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EXPLORING BARRIERS TO THE RIGHT TO INCLUSIVE EDUCATION IN RURAL NEPAL

by Dev Datta Joshi*

INTRODUCTION

Inclusive education centers aim to ensure they meet students' diverse needs by providing them with access to quality education, including access to education for persons with disabilities in a responsive, inclusive, and supportive environment.¹ To foster inclusivity, their education programs must be in a common learning environment with support to diminish and remove barriers and obstacles that may lead to exclusion.²

While Nepal is a signatory to several international human rights instruments, including the Convention

on the Rights of Persons with Disabilities (CRPD), the national implementation process is very slow.³ In Nepal, education policymakers are not fully aware of the ideological support for an inclusive education system on a global scale.⁴ The result is that the government fails to ensure an inclusive education system that is available, accessible, appropriate, and of good quality for children with all types of disabilities.⁵

Nepal's 2015 Constitution enshrines education as a fundamental right to all citizens, including persons with disabilities.⁶ It also envisages free education up to grade twelve and free and compulsory education up to grade eight.⁷ The Act Relating to the Rights of Persons with Disabilities provides for free education up to higher education for persons with disabilities.⁸ The Free and Compulsory Education Act provides for the equal right to access quality education for all without discrimination on any grounds.⁹ However, the Nepalese government is unable to implement these legal policy provisions to enable children with disabilities to realize their right to high-quality, inclusive education.¹⁰ This situation shows how Nepal is violating laws enshrined in its Constitution that aim to ensure the right to education for children with disabilities.¹¹

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¹ INCLUSIVE EDUC. CAN., *What Is Inclusive Education?*, <https://inclusiveeducation.ca/about/what-is-ie/> (last visited Nov. 15, 2021).

² *Id.*

³ Dev Datta Joshi, *Inclusive education: A Must for the Disabled*, HIMALAYAN TIMES (May 25, 2017), <https://thehimalayantimes.com/opinion/inclusive-education-must-disabled>.

⁴ Dev Datta Joshi, *Mindset needs to change*, KATHMANDU POST (Dec. 7, 2016), <https://kathmandupost.com/opinion/2016/12/07/mindset-needs-to-change>.

⁵ *Id.*

⁶ Shak Bahadur Budhathoki, *Creating an inclusive school*, RISING NEPAL (Nov. 20, 2021), <https://risingnepaldaily.com/opinion/creating-an-inclusive-school>.

⁷ *Id.*

⁸ The Act Relating to Rights of Persons with Disabilities (Act No. 25 of 2074/2017) (Nepal).

⁹ Budhathoki, *supra* note 6.

¹⁰ *Id.*

¹¹ Dev Datta Joshi, *Inclusive education for the blind: It is their right*, HIMALAYAN TIMES (July 15, 2021), <https://thehimalayantimes.com/opinion/inclusive-education-for-the-blind-it-is-their-right>.

The right to education is categorized under economic, social, and cultural rights.¹² This right is contained in numerous international and regional human rights conventions and treaties, and requires that states must develop national legislation and policies in line with international law.¹³ If a state can provide its people with fundamental human rights, such as the freedom of expression, equality before the law, and the right to work, the State must commit to providing the right to education.¹⁴ Field research that I conducted found that in remote rural Nepal, children with disabilities, especially girls with disabilities, are deprived of enjoying even a minimum of their human rights. Such cases have affected not only parents' commitment to allow their children with disabilities to attend school but also demonstrate a violation of the laws enshrined under the Nepalese Constitution.¹⁵

Through the analysis of my field research with school officials, students, and policymakers in Nepal, this paper demonstrates that Nepal is violating its obligations under Article 24 of the CRPD.¹⁶ Using desk-based analysis and field research methods, I examined the legal understanding of inclusive education and the major barriers to the implementation of inclusive education for children in Far-West Nepal, one of Nepal's poorest areas.¹⁷ During this research, I mainly focused on the

barriers facing children with disabilities, especially girls from marginalized communities, such as Dalits (members of the lowest caste, also known as "untouchable"),¹⁸ ethnic minorities, and indigenous people.

I. BACKGROUND

A. International Law and Regional Adoption

As a signatory to the CRPD, Nepal needs to develop a comprehensive understanding of the Acts, laws, and policies framed for children with disabilities.¹⁹ On December 13, 2006, the UN General Assembly adopted the CRPD and an associated optional protocol.²⁰ The formation of CRPD has been hailed as a landmark decision in the struggle to reframe the needs and concerns of persons with disabilities in terms of human rights.²¹ The Convention spells out the right to education for children with disabilities in international law in much greater detail than had since existed.²² Article 24 requires States to ensure that children with disabilities "are not excluded from the general education system on the basis of disability" and that they have access to "inclusive, quality and free primary and secondary education on an equal basis with others in the communities in which they live."²³ Further, the Convention requires governments to provide reasonable accommodation and the "individual support required within the

¹² Fons Coomans, *Identifying Violations of the Right to Education*, CTR. FOR HUM. RTS., MAASTRICHT UNIVERSITY (2007), https://www.right-to-education.org/sites/right-to-education.org/files/resource-attachments/Coomans_Identifying_Violations_Right_to_Education_2007.pdf

¹³ DIPENDRA PANT & POSH ADHIKARI, HUMAN RIGHTS EDUCATION IN NEPAL'S CURRICULA AND TEXTBOOKS (INCLUSION AND IMPLEMENTATION STATUS) 2 (2013).

