##

**Shadow Report Submitted to the**

**Human Rights Committee, in its 131th session for the Country**

**For the adoption of the List of Issues Prior to Reporting on the**

**Federal Democratic Republic of Nepal**

(01 Mar 2021 - 26 Mar 2021)

**INTRODUCTION**

This document is submitted to the Human Rights Committee by Ms. Pratima Gurung on behalf of the National Indigenous Disabled Women Association Nepal (NIDWAN), Independent Living Center (CIL, Kathmandu), Nepal Disabled Women Association (NDWA) and Nepal Indigenous Disabled Association (NIDA).

**METHODOLOGY:**

The report is prepared primarily based on the secondary data supplemented by partial primary data collected by NIDWAN from April to Dec 2020 through its member organizations representatives at federal, province and local levels by the focal persons and also in the 5 days National consultation workshop on Impact of COVID held from 5th Dec-11 Dec 2020. It also included telephone interview, formal and informal discussions website, social media and statements. Similarly, CIL Kathmandu have also collected information using same methods on the thematic areas they are working.

## 1) Non Discrimination:

The 2015 Constitution of Nepal obligates inclusive and proportional representation provision to address marginalized groups including person and women with disabilities, indigenous, Dalit, Madhesis, Muslims and others. However, there is no provision addressing multiple and intersectional discrimination, which is commonly faced by members of those marginalized groups, including persons with disabilities. The concluding observations of the CEDAW Committee and of CRPD Committee clearly states that Nepal has to formulate policies to address multiple and intersectional discrimination.[[1]](#footnote-1)

The preamble of the Act 2017 Disability Act has explicitly aimed at prohibiting any form discrimination against persons with disabilities to empower them by securing their civil, political, economic and cultural rights. In relation to this, section 7 provides that in addition to the rights secured under the Act, persons with disability shall have the right to enjoy all other rights provided to other persons, in an equal footing. However, person with disabilities from marginalized groups (especially those with intellectual disabilities and those with psychosocial disabilities, autistic persons, and persons from ethnic, Dalit, Madhesi and Muslim communities) are still facing challenges to the enjoyment of their basic rights like right to health, education, employment, services and their right to self-dignity.[[2]](#footnote-2)

Similarly, Section 8(1) secures human rights in political, economic, social and cultural sectors and fundamental freedom of the persons with disabilities; it also incorporates the denial of reasonable accommodation as a form of discrimination. However, there is huge lack of understanding on reasonable accommodation and it is usually taken as extra benefit, instead of a right of persons with disabilities.

Section 8(2) prevents discrimination of any kind in using any form of publicly provided facilities such as admission in educational institution, borrowing loan or any undertaking any form of financial transaction in bank and financial institution, employment selection processes. Section 8(3) prevents discrimination of any kind from family members in issues of partition; care to be provided and so on. Section 8(4) outlaws any form of discrimination in entering public places/ buildings. Section 21(5) provisions that educational institutions should not discriminate person with disabilities in extra-curricular activities, access and distribution of education materials. Similarly, section 38 of the Act has envisioned of a National Disability Direction Committee, which will be responsible for monitoring rights & facilities of the person with disabilities as well as for carrying out protection and promotional activities to effectively ensure the rights of person with disabilities.

However, all these rights mentioned in the Act are not respected nor implemented in practice. Persons with disabilities are not able to exercise their social, economical, political, cultural and other rights including their effective meaningful participation in both public and private sphere. The recent Act is a positive step forward in many areas, but it remains neither implemented nor taken into account.[[3]](#footnote-3) The National Disability Direction Committee has been recently formed but has not been able to function effectively to protect and promote the rights of person with disabilities.[[4]](#footnote-4)

Additionally, section 45(4) requires the three tiers of government to secure a dignified life of persons with disabilities. Allocation of budget, programs, skills and rehabilitation programs to groups facing double and multiple discrimination like women with disabilities have been prioritized from MoWCSW but such measures and programs are not focused to groups facing intersectional discrimination including on the basis of caste, ethnicity, and indigenous identity till today.[[5]](#footnote-5)

