

The Rights of Indigenous Persons with Disabilities in Nepal

Reply from Indigenous Persons with Disabilities Organizations to the List of Issues in relation to the initial Report of Nepal

Submitted to

**The Committee on the Rights of Persons with Disabilities
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Submitted by

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Asia Indigenous Peoples Pact (AIPP)

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The document contains reply to the List of Issues in relation to the initial report of states Nepal submitted to the Committee on the Rights of Persons with Disabilities in 29th August 2014 <http://www.hrtmcc.org/admin/uploaded/report/pdf/164.pdf> *

Abbreviations:

CBR	Community Based Rehabilitation
CCPR	Covenant on Civil and Political Rights
CEDAW	Committee on the Elimination of Discrimination Against Women
CERD	Committee on the Elimination of Racial Discrimination
CRC	Convention on the Rights of Child
CESCR	Covenant on Economic, Social and Cultural Right
CRPD	Convention on the Rights of Persons with Disabilities
CWDs	Children with Disabilities
DPOs	Disabled Peoples Organization
FGD	Focus Group Discussion
GoN	Government of Nepal
PWDs	Persons with Disabilities
IASG	Inter Agency Support Group
ILO 169	International Labor Organization No. 169
IPs	Indigenous Peoples
IPOs	Indigenous Peoples Organization
IPWDs	Indigenous Persons with Disabilities
IWWDs	Indigenous Women with Disabilities
ICWDs	Indigenous Children with Disabilities
MoWCSW	Ministry of Women Children and Social Welfare
NDC	National Dalit Commission
NFDIN	National Foundation for the Development of Indigenous Nationalities
NHRC	National Human Rights Commission
NLSS	National Living Standard Survey
NWC	National Women Commission
TYP	Three Year Plan
SDG	Sustainable Development Goal
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
UNPFII	United Nations Permanent Forum on Indigenous Peoples
WWDs	Women with Disabilities

* Adopted by the 8th pre-sessional working group of CRPD Committee (4-9th September 2017)

Introduction

1. This joint submission report is done by three indigenous peoples' organizations (IPOs) Nepal Indigenous Disabled Association (NIDA), National Indigenous Disabled Women Association Nepal (NIDWAN) and Asia Indigenous Peoples Pact (AIPP) working on the rights of indigenous peoples and indigenous persons with disabilities (IPWDs). This report is submitted to the UN Committee on the Rights of Persons with Disabilities incorporating the reply to the List of Issues (LoI) in relation to the State Report submitted by the State and Shadow Report submitted by the civil society of Nepal. It is updated information provided on the LoI submitted to the CRPD Committee on the Rights of Persons with Disabilities in July 2017 by three organizations.

Methodology

2. The report has been prepared collectively by IPOs of Nepal working for IPWDs. 3 workshops, 5 meetings, 3 Focus Group Discussion (FGD) and a National Consultation Workshop were carried out both at local and national level to identify the priority issues and concerns affecting Indigenous Persons with Disabilities (IPWDs) and gathered recommendations for the report to the CRPD committee. The first-hand information from the ground was based on the IPWDs knowledge, involvement, experience and day-to-day information gathered from IPWDs and respective communities and the secondary data was based on the reports of various government, UN agencies, publications, reports from organizations, case studies and others documents related with IPWDs.

Background

3. Nepal is a multilingual, multi religious, multicultural with diverse geographical region. The census 2011 of Nepal states that indigenous peoples (IPs) (*Advaasi Janajati*) comprise of 36% of 28.5 million population of Nepal. It has listed IPs as belonging into 125 caste and ethnic groups. 59 IPs groups are legally enlisted where 14 IPs are classified as disadvantaged, 19 as marginalized, 12 as highly marginalized and 9 as endangered groups and there are numbers of IPs groups who are yet to be recognized legally.

4. Similarly, the National Census 2011 reports that 1.94% of the total population of Nepal is living with some kind of disabilities, whereas the National Living Standard Survey Report (NLSS) 2011 stated to be 3.6% persons with disabilities in Nepal (PWDs). However, both figures are quite low as compared to the 15% disability prevalence claimed by World Health Organization (WHO) and World Bank in the World Report on Disability Report (2011). Both IPOs and DPOs claim a larger figure of more than 50% IPs and more than 10% population PWDs. Based on the data of IPs and PWDs, organizations working for IPWDs with other districts reports, evidences and information state 1.3 million IPWDs in Nepal¹ and the data has increased after the 2015 earthquake in Nepal.

5. Both IPs and PWDs have marginalized status in Nepal. There is a long history of IPs struggle against State oppression, exclusion and discrimination. The institutionalized dominant Hindu hierarchical caste system is still prevalent in Nepal and has direct impacts of marginalization and subjugated of and internal colonization over IPs by dominant caste groups in terms of land, territories, language, customary laws and collective way of life² that has been reflected in many literatures, reports and documents. Prof. James Anaya, former Special Rapporteur on Indigenous Peoples in his official visit in 2008 to Nepal reflects similar observation in his report that a long history of oppression and marginalization has excluded IPs from political representation and decision-making, full citizenship, lack of secure access to resources and economic and educational opportunities; and their distinct cultures and languages have been continuously threatened. He noted that State and its agencies should explicit support IPs' rights to be secured and protected in reality through the implementation of the ILO convention 169 in practice.³

¹ See Nepal Indigenous Disabled Association's (NIDA) website www.nidanepal.org.np

² Bhattachan, Krishna, "Failure in the Implementation of the Constitution". 2017, The Indigenous World, The International Work Group for Indigenous Affairs (IWGIA)

³ http://www.un.org/apps/news/story.asp?NewsID=29152&Cr=#.Wi_Y8BTWW-U

6. Though Nepal promulgated its new constitution in 2015, IPs' movement of the country has not fully accepted the constitution as it does not address their fundamental issues of identity and rights and does not reflect the rights of IPs based on the mandate of the interim constitution. IPOs claim that 11 articles of the constitution are against the IPs, 23 articles are discriminatory to the IPs, 49 articles are exclusionary to them and 5 articles tend to establish the supremacy of ruling caste groups.⁴ On the other hand, PWDs claim that the 2015 constitution is progressive and better for them. According to them, it has clearly mentioned PWDs in fundamental rights like in education, health, social protection, and access to employment, including free education, sign language provision and political rights and mainstreaming of PWDs in the constitution.⁵

7. Further, the Government of Nepal (GoN) has recently passed Disability Act in 2017, which classifies disability into 10 types; Physical, Disability related to hearing, vision, voice and speech, Deaf and Blind, Mental and Psychosocial, Intellectual, Hemophilia, Autism and Multiple disability which has opened a new avenue in disability discourse.

Indigenous Persons with Disabilities in Nepal

8. IPWDs face multi- layered discrimination being indigenous, person with disabilities and indigenous person with disabilities. IPWDs represent a marginalized population within a marginalized population that brings complexity. They are mostly uneducated, unaware about their rights, resources and are outreach of legal, basic services and legal remedy. Reports indicate that 81% IPWDs have poor access to public facilities⁶ than other PWDs. There are many forms of barriers including attitudinal that IPWDs face, which obstructs their full enjoyment of their rights in their lives. They are not able to bring their voices in wider domain and face constant challenges in their own ancestral land and resources, culture, traditions, languages and suffer from forced evictions, including destroyed resources and environment.⁷ They face multifaceted encounters such as barriers to participate in political, social and cultural activities in the society as IPs and as PWDs they confront challenges including lack of education, employment, health care, communication and accessibility, access to intuitions, resources, rehabilitation, development programs and funds than others.⁸

9. While enjoying their rights, IPWDs are subjected to direct, indirect structural and others forms of discrimination that are distinct from others groups and vary among IPWDs. Some of them are manifest and deliberate, unofficial, or subtle and intended. Not all discrimination they face can be documented, reported and provided evidences with facts, figures and findings due to several reasons. For instance government's lack will and commitment, priority of IPs and PWDs issues, available resources and experts and others, which have made evidences lacking. In addition, there are many factors that contribute to the higher rates and risk of disability among IPs than other groups that include their greater level of poverty and lower standards, poor quality of prevention and lack of suitable rehabilitation services, increased exposure to environmental degradation, climate change impacts, natural and other disasters, conflict and higher rate of being victim of violence (including sexual violence and rape), dangerous working condition and accidents including in foreign employment and higher rates of illiteracy, inadequate nutritional level lower immunization coverage, higher unemployment and underemployment rates and lower mobility⁹ that are mostly connected with indigenous and Dalit PWDs living in risk and vulnerable lives in rural areas of Nepal. Similarly, there is higher possibility of under reporting of disability among indigenous community.

⁴ LAHURNIP, Study and Analysis of the Constitution of Nepal from the Perspective of Indigenous Peoples, 2016 Kathmandu.

⁵ See Nepal's Constitution <http://www.nfdn.org.np/constitutional-provision/authors-note.html>

⁶ Disaster, Disability and Differences, A Study of the Challenges faced by Persons with Disabilities in Post Earthquake Nepal, 2016 UNPD, Social Science Baha and National Federation of the Disabled Nepal.

⁷ Gurung Pratima, "Life at the margin: The Challenges of Indigenous Women with Disabilities", 2017 Asia Indigenous Women Network (AIWN) Philippines.

⁸ The Statement by the First Gathering of Indigenous Persons with Disabilities in Asia and the Pacific in 2015 highlights that <http://www.asianindigenouswomen.org/index.php/publications-and-multimedia/magazines-and-newsletters/183-aiwn-2016-2017>

⁹ Disability Rights Holistic Monitoring Report 2013 National Federation of the Disabled-Nepal

10. The Special Rapporteur on the Rights of Persons with Disabilities, Catalina Devandas Aguilar and the Special Rapporteur on the Rights of Indigenous Peoples, Victoria Tauli Corpuz in an expert meeting, organized by ILO and OHCHR held in 2016 in Geneva, mentioned that IPWDs face exclusion, marginalization and multiple layers of discrimination based on their disability, their ethnic origin and their gender. However, despite higher rates of disability in indigenous communities, little or no attention is given to their situation. In most cases they have no access to the services and the support they need to participate fully in society at large and their own communities.¹⁰ This ground reality has been documented and reflected in many international instruments, documents and reports since 2011 onwards including the concluding observation of the CRPD committee to many member states.¹¹ These studies have highlighted the problems and challenges faced by IPWDs and include detailed recommendations to member States, the UN agencies, stakeholders and IPs, PWDs and others.

