

Citizen Engagement in Lawmaking

International Trends and Nepalese Scenario



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Citizen Engagement in Lawmaking: International Trends and Nepalese Scenario

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Citizen Engagement in Lawmaking: International Trends and Nepalese Scenario

Executive Summary

This research paper emphasizes and concludes that the constitutional legal provisions created for citizens' engagement in lawmaking at the federal level as well as the provincial and local assemblies need to be institutionalized and practiced as a matter of rule rather than choice.

Nepal has a clear foundation for the citizen engagement. Based on international trends, this foundation can be improved by developing Code of Practice on Consultation guides that enable all lawmakers to be knowledgeable about how public engagement ought to be facilitated. This may include provisions on when to consult (with ample scope for influence), how long to solicit feedback for (a minimum of 12 weeks), accessibility, and low burden of consultation. At least at federal level, the Parliament may derive lessons from the British practice of producing Green and White Papers before drafting a new legislation and after the formal consultation period had ended, respectively. There should be a clear pre-legislative consultation policy obliging the Parliament to share draft bills with the public for 30 or more days so as to gauge the costs and benefits of the bill before its passage and implementation. In fact, only after this stage has been passed should the draft bill be sent to the Cabinet for approval. The House Rules of the both Houses should contain clear provisions to involve and inform the public regarding its decision-making in legislative matters as well as other processes. The provisions oblige the Houses in Parliament to conduct legislative business openly and to ensure public accessibility, including that of the media. The committees in both the Houses should be enabled to conduct hearings in which information regarding legislation may be gathered from stakeholders, although committees are not obliged to base the drafts of the bills on these hearings. Additionally, these committees should meet that different stakeholders, including lobbyists or pressure groups, that come to influence legislation. These reforms will further magnify the existing institutions and procedures in the federal parliament and the legislatures at the sub-national level.

While various stakeholders must be informed and consulted in the process of lawmaking, participation of the public may be limited in the cases of special working groups. Public participation should be open to different groups like women, *Dalit*, and indigenous people based on appropriate methods to facilitate and encourage their involvement. While all laws and

implementing regulations should be drafted in a participatory manner, certain conditions could require limitations in the process (e.g., natural disaster, conflict). The timeline allocated for comments or participation in public meetings should be determined based on several factors, including the type of document, the issues raised, the document's length, available expertise, and the size of the target group the document affects, among others. Providing feedback to the consulted parties increases trust and strengthens cooperation. The decision regarding which method to utilize to engage the public may be made based on several factors, but such decisions should be made at the beginning of the process to ensure that the most appropriate method that brings the desired results is selected. Different tools like web sites, newspapers, televisions, and civil society organization (CSO) portals should be used to ensure that the information about the launched process is distributed as widely as possible. Governmental bodies, the federal parliament, and sub-national legislatures may use their web sites to facilitate the process of consultations.

It is difficult to conceive of parliamentary effort, not to mention citizens engagement in lawmaking, without first building the Secretariat, which has a major backstopping role. Parliament Secretariat provides human resources, finance, administrative, legislative and committee support, and information technology to the Parliament. Its institutionalization and development is necessary for the citizens engagement in lawmaking.

1. Introduction

Nepal is a democratic country that was federalized with the promulgation of the Constitution of Nepal, 2015. The Constitution of Nepal pledges in its Preamble to end all forms of discrimination and oppression created by the previously-existing feudalistic, autocratic, centralized, and unitary system of governance.

The Preamble of the Constitution also recognizes the multi-ethnic, multi-lingual, multi-religious, multi-cultural, and diverse regional characteristics of the people of Nepal. The Constitution resolves to build an egalitarian society founded on proportional inclusivity and participatory principles in order to ensure economic equality, prosperity, and social justice for all citizens. This is to be done by eliminating discrimination based on class, caste, region, language, religion, and gender as well as all forms of caste-based untouchability. This immense commitment of the Constitution is a national challenge that is unlikely to be tackled with the singular effort of the government and without the people's participation in the governmental system.

In a democratic system, the legislature is responsible for lawmaking and is the principal lawmaking body. A legislature consists of the elected representatives of the people. Even when lawmaking is delegated to the government or its outfits, such entities must consider lawmaking within the framework of the laws enacted by the legislature. As a democratic country, Nepal considers citizens engagement in law making as desirable, because it facilitates dialogue between lawmakers and those to whom the laws apply. Citizens are given the opportunity to review and criticize draft legislations from different perspectives and vantage points and suggest reforms. This process also engages several stakeholders' values. By doing so, citizens are exercising their democratic rights to participate in the governance decisions that affect them, beyond just casting votes for their representatives in the legislature. Apart from ensuring openness and transparency in legislative matters, citizen engagement in lawmaking enhances the quality of the laws being created.

While citizen engagement is important, it is neither an alternative to the functions of the representatives of the people nor does it reduce the legislative body's responsibilities. However, citizen engagement enables legislators to collaborate with the external stakeholders while enabling sovereign people to participate in legislative decision-making. Citizen engagement also aims to engage legislators and civil society in a constructive dialogue to support the evolution of such democratic practices

while also acknowledging and mitigating challenges and risks in the implementation of such practices.

Objective of the Research

The aim of this research paper is to review citizens engagement in lawmaking in Nepal. To achieve this aim, this study will concentrate on the following areas:

- a. consider the practices of democratic countries (i.e. the United Kingdom (UK), India, South Africa, that have an established history of parliamentary democracy and the United States of America (US));
- b. compile effective and replicable best practices of citizen engagement in lawmaking and policy-making from the experience of these countries;
- c. evaluate Nepal's past practices in citizen engagement; and
- d. provide recommendations to improve the status and quality of citizen engagement in Nepal in the lawmaking sphere.

2. Literature Review

Public participation in decision-making is argued to have positive outcomes. Elkins et al. (2008) find that participatory constitutions are systematically different than other constitutions and “are more likely to include an expansive role for the public in ongoing governance.”¹ Additionally, public participation of minorities, for example, is argued to be crucial for their engagement with the state and wider community as well as in the protection of their interests and sense of identity.²

More specifically, when discussing public participation in legislature, Daudu and Fagbadebo (2019) argue that the legislature represents the General Will of the people, as referred to by philosopher Jean Jacques Rousseau; the General Will is simply “the symbol of the geniality of the people participating in the government.”³ In legislatures around the world, Duncan (2006) states, the following are some of their major functions.

¹ Elkins, Z., Ginsburg, T., and Blount, J. (2008). The citizen as founder: public participation in constitutional approval. *Temp. L. Rev.*, 81, 361, at p. 381.

² Ghai, Y. P. (2001). *Public participation and minorities* (p. 9). London: Minority Rights Group International, at p. 27.

³ Daudu, I. A., and Fagbadebo, O. (2019). Public Participation in Legislative Oversight: A Review of Nature and Practice in Nigeria and South Africa. In

1. *Enacting legislation.* Legislatures hold the power of the purse because of their authority to enact laws that raise revenues and authorize spending on public policy.⁴
2. *Representing the public.* This means representing its opinions and interests and thereby providing a link between the government and the people.⁵
3. *Overseeing the executive.* Legislatures have the authority to scrutinize, and sometimes even investigate, the work of the executive, including individuals, in implementing public policies.⁶ It can even pressurize the executive to resign.⁷
4. *Channeling the recruitment of the next generation of political leaders.* Many parliamentary systems require that future ministers and premiers participate in the legislature before qualifying for those positions.⁸
5. *Discussing financial provisions, debating, and asking questions.*⁹

In honoring its second responsibility, as listed above, it is important to involve citizens in drafting new laws. Laws are often improved by feedback and comments from citizens who will be living within the confines of the law, and citizens are also more likely to follow the law given that they accept its contents and were given the chance to effect them.¹⁰ In a truly participatory democracy, scholars argue, legislators must interact with those who will be affected by their decisions, even if they ultimately end up rejecting those opinions.¹¹ Public participation, in the form of citizens

Perspectives on the Legislature and the Prospects of Accountability in Nigeria and South Africa (pp. 233-250). Springer, Cham (hereinafter, “Dudu and Fagbadebo, Public Participation in Legislative Oversight”), at p. 235.

⁴ Watts, D. (2006). *British Government and Politics: A Comparative Guide: A Comparative Guide*. Edinburgh University Press (hereinafter, “Watts, *British Government and Politics*”), at p. 62.

⁵ Watts, *British Government and Politics*, at p. 62.

⁶ Watts, *British Government and Politics*, at p. 62.

⁷ Watts, *British Government and Politics*, at p. 63.

⁸ Watts, *British Government and Politics*, at p. 63.

⁹ Watts, *British Government and Politics*, at p. 63.

¹⁰ Westminster Foundation for Democracy (2018). *Legislative Scrutiny: Overview of the Legislative Scrutiny Practices in the UK, India, Indonesia and France*. London. Available at https://www.wfd.org/wp-content/uploads/2018/12/WEB_Legislative-Scrutiny_UK_India_Indonesia_France.pdf (hereinafter, “Westminster Foundation for Democracy, *Legislative Scrutiny*”), at p. 8.

¹¹ Syma Czapsanskiy, K., and R. Manjoo (2008). The right of public participation in the lawmaking process and the role of legislature in the promotion of this right. *Duke*

giving feedback to the formulation of rules and legislation, is critical in facilitating legislative oversight functions, as citizens are given the opportunity to practice their constitutional rights and hold their government accountable to its actions.¹²

In this regard, there are some major factors of public participation in the oversight of the legislative process: It enables a diversity of viewpoints, including in support of the opposition, and legislatures are responsible for accepting laws from the executive as well as initiating laws that are consistent with the population's interests.¹³ Public participation is also important because it allows the legislature to hold the executive accountable by ensuring that the people's priorities are communicated to and executed by the work of the executive.¹⁴ Additionally, public participation is also essential for the long-term stability of democracy, as it promotes legislations' legitimacy and public support.¹⁵ Some of the most important avenues for public participation include lobbying, raising issues to the parliamentary constituency offices, petitions, and public hearings.¹⁶ Additionally, public participation enriches the decision-making process itself, to inform and educate the communities about issues of governance and the government, and also to understand the public's views so that service delivery, effective laws in this case, can be optimized and adapted to the public's needs.¹⁷

The theoretical foundation of public participation in the West has been dominated by the Arnstein's Ladder (1969). Each step of the ladder shows the degree to which people have power over the end product of their participation.¹⁸ Arnstein argued, however, that "participation without

J. Comp. & Int'l L., 19, 1 (hereinafter, "Syma and Manjoo, The right of public participation in the lawmaking process"), at p. 17.

¹² Dudu and Fagbadebo, *Public Participation in Legislative Oversight*, at p. 237.

¹³ Houston, G. F. (2001). *Public participation in democratic governance in South Africa*. HSRC Press (hereinafter, "Houston, *Public participation in democratic governance in South Africa*"), at p. 147.

¹⁴ Houston, *Public participation in democratic governance in South Africa*, at p. 148.

¹⁵ Houston, *Public participation in democratic governance in South Africa*, at p. 148.

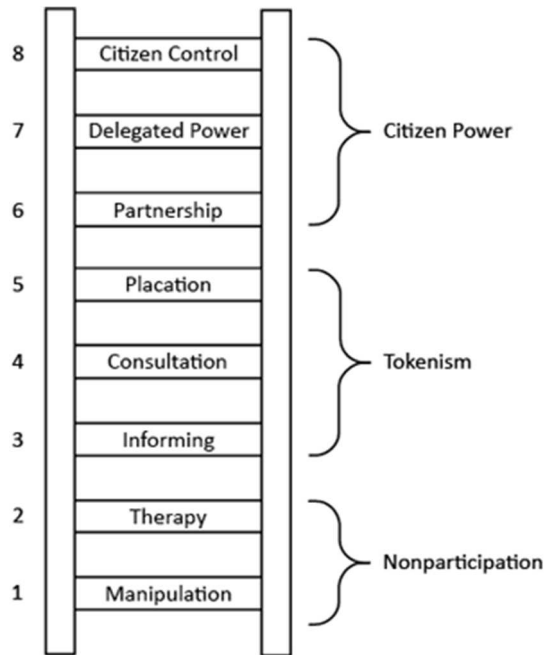
¹⁶ Houston, *Public participation in democratic governance in South Africa*, at p. 148.

¹⁷ Legislative Sector South Africa (2013). *Public Participation Framework for the South African Legislative Sector*. Available at <http://www.sals.gov.za/docs/pubs/ppf.pdf>, at p. 30.

¹⁸ Participatory Methods. Levels of Participation. Available at <https://www.participatorymethods.org/method/levels-participation> (hereinafter, "Participatory Methods. Levels of Participation").

redistribution of power is an empty and frustrating process for the powerless. It allows the power holders to claim that all sides were considered, but makes it possible for only some of those sides to benefit. It maintains the status quo.”¹⁹

FIG. 1: ARNSTEIN’S LADDER (1969) DEGREES OF CITIZEN PARTICIPATION²⁰



As such, the first two steps are non-participative and only serve to achieve public support for the proposed plan.²¹ The “informing” step is the first step to legitimate public participation, but often, the information only flows one way.²² The consultation phase is achieved through activities like surveys, meetings, and public enquiries.²³ The placation step allows citizens to participate in advising but under the purview of power holders, who hold the decision-making powers.²⁴ The partnership phase, arguably the most

¹⁹ Participatory Methods. Levels of Participation.

²⁰ Participatory Methods. Levels of Participation

²¹ The Citizen’s Handbook. Arnstein's Ladder of Citizen Participation. Available at <http://www.citizenshandbook.org/arnsteinsladder.html> (hereinafter, “The Citizen’s Handbook. Arnstein's Ladder of Citizen Participation”).

²² The Citizen’s Handbook. Arnstein's Ladder of Citizen Participation.

²³ The Citizen’s Handbook. Arnstein's Ladder of Citizen Participation.

²⁴ The Citizen’s Handbook. Arnstein's Ladder of Citizen Participation.

relevant in Nepal's case, is when power is redistributed through negotiations between citizens and power holders in the form of, for example, joint committees.²⁵ The top two phases, then, are the delegation and citizen control phases, where citizens either hold the majority of the power to make decisions and ensure accountability or have entire control.²⁶

There have been little efforts in Nepal, especially after the promulgation of the Constitution of Nepal, 2015, to ensure citizen engagement in lawmaking. There have been some peripheral studies, which have been referred to in appropriate places in this writing. This study is a preliminary assessment.

3. The Constitution of Nepal and Participatory Lawmaking

The Constitution of Nepal, 2015 is a federal constitution that provides for a three-tier federal system of government. Each tier has its own government and legislature, although the judiciary is an integrated system and is generally common to all tiers. At the federal level, the Constitution provides for a bicameral parliament comprising of the House of Representatives (HoR) and the National Assembly (NA). The provincial and local assemblies are unicameral.

The HoR at the federal level, known as the lower house, consists of 275 members as follows: (1) 165 members elected through the first-past-the-post electoral system consisting of one member from each of the 165 electoral constituencies formed by dividing Nepal based on geography and population, and (2) 110 members elected from the proportional representation electoral system, in which voters vote for parties, while treating the whole country as a single electoral constituency.²⁷ Based on this provision, the federal law²⁸ enables political parties to file for candidacy to the HoR's proportional representation system through a closed list of women, *Dalit*, *Adivasi Janajati*, *Khas Arya*, *Madhesi*, *Tharu*, Muslim, and citizens from backward regions. Balance in geography and

²⁵ The Citizen's Handbook. Arnstein's Ladder of Citizen Participation.

²⁶ The Citizen's Handbook. Arnstein's Ladder of Citizen Participation.

²⁷ Article 84 (1).

