

**An integrated report on
Public participation in law making in provinces of Nepal
December 2020**

Introduction

The Constitution of Nepal, 2015 declared Nepal as Federal Democrat Republic dividing Nepal into 7 provincial governments with one central government overlooking the federal matters of the country. The Constitution also created 753 units as local level government. All these tiers of governments have been vested with a list of rights, duties and responsibilities as enumerated in Schedules 6-9 of the Constitution. To look at the Schedules, it is found that one of the major rights or responsibilities of all-level governments is to enact law.

This report examines the law making process of the provincial governments through public participation approach. This report was prepared by collecting information from all the 7 provinces of their law making initiatives.

No. of Acts enacted by provinces so far:

Province	Number of Acts
Province 1	50
Province 2	26
Bagmati Province	60
Gandaki Province	32
Lumbini Province	65
Karnali Province	46
Sudurpaschim Province	38

Law making practice in the provinces

Province 1

Province 1 has so far enacted almost 50 Acts out of which 29 are guiding the regular business of provincial government. The remaining Acts mostly cover the fundamental rights of citizens such as Public Health Act, 2077, Children Protection Act, 2077 and Environment Protection Act, 2076. As the Acts have used term like *tokie bamoji* (as prescribed) in many places, there is a requirement of regulations to implement the Acts properly. The Provincial Government seems sluggish to formulate required regulations.

The process followed by the Provincial Assembly of this province is similar to the formal procedure followed by the federal government. The concerned ministry tables the bill for discussion in the Assembly. The members of the Assembly propose amendment to the bill and the amendments and the bill are forwarded to the concerned legislative committee for discussion.

The provincial lawmakers have followed democratic process to some extent where consultation with experts and related stakeholders is done before passing the bill. For example, on the Public Health Bill, the Social Development Ministry conducted discussions with experts of health sector from Biratnagar and Kathmandu. The ministry also consulted with the federal health ministry in Kathmandu. The legislative committee also conducted meetings with various health professionals.

However, there is no such established practice of public consultation and seeking suggestions from the public on the bills. Most of the Acts were enacted without proper consultations with the stakeholders.

Province 2

There are 26 Acts enacted by the Province 2 government by this reporting date. Many of the Acts are related to establishing guidelines and directives to regulate government functions and management. Such Acts include Finance Procedural Act 2076, Act relating to remuneration and incentives of members of Provincial Assembly, 2076 and Act relating to remuneration and facilities of Chief Minister and ministers of Province 2, 2075. Some other Acts are related to development of infrastructure and civil rights as well as liberties.

There are 7 registered Bills that relate to Janakpur Health and Science Institute, Media management, FM and radios operation and management, Health services, and Madrasa Education Board.

The process of passing a bill as an Act by the Assembly of province 2 is similar to that of the Federal Parliament. However, the role of the legislative committee is not

seen very effective. The committee does not conduct public consultations unless expert opinion is required.

One instance where stakeholders and general public were consulted was in formulating Dalit Empowerment Act, 2076. The house took almost a year to conduct different rounds of discussions and dialogue while bringing this Act. All the district and concerned authorities were consulted and their suggestions were incorporated in this Act.

Some controversies were observed while enacting the laws. There was a clash between provincial Police Act and the Federal Act relating to Police services. The Constitution provides that the provincial law must not contravene with the federal law and if it happens, the provincial law will be invalid. But, the federal Act was enacted after the Province 2 passed the Police Act. So, it created chaos and rounds of debates between two governments. There was another public outcry in regards of the Madrasa Education Board bill, which was said to have bypassed the provision of federal law that requires permission from the federal government to create any funds with foreign donation. The provincial assembly must be mindful of all controversies and bring out laws with needed amendments.

Bagmati Province

Out of 60 bills registered in the Bagmati Province Assembly, 59 have been passed making them Acts. One bill relating to road infrastructure is still in the process of discussion in legislative committee. Some of the unique laws brought out by the Provincial government are related to Inter- Provincial Residents Equal Security, Management and Facilities Act, 2077, State Youth Council Act, 2076 and Agribusiness Promotion Act, 2076.

Bagmati Province held consultations with public and stakeholders while enacting some Acts. For example, a consultation was held on Media Management Bill, 2075 with various media houses and District Level Federation of Journalists. In bringing State Police Act, 2077, higher-level police officers such as DIG, SSP were invited for discussion but legal experts or general public had no say in it. Public played a greater role in contributing to the State National Forest Act by suggesting some practical suggestions that helped people living off forest resources.

Some of the problems faced by the provincial assembly while making laws were the vagueness of jurisdiction of federal and state duties, especially because Kathmandu is located in this province and some matters were governed by central government. There was confusion for the lawmakers in regards of collecting taxes and fees which in turn loaded the tax payers because both governments wanted to collect funds for themselves.

Gandaki Province

The Gandaki Province has legislated 32 Acts. Some of the notable Acts are Procedural Act for Province Capital and Territorial Recommendation Committee, 2074, Provincial Assembly Rule for Province -4, 2074, Act on arrangements for drafting laws of local level. Most of these laws cover the administrative aspects to smoothly operate the regular business conduct of the province. There are four bills pending in the Provincial Assembly as the lawmakers are discussing and conducting various debates on it.

The legislative committee has conducted consultation with the public before passing few laws. Some of these laws are Act relating to management and operation of Gandaki University, where consultation was taken from VDCs, Municipalities as well as from District Co-ordination Committee of the Gandaki Province regarding the best suitable location of the university and subject matter that should be provided to the students by the university. Another Act was Act relating to Secretariat of Provincial Assembly where representatives of different political parties contributed to the debate and discussion.

