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Status and process of law-making in local governments:

Reflections from two provinces

FEDERALISM IN NEPAL – VOLUME 4



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About Sundar Santa Nepal

This project aims to support the implementation of federalism and inclusive peace in Nepal by building understanding around evolving forms of marginalisation in the present context. It collaborates with provincial and local government representatives, civil society and the media, to draw lessons and best practices. The project is managed by International Alert and implemented through a consortium of Saferworld, BBC Media Action and local partners Samagra Jana Utthan Kendra, Jan Jagaran Club, Support-Nepal, United Youth Community Nepal, Mahuri Home and Nepal Madesh Foundation. It is funded by the Government of the United Kingdom through the Conflict Stability and Security Fund (CSSF).

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Janak Rai
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CONTENTS

| | |
|---|-----------|
| Executive summary | 4 |
| Major findings | 4 |
| Existing law-making processes in local governments | 4 |
| Law-making and marginalised groups | 5 |
| Ways forward | 6 |
| 1. Background of the study | 7 |
| Local government and participatory legislation-making | 7 |
| 2. Research approach | 9 |
| 3. Major findings | 10 |
| The status of legislations in local government | 10 |
| “People want <i>bikas</i> from us”: Legislation-making receives lesser priority | 14 |
| 4. Process of law-making: By few, and ‘fast and easy’ approach | 16 |
| ‘Fast and easy’ approach | 17 |
| Non-consultative and non-participatory process | 18 |
| Bureaucrats as law-making actors | 19 |
| Civil societies, local lobbyists and law-making process | 20 |
| Lack of dissemination | 20 |
| 5. Local government, law-making and marginalised groups | 21 |
| Rhetoric vs reality: No legislations for marginalised groups | 21 |
| Male domination and politics of silencing and exclusion | 23 |
| 6. Conclusion | 26 |
| Major findings | 26 |
| Law-making and marginalised groups | 27 |
| Ways forward | 28 |

EXECUTIVE SUMMARY

This report is based on an explorative study and contextual analysis of the state of the legislation-making process in local governments, with a focus on marginalised groups. It provides an overview analysis of processes and practices of law and policy formulations in the six local government units. Broadly, the study aims to understand: (a) what legislation local government units have formulated in the last two years; (b) the existing practices of law-making (the formal and informal process; actors involved in law-making; level of consultation and wider participation in law-making; involvement of elected officials from the marginalised communities, and so on); and (c) what local laws have been formulated specifically for the marginalised communities. This report draws on desktop reviews of various reports, analysis of legislation passed by the six local governments and a brief fieldwork conducted during October 2019 in Siraha, Dhanusha, Rupandehi and Kapilvastu districts.

Major findings

***Bikas*, the realpolitik; legislation-making, a subsidiary priority**

Legislation-making is an important right and duty of local governments under the current federal system. Inclusive and locally responsive legislations enable local government to promote and abide by the rule of law and execute its duties and functions in a transparent and legitimate manner. However, the study found that legislation-making is not an immediate priority for the elected local government officials. In fact, the majority of the elected representatives are unaware of the legislations that they themselves have approved and are less interested in policy and law formulations. *Bikas* (development), the infrastructure development, in particular, is the realpolitik for the elected officials as well as for the local people of their constituencies. They are more concerned and motivated to maximise the access, distribution and appropriation of the annual budget for their own ward, settlement and communities. The belief that it is the delivery of *bikas* not legislation that enhances their electability in the next election also undermines the legislative roles of elected officials. Some of the major barriers that have delayed the law-making process in local governments include factors such as weak leadership and teamwork; fractional politics; conflict among the elected members and between elected members and bureaucrats; and lack of (or perceived lack of) knowledgeable and experienced elected representatives to draft legislations.

Existing law-making processes in local governments

Involvement of a few: male elected officials and the bureaucrats

All six local government bodies in this study have formed a legislative committee, which includes a few elected members to draft new bills, but many of the committee members are unaware of and are not involved in the law-making process. In practice, only a few male elected members participate in the drafting of legislation. There is a widespread belief that law-making is a complex and technical process that requires special expertise, knowledge, educational background, experience and skill. Such (flawed) understanding of the law-making process also works to (a) *exclude* the majority of elected members, particularly women and elected members of minority groups who lack such cultural capital, from the process; and (b) provide *excuses* for elected officials not to be involved

in the drafting of bills. The chief administrative staff and other bureaucrats are the key players in the law-making process, even though legislation-making does not fall under their roles, duties and authorities. However, the total dependency on government employees for preparation of legislation can make the law-making process more bureaucratic, technical and non-participatory.

‘Quick and easy’ approach

The legislation and policy-making process lacks much needed wider discussion, and consultation with and the participation of all elected officials and the community. In drafting new legislations, local government units, for various reasons, have relied heavily on and copied the ‘model laws’ prepared by the Ministry of Federal Affairs and General Administration (the MoFAGA). Rather than taking these ‘model laws’ as guidelines, elected representatives and staff simply ‘copy and paste’ the specific model law, add the names of their municipality/rural municipality and get it approved as the new local law. This ‘quick and easy’ approach has maintained a uniformity of legislation in local governments and offered a convenient way to pass many laws in a shorter period. However, when these model laws are simply copied, local legislations are likely to ignore or miss out the specific local contexts and problems of their constituencies. For instance, the Education Act passed by a municipality with a higher Muslim population does not focus on the Madrasa education. Similarly, the Education Act passed by rural municipalities where the Dalit communities need special support and interventions for improving their school education fails to consider their concerns and needs.

Non-consultative and non-participatory process

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. The Local Government Operation Act, 2017 (the LGA) has clear instructions to ensure the maximum participation of local citizens, marginalised communities and other stakeholders in the planning and implementation of development plans and programmes. However, the LGA does not have similar provision to ensure consultation with and participation of local communities in the local law-making process. In addition, *the existing law-making practice is blatantly exclusive, involving only a few male elected members and the bureaucrats*. Meaningful consultation with community members is, at best, a token gesture and often does not exist at all. Local governments seriously lack the consultative and participatory mechanisms to ensure the community’s involvement, and that of marginalised groups in particular, in the law-making process. Similarly, there is no effective dissemination of the legislations and policies formulated by local 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 local government laws, particularly those of marginalised communities.*

Law-making and marginalised groups

In all six local government units, the law-making process is the exclusive domain of men, including a few elected men from the Dalit and Muslim communities. The androcentric domination and control of the major positions of power (the mayor/chair and the ward chairs) by men reinforce the politics of silencing and exclusion of women from the decision-making power in local governments. The majority of elected women representatives, including the deputy mayor, interviewed for this study consistently and vocally stated that their voices are either ignored or not taken seriously by the male members during the municipality meetings and in other settings. Muslim and women representatives from Madhesi communities who are not native Nepali speakers are obliged to remain

quiet because of linguistic barriers whenever the executive and assembly meetings are held in Nepali. The Dalit women members are more vulnerable to such politics of silencing and exclusion in all the local government units in this study. The dominant belief that law-making requires 'expertise, knowledge and skill' renders women members incompetent and inexperienced to lead or participate in the process. At best, a few women are included in the legislative committee but only as token appointments to make the committee appear more inclusive. If more women had been elected to the post of ward chairs, then more women representatives would have been involved in the law-making process.

Ways forward

- More in-depth and longitudinal studies are needed to understand the processes and barriers to inclusive and locally relevant legislation-making processes in the local government bodies.
- All provincial governments (as it is their jurisdiction) need to prepare the required acts and directives to guide the inclusive legislation-making processes in the local governments.
- Federal government and development agencies need to support the provincial and local governments in legislation-making.
- Civil society organisations, particularly those working with women and marginalised groups at the community level, can play a cabalistic supportive role in enabling marginalised groups to influence the local legislation-making process to address their collective concerns, rights and aspirations.
- Donors and development agencies should support the local governments and local community organisations in promoting and institutionalising inclusive and locally responsive legislation-making processes to ensure that elected women officials, elected Dalit women and those from the marginalised communities can meaningfully undertake their legislative roles and functions.