²⁸ House of Representatives Election Act 2074 (2017).

province have to be considered while offering candidacy for these proportional representation.²⁹

Similarly, the NA is to be a permanent house.³⁰ Known as the upper house of the federal bicameral parliament, it has 59 members. Fifty-six members are elected from an Electoral College comprising of members of the Provincial Assembly and Chairpersons and Vice Chairpersons of Village Councils and Mayors and Deputy Mayors of Municipal Councils. Different weights of votes are given to each of these positions. Additionally, there must be eight members for each province, including at least three women, one *Dalit*, and one person with disability or a person from a minority community.³¹ Three members, including at least one woman, are to be nominated by the President on the recommendation of Government of Nepal. The NA's members have a tenure of six years.³²

Article 97 of the Constitution states that the HoR and the NA shall have the right to form committees according to the law. These committees are also known as mini-parliaments within the Parliament and consist of a small number of members. They enjoy powers as sub-legislative organizations within their respective houses and oversee the work of ministries, departments, and agencies, examine topical issues affecting the country under their terms of reference, and review and advise on different parliamentary issues.³³ A Joint Committee is constituted if a resolution is passed by either House demanding that a Joint Committee of both the Houses be constituted for the purpose of managing the working procedure between the two Houses, resolving disagreements on any Bill, or for any other specified function. The Joint Committee shall consist of a maximum of 25 members in the ratio of five members from the HoR to one member from the NA.³⁴

²⁹ Article 84 (2).

³⁰ Article 86 (1).

³¹ Article 86 (2) (a).

³² Article 86 (3).

³³ See for details, House of Representative Rules 2018, National Assembly Rules 2018, and Federal Parliament Joint Meetings and Joint Committee (Conduct of Business) Rules 2018.

³⁴ Such Committees were in existence in the past as well. For example, Article 64 of the Constitution of the Kingdom of Nepal, 1990 enabled the HoR to regulate the constitution and management of committees on finance, public account, human rights, foreign relations, natural resources, protection of the environment, population and on other subjects as required. Similarly, if a resolution was passed by either House

Additionally, the internal rules of the Parliament, i.e. the House of Representative Rules 2018, the National Assembly Rules 2018, and Federal Parliament Joint Meeting and Joint Committee (Conduct of Business) Rules 2018, deal with the internal procedures of the Parliament. While these procedures mostly reflect Westminster traditions, over the years, parliamentary practice has also absorbed Nepalese experience in these Rules. Chapter 15 of the House of Representatives Rules provides some guidelines for legislative procedures, specifically when soliciting public opinion. According to Rule 107, when a motion that a Bill be circulated for the purpose of eliciting public opinion is passed, the Secretary of the House may, in addition to publishing the Bill in the Nepal Gazette specifying the ascertained period for collection of opinion, publicize the Bill through other appropriate media. After compiling the opinions received during such a specified period, the Secretary of the House then delivers them to the Member introducing the Bill through the Speaker of the House. The Rule clearly states that other procedures of eliciting public opinion shall be as determined by the Speaker. As far as the procedure after receiving public opinion is concerned, Rule 108 provides that the Member introducing the Bill may, having enclosed the opinions received pursuant to Rule 115, move with a motion that the Bill, along with the public opinion, be taken into consideration in the House.

As a matter of principle, thus, when the presenter receives permission to present a Bill in parliament, she can propose either to consider the Bill or to subject it to public feedback. The timeline in the latter case as well as the appropriate manner of disseminating the Bill (through publication in the gazette or other means) will be decided upon. Once feedback has been collected, the Bill and the feedback will be presented for consideration by the presenter member. The House of Representative Rules also entitles the Speaker to appoint an expert or an expert group to assist the House or any Committee in its job.³⁵ The National Assembly Rules 2018 also have similar Rules regarding soliciting public opinion,³⁶ but not appointment of

demanding that a joint committee of both the Houses be constituted for the purpose of managing the working procedures between the two Houses, resolving disagreements on any bill, or for any other specified function, a joint committee thereon shall be constituted. The joint committee was to consist of up to a maximum of fifteen members in the ratio of two members from the HoR to one member from the NA. See Article 65 of the Constitution of the Kingdom of Nepal, 1990.

³⁵ Rule 242.

³⁶ Rules 102 and 103.

an expert or an expert group to assist the House.³⁷ As a federal country, Nepal has seven provincial assemblies and 753 *palikas* (municipalities and rural municipalities) functioning as provincial and local legislatures. All provincial assemblies and *palikas* are unicameral, work through their respective committee systems, and operate internally according to the assembly rules they have adopted. All provincial assembly rules were drafted by the provincial assemblies with the technical support of the Federal Parliament Secretariat. The rules of the local legislatures were initially framed by the *palikas* on the framework laid down by the Local Government Operations Act 2017.³⁸ A model of Rules for the *palikas* was made available by the Kathmandu University School of Law (KUSL) to all *palikas* in the country so that they could utilize the model and accommodate it to their local needs. The Constitution of Nepal, 2015 clarifies that the *palikas* shall operate according to provincial law.³⁹ In principle, the committee system has been operationalized at all levels throughout the country. Additionally, the internal rules throughout the country allow legislatures to invite the public's participation in lawmaking. The modern lawmaking process started in Nepal in 1951, when the Rana system of government was dismantled and democracy was introduced for the first time. Then, the Law Department of the government was established. In 1955, the Department was transformed into the Ministry of Law, which has persisted in the country (although under varying names). Based on the Government of Nepal Allocation of Business Rules framed by the government of the day, the Ministry continues to draft and submit to the government Acts, Rules, and Orders, as required by the government. The Ministry also works on delegated legislation to be enacted by the government under the Acts passed by the parliament. The Ministry has a Department of Legal Drafting that specializes in making draft laws. The Ministry is generally able to cater to all such requirements in its own existing capacity.

³⁷ Legal expert could still be appointed under Rule 224.

³⁸ Chapter V, Local Government Operations Act 2017.

³⁹ Article 227 states: "Other provisions relating to Village Assembly and Municipal Assembly: Other

matters relating to the conduct of business of a Village Assembly and Municipal Assembly, rules of procedures of meetings, formation of committees, conditions in which the office of member falls vacant, facilities receivable by members of the Village Assembly and Municipal Assembly and employees and offices of the Village Body and Municipality shall be as provided for in the State law."

Nepal also ushered in the concept of constituting law commissions in 1953, when, as a temporary arrangement, the Law Commission was constituted by an executive decree to assist with legal research and legislative drafting. The second through fifth Commissions were constituted in 1960, 1963, 1972, and 1979, respectively. The Commission was created and given permanent status in 1984, because the government found that the Commission needed to exist continuously to address the increasing needs of the government. After the restoration of multiparty democracy in 1990, and later in 2003, the Commission's organization was restructured with timely changes in its mandate and composition.

The Commission is a statutory body at present under the Nepal Law Commission Act, 2007. As a statutory body, it drafts new legislation and amendments of statutes with explanatory notes, codifies, unifies, and reviews existing laws, drafts legislation to internalize treaty obligations, exchanges ideas and information with law commissions and law drafting agencies of other countries, carries out study and research on the legal field, consults with stakeholders, obtains expert service, discusses Consultation Papers, and so on. The Commission is available to the government as an expert organization. Under the Act, the Commission has full powers to engage citizens and stakeholders when drafting laws or conducting research.⁴⁰

4. Materialization of Lawmaking Procedures

Because Nepal has a parliamentary system of government, most of the time, the lawmaking process starts at the initiation of the government from outside the parliament. Per the Government of Nepal (Work Performance) Rules, if a new Act has to be created on any subject other than the Bill to

⁴⁰ Section 10 of Nepal Law Commission Act 2007 empowers the Commission:

- (g) to make consultation, discussion and interaction with concerned agency, organization in regard to drafting, codification, integration, review, reform and development of laws as per necessity, or to co-work with the concerned agency or organization in this regard,
- (h) to obtain service of experts for study, research and drafting of special type of laws,
- (i) to collect public opinion, views and suggestions in course of processing enactment of laws as per necessity,
- (j) to launch programs like symposium, seminar and interaction as per necessity in course of reformation of draft of laws...

amend the existing Act, the concerned Ministry must, as a matter of principle, first receive approval from the Government of Nepal.

For the purpose of drafting a new Act, the concerned Ministry is required to prepare a concept note disclosing important details about such an initiation. The need to make a new Act must be explained on the basis of constitutional grounds, international obligations, Supreme Court decisions, government policies and programs, or any other substantial grounds. The concept note must also explain the achievements to be accomplished after the enactment and implementation of the new Act. If there is an existing law on the proposed subject, the name of the Act, Rules, the constitution order, or other relevant provisions must be highlighted in the concept note. If this achievement cannot be accomplished by amending the existing law, the reasons must be specified. If the government has approved any special policy on the proposed subject, the concept note must state the method by which the policy has been formulated. There could be a rational, incremental, or mixed method. Key officials involved in policy-making must also be mentioned, as such officials hold discussion on the draft. If any law has been made in other countries or if any international organization has made a model law on the subject, these provisions must also be stated. If any suggestion has been made regarding lawmaking after a study and research on the proposed subject by any party, its brief proceedings must also be highlighted in such a request for approval.

Cost is also an important issue. Where there are financial costs to implementing a proposed law, estimated annual cost must be pointed out. The request must mention whether an additional structure is required to implement the proposed law. If applicable, the request must state whether or not consultation or consent of a concerned party to make the proposed law has been obtained. The request must state the main issues sought to be included in the proposed law.

After preparing the concept note in this format, the concerned Ministry has to take a decision at the ministerial level for the purpose of initiating the drafting of the bill and send the concept file, along with the concept note, to the Ministry of Law. Once the original file with the concept note is received for the approval in principle, the Ministry of Law examines all relevant issues. It will consider whether or not the existing law can address such issues, whether or not existing issues can be addressed by amending any existing law, Nepal's constitution, precedent set by the Supreme Court, court decisions, and Nepal's obligations mentioned in international treaties

to which it is party. In this regard, if it is deemed necessary to make a new Act, the Ministry of Law then agrees with the concerned Ministry to take action to get the in-principle approval of the Government of Nepal and the Council of Ministers regarding the creation of a new Act.

The concerned Ministry begins drafting the Act after the approval in principle from the Council of Ministers. It completes the preliminary draft of the Bill on the basis of the required contents and discussions with stakeholders, expectations of the public, and the demands and needs of interest groups. The concerned Ministry interacts with relevant parties, bodies, and experts in related fields and prepares the Bill in the prevailing format. If amending an Act, the preliminary draft of the Amendment Act and its details are attached and sent to the Ministry of Law for drafting. After receiving the original file, including the preliminary draft of the Bill, the Ministry of Law examines and amends the draft law, while considering the provisions of the Constitution, human rights, the rule of law, valid principles of law and justice, principles formulated by the Supreme Court, existing law, and the implementation of the proposed law. After receiving the consent of the Ministry of Law, the concerned Ministry decides at the ministerial level to submit the Bill to the Council of Ministers for approval to further submit it to the Parliament. This process is generally meant for screening the need for a new law and assuming ownership of the Bill on the part of the government.

After receiving the proposal, including the Bill from the concerned Ministry, the Council of Ministers sends the Bill to its Bills Committee for detailed discussions as required. The Council makes the final decision only after it hears from the Bills Committee and considers the modification as required in the Bills Committee. After receiving the approval of the Council of Ministers to submit the Bill with the report to the Parliament, the concerned Minister explains the purpose of and reasons for the Bill, detailed with explanatory remarks, and highlights the financial burden of implementing the Act thereby passed. A House Rules provision states that the Bill should be registered before the Parliament by enclosing the comments related to the delegated legislation. The concerned Ministry should send the required number of copies of such a Bill to the Parliament through the Ministry of Law.

In Nepal's three-tier federal system, the lawmaking power of the state is divided between the Federal Parliament, the provincial assemblies, and the *palikas* (or local bodies). Like the Federal Parliament, the provincial

parliaments are also modelled along the parliamentary system of governance. In principle, therefore, all provincial assemblies have adopted the same lawmaking powers according to these federal parameters. Based on the federal rules, these provincial assemblies have enacted their own internal business rules under Article 194 of the Constitution.⁴¹ However, the model of local government, be it municipal or village, is neither parliamentary nor presidential. It is a mixed form of government, in which the leader of the government (chairperson of the village council or mayor of the municipality), deputy leader, and ward leaders are directly-elected executives. There are other members as well. But these executives are elected for a fixed term and are not removable by the concerned village and municipal assembly on the basis of a vote of no confidence or other means.⁴² All village or municipal bodies have their own assemblies, which enjoy powers of a legislature and are also expected to function likewise. The committee system is a feature of their internal rules, although in most cases, they are not very functional due to a lack of resources and inadequate capacity. Nevertheless, these assemblies have the power to approve budget and sanction the laws and policies on the basis of which the executive is to operate. Despite a lack of constitutional recognition of the loyal opposition in these assemblies, local governments and legislatures are expected to work harmoniously and generally for the full term. The reality so far is that these newly-created sub-national governments and legislatures have not been able to engage citizens and stakeholders in the lawmaking process as expected.⁴³

In the federal context, Article 110 of the Constitution provides that the Bill related to the Finance Bill, the Nepal Army, the Nepal Police, the Armed Police Force, and other security agencies must only be presented as a government bill. There is an arrangement for the members presenting a Bill to present it in the House immediately after receiving permission to do so.

⁴¹ Article 194 states:

Procedures relating to conduct of business of Provincial Assembly:
The Provincial Assembly shall frame rules to conduct its business, maintain order during its meetings and regulate the constitution, functions and procedures of, and other matters relating to, its committees. Until such rules are framed, the Provincial Assembly shall regulate its procedures on its own.

⁴² See Articles 215 and 216.

⁴³ Adhikari, Bipin (2019). *Local Legislatures under the Constitution of Nepal: Justification and Aspects of their Experiment*. Dhulikhel: Kathmandu University School of Law.

After the Bill is introduced, the member can make one of the following proposals: (1) consider the bill or (2) promote the Bill to receive public feedback. If the latter proposal is approved, the Bill will be published in the *Nepal Gazette* and opinions will be collected through other suitable means. After receiving the opinions and suggestions in the Bill, the member presenting the Bill can submit a motion to the House for consideration of such a Bill with the feedback of the people. The information, including the amendment on the proposed Bill to be submitted within 72 hours, must be given to the Secretary General or Secretary of the House; the information of such an amendment can be submitted subject to the conditions related to the amendment. Notice of such amendment is kept in the list of amendments after approval by the Speaker.

After receiving the amendment proposal of the Bill, the member presenting the Bill can submit one of the motions that the Bill be discussed in the House or the Bill be sent to the concerned thematic committee for clause-by-clause discussion. If the motion for clause-by-clause discussion is passed in the House, the clause-by-clause discussion is held in the House itself. If the motion for clause-by-clause discussion is passed in the committee, the Bill is sent to the committee for clause-by-clause discussion. The committee or a sub-committee discusses the Bill clause by clause. After its formation, the sub-committee discusses the Bill clause by clause and submits its report to the Committee. The Committee then reviews the clause-by-clause discussion on the Bill at the Committee level, discusses the report of the sub-committee, and finalizes it for the submission to the House. After such a Bill is passed by the House, it is forwarded to the other House of parliament for a similar procedure. Apparently, more time is consumed in the House of origin of the Bill than the other House. But the procedures are generally identical. After the passage from both Houses, the Speaker certifies the Bill and submits it to the President for certification. After the bill is passed by the Parliament, it is signed by the President by way of assent, and the Ministry of Law publishes it as an Act in the *Nepal Gazette*.

As far as delegated legislation is concerned, the process of lawmaking mainly involves the formulation of rules, orders, regulations, directives, and procedures. For this purpose, the draft of the legislation has to be sent to the Ministry of Law first. Upon receipt of the original file with the draft, the Ministry of Law primarily approves the drafting, following scrutiny and modification of the draft on the basis of the Act under which the legislation is being enacted. After the Ministry submits the draft to the Council of

Ministers for approval and after receiving said approval, the concerned Ministry sends the legislation to the Ministry of Law for editing for the purpose of publication in the *Nepal Gazette*. After being received and edited by the Ministry of Law, the concerned Ministry publishes the legislation in the *Nepal Gazette*.

As far as the procedure for the formulation of an ordinance is concerned, Article 114 of the Constitution provides that, except during the sessions of both Houses of the Parliament, an ordinance may be issued by the President on the recommendation of the Council of Ministers if it is necessary to do something immediately. Similarly, Article 202 provides that, except during the session of the Provincial Assembly, the head of a province may issue an ordinance on the recommendation of the Council of Ministers if it is necessary to do something immediately. When drafting an ordinance, the drafters generally follow a procedure similar to that of a Bill. At the federal level, the ordinance will be issued if the President is satisfied with the recommendation made by the Government of Nepal and the Council of Ministers to issue the draft as an ordinance. After the issuance of such an ordinance, there is an arrangement to present it in both Houses of the Parliament. A constitutional provision states that if the ordinance is not accepted by both Houses of the Parliament, is rejected by the President, or 60 days have passed since the ordinance's presentation with both Houses sitting, such an ordinance will automatically become inactive. The ordinance issued in this way will be implemented like an Act, and the ordinance will have to be presented in the meeting of the Parliament for approval. When approved, the government will have to introduce a Bill to replace the ordinance with or without amendment.

