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KOSHISH (National Disabled People Organization) Submission to the United Nations Universal Periodic Review 37th Session (Third Cycle) of the UPR Working Group of the Human Rights Council Concerning Human Rights of Persons with Psychosocial Disability and Other Under-represented Disabilities in Nepal July 2020

I. INTRODUCTION

1. This submission has been prepared by KOSHISH, a National Disabled People Organization, working for mental health and psychosocial wellbeing of all in Nepal. This submission highlights the issues of persons with psychosocial disabilities and autism, down syndrome, intellectual disability, hemophilia, cerebral palsy, stuttering or stammering, and deaf which are neglected or under-represented disability groups in Nepal.¹

II. METHODOLOGY

2. This report is the product of wider consultations with persons with disabilities and other concerned stakeholders. Two provincial level consultations, two consultations² in Kathmandu and 2 validation workshop³ were held before giving final shape to this report. In total 113 persons with disabilities or the representatives from Disabled Persons Organizations (DPOs) were consulted while preparing this report.

III. IMPLEMENTATION STATUS OF UPR 2015 RECOMMENDATIONS ON RIGHTS OF PERSONS WITH DISABILITIES

3. In Nepal's second cycle of review, none of the recommendations were on psychosocial disability.
4. Only four recommendations⁴ were made exclusively on disability issues⁵ and none of the recommendations were fully implemented⁶.

IV. GENERAL LEGAL MEASURES AND HUMAN RIGHTS FRAMEWORK CONCERNING PSYCHOSOCIAL DISABILITY

a. Scope of International Obligations

5. Nepal ratified the Convention on the Rights of Persons with Disabilities and its Optional Protocol on May 7, 2010⁷, which was ratified by the parliament of Nepal on 27th December, 2009. The provisions of ratified

treaties will prevail if the provisions of domestic contradicted with them.⁸

b. Constitutional and Legislative Framework

6. Rights of persons with disabilities have been ensured in the Constitution of Nepal under the provisions of right to equality⁹, right to education¹⁰, rights of the child¹¹, right to social justice¹², right to social security¹³, policies relating to basic needs of the citizen¹⁴, etc. Despite these constitutional guarantees, persons with psychosocial disabilities experience the worst forms of discrimination and face huge barriers in reaching their full potential.¹⁵
7. The Rights of Persons with Disabilities, 2017 was enacted as a comprehensive Act to address issues and concerns of persons with disabilities in Nepal. However, the Act in Section 2(b), 2(g), 2(h) while defining 'persons with disabilities', 'accessibility' and 'rehabilitation center' have focused more on visible disability and functional impairment rather than social barriers.¹⁶
8. The Act in Section 2(g) while defining 'accessibility' has again focused more on physical disabilities and functional impairment. It mentions accessibility to physical infrastructure, transportation, information and communication and other public services. It has not pointed out barriers caused by laws, rules, policies, administrative systems, social values, structures psychosocial environment.
9. The Act in Section 2(h) while defining 'rehabilitation center' has ignored living independently and being included in the community.¹⁷
10. Section 4 of the Act while prescribing provision and process of getting disability identity card have provided comparatively an easy process for persons with visible disability and a lengthy process for persons with psychosocial disabilities and other underrepresented disabilities as their application needs to be verified by a coordination committee.¹⁸ There is no concrete identification criteria for persons with psychosocial and underrepresented disability.
11. The Act does not provide any rights regarding supported decision making mechanisms and has focused more on guardianship provisions.
12. The Act lacked concrete provisions related to psychosocial disability and persons with psychosocial disability face more stringent barriers with little or no access to legal services, social protection services and livelihood

programs.¹⁹

13. The Act is also silent regarding the legal harmonization in compliance with UNCRPD in regards to discriminatory and derogatory provisions in the legal framework.
14. The Act has made provision for formation of National Directive Committee with authority for coordination, supervision and promotion of rights, services and protection of persons with disability but the committee has not been formed thus far.
15. The new Civil and Criminal Code adopted on 2017 emphasized on the responsibility of guardians in relation to persons with disability and not on strengthening the state mechanism to ensure rights of persons with mental/psychosocial disability.²⁰