1. BACKGROUND OF THE STUDY

The 2015 Constitution of Nepal recognises the *palikas* – municipalities and rural municipalities – as the third tiers of government and has entrusted these local government units with defined executive and legislative power, and limited judicial authority. Under the present federal system, legislation-making is one of the fundamental rights and duties of local governments; the *palikas* have the authority to formulate legislation in their jurisdictions, provided that these local laws do not conflict with federal and provincial laws. Local governments are expected to govern and serve local people by formulating and implementing locally relevant and responsive laws, policies, plans and programmes informed both by the specificities of local contexts and needs, as well as by the principles and directives enshrined in the Constitution.

The new local government units, established through the historic election in 2017, began “functioning from scratch” under many constraints and challenges,¹ including the absence of the necessary laws and directives to become fully functional and exercise the defined executive, legal and judicial power and authority in their jurisdictions. During this initial period of confusion, different federal ministries issued directives and orders related to matters of jurisdiction and governance.² The LGA, which came into effect on 15 October 2017, is the most important law guiding the overall operation of local governments. It details and specifies the power, functions, duties, roles and rights of local government and its elected officials and chief administrative officer, who is appointed by the federal government. According to the Constitution, the village/municipal assembly is the legislative body of local government and can enact laws in its jurisdictions specified by the Constitution (and further detailed by the LGA). The executive may table the bills (draft acts) before the assembly on matters under the jurisdiction of local government for discussion and approval. If the bill is adopted by a majority of then existing members of the assembly, the assembly chair must certify the bill within 15 days. After the bill is verified by the chair, it becomes an act. All laws passed by the assembly must be published in the *Rajpatra*/Official Gazette and one copy of each law must be sent to the provincial and the federal governments. Once an act is passed, *palikas* can make necessary draft regulations, procedures, guidelines and standards as required.³ The LGA also authorises local governments to form different committees, including the ‘legislative committee’, to work on the drafting of bills and to review existing laws for any necessary amendments.

Local government and participatory legislation-making

Local governments provide opportunities for public participation in the decision- and policy-making processes that are more difficult, if not impossible, at the federal and provincial levels of government. As they are smaller in size and locally embedded and can have more frequent and easier interactions with their constituents, local governments can be more receptive to the needs of their respective communities. This leads, in theory, to more responsive and representative policy-making as local government officials can make decisions informed by their

1 See K. Khanal, *State-society covenant at the subnational level*, in D. Thapa (ed.), *The politics of change: Reflections from contemporary Nepal*, Kathmandu: Social Science Baha, Himal Books, 2019, pp.30–53, <https://soscbaha.org/publication/the-politics-of-change-reflections-on-contemporary-nepal>.

2 Democracy Resource Center Nepal (DRCN), *Final report: Findings on functioning of local and provincial governments in Nepal* (January – June, 2018), Nepal: DRCN, 2018, <https://www.democracyresource.org/reports/final-report-findings-on-functioning-of-local-and-provincial-governments-in-nepal/>

3 See LGA, Chapter 15, Article 102, Nepal Law Commission, <http://www.lawcommission.gov.np/np/archives/44921>, accessed 5 October 2019.

knowledge of the community's requirements.⁴ In the context of Nepal, local governments also have the moral and constitutional responsibility to enact and promote the principles of inclusive democracy and social justice through their policies, programmes and service delivery. *The LGA fails to ensure consultation with and participation of the community and stakeholders* – crucial elements of inclusive and participatory democracy during the law-making process in local governments. Local governments must ensure an inclusive and consultative law-making process so that all sections of local communities and marginalised groups can meaningfully participate in voicing their concerns, rights and needs. Similarly, each local government needs to guarantee that any legislation it makes integrates an inclusive (including gender equality and social inclusion) approach to ensure its policies, plans, resource distribution and programmes equally and equitably address the needs and concerns of marginalised communities and genders.

The Constitution specifies that the law-making process in the local government will be as per the provincial laws (Article 226.2). Accordingly, in 2018, the provincial government of Province 5 passed a bill entitled 'Law Prepared to Manage the Process of Law-making in the Village and Municipal Assembly Under Province 5'.⁵ Importantly, this Act also has a provision for community-level consultation at all ward levels. However, as this study's findings show, this provincial law is not implemented at local government level in Province 5.

Broadly, this study is an attempt to address the following research questions through an explorative analysis of the status of the law-making process in selected local government units in Province 2 and Province 5:

- i. What kinds of legislation have local governments formulated in the last two years?
- ii. What law-making processes are practised by local governments? Who are involved and who are excluded in the local law-making processes?
- iii. What specific laws have been formulated to address the needs and concerns of marginalised groups and genders?

The study focuses only on the status of legislation and the law-making process. The other multiple and important roles and functions of local governments, such as service deliveries, development activities, judicial committees and many others, are excluded from the scope of this study.

4 M.J. Parlow, *Progressive policy-making on the local level: Rethinking traditional notions of federalism*, Temple Political & Civil Rights Law Review, Paper 481, 17(2), 2008, pp.371–385, Milwaukee: Marquette University Law School, Faculty Publications, <http://scholarship.law.marquette.edu/facpub/481>

5 According to this Act, the mayor or chair can elect knowledgeable members from the executive committee or other elected members of the local government to form a law-drafting committee. The committee can also invite local residents with knowledge of the law to provide suggestions and feedback.

2. RESEARCH APPROACH

The study is based on desktop reviews and a brief fieldwork in the six local government units in the Tarai region of Province 2 and Province 5. Various research/study reports, media coverage and legislation passed by these six local government units are reviewed and analysed to understand the contexts, problems and issues related to formulations of law and policies in local governments. Dhangadi Mai Municipality, Siraha Municipality and Bateswor Rural Municipality from Province 2, and Kapilvastu Municipality, Suddhodhan Rural Municipality and Lumbini Sanskritik Municipality from Province 5 were purposively selected for this study.

Study areas



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A research team conducted fieldwork during October 2019 by using unstructured methods, including informal discussions and interactions with elected officials, municipality bureaucrats, members of civil society organisations, journalists, schoolteachers, Dalit and Muslim elected women members, and other community members from different wards in Siraha, Dhanusha, Rupandehi and Kapilvastu districts.

This report provides an overview analysis of the processes and practices of law and policy formulations based on the study of the six local governments in the Tarai region only. The field-level study was completed in a shorter period (five days in a province), which limited the detailed and in-depth understanding of the various aspects of legislation-making, including understanding of the implementation of these laws and directives. Hence, the findings of this study may not be generalisable to local governments across Nepal.

3. MAJOR FINDINGS

The status of legislations in local government

In the last two years (2017–2019), the six *palikas* in this study have promulgated a number of legislations and directives, with a focus and priority on basic and essential laws and acts necessary for their regular functioning and providing services to the public. The number of legislations passed by individual local government units during this period ranges from nine to 29; the fewest by Siraha Municipality and the most by Kapilvastu Municipality (see Table 1).

