



UNITED NATIONS COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST  
WOMEN

**71<sup>st</sup> Session of the CEDAW Committee**  
22 October – 9 November 2018

**SUBMISSION OF THE INTERNATIONAL COMMISSION OF JURISTS (ICJ)  
TO THE UN COMMITTEE ON THE ELIMINATION OF DISCRIMINATION  
AGAINST WOMEN IN VIEW OF ITS EXAMINATION OF THE SIXTH PERIODIC  
REPORT OF NEPAL UNDER THE CONVENTION ON THE ELIMINATION OF ALL  
FORMS OF DISCRIMINATION AGAINST WOMEN**

Submitted in 1 October 2018

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**SUBMISSION OF THE INTERNATIONAL COMMISSION OF JURISTS TO THE  
COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST  
WOMEN ON THE SIXTH PERIODIC REPORT OF NEPAL UNDER THE  
CONVENTION ON THE ELIMINATION OF ALL FORMS OF  
DISCRIMINATION AGAINST WOMEN**

1. During its 71<sup>st</sup> session, from 22 October to 9 November, the UN Committee on the Elimination of Discrimination against Women (the CEDAW Committee) will examine Nepal's implementation of and compliance with its obligations under the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in light of the State party's sixth periodic report under Article 18 of the Convention.
2. In this context, the International Commission of Jurists (ICJ) welcomes the opportunity to present the present submission to the Committee with a view to assisting its review of Nepal's human rights record under CEDAW.

**Executive Summary**

3. In the present submission, the ICJ has provided alternative replies to some of the issues raised in the List of Issues to be considered during the examination of the sixth periodic report of Nepal.<sup>1</sup> The present submission, therefore, considers the questions posed by the Committee to the Government of Nepal in the List of Issues, as well as other concerns that the organization has identified through its analysis of Nepal's compliance with its obligations under the Convention.
4. The ICJ is highly concerned about the failure of the Nepali authorities to ensure criminal accountability for serious crimes, including rape and other forms of sexual violence, during the conflict; and to ensure effective and meaningful participation by women in political and public life. The ICJ concludes with recommendations for steps that the Government of Nepal should undertake to comply with its obligations under the Convention and other relevant international law.

**IMPUNITY FOR CRIMES OF RAPE AND OTHER SEXUAL VIOLENCE  
COMMITTED DURING THE ARMED CONFLICT**

<p>List of Issues, paragraph 5: Please state the measures that have been taken to address impunity for crimes of rape and other sexual violence committed during the armed conflict and provide data thereon</p>
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*The Commission on Investigation of Disappeared Persons, Truth and Reconciliation Act (TRC Act 2014)*

4. On 11 May 2014, Nepal adopted the *Commission on Investigation of Disappeared Persons, Truth and Reconciliation Act (TRC Act)*, which amended the 2013 TRC Ordinance that was struck down by the Supreme Court after it found provisions of the law to be unconstitutional and in violation of international law and standards.<sup>2</sup>

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<sup>1</sup> Committee on the Elimination of Discrimination against Women (CEDAW Committee), 71st Session, 22 October – 9 November 2018, List of Issues and Questions in relation to the sixth periodic report of Nepal, CEDAW/C/NPL/Q/6.

<sup>2</sup> *Advocate Madhav Kumar Basnet and Others v. President, Interim Election Council and Office of Council of Ministers and Others*, Nepal Kanoon Patrika 2070 (BS) Issue 9, decision no. 9051,