¹⁴ *Id.*

¹⁵ Dev Datta Joshi, *Examining Barriers to Implementation of Inclusive Education for Children with Disabilities* (2014) (unpublished L.L.M. thesis, National University of Ireland, Galway) (on file with author).

¹⁶ G.A. Res. 61/106 art. 24, Convention on the Rights of Persons with Disabilities (Jan. 24, 2007).

¹⁷ Desk-based research is a type of research that can be performed over a desk. In desk-based research, a researcher finds, collects, and reviews the publicly available data about the research topic.

¹⁸ Hillary Mayell, *India's "Untouchables" Face Violence, Discrimination*, NAT'L GEOGRAPHIC (June 2, 2003), <https://www.nationalgeographic.com/pages/article/indias-untouchables-face-violence-discrimination>.

¹⁹ Dev Datta Joshi, *Behind the Curve*, MYREPUBLICA (June 10, 2017), <https://myrepublica.nagariknetwork.com/news/behind-the-curve/>.

²⁰ Rosemary Kayess & Phillip French, *Out of Darkness into Light—Introducing the Convention on the Rights of Persons with Disabilities*, 8 HUM. RTS. L. REV. 1, 1 (2008).

²¹ *Id.*

²² Bronagh Byrne, *Hidden Contradictions and Conditionality: Conceptualizations of Inclusive Education in International Human Rights Law*, DISABILITY & SOC. 232–234 (2013).

²³ G.A. Res. 61/106 art. 24, Convention on the Rights of Persons with Disabilities (Jan. 24, 2007).

general education system, to facilitate their education . . . consistent with the goal of full inclusion.”²⁴

Once a State becomes a signatory to an international legal instrument, it then has an obligation to comply and implement the instrument’s provisions within its jurisdiction.²⁵ The State should abide by the ratified international treaties as per the norms of international law and diplomacy, which holds that international treaties, once entered into, should be upheld by all the signatories.²⁶

Nepal is a State Party to several international human rights instruments including, but not limited to, the International Covenant on Civil and Political Rights (ICCPR),²⁷ the International Convention on the Elimination of All Forms of Racial Discrimination (CERD),²⁸ the International Covenant on Economic, Social and Cultural Rights (ICESCR),²⁹ and the United Nations Convention on the Rights of Persons with Disabilities (CRPD).³⁰ However, contrary to the obligations enshrined in the agreement, Nepal did not review its laws and policies before ratifying the CRPD. As a result, the ratification of the CRPD by Nepal’s government in 2010 has not brought any significant practical change in the daily life of children with disabilities, especially girls with disabilities in rural Nepal.³¹

²⁴ *Id.*

²⁵ PANT & ADHIKARI, *supra* note 13.

²⁶ *Id.*

²⁷ International Covenant on Civil and Political Rights, May 14, 1991, S. Exec. Doc. E, 95-2 (1978), 999 U.N.T.S. 171.

²⁸ International Convention on the Elimination of All Forms of Racial Discrimination, Jan. 30, 1971, 660 U.N.T.S. 195, 212.

²⁹ International Covenant on Economic, Social and Cultural Rights, May 14, 1991, 993 U.N.T.S. 3.

³⁰ Convention on the Rights of Persons with Disabilities, Jan. 3, 2008, A/RES/61/106, Annex I.

³¹ Dev Datta Joshi, Panel Speaker at NUI Galway’s Centre for Disability Law and Policy Student Conference: Article 24 UN-CRPD is this a Brown v. Board of Education moment? (Feb. 21, 2014) (speaking as a jurisdiction expert on Inclusive Education as Enshrined in the UNCRPD Article 24 for Children with Disabilities in Nepal), <http://www.conference.ie/conferences/menu.asp?menu=1493&Conference=356>.

By advocating for inclusion, voting, and rights for persons with disabilities, such as by bringing lawsuits, I am working to empower Nepal’s over 600,000 persons with disabilities, and especially the rights of these persons living in rural areas. Through my research, I visited schools in Ireland, Canada, and the United States, where I shared my expertise and knowledge and spoke at length with teachers about how to ensure quality education for students with disabilities.³² These countries provide reasonable accommodations to students with disabilities, such as support systems, flexible curricula, extra exam time, and disability allowances.³³ As a result, students with disabilities can often lead fully independent lives, have meaningful careers, and become productive members of their communities.³⁴ Despite the limited resources in African and Latin American countries, little gap exists between an inclusive education policy and its practical implementation.³⁵ Nepal has a long way to go before it meets its obligations under the CRPD.³⁶

B. The Development of the Right to Education for Persons with Disabilities in International Human Rights Law

In 2003, disability rights lawyers won a lawsuit at Nepal’s Supreme Court that held that Nepal’s 90,000 children with disabilities have the right to free and inclusive education.³⁷ To make its decision, Nepal’s Supreme Court referred Constitution of Nepal 1990 Article 11—Right to Equality.³⁸ The Court

³² Tom Robertson & Dev Datta Joshi, ‘Effective Writing Plays a Vital Role in Changing Society,’ RECORD (Sep. 9, 2021), <https://www.recordnepal.com/dev-datta-joshi-effective-writing-plays-a-vital-role-in-changing-society>.