Table 1: Acts, laws and directives passed by local governments in the study

| Local government | Year | | | | | | |
|--|----------------------|---------------------------|----------------------|---------------------------|----------------------|---------------------------|-------|
| | 2017 | | 2018 | | 2019 | | Total |
| | Laws and regulations | Directives and guidelines | Laws and regulations | Directives and guidelines | Laws and regulations | Directives and guidelines | |
| Province 2 | | | | | | | |
| Dhangadi Mai NP, ⁶ Siraha | 8 | 4 | 6 | 3 | 2 | 0 | 23 |
| Siraha NP, ⁷ Siraha | 0 | 0 | 1 | 8 | 0 | 0 | 9 |
| Bateswor GP, ⁸ Dhanusha | 2 | 2 | 11 | 2 | 0 | 0 | 17 |
| Province 5 | | | | | | | |
| Suddhodhan GP, ⁹ Rupandehi | 4 | 2 | 4 | 6 | 0 | 0 | 16 |
| Lumbini Sanskritik NP, ¹⁰ Rupandehi | 0 | 0 | 10 | 0 | 0 | 0 | 10 |
| Kapilvastu GP, ¹¹ Taulihawa | 5 | 5 | 8 | 7 | 4 | 0 | 29 |

NP: Municipality; GP: Rural Municipality

Source: Individual websites of municipalities, and fieldwork 2019

- 6 Dhangadi Municipality, Acts, Laws and Directives, <http://dhangadhaimun.gov.np/en/act-law-directives?page=1>, accessed 1 October 2019
- 7 Siraha Municipality has not updated its website; no information on acts, laws and directives has been uploaded. This information on the lists of the laws and acts was provided during the fieldwork by the Municipality Administrative office. See <http://sirahamun.gov.np/en/act-law-directives>, accessed 1 October 2019.
- 8 Bateswor Rural Municipality, Acts, Laws and Directives, <http://bateswormun.gov.np/act-law-directives>, accessed 1 October 2019
- 9 Suddhodhan Rural Municipality, Acts, Laws and Directives, <http://shuddhodhanmunrupandehi.gov.np/act-law-directives>, accessed 1 October 2019. The above list is based on the information provided by the chief administrative officer of the municipality.
- 10 Lumbini Sanskritik Municipality has not uploaded any information on acts, laws and directives to its website. The information in this table is based on the printed hard copies of the acts passed by the municipality, which were provided by the municipality staff during the fieldwork. See <http://lumbinisanskritikmun.gov.np/ne/act-law-directives>, accessed 1 October 2019.
- 11 Kapilvastu Municipality, Acts, Laws and Directives, <http://kapilvastumun.gov.np/ne>, accessed 1 October 2019

If we consider the overall political and administrative contexts and various barriers and challenges that local governments have faced over the last two years,¹² the number and types of legislation passed by these six *palikas* show that local governments have initiated the process of legislation-making. They have formulated the basic and essential laws and directives required for the immediate functioning and governance of local governments (see Table 2). For example, 11 (i.e. 60%) of the 18 different acts and laws are related to conducting municipal assembly meetings, administrative management, regulations for finance and taxation, and procedures of the judicial committee.

Table 2: Types of acts, laws and directives passed during 2017–2018 by the six local governments

| Acts, laws and regulations | |
|---------------------------------------|---|
| 1 | Related to Tax & Fees (Financial Act) Ba, Dh, Ka, LS |
| 2 | Local Fund Distribution Act Ba, Dh, Ka, LS |
| 3 | Act to regulate the Administrative Procedure and Management Ba, Dh, Ka, LS, Su |
| 4 | Judicial Committee (related to procedure) Act Ba, Dh, Ka, LS, Su |
| 5 | Disaster Risk Reduction and Management Act Ba, Dh, Ka, LS |
| 6 | Cooperative Act Ba, Dh, Ka, LS, Si, Su |
| 7 | Organization Registration Act Ba, Dh, Ka |
| 8 | Act to Promote Agriculture-based Entrepreneurship Ba, Dh, Ka, LS |
| 9 | Law to Regulate Financial Procedure and Management Ba, Dh, Ka, LS |
| 10 | Law related to Codes of Conduct of Elected Representatives Dh, Ka, Si, Su |
| 11 | Mines and Mineral Act Dh |
| 12 | Regulation related to the verification of decision or order and charter of municipality Ka, Su |
| 13 | Regulation related to divisions of work and roles in municipality/rural municipality Ba, Ka, Su |
| 14 | Regulation related to local Education/Education Act Ba, Ka, LS, Su |
| 15 | Acts related to tax and non-tax revenue Ka |
| 16 | Acts related to basic standards for building/house construction Ba, Su |
| 17 | Codes of conduct for staff Si |
| 18 | Act related to operational procedure for 'Social Security of Orphan and Vulnerable Children' |
| Directives, procedures and guidelines | |
| 1 | Procedure for Municipality/Rural Municipality Assembly Ba, Dh, Ka, Su |
| 2 | Directives for Licence of 'Gha'/'D' group Construction Companies Ba, Dh, Ka, Su |
| 3 | Procedure for Management of Contractual Staff Dh, Si |
| 4 | Procedure for Distribution of Identification Card to Persons With Disabilities Dh, Su |
| 5 | Procedure related to Mediation (related to judicial committee) Dh |
| 6 | Procedure related to Formation and Regulation of User's Group Committee Ba, Dh, Ka, Su |

12 DRCN, 2018, Op. cit.

| | | |
|----|--|------------|
| 7 | Procedure related to Municipality Meeting | Ba, Ka, Su |
| 8 | Procedure related to management of Integrated Tax System | Ka |
| 9 | Procedure related to management of thatched roof | Ka |
| 10 | Procedure related to management of welfare health fund | Ka |
| 11 | Procedure related to management and regulation of FM radio | Ka |
| 12 | Directives for monitoring of local market | Ka |
| 13 | Procedure for Formation of Youth Club and Management of Model Youth Member of Parliament | Ka |
| 14 | Procedure related to formation of Farmers' Group | Ka |
| 15 | Procedure related to utilisation of local Disaster Fund | Ka |
| 16 | Procedure related to publication in <i>Rajpatra</i> /Official Gazette | Ka, Su |
| 17 | Procedure related to the management of property/wealth tax | Su |
| 18 | Procedure related to operation and management of the 'Young girl insurance' | Si |
| 19 | Directives related to management and operation of backhoe loader | Si |
| 20 | Directives related to management and operation of Physical Infrastructure Maintenance Fund | Si |
| 21 | Procedure related to approval of housing design | Si |
| 22 | Procedure related to operation and management of Women and Children Development Fund | Si |
| 23 | Procedure related to planning and implementation, completion and approval of expenses | Si |
| 24 | Land Use Policy | Si |
| 25 | Procedure for Approval of Survey Design and Drain DPR | Si |

Ba: Bateswor Rural Municipality (2); **Dh:** Dhangadi Mai Municipality (2); **Ka:** Kapilvastu Municipality (5); **LS:** Lumbini Sanskritik Municipality (5); **Si:** Siraha Municipality (2); and **Su:** Suddhodhan Rural Municipality (5)

Source: Individual websites of these local governments, and fieldwork 2019. See also Table 1

Only four acts and laws are related to the specific jurisdiction of local governance related to education, agriculture, cooperative, and disaster risk reduction and management (Table 2). Hence, the majority of the legislations are aimed more at enabling these local government units to undertake their administrative and financial functions and execute their annual plans and programmes.

As can be seen in Table 1, not all local government units are equally active and engaged in the law-making process. For example, in Province 2, Siraha Municipality lags far behind Dhangadi Mai Municipality and Bateswor Rural Municipality in terms of legislation-making. The mayor and administrative staff of Siraha Municipality pointed out that frequent changes and the long absence of the chief administrative officer, who is appointed by the federal government, have delayed the drafting of the required legislations. This explanation also underlines the important and crucial role of the chief administrative officer of the local government in drafting and facilitating the formulation of new legislation.

The 2015 Constitution of Nepal clearly specifies that local governments cannot make any laws that contradict the federal and provincial laws. Federal and provincial governments have yet to formulate required laws and acts on many areas – such as education, health, mines and minerals, and so on – which also fall under the jurisdictions

of local governments. The delay in the formulation of federal and provincial laws discourages local governments from coming up with their own local laws. Many local government representatives pointed out that they are less motivated to make new local laws in the absence of the federal and provincial laws related to the areas of the shared jurisdictions of all the three tiers of governments. For example, the mayor and staff of Siraha Municipality stated:

“We (the elected representatives) spent the two years learning about our roles, responsibilities and other things. When we were elected, there were no new laws and guidelines for us, and there were so many barriers and challenges to operate the municipality and execute its duties and functions. When our bicycle tube gets punctured, we patch the tube and keep it running. This is exactly how we are running the municipality at present under all these barriers and challenges.”

However, others – ward chairs, civil society members and activists – who spoke with the research team cited other factors that have impacted the functioning of the municipality and the law-making process, such as the intense fractional party-based politics; lack of effective leadership and teamwork; presence of elected representatives with inadequate education and other skills needed for law-making; and frequent absences of the deputy mayor. On the other hand, elected members as well as other research participants in Dhangadi Mai and Bateswor Municipalities attributed good leadership; effective coordination and cooperative relations among the elected members and between elected members and administrative staff (bureaucrats); prior experience and educational backgrounds of elected members; and a more amicable partnership between local government, civil society organisations and community leaders for active engagements in legislation-making. (See Table 3.)