5. The TRC Act established two bodies: the Truth and Reconciliation Commission and the Commission on Investigation of Disappeared Persons (CoID). Both are tasked, in part, with investigating human rights violations that occurred during the armed conflict from 1996 to 2006.<sup>3</sup>
6. Several organizations, including the ICJ, raised concern about provisions of the TRC Act that affect the independence and impartiality of the Commissions, and provide for an amnesty (or resolution through mediation) for serious crimes, including crimes under international law. Under Section 26, the Commission can recommend an amnesty for serious human rights violations, including torture, enforced disappearances, and crimes against humanity.<sup>4</sup> As such, this provision allowing for the possibility of an amnesty for gross human rights violation and crimes under international law is contrary to international law and standards.<sup>5</sup> However, in an important decision, on 26 February 2015, the Supreme Court declared certain provisions of the TRC Act unconstitutional and contrary to Nepal's obligations under international law. It ordered the Government of Nepal to amend the TRC Act so that it would be consistent with the Constitution, international law and standards, and previous rulings of the court.<sup>6</sup>
7. The ICJ and other organization expressed concern also in relation to Section 22 of the TRC Act as it allows for mediation even in the context of cases involving the commission of serious crimes. Moreover, it allows for the possibility of mediation even without ensuring the proper consent of victims.<sup>7</sup> Furthermore, the lack of transparency in the appointment and vetting processes set out under Section 3(5) do not provide adequate safeguards to ensure the independence and impartiality of the Commissions, making them vulnerable to political interference.<sup>8</sup>
8. The TRC Act includes "physical or mental torture" and "rape and sexual violence" in its enumeration of acts that constitute "gross violations of human rights."<sup>9</sup> It also defines "gross violations of human rights" to include any "inhuman acts inconsistent with the international human rights or humanitarian law or other crime against humanity."<sup>10</sup> This is a welcome development in terms of defining gross violations of human rights.
9. Pursuant to the TRC Act, the Truth and Reconciliation Commission (TRC) and Commission on Investigation of Disappeared Persons (CoID) were constituted

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decision date 2 January 2014. In this ruling the Supreme Court directed the government to enact new legislation on transitional justice, which would exclude any possibility of granting amnesties for gross human rights violations; comply with Nepal's international legal obligations; implement previous Supreme Court decisions; and be in conformity with the Comprehensive Peace Agreement 2006 and Interim Constitution 2007. The court further called on the government to enact legislation that criminalizes serious human rights violation, including acts of enforced disappearance and torture.

<sup>3</sup> Section 3 (1) of the Commission on Investigation of Disappeared Persons, Truth and Reconciliation Commission Act, 2071 (2014) (hereinafter, the TRC Act).

<sup>4</sup> Ibid at page 6.

<sup>5</sup> Section 26(2) of the TRC Act states: "Notwithstanding anything contained in sub-section (1), the Commission may not make recommendation for amnesty in the case of the perpetrator who was involved in rape and who was involved in other offence of grave nature, where sufficient ground and reason are not found to grant amnesty from the investigation of the Commission.

<sup>6</sup> *Suman Adhikari and Others v. the Government of Nepal, Prime Minister and Council of Ministers*, Nepal Kanoon Patrika 2073 (BS) Issue 6, Decision No. 9612, 26 February 2015.

<sup>7</sup> International Commission of Jurists, *Justice Denied: The 2014 Commission on Investigation of Disappeared Persons, Truth and Reconciliation Act* (May 2014), page 5, available at <https://www.icj.org/wp-content/uploads/2014/05/Nepal-TRC-Act-Briefing-Paper.pdf>

<sup>8</sup> Ibid at pages 9 & 10.

<sup>9</sup> Section 2(j)(6) of the TRC Act.

<sup>10</sup> Section 2(j)(9) of the TRC Act.

on 10 February 2015 with two-year mandates.<sup>11</sup> The TRC collected more than 63,000 complaints of human rights violations, including rape and other forms of sexual violence.<sup>12</sup> However, more than three and a half years after its establishment, the Commission has yet to take adequate measures to address the needs of the conflict victims, including the victims of rape and sexual violence.

10. In June 2018, the Government of Nepal released a draft bill that would amend the TRC Act. The ICJ, in a joint submission with Amnesty International and TRIAL International, expressed concern over the lack of meaningful consultation with stakeholders and civil society groups during the drafting process of the bill.<sup>13</sup> The ICJ also expressed concern regarding provisions of the bill (including provisions allowing for wide discretion to decline prosecution, a politically vulnerable process for the withdrawal of charges, and grossly disproportionate and inadequate sentencing provision) that are likely to lead to effective impunity in violation of well-established international law standards.<sup>14</sup>
11. In its preliminary comments on the draft bill, the ICJ also expressed apprehension about the failure to refer to “crimes against humanity” in the preamble, and in the sections of the draft bill providing definitions, and setting out the substantive mandates of the commissions. Such an omission demonstrates a “weakening commitment to stand against crimes against humanity and war crimes,” which are principal crimes under the Rome Statute of the International Criminal Court (ICC) and customary international law.<sup>15</sup>
12. Importantly, the language of the bill – in its current form and in the draft amendment – fails to adequately address rape and other forms of sexual violence, and remains inconsistent with international standards in several important respects.
13. Furthermore, under Section 30L of the draft bill, the Government may withdraw any case from prosecution, regardless of the gravity and nature of the crime. The ICJ recalls that in the past, cases have been withdrawn to shield politically connected individuals from criminal accountability.<sup>16</sup> Given the already hostile environment for victims, the provisions for withdrawal in the current bill create an even further disincentive for victims of sexual violence to come forward. This is particularly the case in light of the fact that there have been cases where women who experienced sexual violence during the armed conflict and their families were forced to withdraw their complaints because of life-altering threats.<sup>17</sup>
14. The draft bill proposes a “sentencing and alternative punishment scheme” pursuant to which perpetrators of crimes constituting “serious human rights violations” may be given leniency in both the form and duration of their