Recommendations:

- (a) Amend Section 2(b) and 2(g) and redefine disability and accessibility. Ensure that the definition of disability and accessibility incorporates barriers, caused by laws, rules, policies, administrative systems, social values and psychosocial environment.
- (b) Amend Section 2(h) and incorporate provisions of safeguarding rights of persons with mental/psychosocial disability through development of support systems and state mechanisms.
- (c) Amend Section 4 and incorporate provisions of psychosocial disabilities while issuing disability identity card. Prepare human resource competent of examining all types of disabilities while issuing disability identity card.
- (d) National Directive Committee for the coordination, supervision and promotion of rights, services and protection of persons should be formed with effective functioning.
- (e) Develop and incorporate infrastructures and government mechanisms that addresses need based supported decision-making mechanism.

c. Human Rights Institutions, Infrastructures and Policy Measures

16. There is National Human Rights Commission as a constitutional and independent human rights monitoring body established as per Paris Principle. The constitution has also made provisions for National Women Commission, National Dalit Commission, National Inclusion Commission, Indigenous Nationalities Commission, Madhesi Commission, Tharu

Commission and Muslim Commission with one of the core working areas for the protection and promotion of rights of persons with disabilities. The CRPD has also made provision for an independent CRPD implementation committee to be formed but it has not been formed yet.

17. Commissioners to most of these Commissions have not been appointed yet. These specific commissions were created with the mandate to receive complaints and to look into the cases of rights violations in the respective communities and are also mandated to identify areas of necessary policy, legal and institutional reforms and make recommendations to the government.²¹

Recommendations:

- (a) Awareness campaigns on issues such as legal capacity of persons with underrepresented disability, access to justice, legal remedies, removing social barriers towards persons with disabilities, collaboration with civil society and implementation of policy measures to protect and promote the rights of persons with underrepresented disabilities.
- (b) Equally prioritize the issue of under-represented disability including psychosocial disability in all the commissions to monitor the situations of violation of the rights of persons with disabilities and provide recommendation to the government accordingly.
- (c) While developing plans and programs relating to disability by concerned authorities, it should be inclusive of issues relating to psychosocial and underrepresented disability.

V. IMPLEMENTATION OF INTERNATIONAL HUMAN RIGHTS OBLIGATIONS CONCERNING PSYCHOSOCIAL DISABILITY

a. Implementation of CRPD Concluding Observations on Psychosocial Disability

18. The concluding observation of the CRPD Committee dated March 1, 2018 has pointed many concerns of persons with psychosocial and other underrepresented disabilities.²² Despite the Committee recommendation to investigate, prosecute and punish cases of chaining and detention in private homes, and forcible placement and treatment in psychiatric facilities of the persons with psychosocial disabilities²³, the government's initiative to address such issues has not been evident as KOSHISH has received numerous calls to rescue and provide treatment to them.²⁴

Likewise there is no mechanism to monitor chaining, detention and human right violation of persons with underrepresented disabilities.

19. Despite Committee's recommendation to pay particular attention to children with disabilities belonging to marginalized groups in rural and mountainous areas, especially children with intellectual or psychosocial disabilities and those from indigenous communities²⁵, the government has taken no specific measures to support children with disabilities and their families.²⁶
20. Establishment of psychosocial and comprehensive community-based rehabilitation services²⁷ were recommended by the Committee but there are not such services established so far for the persons with psychosocial other unseen disabilities.
21. Despite committee's recommendation to take appropriate measures to gather data and develop criteria to fill the 5 per cent quota for civil service positions that are reserved for persons with disabilities²⁸, no specific actions were taken to evaluate the situation.²⁹

Recommendations:

- (a) Take appropriate measures to gather data including undertaking a comprehensive evaluation. Integrating mental health issues in the information system of the public health issues under government priority and internalize the toll of mental health and psychosocial problems on economic growth and development.
- (b) Draft and implement a separate Plan of Action to implement UNCRPD concluding observations prioritizing the issue of children with disabilities belonging to marginalized groups in rural and mountainous areas, especially children with intellectual or psychosocial disabilities and those from indigenous communities.
- (c) Adopt specific measures to collect information on the effectiveness of the employment quota for persons with disabilities in the civil services and how these posts are filled by persons with underrepresented disabilities.
- (d) Form an independent CRPD Committee to monitor the disability related implementation.

