

# Local Self Governance

Nepal Participatory Constitution Building  
Booklet Series  
NO. 4



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# Local Self Governance

## Introduction

Effective decentralization is an element of good governance and an expression of democratic practice. It is also a prerequisite for effective and efficient public administration. It is recognized that elected local authorities, alongside national and regional authorities, are key actors in democratic governance and administration. They collaborate with national and regional authorities but also have their own autonomous spheres of public action. Local democracy thus constitutes an essential element of democracy itself whatever the form of the State, whether federal, regionalized or unitary.

Public responsibilities should be exercised by those elected authorities, which are closest to the citizens. Generally, national, regional and local responsibilities should be differentiated by the constitution and legislation, in order to clarify the respective powers. The Constitution should also guarantee access to the resources necessary for the decentralized institutions to carry out the functions allocated to them.

Nepal's recent history has been characterized by weak or dysfunctional local government. Constitutional and legal provisions foresee a system of self government based on principles of decentralization and devolution in both rural and urban areas. However, the current situation calls for significant legal and administrative reforms to enact a system of local government that is both practical and responsive to Nepal's needs, as well as in line with international standards of good and democratic governance. The drafting of a new Constitution represents an opportunity to revisit this area and develop a comprehensive and new approach to local governance.

## Principles of local self-government

Models of local self governance, its power structure and jurisdiction vary starkly from one county to another. The size and relative administrative power

of local government units varies widely even within countries. Many large city administrations exceed the financial, human and administrative resources of many countries, for example.

The development of international standards and best practice on local government is a relatively recent trend. In April 2007, the Governing Council of the United Nations Human Settlement Programme approved Guidelines on Decentralization and Strengthening of Local Authorities as a key instrument to promote good governance at all levels and to strengthen local authorities. The Guidelines were endorsed by the UN General Assembly.

The UN invited Governments to place decentralization and local development at the centre of governance and development policies and to strengthen their legal and institutional frameworks with regard to decentralization and governance at all levels, in line with the Guidelines.

The Guidelines outline the main principles underlying the democratic, constitutional/legal and administrative aspects of local governance and decentralization. At the same time they must be applied to specific conditions of State form (federal, regionalized or unitary), with different State traditions.

Local authorities should be acknowledged in national legislation, and in the Constitution, as legally autonomous sub-national entities. The constitution and national legislation should determine the manner in which the local authorities are constituted, the nature of their powers, the scope of their authority, responsibilities, duties and functions. Legislative provisions should clearly articulate the roles and responsibilities of local authorities' vis-à-vis higher spheres of government. Only those roles and responsibilities beyond their scope and competence should be assigned to another authority. Local authorities should freely exercise their powers, including those bestowed upon them by national or regional authorities, within the limits defined by legislation. These powers should be full and exclusive, and should not be undermined, limited or impeded by another authority except as provided by law.

The supervision of local authorities should only be exercised in accordance with such procedures and in such cases as provided for by the constitution or by law. That supervision should be confined to a posteriori verification of the legality

of local authority acts, and should respect the autonomy of the local authority. Following the suspension or dissolution of local councils, or the suspension or dismissal of local executives, the prescription of the law should determine the resumption of their duties in as short a period of time as possible. Local authorities should be allowed to determine as far as possible their own internal administrative structures, to adapt them to local needs and to ensure effective management.

Local governments should be free to form partnerships and associations. Associations of local governments often have a separate legal identity, and often also pursue international outreach and cooperation. In some countries, associations of local governments enjoy a constitutionally guaranteed consultative role on matters pertaining to local government. Local authorities should also have the right to establish and develop partnerships with all actors of civil society, particularly non-governmental organizations and community-based organizations, and with the private sector and other interested stakeholders.

Local Governments also have a particular role to play in the effort to increase the participation in public affairs by excluded and marginalized communities and sections of society. Local authorities should be entitled to define appropriate forms of popular participation and civic engagement in decision-making and in fulfilment of their function of community leadership. This may include special provisions for the representation of the socially and economically weaker sections of society, ethnic and gender groups and other minorities.

## Financial autonomy

Effective decentralization and local autonomy require appropriate financial autonomy. Where central or regional governments delegate powers to them, local authorities should be guaranteed the resources necessary to exercise these powers. They should also have discretion in adapting the execution of their tasks to local conditions and priorities. Local authorities should have access to a broad variety of financial resources to carry out their tasks and responsibilities. They should be entitled to adequate resources or transfers, which they may freely use within the framework of their powers.