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ Subedi v. Gov’t of Nepal, (2003) S.C.N. writ no. 3586 (Nepal).

³⁸ नेपालको संविधान २०४७ [The Constitution of Nepal] (1990), art. 11.

also referred to the Protection and Welfare of the Disabled Persons Act 1982.³⁹ In response to the case, Nepal's Supreme Court ordered the State to provide free inclusive education with reasonable accommodations to all children with disabilities.⁴⁰ Moreover, the judgment made provisions that would allow children with disabilities to receive disability identity cards.⁴¹ The verdict also made it mandatory for each school, public and private, all around the country to manage trained inclusive education teachers who would know how to teach students with disabilities.⁴² Before the Court's decision, Nepalese schools routinely denied children with disabilities admission into schools, thus, effectively violating their right to access education.⁴³ However, notwithstanding this important legal achievement, much still remains to be done for the effective implementation of the Court's ruling. For example, private schools still refuse to admit children with disabilities.⁴⁴

The right to education has a clear basis in international human rights law.⁴⁵ Article 26 of the Universal Declaration of Human Rights (UDHR) emphasizes inclusive education.⁴⁶ It states:

Everyone has the right to education . . . and that education shall be directed to the full development of human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding,

tolerance and friendship among all nations, racial or religious groups and shall further the activities of the United Nations for the maintenance of peace.⁴⁷

Education is a fundamental human right and it is foundational for persons to exercise this right to access their other rights, such as the right to vote.⁴⁸ Disability and civil rights law expert Michael Waterstone argues that the right to vote is very important for persons with disabilities because their interests are usually not represented sufficiently at the governmental level.⁴⁹ Education is a vital instrument that can ensure that society's marginalized can lift themselves out of poverty.⁵⁰ It is universally accepted that education contributes to the development of human personality and encourages the maturation of society at large.⁵¹ It plays a vital role in empowering women, safeguarding children from exploitation (either through hazardous labor or sexual exploitation), and promoting human rights and democracy.⁵² Increasingly, education is considered one of the best financial investments that a government can make.⁵³

The Convention on the Rights of the Child declares that all children have a right to receive an education without any discrimination.⁵⁴ Article 23 states that "disabled children should enjoy a full and decent life, in conditions while ensure dignity, promote self-reliance, and facilitate the child's active participation in the community."⁵⁵ The United Nations Educational, Scientific and Cultural Organization

³⁹ Protection and Welfare of the Disabled Persons Act ¶¶ 5-6 (1982), <https://www.lawcommission.gov.np/en/wp-content/uploads/2018/10/protection-and-welfare-of-the-disabled-persons-act-2039-1982.pdf>

⁴⁰ Subedi v. Gov't of Nepal, (2003) S.C.N. writ no. 3586 (Nepal).

⁴¹ *Id.*

⁴² *Id.*

⁴³ Robertson & Joshi, *supra* note 32.

⁴⁴ *Infra* Part III (discussing field research that I conducted in Far-West Nepal in between February and April 2021).

⁴⁵ Fons Coomans, *Clarifying the Core Elements of the Right to Education* (2013).

⁴⁶ G.A. Res. 217 A (III), art. 26, Universal Declaration of Human Rights, (Dec. 10, 1948).

⁴⁷ *Id.*

⁴⁸ Joshi, *supra* note 31.

⁴⁹ Dev Datta Joshi, *Ensure Voting Rights Of Persons With Disabilities*, RISING NEPAL (Apr. 12, 2021), <https://risingnepaldaily.com/opinion/ensure-voting-rights-of-persons-with-disabilities>.

⁵⁰ DEITER BEITER, *THE PROTECTION OF THE RIGHT TO EDUCATION in INTERNATIONAL LAW* 18 (2006).

⁵¹ *Id.* at 30.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3.

⁵⁵ *Id.* at art. 23.

(UNESCO) strongly suggests that “all children be accommodated in schools, regardless of their physical, intellectual, social, emotional, linguistic or other conditions.”⁵⁶ As per the framework, local and national policies should stipulate that children with disabilities attend the neighborhood school “that would be attended if the children did not have a disability.”⁵⁷ But my field research found that Nepal’s Supreme Court decision has been ineffective in changing the treatment of students with disabilities.⁵⁸ Also, this research found that international treaties, such as the CRPD of which Nepal is a party, have not influenced education policymakers’ behavior.⁵⁹

Scholars have taken many approaches to prioritizing different aspects of inclusivity in education. Inclusive education in relation to children with disabilities needs to be understood as presence, participation, and achievement.⁶⁰ Policies and programs should address children with disabilities’ educational needs through inclusive education and diversity.⁶¹ However, in my research, I did not see schools celebrating the voices of children with disabilities.⁶² Inclusive education is the creation of settings in which all students and teachers feel comfortable and confident and where inclusive methods accommodate and appreciate differences and special needs.⁶³ This philosophy aims to help all children in regular classrooms, where children with or without disabilities learn together and from each other.⁶⁴ Inclusive education should be a “flagship”

that is used to “transform cultures and practices . . . in celebration of diversity.”⁶⁵ All teachers should have the appropriate skills required to address the exact needs of the diverse students in their classrooms.⁶⁶