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<sup>11</sup> The mandate of both Commissions was extended twice; in February the mandate was extended for one year 2016 and in 20 January 2018 mandate for another one year was extended through an Ordinance.

<sup>12</sup> *TRC has received 60,298 complaint of human rights violations where as the CoID has received 3093 complaints of incidents of enforced disappearances. (Source: TRC and CoID)*

<sup>13</sup> Preliminary Comments jointly submitted by the International Commission of Jurists, Amnesty International, and TRIAL International, on the *Draft Bill to Amend the Act on Commission on Investigation of Disappeared Persons, Truth and Reconciliation, 2014* (20 July 2018), available at <https://www.amnesty.org/download/Documents/ASA3188172018ENGLISH.pdf>

<sup>14</sup> *Ibid.*

<sup>15</sup> *Ibid.*

<sup>16</sup> See: UN Office of the High Commissioner on Human Rights & the National Human Rights Commission of Nepal, *Legal Opinion, Remedies and Rights Revoked: Case Withdrawals for Serious Crimes in Nepal*, (June 2011), available at [http://nepal.ohchr.org/en/resources/publications/2011/2011\\_06\\_23\\_Case-Withdrawals\\_for\\_Serious\\_Crimes\\_in\\_Nepal\\_E.pdf](http://nepal.ohchr.org/en/resources/publications/2011/2011_06_23_Case-Withdrawals_for_Serious_Crimes_in_Nepal_E.pdf)

<sup>17</sup> UN Office of the High Commissioner for Human Rights, *Nepal Conflict Report* (2012) at p. 166, available at [https://www.ohchr.org/Documents/Countries/NP/OHCHR\\_Nepal\\_Conflict\\_Report2012.pdf](https://www.ohchr.org/Documents/Countries/NP/OHCHR_Nepal_Conflict_Report2012.pdf)

punishment if they “reveal the truth”, “express remorse”, “apologize to the victim”, and “promise not to commit the same acts.”<sup>18</sup>

15. The CEDAW Committee noted with concern in the past that “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 and in the media.”<sup>19</sup> Violence against women is so common in Nepal that many civil society groups report that it has become “socially accepted as normal”.<sup>20</sup> In this context, the practical application of the sentencing provisions of the draft bill will likely result in perpetrators of rape and sexual violence receiving sentences that are not commensurate with the gravity and nature of their crimes.<sup>21</sup>

*The 35-day limitation period for rape complaints under Nepal’s criminal laws*

16. Although rape is a criminal offence in Nepal, many women who experienced rape and sexual violence during the armed conflict have been denied access to justice because of the 35-day limitation period for filing complaints of rape provided for in Section 11 of the 1962 General Code (*Muluki Ain* 2020).<sup>22</sup> This creates an unacceptable and nearly insurmountable barrier, as it was almost impossible to file a first information report (FIR) during the armed conflict. In addition, feelings of shame and guilt, lack of trust in the courts and law enforcement, fear of reprisal, and the stigma attached to rape victims prevented women from reporting the crime.<sup>23</sup>
17. The CEDAW Committee has recommended the abolition of the 35-day of limitation period for filing rape complaints in the criminal laws of Nepal.<sup>24</sup> Recently, the UN Human Rights Committee, in a decision issued in the case of Purna Maya, who was raped by Nepal Army officers, similarly found that the 35-day limitation period is “an unreasonably short statutory period for bringing complaints of rape” and “flagrantly inconsistent with the gravity and nature of the crime and that it has a disproportionately negative effect on women.”<sup>25</sup> The UN Human Rights Committee also found the 35-day limitation period violated Article 2(3) of the International Covenant on Civil and Political Rights (ICCPR) on the right to an effective remedy.<sup>26</sup>

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<sup>18</sup> Section 29 of the Draft Bill to Amend the Act on Commission on Investigation of Disappeared Persons, Truth and Reconciliation, 2014. See also the International Center for Transitional Justice (ICTJ), *Comments on the Proposed Amendments to the TRC Act* (August 2018).

