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Constitution Watch Group

An Interaction on

Citizen Engagement in the Legislative Process

Hotel Himalayan, Lalitpur PROCEEDING REPORT

26 December 2019

1. BACKGROUND

After seven decades of struggle, the people of Nepal have been able to obtain a constitution written by their elected representatives. The new constitution promulgated in 2015 has a number of characteristics that intend to put Nepal on a path of prosperity through the institutionalization of federal, democratic, and republican system of governance. After the elections, there is a government with two-third majority support in the federal level led by the Communist Party of Nepal. Likewise, there are majority governments - in some provinces with two third majority - led by the same party in six provinces and the one led by Terai parties in Province 2. As such, the new constitutional set up is currently in operation. But it faces many challenges - law making being the foremost one. With the new constitution, there is a need to have hundreds of new laws at all levels - federal, provincial and local.

In these initial years of constitution implementation through law making, there is a crucial element that seems to be missing - the citizen engagement. The current practice in Nepal is such that once a person is elected as people's representative, the link between the representative and the voters gets weakened for the rest of the five year period. Although voters have elected him/her to make laws on their behalf, the modern democracy demands that there be constant dialogue between the two regarding the content and nature of the laws that will be made. This element needs strengthening in Nepal. There are some processes such as discussions in parliamentary committees in place. Key objectives of such processes are to involve stakeholders in the law making. But actual and meaningful involvement of stakeholders and citizens are rarely carried out. Whenever a government brings out a draft law to the parliament, the House through its committee and members need to reach out to the citizens to inquire about their thinking on the particular matter.

Successful implementation of constitution does not merely depend on structures. Rather, it depends on the system and functionality of those structures, and how well they deliver the public aspirations from democracy. That requires constant monitoring and evaluation by constitutional experts and civil society. In case of present day Nepal, not much discussion seem to be taking place relating to the constitution and law making process, particularly among the academics, intellectual community and the media. In these formative years, the main problem is how to build the ownership over the constitution itself. Nepal has experimented with half a dozen constitutions in these past seven decades already. The new constitution is a result of long struggle so it must not be allowed to suffer similar fate. In the course of the implementation of the constitution, there have been many gains such as the election held for all tiers of government and the federalism being put in implementation, but many things are yet to happen. These are all crucial issues, but people, in general, seem to be largely unaware of this need of the hour. Hence, there is the need for a group of intellectuals and civil society leaders to rise to the occasion and take up this responsibility on behalf of the people in front of people's representatives.

In this light, Constitutional Watch Group (as a composition of five different organizations) organized an interaction on Citizen Engagement in the Legislative Process at Hotel Himalayan Lalitpur Nepal with the support from UNDP/A2J project. The program was organized on 26 December 2019.

There are five organizations affiliated to the Constitutional Watch Group - Nepal Law Society, Kathmandu University, Open University, Niti Foundation and General Election Observation Committee. The Group is active in lobbying issues related to constitutional development, rule of law, human rights, social justice, inclusion and good governance.

2. OBJECTIVES OF THE PROGRAM

Overall objective of the interaction program was to review existing legislative process and identify the trend of the Federal Parliament on Law Making process from people's participation perspectives. Specific objectives of the particular event were as follows:

- To oversee and assess the working of the Federal Parliament on legislative process in line with the letter and spirit of the constitution;
- To sensitize people's representatives about their role during law making and play oversight role of the Parliament to ensure public accountability;
- To review the role of concerned stakeholders including the Parliament, Government and CSOs on legislative process and identify the gaps for the further improvement;
- To identify potential options and recommend to the Federal Parliament on meaningful citizen engagement in law making process;
- To encourage CSOs to take part actively in the legislative process.

3. PARTICIPATION IN THE MEETING

A total of 134 participants attended the program. They came from different sectors including members of Federal and Provincial Parliament, Committee Chairperson. Officials from Parliamentary Secretariat, professors from different Universities, Civil Society leaders, human rights activists, media and donor partners etc. The composition of the participants was thus: there were 112 men, 22 women, 25 from members of Janajati community, 9 from members of Madhesi community, and 8 from members of Dalit community.