While discussing the drafting of the law, it will be pertinent to briefly discuss the provisions related to the right to remove the difficulty in the implementation of the Constitution. Article 305 of the Constitution provides that if any provision of the Constitution cannot be implemented at any time and a constitutional crisis or stalemate arises, an order can be issued to remove the impediment subject to the Constitution. In the case of judicial inquiry into the *Dasdhunga* accident case, the Supreme Court ruled that “no constitutional act or body can be constituted, no constitutional provision can be implemented, or no constitutional mechanism can function *except* as provided for in the Constitution.”⁴⁴ If so, to make the

⁴⁴ The Dasdhunga Inquiry Commission was constituted under the leadership of Supreme Court Judge Trilok Pratap Rana as Chairperson and Advocate Bipulendra

constitutional mechanism functional, the right to remove the impediment may be exercised. Article 305 of the Constitution provides that an order can be issued to remove the impediment to the implementation of the Constitution until the first session of the Parliament begins. Article 305 of the Constitution provides that the right to issue an order to remove an impediment can be exercised only in a transitional period (which has already terminated). The order to remove the impediment is not to amend the Constitution but to immediately end the impediment or stalemate in the implementation of the Constitution. Even if approved by the Parliament, such an order cannot become a part of the Constitution.

As a matter of principle, the provincial and the local governments follow identical procedures in the matter of lawmaking and as assigned to them under the Constitution.⁴⁵ However, as the country is still in the early years of federalization, these procedures have yet to be institutionalized. Due to lack of provincial and local lawmaking capacities, whether at the governmental, provincial, or local legislature levels, the federal government in the last three years supplied these bodies with dozens of model laws and procedures so that the bodies may tailor the models according to their provincial or local needs.

5. Legislative Meetings at Thematic Committees

The primary function of the parliament is to make laws. However, in recent times, there has been a growing perception that lawmaking is not just a process within the parliament. As the people and stakeholders must implement the laws passed by the parliament, the concept is developing that the parliament should increasingly incorporate the opinion, suggestions, and feedback of the public when making laws. If the people and stakeholders participate in the lawmaking process, the law will be more easily implemented. Therefore, the parliament should develop a system that incorporates the opinions and suggestions of the people and stakeholders regarding Bills. It is appropriate to start a parliamentary exercise to increase citizen engagement in this regard.

Chakrawarti and Harshnarayan Dhaubadel as Members. See Nepal Gadget, Part 44, Asar 14, 2051 (June 28, 1994) (Additional Vol. 13) (emphasis added).

⁴⁵ The provincial and local governments have not been given ordinance-making powers.

Most of the lawmaking exercises in the Parliament are done at the level of parliamentary committees, comprised of a small group of members and formed by the concerned House of the Parliament itself. They work in accordance with parliamentary laws and systems to ensure that the the parliament's work is systematic, quick and effective. Parliamentary committees also debate and discuss all the issues of governance. A committee system is one of running such committees according to an established criterion. The committees also present citizens and stakeholders an opportunity to engage with the members of parliament in the context of the Bill under discussion. It is at this stage that experts may be consulted on thematic issues and the Bills being finalized are improved.

A modern system of government based on constitutionalism is based on the principle of separation of powers. Of the three organs of government, the parliament makes laws, represents the people, and holds the government accountable to the sovereign people by exercising proper control over the government. In a parliamentary system, since the government is born from the parliament, the government is acting on behalf of the parliament. The Council of Ministers is also known as the Large Executive Committee. The Parliamentary Committee has an important role to play in holding the Parliament accountable by monitoring and evaluating the functions of the government in the context of the diverse and wide-ranging nature of the work of the government.

It is not possible for the parliament to perform all its functions in the full house. Due to a lack of time, a parliament performs its functions through parliamentary committees, which also enable the parliament to simplify the work process, use expertise, and conduct in-depth studies and research on the subject. As the issues within their jurisdiction are discussed in depth, parliamentary committees have been portrayed by some as mini-parliaments, while others have come to understand it as workshops of the parliament.

There are two prevalent types of parliamentary committees, namely permanent and temporary (ad hoc). They differ from each other on the basis of their formation processes, functions, rights, and tenures. The standing committee is provided for in the Rules of Procedure of the Parliament and its term lasts until the term of the prevailing Parliament. Regulations determine the standing committee's functions, duties, and rights and the scope of its work. Thematic committees of the parliament fall under this category. The ad hoc committee is formed by passing a resolution from the

House for a special purpose and is automatically dissolved after the completion of the prescribed work. In Nepal's parliamentary practice, the arrangement of the committee is regulated by the rules the parliament formulates after each periodic election. While making such arrangements, the values and methods of the committee system are generally given continuity. However, from 2048 BS to the present, there has been no uniformity in the name and scope of the work of the parliamentary committee.

The committee system's work is related to the work, duties, and powers of the parliament. Therefore, the role of the committee is viewed on the basis of the objective of conducting the work falling under the jurisdiction of the parliament. In this regard, the committee discusses the bill, formulates policy, monitors the government, acts as a bridge between the parliament, the government, and the people, examines the delegated legislature, and controls and examines the revenue, expenditure, public accounts, and government assurance. The committee conducts policy studies, research, monitoring, and evaluations and provides the necessary guidance to the government. Considering these responsibilities, parliamentary committees play the following roles: policy formulation and monitoring, financial monitoring, legislative management, and grievance redressal.

Committee meetings can be categorized as either confidential (private) or open (public). A confidential meeting is one in which discussion is held among only the members of the committee and no person from outside is present. An open (public) meeting is one which involves stakeholders, communication professionals, and the officials of the concerned Ministry, among other parties. There are basically four types of meetings in the committee: internal meetings, inquiry meetings, legislative meetings, and meetings with stakeholders.

As the expression suggests, the internal meeting discusses internal issues. Such a meeting is held to create internal action plans, strategies, and plans for the next meeting. Neither journalists nor officials from ministries or departments participate in internal meetings. Inquiry meetings, on the other hand, are for the purpose of inquiry about any issues under consideration of the committee. In order to fulfill the responsibility of parliamentary oversight, officials of relevant ministries or departments are directed to be present at inquiry meetings to discuss and gather facts and evidences as required by the committee. Ministers of ministries, ministers of state, secretaries, departmental heads, and heads of the bodies are summoned as

necessary, and information on the subject is gathered from them. The main purpose of inquiry meetings is to ensure these officials' accountability to the people through the parliament. In this process, the Committee asks questions to the officials, and they are required to present any related documentation to support their responses. After the Minister, it is the turn of the Secretary and other departmental heads to provide answers. Inquiry functions are very important functions to maintain ministerial, departmental, and other administrative accountability.

One of the main functions of the meeting related to legislation, which are most common, is to discuss in detail the Bill under consideration. Discussions are held with relevant experts, stakeholders, citizens, pressure groups, professional associations, and government officials as needed. The Committee evaluates the inputs and considers where or not to include the suggestions received from such discussions in the Bill. When the Bill is received in the committee, the amendments proposed by the members to the Bill are discussed clause by clause. In this process, the members who proposed such amendments are invited. Generally, the invited member(s) has no role in the decision of the committee. During the discussion, the Secretary of the Ministry of Law is invited to assist the committee in writing in legal language the theoretical aspects of the Bill and the suggestions received during the discussion. In some cases, to make the bill more refined, the committee may also address the concerns of experts and the public as well as inputs that could not be included at the ministerial level when the Bill was being drafted. In this way, after a wide discussion on the Bill, the committee prepares a report to be submitted to the House; this report includes the provisions that are to be included, removed, modified, or adjusted as necessary. Such a report is signed by the committee chairperson or anybody assigned for this purpose. Save for a few exceptions, the reports submitted in this way are generally accepted and passed by the House.

One of the important meetings of the committee is with stakeholders. During these meetings, the committee aims to understand stakeholders' views on any issue received in the committee, hear grievances, and receive suggestions on the role the committee ought to play. The committee will collect accurate information from such meetings, especially regarding public interest and how the opinion of the government differs from that of others. This helps the committee members to read the Bill holistically and refine its approach.

Institutional support is quite important in this regard. The Legislation Management Division,⁴⁶ the HoR, and the NA take necessary actions regarding the Bill to be discussed in Parliament, preliminarily scrutinize existing Bills registered at the Federal Parliament Secretariat, register amendment proposals, and publicize a Bill or amendment proposal if the House decides to solicit public opinion on the measure. These entities also make administrative arrangements for this purpose and facilitate the certification of the Bill. For the purpose of completing the administrative process for certification and publication, there are separate Legislative Management Divisions under both Houses of Parliament. They also have a Bill Branch under the Division, and its primary functions are preliminary scrutiny of the Bills registered in the Secretariat, determining the priority of the Bills received, arranging for their presentation in the Parliament, making arrangements for the draft bill to be presented in Parliament, tabling draft amendment motions, and advising on the preparation of the drafts' framework. Additionally, regarding the priority of the bill to be introduced in the NA, the Bill Branch also provides the necessary assistance to the Operational Management Branch.⁴⁷

In providing the necessary technical assistance for non-government bills, the Bill Branch checks for errors or omissions in the Bills received for submission to Parliament and informs the presenter of the Bill to rectify the flaws. After approval, the Bill Branch sends these measures to the Attendance and Distribution Unit to make the copies of the Bill available to its members. As far as the amendment motion is concerned, upon receipt from members, the amendments are sent by the Bill Branch to the Parliament and the concerned parliamentary committees along with the order of presentation and discussion. Arrangements are made to distribute the amendments to the parliamentarians. The Bill Branch also helps the committee determine further procedures of the bill by examining its nature and providing counseling as required. The Bill Branch also submits the bill to a Joint Committee depending to the nature of the Bill. If the Bill is discussed in the committee per the decision of the House, the Bill Branch assists the committee in relation to the bill as required. If the House decides to seek public opinion and suggestions regarding the Bill, it pursues the related works. The Bill Branch is responsible for proofreading for linguistic

⁴⁶ See *Federal Parliament Secretariat: A Brief Introduction*, Federal Parliament Secretariat, 2074 (2017) (hereinafter, “*Federal Parliament Secretariat: A Brief Introduction*”), at pp. 7-8.

⁴⁷ *Federal Parliament Secretariat: A Brief Introduction*, at pp. 7-8.

mistakes and compliance with all procedures and preparing a copy to be submitted to the President for verification.⁴⁸

6. International Trend on Citizens Engagement

Nepal has instituted the basic norms and procedures regarding citizens engagement in lawmaking, as demonstrated by the review of the provisions of Constitution of Nepal and participatory law making, the basic standards of lawmaking procedures, and the legislative meetings at thematic committees. One can moderately claim that the enabling provisions for citizen engagement exist in Nepal. With this in mind, it is important to consider how they fare up in the international scenario as a basis for comparison for best practices.

6.1. United Kingdom

6.1.1. Legislature Overview

In the legislative process of the UK, a bill is presented for debate before the Parliament, either in the House of Commons or the House of Lords.⁴⁹ This bill can be a proposal for a new law or a change to an existing one. Once approved by both Houses, the bill becomes an Act of Parliament or law when it receives the Royal Assent. Bills can be introduced by the government, individual members of Parliament (MPs) or Lords, or even private individuals and organizations.

There are various types of bills. Public Bills, the most common type introduced in Parliament, apply to the general population; if individual MPs or Lords, who are not government ministers, put forward a public bill, it is known as a Private Members Bills and is more narrow in its scope.⁵⁰ Private Bills apply only to specific individuals or organizations and are usually promoted by organizations to give themselves power beyond what the general law permits.⁵¹ Lastly, Hybrid Bills, a mix of the characteristics of both Public and Private Bills, affect the general public but also significantly

⁴⁸ *Federal Parliament Secretariat: A Brief Introduction*, at pp. 7-8.

⁴⁹ UK Parliament. What is a bill? Available at <https://www.parliament.uk/about/how/laws/bills/>.

⁵⁰ UK Parliament. Public Bills. Available at <https://www.parliament.uk/about/how/laws/bills/public/>.

⁵¹ UK Parliament. Private Bills. Available at <https://www.parliament.uk/about/how/laws/bills/private/>.

impact specific individuals or groups (e.g. bills concerning works of national importance, like rail links).⁵²

To become a law, a bill is first introduced to either the House of Lords or the House of Commons, in which it goes through the following stages of evaluation:

1. First Reading (formal introduction of the bill and printing),
2. Second Reading (first opportunities for members to debate the key principles and purpose and flag any areas for amendments as necessary),
3. Committee stage (a line by line examination of the clauses and schedules of the bill and reprinting of bill if any amendments were made),
4. Report stage (further opportunity to examine bill and make amendments and reprinting of bill if necessary), and
5. Third Reading (tidying up the bill and ensuring that eventual law is effective and without loopholes).⁵³

Then, it is sent to the second House, where the bill goes through the same process.⁵⁴ Then, the bill is sent back to the first House for the amendments to be considered, and both Houses must agree on the exact wording of the bill. There is a “ping pong” period when both Houses reach an agreement. Finally, the final version of the Bill is able to receive Royal Assent, a formality, and becomes an Act of Parliament or law.⁵⁵

In this third stage of a bill going through the House of Commons, the Commons Public Bill Committees hold up to three public hearings with stakeholders, which are open to the public and largely advertised on the internet and media.⁵⁶ However, public hearings are not made available for Bills that are passed by the House of Lords or have been committed to the

⁵² UK Parliament. Hybrid Bills. Available at <https://www.parliament.uk/about/how/laws/bills/hybrid/>.

⁵³ UK Parliament. How does a bill become a law? Available at <https://www.parliament.uk/about/how/laws/passage-bill/>.

⁵⁴ UK Parliament. Consideration of amendments. Available at <https://www.parliament.uk/about/how/laws/passage-bill/commons/coms-consideration-of-amendments/>.

⁵⁵ UK Parliament. Royal Assent. Available at <https://www.parliament.uk/about/how/laws/passage-bill/commons/coms-royal-assent/>.

⁵⁶ Westminster Foundation for Democracy, *Legislative Scrutiny*, at p. 13.

plenary of the whole House in the Bill's committee stage.⁵⁷ The House of Lords, on the other hand, does not hold public hearings on Bills usually, except in a few cases, where the Bill is committed to a select committee after the Second Reading.⁵⁸

The Parliament also has a Digital Engagement Programme, through which the Parliament gathers the public's experiences and knowledge to help inform MPs' work in Parliament.⁵⁹ This Programme includes a digital and debates discussions series and internet forums, through which the public can share its views with MPs.⁶⁰ Additionally, citizens also have access to all current and draft Bills in Parliament and their progress through Parliament as well as secondary legislation, wherein the Government has the authority to make changes to the law conferred by an Act of Parliament.⁶¹

It is also possible for citizens to object to Private Bills.⁶² If a citizen feels that they are "specially and directly affected" by a Private Bill, they can oppose it or seek its amendments before a committee in either or both Houses of Parliament.⁶³ A citizen can file a formatted petition against a Private Bill, outlining how they are affected by it and why they think it should not be processed or should be altered.⁶⁴ However, the petition must fall within a certain time frame: The first period is when the Bill starts its progress through the Parliament in the first House, and the second period

⁵⁷ Westminster Foundation for Democracy, *Legislative Scrutiny*, at p. 13.

⁵⁸ Westminster Foundation for Democracy, *Legislative Scrutiny*, at p. 13.

⁵⁹ UK Parliament. Digital Engagement Programme. Available at <https://www.parliament.uk/get-involved/have-your-say-on-laws/digital-engagement/>.

⁶⁰ UK Parliament. Digital Engagement Programme. Available at <https://www.parliament.uk/get-involved/have-your-say-on-laws/digital-engagement/>.

⁶¹ UK Parliament. Bills & legislation. Available at <https://www.parliament.uk/business/bills-and-legislation/>.