<sup>19</sup> CEDAW Committee, Concluding Observations: Nepal, UN Doc. CEDAW/C/NPL/CO/4-5 (11 August 2011) at para. 17, available at <https://undocs.org/CEDAW/C/NPL/CO/4-5>

<sup>20</sup> UN Office of the High Commissioner for Human Rights, *Nepal Conflict Report* (2012) at p. 164, available at [https://www.ohchr.org/Documents/Countries/NP/OHCHR\\_Nepal\\_Conflict\\_Report2012.pdf](https://www.ohchr.org/Documents/Countries/NP/OHCHR_Nepal_Conflict_Report2012.pdf)

<sup>21</sup> Preliminary Comments jointly submitted by the International Commission of Jurists, Amnesty International, and TRIAL International, on the *Draft Bill to Amend the Act on Commission on Investigation of Disappeared Persons, Truth and Reconciliation, 2014* (20 July 2018), available at <https://www.amnesty.org/download/Documents/ASA3188172018ENGLISH.pdf>

<sup>22</sup> See Section 11, Chapter 14 on Rape, General Code (*Muluki Ain*) which states: “if a suit on the matter of rape is not filed within thirty-five days from the date of the cause of action, the suit shall not be entertained” available at: <http://lawcommission.gov.np>

<sup>23</sup> UN Human Rights Committee, *Views adopted by the Committee under Article 5(4) of the Optional Protocol, concerning communication No. 2245/2013*, UN Doc. CCPR/C/119/D/2245/2013 (23 June 2017), para. 3.6.

<sup>24</sup> See Concluding Observation of the Committee on the Elimination of Discrimination Against Women on Nepal, UN Doc. CEDAW/C/NPL/CO/4-5 (2011) Para 20 (c), available at: <http://www2.ohchr.org/english/bodies/cedaw/docs/co/CEDAW-C-NPL-CO-4-5.pdf>

<sup>25</sup> UN Human Rights Committee, *Views adopted by the Committee under Article 5(4) of the Optional Protocol, concerning communication No. 2245/2013*, UN Doc. CCPR/C/119/D/2245/2013 (23 June 2017), para. 12.5.

<sup>26</sup> *Ibid.*

18. On 11 July 2008, the Supreme Court of Nepal ordered the government to amend the 35-day limitation period, calling it “unreasonable”, “unrealistic”, and an impediment to access to justice for victims of rape.<sup>27</sup> The 35-day period was subsequently extended to six months from the date of the commission of the crime.<sup>28</sup> More recently, the newly-enacted Country Penal (Code) Act 2017 again extended the limitation period for filing rape complaints to one year.<sup>29</sup> Despite this extended period, victims of rape during the armed conflict would still be unable to file a case against perpetrators because these acts have occurred more than a decade ago.

### **PARTICIPATION IN POLITICAL AND PUBLIC LIFE**

List of Issues, paragraph 12: Please provide information on the representation of women in high-level decision-making positions, and the specific measures that the State Party is undertaking to address their underrepresentation.

19. On January 2017, the Parliament 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 chairperson/vice-chairperson) 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.
20. In 2017, more than 20,000 women, including women human rights defenders, stood for local level elections as mayor, deputy mayor, ward chairperson and member.
21. While this was a positive step forward for women’s political participation, the results of the election illustrated that there remain significant impediments to women taking on meaningful leadership roles and exercising political power. Most of the women candidates were fielded by political parties for secondary positions, such as deputy mayor and vice chairperson. 97.61% men were elected for the mayoral and chairperson posts and women were limited to only 2.39%. . The total representation of women in local level is 40.95% whereas male representation is 59.05%. (See table below)

<b>Position</b>	<b>Male</b>	<b>Female</b>
Mayor/Chair	735	18
Deputy Mayor/Vice-Chair	53	700
Total elected in local level	20,690	14,351

(Source: Election Commission of Nepal)

22. In August 2017, the ICJ, in collaboration with the National Alliance of Women Human Rights Defenders, organized a conference on Women Human Rights Defenders as Political Actors, in Kathmandu, Nepal.<sup>30</sup> The participants at the conference were women human rights defenders who had been recently elected to local government posts. Many women human rights defenders were elected because their work was well-known in their communities. However, when the

<sup>27</sup> *Sapana Pradhan Malla and Others v. the Government of Nepal, Ministry of Law, Justice and Parliamentary Affairs and Others*, Nepal Kanoon Patrika 2065 (BS), volume 11, Decision no. 8038.

