

**Local Bodies and Civil Society-
Non Government Organisations:
A Perspective for Nepal**

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Country Review

Nepal, situated on the southern part of the Himalayas, is a part of the South Asia and a developing country with a population of 23.1 million and a growth rate of 2.2 percent (Population Census, 2001).

Geo-physically, she has been divided into three geographical regions, i. e. Mountains, Hills and Terai (southern plains)¹. Kathmandu is the capital of the country. The overall literacy rate in the country in 2001 was 54.1 per cent with the male literacy rate of 65.5 per cent and the female literacy rate of 42.8 per cent. (Ibid.) The life expectancy at birth in 2004 was 62.2 years while infant mortality rate was 64.4 per 1,000 live births. Maternal mortality rate was 539 per 100,000 in 2001 and total fertility rate was 3.7 per women (CBS, 2004). About 20 per cent of the population had no access of safe water; 39 per cent of them had the access of sanitation and about 31 per cent household had the electricity supply (NLSS 2004). Agriculture is the main source of income in Nepal. The share of agriculture in the national income (real GDP) in 2004 is about 39 per cent (Economic Survey 2004). About 78 per cent of the household are dependent upon agricultural activities (NLSS 2004). Trade, manufacture and services are the non-agriculture sectors that generate income to the people.

In terms of human development index, Nepal ranks 140th in the group of 177 countries. The HDI value for Nepal, estimated to be 0.504 for 2002, an indication of low level of human development in SAARC region (HDR, 2004).

The various empowerment index measured for 2001 were: the gender empowerment measure (GEM) 0.391, the social empowerment index (SEI) 0.406, economic empowerment index (EEI) 0.331 and the political empowerment index (PEI) was 0.646 giving the overall human empowerment index (HEI) of 0.463 (NHDR, 2004).

With regard to the politico-administrative divisions, the country has been divided into five development regions², fourteen zones³, seventy-five districts, three thousand nine hundred thirteen village units and fifty-eight towns. In each of these divisions, His Majesty's Government of Nepal, is represented by its field offices. In addition, each of the village and town units and districts (Village Development Committee [VDC], Municipality and District Development Committee [DDC]) has an unit of local authority/body.

Nepal has adopted a unitary type of polity. She is being governed under the provisions of the Constitution of the Kingdom of Nepal 1990. This Constitution guarantees the basic human rights to the people of Nepal, rule of law and independent judiciary. It also lays down the framework for a government headed by the

Prime Minister that carries confidence of the House of Representatives (HoR) and is accountable to it while running the administration of the country with the King remaining as the constitutional Head of State.

I. Local Authorities/Bodies: Constitutional and Legal Basis

Among the different politico-administrative units, in each of the village or town units and districts, there is one local authority. The village level unit is known as Village Development Committee (VDC), the town level unit as municipality and the district level unit as District Development Committee (DDC). There is, thus, a nation wide two-tier local authority/body (village or town and district level unit) system in the country.

The modern history of local authority goes back to almost hundred years. The order (Sanad) of 1919 AD (1976 BS) is the first law made for the establishment of a municipality in a locality called Bhotahity a down town area within the city of Kathmandu. In 1926 AD (1983 BS) another order was issued to establish Manayjana Kachahari (Court of the Wise people/Respectable local Elders) in Dang-Deukhuri Valley in the district of Dang in Rapti Zone of the Mid-Western Development Region and after that a few more laws were enacted to establish local authorities⁴ in other parts of the country (Dhungel et al. 2004). But for the first time, a country wide network of these bodies, with two tier system – Village/Town and District level – was established in the beginning of the nineteen sixties. Since then the local authorities/bodies have been the part and parcel of the Nepalese life.

The Constitution of the Kingdom of Nepal 1990 does not have a separate provision for the constitution of the local authority/body nor says anything about their role in the development of the country. But it recognises the existence of the local authority/body in reference to the election of the 15 members for the National Assembly, ie. Upper house of the Parliament⁵. In addition, one of the Directive Principles and Policies of the State, Article 25.4 envisages its role in the governance of the country. This article states:

It shall be the chief responsibility of the State to maintain conditions suitable to the enjoyment of the fruits of democracy through wider participation of the people in the governance of the country and by way of decentralisation, and to promote general welfare by making provisions for the protection and promotion of human rights, by maintaining tranquility and order in society.