4. OUTCOMES

- Reached conclusion about the need for Law on Legislative Process by incorporating the Citizen Engagement
- Held direct consultations among parliamentarians, and stakeholders (including judges, lawyers, professors, political leaders, CSO leaders, academicians) helping to learn about each other's challenges and contributions
- Commitment made by parliamentarians to involve citizen in law making process

5. PROCEEDING

The Chairperson of the Constitutional Watch Group, Mr. Kalyan Shrestha, former Chief Justice, Supreme Court, chaired the program. There were 112 participants. Out of them 17 experts shared their views on the issue from the floor. During the 4-hour program, two papers were presented followed by remarks by the Chairperson, and the participants. The paper presenters

responded to the questions raised and the chairperson wrapped up the program by listing out the conclusions.

The two papers that were presented in the program had the objectives to clarify the legislative process and existing practices. The chairperson of Legislative Management Committee of the Federal Parliament presented first paper clarifying the existing practices of the Federal Parliament and the new approach adopted by the Committee. The Legislative Management Committee falls under the National Assembly. Professor Krishna Khanal presented the second paper identifying international practices and gaps in Nepalese process on participatory law making.

• Mr. Krishnaman Pradhan, Executive Director, Nepal Law Society



Pradhan conducted the Mr. highlighting the program composition of the group in the Constitutional Watch Group which includes Nepal Law Society, Open University, NITI Foundation GEOC and Kathmandu University. He said that the group came up together to facilitate the law making and implementation process. He said that the government introduces the Bill, Parliament finalizes it and the Judiciary interprets it. He talked about the importance of citizen engagement in the legislative process for the sake of ownership and effective

implementation of the laws. He said that the interaction program would help clarify the issues. He said the Group had earlier held an interaction on the National Human Rights Commission Bill and presented it as an example how such interactions could be helpful in constructive manner. The initiative conducted by the group, he said, helped the government, parliament and others to streamline the Bill and reduced the increasing conflict between the NHRC and the government over the new proposed law. He said that the group expects to provide similar support to help in the law making process by facilitating citizen engagement.

• Dr. Shilu Manandhar Bajracharya, Dean, Faculty of Law, Open University

She welcomed the participants and said that the Group expects rigorous discussions on the issue of citizen engagement in legislative process. She talked about the importance of the participatory law making process. She called for discussions to clarify the process of citizen engagement in law making. She said will make the it representatives accountable to their voters. This will help in better coordination among all tiers of government and help strengthen democracy.



Mr. Mohan Das Manandhar, Niti Foundation

Mr. Manandhar also highlighted the objectives of the Group. He said the Group will act as watchdog about the Constitution Implementation and Legislative process. The main responsibility of the group is to observe the people's participation in law making process, he said. He said that for effective dialogue, the Group had invited Members of Legislative Bodies from all three tiers. He said that the Group was currently working in three key areas including



Law making process; Accountability; and Implementation mechanism. He said that the participation of CSOs in policy-making process is an important aspect. But, he government noted. the and parliament in Nepal are not serious about such participatory process. He insisted that the concerned groups need to be consulted duly, sufficiently and timely. In addition to that, accountability needs to be ensured. He asked how it can be institutionalized and urged the discussions to suggest about enhancing the ownership of the

people and concerned stakeholders.

Paper Presentations and Review

• Mr. Parshu Ram Meghi Gurung, Chairperson, Legislative Management Committee, NA

Mr. Gurung shared his paper highlighting about the sovereign rights of the people, self and autonomous rule, parliamentary supremacy and constitutional supremacy. He shared that, people have ample opportunities to participate in law making process through different channels including constitutional commissions, reports of the directive principles and policy committee, formation of the various committees in the parliament, their discussion, vote of confidence and no confidence, privileges and immunities of the parliament and parliamentary hearing etc. In addition to that, he shared legislative process and people's participation, limitations of the law making process, current practices, key challenges and the way forward.

Further, he said, while talking about citizens' engagement on law making, one also needs to



discuss about "law breaking process." On limitations, he shared certain constitutional limitations; people's will: International Law to which Nepal is a party; global norms and values and available resources etc. While sharing challenges, he explained that there is little planning in law making process. Financial scarcity, time limitation, limited knowledge. lack of expertise in Parliamentary Secretariat, lack of resources and of knowledge level in the committee are key challenges for parliament on legislative the process.