⁶² UK Parliament. Object to a Private Bill that affects you. Available at <https://www.parliament.uk/get-involved/have-your-say-on-laws/private-bill-petitions/>.

⁶³ UK Parliament. Object to a Private Bill that affects you. Available at <https://www.parliament.uk/get-involved/have-your-say-on-laws/private-bill-petitions/>.

⁶⁴ UK Parliament. Object to a Private Bill that affects you. Available at <https://www.parliament.uk/get-involved/have-your-say-on-laws/private-bill-petitions/>.

of 10 days starts the day after the bill is sent to the second House.⁶⁵ Additionally, the Court of Referees and the Select Committee on a Bill will decide if a petitioner can give evidence to a Select Committee in the House of Commons and the House of Lords, respectively.⁶⁶

6.1.2. Code of Practice on Consultation

Draft Bills, almost all of which are Government Bills, are released for consultation before they are formally introduced in Parliament, which allows changes to be made beforehand.⁶⁷ This examination can come from select committees in the Commons or Lords or a joint one, and sometimes the government may issue a paper for public discussion as well.⁶⁸ Select Committees' role in both Houses is to check the work of the government and consider policy issues; they also often seek evidence from members of the public, like academics and other experts, and the implication of such evidence may require a governmental response.⁶⁹ Drafts of bills are published so that those affected by it can give feedback and a public consultation exercise can be carried out.⁷⁰

Regarding the framework, the procedures and rules of public participation in the lawmaking processes on government level are embodied as codes and guidelines, which are not legally binding documents. The Code of

⁶⁵ UK Parliament. Object to a Private Bill that affects you. Available at <https://www.parliament.uk/get-involved/have-your-say-on-laws/private-bill-petitions/>.

⁶⁶ UK Parliament. Object to a Private Bill that affects you. Available at <https://www.parliament.uk/get-involved/have-your-say-on-laws/private-bill-petitions/>.

⁶⁷ UK Parliament. What is a draft bill? Available at <https://www.parliament.uk/about/how/laws/draft/>.

⁶⁸ UK Parliament. What is a draft bill? Available at <https://www.parliament.uk/about/how/laws/draft/>.

⁶⁹ Northern Bridge. Public policy engagement toolkit. Available at <http://toolkit.northernbridge.ac.uk/introductiontogovernmentandpolicy/theukparliament/>.

⁷⁰ University of Oxford (2011). *A Comparative Survey of Procedures for Public Participation in the Lawmaking Process- Report for the National Campaign for People's Right to Information (NCPRI)*. Available at https://www.law.ox.ac.uk/sites/files/oxlaw/1._comparative_survey_of_procedures_for_public_participation_in_lawmaking_process_-_report_for_national_campaign_for_peoples_right_to_information.pdf (hereinafter, "University of Oxford, *A Comparative Survey of Procedures for Public Participation in the Lawmaking Process*") at p. 31.

Practice on Consultation, revised 2008, sets out seven consultation criteria guidelines regarding the process of public consultation as follows:

1. “When to consult: Formal consultation should take place at a stage when there is scope to influence the policy outcome.
2. “Duration of consultation exercises: Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.
3. “Clarity of scope and impact: Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.
4. “Accessibility of consultation exercises: Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.
5. “The burden of consultation: Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees’ buy-in to the process is to be obtained.
6. “Responsiveness of consultation exercises: Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.
7. “Capacity to consult: Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.”⁷¹

Most recently, for example, the UK Government launched a four-week public consultation regarding the development of a post-Brexit tariff regime that will be implemented from January 1, 2021 onward.⁷² The UK Government is specifically targeting businesses and business associations, consumers, and other interested parties via a series of events throughout the country.

⁷¹ HM Government (2008). *Code of Practice on Consultation*. Available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/100807/file47158.pdf, at p. 4.

⁷² Mann, S. and R. L. Denton (2020). UK Government launches public consultation to seek views on development of post-Brexit Tariff regime. *Baker McKenzie*. Available at <https://brexit.bakermckenzie.com/2020/02/10/uk-government-launches-public-consultation-to-see-views-on-development-of-post-brexit-tariff-regime/>.

6.1.3. Green Papers and White Papers

Additionally, the Government may also produce Green Papers (before drafting new legislation) and White Papers (after the formal consultation period has terminated) for the discussions and responses from the public.⁷³ However, the government is not obligated to produce Green or White papers and may choose to introduce the Bill to Parliament without any consultation steps.⁷⁴ The consultation period for the Green Paper usually lasts for three months and is centered around receiving the public and specialists' feedback and input.⁷⁵

While White Papers are more limiting, in that the Government states its intention to introduce a particular legislation and highlights the main ideas, there is a period for the public to give feedback on the proposal by writing to the relevant government department.⁷⁶ Information and Communications Technology (ICT) and the internet have become widely available for this type of public consultation.⁷⁷ If a government department does not consult widely, it is expected to explain why.⁷⁸ The Department that is bringing forth the bill could publish a consultation document or White Paper at the same time or before the draft Bill, considering whether the Parliamentary Committee wants to see the results of such consultation before the Reporting stage.⁷⁹

⁷³ University of Oxford, *A Comparative Survey of Procedures for Public Participation in the Lawmaking Process*, at p. 34.

⁷⁴ Northern Bridge. The UK Parliament. Available at <http://toolkit.northernbridge.ac.uk/introductiontogovernmentandpolicy/theukparliament/>.

⁷⁵ University of Oxford, *A Comparative Survey of Procedures for Public Participation in the Lawmaking Process*, at p. 34.

⁷⁶ University of Oxford, *A Comparative Survey of Procedures for Public Participation in the Lawmaking Process*, at p. 34.

⁷⁷ Voermans, W., H. M. ten Napel and R. Passchier (2015). Combining efficiency and transparency in legislative processes. *The Theory and Practice of Legislation*, 3(3), 279-294.

⁷⁸ OECD (2010). *Better Regulation in Europe: United Kingdom*. Available at <https://www.oecd.org/gov/regulatory-policy/44912087.pdf>, at p. 77.

⁷⁹ University of Oxford, *A Comparative Survey of Procedures for Public Participation in the Lawmaking Process*, at p. 31.

6.1.4. Post-Legislative Scrutiny

Once the bill has been introduced in parliament, there are still other ways for the public to become involved. Members of the public can participate in this process by contacting an MP in the Commons or a member of the Lords about a concerning bill and make their case.⁸⁰ Additionally, the public can also submit evidence to a Public Bill Committee when a bill is referred to it after the second hearing in the House of Commons.⁸¹ Such Committees in public meetings may invite lobby groups, organizations, or individuals to get their views or even ask for written evidence from such entities.⁸² Any suggestions or amendments to the bill will be reported to the House of Commons and debated in the House of Commons chamber.⁸³

In the area of post-legislative scrutiny in Parliament, a select committee in the House of Commons may conduct a post-legislative review of an Act of Parliament based on a Ministry review paper and hold stakeholder hearings before publishing an advisory report; this is another instance for the public to be involved.⁸⁴

6.1.5. Issues and Challenges

Importantly, Rogers and Walters (2015) note that the process of public consultation sometimes draws criticisms:

Political pressures may mean that there is, in fact, little time for effective consultation. The process may sometimes focus too much on ‘the usual suspects’ – those organisations with a national profile – rather than opinion more widely. Consultation often has to be on the broad intentions of a proposal, but ‘the devil is in the detail’, and some important elements of a proposal may be decided only when the business of drafting begins. Finally – and crucially – there is no point in consulting if the opinions

⁸⁰ UK Parliament. Input into legislation. Available at <https://www.parliament.uk/get-involved/have-your-say-on-laws/input-into-legislation/>.

⁸¹ UK Parliament. Input into legislation. Available at <https://www.parliament.uk/get-involved/have-your-say-on-laws/input-into-legislation/>.

⁸² UK Parliament. Input into legislation. Available at <https://www.parliament.uk/get-involved/have-your-say-on-laws/input-into-legislation/>.

⁸³ UK Parliament. Input into legislation. Available at <https://www.parliament.uk/get-involved/have-your-say-on-laws/input-into-legislation/>.

⁸⁴ Westminster Foundation for Democracy, *Legislative Scrutiny*, at p. 17.

expressed are ignored and the government of the day steams ahead regardless.⁸⁵

In the same vein, Kirk and Blackstock (2001) argue that when regulators are making decisions regarding policy in compliance with the Better Regulations' Code, "greater emphasis is now being placed on ensuring speed and consistency in decision making in certain contexts than on improving the quality of information before individual regulators tasked with making certain decisions."⁸⁶ Thus, this issue calls for a greater emphasis placed on participatory rights as well as the adoption of various types of participatory processes.⁸⁷

6.2. India

6.2.1. Legislature Overview

Uniquely, in India, both the federal and the state legislatures are empowered to make laws.⁸⁸ India's parliament has two houses: one House, Lok Sabha, or "House of the People," with the Members of Parliament who are directly elected by general elections, and another House, Rajya Sabha, or "Council of States," consisting of Members of Parliament who have been indirectly elected by legislators from the states.⁸⁹ Aside from Constitutionally-categorized financial legislations, a law must be approved by both houses to pass.⁹⁰ Aside from finance, there are two other types of legislation: ordinary and laws to amend the Constitution of India.⁹¹ The former can be introduced in either Houses of Parliament and is new or an amendment that can pass by simple majority. For the second to pass, the law must secure a two-thirds majority in each House.⁹² Ministers of

⁸⁵ Rogers, R., and Walters, R. (2015). *How parliament works*. Routledge, p. 175.

⁸⁶ Kirk, E. A., and Blackstock, K. L. (2011). Enhanced decision making: Balancing public participation against 'better regulation' in British environmental permitting regimes. *Journal of Environmental Law*, 23(1), 97-116 (hereinafter, "Kirk and Blackstock, Enhanced decision making"), at p. 114.

⁸⁷ Kirk and Blackstock, Enhanced decision making, at p. 115.

⁸⁸ Westminster Foundation for Democracy, *Legislative Scrutiny*, at p. 18.

⁸⁹ Westminster Foundation for Democracy, *Legislative Scrutiny*, at p. 18.

⁹⁰ Westminster Foundation for Democracy, *Legislative Scrutiny*, at p. 18.

⁹¹ Westminster Foundation for Democracy, *Legislative Scrutiny*, at pp. 18-9.

⁹² Westminster Foundation for Democracy, *Legislative Scrutiny*, at pp. 18-9.

different departments introduce Bills on behalf of the government, while individual MPs can also introduce Bills as Private Members' Bills.⁹³

The legislative process in Parliament goes through the following ten steps: the draft bill, invitation for public feedback, Cabinet approval, introduction in one House, reference to the Standing Committee, consideration of the Bill, a clause-by-clause discussion and voting, voting on the Bill, Presidential Assent, and finally, Rules and Regulations framed.⁹⁴ The Pre-legislative Consultation Policy requires that draft bills be shared with the public for 30 days in its pre-legislative consultation phase.⁹⁵ This is implemented so that the costs and benefits of the draft Bill may be explored prior to its anticipated implementation.⁹⁶ The comments received from the public and other stakeholders need to be made available on the internet; only after this process is the draft bill sent for Cabinet approval.⁹⁷ A summary of these comments also need to be placed before the Department Related Parliamentary Standing Committee by the Department/Ministry concerned when the proposed legislation is brought to the Parliament and is referred to the Standing Committee.⁹⁸

In order to circulate a bill for public consultation, there is a motion, entitled “Motion for Circulation of a Bill for Eliciting Public Opinion,” that the concerned Minister needs to submit to the concerning House of Parliament as well as the Ministry of Parliamentary Affairs and the Ministry of Law and Justice (Legislative Department).⁹⁹ However, in practice, often major Bills are introduced without consultation with the public. and thus, some

⁹³ Rao, P. (2014). *Parliament as a Law Making Body: Background Note for the Conference on Effective Legislatures*. New Delhi: PRS Legislative Research, Institute for Policy Research Studies. Available at <https://www.prsindia.org/administrator/uploads/general/1417684398~Parliament%20as%20a%20Law%20Making%20Body.pdf> (hereinafter, “Rao, *Parliament as a Law Making Body*”), at p. 1.

⁹⁴ Rao, *Parliament as a Law Making Body*, p. 1.

⁹⁵ Westminster Foundation for Democracy, *Legislative Scrutiny*, at p. 19.

⁹⁶ CUTS International. *Law Making Process in India*. Center for Competition, Investment and Economic Regulation. Available at https://cutsccier.org/pdf/Draft_Law_Making_Process_in_India.pdf (hereinafter, “CUTS International, *Law Making Process in India*”), at p. 8.

⁹⁷ CUTS International, *Law Making Process in India*, at p. 1.

⁹⁸ CUTS International, *Law Making Process in India*, at p. 1.

⁹⁹ Ministry of Parliamentary Affairs (2018). *Manual of Parliamentary Procedures in the Government of India*. Available at https://mpa.gov.in/sites/default/files/Manual2018_0_0.pdf, at p. 167.

argue, this process cannot be compared with the green/white papers system in the UK.¹⁰⁰ There have been issues of drafts not being made public and of the consultation policy being disregarded.¹⁰¹

In the next step, the draft bill is sent to the Cabinet for approval, after which it may be introduced to either House.¹⁰² While Ordinary Bills and Constitution Amendment Bills may be introduced to either house, Money Bills and other financial ones must be introduced in the Lok Sabha.¹⁰³ In the First Reading in the concerned house, the MPs can raise objections towards it, including on the grounds that the body doesn't have the legislative competence to enact it as law or that it is non-compliant with Constitutional provisions.¹⁰⁴ Then, once the Select Committees of the Rajya Sabha submits a report to the House, in the Second Reading, the Bill is discussed, its principles and clauses are analyzed, and MPs can move to amend the Bill.¹⁰⁵ The Third Reading and Voting come next, in which case the debate is regarding whether one supports or is against the Bill. The Bill is put to vote, and once it passes, it is sent to the other House for consideration and to be passed. The Presidential assent happens, and the Bill becomes an Act. The executive is then responsible for creating the rules and regulations for the implementation of the Act.¹⁰⁶ This legislation, usually, is tabled in Parliament where it may be amended or repealed.¹⁰⁷

6.2.2. Issues and Challenges

Godbole (2011) argues that the legislative process in India is very hasty, with a history of passing bills in shockingly short amounts of time.¹⁰⁸ Additionally, as with the Delhi Rent Control Bill, sometimes bills that pass through the legislature and are assented to by the President fail to be implemented by notification from the government due to pressure from stakeholders.¹⁰⁹ Additionally, there are also practices of leaders keeping the

¹⁰⁰ Westminster Foundation for Democracy, *Legislative Scrutiny*, at p. 19.

¹⁰¹ Rao, *Parliament as a Law Making Body*, p. 2.

¹⁰² Rao, *Parliament as a Law Making Body*, pp. 1-2.

¹⁰³ Rao, *Parliament as a Law Making Body*, p. 2.

¹⁰⁴ Rao, *Parliament as a Law Making Body*, p. 2.

¹⁰⁵ Rao, *Parliament as a Law Making Body*, p. 2.

¹⁰⁶ Rao, *Parliament as a Law Making Body*, p. 2.

¹⁰⁷ Rao, *Parliament as a Law Making Body*, p. 2.

¹⁰⁸ Godbole, M. (2011). *India's Parliamentary Democracy on Trial*. Rupa Publications (hereinafter, "Godbole, *India's Parliamentary Democracy on Trial*"), at p. 101.

¹⁰⁹ Godbole, *India's Parliamentary Democracy on Trial*, at p. 102.

ugly happenings in Parliament from media and thus the people in an effort to save face and retain their voters' trust.¹¹⁰

When Bills are kept from public discussions, leaders argue that it is because they have been carefully scrutinized by parliamentary committees; Godbole (2011) argues that this is far from the truth, as those discussions are often behind close doors, away from public scrutiny and involvement, often rushed through without going through such committees in the first place, or have disregarded dissenting viewpoints and discussions.¹¹¹ Godbole (2011) also argues that because of the Anti-Defection Act, MPs are very hesitant to go against party high command, even within parliamentary committees.¹¹²

6.3. South Africa

6.3.1. Legislature Overview

South Africa's Parliament is the lawmaking body of the country, which includes passing new laws, amending existing laws, and repealing old ones.¹¹³ Its functions are guided by the Constitution of South Africa.¹¹⁴ There are two houses in Parliament: the National Assembly (NA) and the National Council of Provinces (NCOP), both of which play a role in the lawmaking process. The NA is elected according to the electoral system and represents the country as a whole, while the NCOP are elected delegates representing the interests of the provinces.¹¹⁵ Like in other countries, a draft Bill can only be introduced in Parliament by a Minister, a Deputy Minister, a parliamentary committee, or an individual MP.¹¹⁶ As such, around 90 percent of South Africa's bills are initiated by the Executive.¹¹⁷ Individual Members' bills are known as Private Members'

¹¹⁰ Godbole, *India's Parliamentary Democracy on Trial*, at p. 119.

