursue their advocacy in their new roles as political actors.
35. The Local Level Governance Act lays out the mandate and functions of newly-formed local bodies. If the recently-elected WHRDs are allowed to meaningfully participate in local governance, the new law could empower them further so that they can take the lead in addressing key human rights issues, especially women's human rights.
36. Notably, the law lays out its tasks and mandate of local-level judicial committees. Under the Constitution, the judicial committee is to be convened by "the Deputy Head of the Village Executive in every Village Council" and the "Deputy Mayor of the Municipality in every Municipality."<sup>38</sup> Because most of the women occupy these secondary positions, this means that most of the judicial committees throughout Nepal will be chaired by women. For the newly-elected WHRDs, their roles in relation to judicial committees are likely to present both challenges and opportunities.

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<sup>36</sup> Report of the UN Working Group on the issue of discrimination against women in law and practice, UN Doc. A/HRC/35/29 (2017), paragraph 37.

<sup>37</sup> Report of the UN Working Group on the issue of discrimination against women in law and practice, UN Doc. A/HRC/23/50 (2013), paragraph 76.

<sup>38</sup> Article 217 of the Constitution of Nepal.

37. The judicial committees, under the Local Level Governance Act, are authorized to settle or adjudicate specific kinds of cases,<sup>39</sup> and to act as a mediator in others.<sup>40</sup> The areas of competence of the judicial committees directly impact women's lives and the protection of their human rights. Cases of domestic violence may fall under the jurisdiction of the judicial committee,<sup>41</sup> as may disputes over child and/or spouse support, divorce between husband and wife, and defamation.
38. The expansive jurisdiction of these committees, including some criminal cases, raises significant human rights concerns. The law is clear, however, that the committees should not result in limiting access to the courts. For instance, the law provides that the filing of a case before the judicial committee does not prevent a case from being filed before a court if any of the parties wish to do so.<sup>42</sup> Furthermore, if mediation fails to resolve a dispute, the judicial committee shall advise the parties to submit the case to the relevant court, and transmit all the documents and evidence it has to that court.<sup>43</sup>
39. Some WHRDs viewed their role in relation to the judicial committees as an opportunity to address gender stereotyping in justice delivery. According to the CEDAW Committee, "stereotyping and gender bias in the justice system have far-reaching consequences on women's full enjoyment of their human rights." Stereotyping and gender bias of judges or adjudicators prevent women from accessing justice in all areas of the law, and has significant impact on women victims and survivors of violence. In many cases, judges or adjudicators hold rigid standards about what they consider to be appropriate behavior for women and penalize those who do not conform to these stereotypes. Stereotyping also has an impact on the credibility of the arguments and testimonies of women, as parties and witnesses. Such stereotyping can cause judges to misinterpret or misapply laws.<sup>44</sup>
40. Furthermore, a study conducted by the ICJ in 2013 revealed that many women in Nepal perceive formal authorities as ineffective in enforcing

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<sup>39</sup> Article 47(1) of the Local Level Governance Act.

<sup>40</sup> Article 47(2) of the Local Level Governance Act.

<sup>41</sup> Article 47(2)(d) provides that cases of physical assault wherein the accused could be liable to a maximum of one year imprisonment fall under the jurisdiction of the judicial committee. Under the Domestic Violence and Punishment Act of Nepal, perpetrators of domestic violence may be imposed the penalty of up to six months of imprisonment.

<sup>42</sup> Article 47(3) of the Local Level Governance Act.

<sup>43</sup> Article 47(4) of the Local Level Governance Act.

<sup>44</sup> Committee on the Elimination of Discrimination Against Women, General Recommendation No. 33 on women's access to justice, UN Doc. CEDAW/C/GC/33 (2015), paragraph 26.

laws on violence against women. Trust in the justice system is very low and most of the women surveyed by ICJ in that study believed that police and judges could be bribed.<sup>45</sup>

41. At the same time, it is crucial to note that the current provisions for the composition, operations, power and scope of jurisdiction of the committees raise questions about their consistency with international human rights law and standards. This includes in relation to “a fair and public hearing by a competent, independent and impartial tribunal established by law” (under Article 14 of the ICCPR), and the potential for discriminatory impacts often associated with such mechanisms that may arise despite the involvement of WHRDs, for instance if other actors within them reproduce gender or other forms of discrimination within their operations. The CEDAW Committee has, for example, highlighted a range of potential negative and positive impacts on the rights of women, from such mechanisms,<sup>46</sup> and has specifically recommended that States “[e]nsure that cases of violence against women, including domestic violence, are under no circumstances referred to any alternative dispute resolution procedure.”<sup>47</sup>
42. Gender-based violence is a severe issue in Nepal. It is common in rural communities, where most of the women are reported to be subjected to recurring domestic violence. Women in Nepal rarely seek assistance from any individual, group, or institution for the violence they have experienced.<sup>48</sup> In 2011, the CEDAW Committee expressed concern about the “continued prevalence of violence against women and girls, including