Table 3: Factors enabling and delaying the legislation-making process in *palikas*

| Factors enabling legislation-making process in <i>palikas</i> | Factors delaying legislation-making process in <i>palikas</i> |
|---|--|
| <ul style="list-style-type: none"> • Good leadership • Effective coordination and cooperation among various actors • Better working relations between elected officials and bureaucrats/staff • Presence of experienced and skilled elected officials • Amicable partnership between local government, civil society and community leaders | <ul style="list-style-type: none"> • Lack of effective teamwork • Fractional politics between elected officials • Lack of coordination and cooperation between elected officials and staff • Inadequate experience, knowledge and skill among the elected officials • Absence of chief administrative officer • Conflict between the mayor/chair and other elected officials • Lack of interest among the elected officials in legislation-making • Lack of civil society engagement in/for legislation-making process |

Source: Based on field-level interactions

In Province 5, Lumbini Sanskritik Municipality passed 10 legislations *in a single day* (assembly) in 2018,¹³ while Kapilvastu Municipality and Suddhodhan Rural Municipality have periodically passed various acts and directives over the last two years. The fact that 10 legislations were passed in a single day also indicates the speedy or 'fast track' process of law-making that involves no discussions on various aspects of the proposed individual legislations. The 2018 DRCN report also observes that "Local units mostly passed legislation based on the model laws prepared by MoFAGA without any discussion even among the assembly members".¹⁴ Interestingly, a more urban and resourceful municipality such as Lumbini Sanskritik was found to be less engaged and regular in its law-making than a rural *palika* such as Suddhodhan, which suggests that *whether the local government is a municipality or rural municipality has no bearing on the status of legislation-making*. The factors that seem to matter more in making local governments engage in legislation-making include the overall leadership quality of the chair or mayor in undertaking the legislative roles of a local government; the existing relations, including power relations, among elected representatives, and between staff and elected representatives; and the level of cultural capacity (knowledge, skill, experiences, access to information, and so on) of elected representatives.

The case of Kapilvastu Municipality is interesting here. In its fourth assembly held in 2018, the municipality approved the formation of a legislative committee "to prepare necessary legislation, procedures and guidelines to implement the executive rights and authorities under its jurisdictions granted by the Constitution and the Local Government Operation Act, 2017".¹⁵ It further decided to allocate the budget to use 'experts' for study, research and consultation for preparing the required legislation. This decision shows that (a) the municipality has prioritised the formulation of policies and laws for its effective governance; and (b) it endorses the idea that law-making requires special expertise that the municipality lacks. This decision also explains why the municipality has the highest number of legislations among the six local government units.

“People want *bikas* from us”: Legislation-making receives lesser priority

Our field-level interactions in the two Provinces reveal that elected representatives, with a few exceptions, seemed unaware of how and what kinds of laws *palikas* have passed in the last two years. These elected officials also seemed less interested in their roles as legislatures of the local government. It needs to be underlined here that *this lack of understanding or interest of local*

elected representatives in law-making should not be attributed merely to their lack of formal education or lower level of education qualifications – a dominant explanation that spreads across all levels of discussion on local government. The problem is more structural and originates from the way local government is popularly projected and imagined, and how it functions on the ground. There exists

“Laws and policies are important. Making laws and policies should be the job of local government. Who should know it better than me? I was myself a lawyer by profession before. But this is [making laws and policies] not what people expect us to do. They all want us to deliver bikas and facilities like water pumps.”

The chair of Bateswor Rural Municipality

a very powerful and dominant belief that the principal function of a local government is to deliver development or '*bikas dine or garne*', i.e. development of roads, irrigation and other infrastructure, such that the legislative role of local government is either undermined or receives lesser significance. When asked what their local

13 One municipality member of staff in Lumbini Sanskritik, M, who claimed to have worked on the drafting of these legislations, said that the elected representatives were not interested in making new legislation. The municipality staff used the model laws circulated by the MoFAGA and drafted these 10 legislations in consultation with some elected representatives. The mayor, deputy mayor and chief administrative officer of the municipality were out of the district during the fieldwork period.

14 DRCN, 2018, Op. cit., p.16

15 Kapilvastu Municipality, Annual Policies and Plans, 2018, <http://kapilvastumun.gov.np/ne>, accessed 1 October 2019

governments have done in the last two years, all elected representatives consulted for this study first emphasised the development works that had been carried out, such as road buildings and so on. None of them mentioned what laws and policies they had passed. One ward chair from Bateswor Rural Municipality succinctly expressed why elected officials give lower priority to legislation-making:

“We, local representatives, are also legislatures. We have important roles and responsibilities to make local laws and policies needed for local contexts. However, we are less interested in exercising this role. Also, the chunk of our time is taken up for doing the sifaris, i.e. signing documents and applications of people for various purposes.”

Similarly, when local people were asked what their local governments have done in the last two years, they would either say that they have done nothing or mention only the kinds of development works that the municipalities/ward offices have carried out.¹⁶ In general, local people also do not relate to local government by emphasising its legislative functions. They seem more concerned with and engaged in pressuring local representatives to ‘bring bikas’ for them and their communities. *Bikas*, the infrastructure development in particular, is the realpolitik for local governments and its citizens. For elected representatives, their primary focus is on the distribution of budget; they compete in the fields of power politics for assessing, maximising and manipulating the local government budget for their own ward, settlement and communities. Delivery of tangible development, in the form of infrastructure, also ensures their chance of being re-elected in the next election. Hence, legislation and policy-making are given lower priority and importance in local government units.

Another factor that discourages or slows down the process of law and policy formulations is a general belief that law-making requires distinct knowledge, skill and understanding of the process. In other words, only experts and knowledgeable individuals can prepare laws in an accepted form and structure. Such a perception of the law and law-making process both dissuades elected representatives from engaging as well as *provides* excuses for their not participating in the law-making process, as many of them do not possess the required competency and knowledge (cultural capital). Despite these challenges, local governments are making efforts to make new laws and regulations by relying on a few elected officials, and even by hiring outside consultants to prepare the required legislation.

“Our janapatinidhi [representatives] are barely literate. They even can’t read Nepali properly. How can they make new legislations when they themselves don’t know about laws and regulations?”

A local Dalit activist, Kapilvastu

¹⁶ People’s expectation of development works from local governments is not specific to our study sites. The Nepal National Survey of Governance conducted in 2017/2018 across all seven Provinces shows that 78% of the survey participants reported that ‘road construction’ should be the top priority of provincial and local governments for the next five years. See Nepal Administrative Staff College (NASC), The Nepal National Survey of Governance 2017/2018, Figure 5.1.7, Lalitpur, Nepal: NASC, 2018, p.72, <http://www.nasc.org.np/content/nepal-national-governance-survey-201718>.

4. PROCESS OF LAW-MAKING: BY FEW, AND ‘FAST AND EASY’ APPROACH

“The process of drafting laws is itself challenging and a subject of profound responsibility.”

Nepal Law Commission, 2009, *An Overview of Law-making* (Kanon Tarjuma Digidarshan)

“By nature, the law-making process is expensive, tiresome and time-consuming” in the Preface to Model Laws Prepared by Ministry for the Local Level 2017.