Reports indicate most cases of discrimination affect more than one identity layer, which signifies that the majority of human rights violations in this field are intersectional.[[6]](#footnote-6) In this regard, Nepal has diversity in terms of different ethnic groups, language, culture, religion and geography so there are individuals with multiple and intersecting identities. This has been continuously reflected in the concluding observation of different UN Treaty Bodies (CEDAW- 2011, CESCR- 2014, 2007, CCPR-2014, CRC-2016, CEDAW 2018 and CRPD 2018) to the government of Nepal. The CRPD Committee in its concluding observation to states recommends in para 9 and 10 about the multiple forms of discrimination, violence against women and girls with intellectual, psychosocial disabilities, autistic persons, persons from ethnic, Dalit, Madhesi and Muslim communities. Different committees have also encouraged Nepal to: adopt temporary special measures[[7]](#footnote-7) and measures to address domestic violence against disadvantaged groups,[[8]](#footnote-8) prioritize comprehensive programs like collection of disaggregated data[[9]](#footnote-9), increase the low representation of dalit and indigenous women high-level decision-making in all areas of public service,[[10]](#footnote-10) and the representation and active efforts to promote the participation of these groups in the Constituent Assembly,[[11]](#footnote-11) to establish concrete goals and time tables[[12]](#footnote-12) and strengthen the special efforts to achieve universal education to dalit and indigenous and disadvantaged girls.[[13]](#footnote-13)

**We thus request the Human Rights Committee to:**

a) Ask the State on measures to review the 2017 Act and 2020 Disability Regulations to include recognition and consideration to the condition of groups facing multiple layers of discrimination like indigenous women with disabilities and other person with disabilities, including other marginalized groups so that the Act is fully in line with human rights models of disability enshrined in the Convention.

b) Consult the State on measures ensure systematic and meaningful consultation with organizations of person with disabilities including indigenous peoples and other marginalized groups in development of all laws and policies related to their lives.

c) Ask the State about measures to implement law and policies, protection from discrimination for person with disabilities, with the same standard for all other social groups, for implementation in practice of reasonable accommodation, and for the adoption of affirmative actions for indigenous peoples with disabilities including minority groups.

d) Consult the State on measures to review legislation and normative regulations on reasonable accommodation and universal design to ensure they apply to all rights guaranteed by the Convention.

## 2) The impact of the COVID19 pandemic on the rights of persons with disabilities to be included in the community and access to information, to their personal integrity and to be protected from violence

The Article 19 (c) of UNCRPD, Constitution of Nepal 2015 Part 3 Article 16 (1) Article 35 (3), Article 39(9), the Disability Rights Act 2017 Chapter 4(19)(2) and the Rules on the Rights of Disabilities Chapter 8 (37) ensure of human right of person with disabilities living in a community with dignified status. In the midst, the UN COVID 19 Brief Report - May states that the global crisis is deepening pre-existing inequalities, exposing the extent of exclusion and highlighting that work on disability inclusion is imperative.[[14]](#footnote-14)

People with disabilities in Nepal had no disability inclusion intervention during the pandemic and there was lack of food, accessible means of communication for deaf, hard of hearing, intellectual, spinal cord injury and indigenous peoples with disabilities.[[15]](#footnote-15) Basically for indigenous person with disabilities access to mother tongue/native/local language is still not considered as disability inclusion.[[16]](#footnote-16) There were limited reliable, accurate information, data, facts and figures on person with disabilites, personal assistance system, and medical support, WASH facilities, limited participation and consultation in COVID response putting the human rights in peril during the pandemic.[[17]](#footnote-17)

There was lack of local government coordination with organizations of persons with disabilities from underrepresented groups and local community leaders. Bureaucratic barriers and processes prevented especially marginalized groups like single women, women with disabilities, Indigenous, Dalit, Madhesis persons with disabilities from being counted and included in relief efforts, which resulted in starvation, death, and prevention of passing on intergenerational knowledge.[[18]](#footnote-18) Quarantine beds and spaces build for COVID measures don't have provision of safety measures, enough beds and proper treatment.[[19]](#footnote-19)