VI. MAJOR AREAS OF CONCERNS

a. Lack of Data

22. There is lack of comprehensive population based³⁰ national level data of persons with mental/psychosocial disabilities.³¹ Which is one of the significant barriers to identifying and addressing mental/psychosocial disability in Nepalese context.³²
23. Census survey forms do not incorporate questions to collect data on psychosocial disabilities.³³

Recommendations:

- i. Take action towards involving persons with disabilities and their organizations in population census going to be conducted in 2021 in order to use data to devise and implement informed programs.
- ii. Include questionnaire to identify and record persons with psychosocial disability and other under-represented disability in the National Census going to be conducted in 2021. World Health Organization Disability Assessment Schedule 2.0 can be referred for the questionnaire.
- iii. Take appropriate measures to develop and carry out national level research on various forms of disabilities and its impact on lives of persons with psychosocial disability.

b. Lack of health professionals and quality health service

24. There is severe lack of efficient mental health services³⁴ where availability and accessibility are the challenges. At community level, counselling and psychotherapeutic services are not available. The existing policies has failed to integrate mental health within the general health system of the country.³⁵ The healthcare remains costly and inaccessible to the majority of persons with disability in far-flung areas³⁶ with no early diagnosis, intervention and treatment at all.³⁷
25. There are 0.36 psychiatrists, 0.003 child psychiatrists, 0.56 mental health nurses and 0.52 psychologists for every 100,000 population.³⁸The appointment of mental health professionals such as psychologist and counsellor is null and very few psychiatrists are appointed in government hospitals.³⁹
26. There is no equal and easy access on mental health services to all⁴⁰ and government has not prioritized mental/psychosocial disability issues as

the draft National Guidelines on Disability Management 2019, for disabilities Government hospitals lack adequate funding and infrastructure.⁴¹ There are only 6 mental hospitals and 18 general hospitals with psychiatric units with inpatient care and 29 mental health outpatient facilities attached to a hospital. Likewise, the government has only allocated 0.18 % of the overall health budget to mental health services.⁴²

Recommendations:

- i. Accelerate generating adequate numbers of holistic team including social workers, lawyers and health professionals like psychologists, psychiatrists, neurologists, etc. along with creating standard curriculum to train local level community workers/health personnel and providing psychosocial support at levels of health facilities.
- ii. Take appropriate action towards providing sufficient budget to government hospitals, health posts and clinics to improve quality of mental health and psychosocial services and to establish programs based on social justice to make mental health accessible to disadvantaged and marginalized communities.
- iii. Policies related to treatment and rehabilitation of patients should address the interrelated social, economic, environmental, cultural and psychosocial factors that affect them.
- iv. Set up facilities at local level and train health workers for early diagnosis, intervention and treatment to ensure equal and easy access on mental health services to all.

c. Violation of right of persons with mental/psychosocial disability.

27. The legal barriers faced by persons with psychosocial disability were depicted by 69 out of 340 Acts being inconsistent with UNCRPD and Constitution of Nepal.⁴³
28. The eligibility criteria for right to vote and right to get elected for persons with mental/psychosocial disability are put together without any specific categorization.⁴⁴
29. Persons with mental/psychosocial disability are not considered eligible to hold government positions, cannot exercise their right to privacy and are compelled to be accompanied by a guardian to hold legal ownership of any properties.⁴⁵

Recommendation:

- i. Provide adequate training to government officials, lawmakers and health service providers to improve the understanding of rights of persons with mental health and psychosocial disabilities.
- ii. Remove all the discriminatory provisions, which forbid persons with mental/psychosocial disability to exercise their full legal capacity and to acquire properties in the absence of guardians. The legal harmonization should be in compliance with UNCRPD and the constitution of Nepal.

d. Special problem of women and girls with psychosocial and other under-represented disabilities