Then Secretary, Ministry of Federal Affairs and Local Development

Our field-level findings suggest that only a few elected representatives and staff are involved in the law-making process in the six local governments in this study. This participation of few elected officials and staff is to be expected as the law-making process is considered to be very ‘time-consuming, tiresome’ and a ‘technical’ process requiring certain knowledge, for example, that of law, and particular skill such as the ability to use and write in certain legal templates and format in *Nepali* (see the epigraphs above). Many elected officials, particularly those belonging to the marginalised communities, do not possess such knowledge, educational background and necessary skill, and consequently may be seen as ‘incompetent’. They also face a language barrier if meetings and discussions on draft bills *only take place in the Nepali language*.¹⁷

All the six *palikas* have formed a legislative committee comprising of a few ‘experienced’ and ‘knowledgeable’ elected members, ranging from four to seven, to draft the required bills. The draft bill is first submitted to the executive before it is tabled at the assembly for discussion and approval. When asked about the existing law-making process, the mayor/chair, the chief administrative officer and the few other elected members who have participated in the drafting of new bills were quick to refer to the ‘official’ law-making process – the legislative committee works to draft bills and coordinates with other committees, for example, the education committee. It also becomes evident from the Provincial Act of Province 5¹⁸ and media reports that it is common practice in local governments to assign the responsibility of drafting bills to a few ‘knowledgeable’ elected representatives.¹⁹ Hence, only a few members are involved in the drafting of the bills.

Members of the legislative committees in the six local government units are *predominantly men*, including a few Muslim and Dalit representatives. One or two women representatives are included only as ‘members’, while the positions of coordinator and secretary of the committees are held by the male members. Thus, the formal

17 For many Tarai communities, Nepali is not their mother tongue, and they do not use it for everyday communication. All the laws and legal documents, including the published laws of local governments, are in the Nepali language. Three elected women members told us that they cannot participate in discussions in the municipality when discussions only take place in Nepali, as they cannot read and understand the published legal documents.

18 See footnote 5 above.

19 On 30 January 2018, Himal Khabar reported that “*Butwal Municipality has assigned the work of drafting new bills to legislative committee and a group of experts*”. See Tilolatma Municipality of Rupandehi and Aatbasikot Municipality of Rukum have begun exercising their rights, Himal Khabar, 30 January 2018, <https://www.himalkhabar.com/news/6602>, accessed 1 October 2019.

process adopted and structures set by the local governments for drafting new laws are exclusive and endorse the idea that only 'knowledgeable' individuals can draft new bills. However, the majority of elected representatives, including members of the legislative committee, and even those with a better educational background, expressed no knowledge about how the law-making process works in local government or have no knowledge about what specific laws they have passed in the last two years. This finding suggests that elected representatives are less interested and motivated in their legislative roles. The actual law-making process is too exclusive (controlled by a few) and lacks wider consultation with and participation of local citizens for feedback and suggestions.

In some cases, a few elected members (ward chairs or ward members) had taken initiatives to draft the bills. In Bateswor, one ward chair, who is also a member of the education committee, felt that his rural municipality urgently needed the Education Act to intervene in the public schools in his wards. He explained:

"I used to be a teacher before I became the ward chair. My ward has some serious problems with public schools. As an ex-teacher, I have a better understanding of problems as well as their solutions. Intervening in the management of schools and school property (lands, ponds, and so on) and transferring of teachers from one school to another is a challenging task. There will be many political pressures from all corners for sure. I knew it very well. But we did not have a local law on education that will support my interventions. Hence, I worked to draft the Education Act which was passed by the assembly. Now, backed by this law, I am more confident to implement the required interventions."

Similarly, another ward chair in Suddhodhan prepared the local Education Act so that local representatives can form 'school management committees', which have remained inactive or discontinued for many years. In both cases, the ward chairs worked on their own, without much consultation with or participation of others. Nevertheless, these cases show that elected representatives can become active in drafting specific legislation when they need it to exercise their executive power over jurisdictions guaranteed by the laws.

'Fast and easy' approach

A quick analysis of a legislation, for example, the Education Act passed by four of the local government units in this study, shows that some of these legislations are an exact copy of the 'model law' prepared and circulated by the MoFAGA to assist local governments in the law-making process. The absence of new federal laws on education, health and other areas under the jurisdictions of local governments also makes these model laws relevant and useful for local government representatives. A chief administrative officer in one municipality in Province 5 believes that these model laws help to maintain 'shared rule' among the local governments:

"There are 753 municipalities and rural municipalities, but we are one nation. Local governments need to have uniformity in their legislations. The model laws prepared by the Ministry help the local governments to maintain uniformity in legislation."

However, instead of taking these model laws as guidelines before drawing on the locally specific needs and contexts, elected officials and staff simply 'copy and paste' the specific model law, add the names of their municipality/rural municipality and get it approved as the new local law. The Education Act of Bateswor Rural Municipality and Kapilvastu Municipality read almost the same, a replica of the model law. These two local laws on education do maintain uniformity, but these two *palikas* are located in two different regions with specific local histories and distinct social-cultural and economic dynamics, and this dominant mode of legislation-making is likely to miss out the specific local contexts. For example, there is a significant Dalit population with a much

lower educational status in Bateswor Rural Municipality. In our conversation, both Dalit activists and elected representatives expressed their concerns that there is a critical need to focus on improving the educational status of the Dalit communities. However, the Education Act passed by Bateswor Rural Municipality lacks any specific provisions for the Dalits. Similarly, the Education Act passed by Kapilvastu Municipality does not have any particular provision on Madrasa education for the Muslims, the largest population group in the municipality. One reason for the omission of such locally specific needs could be the uncritical acceptance and copying of the model laws, which lack any specific provisions for Dalit and Muslim education. Therefore, when local governments simply (and blindly) adopt and copy the specific model law, the local legislations are likely to miss the gravity of the specific problems and issues of their local constituencies. In addition, as evidenced by the Education Acts of the four *palikas*, the 'fast and easy' approach is more likely to undermine inclusive legislation-making processes, thereby excluding the concerns and needs of the marginalised communities.

Non-consultative and non-participatory process

The LGA categorically specifies that each municipality and rural municipality should ensure the maximum participation of local citizens, marginalised communities and other stakeholders in the planning and implementation of development plans and programmes.²⁰ However, the LGA does not have similar provisions to ensure wider consultation and participation in the law-making process, and the existing practice in the six local governments is generally non-consultative, with only a few elected representatives, staff and others involved. Moreover, the existing dominant practice of law-making, i.e. the quick and easy process of copying the model laws into new local laws, does not require such a consultative process.

Some elected representatives and chief administrative officers stated that they consulted with the local business community, entrepreneurs and other stakeholders during the drafting of the bill on local taxes. Similarly, they claimed to have consulted local teachers, educationists and other knowledgeable persons for the education bill. However, the civil society members, journalists, local community members from the marginalised communities, women activists and teachers interviewed for this study said that they had never been consulted or invited by their local government units for discussions on proposed draft bills. None of the six local government units has initiated community-level consultation for feedback and suggestions in the law-making process.

The Constitution specifies that the law-making process in local governments will be as per the provincial laws.²¹ Thus, it is the responsibility of the provincial government to make the required law and instruct local governments to implement it. The Act passed by Province 5 to guide and manage the law-making process in local government stipulates that "the legislative committee can collect suggestions and feedback on the draft bill from *citizens from each ward*". While it does not make the consultative process mandatory, this is an important provision that envisions a participatory and consultative law-making process in each municipality and village municipality. Elected officials in Province 5 have not heard about this provincial act, which suggests that there is a lack of communication and coordination between the Province and the local governments in delineating the law-making process.

20 See LGA, Chapter 6, Article 24, Sub-clause 5.

21 The Constitution of Nepal, 2015, Part 18, Article 226(2), <http://www.lawcommission.gov.np/en/archives/868>

Bureaucrats as law-making actors

The chief administrative officer and other employees in the *palikas* are the key players in the law-making process, even when it does not fall under their professional jurisdictions. The general lack of interest and the perceived or actual incompetence of elected representatives also necessitate the involvement of government employees in the law-making process. That the mayor of Siraha Municipality attributed the delay in legislation-making to the long absence and frequent changes of the chief administrative officer also highlights the crucial role of these bureaucrats in the process. “The chief administrative officer drafts the bills, and the mayor proposes the bills to the assembly,” one deputy mayor in Siraha said when asked how the new laws are made in the municipality. Some administrative officers cautiously told us that the law-making is not their jurisdiction, and they only provide support or feedback when they are asked by the mayor and other members of the legislative committee. However, other administrative officers were more open to admitting that they are the ones who draft the bills because, they claim, the elected officials do not possess the required competency for this task. One administrative officer in Province 2 openly shared:

“Even in a rural municipality, multiple layers of entities – other than federal, provincial governments and their ministries – work to influence its governance and policies. For example, many bilateral, international agencies and other big donors have their different programmes and policies which come to us [local government] through various ministries. And we also have to respond to these directives even when these programmes and policies may not be relevant in the local contexts.”