On the way forward, he said that people should pay more attention in days to come to drag their representatives to right track, if and when they are out of track; role of parliamentary party needs to be increased; knowledge building needs to be strengthened; Parliamentary Secretariat should be strengthened; scientific evaluation system needs to be established; use of technology needs to be increased; and effective implementation mechanism of existing provisions should be strengthened.

• Prof. Krishna Khanal

Prof. Khanal presented his paper highlighting a number of issues including parliament and citizen's engagement, people's participation in legislative process, cycle of legislative process and existing provisions and opportunities. He shared his views critically with ample examples from various incidences. He said people's participation is necessary in the entire process of the parliament, people should have opportunity to know and listen to various processes adopted by the parliament. There are issues and weaknesses in the process. He raised a question that whether elected people are free from their responsibility. Parliament is not a job to get financial benefit from, he said. He suggested that Members of Parliament work in transparent manner and not be confined in a 'dark room'. Parliament should always be open, transparent and accountable towards people and their constituency. In modern democracy, there is no control of government and parliament; Singapore and UK can be taken as an example. While talking

about inclusive democracy, he cited a recent example of Italy where there was a Parliamentary Conference. They came up with open parliamentary process, he said. They produced a declaration covering accountable, transparent and effective parliament. He participatory recalled that process is not new for Nepal. It was introduced in 1991 in the legislative Rule itself. He said that recently controversial proposed laws such as Guthi Bill, Online NHRC Media Bill, Bill and Intelligence issues should be openly shared with the people and feedbacks get their as the



government should be careful, too, on the privacy of their citizen.

While sharing about the parliamentary practice in and outside the parliament, he remembered previous mock parliaments and felt that the trend is decreasing now. The space is taken by the State gradually, which is frustrating, he said. He said that awareness and civic education on parliamentary as well as legislative process is important and necessary. One-way traffic should be avoided and two-way traffic needs to be promoted. Sharing the development from elsewhere, he expected to have verbatim record and public information center in and outside the parliament, which is missing, as he believes that the information sharing is the first step. He also believed that only informed citizen can meaningfully take part in the process.

He said that once the state builds ownership on the process and outcome then people can defend if and when required. He expressed his concern as the Government utilized experts from party quota rather than engaging real experts. He suggested conducting expert review on various products, use e- petition system and online portals. He also warned by saying that in modern democracy institutions are being failed and overtaken by crowd, if and when such institutions are not being able to show their accountability and professionalism. He suggested building accountable, transparent and clean parliament.

• Mr. Kalyan Shrestha, Former Chief Justice

Speaking from the chair, Mr. Shrestha said that principally a law making process is led by the parliament, however participatory process is necessary to gain the legitimacy and ownership from concerned stakeholders and citizens at large. He believed that such events helps dig out issues on the process. Effectiveness of the parliament will help us to develop the system. He said Nepal is still in the learning phase; relationship between parliament and people are yet not clarified. Approach of self-criticism is not being adopted to build connectivity. One has to raise questions why some laws are made but not implemented, he asked. And even if they are implemented, why they are not effective and why people are resisting. The obvious answers, he



said, could be that people see them as laws made by others and as an imposition. Thus, law making should be participatory in nature.

He said that Nepal is practicing representative democracy but someone needs to define what representative democracy is and whether it is blank check. In response, he expressed his views by saying, laws and decisions of Court should have acceptability and adoptability. Parliament is a vehicle in principle and custodian of the people. He suggested thinking how the parliament can be turned into an effective vehicle. He

pointed that there is legality but not

enough legitimacy. Knowledge, skill and experience of the Member of Parliament is important but not sufficient, he said. Right to participate is more important than right to vote. It is not just listening; there should be two-way dialogue between the Member of Parliament and people, he said. Reciprocity proportionality, accessibility, complimentarity and inclusiveness are the words that are accepted by the Preamble of the Constitution itself. Such words have a huge value in the constitutional democracy, he said. He admitted that getting a process developed by 761 governments is a serious challenge in the new system.