Despite the fact that this provision of the said Article is simply the part Directive Principles and Policies of the State, the framers of the Constitution, seemed to have accepted 'decentralisation' as a strategy/framework for having 'wider participation of the people in the governance of the country'. In other words, people of Nepal would, as per the intention of the constitution framers, in addition to their role through their representatives in the national legislature in running the administration of the country would also have a role in the decision making process at the local

level (from planning to the implementation including the monitoring and sharing of benefits accruing from the programmes undertaken) in those affecting their lives. For this purpose they have envisaged the formation of local bodies/authorities at the local level. Interestingly, the constitution does not recognise the existence of community formed local bodies. It is only the Local Self Governance Act 1999 (LSGA) framed to translate the spirit of the above directive principles into practice recognises the existence of these bodies in relation to the planning and management of development programmes.

To operationalise the provisions of the LSGA, the government has framed Local Self-Governance Regulations 2056 BS (1999) and Local Authorities (Financial Administration) Regulations 2056 BS (1999).

Main Features of the LSGA:

The LSGA is a comprehensive law and contains five parts and a total of 268 sections covering various things such as: the powers, functions, duties of the VDC, Municipality, DDC, their inter-relationship, relationship with the civil society/non-government organisations, relationship with the government and responsibilities of the government towards the local authorities/bodies. Some of its important elements, especially concerned with the local authorities/bodies and their relationship civil society/non-government organisations are discussed below:

1. Continuation of a Two Tier System and Composition & Structure of Each Unit

Since the beginning of the nineteen sixties, as already indicated above, the country has been following a two-tier local authority/body system, village or municipal level and district level. The LSGA too has given the continuity to this system. And for each tier, the LSGA has made a provision for deliberative and executive wings.

Village Council (VC) is the deliberative body of the VDC. It comprises of all the elected members, Chairperson, Vice-Chairperson, Ward members⁶ (Ward Chairperson and other four members) of each ward and six other members including one women who are nominated by this body from the group of social workers, socially and economically backward tribes and ethnic communities, down trodden and indigenous people living with the village development area, belonging to the class whose representation in the Village Council does not exist and who are in possession of the required qualifications to become the member of the village council.

The executive committee of the VC comprises of the Chairperson, Vice-Chairpersons, the nine Ward Chairpersons (one from among the five elected from each of the nine areas) and two other members including one woman nominated by the committee from amongst the members of the village assembly as indicated above.

Members of the VDC, other than the nominated one, are elected by the people living within its territorial jurisdiction on the basis of the universal adult franchise, for a period of five years. Their term ends on the 13/14 July of the fifth year of being elected. The Chairperson and Vice Chairperson are elected by all the voters, whereas, the Ward Members are elected by the voters of the respective wards only.

In the case of Ward members, (i.e. Ward Chairperson and other four members including one women are elected by the voters of the respective ward.) And, as indicated in the endnote, from among the ward members, it is only the Chairperson who represents the respective ward in the VDC.

A settlement with of at least twenty thousand population and with electricity, roads, drinking water and communication facilities could be declared as a municipal area and a municipality is formed. The deliberative body of the municipality is the municipal council, which comprises the directly elected members of the municipality including Mayor, Deputy Mayor, ward members⁷ and 6 to 20 lady members (40 percent of the nominated has to be women) nominated by the council from amongst those social workers, socially and economically backward tribes and ethnic communities, down trodden and indigenous people living with the area of the municipality, belonging to the class whose representation in the Municipal Council does not exist and who are in possession of the required qualification to become of the Municipal Council.

The Executive Committee, i.e. municipality comprises of the Mayor, Deputy Mayor and Ward Chairpersons, one of the, as indicated in the endnote, five ward members elected from the respective wards, and two members including woman elected by the municipality from amongst the members of the Municipal Council, i.e. from the ethnic group and so on.

A municipality may have nine to thirty five wards depending upon the size of its population. Like the members of the VDC, members of the municipality are elected directly by the voters of the respective municipality on the basis of the universal adult franchise for a period of five years, ie. 13/14 th July of the fifth year from election year. In other words, the voters of the municipality elect the Mayor and Deputy Mayors. Whereas, the Ward members, i.e. Ward Chairperson and other four members including one women are elected by the voters of the respective ward.

District Council is the deliberative body of the DDC. It comprises of the VDC Chairpersons, Vice-Chairpersons, Municipality Mayors and Deputy Mayors, Members of the DDC, members of the House of Representatives elected from the district and the National Assembly representing the district (ex-officio member) and six nominated members including one woman who are nominated by the District Council from amongst those social workers, socially and economically backward tribes and ethnic communities, down trodden and indigenous people with the district, belonging to the class whose representation in the District Council does not exist and who are in possession of the required qualification to become the member of the District Council.