A government employee, Rural Municipality, Province 5

“Representatives have no ideas about the policy and system. I am even writing the meeting minutes which should be their responsibility. I even prepared those laws, which are not included in the model laws, by using available sources on the internet. Representatives want to do things (for their constituency) without following due procedures and laws. They always say: ‘milayera laau’ (make it happen by adjusting here and there) but there is no such thing as ‘milayera laaune’ in the law. I have been transferred many times in my career, but I don’t go beyond the law and do ‘milayera laaune’ thing. Representatives go to Kathmandu to select administrators who abide by what they say.”

In his reflections, the administrative officer points out that elected representatives are more likely not to follow rules and regulations; care less for the due procedure of governance and are more focused on results or deliveries. He is less optimistic that representatives will draft bills on their own. In an informal conversation, another government officer in Province 5 was harsher and more scathing about the perceived incompetency of local elected representatives:

“The majority of the local elected representatives are illiterate (gaunwaar). How can they make laws and policies in the municipality? They are only concerned with using and distributing budgets for their constituencies and for the next election.”

Government bureaucrats have or are expected to have greater knowledge and understanding of laws, and how these laws are applied in the day-to-day functions of the state. In addition, they work closely with the executive body of the local government to ensure that the decisions and official actions of elected representatives and others follow due legal process. Thus, it is more convenient for the mayor and others to ask government employees to draft the bills. The fractional politics among the elected members, conflicts between the mayor and the deputy mayor, the ward chair and the mayor/chair, and differences in party affiliation can also create barriers to bringing a group of elected members together for drafting bills. In such a situation, government employees play more active roles in the law-making process. However, the total dependency on government employees for the preparation of legislation can make the law-making process even more bureaucratic, technical and non-participatory.

Civil societies, local lobbyists and law-making process

Multiple stakeholders and actors other than the elected representatives and local government staff may be involved in the law-making process. The fieldwork period for this study did not permit us to delve into the 'backstage' process of law-making. Individuals, groups and organisations with various interests may influence the making of particular laws in local government. NGOs working in the field of child rights may have worked formally and informally to introduce the concept of a 'child-friendly environment' in local government policies. Similarly, NGOs may have worked formally and informally to incorporate programmes for sexual minorities in the annual plans and programmes in Kapilvastu. However, civil societies and Dalit rights activists seem less active in pressuring local government units or lobbying elected representatives to draft Dalit-focused legislation in the municipality and local municipality.

In Dhanusha, a group of local influential youths, who have begun commercial agriculture, seem to have lobbied the local government to formulate the Act to Promote Agriculture-based Entrepreneurship. As all these legislations will impact marginalised groups in one way or another, there is a need to understand how various actors, lobbyists and organisations work and influence the law-making process in local governments.

Lack of dissemination

Local government units have not focused on the dissemination of the various legislations, guidelines and procedures that they have passed in the last two years. Once a bill is passed, the local government unit is required to publish it in the *Rajpatra*/Official Gazette. Three local government units have uploaded their laws, regulations, procedures and guidelines to their website. Kapilvastu and Dhangadi Mai Municipalities are more active in updating their websites. However, the local residents at large, and even local representatives, seem unaware of the various acts and laws passed by their local governments. Ward offices do not have public information about these legislations. *All these legislations are published only in the Nepali language* – which is not read and understood by many people in the Tarai. Many elected representatives also do not understand Nepali. There is a critical need for wider and more effective dissemination of these local laws.

5. LOCAL GOVERNMENT, LAW-MAKING AND MARGINALISED GROUPS

Rhetoric vs reality: No legislations for marginalised groups

In the official discourses circulated in the annual plans, programmes and other similar documents (e.g. municipality profile), all local government units have expressed commitments to promote ‘gender equality and social inclusion’. Dhangadi Mai Municipality (Province 2) in Siraha, unlike many local government units which group together all marginalised and other minority groups, including sexual minorities, disabled people and even children, under one single classification, has clearly categorised each marginalised and other targeted group – women, children, senior citizens, Dalits, Adivasi Janajati and disabled people – in its annual policies and plans for the Nepali year 2076/2077 (2019/2020) (see Table 4). The municipality has specified its policies and programmes for each of these groups. Of the six local government units, Dhangadi Mai Municipality seems more ‘progressive’ in terms of delineating what constitutes a marginalised group and specifying policies and programmes for them. However, it does not include Muslims in the category of marginalised groups even when there is a significant Muslim population in some wards of the municipality. In addition, the municipality has not passed any acts and regulations to enable and codify these policies into legislation. More critically, the individual acts and regulations passed by this municipality, for example, the Act to Promote Agriculture-based Entrepreneurship and Cooperative Act, do not integrate the very ‘gender equality and social inclusive approach’ that the municipality claims to promote for marginalised groups. Such disjuncture between legislation and annual policies and programmes raises a critical question: do local governments implement and practise what they set out in policy papers? It is beyond the scope of this study to assess whether these policies and plans have been implemented through adequate budget allocations. However, our field-level interactions with Dalit and Muslim communities, including the Dalit elected representatives (women), suggest that these marginalised communities have not yet experienced the local government’s commitment to addressing the plights and rights of their communities.²²

Table 4: Dhangadi Mai Municipality: Policies and programmes for 2076/2077 (Nepali year)

| Marginalised groups | Policies and programmes |
|---------------------|--|
| Women | Promote fundamental rights of development of women Make the municipality free from ‘violence against women’ Campaign against harmful practices (GBV, child marriage, child labour, and so on) Protection and welfare for single women |

²² This is not to suggest that the municipality has not done anything for the Dalits and Muslims; it has implemented some programmes and development activities for these groups. However, the community members feel that these programmes are too sporadic and do not address their core issues of livelihood, landlessness, citizenship-less, discrimination and lack of other basic entitlements.

| | |
|------------------|---|
| Dalits | <p>Strict implementation of law against caste discrimination</p> <p>Promote and modernise in order to transform traditional occupations of Dalits into industrial-based production</p> <p>Implement special programmes to prevent untouchability and caste discrimination inside the municipality areas</p> <p>Model settlement and housing programme in the most deprived Dalit areas</p> <p>Mandatory provisions of basic services, such as roads, electricity and drinking water</p> |
| Adivasi Janajati | <p>Protect and promote indigenous cultures, languages and costumes through special programmes</p> <p>Initiate efforts to establish Ethnic Museum</p> <p>Provide separate training and orientation to prepare indigenous youths to sit the Civil Service Commission Exam</p> <p>Attention will be given towards securing Indigenous Peoples' Rights mentioned in the climate change and ILO 196</p> <p>Celebrate World Indigenous Day as an event</p> |

Source: *Policies and Programme, 2019/2020, Dhangadi Mai Nagarpalika*

Other groups included under this category include children, senior citizens and disabled people

No local government unit in this study has prepared or passed any legislation focused on marginalised and minority groups. Similarly, the various legislations, particularly those related to education, agriculture, social services and tax, passed by these municipalities and rural municipalities do not employ an inclusive approach to include and address the rights, issues and concerns of marginalised groups. As discussed above, many local governments have prepared the required legislations simply by copying the model laws prepared by the MoFAGA. *These model laws seriously lack a gender equality and social inclusion (GESI) approach* and do not integrate the fundamental principle of inclusive governance as it has been emphasised in the Constitution and the LGA. Thus, when the local government prepares new legislation out of these model laws, it is very likely that the local legislation will also miss the GESI approach. For example, a ward chair from Bateswor Rural Municipality, who had led the preparation of the Education Act, admitted that he did not focus on the special needs of the Dalits while drafting this bill because he had relied on the model laws. More than 40% of the local population in his ward are Madhesi Dalits who have one of the lowest educational statuses in the municipality, yet the local Education Act has no special provisions for the Dalit and other marginalised communities. Admitting this critical omission, the ward chair told us:

“Yes, I admit that I did not focus on the Dalits while drafting the education bill. This is a missed opportunity. At that time, there was a rush to make the Education Act. And, not to lie, we did copy much from the model laws as it was easy and convenient.”