He said that the right to participate is a Constitutional as well as Human Rights matter. There are possibilities to raise questions in the court if people are not consulted in the process as it was raised in the South Africa. He shared that currently there is no space to share views. The government has not created appropriate public outreach centers yet, however NLS does have CICs at least in major cities of the country. He appreciated the role-played by the Legislative Management Committee and suggested political parties to contribute more in the days to come. Along with that he raised a concern as many feedbacks were collected during the constitution making process but no one knows the outcome of those feedbacks. He also raised concerns in relation to the promulgation of 16 different legislations to implement fundamental rights as those laws were produced overnight. He suggested all three-tiers of governments should think seriously about not compromising democracy by taking up excuses of time limitation and budget constraints.

6. FLOOR DISCUSSION

18 participants shared their views during floor discussions. Brief synopsis is given below:

• Mr. Min Bahadur Biswokarma, member of Federal Parliament

Mr. Biswokarma agreed that the parliament had limited discussion on Bill making process since very long. Government should help the Parliament to ensure participatory process. MPs are going for the election campaign as per their party declaration and also need to address people's agenda directly. They have to bear with the party whip rather than public at large. Thus, PMs



are accountable towards people, party and the Constitution. He shared that in developed countries, both MP and people interact widely but in Nepal, there is limited practice. Nepalese economic condition is poor, infrastructure weak. is Government wants to produce law as soon as possible due to certain interest and the parliament is also affected by the party politics. If there is agreement among parties then laws come guickly, if not law making process takes more time. In various laws, provisions like "as for provided by laws" are kept but necessary laws and Rules are not made

by the government on time. He further shared that it would be good to conduct such interactions in local level also.

• Mr. Ram Narayan Bidari, member of Federal Parliament

He raised a question to the citizen and CSOs. As per him, citizen should raise a question whether their representatives are getting all facilities. For example, he pointed, laptop facility was criticized heavily but they do not think that they need such facilities to deliver their task efficiently. Experts are giving examples from UK and India but they do not share how much MPs

from those countries are getting facilities from their government. Citizens are not able to control their representatives. MPs are dominated by the State. 20% laws are made by the parliament and 80% are made by the government, he said, adding that it is true peoples' representatives are focusing on development rather than on law making process due to the perception and practices. Participatory approach was adopted during the discussion on Civil Code, Criminal Code and Constitution building process. However, the practice was not effective, he said.



• Mr. Laxman Lal Karna, member of Federal Parliament

Mr. Karna felt that whether the conducting of review on parliamentary process is too early. He said that the education initiatives need to be launched for people before expecting their feedbacks. Consultations were organized while discussing on Civil and Criminal Code on limited scale, he recalled. The issues related to law making process is complicated but it can be made simple by simplifying the language and



educating the people widely. Bill itself cannot be discussed with general people. If the Parliament is making laws for people then their involvement is necessary, he said. Even MPs are not aware about the legislative process as the government does not follow the practice to discuss with MPs in advance. Discussion is required during that phase also, he said. If it is discussed in advance, then it might not need to be discussed in second phase. Furthermore, he said that there is no practice to maintain roster of experts, question about the

quality of experts can be raised in that

sense. In welfare state, one has to address problems that come up during the execution of the legislation. He said there is a committee in the Upper House for assessing the implementation of legislations. He suggested delegating legislative and judicial power to other bodies including law making and decision-making process.



Ms. Indira Shrestha, chairperson of INSEC

She said that the government is not positive towards civil society. CSOs Government treats as competitor rather than helping hand. While making laws the Government should consult with CSOs because they are working with the people. Human rights violations have increased compared to last year, she said. It is unfortunate that MPs and governments associate with CSOs in the process of election and other social matters but are behaving differently once they are in power. Hence, citizens should be mobilized through CSOs in law making

process.

Ms. Indu Tuladhar, Advocate

She said there is a need to look from two perspectives. Public consultations and live telecast provisions are there in the rule. But the law making process is very low in the priority of the government, she said. First is the budget and plan, second is to lobby with people, third is to help people, fourth is to lobby with party leaders and fifth one is law making, she listed. She said that always voters ask about development but do not enquire about the laws made. While talking about the interaction between



parliament and people, she said certain system needs to be established and secretariat needs to be strengthened.