In addition, people with visually impaired were denied of accessing to bank services like opening bank account, withdrawing the money, using ATM services and there was huge discrimination to them during pandemic and that exist till now. The self-isolation and quarantine ward were not gender, disability inclusive and there was no mechanism for PCR test and other services provided to person with disabilities.[[20]](#footnote-20)

Marginalized groups including person with disabilities and indigenous women have reflected limited access to water, food, healthcare, and many other services*.* In the situation, they lack sufficient water to cooking food, frequent hand wash to maintain hygiene and sanitation required for fighting COVID-19 has become more challenging. They are worried about water rather than safeguarding themselves from COVID 19 at this season.[[21]](#footnote-21) The Kathmandu Post June 9, 2020 reports, ‘Chepang face a Humanitarian Crisis’[[22]](#footnote-22)as the impact of the lockdown on vulnerable communities does not appear on the government’s radar.

Similarly, people with hemophilia like Pushpa Lal Tamang, who lives in rural part of country, has been worrying as he has shortages of those things which can be life threatening for him. He has no other option rather to give up his life if the bleeding does not stops itself. [[23]](#footnote-23)Likewise there are more than 563 cases of hemophilia cases in Nepal. In addition, women with disabilities have specific requirements based on their impairments. For Kanchi Maya Tamang, from Nuwakoth as spinal cord injury, life is expensive for and she faces aggravated forms of mental health conditions. There are about three hundred women and girls with spinal cord injuries[[24]](#footnote-24) who are facing similar challenges and 45% person with disabilities are in the urgent need of hygiene materials such as catheter, tube, mask, sanitizer, urine bag, diaper etc.[[25]](#footnote-25)

The National Federation of Disabled Nepal (NFDN) survey reflects that 60.34% persons with disabilities are in need of relief materials; only 45.30% of them have confirmed receiving it whereas 54.69% are still out of the access to relief packages. 62% of Red Disability Card holder (“severe” types of impairments) and Blue Disability Card holder (moderate disability) are still excluded from the relief package. In addition, 40.08% persons with disabilities have lost their source of income and 19.89% think that they are going to lose in near future. Similarly, 48.68% women with disabilities and 51.32% men with disabilities have lost their jobs[[26]](#footnote-26)

Furthermore, people with disabilities experience intersectional and multiple discrimination as a result of their gender, age, ethnicity, race, class, sexual orientation, origin, location, and legal status, among other factors, and carry a heavier burden of the immediate and long-term economic and social consequences of the pandemic.[[27]](#footnote-27) There has been increasing rate of violence and discrimination against women with disabilities both in public and private sphere like. It has been discussed and reported to us in Weekly Discussion Series conducted by NIDWAN that many house owners have denied and abused peoples with disabilities and indigenous women with disabilities repeatedly and forced them to leave their house during pandemic. Some of them are infected by virus and they did not disclose themselves due to the fear of forcibly leaving the house. Among them, there is the case of a woman that, while protecting herself, had an accident leading her to more serious impairment, acquiring as well new impairments.[[28]](#footnote-28)

Similarly, the allegation of high rates of violence and rape cases incurred during pandemic have not been investigated properly and the victims not granted justice, like in the case of a 54 years old man who raped a ten years old girl with disability from a marginalized group during the lockdown in Rautahat district. The case has been registered but no effective action has been taken.[[29]](#footnote-29) Similarly, an eight years old girl from an indigenous group has been rapped but the incident report states that she fell down from the tree.[[30]](#footnote-30) Equally, a 31-years old woman from Lamkichuwa Municipality-1was gang-raped while she was in quarantine and no intervention was taken during the pandemic.[[31]](#footnote-31) Issues of mental heath, suicide, terror, fear have increased and there was news on the challenges faced by marginalized groups by marginalized groups.[[32]](#footnote-32)

**We thus request the Human Rights Committee to:**

1) Ask the State on measures to review the mechanisms to address discrimination faced by persons with disabilities and groups with multiple and intersectional identities in exercising their rights, in particular to their personal integrity?

 2) Consult the State on measures to enhance systems to investigate, sanction and remedy violations to the fundamental human rights of marginalized groups during COVID and other emergencies?