¹¹¹ Godbole, *India's Parliamentary Democracy on Trial*, at p. 125.

¹¹² Godbole, *India's Parliamentary Democracy on Trial*, at p. 125.

¹¹³ Parliament of Republic of South Africa. How a Law is Made. Available at <https://www.parliament.gov.za/how-law-made>.

¹¹⁴ Parliament of Republic of South Africa. How a Law is Made.

¹¹⁵ Dudu and Fagbadebo, *Public Participation in Legislative Oversight*, at p. 235.

¹¹⁶ Parliament of Republic of South Africa. How a Law is Made.

¹¹⁷ Parliament of Republic of South Africa. How a Law is Made.

Legislative Proposals.¹¹⁸ The Cabinet must approve the Bill before it is submitted to the Parliament.¹¹⁹

Schedules 4 and 5 of the Constitution of South Africa outline the functional areas in which the Parliament and the provincial legislatures and the provincial legislatures only, respectively.¹²⁰ The former concerns areas like agriculture, health, housing, and education, while the latter includes roads and traffic, liquor licensing, and provincial sport.¹²¹

The process of lawmaking usually begins with the document called the Green Report, which highlights the general thinking of the policy.¹²² The Green Report is then introduced to the public for comments, suggestions, and ideas, which then leads to a more refined document, called the White Paper.¹²³ The public may submit feedback to the National Assembly Committees, the National Council of Provinces Committees or Joint Committees.¹²⁴ The White paper is a broad statement of government policy and drafted by the relevant department or task team.¹²⁵ Parliamentary committees may suggest amendments and other proposals to the draft, which is then sent back to the Ministry introducing the bill for discussion and final decisions.¹²⁶ A summary of this process is outlined in the figure below.

¹¹⁸ Parliament of Republic of South Africa. How a Law is Made.

¹¹⁹ Parliament of Republic of South Africa. How a Law is Made.

¹²⁰ Parliament of Republic of South Africa. How a Law is Made.

¹²¹ Parliament of Republic of South Africa. How a Law is Made.

¹²² Parliament of Republic of South Africa. How a Law is Made.

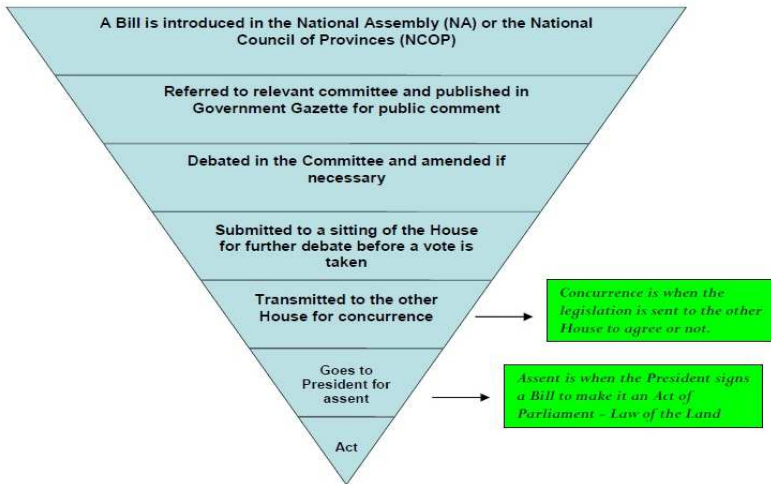
¹²³ Parliament of Republic of South Africa. How a Law is Made.

¹²⁴ Parliament of Republic of South Africa. Submissions. Available at <https://www.parliament.gov.za/submissions>.

¹²⁵ Parliament of Republic of South Africa. How a Law is Made.

¹²⁶ Parliament of Republic of South Africa. How a Law is Made.

FIG. 2: LAWMAKING PROCESS IN SOUTH AFRICA



A submission to the Parliament by a member of the public presents the submitter's views or opinions in the matter under consideration by a committee of the Parliament.¹²⁷ This submission may be presented in the language of the submitter's choice¹²⁸ and can either be in written form or oral presentations to the committee, but only when the person or group submitting is invited to do so.¹²⁹ Submissions give the public a chance to propose any changes or possible actions in ensuring that the laws under discussion serve their purpose.¹³⁰

6.3.2. Constitutional Safeguards

The Constitution of South Africa, Articles 59 and 72 oblige both the NA and the NCOP to involve and inform the public in its decision-making. Most specifically, Article 59 outlines the following:

59. (1) The National Assembly must—

(a) facilitate public involvement in the legislative and other processes of the Assembly and its committees; and

¹²⁷ Parliament of Republic of South Africa. Submissions.

¹²⁸ Parliament of Republic of South Africa. Submissions.

¹²⁹ Parliament of Republic of South Africa. Submissions.

¹³⁰ Parliament of Republic of South Africa. Submissions.

(b) conduct its business in an open manner, and hold its sittings, and those of its committees, in public, but reasonable measures may be taken—

(i) to regulate public access, including access of the media, to the Assembly and its committees; and

(ii) to provide for the searching of any person and, where appropriate, the refusal of entry to, or the removal of, any person.

(2) The National Assembly may not exclude the public, including the media, from a sitting of a committee unless it is reasonable and justifiable to do so in an open and democratic society.

Similarly, Article 72 states:

72. (1) The National Council of Provinces must—

(a) facilitate public involvement in the legislative and other processes of the Council and its committees; and

(b) conduct its business in an open manner, and hold its sittings, and those of its committees, in public, but reasonable measures may be taken—

(i) to regulate public access, including access of the media, to the Council and its committees; and

(ii) to provide for the searching of any person and, where appropriate, the refusal of entry to, or the removal of, any person.

(2) The National Council of Provinces may not exclude the public, including the media, from a sitting of a committee unless it is reasonable and justifiable to do so in an open and democratic society.

Additionally, the Constitution states that, with regards to a Constitution Amendment Bill, it must be introduced to the public 30 days before it is to

go to the Parliament.¹³¹ The Amendment Bill must be published in the Gazette and submitted to the Provincial legislatures are well to get both parties' views.¹³² If the bill is not required to be passed by the NCOP, it must still be submitted to the body for comments.¹³³ All comments from the public and Provincial legislatures must be tabled with the Bill.¹³⁴ Other Bills must all be introduced to Parliament only if it has been introduced by public notice to the Gazette and accompanied by an explanatory summary of it.¹³⁵ Such a prior notice to the public must include an invitation for all interested parties to submit written representations to the Secretary of the Parliament.¹³⁶

6.3.3. *Doctors for Life International v. Speaker of the National Assembly*

In the *Doctors for Life International v. Speaker of the National Assembly, et al.*, 2006, the Constitutional Court ruled in favor of the applicant, who claimed that the NCOP and the provincial legislatures failed to uphold their constitutional obligations to consult the public in creating four draft bills relating to health rights, as they neither invited written submissions from the public nor held public hearings.¹³⁷ The Constitution Court held that two of the health statutes were invalid, because the NCOP had failed in fulfilling its obligation; it ruled that although the NCOP had decided that public hearings should be held in the provinces, only one province actually held such a hearing.¹³⁸

¹³¹ Department of Justice and Constitutional Development, Republic of South Africa. The Legislative Process. Available at <https://www.justice.gov.za/legislation/legprocess.htm>.

¹³² Department of Justice and Constitutional Development, Republic of South Africa. The Legislative Process.

¹³³ Department of Justice and Constitutional Development, Republic of South Africa. The Legislative Process.

¹³⁴ Department of Justice and Constitutional Development, Republic of South Africa. The Legislative Process.

¹³⁵ Department of Justice and Constitutional Development, Republic of South Africa. The Legislative Process.

¹³⁶ Department of Justice and Constitutional Development, Republic of South Africa. The Legislative Process.

¹³⁷ *Doctors for Life International v. Speaker of the National Assembly, et al.* [2006] ZACC 11; 2006 (12) BCLR 1399 (CC); 2006 (6) SA 416 (CC).

¹³⁸ *Doctors for Life International v. Speaker of the National Assembly, et al.* [2006] ZACC 11; 2006 (12) BCLR 1399 (CC); 2006 (6) SA 416 (CC).

6.3.4. Issues and Challenges

The Supreme Court emphasized the importance of legislatures facilitating input from the public, rather than passively waiting for feedback.¹³⁹ When legislatures invite the public's feedback in this way, the Court stressed, it demonstrates their respect for the public and allows the public to be more engaged in and less apathetic about public life.¹⁴⁰ Thus, this facilitation differs from just representative democracy.¹⁴¹ Czapanskiy and Manjoo (2008) conclude that this decision of the Court placed "South Africa on the road to improving both legislation and citizenship," because requiring legislators to invite and attend to the public participation improves both components.¹⁴²

South Africa's increase in public participation in decision-making was especially apparent in the antiapartheid struggle, when the advocates of democracy mobilized citizens to participate in politics and governance (e.g. the first inclusive elections of 1994), ultimately ending the oppressive apartheid era.¹⁴³ Some argue that public participation in decision-making gained prominence post-apartheid because of the stress placed on it during the movement.¹⁴⁴ The decline in public participation in decision-making since 1994, however, can be attributed to factors such as failed promises by the government of the day, declining trust between the public and the government, and declining service delivery in certain areas.¹⁴⁵ Public participation is sometimes also difficult to manage, because more often than not, the legislative process's regular participants are actually organized private sector and civil society organizations.¹⁴⁶

¹³⁹ Syma and Manjoo, The right of public participation in the lawmaking process, at p. 40.

¹⁴⁰ Syma and Manjoo, The right of public participation in the lawmaking process, at p. 40.

¹⁴¹ Syma and Manjoo, The right of public participation in the lawmaking process, at p. 40.

¹⁴² Syma and Manjoo, The right of public participation in the lawmaking process, at p. 40.

¹⁴³ Dudu and Fagbadebo, Public Participation in Legislative Oversight, at pp. 240-1.

¹⁴⁴ Friedman, S. (2006). *Participatory governance and citizen action in post-apartheid South Africa*. International Labour Organization (International Institute for Labour Studies) (hereinafter, "Friedman, *Participatory governance and citizen action in post-apartheid South Africa*"), at p. 6.

¹⁴⁵ Dudu and Fagbadebo, Public Participation in Legislative Oversight, at p. 241.

¹⁴⁶ Dudu and Fagbadebo, Public Participation in Legislative Oversight, at p. 241.

Friedman (2006) explains that South Africa's participation mechanisms for citizens do not enhance participatory governance. They are biased towards those with the capacity to organize, who would be able to bring their concerns to government attention without these mechanisms; indeed, they are intrinsically hostile to effective participation by the poor, who arguably need access to government decisions the most. Nor have formal participatory structures enabled citizens to influence policy. By contrast, the most effective example of citizen participation in post-apartheid governance, the change in government policy towards dispensing anti-retroviral medication to people living with AIDS, was a product not of participation in formal governance mechanisms but of activists using their constitutional rights to make demands to the government.¹⁴⁷

Some scholars criticize that South Africa's constitutionalization of public participation often materializes in a top-down manner and as initiated by the government, in the forms of co-optation and co-governance.¹⁴⁸ When participative and substantive transformations are thus missing, the people embraced protests as a bottom-up and self-initiated form of participation.¹⁴⁹ Others note that while it is commendable that South Africa has institutionalized and legislated public participation, it is difficult to achieve, given that public involvement is fickle when it comes to both the electoral and civic areas; thus, linking participation closely with democratic trends is a mistake, they argue.¹⁵⁰

Other issues of public participation in South Africa include: poor advertising of legislative agenda, public hearings limited to urban areas, issues of physical access, insufficient information, limited public education, and language barriers, as South African legislation is carried out in English.¹⁵¹ Additionally, factors like poverty, high unemployment, and wealth inequality all characterize and contribute to the level of public participation in South Africa.¹⁵² Additionally, a 2010 study finds the need

¹⁴⁷ Friedman, *Participatory governance and citizen action in post-apartheid South Africa*, at p. 3.

¹⁴⁸ Booyesen, S. (2009). Public participation in democratic South Africa: from popular mobilisation to structured co-optation and protest. *Politeia*, 28(1), 1-27 (hereinafter, "Booyesen, Public participation in democratic South Africa").

¹⁴⁹ Booyesen, Public participation in democratic South Africa

¹⁵⁰ Deegan, H. (2002). A critical examination of the democratic transition in South Africa: the question of public participation. *Commonwealth & Comparative Politics*, 40(1), 43-60, at p. 58.

¹⁵¹ Dudu and Fagbadebo, Public Participation in Legislative Oversight, at pp. 241-2.

¹⁵² Dudu and Fagbadebo, Public Participation in Legislative Oversight, at p. 246.

to better integrate an e-participatory platform for citizens to share their views and concerns on laws through accessible technologies, while providing ample time to do so.¹⁵³

6.4. United States of America

6.4.1. Legislature Overview

The legislature of the US is the Congress, formed by the House of Representatives (435 elected members) and the Senate (100 elected members), with six additional non-voting members representing the District of Columbia, the Commonwealth of Puerto Rico, and four other territories of the US.¹⁵⁴ The Congress is solely authorized by the Constitution to enact legislation.¹⁵⁵ In the event that the President vetoes a bill that the Congress passes, with a two-thirds vote, the Congress can also override this veto.¹⁵⁶ Additionally, through hearings, the House Committee on Oversight and Government Reform and the Senate Committee on Homeland Security and Government Affairs conduct oversight of government operations.¹⁵⁷ The US Constitution does not oblige the Congress to legislate in public, and it is only required to publish a journal of its proceedings.¹⁵⁸

Legislation in Congress is drafted in committees within the Congress.¹⁵⁹ These committees include Armed Services, Foreign Affairs, Science, Space, and Technology, and Commerce, Science, and Transportation, with senators and representatives serving on multiple committees and subcommittees (subdivided for further specialization).¹⁶⁰ Subcommittees do much of the work: They collect relevant information for hearings, where

¹⁵³ Okeke-Uzodike, O. E., and Dlamini, B. (2019). Citizens' E-Participation at Local Municipal Government in South Africa. *Journal of Reviews on Global Economics*, 8, 458-468.

¹⁵⁴ White House. The Legislative Branch. Available at <https://www.whitehouse.gov/about-the-white-house/the-legislative-branch/>.

¹⁵⁵ White House. The Legislative Branch.

¹⁵⁶ White House. The Legislative Branch.

¹⁵⁷ White House. The Legislative Branch.

¹⁵⁸ Ritchie, D. A. (2010). *The U.S. Congress: A Very Short Introduction*. Oxford University Press (hereinafter, "Ritchie, *The U.S. Congress*"), at p. 41.

¹⁵⁹ Ritchie, *The U.S. Congress*, at pp. 44-5.

¹⁶⁰ Congress. Committees of the U.S. Congress. Available at <https://www.congress.gov/committees>.

experts are called, work with the media, and make a strong case for passing the concerned legislation.¹⁶¹

The general process of turning a bill into a law is as follows. A bill can be written by anyone, but it must be introduced in either house of the Congress by an elected representative, who is also the primary sponsor of the bill.¹⁶² In the House of Representatives, the bill is placed in a wooden box called the hopper, in which the bill is numbered before the Speaker of the House sends it to a relevant committee.¹⁶³ The bill then goes to the committee, where it is researched, discussed, and any changes are made, after which the Representatives or the Senators vote to either accept or reject the bill.¹⁶⁴

After this step, the bill is either sent to the House or Senate floor for debating or it is sent to a sub-committee for further, in-depth research.¹⁶⁵ Then, Congress debates the bill, proposes any changes or amendments to it, and finally votes on the bill. If approved by a majority, the bill moves to the other committee, and both Houses must agree on the same version of it before it goes to the president.¹⁶⁶ Once it goes to the President, he or she can approve and pass the bill, veto it, choose no action (after 10 days, the bill automatically becomes law), or pocket veto (i.e. within 10 days of the Congress adjourning after passing the bill to the President, the President can do nothing and the bill does not become law).¹⁶⁷

The First Amendment of the Constitution guarantees, among other rights, the right to petition the government for a redress of grievances through the courts or other governmental action.¹⁶⁸ A petition is defined as “[a] formal application in writing made to a court or other official body requesting judicial action of some character.”¹⁶⁹

¹⁶¹ Ritchie, *The U.S. Congress*, at p. 45.