30. Women and girls with disabilities are vulnerable and their sexual and reproductive rights are not yet cemented under relevant laws.⁴⁶ Women with disabilities face additional discriminatory practices from the state mechanisms and the society despite of constitutional and legal protection due to ineffective state authorities and lack of enforcement of proper legal mechanisms.⁴⁷ As a result, women fall victim to violence including intimate partner violence, domestic abuse, verbal and emotional abuse, physical abuse, sexual violence⁴⁸, sexual harassment⁴⁹, rape and other forms of gender based violence etc.⁵⁰ Nearly 80% of human rights violations in 2019 were against women.⁵¹ KOSHISH provided services to 143 victims of gender-based violence, 43 rape survivors and seven persons victimized in foreign employment.⁵²
31. National Women Commission received 604 cases of complaints of violence against women during the COVID lockdown period, which is an increase by 54%. Similarly, Nepal Police have received 432 complaints relating to violence against women during the period of March 24 until May 30, 2020.⁵³

Recommendations:

- i. Expedite carrying out research to establish casual/effectual relationship between GBV and mental/psychosocial disability, promoting reporting practices, promoting community groups in addressing them and providing family support.
- ii. Provide essential services like medico-legal services, immediate safe shelters, rehabilitation services, health services and need based counselling services to victims of any forms of violence without any discrimination though hospital based One Stop Crisis Management Center

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iii. m the local level and FCHVs (Female Community Health Workers).

e. Chaining, incarceration and inhumane degrading treatment

32. Children and other family members with psychosocial disabilities are often chained,⁵⁴ incarcerated inside the home or in separate cage⁵⁵/hut.⁵⁶ Many families do not reveal whether someone in the household has disability.⁵⁷ Persons with psychosocial disability are often take such person as burden and wish for their early death.⁵⁸

33. Since 2008 to 2019, KOSHISH rescued and provided services to 578 persons with disabilities chained and locked persons with psychosocial disabilities.⁵⁹

Recommendations:

- i. Investigate, intervene and penalize cases of chaining, incarceration and inhumane degrading treatment of persons with psychosocial and other under-represented disabilities.
- ii. Develop infrastructures and government mechanisms that address need based assistance to include diverse disabilities issues of persons with under-represented disabilities.

f. Access to education

34. Even though the government has ensured that the education system is accessible, appropriate and of good quality for children with disabilities on paper⁶⁰, there is a huge gap in the implementation⁶¹. The current academic curriculum limits children with under-represented disabilities to learn practical life skills. Most schools lack adequate trained staffs who can constructively address challenges or take on support roles for children with under-represented disabilities.⁶²

35. Children with disabilities in Nepal face serious obstacles to quality and inclusive education.⁶³

36. Corporal punishment is inflicted by teachers against children with learning disability simply because they are not learning fast.⁶⁴

Recommendations:

- i. Provide training to teachers to make them competent and skilled to teach persons with psychosocial disabilities and other under-represented disabilities.

- ii. Prioritize and provide sufficient budget for development of human resource, materials and methods for the education of persons with psychosocial disabilities and other under-represented disabilities.
- iii. Policy level intervention along with development of academic curriculum for children with under-represented disability with adequate support and inclusive environment should be adopted.

g. High prevalence of suicide among youth.

37. Suicide is one of the leading causes of unnatural death in young people in Nepal.⁶⁵ There were 5754 incidents of suicide reported in the year 2018/19 which was an increase by 8.2 percent than 2017.⁶⁶ 1498 death by suicide were documented during the period from 24th March until 20th June 2020.⁶⁷

Recommendations:

- i. Invest in awareness raising activities for increasing understanding of mental health and psychosocial wellbeing among general public.⁶⁸
- ii. Revise school curriculum to incorporate mental health and psychosocial wellbeing as an integral part of overall health.⁶⁹
- iii. Make a provision of free mental well-being assessment to all school children and psycho-social counseling to needy children at schools in every four months.⁷⁰
- iv. Develop a reliable national database to identify the burden, determinants and distribution of suicide and then formulate and implement national strategy for suicide prevention to address the growing rate of suicide.
- v. Develop a separate plan of action to implement national strategy for suicide prevention.