At best, local governments consider marginalised groups, such as Dalits, Janajati, Muslims, women and others, to be the ‘target groups’ for the budget under ‘social development’. Hence, all local government units do mention marginalised groups in their annual plans and programmes but more as a token gesture to include these marginalised communities as ‘target groups’ for some budget allocation. When such plans and programmes are not enabled by specific legislation and regulations, distribution of the budget for all marginalised groups in a just and equitable manner cannot be ensured. For instance, The Local Resource Mobilization and Management Procedure, 2013 issued by the then Ministry of Federal Affairs and Local Development instructed the existing local governments to allocate at least 35% of their programme budget for the development of marginalised groups.

However, no such provisions to ensure a fixed amount of budget for marginalised groups (target groups) exist in the present LGA.

All the research participants from the marginalised communities unanimously pointed out that, without such legislative provision for mandatory allocation of the budget (at least 35%) for their communities, local governments have been spending only a very small amount of budget for marginalised groups. At present, local governments are not promoting inclusive legislations and inclusive process of legislation-making – which are fundamental for institutionalising inclusive democracy and federalism in Nepal.

Male domination and politics of silencing and exclusion

A complex structure of hierarchy and power dynamics work and shape the relations between elected representatives in local governments. How these power relations work in the everyday functioning and governance of municipalities and rural municipalities needs more in-depth study and analysis than is within the scope of this study. Nevertheless, it is evident that the major positions of power, the mayor/chair of the municipality/rural municipality and the ward chair, are predominantly controlled by men. As a result of this androcentric domination, and hence control of executive power, men in the positions of power tend to mute the voices of the elected women representatives and exclude them from the decision-making process in local governments. The majority of elected women representatives, including one deputy mayor, interviewed for this study consistently and vocally stated that their voices are either ignored or not taken seriously by the male members during the municipality meetings and in other settings. Women members of the municipality and village executive also expressed similar experiences of the politics of silencing and exclusion.²³

“Two months ago, I met three Dalit women representatives who were returning back from a meeting in the rural municipality office. I asked them what was discussed and decided in the meeting. They told me, ‘We don’t know what things were being discussed; they were speaking in Nepali. We understood only when some spoke in Awadi.’”

Kusum, a Dalit woman activist, Suddhodhan Rural Municipality

“For us, the earlier local government system was better. Then, we were, at least, entitled to receive certain percentage of the budget for sure. Now we don’t know how much budget has been allocated for us, and then there is no guarantee that it will be used for our community unless we have ‘connection’ and political alliance with the Pradhan [the chair of local government] and the ward chair.”

A Dalit woman activist, Siraha

²³ These experiences of women representatives should be understood in the contexts of how decisions are made and who makes these decisions in the local governments. Many of them, despite such challenges, do play influential roles at the ward level. Having become more confident and knowledgeable about how power relations work, some women ward members expressed their determination to contest the next election for the post of ward chair.

Ward members have no rights: The Constitution has betrayed us!

When we went to meet the deputy chair of one municipality in Province 5 at her office, a woman in her early thirties was sitting next to the deputy mayor. She was listening to our ongoing conversation with the deputy chair who was sharing her story of struggles in the municipality as she had no prior experience of politics. “I was simply a home maker while my husband looks after the family business. I even didn’t speak Nepali,” the deputy mayor told us and narrated how she faced criticism and exclusions from the mayor and other male members because they thought her to be less competent. “But I’m an educated person with a master’s degree in psychology from India,” she told us in English. As our conversation progressed, we wanted to know whether other women members are also subjected to domination and exclusion like her. The deputy mayor then introduced us to the woman who was sitting next to her and listening to our conversation, which switched between Awadi, Hindi, Nepali and even English. The woman is a ward member and had come to the municipality to meet the mayor with a formal complaint, an application, about the ward chair. She shared how the ward chair simply chooses to decide about the budget and other issues on his own. According to her, she is not even invited to the ward meeting. In a very low tone, she said:

“Sir, my heart hurts so much today. I gave one application letter to the mayor regarding the behaviours of the ward chair. The mayor put the application on the table and didn’t even bother to read it. Then, he left the office. And our ward chair was there too. When the mayor left, he tore apart the letter in front of me. It was such a humiliating experience. The mayor, the ward chair and the ward members – we all are elected under the same Constitution and the law. But the Constitution only talks about the roles, authority and power of the mayor and ward chair. It does not give us [ward members] any authority and power The Constitution has cheated us.”

This vignette from the field can help us understand the kinds of challenges elected women members face in the existing hierarchy of structure and power relations in the local government. Moreover, by way of blaming the Constitution, the woman ward member cogently points out how the Constitution and the LGA stipulate limited roles and authorities of ward members. The deputy mayor and the women ward members, because of their experiences of humiliations, struggles and resistance, have now become more critical of how male domination and positions of power work to exclude and marginalise women members. They also realised how the Constitution and the LGA focus more on the positions of power. One of the stipulated duties of a ward member is “to carry out tasks assigned by the ward chair”. In another meeting, a Dalit activist also pointed out:

“The elected Dalit woman member has no specific rights and authority in the ward. She is being used as a peon to delivery messages and letters to ward people.”

Muslim and women representatives from Madhesi communities, who are not native Nepali speakers, are obliged to remain quiet because of linguistic barriers whenever executive and assembly meetings are held in Nepali. A few Muslim women ward members who are elected in the ward committee of predominantly Muslim settlements (Province 2 as well as in Province 5) expressed more confidence and a sense of empowerment at the ward committee where the ethos of community solidarity and support still work. However, like other women members, these Muslim women ward members also feel and have experienced marginalisation and exclusion in the decision-making process in the municipality executive.

The Dalit women members elected under the ‘reservation position of ward member’ are more vulnerable to the politics of silencing and exclusion in the decision-making processes in all the local government units in this study. The position of a ward member, as discussed above, has a more limited role and authority than a ward chair. Moreover, the position of ‘Dalit women ward members’ is further generally looked down upon by those in positions of power within the organisational structure of local government. For these Dalit women members, local government and its offices are public spaces dominated by high-caste and non-Dalit men, many of whom come from the locally dominant groups and families. Many of these Dalit women, thanks to the constitutional provision

of reservation, are the first generation of politicians in their entire community; they come from an economically weaker class and many of their families have had or continue to have 'patron-client' relations with the families of ward chair and other 'high-caste' members of local government. Furthermore, they lag behind other non-Dalit women and male members in terms of cultural capital (education, previous experience of working in an NGO or political party, information, the dominant linguistic and cultural repertoires, and other skills) and social capital (connections and access to political parties, state power, market and NGOs; local support, network and so on). All these structural conditions of social, political and economic relations reinforce the stronghold of caste, gender and class hierarchies in local government, making the Dalit women members more vulnerable to the politics of silencing, marginalisation and exclusion from the decision-making process.

"They, the ward chair and Pradhan [the mayor/the chair], don't listen to us and our concerns. They look down on us as najanne (inexperienced/ignorant) and poor," many of the Madhesi Dalit women members said. Many residents (including the Dalit) and even other local elected members ridicule their ward Dalit women members for their perceived lack of competency and powerlessness. Stereotyped comments such as "they [Dalit women members] don't know how to read and write, and how to speak. They only sign the meeting minute" are widespread across the two Provinces. Moreover, all the educated and politically active Dalit people working in NGOs that we spoke to for this study think that political parties purposively selected "less experienced" and "illiterate" Dalit women for the reserved position of ward members so that these elected women would remain loyal and obedient to the men in positions of power. In Siraha, a Dalit woman from the Musahar community with BA-level education said:

"The political parties did not want to elect an educated and knowledgeable woman like me. They know that I always speak out against injustice and bad things. They don't want a woman like me in the ward committee."