A significant proportion of the financial resources of local authorities should derive from local taxes, fees and charges to cover the costs of services provided by them. Financial sustainability should be ensured through a system of financial equalization, both vertical (between State and local authorities) and horizontal (among local authorities). This should happen especially where the local tax-base is weak or non-existent.

## Local Self Government law in Nepal

The broad objective of the Constitution of 1962 and the party-less Panchayati (“council”) system it tried to institutionalize was to implement a concept of decentralization. Local bodies were formed at the village, city, district and zonal levels. However, effective local self-governance or the actual devolution power and rights were not possible in that environment. Despite quasi-democratic provisions the local bodies served merely as units under the administrative bodies set up by the centralized state.

One of the weakest points of the Constitution of 1990 was that it did not include any constitutional guarantee of ‘local self-governance’. Some related aspects were mentioned under the ‘Directive Principles of the State’. But the constitution failed to clearly define the minimum organizational basis and theoretical base to ensure people’s participation in the system through decentralization. Despite this constitutional shortcoming, new democratic local bodies were established after 1991s under legislation made by the newly elected multiparty parliament.

Thus Local Self-Government Act (LSGA) of 1999 and subsequent Local Self-Government Rules and Regulations (to implement the LSGA) replaced and incorporated earlier provisions of the Village Development Committee Act, Municipality Act and District Development Committee Act of 1991 in an integrated way. The LSGA forms the existing legal basis for local governance in Nepal.

The Interim Constitution of 2007 is the first Constitution of Nepal to include a separate section on local self-government (Part 17). Its Art. 139 stipulates that “Election shall be held to set up local self governance bodies on the basis of principles of decentralization and devolution of power by creating a congenial

atmosphere for the exercise of the people's sovereignty and thereby ensuring maximum peoples' participation in the country's governance, to provide services to the people at the local level and for the institutional development of democracy." This represents a significant step and solidifies the principles laid down in the LSGA. However, it still fails to provide an enforceable guarantee of autonomy to local governments and provides only inadequate clarity as to the functioning, resources and responsibilities of local bodies. Art. 140 recognizes the need to equip local bodies with commensurate resources. But it limits itself to stating that "there shall be sharing of accountabilities and revenues between the Government of Nepal and local self governance bodies according to the provisions in the law."

The VDC/Municipality level and the District level are the key areas of institutional activity, while the other levels play secondary roles. Each ward and each village development area or town ought to have elected bodies, i.e. a Ward Committee, a Village Council or a Municipal Council. The Village Development Committee (VDC) is the executive committee of each village development area, chaired by an elected VDC Chairman (who also convenes the Village Council). The Ward Chairmen (who simultaneously make up the VDC Members), Ward Members and the VDC Chairman are elected by the general electorate of the wards or the village development area respectively.

## Functions and responsibilities of local bodies

[for translators: for the following section, please use the Local Self-Governance Act (1999)] Wards have been given a variety of functions and duties which relate to the removal or waste and sewage, maintaining canals, drains and dams; assistance in managing health centres, schools; and project supervision. The functions and duties of VDCs are much wider. VDCs have been envisaged to carry out agricultural development; arrange for bazaars, veterinary services and animal disease control; provide drinking water; build and maintain rural roads and bridges; establish primary schools; supervise and manage schools within the area; provide adult education; irrigation; soil erosion programmes and river control; electricity generation; community buildings; land-utilization plans; operate and maintain health posts; forestation and environmental protection;

preservation of tourist sites and religious places; record keeping of population, houses, land and livestock; birth and death registration; works to control natural calamities; control immoral activities; and promote income generation (LSGA).

In terms of social protection, VDCs have the responsibility for, i.a. helpless, orphan and disabled children; the upliftment of women within the village; and the protection of girls and women. [for translators: LSGA (1999), para. 28] The VDCs and Municipalities are also the primary institution responsible for development activities. They should formulate annual development plans, collect objective data and prepare a resource map of the area, undertake feasibility studies, select, monitor and evaluate projects, and coordinate with NGOs. The legal responsibilities of Municipalities include those of VDCs, and extend beyond that commensurate to urban needs and generally higher resource levels.

## The local administrative reality

The current regulatory framework for local governance is complex and often contradictory with other legislation. The Government itself conceded that no remarkable achievement could be made in the decentralization and self-governance sector in recent years due to the conflict and the absence of elected representatives at local level. Despite the attention garnered by the decentralization process, the devolution of power and authority to the local bodies has yet to occur. There has been no serious attempt to implement meaningful fiscal decentralization. Local governments lack the legal power to coordinate and supervise any local level programme. There are no clear-cut models for full-fledged participation by the beneficiaries or institutional provisions to ensure the representation of the socially excluded in local governance (Nepal Human Development Report (NHDR), 2004).