11. However, decades of research in Nepal on disability have failed to address those aspects. The ways in which gender, caste, and ethnic classifications and identities strongly condition the level of social exclusion that Nepalese face have been demonstrated. Yet, the ways in which these patterns intersect with discrimination faced by PWDs is relatively understudied. The existing limited literature on disability studies and the rich scholarship on social exclusion provides a context to demonstrate the various ways PWDs face multiple or intersectional layers of exclusion and discrimination.¹² Social and contextual indicators to understand disability in terms of rights enjoyed by PWDs in certain environmental and social barriers and opportunities are often not integrated. This has been stated at global level that most non-discrimination laws and policies, even many human rights treaties, such as the CERD and CEDAW have one-dimensional approach which could not address the over all issues of diverse group within a single domain¹³ which has been realized lately.

12. The major fundamental concern of IPWDs is an analysis of the concepts of equity and equal opportunities for all PWDs. While ensuring rights of all PWDs, equity cannot occur on unequal grounds to groups that are historically marginalized and discriminated. So, development policies should contribute to the social inclusion by responding the needs of heterogeneous groups in existing in societies through policies and framework to enjoy their rights. The discrimination based on the functional limitation among PWDs has gained attention both in public and State policies and the State has put efforts towards protecting and promoting rights of PWDs since 1982 on that model which is positive and praiseworthy. However there still exists a huge gap in implementing them and making PWDs realize those rights in daily lives.¹⁴

13. Second, from 1982 to present, disability is understood in one-dimensional manner. Disability is described as the social effect of the interaction between individual impairment and the social forms of barrier and exclusion. These social forms of barrier are largely access, information awareness, assistive devices and social categories of exclusion that are existent in society that need to be realized, reflected in inclusive disability policies. For e.g. if a woman with disability in a wheel chair can go to accessible office but if she cannot enjoy the services like other PWDs, means there is need to understand other forms of social barrier that disallows her to benefit on equal basis with others. Apart from physical accessibility, there are various barriers linked with individual status that s/he cannot achieve most often and are almost ignored. So understanding of disability in both framework in inclusive manner framing the ground reality of environment and availability of needs is vital. In this regard, IPWDs and other marginalized groups have found to be in the lowest hierarchy among PWDs. The respect for human dignity, non-discrimination in all aspects of lives with full participation and accountability in all activities are often not realized within their

¹⁰ Devandas-Aguilar, C. Special Rapporteur co-organized an Expert meeting on indigenous persons with disabilities, Organized by ILO, OHCHR, IPWDGN and IDA, See <http://www.ohchr.org/EN/Issues/Disability/SRDisabilities/Pages/IPDisabilities.aspx>

¹¹ See report on IPWDs, ILO Report 2015, IASG Report 2014, 12th session UNPFII Study, HRC Report 2016, see IDA, on access to justice in the promotion and protection of the rights of indigenous peoples: restorative justice, indigenous juridical systems and access to justice for indigenous women, children and youth, and persons with disabilities (A/HRC/27/65).

¹² Disaster, Disability and Differences, A Study of the Challenges faced by Persons with Disabilities in Post Earthquake Nepal, 2016 UNPD, Social Science Baha and NFDN Nepal.

¹³ Degener Theresia, "Intersectionality of Gender and Disability" General Discussion on Women and Girls with Disabilities, 2014 UNCRPD Committee.

¹⁴ Gurung, Pratima. "Implementation Status of Disability Related Plan and Policies in Nepal", Compendium of Policies Review Report: A Summary. 2016 GoN National Planning Commission.

own communities and wider communities. Forms of structural, direct and indirect discrimination are everyday reality of lives while their issues have not become part of public discourse and disability domain from a human right lens in Nepal.¹⁵

Normative Framework

14. The rights of IPWDs are enshrined in a range of international instruments applicable to Nepal as a State party. These include numerous human rights treaties and standards protecting equal rights and freedom for all human beings with dignity.¹⁶ At the national level, there are important opportunities for ensuring rights and advancing access to justice for IPWDs, particularly through efforts to translate the UN Convention on the Rights of Person with Disabilities (CRPD). The preamble of the convention stresses that persons with disabilities “are subject to multiple or aggravated forms of discrimination on the basis of race, color, sex, language, religion, political or other opinion, national, ethnic, indigenous or social origin, property, birth, age or other status”.¹⁷

15. Non-discrimination and participation is a general principle of the convention, (art. 3b), to be applied in interpretation of all of its provisions for all PWDs. Further, the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) in article 21 and 22 mentions special attention should be given to PWDs and others. The World Conference on Indigenous Peoples (WCIP) Outcome Document 2014 and the 2030 Agenda on Sustainable Development, including Sustainable Development Goals (SDG) with the aim of 'reaching the furthest behind first' and 'leaving no one behind' adopted in 2015 presents a new opportunities with commitment to include the voices and concerns of PWDs and IPWDs in efforts towards implementation of the UNDRIP and CRPD including ILO 169, CEDAW, CERD and others international commitments.

16. Grounded on these, it is envisioned that IPWDs have the same right as others and their rights to recognition and inclusion should be guaranteed at all level of implementation of human rights regimes focused on disability and indigenous identity¹⁸ at national level. The constitution of Nepal includes a commitment to effectively implement various human rights instruments and commitments, which Nepal is party to.¹⁹ Further, Section 9 of the Nepal Treaty Act, 1991 states that international law has a higher status than the national law. In case of inconsistency, international law prevails over the national laws so there are cases in the Supreme Court has referred to the CRPD in number of cases concerning to the rights of PWDs.²⁰ At national level, the recent 2015 constitution and recent Disability Act 2017 is a new prospect to exercise the rights of PWDs including IPWDs on the ground.

Indigenous Persons with Disabilities Issues

Understanding CRPD

17. The understanding of CRPD in wider comprehensive lens to incorporate the issues of all PWDs is necessary. From IPWDs perspective, it has to be understood from three levels, first CRPD as a whole applies to all PWDs including IPWDs. Importantly, as stated in the preamble of the convention, it recognizes the diversity among PWDs. PWDs experience significant variations on the type and severity of disabilities that affect both everyday experience and the experience of discrimination based on other social category of exclusion. So the barrier, discrimination, exclusion that an individual face on all ground has to be read in conjunction with multiple forms of discrimination incorporating inclusive approach and ensuring meaningful participation of all PWDs when issues related to disability are discussed. In designing and

¹⁵ National Consultation on CRPD List of Issues and Shadow Report Submitted to the CRPD committee, Organized by NIDA, NIDWAN, 31 October 2017 Kathmandu

¹⁶ The rights of all citizens, women, children, indigenous peoples and persons with disabilities that includes UDHR, ICCPR, ICESDR, CRC, CERD, CEDAW, CAT, ILO Convention 169, UNDRIP, UNCRPD, WCIP-2014 and others.

¹⁷ See Convention on the Rights of Persons with Disabilities. UNTS, vol. 2515, p.3. See preamble paragraph (p).

¹⁸ Hickey Huhana. "Indigenous Peoples with Disabilities: The Missing Link". Human Rights And Disability Advocacy 2014.

¹⁹ Article 51(b) of the Constitution states policies relating to political and governance system of State mentions to implement international treaties, agreements to which Nepal is a party.

²⁰ State report submitted in July 2014 to the CRPD Committee, <http://www.hrtmcc.org/admin/uploaded/report/pdf/164.pdf>

implementing of public policies and CRPD, states must acknowledge the situation of the most marginalized groups among PWDs while implementing the policies and programs.²¹

18. Second though there lacks article on IPWDs in the CRPD²², the Committee on the Rights of PWDs has systematically considered the infringement experienced by IPWDs, which include historical marginalization and situation of IPWDs. Considering this aspect, the committee has made several recommendations since 2011 while reviewing state reports for underrepresented groups including IPWDs so the policy would to be formulated at national level in this regard.

19. Third, the CRPD is the 21st century treaty which incorporates the social development perspectives and has interconnected with civil, political, cultural, economic and social aspects interconnected with various treaties and human rights instruments like Universal Declaration of Human Rights (UDHR), ILO Conventions No. 169, No. 111 and No. 159, Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Convention on Eliminating Racial Discrimination (CERD), The Convention on the Rights of the Child (CRC), UN Declaration on the Rights of Indigenous Peoples (UNDRIP) are mutually reinforced each other so from IPWDs viewpoint, we need to understand the intersections between these instruments and recognize human diversity, inclusion and dignity of all PWDs including IPWDs and reflect in national plan, and policies framed for them.

Invisible and Excluded

20. The present status of IPWDs is predominantly invisible everywhere and they are excluded in policies, programs of states, development partners, DPOs and in exercising their rights. The Special Rapporteur on the rights of PWDs Ms Catalina Devandas reflects groups of IPWDs "are often not included in the mainstream work on disability and the rights of PWDs. Consequently; we are not being responsive enough to their needs or cultural settings. It is important for us to learn about how can we promote the rights of IPWDs in a way that is respectful and sensitive. Today, we need to learn to read the UNDRIP from a disability perspective, and the CRPD from an IPs' perspective".²³

21. Similarly the 12th session of UNPFII report highlights IPWDs have been largely invisible in the work of the various United Nations entities that address the rights and situation of IP and PWDs.²⁴ Participant in the Focus Group Discussion (FGD) focused that IPWDs are often made invisible by states and by their own communities (disability and indigenous), who struggle to understand disability and what it means within their own cultural settings, drawing attention to their living condition, lack of opportunity and access to the world. The social stigma and perception they hold in larger context have made them silence and segregated to raise their issues most often escorting to exclusion.²⁵

Right to Self Determination

22. The right to self-determination is a central focus for IPWDs and includes rights to autonomy or self-government²⁶ and also to participate and be actively involved in external decision-making processes. Stakeholders while implementing laws policies should respect the right to self-determination of IPWDs and implement accordingly in policies and programs. Specific disability rights legislation, policies and programs aimed for PWDs, should also be respectful of the right of self-determination including right to social security and engagement of IPWDs at all levels to mainstream them in society.

²¹ Devandas-Aguilar.C Report of the Special Rapporteur of the Human Rights Council on the rights of PWDs, 2016,71st session, UN General Assembly, A/71/314. http://www.un.org/ga/search/view_doc.asp?symbol=A/71/31/english&Lang=E

²² Hickey Huhana. "Indigenous Peoples with Disabilities: The Missing Link". Human Rights And Disability Advocacy 2014. She describes the challenges of IPWDs in the drafting process of CRPD and the reason why did not have separate article in the CRPD.