¹⁶² Federal Government of the United States. How Laws are Made. Available at <https://www.usa.gov/how-laws-are-made>.

¹⁶³ Federal Government of the United States. How Laws are Made.

¹⁶⁴ Federal Government of the United States. How Laws are Made.

¹⁶⁵ Federal Government of the United States. How Laws are Made.

¹⁶⁶ Federal Government of the United States. How Laws are Made.

¹⁶⁷ Federal Government of the United States. How Laws are Made.

¹⁶⁸ Cornell Law School, Legal Information Institute. First Amendment. Available at https://www.law.cornell.edu/constitution/first_amendment.

¹⁶⁹ Cornell Law School, Legal Information Institute. Petition. Available at <https://www.law.cornell.edu/wex/petition>.

6.4.2. Congressional Committee Hearings

During the lawmaking process, a congressional committee hearing is a key way in which congressional committees can gather and analyze information during the legislative process. Although there are four different types of hearings (legislative, oversight, investigative, and confirmation), they all often shape legislation.¹⁷⁰ Legislative hearings can be held before a bill is introduced for the purpose of gathering information that could be used to shape the legislation.¹⁷¹ However, committees are not obliged to base the drafts of bills on the hearing testimony or even mark up and report a measure of the hearings.¹⁷² There are only a few procedural circumstances (including consideration of the annual budget resolution) in which committees are required to hold a hearing before taking any further action on the concerned legislation.¹⁷³

6.4.3. Lobbying

Lobbying is an important tool used in the US to exercise the right to petition; more specifically, it is viewed as part of the pluralistic democracy of the US and a means of enabling improved and politically acceptable government decisions.¹⁷⁴ Lobbying is defined generally as “an attempt to influence government action through either written or oral communication,” although each state has unique approaches to what constitutes lobbying as well as exceptions.¹⁷⁵ Similarly, a lobbyist is generally defined as one who lobbies on behalf of another for compensation.¹⁷⁶ Various states oblige lobbyists to file disclosure reports periodically that identify information such as amount of money spent on

¹⁷⁰ Heitshusen, Valerie (2018). Types of Committee Hearings. *Congressional Research Service*. Available at <https://www.senate.gov/CRSPubs/cb39da50-6535-4824-9d2f-e5f1fcf0a3e4.pdf> (hereinafter, “Heitshusen, Types of Committee Hearings”).

¹⁷¹ Heitshusen, Types of Committee Hearings.

¹⁷² Heitshusen, Types of Committee Hearings.

¹⁷³ Heitshusen, Types of Committee Hearings.

¹⁷⁴ Allard, N. W. (2008). Lobbying is an honorable profession: The right to petition and the competition to be right. *Stan. L. & Pol'y Rev.*, 19, 23 (hereinafter, “Allard, Lobbying is an honorable profession”), at p. 67.

¹⁷⁵ National Conference of State Legislatures (2020). How States Define Lobbying and Lobbyist. Available at <https://www.ncsl.org/research/ethics/50-state-chart-lobby-definitions.aspx>.

¹⁷⁶ National Conference of State Legislatures. How States Define Lobbying and Lobbyist.

lobbying, beneficiaries, and legislative issues being lobbied, although states vary regarding how often such reports are to be filed.¹⁷⁷ Most often, lobbyists are required by states to file registration paperwork with information such as contact and client information and subject matters of interest.¹⁷⁸

Drutman (2011) argues that lobbying has facilitated American businesses, previously hesitant to become involved in politics, to gain confidence in their pursuing government policy as a tool, not a threat, to further their interests.¹⁷⁹ In fact, this issue has been raised many times in the past, about “balancing the need to prevent undue legislative influences and the appearance of impropriety with the individual's right to petition the government.”¹⁸⁰ The Organisation for Economic Co-operation and Development (OECD) notes that although lobbying can be a positive factor for democracy, it can often become perverted because powerful groups are empowered to influence laws and regulations at the expense of public interest.¹⁸¹ Issues of unfair competition and undue influence may arise.¹⁸²

Lobbying has been criticized for creating a system where one’s voice is heard only if one has money, thus marginalizing certain voices and favoring others. According to Statista, in 2019, the pharmaceutical/health products category spent the most on lobbying, at \$295.17 million, followed by electronics manufacturing and equipment, insurance, and oil and gas.¹⁸³ The American public’s sentiments are also negative regarding lobbying, as often their interests are sidelined. For example, survey results released by non-partisan organization Voice of the People in 2017 found that an

¹⁷⁷ National Conference of State Legislatures (2018). 50 State Chart: Lobbyist Activity Report Requirements. Available at <https://www.ncsl.org/research/ethics/50-state-chart-lobbyist-report-requirements.aspx>.

¹⁷⁸ National Conference of State Legislatures (2020). Lobbyist Registration Requirements. Available at <https://www.ncsl.org/research/ethics/50-state-chart-lobbyist-registration-requirements.aspx>.

¹⁷⁹ Drutman, L. (2015). *The business of America is lobbying: How corporations became politicized and politics became more corporate*. Oxford University Press.

¹⁸⁰ Browne, S. A. (1995). The constitutionality of lobby reform: Implicating associational privacy and the right to petition the government. *Wm. & Mary Bill Rts. J.*, 4, 717, at p. 718.

¹⁸¹ OECD. Lobbying. Available at <http://www.oecd.org/corruption/ethics/lobbying/>.

¹⁸² OECD. Lobbying.

¹⁸³ Duffin, Erin (2020). Leading lobbying industries in the United States in 2019, by total lobbying spending. Statista. Available at <https://www.statista.com/statistics/257364/top-lobbying-industries-in-the-us/>.

overwhelming number of surveyors supported the expansion of the period that former government officials must wait before engaging in lobbying activities for clients and prohibition of former executive branch officials in ever lobbying for foreign governments.¹⁸⁴ In fact, McKinley (2016) argues that lobbying, in the way that the Congress engages in the activity, is actually in violation of the right to petition, as the process is informal, opaque, and based on political power.¹⁸⁵

Perhaps what is necessary, McKinley suggests, is a revisit of the Petition Clause doctrine, so that “a stronger petition right, especially a right to consideration and response” as well as “a narrowed petition right that protects only practices that correspond with the traditional practice of petitioning.”¹⁸⁶ Still, others argue that lobbying is an essential component of the right to petition, and that its improvement has to do with the Congress abiding by ethical standards in lobbying and lobbyists themselves complying to the letter and spirit of laws regulating their practice.¹⁸⁷

6.4.4. Initiative and Popular Referendum

Some states in the US are initiative and popular referendum states, which means citizens are provided with an additional avenue for participatory lawmaking. The former is a law or amendment introduced to the legislature or voted directly by citizens through a petition process, while the latter is a way for citizens to demand popular vote on a new law passed.¹⁸⁸ These processes, embodying direct democracy, were adopted as a form of check on representative democracy and as a way to enhance, not supersede or abolish, it.¹⁸⁹ More specifically, in the late nineteenth century, American

¹⁸⁴ Augusta Free Press (2017). Poll: Bipartisan majorities support restrictions on lobbying by former government officials. *Jim Sensenbrenner*. Available at <https://sensenbrenner.house.gov/2017/12/poll-bipartisan-majorities-support-restrictions-on-lobbying-by-former-government-officials>.

¹⁸⁵ McKinley, M. (2016). Lobbying and the petition clause. *Stan. L. Rev.*, 68, 1131 (hereinafter, “McKinley, Lobbying and the petition clause”).

¹⁸⁶ McKinley, Lobbying and the petition clause, Abstract.

¹⁸⁷ Allard, Lobbying is an honorable profession, at p. 66.

¹⁸⁸ National Conference of State Legislatures. Initiative and Referendum States. Available at <https://www.ncsl.org/research/elections-and-campaigns/chart-of-the-initiative-states.aspx>.

¹⁸⁹ Pound, W. T. (2002). *Initiative and Referendum in the 21st Century: Final Report and Recommendations of the NCSL I&R Task Force*. Washington D.C. and Colorado: NCSL. Available at

public began feeling that their interests were no longer supported by their political leaders, who answered more to corporate interests rather than the public, and direct initiative and referendums would allow them to bypass such leaders and legislate themselves.¹⁹⁰

There are two types of initiatives: direct (meaning that proposals that qualify will go directly on the ballot) and indirect (meaning that proposals are submitted to the legislature, which has an opportunity to act on the proposed legislation, and the initiative question goes into the ballot if the legislature rejects it, does nothing, or submits a different proposal altogether).¹⁹¹

Twenty-four states have an initiative process.¹⁹² To qualify for the ballot, an initiative will generally include the following steps:

- (1) preliminary filing of a proposed petition with a designated state official;
- (2) review of the petition for conformance with statutory requirements and, in several states, a review of the language of the proposal;
- (3) preparation of a ballot title and summary;
- (4) circulation of the petition to obtain the required number of signatures of registered voters, usually a percentage of the votes cast for a statewide office in the preceding general election; and
- (5) submission of the petitions to the state elections official, who must verify the number of signatures.¹⁹³

https://www.ncsl.org/Portals/1/documents/legismgt/irtaskfc/landR_report.pdf (hereinafter, “Pound, *Initiative and Referendum in the 21st Century*”), at p. 4.

¹⁹⁰ Piott, S. L. (2003). *Giving voters a voice: The origins of the initiative and referendum in America*. University of Missouri (hereinafter, “Piott, *Giving voters a voice*”), at pp. 1-2.

¹⁹¹ National Conference of State Legislatures. Initiative and Referendum States

¹⁹² National Conference of State Legislatures. Initiative Process 101. Available at <https://www.ncsl.org/research/elections-and-campaigns/initiative-process-101.aspx>.

¹⁹³ National Conference of State Legislatures. Initiative Process 101.

To pass, the initiative generally requires a majority vote, although this isn't always true. Some states require a majority "provided the votes cast on the initiative equal a percentage of the total votes cast in the election..."¹⁹⁴

On the other hand, there are 26 states that allow popular referendum. As the National Conference of State Legislatures (NCSL) explains:

The popular referendum is a device which allows voters to approve or repeal an act of the legislature. If the legislature passes a law that voters do not approve of, voters may gather signatures to demand a popular vote on the law. Generally, there is a 90-day period after the law is passed during which the petitioning must take place. Once enough signatures are gathered and verified, the new law appears on the ballot for a popular vote. During the time between passage and the popular vote, the law may not take effect. If voters approve of the law, it takes effect as scheduled. If voters reject the law, it is voided and does not take effect.¹⁹⁵

A NCSL study points out that if there are other states that wish to adopt an initiative process, they should consider "adopting an initiative process should give preference to one that encourages citizen participation without enacting specific constitutional or statutory language."¹⁹⁶ More specifically, they are recommended to adopt either the advisory initiative or the general policy initiative, wherein the former "provides citizens with a formal means of presenting to the legislature the views of the majority on a particular issue, but stops short of the actual enactment of laws" and the latter "is similar to the advisory initiative [], except that it is binding upon the legislature."¹⁹⁷

Scholars argue that these two features allowed citizens to bring their voices regarding legislation to the forefront and facilitate voter-initiated accomplishments, including woman suffrage, direct primary laws, the recall, corrupt-practices acts and antipass legislation, workmen's compensation, and child labor and eight-hour laws, among others.¹⁹⁸ On

¹⁹⁴ National Conference of State Legislatures. Initiative Process 101.

¹⁹⁵ National Conference of State Legislatures. Initiative and Referendum Processes. Available at <https://www.ncsl.org/research/elections-and-campaigns/initiative-and-referendum-processes.aspx>.

¹⁹⁶ Pound, *Initiative and Referendum in the 21st Century*, at p. 6.

¹⁹⁷ Pound, *Initiative and Referendum in the 21st Century*, at pp. 6-7.

¹⁹⁸ Piott, *Giving voters a voice*, at p. 257.

the other hand, scholars have also considered how such direct democracy processes affect minorities. Gamble (1997), by evaluating three decades worth of initiatives and popular referendum, finds that rather than allowing minorities to pursue progressive causes, "the majority has indeed used its direct legislative powers to deprive political minorities of their civil right" and "been extraordinarily successful at using the ballot box to repeal existing legislative protections and to pass laws that block elected representatives from creating new law"¹⁹⁹ For example, in February 1998, voters in Maine repealed a civil rights protection for gay men and lesbians as conservatives garnered adequate support of disparate audiences for an appeal referendum.²⁰⁰

6.4.5. Issues and Challenges

An evaluation of the websites of 50 state legislatures revealed that their "chief impact appears to be dissemination of information and the facilitating and encouraging of participation through more or less traditional methods." However, there was a lack of two-way communication, perhaps because interactive mediums would be overwhelmed by interest and advocacy groups, thus overwhelming individual input.²⁰¹ Moreover, trends depict that there is a growing use of thin participation mechanisms, especially those that are one-way or limited two-way, in place of town hall meetings that are much more interactive; for example, "telephone town halls" have become popular with federal legislators, as they are less resource intensive, have a wider reach, and do not require extensive logistical planning.²⁰²

However, tele-town halls often perpetuate certain issues, like not having enough time to ask questions or discuss issues in depth or that staffers are

¹⁹⁹ Gamble, B. S. (1997). Putting civil rights to a popular vote. *American Journal of Political Science*, 245-269, at p. 246.

²⁰⁰ Wiethoff, C. (2003). Naming, blaming, and claiming in public disputes: The 1998 Maine referendum on civil rights protection for gay men and lesbians. *Journal of Homosexuality*, 44(1), 61-82.

²⁰¹ Ferber, P., Foltz, F., and Pugliese, R. (2003). The politics of state legislature Web sites: Making e-government more participatory. *Bulletin of Science, Technology & Society*, 23(3), 157-167, at pp. 164, 166.

²⁰² Nabatchi, T., and Leighninger, M. (2015). *Public participation for 21st century democracy*. John Wiley & Sons (hereinafter, "Nabatchi and Leighninger, *Public participation for 21st century democracy*"), at p. 199.

able to regulate conversations for the legislator.²⁰³ Additionally, because legislators had bad experiences with conventional participation and are uncertain about how to engage with the public online, they “have a hard time envisioning more productive forms of participation” and are “accustomed to the parent-child dynamic between government and citizens.”²⁰⁴

7. Highlights of the Best Practices

There are various mechanisms that countries around the world have adopted in order to facilitate citizen engagement in lawmaking. In the UK, while there are no formal measures, the Code of Practice on Consultation (2008) guides how public feedback should be facilitated. This includes provisions on when to consult (with ample scope for influence), how long to solicit feedback (minimum of 12 weeks), accessibility, and low burden of consultation. There is also a practice of producing Green and White Papers, before drafting a new legislation and after the formal consultation period had ended, respectively. Additionally, the public can also get involved in post-legislative scrutiny in Parliament, when a committee in the House of Commons conducts a review of an Act of Parliament and may hold stakeholder meetings before publishing an advisor report. Nepal can learn from these traditions.

In India, the Pre-Legislative Consultation Policy obligates that draft bills are shared with the public for 30 days so as to gauge the costs and benefits of the bill before its implementation. In fact, only after this stage has been passed can the draft bill be sent to the Cabinet for approval. Additionally, the Ministry proposing a draft bill has to submit the Motion for Circulation of a Bill for Eliciting Public Opinion to the concerned House of Parliament and the Ministry of Parliamentary Affairs and the Ministry of Law and Justice. Consideration of these initiatives in Nepal's context may also offer some insights for reform.