<sup>28</sup> Amended by the 2015 Act to amend provisions of law in Nepal in order to maintain Gender Equality and End Gender-Based Violence (Published in Nepal Gazette on 1 October 2015)

<sup>29</sup> See Section 229 of the Country Penal (Code) Act, 2017, came into force from 17 August 2018.

<sup>30</sup> International Commission of Jurists, *Nepal: women as political actors*, 29 August 2017, available at <https://www.icj.org/nepal-women-human-rights-defenders-as-political-actors/>

women assumed office, it became clear to them that the political parties never intended for them to meaningfully participate in the work of the local bodies to which they were elected.<sup>31</sup>

23. The women human rights defenders revealed that their male colleagues would exclude them from decision-making processes. "Most of the time, we are ignored. We are neither informed nor asked to attend meetings," said one woman human rights defender. The newly-elected women political actors would be assigned primarily ceremonial tasks, such as offering visitors ceremonial scarves at public events.<sup>32</sup>
24. Women human rights defenders emphasized the role of political parties in perpetuating discrimination against women, by allowing women to run only for secondary positions (i.e. deputy mayor). It appears that women were included in the candidate lists merely to fulfill the requirements under the law. Women human rights defenders also revealed that during the campaign, female candidates would often have to rely on their own funds because political parties would not provide them with the same resources as they would for male candidates.<sup>33</sup>
25. According to the UN Working Group on the issue of discrimination against women in law and practice, "effective participation of women requires not only admission to political institutions but also integration into their decision-making forums."<sup>34</sup> Quota systems and other temporary measures are necessary to achieve equality between men and women in political and public life, but they are not enough. Complementary measures must be introduced to ensure the meaningful participation of women and they should directly address the patriarchal context and women's historical disenfranchisement and ongoing discrimination.<sup>35</sup>
26. Political parties have a key role in ensuring that women are able to participate equally and meaningfully in political and public life. The UN Working Group on the issue of discrimination against women in law and practice noted how political parties "tend to be exclusionary towards women", and that women are not able to access funding and financial resources from political parties for their election bids and campaigns. The Working Group therefore recommended that political parties must "guarantee rotation of power, accountability and party membership between women and men on their governing boards."<sup>36</sup>

## **RECOMMENDATIONS**

27. Against the information discussed above, as well as in light of the thematic areas considered in this submission, the ICJ considers that the Government of Nepal should implement the following recommendations in order to fulfill its international legal obligations under CEDAW:

### *On the Commission on Investigation of Disappeared Persons, Truth and Reconciliation Act (TRC Act)*

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<sup>31</sup> International Commission of Jurists, *Nepal: Supporting Women Human Rights Defenders in Pursuing a Human Rights Agenda as Political Actors*, 8 February 2018, para. 27, available at <https://www.icj.org/wp-content/uploads/2018/02/Nepal-WHRD-Advocacy-Analysis-brief-2018-ENG.pdf>

<sup>32</sup> Ibid at para. 28.

<sup>33</sup> Ibid at para. 29.

<sup>34</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), para. 41.

<sup>35</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>36</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.

- (i) Amend the 2014 TRC Act in line with the Supreme Court rulings and international law and standards on transitional justice in order to ensure truth, justice and reparation to conflict victims, including women who experienced sexual and gender-based violence;
- (ii) Ensure that amnesty, pardon and case withdrawal will not be used as tools to evade criminal accountability for crimes under international law, including gross human rights violations and serious violations of international humanitarian law;

On the limitation period for filing rape complaints under Nepal's criminal laws

- (iii) Take immediate measures to abolish the limitation period for filing complaints of rape and other sexual violence during the conflict to ensure women's access to justice; and

On participation of women in political and public life

- (iv) Ensure the meaningful participation of women in public and political life by not only establishing quotas and special measures in Nepal's laws, but also establishing complementary measures that directly address the patriarchal context and women's historical disenfranchisement and ongoing discrimination.