According to the Provincial Assembly office secretariat, there has not been any controversy or contentions raised by the public in matters of Assembly. The main reason might be due to the lack of interest shown by the public or lack of awareness.

Lumbini Province

So far, provincial assembly of Lumbini province has registered 65 bills out of which, 58 of them have been passed. Four bills have not been brought under discussion at the Assembly and other 2 bills are in the process of discussion in the legislative committee. One bill relating to Public Service Commission was returned to the concerned ministry due to errors.

There are 6 committees that address the bills presented in the house. They are Province matters and law committee, Finance, Industry and Commerce committee, legislative committee, Agriculture, Forest and Environment Committee, Infrastructure Development committee and Social Development committee. These committees play an active function in discussion line-by-line of the bill in question and also consult to experts, stakeholders and general public when required.

Some of the contentions that the opposition members of Provincial Assembly have expressed towards law making process of this province are that:

- In few cases the provincial law has superseded federal law,
- Due to time constrain, some laws have directly been passed to legislative committee without first reading and discussion among members
- Not much time is devoted towards discussion in the contentious laws

- The contentions presented by members of the Assembly are not properly addressed.

The public is not active and has a minimum role in law making process in this province.

Karnali Province

The Karnali Province has registered 46 bills out of which 36 of them have been passed and accepted as Acts, 5 are being discussed in legislative committee, 4 have been registered but not discussed yet and 1 bill is returned back to the concerned ministry.

The law making process of this province is somehow similar to that of federal government. It is mandated by Karnali Provincial Assembly Regulation 121 and consists of 7 stages, which are:

1. Registration of Bill
2. Distribution of Bill in Provincial Assembly
3. Presentation in Assembly
4. Discussion on the bill in assembly and in legislative committee
5. Presentation by legislative committee
6. Amendment, Correction on the bill
7. Passing of Act

There are primarily 4 committees that have been working on the bill. These committees have also conducted discussion with stakeholders while working on the bills. Some of the bills that included public consultation are Public and Private Cooperation Act, 2076, Province Cooperatives Act, 2075, Food Production, Rights and Supremacy Act 2075.

SudurPaschim Province

The Provincial Assembly of Sudurpaschim Pradesh has enacted 38 Acts so far which have all been proposed by the Provincial Ministries (Ministry of Social Development, Ministry of Internal Affairs and Law, Ministry of Industry, Tourism, Forest and Environment, Ministry of Land Management, Agriculture and Cooperatives, Ministry of Financial Affairs and Planning). The Assembly has formulated 2 regulations to guide the Assembly matters, namely, Provincial Assembly Regulation 2074 and Provincial Assembly (First Amendment) Regulation, 2076. There are 5 Bills pending in various stages of discussion in the house.

Work Execution Regulation, 2074 and Provincial Assembly Regulation, 2074, govern the law making process. There have been no consistent and obligated practice of consultation with the public; however, the public and experts have been consulted as per necessity. Some cases are:

- Bill to Make Provision for Radio, F.M. and Television Broadcasting, 2076- consultation with media journalists, media associations and other stakeholders.
- Sudurpaschim Ayurveda Academy Act, 2076- consultation with local people for suitable location, local farmers and herbal traders for educational design and with other experts on various matters.
- Provincial Sports Act, 2076- consultation with sports experts, trainers, sportspersons and other stakeholders.

Some of the controversies faced during the enactment of laws were regarding inconsistency with federal law, difficult and impractical provisions, as claimed by stakeholders in Radio related Act and improper representations in various commissions.

While not many laws were passed through public consultation, it was found that public opinions were taken into consideration in designating the capital and naming the Province.

Conclusion

The Provincial Assemblies of all the provinces have formulated both substantive and procedural laws for their respective provinces. It seems that the process followed during the law-making process is similar in all and is consistent with the provision of federal law making. However, it is found in all provinces that democratic process is not strictly followed, as there is no provision where the lawmakers must oblige to consult public before passing out the laws. The Provincial governments seem to have consultation with stakeholders on some bills but they have done it in very limited numbers. Even if the consultations are held, opinions of general public who might be affected by such law are hardly taken into consideration. As a result, the law making process has been opaque and non-participatory in the provincial level. Followings might be the reason for this:

- People themselves are not seen very much enthusiastic to participate in lawmaking.
- The assembly is not transparent enough with its information sharing, as many bills are not readily available to public for them to read and comment on it.
- Most of the people do not know how to get access to the bills and submit their suggestions and complaints regarding the contentious provisions.
- Public is unaware of their role in democratic lawmaking.
- Sometimes the suggestions made by stakeholders are not accepted or addressed which frustrates people in continuing such contributions.
- Sometimes, the members of the Provincial Assemblies are reluctant in sharing all information, as they think that making public aware of the bills may create hassle and cause difficulty in bringing out laws as they desire.

Citizen participation in the legislation-making process – through public opinions, discussion on the proposed drafts, feedback and suggestions for amendments or even through protests – is an essential and inalienable part of a functioning inclusive and participatory democracy envisioned and enshrined in Nepal's Constitution. However, meaningful consultation with people is, at best, a token gesture and often does not exist at all.

Provincial governments lack the consultative and participatory mechanisms to ensure the peoples' involvement, and that of marginalized groups in particular, in the law-making process. Similarly, there is no effective dissemination of the legislations and policies formulated by the provincial governments. The findings of this study suggest that the quick but non-consultative and non-participatory legislative processes are likely to miss out specific local contexts and needs in the provincial government laws, particularly those of marginalized communities.

Both the government and the public must be aware of their rights and duties in lawmaking process and should play active role in bringing democratic laws that promote development, peace and progress in the society and the country.