²³ Embracing Diversity, The Expert Group Meeting on IPWDs Report, 7-8 July 2016, ILO Head Quarter Geneva.

²⁴ Study on the situation of indigenous persons with disabilities, with a particular focus on challenges faced with regard to the full enjoyment of human rights and inclusion in development, 12th Session UNPFII, 2013 E/C.19/2013/6 see <http://www.un.org/disabilities/documents/ecosoc/e.c.19.2013.6.pdf>

²⁵ Focus Group Discussion on Rights of Persons With Disabilities and Local Policies 24th September 2016, Kavre

²⁶ See Article 4 of the United Nations Declaration on the Rights of Indigenous Peoples.

Participation in Decision-making and Consultation

23. The right to participate in decision-making processes is reaffirmed in both CRPD and the UNDRIP. It contains articles on participating in life-affecting decisions article 4 (3) and 29 of the CRPD, in addition to article 33 (3) and article 18 and 19 of the UNDRIP, the right to participate in political and public life.²⁷ Similarly, Article 20 of the UNDRIP states the right of IPs to maintain and develop their political, economic and social systems or institutions that should be framed in disability discourse.

24. Though the CRPD is for all PWDs in reality it has not been realized among PWDs and duty bearer in that manner. Participant in orientation program opined that IPWDs continue to be in the margin of power, participation and access to services. Underrepresented groups like IPWDs and other marginalized groups are not part of consultation process while the policies and program for PWDs are made and implemented at national level either from states or DPOs. The CRPD state report, shadow report from civil society and the recent 2017 Disability Act are some recent examples that excluded these groups. Hence, IPWDs participation is low and has almost no space in decision-making and consultation process. In most consultation process DPOs and PWDs participants are invited according to the choice of individuals' interest and access rather than being inclusive to mainstream all groups.²⁸

Education Language and Culture

25. Education, language and culture are interconnected to IPWDs. Specifically, there is a lack of prioritization of education for CWDs by their parents, resulting from the lack of awareness of and support by States. Many evidences and reports mention that indigenous children face challenges in gaining access to school in their communities, as 41% of indigenous children have to manage both school and work.²⁹ Indigenous children with disabilities (ICWDs) face further challenge. Their rights to be heard, choose their surrounding, and express their views opinions on their best interest are most often violated.

26. Information from the ground suggest that there are many reasons like high illiteracy and awareness of their parents, social economic status, education as low priority, enabling environment and access to school, parents and teacher commitment, cultural and societal prejudices towards disabled child, lack of culturally appropriate methods and language and enabling environment are few of them that hinders many ICWDs to be in school.³⁰ Participation in school and in community with their best interest to be involved and engaged in activities is often considered as their rights however anecdotal evidence suggests that a disproportionately high number of ICWDs are out of school altogether.³¹ So enabling environment to express their opinions and their rights to education should be in priority considered in the fundamental rights with implementation.

Access to Health and Adequate Standard of Living

27. The World Report on Disability highlights that PWDs face serious challenges in gaining access to health services, leading to decreased life expectancy. Similarly IPs suffers from poorer health, more likely to experience disability and reduced quality of life and ultimately die younger than non-indigenous counterpart.³² The gap in life expectancy between indigenous and non-indigenous people is 20 years in Nepal.³³ In such context IPWDs situation is worse at community level; they often lack basic health such as food, clothing, sanitation, water, support for the basic necessities of life, assistive devices, mobility aids and health and rehabilitation services. Most of them are poor, ignorant, and live in remote areas; seeking for basic needs where government does not invest in basic social services. They have limited access or no access to health care, nutrition, sanitation services and participation in social activities³⁴. There is a vicious

²⁷ See, Article 29 and preamble paragraph 7 of the Convention and Article 5 and 11 of the Declaration

²⁸ Discussion on Orientation Program on CRPD Reporting Process and IPWDs Engagement held in 5th August 2017 Kathmandu.

²⁹ A study on the socio-economic status of Indigenous Peoples in Nepal, 2014 LAHURNIP, Kathmandu.

³⁰ Discussion Meeting held with Parents and Indigenous Children with Disabilities at Community level, 14 Sep, 2017, Kavre.

³¹ Interview with Parents and Children with disabilities from Indigenous Danuwar and Tamang community, 13th Sep 2017, Kavre.

³² Department of Economic and Social Affairs [DESA] http://mypublichealthblog.com/?p=205#_ENREF_6

³³ UNPFIL. 2010. *Health* Retrieved May 27, 2013, from <http://social.un.org/index/IndigenousPeoples/ThematicIssues/Health.aspx>

³⁴ Workshop on Situation of Human Rights of Indigenous Persons with Disabilities, 24th July 2017, Kathmandu.

cycle of disability and poverty often linked with IPWDs that impacts their social protection, poverty reduction and measures for it. Often, IPWDs are unaware or do not avail themselves of mainstreaming measures and disability specific measures to PWDs.³⁵

28. Similarly article 26 of the UNCRPD stresses that habilitation and rehabilitation are voluntary and indicates that they should be provided at the community level. For PWDs community level health is community-based rehabilitation (CBR). In the context of IPWDs, article 26 should lead to CBR initiatives that promote the participation and inclusion of IPWDs and that are designed in a culturally appropriate way by IPWDs active involvement. More efforts need to be made from the state to ensure equal access to health, rehabilitation services and adequate standard of living, paying special attention to indigenous women and children with disabilities

Emergency Situation and Disaster Risk Reduction

29. Prevention and preparedness, rescue and response must be prioritized to groups that are at high risk and must be assisted and protected in situations of natural and human-caused emergencies. The social exclusion component had profound significance in 2015 earthquake response because the overwhelming majority of the affected population were from vulnerable and marginalized groups: 41% of houses damaged in the earthquake belonged to Dalits and indigenous communities, 26% to female-headed households and 23% to senior citizens. The earthquake response showed that vulnerable and marginalized groups were not meaningfully participated in local governance structures and decision-making bodies, nor proactively engaged in the earthquake response by international responders.³⁶

30. Therefore initiatives aimed at enhancing the representation and participation of IPs more resilient to cope with challenges need to be undertaken that is gender, disability, inclusive and fully participatory. Any resettlement process including risk reduction and post-disaster reconstruction, rehabilitation and reintegration should be based on respecting cultural sensitive, free from violence, exploitation and abuse with free prior informed consent of IPWDs³⁷. All the recovery, reconstruction and reconciliation and disaster risk reduction efforts should include participation of IPWDs in all phases of decision-making and implementation for effective disaster preparedness and response.

Indigenous Women with Disabilities and Intersectional Discrimination

31. Indigenous women with disabilities (IWWDs) face more marginalization and discrimination because of gender, disability, race, poverty, geographical remoteness and others than women with disabilities and indigenous women. They are disempowered as a result of multiple and intersecting forms of disadvantages that combine, interact and intensify vulnerability resulting in a unique disadvantage falling in the lowest social hierarchy. The CRPD committee explains intersectional discrimination can appear as direct or indirect discrimination, denial of reasonable accommodation and as harassment.³⁸

32. For IWWDs prevailing stereotypes (e.g. seen as incapable, not credible, not educated and powerless) as well as structural factors (e.g. invisibility of IWWDs, active institution, their representation and access in disability, indigenous and wider communities) contribute to the continuation of discriminatory practices and indirect discrimination that often go unreported, and excludes them in every spheres of lives.³⁹ Due to lack of the details on discrimination and violence they face on the intersecting layers of identity, there are higher chances that their issues are left behind, undocumented as usual and the violence and harmful practices occurring to them may increase putting them in higher risk.

³⁵ Interview with indigenous women with disabilities, April 2017, in Saankapur Municipality Kathmandu.

³⁶ Did the humanitarian response to the Nepal earthquake ensue no one was left behind: Report, 2016. Save the Children Nepal.

³⁷ UNISDR. Indigenous Peoples Champion Sendai Framework May, 2016 United Nations Office for Disaster Risk Reduction, <https://www.unisdr.org/archive/49008>

³⁸ Committee on the Rights of Persons with Disabilities General Comment on Equality and Non- discrimination (Article 5) First draft, 31 August 2017, p9 See in www.unhcr.org/refugees/wp-content/uploads/2017/09/GCART5.pdf

³⁹ National Consultation on CRPD List of Issues and Shadow Report Submitted to the CRPD committee, Organized by NIDA, NIDWAN and AIPP 31 Oct 2017 Kathmandu

33. Like indigenous women and women with disabilities they face lack of representation in own communities, government, lack of good hospital networks and health care; lack of consultation; poor access to education, lack of access to resources and ancestral lands; high rates of poverty and increased risk of violence and sexual abuse, including trafficking. Lack of targeted measures taken with respect to disaggregated data collection, consultation, policymaking, non-discriminatory policies and the provision of effective remedies for them is not available so they are subjected to violent and harmful practices like other women common victims among others to sexual abuse, domestic violence, forced sterilization and neglect.⁴⁰

Access to Information, Services and Support for Families and Children with Disabilities

34. Most PWDs and IPWDs are from rural areas are unaware about information and services. Information in urban areas is still challenge because access to information is not friendly to all types of disabilities and the information is not widely disseminated to targeted groups. Due to lack of information most PWDs do not claim their services and rights. In 2015 only 33,578 PWDs have received social security allowances that is 6.54%⁴¹, which is very low. Most IPWDs are not known about their rights like disability card. They do not know about the process and face challenges in acquiring identification cards and access to resources.⁴² They reside in remote places and lack transportation, information and procedure, human resources, language barrier, awareness and cost are the factors that obstruct them in receiving cards. They are not engaged in intuitions and DPOs o they have little information on disability.

35. Moreover, most IPWDs lack exposure in public forum like awareness, education, training, and activities so they are inactive and ignorant and organizations don't send them in programs. As well the information are not in mother or native language or simple version that is unreached to them. Support services for mothers, families to raise, care and nurture their children, participation and engagement is not available at community level because they are not engaged in organization system and activities and have less access to information, services and support.

Access to Justice

36. There are evidences and common experience IPWDs face considerable barriers in terms of access to justice. Barriers are most often complex to define relating with their socio economic and cultural status of IPs. Some of the barriers IPWDs face are accessibility, reporting violence, and in accessing justice and services. These include lack of access to communication where educational materials and proceedings are also not available or conducted in native language, not disabled friendly and difficult to understand, information and education regarding violence; and barriers to mobility, including lack of accessible transportation and access to adequate legal representation and assistance in judicial proceedings.