The Executive Committee (DDC) comprises of the President, Vice President and Members representing the respective area, members of the House of Representatives and the National Assembly representing the district (ex-officio member) and two members including one women nominated by the District Development Committee from amongst the members of the District council, ie from those of the social workers etc.

A district area may have nine (minimum) to seventeen members (maximum)

depending upon the population of the district and its size. Unlike the VDC and municipality, the voters of the concerned district do not directly elect both the Council and the Executive Committee of the DDC. Rather the council, as already indicated above, consists of the ex-officio members and nominated. Whereas the executive committee members other than the ex-officio members, are elected by an electoral college consisting of the members of the lower units⁸. However, the term of period of both council and executive committee comes to an end on 13/14 July of the fifth year.

◆ Powers, Functions and Duties of Each Unit

For VDC, activities included as the powers, function and duties in the LSGA in the different sectors are: agriculture, rural drinking water, work and transport, education and sports, irrigation, soil erosion, river control, physical development, health, forest and environment, language and culture, tourism and cottage industry and some other miscellaneous activities (Chapter 4 of Part II of LSGA).

Activities identified for the Municipality as its powers, functions and duties are in the fields of: finance, physical development, water resources, environment and sanitation, education, sport and culture, works and transport, health services, social welfare, industry and tourism and some other miscellaneous functions (Chapter 4 of Part III of LSGA).

With regard to the activities being performed by a DDC in the forms of its powers, functions and duties the list included in the LSGA are in the fields/sectors of the agriculture, rural drinking water, settlement, water and power, works and transport, land reform and land management, women and helpless people, forest and environment, education and sports, wage of labor, irrigation, soil erosion and river control, information and communication, language and culture, cottage industry, health services, tourism and some other activities under the heading miscellaneous (Chapter 3 of Part IV of LSGA).

Each of the VDCs, municipality, and DDCs is expected to undertake the identified activities through the preparation of an annul programme by taking into account the available technical and other resources-own financial resources, government grants and people's contributions. But, since the district is the focal point for the development activities in the country, it has been specifically indicated in the Act that "each District Development Committee shall have to formulate prepare periodic and annul development plans (DDP) for the development of its own district" (Section 195). The DDC has to prepare such a plan taking into consideration other development programmes – both government and non-governmental programmes (Section 204). In other words, the DDC is expected to bring about coordination among the various development programmes initiated in a district-government and non-government programmes whiling formulating such a plan.

Normally, local bodies/authorities in any country, in one way or other, has been tapping mainly four sources of revenue. They are: (i)local taxes, fees and service charges, (ii)government grants, (iii)trading services and miscellaneous sources (including rents paid by tenants for the assets created) and (iv)loans raised (Golding 1970).

The LGA has identified all these as the sources of revenue for the local authorities/bodies.

The VDC has been empowered to collect various taxes, such as, house, land, market shops, vehicle, entertainment, business etc., various fees such as licensing and renewal fee for television, video and recommendation fee etc.

The municipality can levy and collect various taxes, such as, land revenue, house and land tax, enterprise tax, vehicle tax, property tax, advertisement tax etc. and impose various service charges for the use of facilities such as, drinking water, solid waste management and sanitation and sewerage/drainage etc. (Sections 55-59 and 136-145).

The DDC is entitled to levy taxes on those who use infrastructure facilities built by it, extract charges and fees on services provided, borrow money from banks and other institutions with or without collateral or on government guarantee and receive grants from the government. In addition, it is entitled to receive a portion (25 per cent) of the land revenue collected by the lower unit, i.e. VDC or Municipality.

The DDC is also entitled to receive a share from the income made by the government in the form of registration fee for sale and purchase of assets, royalties received for the use of natural resources, such as mines, petroleum, forest and water resources and income earned in the form of tourist entry fee.

The government provides financial support in the form of tied and block grants to local authorities/bodies to help them perform the delegated functions. In addition the government also provides Npr. 500,000 (1 US\$=NPR. 74.00) to each VDC every year to undertake development activities in their areas concerned.

2. Authorisation to Establish the Subject matter/wise Unit within DDC Secretariat

One of the important provisions of the LSGA is its provision on the establishment of the subject-matter (sector-wise) within the DDC secretariat. The DDC, as per the Section 257 of this law, may establish/set up the subject matter/wise unit within its secretariat to carry on its responsibilities. Once such units are established within the DDC secretariat, the government would not maintain its own district offices for the same purposes/sectors. But the government may provide the service of its employees to the DDC on deputation provided it is requested for the same. It is also mentioned that the related physical facilities would be transferred to the DDC by the government. But so long as the government does not authorise the DDC to establish subject matter/wise units, such units could not be established.