3) Ask on measures to ensure and implement the COVID or other emergency response and recovery mechanism to address the needs of all person with disabilities including under represented groups like women and girls with disabilities, with intellectual disability, with down syndrome, with psychosocial disability, deaf, hard of hearing, deaf blind, persons with severe spinal cord injury and indigenous peoples with disabilities, among others.

4) Consult the State on measures to implement effective access to justice mechanism for the victims and punishment to perpatrators of abuses and violations at all levels.

5) Consult the State on measures to undertake a thorough review of current periodic plan, policies and under the Disability Act and Regulation to include substantive programs for women with disabilities including indigenous women, Dalit and other marginalized gropus in line with UNCRPD, UNDRIP, SDG to address gender equality and equity and combat higher violence and abuse against women and girls with disabilities, especially in the current context of COVID19.

## 3) Implementation of several human rights instruments:

Nepal having ratified a series of human rights treaties and a member state of the United Nations, is obligated to abide by the principles of the conventions and uphold the values of fundamental human rights and ensure equal rights of men and women. The Charter of the UN further imposes a duty on member states to promote “universal respect for and observance of human rights and fundamental freedoms of all without distinction as to race, sex, language or religion.[[33]](#footnote-33)

Article 51(b)(3) of the Constitution of Nepal, 2015 obligates the state to pursue policies related to implementing international treaties and agreements to which Nepal is a state party. The CRC, CEDAW, UNCRPD including all other treaties are connected with the human rights of peoples with disabilities and the Disability Rights Act 2017 and Regulation 2020 mentions about the effective implementation of the UNCRPD. The CRPD committee in para 49, 50, 51, 52 and 55 refers to the effective implementation of all human rights instruments and CRPD but there has no such progressive initiatives and consultation from the government of Nepal. The Disability Direction Committee has been formed according to Disability Act but the committee has not been able to effectively implement anything, as no meeting till now has been held.

**We thus request the Human Rights Committee to:**

1) Consult the State on measures for the effective implementation and updates on the Concluding observation of UNCRPD, CEDAW, CRC, CERD and other agreed international instruments including ICCPR provided to the GoN.

## 4) Climate Change

The international policies related to the Climate change, Paris Agreement, Sendai Framework, UNFCCC, Incheon Strategy, and SDGs are landmark agreements that consider the situation of persons with disabilities. Being vulnerable to climate induced disasters and other forms of natural disasters, there have been significant gaps in the inclusion and addressing the needs of persons with disabilities in climate related discussions and negotiations. The Constitution of Nepal in the fundamental rights and duties of citizen in part 3 from Article 16-48 mentions on the Right to clean environment, social justice, to get prioritized opportunity towards justice, and social security and part 4 of State Directive principles includes the policies related to social justice and inclusion. Particularly for climate change, Nepal prepared its National Adaptation Program of Action, Local Adaptation Program of Action (LAPA), National Adaptation Plan (NAP) is in process however, there is no meaningful participation and consultation with person with disabilities at all these structures.[[34]](#footnote-34)

There is no discussion among person with disabilities and their organizations on the impact of climate change. Based on the ground discussion on climate change person with disabilities including indigenous person with disabilities have reported that they face attitudinal and psychological barrier, environmental barrier, institutional barrier, multiple programmatic barriers related with climate change. The overall climate change discussion does not include disability inclusion in climate change debate and there is no meaningful participation and engagement in that discussion as a result there is lack of program and intervention by the State on the issues that affect their daily lives.[[35]](#footnote-35)

**We thus request the Human Rights Committee to:**

1) Consult the State on measures to mainstream disability inclusion and engage and ensure meaningful participation of the person with disabilities in climate change policies, strategies, plans, programs and projects at the national and local/community levels.

2) Consult the State on measures to integrate intersectionality as a tool in baseline surveys, modalities planning, structures and research and integrate disaggregated data by (sex, age, disability, ethnicity, geography, class) at all levels of climate change interventions.

3) Consult the State on measures to specify dedicated climate fund for disability inclusion to start the discussion and debate on the impact and grievance mechanism with the government and development partners on climate change.