37. In addition, IWWDs those who are victims of rape are faced with indifference and inaction, often leading to non-reporting and in most instances, to forced marriage. In such context they may experience fear of losing independence or fear of retaliation, or may rely upon a perpetrator for assistance with life activities or if they wanted to proceed they lack of access to adequate legal representation and assistance in judicial proceedings. Disability awareness training, with rights-based and intercultural approaches, needs to be provided to service provider and right holder to have access to justice as enshrined in the Convention.

7. List of Issues

Issue 1. Please inform the Committee when the State party envisages to adopt and to fully implement the draft bill aimed at replacing the Disabled Persons Welfare Act (1982) and at eliminating derogatory terms, which continue to be used in the existing definitions of disability. Please also explain if the draft

⁴⁰ See <http://www.internationaldisabilityalliance.org/resources/indigenous-women-and-girls-disabilities-crpd-committee->

⁴¹ Gurung, Pratima. "Implementation Status of Disability Related Plan and Policies in Nepal", Compendium of Policies Review Report: A Summary. 2016 GoN, National Planning Commission. p22

⁴² Lawyers Association for Human Rights of Nepalese Indigenous Peoples Annual Report, 2015, P.45

bill intends to modify the definition of disability in line with the human rights model of disability enshrined in the Convention (para. 18).

Studying of existing legal plan, policies and programs of the GoN shows there are initiatives taken from 1982 for promotion and protection of PWDs. We acknowledge the changes awareness among PWDs, at individual level, from charity based approach to human rights based process and responsibilities of right holder and duty bearers and the continuous efforts of GoN. However there has not been great impact on the lives of PWDs due to duplication of programs, lack of co-ordination and lack of human resources (duty bearers, stakeholders and others) to understand the challenges faced by PWDs on the ground. So, the implementation status of plan and policies has been a slow process.⁴³

The recent Disability 2017 Act has modified the definition of disability in line with some human rights model to some extent, which is remarkable in comparison to the earlier law. The derogatory terms are not mentioned in the Act, which has broadly categorized ten types of disabilities and four degrees of severity that is exemplary for PWDs. However, it lacks reflection of wider exclusion of PWDs on various social grounds. PWDs face discrimination on the basis of functional limitation and also on the grounds of gender, race, origin, ethnicity, and region at the same time. The recent 2017 Act fails to include the broader social exclusion framework of discrimination that PWDs. The Act has classified disability discrimination on the severity of disability, which is not adequate to consider various grounds of discrimination against PWDs and addressing heterogeneous groups among disability.

The human rights model acknowledges that disability identity connected with other several layers of identity, and hence disability law and policy need to take the diversity of PWDs into account⁴⁴ while national policies and plan are developed. While drafting the Act, particularly PWDs from underrepresented marginalized groups were not effectively consulted so the issues of considering multiple and aggravated forms of discrimination are not included in the Act. It is believed that development act/policies should contribute to the social inclusion by addressing social exclusion. An inclusive framework should include heterogeneous individuals among PWDs like groups living in higher risk and facing multiple discriminations. PWDs and such multilayered discrimination they face should be taken into account in the Acts as enshrined in the preamble of CRPD, highlighted by the Special Rapporteur and recommended to the member states by the CRPD committee.

We thus request the Committee to recommend the State to

a) Review the 2017 Act to include recognition and consideration to the condition of multiple layers of discrimination IPWDs and other PWDs from marginalized groups face so that the Act is fully in line with human rights models of disability enshrined in the Convention.

b) Ensure systematic and meaningful consultation with organizations of IPWDs in development of all laws and policies related to their lives.

Issue 2. With regard to the issuing of disability identity cards (para. 21), please explain how the four different categories of disabilities are assessed and how they comply with the human rights model of disability enshrined in the Convention.

Section 4 (1) of the 2017 Act provides the procedure for the application of the disability identity card that is distributed based on 10 types of disability category grounded on the severity spectrum. They are profound, severe, moderate and mild disability.⁴⁵ Based on these categories the red, blue, yellow and white card are provided and disability allowances and services are distributed to PWDs. However, such allowances are still not aligned in a human right-based approach because the amount the red cardholder

⁴³ Gurung, Pratima. "Implementation Status of Disability Related Plan and Policies in Nepal" Compendium of Policies Review Report: A Summary. 2016 GoN, National Planning Commission. p 22

⁴⁴ Committee on the Rights of Persons with Disabilities General Comment on Equality and Non- discrimination (Article 5) First draft, 31 August 2017, p 5 See in www.unhcr.org/refugees/wp-content/uploads/2017/09/GCART5.pdf

⁴⁵ <http://www.lawcommission.gov.np/documents/2017BE-3.pdf> page no 32-33.

profound disabilities receive is only NPR 2000 (about 20 USD) per month, which is inadequate to fulfill his/her basic needs and not in line with SDG target 1.1. Similarly, a blue cardholder with severe disability receives only NPR 600 (about 6 USD) per month. Yellow and white cardholders do not receive any disability allowance but they have the rights to receive other services like in transportation, employment and other services. Further, such cards and associated allowance or services have not reached PWDs with higher poverty and vulnerability such as those living in remote areas and face further discrimination in society based on geographical location. So specific measures should be taken to distribute the cards in a manner to reach the most marginalized groups that require such allowances and services and more effective services provided with such cards.

In this regard the Special Rapporteur on the Rights of PWDs highlights the situation of IPWDs. They live below the poverty line or in rural or remote areas face additional, multi-faceted barriers to their socio-economic wellbeing and participation.⁴⁶ In Nepal different reports and opinions from right holders from poor, vulnerable, remote, IPWDs reflect that they are not aware about their rights and services received associated with the identity card.⁴⁷ They face challenges in obtaining the cards and their access to resources are limited and unreached. The State's commitment to end discrimination against PWDs is thus not materialized into practice.⁴⁸ Hence the distribution of disability card should be available to PWDs ensuring their rights no matter they are most marginalized groups.

We thus request the Committee to recommend the State to

a) Ensure that PWDs receive disability allowances to provide for an adequate standard of living taking into account Target no1.1 of the SDG.

b) Take targeted measures so that most marginalized groups facing multi- faceted discrimination can have access to disability allowance and other services, such support for appropriate skills and employment to discourage dependence on allowance.

Issue 3. Please inform on measures taken to ensure that the denial of reasonable accommodation is acknowledged as a form of discrimination. Please also inform about the legal avenues and remedies available to persons with disabilities to challenge discriminatory laws and practices.

Section 8(1) of the 2017 Act reflects rights against discrimination but it does not clearly describe the meaning of denial of reasonable accommodation in line with convention. There is not policies that could describe in more details what reasonable accommodation measures mean. The concepts of reasonable accommodation and universal design are not operationalized in the recent legal acts and effectively implemented into practice.

From IPWDs perspective, it is understood that denial of reasonable accommodation does not refer to groups but always to an individual in a given particular situation. Denial of reasonable accommodation constitutes a form of discrimination distinct from other forms, such as direct or indirect discrimination.⁴⁹ In this regard, most IPWDs feel their self-respect dignity and right to self-determination in the community are violated. At many times, their 'disability identity' is taken in charity based and 'indigenous identity' is taken as disrespectful and differently. Discussion carried out for this report suggests that IPWDs working in IPWDs areas found difficult and discriminated to raise the issue about IPWDs in public forums as reflected in the case study.⁵⁰

⁴⁶ Devandas-Aguilar, C. 2015. "Experts discuss challenges and opportunities for indigenous persons with disabilities". A/70/297, para80, Available at: [http://www.ohchr.org/Documents/Issues/Disability/Indigenous persons/ InfoNewsIPWD.doc](http://www.ohchr.org/Documents/Issues/Disability/Indigenous%20persons/InfoNewsIPWD.doc)

⁴⁷ Meetings among Indigenous Persons with Disabilities about the CRPD Shadow Report, 16th February 2017 Kathmandu.

⁴⁸ Lawyers Association for Human Rights of Nepalese Indigenous Peoples Annual Report, 2015, P.44

⁴⁹ Committee on the Rights of Persons with Disabilities General Comment on Equality and Non- discrimination (Article 5) p8 First draft, 31 August 2017, p 5 See in www.unhcr.org/refugees/wp-content/uploads/2017/09/GCART5.pdf

⁵⁰ Consultation Meetings among Indigenous Persons with Disabilities about the CRPD Shadow Report, 29th July 2017 Kathmandu. The case studies of IPWDs in the discussion stated "I work for IPWDs and I am hardly invited in disability programs. If I am invited and if I express to opine my views and suggestion, I am most often rejected. When I speak my statements are taken as speaking irrelevant issues and not a human right issue. I am most often treated indifferently and unfairly as soon as I speak. The

Similar opinion was expressed by other IPWDs in 2014 field visit. He stated "disability is not always lack of something - yes for some people it is lack of education, accessibility, services which I also share but for some people it is about self dignity, lack of positive perception among us. So the respect of individual irrespective of their age, ethnicity, sex, class identity with distinct needs must be acknowledged if we discuss about equality and equity".⁵¹ Discrimination is not only a violation of the equal rights but it is also a violation of self-respect and human dignity.

Enabling environment is the key to full inclusion in society. Environment free from prejudice, stereotypes, and humiliation in everyday lives inspire PWDs to express their opinions and needs of reasonable accommodation in easier and effective way. Measures for comprehensive background to address such denial of reasonable accommodation with effective remedies need to be acknowledged.

Proposed recommendation:

Recommend the State to implement the law and policies, protection from discrimination for PWDs having the same standard for all other social groups and inclusion and priority of reasonable accommodation recognizing affirmative actions for IPWDs.

Recommend the State to review adopt legislation and normative regulations on reasonable accommodation and universal design that applies to all rights guaranteed by the Convention.

Issue 4 Please inform the Committee on the measures that the State party has taken to ensure the full and equal participation of persons with disabilities, in particular the most underrepresented groups of persons with disabilities, in decision-making processes, including in legislative processes.

The recent 2017 Act in section 19(1), (2), 20(5), 21(7), 29, 35 and in many references mentions types of disabilities including underrepresented groups like psychosocial, intellectual, autism, hemophilia, deaf and blind, blind, deaf, developmental disabilities including and WWDs and CWDs to provide measures to mainstream with more attention which is a good starting of inclusive approach from GoN but the approach is still inadequate to address all PWDs. Efforts to include most underrepresented groups of PWDs like historically disadvantaged groups like IPWDs, Dalits, muslims and madhesis, poor and regionally backward PWDs is required.