The elected Dalit women, on the other hand, have their own stories of struggles, exclusion, humiliation and resistance inside the power structure of local governments. Contrary to the widespread representations of these ward members as 'najaane' (inexperienced/ignorant), many of these Dalit women we met during this study are very active and engaged representatives. Their seeming powerlessness is not simply due to their perceived lack of awareness or illiteracy but because of the structural problem of power relations that make them vulnerable and marginal in the local government units dominated by non-Dalit men. For instance, Ms Raya, a Dalit woman ward member and also a member of the municipality executive, has worked for many years in cooperatives, women's groups and an NGO before she became an elected ward member in Dhangadi Mai Municipality in Siraha. While speaking about what the ward and the municipality have done in the last two years, her voice was confident and defiant. "There is good teamwork and leadership in the municipality," she told us about the supportive working culture in the municipality executive. But her voice drastically changed to a tone of anger and frustration when she was asked whether the municipality is equally positive and supportive about Dalits and their rights. "Whenever I tried to raise issues about the Dalit and their rights, our ward chair says – now she is speaking the language of NGO," she said, explaining that the municipality is less serious about specific policies and plans for the Dalit community. According to her, the Dalit elected members are the minority in number, and they are further divided along party lines such that they fail to consolidate their collective voices during the meeting and the assembly.

In the six local government units, elected women members are neither consulted nor given any responsibilities in drafting bills. As there is a dominant belief that the process of law-making requires 'expertise knowledge and skill', women members, because of their lower level of education, and perceived 'inexperience' and lack of knowledge, are simply excluded from the law-making process. At best, a few of them are included in the legislative committee under the pretext of making the committee more inclusive, while the mayor and other executive members assign the responsibilities to the male members. If more women had been elected to the post of ward chairs, then more women representatives would have been involved in the law-making process.

In all the local government units, the law-making process is the exclusive domain of men.

6. CONCLUSION

This study finds that *palikas* in the two Provinces (2 and 5) have begun formulating multiple laws, acts, regulations and guidelines, ranging from nine to 29 in individual local government units in the last two years (2017–2019). In terms of legislation-making, these local government units are more focused in formulating basic and essential laws – related to functioning of municipality executive, assembly and administration; collecting tax, financial management, regulation and distribution of annual budget; functioning of the judicial committee, and procedures for providing basic services and infrastructure developments. Some of the local government units have also passed acts for governing specific sectors, such as education, agriculture, cooperatives, FM radio, mines and minerals, and disaster management.

Major findings

Legislation-making is a secondary priority

It was found that not all local governments are equally engaged and regular in undertaking legislative roles. For example, Siraha (Province 2) lags far behind others in the formulations of legislation due to frequent changes and absence of the chief administrative officer, fractional politics and lack of teamwork in the municipality. On the other hand, Lumbini Sanskritik passed 10 legislations at once in 2018 but has not resumed making new laws in the last year. Municipalities such as Dhangadi Mai and Kapilvastu are more engaged and regular, and rural municipalities such as Bateswor and Suddhodhan are making some efforts. Our discussions with elected officials suggest:

- Legislation-making is not a priority agenda for these local government units.
- Many of the elected officials seem unaware of their legislative roles and are less interested in the law-making process.
- ‘*Bikas* or development’, the infrastructure development, in particular, is the *realpolitik* for local governments, its elected officials and constituents. Elected officials are more concerned with the service delivery and budget allocation than with the law-making. The reality and belief that ‘people want *bikas*’ from elected officials and that delivery of maximum *bikas* increases their chance of electability in the next election undermine the legislative roles and duties of local government and its elected officials.
- The internal fractional politics, party differences and conflicts among elected officials and between staff and elected officials, lack of leadership and teamwork, fewer elected officials with the requisite knowledge, expertise and skill for drafting bills also delay the pace and process of law-making in local governments.

Existing law-making process

All local government units have formed a legislative committee of a few elected members to draft new bills. However, the committee is mostly inactive; even members of the legislative committee seemed unaware of the law-making process and the legislations that they have passed. In terms of the law-making process, the major findings are:

- Only a few elected male members, including one or two Muslim and Dalit members, are found to be involved in the law-making.
- The dominant (flawed) belief that law-making requires particular knowledge, experience, skill and competency excludes many elected members, especially women and marginalised communities, as they lag behind or are considered to be less competent to draft new laws. Moreover, such an understanding of law-making also provides a good excuse for many elected members not to be involved in the formulation of laws.
- The chief administrative officer and other government bureaucrats, who have more knowledge of the state laws and legal procedures, play very important, if not decisive, roles in drafting new bills for local government units. The heavy reliance and dependency on municipality bureaucrats can also lead to bureaucratisation of the law-making process without wider consultation with and participation of the community.
- The most prevalent 'fast track' process of the law-making was found to be what we call the 'copy and paste' method. Elected officials and bureaucrats alike copy the specific model laws prepared and circulated by the MoFAGA, add the names of their local government units, and get these 'copied and pasted' bills approved by the municipality/rural municipality assembly. The use of the model laws in this way has helped to maintain uniformity of legislation across all local government units. However, much of the new legislation passed in this way by local governments has undermined the gravity of local problems and needs. For example, the local education laws of four of the local units are exactly alike and have no provisions to deal with the specific problems of the Dalits, women and Muslims in their constituencies.
- The existing law-making process in local governments is generally non-consultative – only a few elected representatives, staff and others are involved. Moreover, the existing dominant practice of law-making, i.e. the quick and easy process of copying the model laws into new local laws, does not require such a consultative process. None of the six local government units has initiated community-level consultation for feedback and suggestions in the law-making process.
- Local government units have not focused on the dissemination of the various legislations, guidelines and procedures that they have passed in the last two years. *All these legislations are published only in the Nepali language.* Many residents and elected representatives in the Tarai do not understand Nepali. There is a critical need for wider and more effective dissemination of these local laws.

Law-making and marginalised groups

- In all the local government units, the law-making process is the exclusive domain of men.
- In these six local government units, elected women members are neither consulted nor given any responsibilities in drafting bills. Women members, because of their lower level of education, and perceived 'inexperience' and lack of knowledge, are simply excluded from the law-making process.
- The majority of elected women representatives, including one deputy mayor, interviewed for this study consistently and vocally stated that their voices are either ignored or not taken seriously by the male members during the municipality meetings and in other settings.
- Muslim and women representatives from Madhesi communities, who are not native Nepali speakers, are obliged to remain quiet because of linguistic barriers whenever executive and assembly meetings are held in Nepali.
- The elected Dalit women members are more vulnerable to the politics of silencing and exclusion in the decision-making processes in all the local government units. Many of these Dalit women members come from a weaker economic background and their families still retain patron–client relations with the families of the 'high-caste' elected officials: ward chair and others in local government. These women members also lag

behind other members in terms of cultural and social capital so they are not considered competent for their active involvement in the law- and policy-making process.

- None of the local government units in this study has formulated legislation specifically for marginalised communities nor have they integrated a GESI approach in the individual legislation such as the Education Act, Cooperative Act and the Act to Promote Agriculture-based Entrepreneurship passed in the last two years.
- At best, women, Dalits, Muslims and Janajatis are considered 'target groups' for distribution of the annual budget under social development. However, without strong laws to safeguard the rights and needs of these marginalised groups, the implementation of such annual plans and programmes is always subject to manipulations, particularly when elected representatives from the marginalised groups do not hold positions of power in local governments.

Ways forward

- More in-depth and longitudinal studies are needed to understand the processes and barriers to inclusive and locally relevant legislation-making processes in the local government bodies.
- All provincial governments (as it is their jurisdiction) need to prepare the required acts and directives to guide the inclusive legislation-making processes in the local governments.
- Federal government and development agencies need to support the provincial and local governments in legislation-making.
- Civil society organisations, particularly those working with women and marginalised groups at the community level, can play a supportive role in enabling marginalised groups to influence the local legislation-making process to address their collective concerns, rights and aspirations.
- Donors and development agencies should support the local governments and local community organisations in promoting and institutionalising inclusive and locally responsive legislation-making processes to ensure that elected women officials, elected Dalit women and those from the marginalised communities can meaningfully undertake their legislative roles and functions.

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