Mr. Sher Bahadur KC, advocate and former chairperson, Nepal Bar Association

He said there is no training to the Member of Parliament. It is true that, we are in liberal democracy and uur constitution is the youngest Constitution but we have to focus on freedom, he said. He said that though the earlier Guthi Bill was failed, the government is still saying that they will reintroduce. Similarly, Media Council Bill was also brought without full consultations and in the



NHRC bill, the government tried to put it under the Attorney General Office. The country is trying to move by ignoring people, he accused. He said the principle of democracy and values

should not be undermined. The government should start consulting with the Member of Parliament before tabling the Bill in the Parliament. People's participation is also crucial, he said.

Mr. Chandeshwer Shrestha, chairperson, Nepal Bar Association

Mr. Shrestha said that Nepal Bar Association is a concerned stakeholder. He said the Bar is conducting meetings in each province where bar representatives are raising issues that laws are not



made properly. The parliament has already spent more than half of its time. Federal parliament is not making enough laws and province and local government is facing challenges, he said. He also talked about weakness of judiciary such as ineffective parliamentary hearing. He said that people have forgotten about the values after the election. Transparency and good governance are seriously affected, hence, he said, such program should be conducted outside the capital also.

Dr. Kumar Sharma Acharya, senior advocate and chairperson of Law Commission of Province 5

He said in course of his work in the Provincial Law Commission, he finds that the concerned Ministries need to think about the type



of laws they need. Ministers do not know what type of legislation they need and even officials are unaware, he said. He added that province laws should not be contradictory with the Federal legislation but that applies only when federal legislations are in place. He said that either the federal laws should be guickly made or other tiers such as province allowed to make their their exclusive laws on competencies. He noted that people's participation is extremely poor. He said that if we fail in future, the major share of blame will go to government officials.

• Mr. Rajan Kuikel, chairperson of Amnesty International-Nepal

Mr. Kuikel asked the members of opposition party about their role and the manipulations by the government. If you are not being able to raise your voice, you can leak the information in advance, he said. Some of the activities may be legal but whether it is valid or not, he asked. He suggested that if you are not expert, you should consult with experts.



Mr. Rishikesh Sharma, Kathmandu University, Dean, Law Faculty

Mr. Sharma said he realizes that the engagement of Member of Parliament is required. He said that the people will evaluate the role of MPs in future. MPs from the government party should also be active. He suggested that we can build a core group and support the system.



• Mr. Saroj Ghimire, treasurer, Supreme Court Bar Association



Mr. Ghimire said that ignorance of law is no excuse. But it is also not appropriate if people are not engaged provided and the understanding of law making process. Citizen engagement is necessary. In Europe and America, people will be happy once law is discussed in the parliament and with the people. In Nepal. universities and campus students are not consulted while making laws. The process of consulting with the students should be started.

Prof. Kapil Shrestha, human rights activist



Shrestha Prof said that the Parliament is the heart and soul of the democratic system. They are torchbearer and special players and have the role to protect the system. Effectiveness, productivity, responsiveness, and nonperformance cannot be excused, he said. He urged the MPs to ask with common people, no one is willing to carry your burden. Some Bills have come in the Parliament that should not have come, he said, asking where the MPs were when they came. Law making is not getting enough priority, he complained.

• Mr. Charan Prasai, human rights activist

Mr. Prasai asked why this discussion was being initiated when Parliament is not acting like parliament. It is a serious matter, he said. Earlier Constitutional Watch Group also conducted an interaction on NHRC Bill, he said, recalling that the Law Minister was not positive at that time.



He asked MPs to understand why people oppose some Bill. The answer, he said, is they oppose when it breaks heart of the people and when it crosses the constitutional limits. He asked the Members of Parliament whether they judge a Bill based on international human rights standard, and citizens' rights. He whether there asked is а committee to discuss on such issue and whether an MP can return such he regressive Bills. lf not. suggested them to make legislations to block authoritative moves of the Government.