IPWDs, as underrepresented groups are double in population⁵² than other but their issues and their critical situation are not included in the Act. IPWDs right to be in decision-making processes and engaged is reaffirmed by both the declaration and the convention, IASG report⁵³ through their own representative intuitions but IPWDs are still missing in 2017 Act, policy documents and programs. Despite recent initiatives such as disability categorization, yearly budget allocation, programs, consultation with many under represented groups by the GoN, still gap to address and reach the most vulnerable exist. Disability policy has to be framed for all respecting disability diversity in all form and at all levels including in decision-making processes.⁵⁴

regular work, which I need to get from service provider as PWDs and as my right, is often challenging and humiliating as soon as I say I work for IPs. I believe that this is harm of my self-respect and human dignity confining my ability to participate meaningfully. Frequently, when I share my stories it is taken as anecdotal. Now I feel reluctant to express my similar experiences but I am repeatedly experiencing it in disrespectful way. When I ask to my other colleague, they do have the similar experience like me but the nature of treatment and means are different.

⁵¹ See Case studies: Questionnaire On the Right of Persons with Disabilities to Participation in Decision Making, Submitted to OHCHR, 2015 by NIDA and NIDWAN.

⁵² Based on several international documents, district evidences, districts wise report, discussions, meetings with IPWDs right holders and experts claim with evidences from community level in different events and programs.

⁵³ The Inter Agency Support Group Report 2014 mentions states should ensure that IPWDs are taken into account in legislation, policies and programmes regarding both IPs/PWDs, adopting a cross-cutting approach, mindful of the multiple forms of discrimination they can be subject to on the account of both disability and indigenous origin and intersectional combinations thereof. http://www.un.org/en/ga/president/68/pdf/wcip/IASG%20Thematic%20Paper_Disabilities.pdf

⁵⁴ National Consultation on CRPD List of Issues and Shadow Report Submitted to the CRPD committee, Organized by NIDA, NIDWAN and AIPP 31st October 2017, Kathmandu

Section 12 of the Act has provisioned that PWDs shall have the right to participate, either directly or through their federation or organizations, in policy development processes affecting them in any way and their views & opinions expressed shall be reasonably given due importance. However such enabling environment for IPWDs to participate effectively, express opinions for discussion has not initiated. Further, the 2015 Constitution of Nepal commits to ending discrimination relating to class, caste, region, language, religion and gender⁵⁵, mandates the representation of women, IPs, Dalits, PWDs and others in the federal parliament and local governance structure⁵⁶ and mention to make the IPs participate in decisions in order to ensure the rights in inclusion.⁵⁷ However there is no full and equal participation of IPWDs in legislative processes. In 2009, the UN Special Rapporteur on the Rights of IPs had recommended establishing special mechanism to consult with IPs through their own representative intuitions in relation to the provisions of new constitutions that affect them⁵⁸. The CERD in 2009, 2012 and 2013 had also recommended the GoN to ensure meaningful participation of IPs in the constitution making process. In the case of LAHURNIP et.al Vs Government of Nepal, the Supreme Court issued orders of Mandamus order to the Government to provide for effective and meaningful participation of IPs by reforming existing laws and policies in accordance with CERD, ICCPR, ILO 169 and UNDRIP⁵⁹ and avoid irreparable harm to IPs due to inadequate representation in the Constituent Assembly⁶⁰.

Despite all those and several appeals and memorandums submitted by IPs and the Government did not comply to ensure meaningful participation of IPs in the constitution making and has continued to disrespect the provision of human rights instruments and recommendation of international mechanisms as well order of the Supreme Court⁶¹ in formulation of laws and policies. Whereas some IPs is representing in State organs including legislative processes, they are representative of political parties rather than IPOs or DPOs representatives. So full and equal participation of underrepresented groups like IPWDs in any decision-making bodies, even in DPOs, IPOs or other framework is still lacking.

We thus request the Committee to recommend the State to

a) Recognize IPWDs as one of the underrepresented group and develop specific procedure to ensure their meaningful participation in decision -making process related to disability.

b) Implement the recommendation of UN Special Rapporteur on the Rights of IPs and CERD to establish mechanisms to ensure the full and equal participation of IPs, including IPWDs, in decision making process guided by its efforts to achieve target 16.7 of the SDG.

Issue 5 Please inform on measures adopted to address multiple and intersectional discrimination faced by persons with disabilities including on the basis of caste, ethnicity, and indigenous identity.

The preamble of the 2017 Act, section 7, 8 9(1) has explicitly aimed at prohibiting any form discrimination against PWDs and enshrines human rights in political, economic, social and cultural sectors but does not mention measures on multiple and intersectional discrimination.

Nepal has several constitutional and statutory bodies that monitor discrimination including National Human Rights Commission (NHRC), National Dalit Commission (NDC), and National Foundation for Development of Indigenous Nationalities (NFDIN) and National Women Commission (NWC). Those institutions seek to promote the rights of various groups in the society. While they generally lack strong mandate and adequate resources, they have not been able to provide adequate attention to discrimination against PWDs and look into multiple and intersectional discrimination faced by PWDs based on caste, and and indigenous identity. As a result they have not recommended or initiated effective measures for

⁵⁵ Government of Nepal, *Constitution of the Kingdom of Nepal*, 2015, preamble.

⁵⁶ Ibid 84(2) (House of Representatives), 86(2)(a) (National Assembly), 176(6) and (9) (Provincial Assembly), 215(4) (Village Council), 220(3) (District Coordination Committee) and 223(3) (Municipal Assembly),

⁵⁷ Ibid 51(j) inclusion of indigenous peoples

⁵⁸ A/HRC/12/34/Add.20 July 2009

⁵⁹ LAHURNIP et.al Vs. Government of Nepal, Supreme Court 2070, Nepal Kanoon Patrika a Additional volume, DN8990 P.491

⁶⁰ CERD issued letter from 2009 to 2013

⁶¹ Lawyers' Association for Human Rights of Nepal Indigenous Peoples, (LAHURNIP) Annual Report 2015, p 34

discrimination against IPWDs, which include special or temporary measures such as affirmative actions, disaggregation in data collection, monitoring human rights violations and others.

Similarly, the new Constitution provides for a National Inclusion Commission in Nepal under Article 258 (1)⁶² of the constitution and the 2017 Act section 38 has envisioned of a Disability National Direction Committee (DNDC)⁶³ but these two intuitions do not have the mandate to function independently as monitoring body and even less so for monitoring multiple and intersectional discrimination faced by IPWDs. The DNDC has provision of representation of PWDs from national level federation based organization and based on the types of disabilities,⁶⁴ which is again directly focused towards organizations with access to decision makers and thus excludes underrepresented groups like IPWDs and marginalized groups that are not in a size and status of federation based organization with no access.

On the other hand, the GoN has taken few initiatives such as skills and rehabilitation programs, budget allocation for WWDs that is remarkable but such measures have to introduced to address to those groups facing multiple and intersectional discrimination based on caste, ethnicity and indigenous identity. The programs for WWDs should be comprehensive to address and reach women and girls with disabilities from caste, ethnicity and indigenous identity with effective participation.

We thus request the Committee to recommend the State to

- a) Take steps to ensure meaningful representation of IPWDs in the DNDC and that is able to monitor multiple and intersectional faced by PWDs based on ethnicity, caste and indigenous identity.**
- b) Adopt specific measures such as affirmative actions and programs targeted to address the conditions of IPWDs, including IWWDs, who experience multiple and intersectional discrimination.**

Issue 6. Please indicate the impact of the measures taken under the Three Year Interim Plan (TYIP) (2010–2013) to ensure the full inclusion of women with disabilities into public policies and programs, especially to combat physical and sexual violence, abuse and exploitation of women and girls with disabilities.

As reflected in a GoN paper, the TYI Plan 12th periodic plan fiscal year 2010-2013 was unable to have a full five-year plan due to the protracted political transition.⁶⁵ The 14th Three-year plan provided brief assessment of the impact highlighted that inequalities among different castes, classes, ethnic groups and women were not scrutinized and substantial achievements in programs for PWDs were not achieved.⁶⁶ There has been development in the sector of legislative reforms but implementation of the laws is yet to be seen. Nepal ranked 144 in Human Development Index Report 2016 with equalities among citizens in various sectors.⁶⁷ However gender inequality is one of such inequalities persistent in country. The State mechanism have not made expected progress in ensuring 33 percent women's representation while the plan stated to taking into consideration the diversity of women in their proportional inclusion.⁶⁸

The current 14th periodic plan provides for increasement of gender responsive budget 22.3% and highlights major issues of PWDs such as CWDs not able to reach school, their high drop out rates, low

⁶² See Constitution 2015 in Article 259(1) explains that the Commission is to carry out research and studies for protecting rights and welfare of Khash Arya, backward community, persons with disability, elderly citizens, workers, peasants, marginalized and minority communities, people of Karnali region and economically disadvantaged people.

⁶³ See Disability Right Act 2017 p21 explains NDDC roles is to function disability services, protection, co-ordination and promotion on the rights of PWDs

⁶⁴ See Disability Right Act 2017 p21 explains that PWDs only from national level federation based organizations and from different ten types of disabilities can be representatives

⁶⁵ See Nepal Three Year Interim Plan Approach Paper, 2013- 2016 at <http://nnfsp.gov.np/PortalContent.aspx?Doctype=Resources&ID=18>

⁶⁶ An Approach Paper to the 13th Three Year Plan 2014 – 2016, NPC/GoN, p 6 and 14th A Three Year Plan (2016-2019) at <http://www.npc.gov.np/images/category/14th-plan-full-document.pdf>. Singha Durbar, Kathmandu, Nepal July, 2013

⁶⁷ See Human Development Report 2016 at http://hdr.undp.org/sites/default/files/2016_human_development_report.pdf

⁶⁸ The concept paper of the 12th Three Year Plan 2011-2013, NPC/GoN, 2011; p156\

environmental quality at school, budget allocation for sign language, CBR, programs for mental, psychosocial, intellectual, autism, severe and profound disabilities and rehabilitation services, support to parents including others.⁶⁹ However it does not include substantive programs as per fundamental needs of WWDs, IPWDs or IWWDs.

