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Nepal: Government of Nepal must act diligently to implement rights provisions under the constitution

On 20 September 2018, Nepal marked the third anniversary of the promulgation of the Constitution of Nepal (2015). Just a day before the deadline mandated by the Constitution, Nepal enacted a significant number of laws¹ giving effect to human rights, in particular, economic, social and cultural rights. A number of economic, social and cultural rights have been recognized as legally enforceable human rights in the Constitution, cognizant of the fact that longstanding practices of exclusion, discrimination and denial of these rights were amongst the root causes² of the decade long armed conflict in Nepal.³

The Constitution obligates the government of Nepal to enact laws necessary to implement fundamental rights within three years of the promulgation of the constitution.⁴ The present Constitution had included express thresholds for enactment of implementing laws as a measure to prevent the delays in operationalization of rights that were experienced under the Interim Constitution of Nepal.⁵

However, the government failed to act on time to formulate the draft laws in meaningful consultation with the relevant stakeholders so as to allow for effective parliamentary scrutiny and deliberations. Broad-based consultation with people in formulating and enacting laws and public policy is a requirement recognized by international standards, including in the International Covenant on Civil and

¹ Key of the Acts in terms of ESCR include the Right to Food and Food Sovereignty Act, Housing Act, Land (Seventh Amendment) Act, Social Security Act, Employment Act, Compulsory and Free Education Act, Safe Motherhood and Reproductive Health Rights Act and Public Health Act. Available at: <http://hr.parliament.gov.np/np/bills?type=auth&ref=BILL>

² See, Raju Prasad Chapagai, Review of the legislative framework and jurisprudence concerning the right to adequate food in Nepal, FAO, 2014, P. 2. Available at: <http://www.fao.org/3/a-i4016e.pdf>

³ The Comprehensive Peace Accord (CPA) signed on 22 Nov 2006 put an end to the conflict between the Government of Nepal and the Communist Party of Nepal (Maoist).

⁴ Article 47 reads, "The State shall, as required, make legal provisions for the implementation of the rights conferred by this Part, within three years of the commencement of this Constitution."

⁵ For example, the right to food sovereignty guaranteed under the Interim Constitution, 2007 couldn't be operational due to absence of the implementing law.

Political Rights (ICCPR) to which Nepal is a state party.⁶

The establishment of several national institutions which have implications for the guarantee of human rights is envisioned under the Constitution. However, most of them have also not been formed yet. The Constitution has retained the National Human Rights Commission (NHRC) to which the Interim constitution had given constitutional status. The other pre-existing commissions-National Women Commission, National Dalit Commission and Muslim Commission-have also been given Constitutional status. At present, except NHRC, other commissions exist without commissioners.

In addition, the Constitution obligates the government of Nepal to establish five new commissions: National Inclusion Commission, Indigenous Nationalities Commission, Madhesi Commission and Tharu Commission.⁷ The timely establishment of these commissions along with appointment of appropriate commissioners to each, as well as an enabling environment for their effective functioning, is a *sine qua non* in order to address root causes of the conflict.

However, delays have plagued the implementation of these Constitutional obligations. Domestic laws necessary to provide a legal framework for the functioning of these commissions were enacted in October 2017;⁸ but the Constitutional Council Secretariat called for applications for the post of Commissioners only in August 2018, almost one year after the legislation was passed.⁹ The National Human Rights Commission (NHRC) Act is yet to be amended to enable the NHRC to effectively function under the newly introduced federal system of governance.¹⁰ The National Women Commission and National Dalit Commission also deserve to be strengthened, such as by decentralizing their presence at provincial level as required by the Constitution.¹¹ Given the division of powers between three layers of government, effective presence of the national institutions including NHRC is vital for monitoring respect for and protection of human rights.

In this context, Amnesty International calls on the Government of Nepal to ensure effective implementation of human rights and other constitutional provisions with

⁶ Article 25, ICCPR.

⁷ Part 27 of the Constitution.

⁸ Acts available at: www.lawcommission.gov.np

⁹ <https://thehimalayantimes.com/kathmandu/constitutional-council-seeks-applicants-for-8-different-commissions/>

¹⁰ By application of the federal system, Nepal has three layers (federal, provincial and local) of government with their constitutionally determined list of competencies. One federal, seven provincial and 753 local governments were formed through elections in 2017.

¹¹ Article 254 and 257 of the Constitution provide for their decentralization at provincial level.

implications for human rights including through adopting the following measures:

1. Allow citizens, interest groups, communities and their representatives to take part and influence the law and public policy making process.
2. Raise awareness among the public of the new laws and create space for public consultation and with civil society on the provisions for future amendments.
3. Formulate necessary rules and regulations required for implementation of new laws in consultation with civil societies and respective community.
4. Promptly appoint officials of the commissions: National Women Commission, National Dalit Commission, National Inclusion Commission, Indigenous Nationalities Commission, Madhesi Commission, Tharu Commission and Muslim Commission.
5. Ensure an open, consultative and transparent process to appoint commissioners from amongst the pool of candidates, with priority given to those with high integrity and capability to carry out the commission's mandate.
6. Amend the National Human Rights Commission Act, 2068 (2012) to enable the NHRC to effectively function under the federal system of governance.