Inclusive education is one of the key strategies to address issues of marginalization and exclusion for vulnerable children, notably girls and children with disabilities.⁶⁷ Researchers have defined inclusion as the provision of appropriate high-quality education for pupils with special needs in non-special needs schools. The effectiveness of inclusive education depends upon the teachers who must facilitate the learning.⁶⁸ However, others have taken a more general view and believe that educational inclusion should include a radical restructuring of the education system to enable all children to participate and achieve within mainstream education.⁶⁹ However, inclusion may mean different things depending on the background of different groups of learners and the context in which they have received their education, if any.⁷⁰ For example, ethnic groups of minorities persons with disabilities and those from lower socio-economic groups will all be drawing from different prior experiences and will have different ideas of what inclusivity means.⁷¹

In sum, the Convention on the Rights of Persons with Disabilities (CRPD) obliges State Parties to advance inclusive education systems that allow

⁵⁶ UNESCO Res. ED-94/WS/18, The Salamanca Statement and Framework for Action on Special Needs Education, World Conference on Special Needs Education: Access and Quality (June 10, 1994), https://www.right-to-education.org/sites/right-to-education.org/files/resource-attachments/Salamanca_Statement_1994.pdf.

⁵⁷ *Id.*

⁵⁸ Coomans, *supra* note 45.

⁵⁹ *Id.*

⁶⁰ PETER CLOUGH ET AL. *Introduction: What is Special about Inclusion?* in MANAGING INCLUSIVE EDUCATION 1, 4 (1998).

⁶¹ *Id.*

⁶² Coomans, *supra* note 45.

⁶³ *Id.* at 2-3.

⁶⁴ *Id.*

⁶⁵ SUSAN L. GABEL & SCOT DANFORTH, *DISABILITY AND THE POL. OF EDUCATION—AN INTERNAT’L READER* 1 (2008).

⁶⁶ CHRIS FORLIN, *CONFRONTING OBSTACLES TO INCLUSION—INTERNATIONAL RESPONSE TO DEVELOPING INCLUSIVE EDUCATION* 156 (2010).

⁶⁷ Susan Peters, *Inclusion As a Strategy for Achieving Education for All*, in THE SAGE HANDBOOK OF SPECIAL EDUCATION 117 (2007).

⁶⁸ Cor J. W. Meijer et al., *Inclusion Implementation and Approaches*, in INCLUSIVE EDUCATION 150 (Sip Jan Pijl ed., 1997).

⁶⁹ *Id.*

⁷⁰ SARAH HERBERT, *THE INCLUSION TOOLKIT* 2 (2011).

⁷¹ *Id.*

children with disabilities to learn alongside their peers in inclusive schools.⁷² In 2003, Nepal's Supreme Court ordered the State to provide free inclusive education to children with disabilities.⁷³ But unless the Nepal government takes the issue of inclusive education seriously, children's right to education, especially girls, is a far-fetched dream.⁷⁴

II. RESEARCH QUESTIONS AND METHODOLOGY

This research assesses the development of the concept of inclusive education and examines the extent to which Nepal has complied with its international obligations under the CRPD. The focus is on inclusive education as contained in Article 24 of the CRPD as it applies to school children aged between 5–16 years.

- a. What does inclusive education mean in the context of children with disabilities?
- b. What are the main barriers and solutions to the barriers to implementation of inclusive education in line with United Nations Convention on the Rights of Persons with Disabilities in Nepal?

To complete this research:

1. I conducted desk-based analysis and field research in Far-West Nepal. The first phase of the research was based largely on an evaluation and analysis of relevant documents to define inclusive education for children with disabilities.
2. I interviewed education policymakers, school heads, general teachers, children with disabilities, their peers, and the School Management Committee members in the region.

⁷² Dev Datta Joshi, *Barriers to Inclusive Education*, RECORD (Sep. 9, 2021), <https://www.recordnepal.com/barriers-to-inclusive-education>.

⁷³ Subedi v. Gov't of Nepal, (2003) S.C.N. writ no. 3586 (Nepal).

⁷⁴ Joshi, *supra* note 72.

Due to the limited scope of this study, the research focused more on the government-supported schools of Far-West Nepal. I selected twenty-five respondents from fifteen schools and a sample school that already included children with disabilities. Initially, I chose fifteen school heads, followed by general teachers, children with disabilities, and other students using the snowball sampling method.⁷⁵

III. EXPLORING BARRIERS TO THE RIGHT OF INCLUSIVE EDUCATION FOR CHILDREN WITH DISABILITIES IN REMOTE RURAL NEPAL

A. An Analysis of the Field Work and the Findings

Between February and April 2021, I carried out this research among respondents including: policymakers, school heads, general teachers, members of the School Management Committee, children with disabilities, and their peers. The research took place in three Far-West Nepal districts: Dadeldhura, Doti, and Baitadi. I developed a three-question questionnaire to explore various dimensions of inclusive education in Nepal.⁷⁶ The aim of the questionnaire was to reveal any obstacles to inclusive education that children with disabilities may be experiencing in remote rural Nepal.

In addition to analyzing the information gained through interviews, I compiled findings of fact to make conclusions and recommendations. I chose a diverse and inclusive set of respondents from various

⁷⁵ Snowball sampling or chain-referral sampling is defined as a non-probability sampling technique in which the samples have traits that are rare to find. This is a sampling technique, in which existing subjects provide referrals to recruit samples required for a research study.