On the other hand, the current plan fails to combat violence against WWDs in substantive manner. Violence against WWDs occurs in conditions where power and access to decision making are intersected with ethnic, class and status grounds and result in greater vulnerability to the victims of violence. 90.9% WWDs feel that they felt excluded within family and community due to intersectional identities they have.⁷⁰ Women with intellectual or psychosocial disabilities from indigenous, Dalit, Madhesi, Muslim and other have higher prevalence of physical, emotional, sexual violence, abuse and exploitation. These groups lack social security, information on access to violence, assault, abuse, prevention and response services so they most often remain silent both in private and public space. Having no options, they and their family members take such activities as normal in their lives or blame themselves.⁷¹

Although there is no data on violence against indigenous girls with disabilities however information from the ground reports, case studies supports the fact that incidence of violence against them is horrendously high, higher than for girls in general.⁷² As an indigenous mother of a Tharu girl with an intellectual disability stated: 'And [the] third time she was again [...] rape[d], [...] nothing was done to none of them, nor any punishment, nor any compensation, nothing, nor any services to my daughter [...], years have passed my daughter is still with me, we are compelled to do forced sterilization to her'.⁷³ DPOs working on IPWDs report that they have found cases on rape, violence, assault and exploitation happening more with groups from psychosocial, developmental disability from Dalit, indigenous background⁷⁴.

This has been continuously reflected in the concluding observation of CEDAW (2011), CESCR (2014, 2007), CCPR (2014) and CRC (2016) including many others for Nepal. The Committees have expressed deep concerned about the multiple forms of discrimination, violence against disadvantaged groups of women such as Dalit and indigenous women, widows and WWDs. The Committee encourages the State party to adopt temporary special measures⁷⁵ domestic violence against disadvantaged groups⁷⁶, prioritize comprehensive programs like collection of disaggregated data⁷⁷, low representation of Dalit and indigenous women high-level decision-making in all areas of public service⁷⁸ representation and active efforts be made to promote the participation of these groups in the Constituent Assembly⁷⁹ recommends to establish concrete goals and time tables⁸⁰ and strengthen the special efforts to achieve universal education

⁶⁹ See 14th Three Year Plan, 2073, NPC/GoN, p164

http://www.npc.gov.np/en/album/42/npc_full_meeting_approved_the_14th_plan_2073_74_2075_76_detail

⁷⁰ Gurung, Pratima. A Study on Familial Discrimination against Women with Disabilities and their Response. May, 2013

http://www.socialinclusion.org.np/new/files/Pratima%20Gurung_1380091217dW9W.pdf

⁷¹ Focus Group Discussion on Sexual and Reproductive Rights held with Physical Indigenous Women with Disabilities, 23 Dec 2017.

⁷² Forgotten Girls, Dev Datta Joshi, 17 Dec 2017 <http://www.myrepublica.com/news/32678/>

⁷³ Cited in Nepal Civil Society Organization's reply to the OHCHR's call for submissions on the right of PWDs to participate in decision-making processes See <http://www.lan.ohchr.org/EN/Issues/Disability/SRDisabilities/Pages/DecisionMaking.aspx>

⁷⁴ NIDA Field Report 2015 www.ohchr.org/.../Disability/.../CSOs%20-%20NIDA-NIDWAN_Nepal_ENG.doc

⁷⁵ <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;

⁷⁶ 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 women

⁷⁷ 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/>

⁷⁸ 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, 2014E/C.12/NPL/CO/3, <http://idsn.org/un-2/treaty-bodies/t-nepal/>

⁷⁹ See, for eg CESCR 38th session, <http://idsn.org/un-2/treaty-bodies/t-nepal/>

⁸⁰ 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>

to Dalit and indigenous and disadvantaged girls.⁸¹ However, those recommendations are yet to be fully implemented for real changes in victims' lives.

We thus request the Committee to recommend the State to

Undertake a thorough review of current periodic plan to include substantive programs for WWDs, IPWDs and IWWDs in line with CRPD and UNDRIP, including to combat higher violence and abuse against women and girls from indigenous and Dalit groups in order to achieve the target 5.2 and 16.1 of the SDG.

Issue 7. Please provide information on measures to support women and girls with disabilities, especially in the fields of education, employment and other areas of public life, and particularly to address intersectional discrimination, in particular with reference to girls and women with intellectual or psychosocial disabilities, and from ethnic, Dalit, Madhesi, Muslim and other communities.

Women with disabilities are heterogeneous groups like women living in poverty; women from ethnic, religious and racial backgrounds; women with multiple disabilities requiring higher level of support.⁸² In sec 19 (1), (2) of 2017 Act, WWDs are enshrined with specific rights, environment for the maximum utilization of the knowledge, skill and ability and protection of health and reproductive right but there is no specific provisions under the Act to address the issues of intersectional discrimination in particular reference to girls and women from ethnic, Dalit, Madhesi and Muslims communities. IWWDs have no representation in any sectors⁸³. There are several provisions for ensuring the representation of women in constitution 2015⁸⁴ and in three years periodic plan however dominant privileged caste women, or political cadres because of the practice of keeping women in a single category occupy those seats.

Therefore, State has not been able to improve the status of marginalized groups and their issues in the whole framework. Like indigenous women comprise of 18.5% of large population however they are invisible in state policies, power and structure⁸⁵ and their identities and rights are not ensured as a right holder. Another examples can be reviewing state's three years periodic plan, from 6th year plan, the state has endorsed different approaches and strategies⁸⁶ however there has not been changes in the lives of indigenous, Dalit and WWDs. Similarly, constitution guarantees the rights of marginalized groups to participate in the state restructure on the basis of principle of proportional representation but the recent appointment of the NHRC is highly exclusionary⁸⁷ and there is no single representative in the recent CA from PWDs. Most of the legal provisions ensuring inclusion of marginalized groups are taken by male first then dominant caste women and others groups. While addressing PWDs, their representation is generally done from mainstream disability group often failing to recognize underrepresented groups facing multiple and intersectional discrimination with disadvantaged status.

We thus request the Committee to recommend the State to

Make gender-mainstreaming programs including intersectional approach in all dimension to address health, employment, education, access to information and social services and implement to increase the participation of psychosocial disabilities from ethnic, Dalit, Madhesi, Muslim communities at all levels in with Targets 3.8, 4.5, 45.b, 9.c and 8.5 of SDGs.

⁸¹ 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

⁸² See for eg CRPD/C/GC/3 para http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD/C/GC/3

⁸³ Shadow Report on the 4th and 5th Periodic Report of the government of Nepal on CEDAW, 2011, FWLD p11

⁸⁴ See article 12 right to citizenship, article 42 Right to social justice, article 51 social justice and inclusion, article 70 President and Vice President, article 84 province and, 306, women commission including social inclusive budget since 2007

⁸⁵ See Shadow Report on 4th and 5th Periodic Report by The Government of Nepal on CEDAW, 2011, FWLD

⁸⁶ See 6th -10th, Periodic Plan incorporating women in development framework, women empowerment, women's participation and mainstreaming, gender equality and mainstreaming and from 10th Year Plan incorporating poverty alleviation, social inclusion for marginalized groups and IPs

⁸⁷ Lawyers' Association for Human Rights of Nepal Indigenous Peoples, (LAHURNIP) Annual Report 2015, p 35

Issue 8 Please indicate the range of support services provided to families of girls and boys with disabilities.

Section 20 (2) of the Act 2017 mentions the rights of children such as education, training, health, rehabilitation, recreation among others shall be guaranteed but there are no specific provisions under the Act that states support services to be provided to the families of girls and boys disabilities. The population of indigenous children stands at 36% of the total population of children, or 4.3 million.⁸⁸ The NHRC 2011 report found that women and children in rural areas and those belonging to endangered and highly marginalized indigenous groups are the most vulnerable groups for trafficking⁸⁹ and indigenous children with disabilities (ICWDs) are vulnerable and isolated within homes due to lack of support services, ignorance and access to information for them.⁹⁰

Discussion carried out for this report suggests that many parents of indigenous ICWDs are unaware about the support services provided to them. Parents of indigenous girl with disability from eastern part said, “we are uneducated people, backward, living in remote places and don't know about disability, preventive measures, services and process to receive to our children. We don't know what, how to get rights, needs and enabling environment for us. We haven't received any services now and we want to get for our children”.⁹¹ In this regard, the principle of the best interests of the child expressing their opinion and exercising their rights is rarely practised to ICWDs. Most ICWDs do not have access, on an equal basis with others, to education, housing, or goods and services than others.

We thus request the Committee to recommend the State to implement the existing policies to support services to families from poor, rural and other ethnic groups and introduce strategy to prioritize them while providing services.

Issue 9 Please inform on the measures to ensure that the opinions and views of children with disabilities are taken into account with regard to the development of legislation, policies and other measures affecting them.

Section 20 (5) mentions developmental, psychosocial, autism, cerebral palsy, deaf and blind CWDs to provide teaching learning materials and methodology, text books with special care and section 32(b) states that helpless CWDs who have been left out by their family shall be provided with accommodation. The flash Report of Department of Education (DOE) 2013-2014 stated that the total number of CWDs (5-18 years) is 179,000 throughout the nation. A total of 73,985, or only 41.3% of all CWDs are benefiting from some kind of educational opportunities. However, about 60% of CWDs, largely intellectual, psychosocial, deaf blind and multiple disabilities are still deprived even the opportunity of basic education.⁹² ICWDs also fall in this group though they are not reflected in the report.

ICWDs' rights enshrined in the Constitution as free education, education in native language and development of mother tongue remains still a challenge. The constitution recognized braille and sign language and provided financial support to sign language interpreters in 20 districts⁹³ which is notable but it should also ensure mother tongue language and other means required for hard of hearing and others as same right for ICWDs in the 2017 Act. The sec 2 (9) of the Act has is defined as sign language and other sound proof language, which need to be broadly revised to incorporate mother tongue language and other modes in language

At present, two types of education systems: special and integrated schools are running where there are 365 resource classes throughout the country to provide support for the education of CWDs. More than 4000

⁸⁸ National population and housing census 2011 CBS, Nov. 2012

⁸⁹ National Human Rights Commission Office of the Special Rapporteur on Trafficking in Women and Children, “Trafficking in Persons Especially on Women and Children in Nepal 2012.

⁹⁰ The Situation of Indigenous Children with Disabilities. 2017. Directorate General For External Policies: Policy Department European Parliament

⁹¹ Focus Group Discussion held with Parents of Indigenous Children with Disabilities, 24th September 2017 Kavre.