1. https://www.ecoi.net/en/document/1426667.html, Paragraph 9 [↑](#footnote-ref-1)
2. https://opendocs.ids.ac.uk/opendocs/bitstream/handle/20.500.12413/15510/DID%20Nepal%20SITAN\_June%202020.pdf?sequence=1&isAllowed=y [↑](#footnote-ref-2)
3. Poudyal, N., Banskota, M., & Khadka, D. (2018). Disability in Nepal: Taking stock and moving forward [↑](#footnote-ref-3)
4. Interview with one of the member of National Direction Committee on 14th Jan 2021. [↑](#footnote-ref-4)
5. Nepal Indigenous Disabled Association (NIDA), National Indigenous Disabled Women Association Nepal (NIDWAN), & Asia Indigenous Peoples Pact (AIPP). (2018). Reply from Indigenous Persons with Disabilities Organizations to the List of Issues in relation to the initial Report of Nepal. NIDA, NIDWAN, & AIPP [↑](#footnote-ref-5)
6. DegenerTheresia, 2014 "Intersectionality of Gender and Disability" General Discussion on Women and Girls with Disabilities, UNCRPD Committee. [↑](#footnote-ref-6)
7. http://www2.ohchr.org/english/bodies/cedaw/docs/co/CEDAW-C-NPL-CO-4-5.pdf to accelerate the advancement of women in areas in which women, in particular women facing multiple forms of discrimination, are underrepresented or disadvantaged, including in political representation, the administration and the judiciary, and access to health, education, employment, housing and land ownership; [↑](#footnote-ref-7)
8. The Committee welcomes the enactment of the Domestic Violence Act 2009 and the launch of a National Plan of Action on Gender Based Violence. However, the Committee is concerned about the continued prevalence of violence against women and girls, including domestic violence, in particular against disadvantaged groups of women such as Dalit , indigenous and others women [↑](#footnote-ref-8)
9. See, for eg CEDAW/C/NPL/CO/4-5 para 24 (i) http://www2.ohchr.org/english/bodies/cedaw/docs/co/CEDAW-C-NPL-CO-4-5.pdf and CESCR 38th session 2007, http://idsn.org/un-2/treaty-bodies/t-nepal/ [↑](#footnote-ref-9)
10. See, for eg CEDAW/C/NPL/CO/4-5 http://www2.ohchr.org/english/bodies/cedaw/docs/co/CEDAW-C-NPL-CO-4-5.pdf, and see CESCR 53rd session, 2014[E/C.12/NPL/CO/3](http://tbinternet.ohchr.org/Treaties/CESCR/Shared%20Documents/NPL/E_C-12_NPL_CO_3_18911_E.doc),http://idsn.org/un-2/treaty-bodies/t-nepal [↑](#footnote-ref-10)
11. See, for egCESCR 38thsession, http://idsn.org/un-2/treaty-bodies/t-nepal/ [↑](#footnote-ref-11)
12. See for eg CEDAW/C/NPL/CO/4-5 http://www2.ohchr.org/english/bodies/cedaw/docs/co/CEDAW-C-NPL-CO-4-5.pdf [↑](#footnote-ref-12)
13. See for eg CEDAW/C/NPL/CO/4-5 para 28 (a) http://www2.ohchr.org/english/bodies/cedaw/docs/co/CEDAW-C-NPL-CO-4-5.pdf and CCPR para 8, CCPR/C/NPL/CO,2014 [↑](#footnote-ref-13)
14. UN Policy Brief: A Disability Inclusive Response to COVID-19, May 2020 [↑](#footnote-ref-14)
15. MRGI, April 2020 Statement on the Impact of the Global COVID-19 Pandemic on Persons with Disabilities from Minority, Indigenous and other Marginalised Communities available at https://minorityrights.org/2020/04/27/ statement-covid-19-pandemic-on-persons-with-disabilities-from-minority-indigenous-communities [↑](#footnote-ref-15)