⁷⁶ The questions on the Questionnaire asked to interviewees during research include:

- (1) What is your understanding of inclusive education?
- (2) What does the United Nations Convention on the Rights of Persons with Disabilities say about inclusive education?
- (3) What are the main barriers to inclusive education for children with disabilities in Nepal?

caste and ethnic backgrounds, such as Bramin/Chhetri,⁷⁷ Janjati,⁷⁸ Dalit,⁷⁹ and Madhesi.⁸⁰ I used these groups to provide for more inclusive research and to help guide the Nepalese government's education policymakers and to emphasize the core principles of equality—notably, an inclusive system for all persons without any discrimination.

B. Understanding of Inclusive Education

The study's first question assessed the understanding of inclusive education for children with disabilities in Nepal.⁸¹ The majority responded that inclusive education for all students (with or without disabilities, girl, Dalit, Janjati, Madhesi, and other marginalized groups) should be a right enshrined and codified through international human rights instruments, including the CRPD. Some teachers said that inclusive education is the refined form of special needs education where all students get quality free education in a non-discriminatory manner. Those on the school management committee had no knowledge about inclusive education as a concept or a legal term under the Convention.

Of the surveyed children with disabilities and their peers, only two were aware of the concept of inclusive education; this accounts for eighteen percent of the total children in the survey.⁸² In taking a closer look at the children who were aware of inclusive education, one of the students, a child with visual impairments, responded that inclusive education is an indispensable and powerful instrument that is vital to hearing the voice of students with disabilities like

him, and it is important for safeguarding the educational right of all children with disabilities.⁸³ The other student responded that inclusive education guarantees all students, with or without disabilities, the ability to learn some basic skills to a secure future.⁸⁴

The second question was: what does the United Nations Convention on the Rights of Persons with Disabilities (CRPD) say about inclusive education?⁸⁵ The respondents stated that the Convention is the first legal international human rights instrument to safeguard persons with disabilities right to inclusive education. Out of eleven respondents, including policymakers and heads of school, all stated they were aware of the Convention from the coverage in daily national newspapers within Nepal, but only five respondents understood the obligations of the CRPD. Other research demonstrated that those respondents that live in remote rural areas have no knowledge about CRPD or inclusive education's legal concept.⁸⁶

The third question asked: what are the main barriers to inclusive education for children with disabilities in Nepal?⁸⁷ In response to this question, my data demonstrates the following obstacles were most widely present to achieving inclusive education as mandated by the CRPD.

1. Lack of reasonable accommodation

The CRPD emphasizes reasonable accommodation to ensure the right to education, especially as a cornerstone to disability law and requires the provision of reasonable accommodation in all areas of life. Article 5(3) of the Convention reads: "In order to promote equality and eliminate discrimination, States Parties shall take all appropriate steps to

⁷⁷ Bramin and Chhetri are high-level Nepalese classes within the caste system.

⁷⁸ Janjati in Far-West Nepal have faced marginalization and lack representation and participation in state structures.

⁷⁹ Dalit are the Untouchable caste in rural Nepal.

⁸⁰ The Madhesi community is a marginalized ethnic minority group living in the southern region of Nepal.

⁸¹ Questionnaire, *supra* note 76.

⁸² Interviews with Nepalese students with disabilities in Far-West Nepal in February 2021.

⁸³ Interview with Nepalese students with disabilities in Far-West Nepal in February 2021.

⁸⁴ *Id.*

⁸⁵ Questionnaire, *supra* note 76.

⁸⁶ Based on field research that I conducted in Far-West Nepal between February and April 2021.

⁸⁷ Questionnaire, *supra* note 76.

ensure that reasonable accommodation is provided.”⁸⁸ CRPD Article 2 defines reasonable accommodation as “necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms.”⁸⁹

While going into the classroom, the researcher found that the desks and blackboards were not at the appropriate height. Almost all children with disabilities were not fully included in classwork and did not receive extra time for examinations or homework.⁹⁰ Also, the research found that Nepal’s rural schools did not provide Braille and large print textbooks for the students who are blind and visually impaired.⁹¹ Schools also did not provide sign language accommodations for children who are deaf or hard of hearing.⁹²

2. Lack of adequately trained teachers and rigid curriculum

UNICEF noted that Nepal’s school curriculum does not meet the learning needs of children with disabilities.⁹³ During the research, respondents reported that Nepal’s government has no policy to train teachers in Braille and sign language to address the educational needs of children with disabilities.⁹⁴

As a result, the rate of school dropout for children with disabilities in Nepal remains high.⁹⁵ Children

with disabilities, especially children who are blind, do not participate in technical subjects such as Science, Technology, Engineering, and Math (STEM). This is in part because school administrators think blind students cannot succeed in subjects like STEM and can only move forward in non-technical subjects like sociology, history, and law.⁹⁶

Moreover, in rural Nepal, many children with disabilities do not go to school at all.⁹⁷ The local governments have not provided many children with disability identity cards, and most teachers know very little about how to help children with disabilities.⁹⁸

3. Attitudinal barriers

Disabled children throughout the world are often marginalized and excluded from mainstream society.⁹⁹ In Nepal, children with intellectual disabilities are sent away to institutions where they receive no education and are isolated from society for their entire lives.¹⁰⁰ Other children with disabilities may be forced to attend separate schools instead of general schools in the community.¹⁰¹

The National Planning Commission has developed a comprehensive social protection policy, which included social protection mechanisms for children with disabilities.¹⁰² Nepal’s government introduced

⁸⁸ G.A. Res. 61/106 art. 5, Convention on the Rights of Persons with Disabilities (Jan. 24, 2007).