Mr. Ekraj Bhandari, CA member

Mr. Bhandari said that the issue under discussion is of grave nature. He said that he feels people's participation is representative participation. The heart of the system as per the Constitution is periodic election and the problem lies there. To win the election you need to have money and because of that people's participation is being neglected, he said. MPs need to be close to agents, businessperson to get donations to use in election and because of such agents controversial bills like NHRC, Guthi

and Media Council Bills have come. People's representatives are weak.

Ms. Bhawana Subedi, MP, Provincial Assembly, Province 3

Ms. Subedi said it is positive to have such debate. An MP should not be treated as if they come from other planet. She asked why people are being negative with the MP and why the experts are not supporting the MPs. There are members who come from direct election, and others who come





from PR. While local level representatives are getting a lot of facilities, MPs are treated less than locally elected people. She said that we are not doing review based on essence rather than engaging in criticism based on individual MPs.

• Mr. Madhav Poudel, (Chairperson of Province Affairs Committee, Province 3

Mr. Poudel expressed happiness that the discussion went very well. It would have been good how much struggle is being done while making laws. It is an opportunity to reform our weaknesses. 90% members are traveling by a public vehicle. We should be careful on such reality also, he said. In Parliamentary provincial Assembly, also we expected a lot from experts and discussed thoroughly on each of the Bills, he said, adding that they passed 40 Bills from Provincial Parliament. He said they are trying to develop their capacity. He suggested educating people regarding the role of parliament.

> Mr. Chiring Dorje Lama, member of Province 3 Assembly

Mr. Chhiring Lama asked about the process of initiating bill. He said that in the Schedule 6 of the Constitution, there is exclusive right to the province and in schedule 7 there is concurrent list. What is the process of initiating bills on these lists, he asked.





• Ms. Pushpa Bhusal, whip of Nepali Congress, House of Representatives



Ms. Bhusal said she agreed with debates, and arguments but people are not aware, and almost all parliamentarians are willing to engage them. Expectations of people are different. There is a big challenge in the system and practice also. She said that the competition should have been based on capacity and quality rather than money and muscle. She said that she also agrees that the parliament is heart and soul of democracy but we do not have institutional and technical support. She called for strong secretariat in each of the party and committees. She said they needed to build mechanism to conduct a perfect system. Opposition party played a crucial role in NHRC, Guthi and Media Council Bill and the government was pushed back. If something comes that puts the intention of the government in doubt then the CSOs should play a vibrant role. There are instances in which government can be pushed back on its authoritative role. She said that they should work together and build the system jointly rather than criticizing each other.

7. RESPONSE FROM THE PAPER PRESENTERS

Professor Krishna Khanal

Professor Khanal said they understand that the MPs are not getting facilities. He thanked everyone for their suggestions and comments. He hoped that this kind of discussions will help bridge the gap between the people and the representatives. He hoped that MPs will incorporate provisions on citizen engagement in the laws and rules to institutionalize such dialogue.

• Mr. Parshu Ram Meghi Gurung

Mr. Gurung said that the program provided opportunity to talk about the Parliamentary practice. He talked about the citizen engagement and said he will propose to make law on legislative process to incorporate the engagement. He also said that some committees are involved in citizen engagement by issuing advertisements calling for public feedback but such initiatives are not enough. He urged NLS and Watch Group to extend further support to expand the engagement of citizen.

Vote of Thanks

Mr. Tirtha Man Shakya, chairperson of NLS. thanked all the participants and expressed happiness over the constructive discussion. He hoped that this will lead the parliament to seriously consider bringing law to institutionalize meaningful citizen engagement. He said that in open democracy, laws are made by the people and for the people unlike the practice in Panchayat days. He urged the MPs to formulate new law along with explanatory notes regarding public consultations.



Remarks from the Chair

Mr. Kalyan Shrestha, former CJ and chairperson of Constitution Watch Group, wrapped up the program by expressing pleasure at the interaction. He said that there is no ruling or opposition party in these matters. The objective of the Group is to increase the standard of MPs status, he said. Mr. Shrestha that this discussion alone is not final and sufficient and called for regular discussions. He said they needed to increase the capacity of people as well as MPs. He ended up by thanking the paper presenters, participants, NLS, and the UNDP. He said the Group will continue to hold similar discussions in future.

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