16. https://disabilityrightsfund.org/nidwan-nepal/ [↑](#footnote-ref-16)
17. https://www.dw.com/en/coronavirus-in-nepal-a-double-threat-for-disabled-people/a-54769845 [↑](#footnote-ref-17)
18. https://iloblog.org/2020/07/20/include-indigenous-people-in-covid-19-response/ [↑](#footnote-ref-18)
19. https://kathmandupost.com/sudurpaschim-province/2020/06/04/sudurpaschim-sees-steady-rise-in-coronavirus-cases-but-hospitals-d [↑](#footnote-ref-19)
20. Discussion with Ramesh Pokharel, President of NAB during NIDWAN and IL Disability and Human Rights Discussion Weekly Discussion Series on 23th Nov 2020. [↑](#footnote-ref-20)
21. www.nayapatrikadaily.com/news-details/41377/2020-04-16?fbclid=IwAR0mxPYI2iDq 8AUj3S4jbu090S \_I30nPISrFpTh9bwL66sJISR8CLVRWHJ0 [↑](#footnote-ref-21)
22. <https://kathmandupost.com/columns/2020/04/21/chepangs-face-a-humanitarian-crisis> [↑](#footnote-ref-22)
23. https://nidwan.org.np/publications [↑](#footnote-ref-23)
24. Virtual Focus Group Discussion held among indigenous women with Disabilities on 7th June 2020, Organized by NIDWAN. [↑](#footnote-ref-24)
25. [https://nfdn.org.np/impaof-covid-19-pandemic-and-lockdown-on-persons-with-disabilities-a-rapid-assessment-report](https://l.facebook.com/l.php?u=https%3A%2F%2Fnfdn.org.np%2Fimpaof-covid-19-pandemic-and-lockdown-on-persons-with-disabilities-a-rapid-assessment-report%3Ffbclid%3DIwAR0xX8c2SmJdKLfkYSyLri901WzrEsDqzqyhVHgbDohFLc4daAa2e15F6CQ&h=AT0MlBAFqsMC0FZXycCby3j-LfD9p6xVAN0qIGw4ilbX-BJ0ONFCOZQyEbvOEZ7PtFd_XGQxZY_xf0rnw0sFC-QxxlaVIKNmlJ67zKpHDluoNdy9MK3ejJSgEDb2Qxy4TdeLc3RgGw). [↑](#footnote-ref-25)
26. https://nfdn.org.np/impaof-covid-19-pandemic-and-lockdown-on-persons-with-disabilities-a-rapid-assessment-report [↑](#footnote-ref-26)
27. UN Policy Brief: A Disability Inclusive Response to COVID-19, May 2020. [↑](#footnote-ref-27)
28. Interview and data collection with NIDWAN focal persons on Impact of COVID at province level from May 2020 to Dec 2020. [↑](#footnote-ref-28)
29. https://thehimalayantimes.com/nepal/man-held-for-raping-differently-abled-minor-inrautahat/?fbclid=IwAR0OlJOLJnONefvnj6HLxqJcji1hRQjZ4EHDAfxzoWTQZvbFBRrmCax [↑](#footnote-ref-29)
30. https://ekantipur.com/pradesh5/2020/06/08/159163436052946781.html?fbclid=IwAR39e HIpbW2Mh9P ApePKiEbpfxRRwI0PtTHC9fui0FOyXdG3LqjXuTXtPw0 [↑](#footnote-ref-30)
31. <https://myrepublica.nagariknetwork.com/news/woman-in-quarantine-in-kailali-gang-raped/> [↑](#footnote-ref-31)
32. https://iloblog.org/2020/07/20/include-indigenous-people-in-covid-19-response/, https://www.internationaldisabilityalliance.org/covid19-indigenous, https://disabilityrightsfund.org/nidwan-nepal/ [↑](#footnote-ref-32)
33. Preamble of the UN Charter [↑](#footnote-ref-33)
34. NIDWAN Climate Change Policy Brief (2020), Disability Issues to Climate Change: From Policy to Grassroot Practices. [↑](#footnote-ref-34)
35. NIDWAN Climate Change Policy Brief (2020), Disability Issues to Climate Change: From Policy to Grassroot Practices. [↑](#footnote-ref-35)