South Africa is unique in that constitutional provisions oblige both Houses of the Parliament to involve and inform the public regarding its decision-making in legislative matters as well as other processes. The provisions oblige the Houses in Parliament to conduct legislative business openly and ensure public accessibility, including that of the media. Constitutional

²⁰³ Nabatchi and Leighninger, *Public participation for 21st century democracy*, p. 199.

²⁰⁴ Nabatchi and Leighninger, *Public participation for 21st century democracy*, pp. 202-203.

Amendment Bills should also, for example, be circulated among the public for 30 days before it goes to the Parliament. Comments from the public are required to be tabled with the Bill. Although Nepal's Constitution does not have such clear provisions, it has practiced information sharing regarding its decision making in legislative matters.

In the US, Congressional Committee hearings are one way in which information regarding legislation is gathered from stakeholders, although committees are not obliged to base the drafts of the bills on these hearings. Additionally, lobbying is a major way in which interest groups influence legislation, especially by businesses to use legislation as a tool for rather than a threat to their interests. Moreover, some states in the US are initiative and popular referendum states, which allows the people to further involve themselves in lawmaking. These features are also quite new for Nepal. The main findings of the Organization of Security and Cooperation in Europe (OSCE) on transparency and public participation in law making processes in Macedonia, as presented below, could be helpful to Nepal as well. These recommendations highlight the best practices that could also be considered by Nepal in a bid to devise important institutions and practices.

Table 1: Main Findings and Conclusions of a OSCE Study on Transparency and Public Participation in Lawmaking Processes

The review of the documents from European countries analysed in the paper reveals that there is a general framework concerning participation which is common for most. This framework outlines important standards which can serve as recommendation for other countries. Those standards include:

1. Everybody should be informed and consulted in the process of law drafting.
2. Participation of the public may be limited in case of special working groups. The selection of the members for such groups should be done openly and based on predefined criteria to ensure credibility and legitimacy of the process.
3. Participation should be open to different groups (minorities, people with disabilities, women). Appropriate methods should be chosen to help facilitate and encourage involvement of such groups.

4. CSOs can play an important role in the process; they can facilitate the public participation, represent members and stakeholders' interests and keep informing on the process and the results.

5. While all laws and implementing regulations should be drafted in a participatory manner, certain conditions could require limitations in the process (e.g., natural disaster, conflict). Those cases should be clearly prescribed to ensure clarity and certainty when participation may be limited. Further, some countries impose minimum standards to be respected in such situations (e.g., the public must be informed and have access to the draft document; minimum time for consultation should be allocated).

6. Some countries require that clear, concise and comprehensive information should be provided to help ensure that interested parties understand the issues better and are able to offer more meaningful contribution. For the same reasons, the public should be able to gain access to the draft documents at the earliest stage of their development.

7. The timeline allocated for comments or participation in public meetings should be determined on several factors including the type of document, the issues raised, its length, available expertise, the size of the target group it affects. Most commonly countries allow between 10-30 days for comments. The timeline can be shortened; but it is recommended that the situations when this occurs are clearly prescribed and justified.

8. Providing feedback to the consulted parties increases trust and strengthens cooperation. It also encourages the public to be more committed and take part in future processes. Feedback does not need to be individualized. Instead a collective response can be made (mainly in a form of report) but all issues should be considered. Some countries provide additional guarantees that the opinions will be considered; for example the responsible state body may need to make the collective feedback public, and send it to the government and/or parliament as accompanying document to the draft law.

9. Some countries plan for an assessment of the process of participation – this can help improve future processes and share experiences for creative models used.

10. Different tools and methods can be used to support participation at all stages of the drafting and implementation process. The decision on which method to choose can be made based on several factors, but such decision

should be made at the beginning of the process to ensure that the most appropriate method is selected and that it will bring the desired results.

11. Several measures can be undertaken to help prepare for the participative process and ensure that it will be executed effectively. For example, some government bodies assign coordinators who will facilitate the process and serve as contact person for the public and other ministry officials. Another example is developing a list of interested parties to be engaged in the process; this helps government bodies to decide who to contact when the process is planned. Finally, some governments propose the development of plans for the process which highlight the stages and deadlines.

12. Different tools should be used to ensure that the information about the launched process is distributed as widely as possible (e.g., web sites, newspapers, TV, CSO portals).

13. Governmental bodies use their web sites to facilitate the process of consultations. In general, those web sites contain information about the drafting process, have space for comments, contact person and other related materials.

14. Some countries have set up central on-line registers to assist with the coordination of information sharing and consultation, but also to provide tool for the public to meet in one place and comment on various undertakings by the government.

15. Other models used by the governments include: (a) Common comment model of Slovakia, where a comment which is supported by 500 signatures must be considered by the drafter of the law; (b) Organizing public meetings; (c) Organizing consensus conference.²⁰⁵

8. Nepalese Scenario: Issues and Challenges

Having discussed the constitutional legal position of Nepal and institutional frameworks and the international trends and best practices, it is important to examine how Nepal has been practicing citizen engagement in the

²⁰⁵ See OSCE (2010). *Transparency and Public Participation in Law Making Processes: Comparative Overview and Assessment of the Situation in Macedonia*. Skopje, at pp. 6-7.

lawmaking process before drawing some conclusions and recommendations.

As this study very clearly shows, Nepal not only has some basic constitutional legal provisions regarding citizen engagement in lawmaking, but also the basic framework to pursue it in different phases of lawmaking. Nepal's problem is basically inadequate motivation to employ these constitutional legal provisions and the participatory framework in the larger interest of citizens and stakeholders. The government of the day fails to take citizens engagement as a rule to be complied with in all important legislative drafting at the governmental level and after the measure has been introduced in the Parliament and subsequent legislative process. Oftentimes, such an initiative creates challenges for the government, which may also evolve into instability. The bureaucracy of the government usually does not think the public has any serious idea. Rather, the opportunity given to the public makes things messy because, it is believed, citizens pressurize for things of which have an inadequate understanding. Important stakeholders in Nepal, including the pressure groups, thus choose other ways to influence the government or bureaucracy, rather than through the transparent interactions in a group where the demands and expectations of both sides are explained. The Ministers who table their bills in the House also usually think sending a bill to the public means delaying its process and giving more opportunity than deserved to the opposition in a parliamentary process. Aware of this thinking, and the attitude of the parliamentary whip of the ruling party, the ruling party members in the committees also avoid calling stakeholders or independent experts for consultation. They sometimes even join the opposition or fringe party members in the thematic committee. The issue of capacity of the Parliament Secretariat to cater to the needs of citizen engagement is also a challenge. However, paucity of the fund has never been a claim of any member of parliament so far.

It is noted that in recent years, the Parliament has been more open to including the views of various stakeholders in the drafting process, including in discussion sessions and through research studies on the Bill in question. Scholars argue that while public participation needs to be afforded to the people in the conceptualization and formulation stage of the legislative process, oftentimes, public participation has not been involved until after the Bill has been formulated and tabled in Parliament. Additionally, although there are provisions for a ministerial committee and relative ministerial officials to involve stakeholders in the process, such provisions are often lacking in implementation, and stakeholders find it

difficult to access the formulation consultation process. Additionally, once the Bill has been presented to the Council of Minister Committees, they are authorized to establish subcommittees and also grant stakeholders and experts the opportunity to participate in finalizing the draft Bill.

Most recently, the Guthi Bill that was tabled in Parliament received a lot criticisms, and protests erupted in the Kathmandu Valley and beyond calling for the Bill to be scrapped.²⁰⁶ The Guthi Bill sought to regulate centuries-old community and religious trusts operationalized by the local people throughout the country. Some of its provisions gave an upper hand to the government in the management of these trusts, which affected the Guthis administered by the Newa community. Although the government claimed that the Bill had been discussed at the public level prior to being sent through the House procedure, the affected communities did not accept such formulations. Eventually, the government withdrew the Bill and announced that it would hold discussions with concerned stakeholders, something that should have been done prior to tabling the Bill in parliament. This example shows the lack of participatory lawmaking in Nepal and how out-of-touch some practices are when it concerns public issues.²⁰⁷ Moreover, many such Bills never become an issue because stakeholders are not very effective in getting their concerns heard.

After the promulgation of 2015 Constitution and subsequent first round of general elections, the Federal Parliament considered many important bills. Some of them have already been passed, and some are still in the process. The National Medical Council Bill 2075, the Children Bill 2075, the Victims of Crime Protection Bill 2075, the Consumer Protection Bill 2075, the Environment Protection Bill 2075, the Land (Eighth Amendment) Bill 2075, the Forest Bill 2075, and the Industrial Enterprises Bill 2075, among others, deserved consultation with stakeholders. There were no such efforts, however. Proponents of media freedom and freedom of expression were forced to protest against the government for quietly introducing the Media Council Bill and the Information Technology Bill. The Federal Parliament had adjourned deliberations on several bills, including the Guthi

²⁰⁶ Aljazeera (2019). Thousands in Nepal protest against cultural ‘guthi’ bill. Available at <https://www.aljazeera.com/news/2019/06/thousands-nepal-protest-cultural-guthi-bill-190619121216425.html>.

²⁰⁷ Kamat, R. K. (2019). People’s inclusion in lawmaking a challenge. *The Himalayan Times*. Available at <https://thehimalayantimes.com/nepal/peoples-inclusion-in-lawmaking-a-challenge/> (hereinafter, “Kamat, People’s inclusion in lawmaking a challenge”).

Bill, the Media Council Bill, and bills related to the National Human Rights Commission and public service after protests from concerned citizens, CSOs, and target audience; these are explicit examples of why the engagement of stakeholders is necessary to make these measures pro-citizens.

On September 17, 2018, the Federal Parliament suspended its rule that requires lawmakers to spend at least 72 hours to study and file amendments to the bills related to the fundamental rights enshrined in the 2015 Constitution. The 16 Bills related to basic rights were endorsed without proper deliberations in either the HoR or the NA in order to meet the constitutional deadline.²⁰⁸ The Constitution obligated the State to enact these laws within three years of its promulgation on September 20, 2015. However, there was no consultation with the rights groups and CSO representatives on this matter, although they were very motivated to participate. The government, which showed no urgency for months, presented the bills just a couple of days ahead of the constitutional deadline, leaving no time for deliberations on the bills in the Houses. Legal experts and even parliamentarians expressed their reservations about such hurried passage of bills. However, instead of learning from these mistakes, the trend of failing to consult stakeholders in the lawmaking process still continues. Experts say as parliamentarians themselves are barely involved in formulating bills, the possibility for the members of the public having their say on lawmaking is far-fetched in Nepal, even though the House Rules have the required and enabling provisions.

Even though the law itself is not a problem, as noted above, parliamentary committees have not been active in seeking citizen engagement in the Bills they are considering. The government usually does not want hassles in the legislative process, especially opportunities for the parties in opposition to call for greater accountability. The bureaucrats generally assume that they are aware of the perspectives of the stakeholders and have already accommodated them. The Committee members often bend to the will of the minister in different matters of principle. The budgetary issues are high when it involves conducting public hearings outside the capital city or organizing field visits to gather citizens' perspectives on the matter of controversy. In such cases, often, the relevant stakeholders (peasants or labourers, for example) are invited to the committee office in the city. In

²⁰⁸ Ghimire, B. (2020). Nepal's political parties rarely encourage public participation in lawmaking. *The Kathmandu Post*. Available at <http://bit.ly/2TPXwqZ>.

such cases, the Parliament Secretariat pleads a lack of adequate budget to respond to all needful cases.

As far as the initiatives of the CSOs or non-governmental organizations are concerned, in recent years, they have conducted such consultation programmes on many important Bills, often with the help of the organizations like the Asia Foundation, United States Agency for International Development (USAID), Australian Aid, the United Nations Development Programme (UNDP) and others. These consultation programmes facilitate discussion on the bills among the stakeholders, legal and legislative experts, and representatives of *Dalit*, women, indigenous peoples, *Madhesi*, youths, and various members of the concerned committee and opposition parties. For example, the Asia Foundation alone has supported dozens of such programmes over the last few years. Some specific organizations also take some initiatives sometimes when they have genuine concerns. For example, Save the Children played a crucial role in “providing technical support to the government in crafting the content of the Child Rights Bill; promoting child rights discourse including through television and radio; and advocating with the policymakers- including through international UN accountability mechanisms provided by the Universal Periodic Review (UPR) and the UN Committee on the Rights of the Child” in the formulation of the Children's Act 2075.²⁰⁹ Significantly, the Act ensured that all children are protected against all types of corporal punishment, making Nepal the 54th state in the world to have such a provision.²¹⁰ While these important interventions are always encouraging, they cannot be a supplement for requirements of regular citizen engagement in the lawmaking process as part of governmental or parliamentary business.

In other areas, experts argue that committees should have the authority to solicit public opinion while discussing the Bill, as currently it can only be sought before approval from the House. Public opinion during the clause-by-clause discussion sessions would increase participation, legitimize the process, and ensure that the legislation is more effective. Additionally, public hearings should also be held, especially for Bills that pertain to the general interest of the public. It would be worthwhile to also explore

²⁰⁹ Guragai, D. (2019). Nepal's Children's Act 2075 & what it means for the children of Nepal. *Save the Children*. Available at <https://campaigns.savethechildren.net/blogs/dilli-guragai/nepals-childrens-act-2075-what-it-means-children-nepal> (hereinafter, “Guragai, Nepal's Children's Act 2075”).

²¹⁰ Guragai, Nepal's Children's Act 2075.

electronic medium to gather public opinion, especially given the increasing Nepali diaspora outside Nepal. Experts also see the need for incorporating more CSOs, think tanks, and non-governmental organizations with relevant expertise and opinions. Additionally, underrepresented members of society, including women, *Dalit*, indigenous people, and *Madhesi* members, should be involved more systematically in the legislative process.

With regards to local governments and lawmaking specifically, an International Alert study in two Nepali provinces found some remarkable shortcomings and areas for improvement.²¹¹

1. Legislation-making is often a subsidiary priority for local governments, who judge re-electability in terms of how much development they can bring into their communities.²¹²
2. Legislation-making is in the hands of the few, specifically male leaders and bureaucrats, given the flawed perception that legislation-making requires complex technical skills, knowledge, and expertise. This perception led to the exclusion of a majority of elected leaders, including women and minority groups who lack cultural capital, and provided an excuse for such elected to be excluded from the process.²¹³
3. Instead of having extensive participation of the public, the legislative process often took a quick and easy approach, wherein local governments minimally adapt model laws void of context-specific adjustments.²¹⁴
4. Although the Local Government Operation Act, 2017 contains specific provisions for the involvement of local citizens in the implementation of development plans and programs, such provisions do not exist for lawmaking. Local governments were

²¹¹ International Alert (2019). *Status and process of law-making in local governments: Reflections from two provinces*. Federalism in Nepal: Vol. 4. Available at <https://www.international-alert.org/sites/default/files/Nepal-Federalism-Vol4-EN-2019.pdf> (hereinafter, “International Alert, *Status and process of law-making in local governments*”).

²¹² International Alert, *Status and process of law-making in local governments*, Executive Summary.

²¹³ International Alert, *Status and process of law-making in local governments*, Executive Summary.

²¹⁴ International Alert, *Status and process of law-making in local governments*, Executive Summary.

lacking in mechanisms for public opinion solicitation as well as an effective means of disseminating legislations and policies.²¹⁵

Elected women representatives felt that their voices were constantly ignored or not taken seriously when it came to the legislative process.²¹⁶ Additionally, other minorities who do not speak Nepali were additionally marginalized due to linguistic barriers from executive and assembly meetings held in Nepali.²¹⁷

Legislative bodies of the three tiers of Nepal's federal government need to overcome multiple challenges to ensure that their legislation process is participatory and transparent.²¹⁸ Safeguarding people's access to the Parliament and parliamentary panels, free and adequate dissemination of information on new bills, budgetary and other policies are required to fix the shortcomings in the legislative process in all tiers of government. Commoners and civil society members do not have the opportunity to take part in the lawmaking process because they do not have easy access to Singha Durbar, where the Parliament Secretariat and parliamentary panels are located. It is high time the Parliament encourage lawmakers to register private member bills on their own initiatives. Private bills are good because they fully reflect public views on particular issues. Even the model laws provided to the provincial governments by the Ministry of Federal Affairs and General Administration and to local governments to the Ministry of Law and Justice were drafted as in-house procedures. They were adopted by the concerned assemblies on the proposal of the concerned government without taking these drafts to public. Even though they lacked the ability to draft their own laws and were therefore compelled to adopt the draft models supplied by the federal government, with or without change or modification, the provincial and local governments were certainly enabled to take these measures to the public for consultation. However, this did not happen in most of the cases. The sub-national governments failed to ensure public participation in the legislation process. There is no denying that it will take some time for the provincial and local governments to develop the capacity to draft bills, yet their disregard to what is possible and within their reaches is also apparent. Any genuine effort therefore must start from

²¹⁵ International Alert, *Status and process of law-making in local governments*.