⁸⁹ *Id.* at art. 2.

⁹⁰ Dev Datta Joshi, *Inclusive Education for Children with Disabilities in Nepal*, Lambert Academic Publishing, Germany (May 5, 2017), <https://www.amazon.com/Inclusive-Education-Children-Disabilities-Nepal/dp/3330080671>.

⁹¹ *Id.*

⁹² *Id.*

⁹³ UNICEF, *Nepal: Education*, <https://www.unicef.org/nepal/education>.

⁹⁴ Interview with Nepalese teachers.

⁹⁵ Joshi, *supra* note 72.

⁹⁶ *Id.*

⁹⁷ Robertson & Joshi, *supra* note 32.

⁹⁸ Dev Datta Joshi, *Reasonable Accommodation: Great Landmark*, HIMALAYAN TIMES (July 4, 2017), <https://thehimalayan-times.com/opinion/reasonable-accommodation-great-landmark> (last visited Nov. 22, 2021).

⁹⁹ Allison de Franco, *The New World of Inclusive Education: A Review of Convention on the Rights of Persons with Disabilities and the American Experience*, http://www.stimson.org/images/uploads/research-pdfs/Complete_Iran_Report_PDF_w_Cover.pdf.

¹⁰⁰ HUM. RTS. WATCH, FUTURES STOLEN: BARRIERS TO EDUCATION FOR CHILDREN WITH DISABILITIES IN NEPAL 4–5 (2011), http://www.hrw.org/sites/default/files/reports/Nepal_0811_insert_LOW_WITH_COVER.pdf.

¹⁰¹ *Id.*

¹⁰² *Id.* at 14.

this policy to provide assistive devices such as wheelchairs, canes, and prosthetic limbs to children with disabilities.¹⁰³ But following discussions with teachers working in the schools, it is clear that children with disabilities living in Far-West Nepal are not receiving the adequate accommodations, such as assistive devices, which would promote inclusive education in the region.¹⁰⁴

In rural Nepal, disability is still attributed to past wrongdoing by parents or even by people with disabilities themselves.¹⁰⁵ Children with intellectual disabilities are barred from religious rites and cultural events like wedding ceremonies and other formal occasions, as their presence is thought to bring bad luck.¹⁰⁶ While conducting this research, I tried to learn the education level of the parents who hold these beliefs.¹⁰⁷ I found that all of the parents I surveyed on this question were illiterate.¹⁰⁸

4. Lack of appropriate legislative framework

In Nepal, education policymakers do not fully understand what inclusive education means.¹⁰⁹ Nepal's government is not aware of adopting appropriate legislation, developing effective policies, or national plans of action, which are considered an instrumental tool for inclusion for all.¹¹⁰ Nepal's government fails to implement resolutions from the Nepal Supreme Court case mentioned earlier.¹¹¹ The existing domestic laws cannot protect the right to education of children with disabilities.¹¹² Research found that schools do not give the parents of children with disabilities the opportunity to attend school

meetings, such as conferences with teachers and overall school meetings with other parents.¹¹³

However, Nepal's government vocally promotes inclusive education.¹¹⁴ For example, in 2017, the Nepalese government developed an inclusive education policy to ensure that no student is discriminated against in school based on their disabilities.¹¹⁵ The Nepalese government also supports segregated classes and separate schools for children with disabilities, with no plan to integrate these children into mainstream schools.¹¹⁶

5. Failure of education as a rewarding instrument

The societal norm in Nepal is that an individual must show evidence of having received a quality education in order to enter the workforce.¹¹⁷ Due to this barrier, even well-qualified persons with disabilities are unable to become employed and support themselves financially in Nepal because inclusive education is not a reality.¹¹⁸ A further stigma stemming from and perpetuating this reality is that employers tend to assume that persons with disabilities are not as productive as their able-bodied counterparts.¹¹⁹

In rural Nepal, girls with disabilities face more discrimination than their male counterparts.¹²⁰ Many parents do not invest in girls' education because they think they will leave home after marriage.¹²¹

¹⁰³ *Id.*

¹⁰⁴ Interview with Head Teacher in Doti district in February 2021.

¹⁰⁵ Based on field research.

¹⁰⁶ Joshi, *supra* note 19.

¹⁰⁷ Based on field research.

¹⁰⁸ *Id.*

¹⁰⁹ Joshi, *supra* note 4.

¹¹⁰ *Id.*

¹¹¹ Subedi v. Gov't of Nepal, (2003) S.C.N. writ no. 3586 (Nepal).

¹¹² Joshi, *supra* note 15.

¹¹³ Interview with children with intellectual and psychosocial disabilities in Baitadi, Sudurpashchim, Nepal.

¹¹⁴ Joshi, *supra* note 88.