Reference

- ¹ In the consultation meetings organized by KOSHISH in 2019, participants shared that autism, down syndrome, intellectual disability, hemophilia, cerebral palsy, stuttering or stammering, and deaf are not given priority and are not represented on an equal basis with physical disability.
- ² Two province-level consultation were carried out in Province number 4 – Gandaki Province and Province number 1- Biratnagar with persons with underrepresented disability.
- ³ MP representing Disability Group in the Parliament, Government stakeholders, youths with disabilities, and representatives from National Federation of the Disabled People – Nepal, representatives from various DPOs and underrepresented disability participated in the validation meeting.
- ⁴ 1) continue to increase spending on education in order to improve coverage and quality of education with the special attention to the right to education of the vulnerable groups, including poor students, girls and children with disabilities (*China*); (2) Amend current education policies to ensure an inclusive education system and implement concrete measures to increase the participation of children with disability (*Norway*); (3) Design instruments for measuring and generating reliable and disaggregated data on persons with disabilities and remove any legal barriers and discriminatory practices towards persons with disabilities (*Panama*); (4) Include defenders of human rights of persons with disabilities in the decision-making process on education policies (*Spain*), were the recommendations provided to Nepal in the 2nd UPR Cycle but none of these recommendations were examined or addressed by Nepal in the following years.
- ⁵ Recommendation 122.98 by China, Rec. 122.109 by Panama, Rec. 122.110 by Spain and Rec 122.107 by Norway.
- ⁶ https://www.upr-info.org/.../nepal/.../upr_midterm_review_april2018_nepal_upr_coalition.pdf.docx
- ⁷ https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Countries.aspx?CountryCode=NPL&Lang=EN
- ⁸ Treaty Act 1990, Sec. 9(1).
- ⁹ Article 18, Constitution of Nepal, 2015.
- ¹⁰ Article 31, Constitution of Nepal, 2015.
- ¹¹ Article 39, Constitution of Nepal, 2015.
- ¹² Article 42, Constitution of Nepal, 2015.
- ¹³ Article 43, Constitution of Nepal, 2015.
- ¹⁴ Article 51(h), Constitution of Nepal, 2015.
- ¹⁵ <https://www.unicef.org/rosa/press-releases/conference-disability-calls-greater-opportunities-people-disability-nepal> retrieved on 15th Dec 2019.
- ¹⁶ Section 2(b), 2(g), 2(i). The Rights of Persons with Disabilities Act, 2017.
- ¹⁷ Article 19, UNCRPD is regarding- living independently and being included in the community, with choice equal to others where persons with disabilities have the opportunity to choose their place of residence and where and whom they live and are not obliged to live in a particular living arrangement with community support services, including personal assistance necessary to support living and inclusion in the community and to prevent isolation or segregation from the community.
- ¹⁸ Sec 4. The Rights of Persons with Disabilities Act, 2017.
- ¹⁹ <https://nfdn.org.np/committee-on-the-rights-of-persons-with-disabilities-examines-nepals-first-country-report-on-crpd/> retrieved on 20th Dec 2019.
- ²⁰ Civil Code chapter 6 - section 135, 136, 137, 141, 142, 146, 147, 149 and chapter 7 – section 154, 155, 164 has emphasized on guardianship of rights of persons with mental/psychosocial disability.
- ²¹ <https://kathmandupost.com/national/2019/07/06/governments-apathy-renders-constitutional-commissions-ineffective> retrieved on 18th Dec, 2019.
- ²² CRPD/C/NPL/CO/1
- ²³ Para 26 of the concluding observations of the CRPD Committee dated March 1, 2018.
- ²⁴ Consultation meeting for UPR, organized by KOSHISH, 2019
- ²⁵ Concluding observations of the CRPD Committee dated March 1, 2018, Para 14.