⁹² Heide Arne, Shailesh Neupane and Karl Gerhard Hem. 2016 The National Survey on Living Condition among Individuals with Disabilities in Nepal, SINTEF Technology and Society, p37

⁹³ Nepal Human Right Report. 2016 <https://www.state.gov/documents/organization/265756.pdf>

students with different kinds of disabilities: visually impaired, intellectual disability and deafness are supported in various mainstream schools by such resource classes. These students are also enjoying the scholarship provided by the government however the disability rights activists and other stakeholders, are facing so many challenges in ensuring enrolment in institutions and ensuring quality education for children with diverse nature of disabilities. Such problems and challenges are prevailing in particular in the most disadvantaged communities.⁹⁴

Another example like Chepang, experience extreme discrimination at all levels. Out of total population of Nepal, 0.23% is Chepang, 90% of them are below the poverty line and 1% Chepang women were literate. There are more than 100 child marriages every year in Chepang community and there is no complaint file case against child marriage. 5% only go to health post for check up and remaining 95% of them depend upon witchcraft and many die untimely. 86% of them were not aware about GoN services for giving birth in hospitals. Similarly, 94% of pregnant women in Chepang community have home birth that is generally risky. Not even 1% of Chepang are able to live off their land for a year. The GoN has implemented Chepang development program like scholarship and uniform to Chepang students for the last 35 years, however there is little impact of this program and the drop out rates are higher.⁹⁵ Such situation is common phenomena to ICWDs. The fundamental values of receiving education, health, are not fulfilled and there is a gap to address measures for supporting environment to ensure their opinions, views with regard to their development and interest.

We urge the Committee to recommend the State to effectively implement multilingual education policies and programs with adequate budget, teachers and trainers allocated for CWDs and ICWDs and ensure access to official information in native a language and to be aligned with Target 4.a, 4.5 SDG.

Issue 10. 7.10 Please explain the extent to which the State party systematically includes senior public officials, politicians, polices, members of legal profession, teachers, etc. in the training and awareness raising initiatives it carries out to promote the rights of PWDs and to combat prejudices and harmful stereotyping against PWDs.

Discrimination cannot be combatted without awareness programs among all sectors of GoN. There are prevalent harmful stereotypes taboos stigma and prejudices related with both PWDs and IPs. Excluded groups who are the victim from multiple disadvantages, denied rights, marginalized from the mainstream society most often experience and has impact by such harmful stereotypes, prejudices in his/her lives though the degree of discrimination varies from one individual/society to another. The stereotypes related with disability are with lack, defect, sins of past deeds, and others whereas the prejudices, practices related with IPs are they ethnic stereotypes that tends to be prejudicial like backward, quarrelsome, drunkards, uneducated, humiliating, language, region, assuming irrational, ignorance and others. IPWDs experience both these stigma and prejudices on their lives and most people's minds are preoccupied with these social constructed values that reflect in their behaviours and perception lagging IPWDs behind.

The GoN has attempted to implement the 2012 Supreme Court order by making budget allocations for development and awareness programs on disability to GoN official, health professionals and to some politicians, right holders at community level. For e.g. NRs 107 million budget allocated for PWDs including NRs 69 million grants to DPOs in 15 districts, though the budget is little, progress had been made in disability awareness which is worthy⁹⁶ but such efforts has to reach all PWDs. MoWCSW and the GoN has to build strategy in realizing awareness raising activities on the existing stereotypes based on several identities and to address multiple and intersecting discrimination. IPWDs explained that they have no roles in eliminating stereotypes, educating, and training participating in awareness raising activities and DPOs representatives mentioned that GoN tries to escape from the execution of different legislations in the name of inadequate resources and something else. Most budgets allocated for development on

⁹⁴ Heide Arne, Shailesh Neupane and Karl Gerhard Hem. 2016 The National Survey on Living Condition among Individuals with Disabilities in Nepal, SINTEF Technology and Society, pg 46

⁹⁵ Nepal Human Right Book Year 2015, p100-109 INSEC, 2015.

⁹⁶ Nepal 2016 Human Right Report; <https://www.state.gov/documents/organization/265756.pdf>

disability is either distributed as small allowances or spent in other developmental activities.⁹⁷ So involvement of senior public officials, politicians, police, members of legal profession, teachers, etc. in the training and awareness raising initiatives has to be increased increasing among under represented groups among disability and State should take into account on all types of DPOs in such programs.

We urge the Committee to recommend the State to adopt policy on awareness raising on inclusion, educating cultural solidarity, harmony and wellbeing to effectively prevent and combat stereotypes faced by PWDs and allocate budget proportionately to engage all DPOs in the campaign.

Issue 11. 7.11 Please inform the Committee on measures to adopt a new strategy on disaster risk reduction, which is inclusive to PWDs and in line with the Sendai Framework for Disaster Risk Reduction.

Section 10 (2) of 2017 Act persons reflects right to guaranteed security and protection during the period of armed conflict, period of emergency and crisis. Nepal has signed and endorsed many national and international policies⁹⁸ whose guiding principle is to ensure protection and safety to the most vulnerable segments that suffer the most in situations of risk, including situations of humanitarian emergencies and natural disasters. However in reality, 2015 earthquake from affected communities indicated a high degree of dissatisfaction from elderly, women, children, PWDs, Dalit and IPs, were among many. 37% PWDs and 40 -70% and Dalit and IPs were excluded from the relief and recovery programs. Similarly, among PWDs, a significant proportion of 62% of Dalit PWDs and 81% IPWDs reported having inadequate or poor access to public facilities. Likewise, a much larger proportion of 85% Dalit PWDs reported less than adequate access to public services as did 74% IPWDs.⁹⁹

Participant in the workshop stated that after three years of earthquake, even in the recovery phase, they are struggling with challenges like no roof, no support and unsafe environment with no food, water and warm clothes. Most of them are severely affected by cold including mobility and financial challenges around them. The earthquake demolished, destroyed everything so to receive a government-rebuilding grant, they must have land ownership documents and disability card that was destroyed. So unable to prove the document, they have been denied with reconstruction procedure and support. Two monsoons, two winters have passed, they are still in temporary shelters made of zinc sheets, shivering in the cold with fever, influenza and pneumonia including other disease and disability and socio economic challenge they have.¹⁰⁰ So the challenge is still in the recovery and rehabilitation phase. The GoN's reconstruction efforts have failed the earthquake's most disadvantaged survivors. Ignoring the historical informal relationships that the communities have with land, the GoN has reinforced their marginalization through a reconstruction program that denies landless people their right to adequate housing," said Aura Freeman, Amnesty International's Campaigner on Nepal.¹⁰¹

Many studies¹⁰² done on earthquake 2015 indicate that a new strategy to response to disaster should be focus to specifically target based on an understanding of the context of social exclusion. Otherwise there will be a real risk that vulnerabilities will be exacerbated and social disadvantage further entrenched, resulting further behind. Importantly, disability experience has significant variations in the type and severity that affect both everyday social experience and the experience of disaster. Therefore, it is necessary to disaggregate our understanding of both disability and vulnerability, to better account for the

⁹⁷ Heide Arne, Shailesh Neupane and Karl Gerhard Hem. 2016 The National Survey on Living Condition among Individuals with Disabilities in Nepal, SINTEF Technology and Society, pg 46

⁹⁸ Natural Calamity Relief Act, 1982, Prime Minister Natural Calamity Rescue Fund, Local Self Governance Act, 1999, National Strategy for DRM 2009, District Disaster Preparedness Plans, National Framework for Disaster Response, 2013, Draft Nepal IASC Contingency Plan 2013, Local Adaptation Plan of Action (LAPA), The National Climate Change Policy, National Adaptation Plan of Action (NAPA), 14th Three Year Interim Plan, Constitution 2015 article, SAARC Agreement on Rapid Response to Natural Disasters, SFDRR 2015-30, COP 21, SDG 2030

⁹⁹ Disaster, Disability and Differences, A Study of the Challenges faced by Persons with Disabilities in Post Earthquake Nepal, 2016 UNPD, Social Science Baha and NFDN Nepal.

¹⁰⁰ Workshop on CRPD Process and Follow up of Shadow Report, Organized by NIDWAN 24 March 2017, Kathmandu.

¹⁰¹ Amnesty Report, 2017, <https://www.amnesty.org/en/latest/news/2017/04/nepal>

¹⁰² Amnesty International Report, 2015, 2016, 2017, Save the Children Report, Waiting or Justice -2015, UNDP Report, Assessing the Impact of Nepal 2015 Earthquake on older People, PWDs and how gender and ethnicity factor into that Impact: Study Report

specific needs and capabilities of different kinds of PWDs recognizing diversity within disability.¹⁰³ Like WWDs and IWWDs during and after earthquake faced increased risk of violence, exploitation or abuse including less access to recovery and rehabilitation services or access to justice.¹⁰⁴

We urge the committee to recommend the States to adopt and implement to ensure the principle of non-discrimination in all programs, revise the existing policies in line with the Sendai Framework for Disaster Risk Reduction and to develop special measures to reach and support the most vulnerable groups during risk and emergencies to be aligned with Targets 1.5, 11.5, 9.c of the SDG.

Issue 12. 7.12 Please explain how PWDs are supported and are made aware of their rights to access to justice on an equal basis with others. Please provide information on the measures taken to implement procedural, gender and age sensitive accommodation in judicial proceedings.

The recent Disability Act 2017 mentions PWDs shall be provided free legal aid to ensure access to justice. Access to justice for IPWDs is a clandestine issue. Most IPWDs and IWWDs do not expose their day-to-day injustices, discrimination and indifferent incidents occurring to them. They are bound to endure all these inhuman activities like (violence, victim, vulnerable and risk) situation with them in their daily lives because the legal process is lengthy, costly, complex to understand all the procedures and in most cases the decision are made with compromise. Most WWDs and IWWDs have to depend on their families to live their lives so they don't want to go against them. The procedures of many justice systems remain the main barrier for many indigenous girls and young women with disabilities. Families are not aware of the specific procedures or legal processes to deal with cases of violence, rape, assault and harassment, and many of them remain silent.¹⁰⁵

The stories of being victim, vulnerable or at risk in their lives are difficult to come unless there is a purpose and urgency for them. Most often they remain silent and if some body tries to express their story, indigenous communities often hide them. They are aware about the fact that the access to justice is difficult to people without disabilities that have voice. Few of them, who speak for their rights and justice, even feel hesitant to file case on violence and inhuman activities. Some cases of PWDs on violence, discrimination happening in public sphere are filed but most IPWDs are not in a status to claim their rights. They have fear that they might be abandon by their own family members, relatives, the social status might lose like IWWDs shared her experience that she is abused and violated by her step brother and father everyday but she can't tell such activities and her mother does not believe on her. As soon she shares such experiences to others they will abuse her severely and she has no places to go and live differently.¹⁰⁶ The social stigma on disability prevails in many form, including financial challenges, social security and functional limitation that they force to remain silent or most often their family members/care takers do not want to go for such process and hurdles.¹⁰⁷

The state has not taken measures to implement procedural, gender and age sensitive accommodation in judicial proceedings for PWDs considering their disability like intellectual and psychosocial disabilities and IPWDs. These barriers exist within society. Most IWWDs and other marginalized groups are not aware about CRPD and their rights, so access to justice remains a question as do not know anything on it. In some communities women are provided some level of sensitization on their rights like CEDAW or through other community activities like participation, involvement and sharing and they know about injustices happening to them but those information are not full informative from access to justice lens. Therefore, IWWDs are disproportionately at risk of experiencing all forms of violence and neglect,

¹⁰³ Disaster, Disability and Differences, A Study of the Challenges faced by Persons with Disabilities in Post Earthquake Nepal, 2016 UNPD, Social Science Baha and NFDN Nepal.