¹¹⁵ *Access to inclusive education in Nepal*, Borgen Project (Dec. 5, 2020), <https://borgenproject.org/inclusive-education-in-nepal/>.

¹¹⁶ Interview with school heads and teachers in Nepal.

¹¹⁷ See generally Kamal Lamichhane & Tomoo Okubo, *The Nexus Between Disability, Education and Employment: Evidence From Nepal*, 42 OXFORD DEV. STUD. 3 (Jul. 2014).

¹¹⁸ *Id.*

¹¹⁹ Dev Datta Joshi, *It Could Work*, MYREPUBLICA (Aug. 21, 2017), <https://myrepublica.nagariknetwork.com/news/it-could-work/>.

¹²⁰ Dev Datta Joshi, *Forgotten Girls*, MYREPUBLICA (Dec. 17, 2017), <https://myrepublica.nagariknetwork.com/news/forgotten-girls/>.

¹²¹ *Id.*

But even for educated girls with disabilities, jobs are not available in the community.¹²² CRPD Article 27 states that State Parties should recognize the right to work on an equal basis with others, but Nepal has no policy to provide equal opportunities for people with disabilities in relation to employment in society.¹²³ During the research, one teacher stated that the current education system and curriculum in Nepal are theoretical, rather than job-oriented. If a child with disabilities passes their secondary education with great struggle, they would get nothing for their efforts in the long term.¹²⁴ The teacher added that the government should implement a policy to provide jobs to people with disabilities, prioritizing girls and marginalized groups. The result would be an increase in the enrollment rate in schools.¹²⁵

6. Poverty

Financial constraints are one of the most prominent barriers obstructing students from education in Nepal.¹²⁶ Disabled children are among the poorest and the most disadvantaged in their communities, thus they are systematically excluded from equal opportunity education.¹²⁷ In developing nations like Nepal, poverty and disability are intricately linked.¹²⁸ Poverty may lead to disability through starvation, the inaccessibility of health services, and poor sanitation.¹²⁹

¹²² AFKE DE GROOT, DEPRIVED CHILDREN AND EDUCATION: NEPAL 55 (Dec. 2007), http://www.crin.org/docs/Nepal_Education.pdf

¹²³ Interview with School Head in Nepal.

¹²⁴ *Id.*

¹²⁵ Interview with Teacher in Nepal.

¹²⁶ Lamichhane & Okubo, *supra* note 117.

¹²⁷ Bronagh Byrne, *Hidden Contradictions and Conditionality: Conceptualizations of Inclusive Education in International Human Rights Law*, 28 DISABILITY & SOCIETY 232 (2013).

¹²⁸ Dev Datta Joshi, *Written Off*, KATHMANDU POST (Dec. 29, 2017), <https://kathmandupost.com/opinion/2017/12/29/written-off>

¹²⁹ *Id.*

Far-West Nepal's low-income families are often obliged to send their children to work rather than to attend school.¹³⁰ A large proportion of Nepal's children suffer from severe malnutrition.¹³¹ As a result, according to the UN and World Health Organization 2020 report, in Nepal, illiteracy rates are high for children with disabilities (forty-five percent compared to eleven percent of children without disabilities), and children with disabilities have worse school attendance than children without disabilities.¹³²

While conducting this research, some students with disabilities and their peers stated that, even in government schools, families are required to pay fees for admission, exams, and school uniform. As a result, low-income families, especially Dalit, a marginalized group in Nepal at the bottom of the Hindu hierarchy, do not send their children to school.¹³³

7. Distance to schools

In remote rural Far-West Nepal, I found school-aged children with physical disabilities and visual impairments sitting on the ground with playing cards.¹³⁴ One blind child stated that the nearest primary school is approximately a ninety minute walk through very narrow foot trails. Furthermore, he added that he was interested in attending school, but he decided not to after learning that his blind friend lost her life while returning from school by falling from a cliff along the dangerous pathways.¹³⁵

One secondary school's headteacher stated that several children with disabilities stayed at home. They cannot attend school due to inaccessible foot trails.¹³⁶ The issue of distance from the school is of

¹³⁰ Interview with School Management Committee in Nepal.

¹³¹ Joshi, *supra* note 90.

¹³² Joshi, *supra* note 72.

¹³³ Interview with students with disabilities in Far-West Nepal.

¹³⁴ Based on field research in Far-West Nepal.

¹³⁵ Interview with 12-year-old blind child in Far-West Nepal.

¹³⁶ Interview with School Head in Nepal.

particular concern for girls with disabilities due to security and safety considerations on such trips.¹³⁷ Teachers in the region I researched also stated that girls, and especially girls with intellectual disabilities, are vulnerable to sexual violence and abuse while traveling, which has become an important underlying factor that stops girls from going to school.¹³⁸

8. Gender and disability-based discrimination

Education is still not realistic for girls with disabilities, especially in remote rural areas. They face multiple challenges, some associated with disability-related discrimination. However, some of the challenges they face occur solely because of their gender.¹³⁹

Dalit parents usually do not send girls with disabilities to schools to protect them from discrimination, since schools are not equipped to give the required support.¹⁴⁰ Also, Dalit girls with disabilities face multiple forms of discrimination and violence because of their caste, gender, and disability status.¹⁴¹ These three identities burden Dalit girls with intellectual disabilities, especially in rural Nepal. They are often subjected to inhuman treatment, such as untouchability,¹⁴² and, as persons with disabilities, they are often perceived as objects requiring charity, seemingly with no rights.¹⁴³ In remote Far-West Nepal, during menstruation,

¹³⁷ Interview with members of the School Management Committee in Nepal.