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- ²⁶ UPR consultation meeting organized by KOSHISH, 2019
- ²⁷ Ibid. Para 38.
- ²⁸ Concluding Observations on the initial report of Nepal, 16th April 2018.
- ²⁹ UPR Consultation Meeting, Organized by KOSHISH, 2019.
- ³⁰ A Report on Pilot Study of National Mental Health Survey, National Health Research Council, Government of Nepal 2018.
- ³¹ <https://www.recordnepal.com/perspective/interviews/we-should-acknowledge-psychosocial-disability/> retrieved on 25th Dec, 2019.
- ³² Mental Health Situation in Nepal and priorities for interventions, Anup Rijal, Journal of Public Health, 2018
- ³³ Refer Annex 1 and Annex 2
- ³⁴ Refer Annex 6
- ³⁵ Mental health situation in Nepal and priorities for interventions, Anup Rijal, Journal of Public Health, 2018
- ³⁶ <https://nfdn.org.np/committee-on-the-rights-of-persons-with-disabilities-examines-nepals-first-country-report-on-crpd/> retrieved on 15th Dec 2019.
- ³⁷ <https://www.seattleglobalist.com/2018/02/14/72153/72153> retrieved on 15th Dec 2019.
- ³⁸ WHO Mental Health Atlas, 2017.
- ³⁹ KOSHISH DATABASE, 2020.
- ⁴⁰ Mental Health Strategic Plan, 2076, Nepal.
- ⁴¹ KOSHISH DATABASE, 2020 (Dr. Arjun Raj Kunwar, The Head, Child and Adolescent Unit, Kanti Children's Hospital, Kathmandu)
- ⁴² Ministry of Health and Population, Fiscal year 2019/20.
- ⁴³ Nepal's Legal and Policies provisions in line with Constitution of Nepal 2015 and United Nations Convention of the Rights of People with Disabilities 2006 in the context of persons with psychosocial disability, Study Report, 2020, KOSHISH.
- ⁴⁴ Ibid
- ⁴⁵ Ibid
- ⁴⁶ <https://nfdn.org.np/committee-on-the-rights-of-persons-with-disabilities-examines-nepals-first-country-report-on-crpd/> retrieved on 15th Dec 2019
- ⁴⁷ Nepal CEDAW Shadow Report, NAWHRD, 2018, pg 6.
- ⁴⁸ Refer Annex 3
- ⁴⁹ Refer Annex 4
- ⁵⁰ <https://thehimalayantimes.com/nepal/women-between-17-and-25-more-vulnerable-to-violence/> retrieved on 28th Dec, 2019
- ⁵¹ <https://kathmandupost.com/national/2020/02/20/majority-of-human-rights-violations-in-past-year-involved-women-report-says> retrieved on 25th Feb, 2020.
- ⁵² KOSHISH Database (2008-2019)
- ⁵³ <https://ekantipur.com/news/2020/06/07/15915021308385430.html?fbclid=IwAR2JaOlg1AdLjrEmiZZnEoCBWYIGXbvDn4ufQqjBrA27IIRE43oPKEMYS1Y> retrieved on 7th June, 2020
- ⁵⁴ Refer Annex 6
- ⁵⁵ Refer Annex 5
- ⁵⁶ <https://www.seattleglobalist.com/2018/02/14/72153/72153> retrieved on 15th Dec, 2019
- ⁵⁷ Ibid
- ⁵⁸ <https://kathmandupost.com/national/2020/02/20/majority-of-human-rights-violations-in-past-year-involved-women-report-says> retrieved on 25th Feb, 2020.
- ⁵⁹ KOSHISH Database since 2008-2019.
- ⁶⁰ Disability Rights Act, 2017
- ⁶¹ <https://www.hrw.org/report/2011/08/24/futures-stolen/barriers-education-children-disabilities-nepal> retrieved on 15th Dec 2019.
- ⁶² Ibid

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- ⁶³ <https://globalpressjournal.com/asia/nepal/half-nepals-disabled-children-miss-schooling/>
retrieved on 20th Dec, 2019
- ⁶⁴ UPR, Consultation Meeting, organized by KOSHISH 2019
- ⁶⁵ http://www.xinhuanet.com/english/2019-06/19/c_138156763.htm *retrieved on 28th Dec, 2019*
- ⁶⁶ Nepal Police DATABASE 2018/2019
- ⁶⁷ Nepal Police DATABASE 2020
- ⁶⁸ Mental Health Strategic Plan, 2076, Nepal
- ⁶⁹ Study report, Education and Mental Health, 2018 KOSHISH
- ⁷⁰ Quarterly intervention and assessment is necessary to monitor the psychosocial wellbeing of children.