²¹⁶ International Alert, *Status and process of law-making in local governments*, Executive Summary.

²¹⁷ International Alert, *Status and process of law-making in local governments*, Executive Summary.

²¹⁸ Kamat, People's inclusion in lawmaking a challenge.

the federal government, whose actions will surely serve as a model and demonstration to sub-national governments.

The other side of the issue is the important virtues of the freedom of speech and expression of the common people. These freedoms apply everywhere and in all occasions. However, this enables the people to participate in all state structures where they are extended this opportunity as a matter of process. The more the citizens understand the legislative and governance process, the more benefits the process would reap for the state and its institutions.²¹⁹ Media access to assembly deliberations, citizens' right to information, freedom of expression, and constant dialogue with the citizens using all platforms, including ICT mechanisms, are all a candid testimony to the media's commitments and actions for leveraging open parliament practices. The media should be allowed to monitor parliamentary activities; social media is massively involved in disseminating parliamentary information, and video conferencing is also must be in operation as well. Adequate space to the opposition party in deliberations and a live cast of parliamentary proceedings reflect their improved practices. The Parliament was the key mechanism advocating for the cause of openness and the people's participation for enhancing quality deliberations and expanding citizens trust on its functioning. However, open parliament practices could not take stride because decisions and actions of the Parliament and sub-national assemblies were not sufficiently accessible to citizens and media. As such, the Parliament and sub-national assemblies must improve their processes as to how the citizens' concerns can be best reflected in the processes of enacting bills.

The parliamentary bureaucracy also has an important role to play at all levels. It must transform its mindset and functioning to best align with political change in country in favour of devolution of power, diversity, and social inclusion. Media entrance should be made more open and easy. There should be spaces for interface between legislators and media so that they can interact more and complement each other's roles. They have the responsibility of introducing a new political culture and strengthening systems to institutionalize government openness. Importantly, there should be the provision to assess and audit the objectives of laws in terms of their

²¹⁹ MyRepublica (2019). "People's participation and openness in legislative and governance process key to strengthen democracy." Available at <https://myrepublica.nagariknetwork.com/news/people-s-participation-and-openness-in-legislative-and-governance-process-key-to-strengthen-democracy/>.

implementation status, as it is instrumental in promoting the rule of law and the effectiveness of law.

9. Institutionalization of the Federal Parliament Secretariat

There are certain problems related to the institution of Federal Parliament Secretariat as well. These problems are common to all provincial and local assemblies commensurate with their level and size. Operationalization of the citizen engagement in lawmaking is not the responsibility of lawmakers alone. In order to make more effective the work, service flow, and physical infrastructure of the Houses of the Federal Parliament, the HoR and the NA, the Parliamentary Committee, and the Federal Parliament Secretariat, the following issues and areas need to be improved.

As explained above, although the Parliament's main function is to make laws, due to the growing perception that lawmaking is not just a process within Parliament, the Parliament should extend the scope of incorporating the opinion, suggestions and feedback of the people while making the law. People and stakeholders' participation in the lawmaking process will make easier the implementation of the law. Therefore, the Parliament should develop a system of discussing bills by collecting the opinions and suggestions of the people and stakeholders. This is the job of the Federal Parliament Secretariat.

Secondly, in a parliamentary system, since the government is born from the parliament and the government is accountable to the parliament, the parliament should make effective the monitoring and evaluation of the government's performance. Parliamentary monitoring is mostly done through parliamentary committees. The House Committee should further monitor and evaluate the issue of non-implementation of the opinions, suggestions, and instructions given by both the Houses and the Parliamentary Committees. The Committee should conduct parliamentary practice only after giving in-depth study and research, and the government should implement the directive. The Parliament should play a role in developing a parliamentary system that evaluates the work of government ministers on the basis of the accountability of ministers in the House and parliamentary committees. The Secretariat should take the initiative in this regard.

Thirdly, the members of Parliament need to manage their time to focus on the study of the Bill theoretically and clause-wise in the concerned House

and Parliamentary Committee. Similarly, the members should create an environment to focus on the issues and work of parliamentary monitoring and evaluation. When evaluating the work of the members by the concerned parliamentary party, it is appropriate to do so on the basis of the activity of the members in the work of the Parliament and the Committee. Members also need to increase their interest in lawmaking and parliamentary oversight. The Secretariat can provide the necessary orientation to the members in this regard.

Fourthly, it is vital to address the issues related to the constituency and development of the members. As the MPs are the people's representatives, it is natural for the people to expect more from the members on the issues of constituency development and issues of public concern and demand their needs. Such demands and issues should be accepted by the members in one way or another. In order to address the issues pertaining to the constituencies and the development of national importance that the members have accepted and deemed necessary, it is appropriate to set up a mechanism for the Federal Parliament Members Concerned with the Chief and Chief Awareness of all the parliamentary parties represented in the Parliament. Such a mechanism could arrange to secure the participation of the Finance Minister of the Government of Nepal, the concerned Minister and the Vice-Chairman of the Planning Commission, and other concerned officials. It is appropriate for the mechanism to make arrangements for the regional ministries and agencies to address the issues and demands related to the constituencies and development of national importance recommended by the members.

The fifth role of the Federal Parliament Secretariat is to insist on the development of a parliamentary calendar. It is the parliamentary practice of Nepal to hold the session of the parliament twice a year. In special circumstances, more than two conventions may be held. The first session of the year is called the budget session. The budget session usually starts from the third week of April of each year and lasts until September 30. The next convention of the year is called the Winter Convention and usually begins in the month of January and lasts until the end of March. The winter session is also called the bill session.

In the case of Nepal, the parliamentary session has not yet been conducted on a parliamentary calendar. It is not known in advance which days of the month or week the HoR and the NA meet during a session. Only when one meeting is adjourned is the next meeting informed. From that, the members of the Parliament and the ministers do not know on which days of the month

and week which bills, resolutions, or urgent public proposals are being discussed. As there is no parliamentary calendar, the members and ministers have difficulty in adjusting the time for the meeting of the Parliament, committee meeting, party program, and constituency program and other programs. As a result, there is a problem of quorum in the House. Therefore, it is time to make a parliamentary calendar in the Federal Parliament of Nepal and conduct the programs of the parliament and the parliamentary committee accordingly.

The sixth responsibility of the Federal Parliament Secretariat is to institutionalize the Parliamentary Library and Parliamentary Studies Research and Consultation of Experts. This responsibility includes adding the latest books and publications related to the Parliament and parliamentary proceedings and procedures in the library of the Parliament, upgrading the infrastructure of the library, and ensuring the retention of the library. Another responsibility is to start the practice of discussing and analyzing the bill on the basis of the facts, figures, information, and evidence obtained from the study of the concerned committee and the Parliament Secretariat, experts, and researchers of the related subject according to the subject matter of the bill received in the Parliament. Similarly, the Parliamentary Committee will develop a system of giving opinions, suggestions, and instructions only after conducting in-depth study and research on the related issues with the help of experts and technicians while discussing various issues of parliamentary monitoring. It is appropriate for both Houses, Speakers and Chairpersons of the Federal Parliament, the Parliamentary Committee, and the Secretariat to establish a formal mechanism to discuss the Bill under consideration in Parliament and issues related to parliamentary monitoring, the economic, monetary, social, and environmental status of the country, and climate change. For such a mechanism, it is appropriate to pursue the concept of a Parliamentary Studies and Research Center. It will also be easier for experts and experts from outside the Parliament and the Secretariat to give advice at the center.

The seventh issue with the Federal Parliament Secretariat is to maximize the use of information technology in the functioning of the House, Parliamentary Committee, and Secretariat. The use of information technology (i.e. software) in the conduct and proceedings of both the Houses, parliamentary committees, and administrative work of the Secretariat is still not up to the requirement. The Secretariat must identify and use appropriate technology for verbatim (speech to text) of both Houses in order to disseminate parliamentary information using state-of-

the-art information technology; this may take the form of parliamentary apps for the information of office bearers, members, staff, journalists, and the public of both the Houses. Because of low emphasis, the use of information technology in the management of records of Parliament and Parliamentary Committees is still low. It must also consider making a digital documentary of both Constituent Assemblies, the peace process, parliamentary proceedings, and history, for example.

The eighth issue is the capacity building of the Federal Parliament Secretariat and staff. The Secretariat is the supporting arm of both the Houses of the Federal Parliament and the Parliamentary Committees. The effectiveness of the Parliament and the Parliamentary Committee depends on the competence of the staff of the Secretariat. The Secretariat has 435 permanent and contract staff posts. The number of technical manpower is about 60. There are 11 accounting and law staff. There are about 380 employees working in the Secretariat. Moreover, 55 posts are being filled. In addition to the parliamentary service staff, there are about 130 guardians of dignity. About 100 staff members of the International Conference Center are also involved in running the Federal Parliament. There is a need for a provision to regularly provide training to non-technical and technical staff at all levels according to the nature of their work. Capacity building through staff promotion, professional development, performance incentive allowance, and national and international exposure is necessary to conduct a multi-faceted training program on law drafting, bill drafting, and parliamentary oversight and service flow to be provided by the Secretariat.

The ninth issue is the expansion of relations with the Parliament and media and the Parliament and citizens. As the Federal Parliament is a people's elected supremacy, its functioning must be open and transparent. The proceedings of both the Houses are broadcasted live and uploaded on YouTube. The government and private sector media have been communicating the proceedings of the Federal Parliament in their own way to the people living in inaccessible and remote parts of the country. The activities of both the Houses and Committees of the federal parliament need to be communicated to the general public through their own programs. In order to observe the parliamentary proceedings directly, measures should be identified to increase the attraction of the spectators. There is a need to start the practice of collecting and receiving the comments of the people in the proceedings of the Parliament.

The tenth issue is promoting international relations through parliamentary diplomacy. Nepal's Parliament is a member of the Inter-Legislative

Association (IPU), the Conference of Heads of Parliament from around the world, the South Asian Association for Regional Cooperation (SAARC) Parliament, and the Association of Heads and Parliamentarians of both Houses. The Parliamentary Friendship Group has been formed in the Federal Parliament for more than 30 countries. Bilateral goodwill visits of the Speakers, Chairpersons, Deputy Speakers, Vice-Chairpersons, and MPs and exchange of parliamentary experiences can help in the promotion of Nepal's foreign relations. With the participation of the International Parliamentary Program, the office bearers and members can receive information about the parliamentary process and the practices of other countries and give information about its own parliamentary practices. The IPU and the United Nations have co-operated from time to time on issues of international concern, including climate change, counter-terrorism, and the promotion of human rights. Therefore, it seems necessary for the Federal Parliament and the office bearers to give importance to the issue of promoting international relations through parliamentary diplomacy by presenting the views of the Parliament of Nepal on issues of international concern through participation in bilateral and multilateral parliamentary forums.

The eleventh issue is monitoring the construction of the Parliament building and improving the physical condition of the parliamentary party offices at the Secretariat complex. The construction work of the Federal Parliament Building is underway in Putali Bagancha of Singha Durbar. Eleven buildings, including that of the Secretariat of the Federal Parliament, the building and meeting room of the Parliamentary Committee, the Parliamentary Library and Museum, and the offices of the Parliamentary parties, are being constructed in the same premises. The Government of Nepal aims to construct the Parliament House within three years. Although the construction of the Parliament building is being carried out by the Building Department of the Ministry of Urban Development, it is appropriate for the officials of the Federal Parliament to monitor the construction of the Parliament building from time to time. The Federal Parliament has need for a parliament building.

Since the first meeting of the first Constituent Assembly on June 3, 2008, both Houses of the then Legislature-Parliament and now the Federal Parliament have been operating at the International Conference Center in New Baneshwor. Until the construction of the new parliament building is completed, the sitting of the Federal Parliament has to be held at the same intern International Conference Center. Initially, the annual rent was fixed at 80 million rupees, and, as per the provision of increasing the rent by 10

percent every three years, the Secretariat is currently paying 150 million rupees to the International Conference Center. A fixed shield of water and electricity in addition to the rent. A provision obliges the Secretariat to pay the aforementioned fee. The Federal Parliament will be conducted in Baneshwor, while the meeting rooms of the Parliamentary Committees, the Secretariat, and the office of the Parliamentary parties are in Singha Durbar, all of which require improvements. As the offices of the Parliamentary parties are in a very old structure, it has become difficult to provide rooms and infrastructure as per the demands of the parties. Until the new parliament building is constructed for the offices of the ruling party, the opposition, and other parliamentary parties, a concrete building has to be demanded from the Government of Nepal near the Federal Parliament Secretariat in Singha Durbar premises. The Secretariat should believe that the Parliament can be strong only if the parliamentary parties have the infrastructure. It is difficult to conceive of parliamentary efforts, not to mention the citizens engagement in lawmaking, without first building the Secretariat, including its physical infrastructure, as the Secretariat has a major backstopping role.

10. Conclusion and Recommendations

This part of the research paper emphasizes and concludes that the constitutional legal provisions created for citizens' engagement in lawmaking at the federal level as well as the provincial and local assemblies need to be institutionalized and practiced as a matter of rule rather than choice.

Nepal has a clear foundation for the citizen engagement. Based on international trends, this foundation can be improved by developing Code of Practice on Consultation guides that enable all lawmakers to be knowledgeable about how public engagement ought to be facilitated. This may include provisions on when to consult (with ample scope for influence), how long to solicit feedback for (a minimum of 12 weeks), accessibility, and low burden of consultation. At least at federal level, the Parliament may derive lessons from the British practice of producing Green and White Papers before drafting a new legislation and after the formal consultation period had ended, respectively. There should be a clear pre-legislative consultation policy obliging the Parliament to share draft bills with the public for 30 or more days so as to gauge the costs and benefits of the bill before its passage and implementation. In fact, only after this stage has been passed should the draft bill be sent to the Cabinet for approval.

The House Rules of the both Houses should contain clear provisions to involve and inform the public regarding its decision-making in legislative matters as well as other processes. The provisions oblige the Houses in Parliament to conduct legislative business openly and to ensure public accessibility, including that of the media. The committees in both the Houses should be enabled to conduct hearings in which information regarding legislation may be gathered from stakeholders, although committees are not obliged to base the drafts of the bills on these hearings. Additionally, these committees should meet that different stakeholders, including lobbyists or pressure groups, that come to influence legislation. These reforms will further magnify the existing institutions and procedures in the federal parliament and the legislatures at the sub-national level.

While various stakeholders must be informed and consulted in the process of lawmaking, participation of the public may be limited in the cases of special working groups. Public participation should be open to different groups like women, *Dalit*, and indigenous people based on appropriate methods to facilitate and encourage their involvement. While all laws and implementing regulations should be drafted in a participatory manner, certain conditions could require limitations in the process (e.g., natural disaster, conflict). The timeline allocated for comments or participation in public meetings should be determined based on several factors, including the type of document, the issues raised, the document's length, available expertise, and the size of the target group the document affects, among others. Providing feedback to the consulted parties increases trust and strengthens cooperation. The decision regarding which method to utilize to engage the public may be made based on several factors, but such decisions should be made at the beginning of the process to ensure that the most appropriate method that brings the desired results is selected. Different tools like web sites, newspapers, televisions, and civil society organization (CSO) portals should be used to ensure that the information about the launched process is distributed as widely as possible. Governmental bodies, the federal parliament, and sub-national legislatures may use their web sites to facilitate the process of consultations.

It is difficult to conceive of parliamentary effort, not to mention citizens engagement in lawmaking, without first building the Secretariat, which has a major backstopping role. Parliament Secretariat provides human resources, finance, administrative, legislative and committee support, and information technology to the Parliament. Its institutionalization and development is necessary for the citizens engagement in lawmaking.

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