¹³⁸ Interview with Head Teacher and faculty in Nepal.

¹³⁹ Dev Datta Joshi, *Inclusive Education: A Tool for Social Change*, HIMALAYAN TIMES (Jan. 12, 2018), <https://thehimalayantimes.com/opinion/inclusive-education-tool-social-change>.

¹⁴⁰ *Id.*

¹⁴¹ Joshi, *supra* note 116.

¹⁴² In rural Nepal, Dalit persons with disabilities are often prevented from: entering inside temples, touching water taps, and attending cultural events such as wedding ceremonies. At best, people treat Dalits with disabilities as objects requiring charity, and with seemingly no rights. Sometimes they treat them much worse. Non-Dalit persons with disabilities do not face these challenges.

¹⁴³ Joshi, *supra* note 19.

women, and girls (including girls with disabilities) are kept in an isolated shed as it is feared that if a menstruating girl touches a man or animal, bad luck will befall the family or the village.¹⁴⁴

Thus, most practical barriers that block inclusive education in rural Nepal stem from limited financial resources, poor understanding of disability, and low prioritization of inclusive education.¹⁴⁵ These obstacles include:

1. lack of information about the right to education to include persons with disabilities and inadequate knowledge about existing possibilities;
2. inaccessible school facilities with poor reasonable accommodation;
3. segregated and inferior quality of education;
4. lack of adequately trained teachers;
5. inflexible curriculum and evaluation systems;
6. ineffective social support;
7. high school fees; and
8. stigma against children with disabilities and their families.¹⁴⁶

IV. CONCLUSION AND RECOMMENDATIONS

During my field research, I concluded that inclusive education welcomes diversity among all learners. This research shows that inclusive education helps children with disabilities and their families from falling into chronic poverty.¹⁴⁷ Education empowers all people, especially those society has routinely cast aside, such as those with disabilities.¹⁴⁸ Currently, Nepal is violating various laws, such as the Constitution of Nepal 2015 Article 18—Right to Equality¹⁴⁹ and prior rulings from Nepal's Supreme Court.¹⁵⁰ Also, in Nepal, education policymakers

¹⁴⁴ Joshi, *supra* note 11.

¹⁴⁵ Joshi, *supra* note 4.

¹⁴⁶ Joshi, *supra* note 3.

¹⁴⁷ Example from field research.

¹⁴⁸ Joshi, *supra* note 15.

¹⁴⁹ नेपालको संवधान २०७२ [The Constitution of Nepal] art. 18 (2015).

¹⁵⁰ Subedi v. Gov't of Nepal, (2003) S.C.N. writ no. 3586 (Nepal).

do not understand the meaning of inclusive, integrated, or special needs education. Therefore, the government is failing to ensure an inclusive high-quality education system for children with disabilities, especially for girls with disabilities in rural Nepal. As a result, in rural Nepal, illiteracy remains high among women with disabilities.¹⁵¹

Additionally, there is limited expertise and physical presence of persons with disabilities and their advocates at the policy level. As a result, it is very difficult to effectively engage policymakers in addressing the exclusion of persons with disabilities.¹⁵² Further, policymakers are not ready to address disability issues because most of them still embrace stereotypes and changing such a mindset is challenging.¹⁵³

This research also concludes that the ratification of the CRPD by Nepal's government in 2010 has not brought any significant practical change to ensure high quality inclusive education for children with disabilities, especially girls with disabilities in remote rural Nepal.¹⁵⁴ Based on UN and World Health Organization estimates, Nepal has 60,000 to 180,000 children with disabilities, and accountability for their education is the government's responsibility—one it has not undertaken yet.¹⁵⁵

As a State Party to the several international human rights instruments, including the United Nations Convention on the Rights of Persons with Disabilities (CRPD), Nepal must first draft enforceable legislation to promote the right to education for children with disabilities of all ages and provide equal educational opportunities at all levels of education. But Nepal currently lacks drafting enforceable education legislation that upholds the rights of children with disabilities. Second, it must advance inclusive education systems that

allow children with disabilities to learn alongside their peers in inclusive schools. Unfortunately, the Nepalese government encourages children with disabilities to attend segregated schools. Third, it must adopt specific measures to ensure that children with disabilities are not excluded from the general education system or from free and compulsory primary education. But from my field research, I found that schools asked students with disabilities to pay fees on various topics such as exams. Fourth, it must provide reasonable accommodation to children with disabilities to facilitate their ability to learn in general educational settings. But in remote rural Nepal, students with disabilities do not get accessible education materials, such as Braille and large print textbooks for the blind and visually impaired. Lastly, Nepal must employ teachers who are qualified to teach children with disabilities. Unfortunately, at the current moment in rural Nepal, teachers simply do not know where to begin in order to effectively educate students with disabilities.¹⁵⁶

¹⁵¹ Joshi, *supra* note 4.

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ Joshi, *supra* note 72.

¹⁵⁵ *Id.*

¹⁵⁶ Examples from field research.