¹⁰⁴ Discussion with indigenous persons/women with disabilities in Sindupalchowk district, July 2016.

¹⁰⁵ The Situation of Indigenous Children with Disabilities. 2017. Directorate General For External Policies: Policy Department European Parliament.

¹⁰⁶ Focus Group Discussion among Women with Disabilities for a Research conducted on Familial Discrimination against Women with disabilities in 2014, Kathmandu, Nepal

¹⁰⁷ Focus Group Discussion held with Indigenous Women with Disabilities Issues and Challenges, 13th April, Organized by NIDWAN, Kathmandu.

compounded by discrimination on several grounds. These forms of violence include physical, emotional and sexual violence. Violence against IPWDs often originates within their own families.¹⁰⁸

We request the Committee to recommend the State to undertake effective measures to expand judicial support services and protection for PWDs to decrease their vulnerability and invest in education and awareness for the general public and those involved in the administration of criminal justice on human rights for PWDs including indigenous persons with disabilities.

Issue 13 7.13 Please provide information on the measures that have been adopted to ensure affordable access to accessible health services by persons with disabilities including IPWDs.

Health measures to both PWDs and IPs are critical. The recent Disability Act provides opportunities to keep documents of PWDs and update health measures and provide services to underrepresented groups like autism, psychosocial, hemophilia and similarly there were eight decision made by the Supreme Court for the protection and rights of PWDs. Among the eight, rights to ensure the reproductive health for WWDs providing delivery beds, cabins and ramps, health professionals support, sign language interpreter at both private and GoN hospitals but this has yet remained to be implemented fully.¹⁰⁹

However there are no such initiatives on mainstream health services including sexual and reproductive rights for WWDs that means all these services health, education, rehabilitation services are provided in a blanket approach. PWDs who are active and have access to information use it effectively and others are often left out that is why most IPs and IPWDs and Dalit PWDs in rural areas are in critical situation and have less access to health services with low health status than others. A study done on health status in one of the IPs communities stated that only 15% Bhote communities were aware of good health.¹¹⁰

IPWDs often do not know the right to the enjoyment of highest attainable standard of physical and mental health including communication, awareness and health education, training and access to information. They reside in the remote areas and practice traditional medical facilities. IPWDs focus that the right enshrined in the convention must be linked to peoples who are most vulnerable understanding adequate cultural appropriate health services, healthy habitats and land rights with their informed consent. Positive action to ensure inclusion and participation of PWDs who have been subjected to historic discrimination and isolation through physical, social and attitudinal affirmative actions is prerequisite, to make appropriate accommodation in workplaces, education, health and services of life to address the exiting gap among us.

We urge the Committee to recommend the State to develop a strategy for consultation with IPWDs to take measures to guarantee that PWDs and IPWDs have access to mainstream health services and awareness on health services and ensure adequate cultural appropriate health services to IPWDs in order to be aligned with Target 3.8 of the SDG.

Issue 14.7 14 Please provide information on the methodology used to collect data on PWDs and to ensure appropriate disaggregation of data on the basis of sex, age, ethnicity, indigenous identity and geography.

The 2011 survey was nation-wide survey of total household and population. However, there was only a single question on data collection on population with disability that was not able to identify exact number of PWDs. So there is no disaggregated data information on PWDs. Data collection was highlighted as a key advocacy instrument, as long as mechanisms to produce statistical data involve the direct participation of the rights holders and are respectful of their rights in the expert meeting of IPWDs.¹¹¹ The lack of

¹⁰⁸ Access to Justice in the Promotion and Protection of the Rights of Indigenous Peoples: restorative justice, indigenous juridical systems and access to justice for indigenous women, children and youth, and persons with disabilities, 2014, Study by the EMRIP, HRC, A/HRC/27/65, 12th session, Agenda item 5 see <http://undocs.org/A/HRC/27/65>

¹⁰⁹ Poudel, Shiva Prasad and Sudarshan Subedi A Collection of the Supreme Court Judgments on Disability 2014 ESCR Net.

¹¹⁰ K. P. Rosyara, Health and Sanitation Status of Bote Community, Journal of Institute of Medicine, December, 2009; p 31:3 <http://jiom.com.np/index.php/jiomjournal/article/viewFile/435/415> A study done in health status stated that only 15 % Bhote community were aware of good health as a physical, mental and social wellbeing and the study concluded that Indigenous groups Bote community are in dire need of basic health and sanitation facilities. They also need to be educated about healthy practices.

¹¹¹ <http://www.embracingdiversity.net/news/indigenous-persons-with-disabilities-opportunities-to-advance-their-rights>

reliable data is linked to some States reluctance to ensure IPs and marginalized groups rights in reality, like the NLSS fails to provide adequate data on the socio economic status of individual groups particularly IPs.¹¹²

Participants highlighted that in order to foster community wellbeing and dignified livelihoods of PWDs, IPWDs and other marginalized groups must be identified and reflected in reports, studies and in laws reflecting their situation from GoN and other UN agencies.¹¹³ Gathering information on IPWDs has many social and political implications in improving social accountability and the monitoring of human rights. Thus, it is crucial to address the existing information system gaps by the participation of PWDs in designing, implementing, monitoring and evaluating of data collection.

It was highlighted significantly in several meetings, FGD and in workshops that there is no single information on IPWDs from state, UN agencies, and development partner working on disability. States and international agencies need to support for data collection and research to fill the knowledge gaps and increase participation of groups facing intersectional discrimination. The evidence, case, information of challenges and successes of PWDs at community level have to be documented to bring changes in lives of PWDs and lobby for policy changes.¹¹⁴ Inclusive and participative research processes should center on the lived experiences and requirements of groups that are invisible among PWDs and ensure that national monitoring procedures to identify the areas of inequality and discrimination that affect their lives.

We request the Committee to recommend the State to take immediate and effective measures for collection of data disaggregated by sex, caste, ethnicity, region and research and information to highlight the situation of PWDs to be aligned with Target 17.18 SDG.

Issue 15. 7.15 Please provide information on measures to ensure that persons with disabilities, through their respective organizations, participate at all stages of international cooperation development programmes, particularly in the implementation of the 2030 Agenda for Development and the SDG.

The MoWCSW is the line ministry of the GoN of Nepal responsible for national and international development programs relating to PWDs, including the 2030 Agenda for SDG. The MoWCSW liaises directly with the National Federation of the Disabled-Nepal (NFDN) and in some cases to individual DPOs, for budget and programs on SDGs. Only few representatives from NFDN are incorporated to participate in all stages of development programs.

IPWDs in the FGD explained that when IPWDs inquiry about budget and programs to the local authorities and they assume that the disability programs implemented for girls and WWDs will cover these marginalized groups among disability and benefitted by it.¹¹⁵ A Study done by National Federation of the Disabled-Nepal (NFDN) mention the total budget allocated for PWDs in 2011/12 is very minimal and the budget is not allocated in accordance with the directive of the constitution and CRPD¹¹⁶ however those budget are not substantially dispersed on proportional manner to all groups among PWDs. Some DPOs receive 40 thousand dollar, some receive 1 thousand and some don't receive at all annually from MoWCSW.¹¹⁷

Similarly, the international funds are managed in the same way. The development partners either works with GoN or with federation based organizations and implements programs on disability. Inclusive modality is practiced including some PWDs from marginalized group no matter they participate in a meaningful manner or not. In this regard, IPWDs are most often left. Though the UNCRPD, UNDRIP and

¹¹² LAHURNIP, 2016. Study and Analysis of the Constitution of Nepal from the Perspective of Indigenous Peoples, Kathmandu.

¹¹³ National Consultation on CRPD List of Issues and Shadow Report Submitted to the CRPD committee, Organized by NIDA, NIDWAN and AIPP 31st October 2017, Kathmandu

¹¹⁴ Meeting among Indigenous Persons with Disabilities on CRPD Pre Session organized by NIDA and NIDWAN held on 14th August 2017, Kathmandu.

¹¹⁵ Sharing in Workshop on Situation of Human Rights of Indigenous Persons with Disabilities, 24th July 2017, Kathmandu.

¹¹⁶ Budget Mapping on Disability Sector in Nepal 2011/2012. 2013 National Federation of the Disabled Nepal (NFDN)

¹¹⁷ Sharing in Workshop on Situation of Human Rights of Indigenous Persons with Disabilities, 24th July 2017, Kathmandu.

IASG documents clearly reflect to include IPWDs in projects at the country level, in cooperation with IPWDs and their representative organizations but it has remained only in paper. The SDG 2030 slogan leaving no one behind with the inclusion of both PWDs and IPs through support and program, involvement, implementation at national level becomes ambitious as there are no international co-operation, economic assistance, research and programs targeted for most marginalized groups like IPWDs and others both from national and international intuitions

In such situation, the thirst of implementing Constitution, CRPD and SDG with leaving no one behind remains a challenge if marginalized groups like IPWDs and others are not mainstreamed because it's about right and dignity of every individual that is connected within a group and with the success of celebration or failure together with the effective implementation of constitution, CRPD and SDG 2030 goals.

a) We request the Committee to recommend the States to integrate and mainstream the rights of PWDs in the national implementation and monitoring of the 2030 Agenda comprising inclusion of indigenous persons with disabilities.

b) Ensure systematic and meaningful consultation with organizations of IPWDs in the development of all policies and laws and economic assistance and promotion of capacity building of all stakeholders.