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<sup>45</sup> International Commission of Jurists (ICJ) and Center for Research on Environment, Health and Population Activities (CREHPA), A Study on Advancing Justice Sector Reform to Address Discrimination and Violence Against Women in Four Selected Districts of Nepal, November 2013, available at [http://crehpa.org.np/wp-content/uploads/2017/05/Baseline-Study-Justice-Sector-Reform-to-address-DVAW\\_English.pdf](http://crehpa.org.np/wp-content/uploads/2017/05/Baseline-Study-Justice-Sector-Reform-to-address-DVAW_English.pdf)

<sup>46</sup> See for instance Committee on the Elimination of Discrimination Against Women, General Recommendation No. 33 on women’s access to justice, UN Doc. CEDAW/C/GC/33 (2015), paragraphs 57 to 58, and 62 to 64. See also Joint general recommendation No. 31 of the Committee on the Elimination of Discrimination against Women/general comment No. 18 of the Committee on the Rights of the Child on harmful practices (CEDAW/C/GC/31-CRC/C/GC/18, 14 November 2014), paras 43, 44, 46, 55(b), 55(o).

<sup>47</sup> Committee on the Elimination of Discrimination Against Women, General Recommendation No. 33 on women’s access to justice, UN Doc. CEDAW/C/GC/33 (2015), paragraph 55(c).

<sup>48</sup> Population Division of the Ministry of Health and Population, Government of Nepal, Demographic and Health Survey of Nepal (2011), pages 258 to 262, available at <http://evaw-global-database.unwomen.org/-/media/files/un%20women/vaw/vaw%20survey/nepal%20vaw%20survey.pdf>



domestic violence, in particular against disadvantaged groups such as Dalit women.”<sup>49</sup>

43. The establishment of the judicial committees is a development that urgently calls for further analysis and guidance. To the extent that WHRDs will now have a role in relation to the judicial committees, they will need to consider how to address and respond to any inconsistencies with international human rights law and national rights protections, while at the same time recognizing and addressing the fact that some community members (including women) may prefer to bring cases to the judicial committees, including for reasons such as distrust, high costs, corruption, gender bias, and language barriers.
44. During the regional conference, most of the participating WHRDs were eager to learn more about the judicial committee and how they might be able to address concern for human rights in their roles as leaders of the committees. There is clearly an opportunity to develop the knowledge and capacity of these committees around human rights. This could be done, in part, through support to the WHRDs participating in the conference.

## **V. Recommendations**

As mentioned above, quotas or special measures embedded in law, are important but not enough to ensure the meaningful participation of women in public and political life. A host of complementary measures must be introduced addressing the patriarchal context and women’s historical disenfranchisement and ongoing discrimination.

The following recommendations for future work and follow-up emerged from the discussions among the WHRDs at the regional conference and are supported by the ICJ:

- The newly-elected WHRDs may develop and implement programmes for their colleagues at the local bodies, aimed at addressing gender stereotyping and patriarchal attitudes in these bodies;
- The newly-elected WHRDs could form a network among themselves for support and exchange of technical knowledge and information. A women’s caucus of newly-elected WHRDs at the local government level would be a good platform to consult with each other as they prepare making policy recommendations to their respective local bodies.

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<sup>49</sup> Committee on the Elimination of Discrimination Against Women, *Concluding Observations on Nepal of the Committee on the Elimination of Discrimination against Women*, UN Doc. CEDAW/C/NPL/CO/4-5, 29 July 2011, paragraph 19.

- The newly-elected WHRDs will engage in dialogue with political parties on increasing the participation of women in the parties' leadership and decision-making bodies.
- Further examination of the judicial committees is imperative. It is recommended that a study is undertaken to analyse the consistency of the judicial committees, in their current form, with international human rights law and standards, and national rights protections, including as regards fair trial rights, the independence of the judiciary and the human rights of women and children, and produce relevant recommendations.
- The newly-elected WHRDs may seek technical assistance from various civil society organizations, whether at the local, national, or international levels, on other topics relating to the day-to-day tasks in their office, e.g. budgeting or public administration skills.

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