In 2002, the terms of office of the local bodies elected in 1998 expired, and no further election has been held since on that level. After an interim period, the local bodies thus became defunct. Since 2002, almost 7 years have passed without a democratic body at the local level. A 2004 Royal Ordinance (No.18 of 2060 B.S. (2004)) still enables the central government to “carry out functions, duties and powers of members of the local bodies as may be necessary.” Due to the absence of elected Village Councils and VDC Chairmen, VDC secretaries

have been serving as acting VDC Chairmen. Equally, Executive Officers (EOs) in Municipalities and Local Development Officers (LDOs) on District level have been standing in for the Mayors and DDC Chairmen. This improvised solution has prevented governance at local and district level from coming to a complete standstill. But it has affected the quality and availability of services at local level as well as accountability and responsiveness of government institutions to a significant degree.

Moreover, many VDC Secretaries suffer from meager resources and access problems. The conflict impacted significantly upon the presence and performance of local government due to massive displacement of state officials and the destruction of infrastructure.

As a substitute to locally elected bodies, political parties decided, in September 2006, to form interim local bodies at the district, municipality and village level in order to allow the release of development funds in line with the relevant regulations. The arrangement was also included in the Interim Constitution of 2007. However, due to a lack of consensus, the bodies were not formed and local ad hoc arrangements replicating the seven party formula prevailed. A more permanent solution has been announced by the current coalition Government but has yet to take shape (as of January 2009).

## Challenges before the Constituent Assembly

Local self-governance poses a very important question for the new Constitution. There is a need for a special discussion on a constitutional guarantee of strong and autonomous local bodies especially in the context of the ongoing debate on restructuring of the state. Federalism with two levels cannot replace the concept of local self-governance or local government. Local self-governance has its own distinct place as the third level (of a federal state structure). A system of effective self-governance can help realize the objectives of federalism.

For that reason among the points that the Constituent Assembly may address with regard to local self-governance are the following:

- » What powers or rights need to be decentralized or devolved to the local bodies to guarantee effective local self-governance?

- » What are the basic elements of self-governance that should be included in the Constitution itself and what other elements should be determined by law (at national and sub-national levels)?
  - » What election system should be adopted for the local bodies in order to maximize their democratic and inclusive character?
  - » What should the levels and types of structure of the local bodies be? What new provisions should be made with regard to the existing local bodies, and what should be the inter-relations among them?
  - » Matters relating to the finances of local bodies (taxes, fees, transfers) to guarantee financial autonomy.
  - » What legislative and judicial rights, if any, should be given to the local bodies under the Constitution?
  - » Matters relating to the administrative autonomy to recruit employees for the local bodies or the practicality of deputing civil servants from the state.
  - » What special measures and mechanisms need to be developed for the participation and representation of women and the marginalized regions that remain backward in the development process?
  - » Modalities for changing the existing boundary, structure and composition of the local bodies.
  - » Matters relating to the inter-relations between local and sub-national government and local and central government in a federal system.
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## About this booklet series

This series of papers is intended to provide a basic background for Constituent Assembly members and the interested public on issues related to the constitution building process. They are not position papers, proposals or intend to preempt any constitutional outcome in any other way. They are the result of a cooperative effort of Nepali and international constitutional experts, coordinated by UNDP's Support to Participatory Constitution Building in Nepal project.

These papers are living documents, and feedback and comments are strongly encouraged. The more they will lead to informed, engaged and constructive discussion and exchanges, the more will their objective be attained. As comments are received further versions of this document or additional issues may be prepared.

In translating them into some of Nepal's major national languages, all effort has been made to achieve a high level of quality standards and the correct terminology, which will be understood by a majority of the speakers of those languages. However, future debates within the various linguistic communities on the proper and correct use of terms can be expected. CCD did not want to preempt that discussion in any way, but rather sought to maximize the reach and inclusiveness of this effort by including those languages.

This booklet is part of a series of documents to be developed by the Centre for Constitutional Dialogue (CCD) on themes relevant to the constitution building process in Nepal.

The objective of this series is to engage Constituent Assembly members as well as the interested public with key constitutional concepts and issues. Each document is available in the major languages used in Nepal – Nepali, Maithili, Bhojपुरi, Tharu, Magar, Tamang, Newar and English. Each document is also available in audio format as well as online.

In the first phase it is envisaged that the publication series will include the following themes: State and Religion, Federal System, Human Rights in the Constitution, Rights of Indigenous Peoples, Minority Rights, Systems of Government, Independent Judiciary, Local Self-Governance, Diversity and Social Inclusion, and Participatory Constitution Making Process.

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