3. Acceptance of the Participatory Planning Process including the Involvement of the Civil Society/NGOs in the Process

The LSGA requires each and every local authority/body has to prepare an annual programme, while undertaking such an exercise the body/authority concerned will have to take into account the programmes of the government and non-government organisations, coordinate its programme with those of others and have to motivate and encourage the civil society/NGOs in planning and managing the plans and programmes in coordination with its plans and programmes, details of

which are mentioned in Part III of this paper.

4. Provision for the Establishment of a Local Service

In the history of the local bodies/authorities, the LSGA, for the first time has recognised the need to have a separate service for the personnel management of personnel associated with the local bodies/authorities. For this purpose, the government would, as per Section 255 of this act enact a law on Local Service. With regard to this matter the LSGA states that:

‘The local service shall be formed by an Act for the discharging of the functions of the local bodies. The operation of that service and terms of service shall be as set by that Act’.

So long as the government does not establish a separate local service through enactment of a law, the local authority/body concerned is entitled to appoint the required number of personnel or continue to use the service of the members of the national civil service. But before hiring or seeking the service of the members of the national civil service, the local authority/body concerned should first of all create the position on the basis of the workload. But as per the LSGA, the secretary to the local authority/body concerned would continue to come from the national civil service.

5. Autonomy and Acceptance of Legal Status for Each Unit

Prior to the enactment of the Act, each unit of local body/authority is established under separate legal arrangements, the Village Development Act, 1991, Municipality Act 1991 and District Development Committee Act 1991. But, before the eye of the law, each unit is independent to each other and autonomous. Each unit has right to sue and could be sued in the court at certain differences, if any. Each of them has a separate seal and is a legal entity. The LSGA, too, has ensured the autonomy of the VDC, Municipality and DDC and each one has been accepted as separate legal entity.

6. Accountability

As already indicated earlier, all the three units of the local bodies have been authorized to levy and collect taxes and service charges. They are also made accountable for their expenditure. VDC's incomes and expenditure are to be audited by the Auditor appointed by the DDC on the recommendation of the Accounts Committee of the Village Council (Section 69). Whereas, the Municipality has to get its income and expenditure audited by the registered Auditor selected by its Municipal Council on the recommendation of its Accounts Committee (Section 135). However, the District Development Committee has to get its income and expenditure audited by the Auditor General of the country (Section 232).

In addition, the local bodies/authorities have been entrusted with the responsibility of acting upon the audited reports. With regard to the audit reports of VDCs

and Municipality, the same procedure has been prescribed for actions to be taken by the respective local body. Upon the receipt of the audited reports, the respective Chairperson in case of VDC and the Mayor in case of Municipality is expected to prepare the reply on the comments made by the Auditor, and then submits the reports and comments to the Accounts Committee⁹. The Committee, in return, scrutinizes the report and comments/responses of the Chairperson or Mayor and submits it with its recommendations to the Council (Village Council/Municipal Council) for final decision. However, in the case of the district level report, the audited report, first of all, is to be scrutinized by the Accounts Committee and then only it is to be discussed by the District Council and which in return will provide its recommendations to the DDC for necessary action.

The Act has also made it obligatory for all the members of the local bodies/authorities to declare their assets publicly within thirty days of oath taken as members. However, the Chairperson and Vice Chairperson of the VDC, Mayor and Deputy Mayor of the Municipality and President and Vice President of the DDC are also required to make such a declaration within thirty days of relinquishing the office.

7. Monitoring Committee

One of the features of the LSGA is the provision for establishment of a Decentralization Implementation Monitoring Committee (DMIC) to monitor the implementation of its various provisions. The Committee is to be headed by an official no less than the Prime Minister of the country. It will comprise the concerned minister, Leader of Opposition Party in the House of Representatives, Chairperson of the concerned Committees of the House of Representatives, Vice-Chairperson and Member of the National Planning Commission and representatives of the civil service, political parties and presidents of respective associations of local bodies/authorities and Secretary of the Ministry of Local Development as the Member Secretary.

In addition, there is a provision for a Working Committee as a sub-committee of the Committee. This committee is to be headed by the Minister of Local Development and will consist of the Secretary of the Local Development Ministry, six nominees of the Government from among the experts in the fields of Decentralization, revenue, accounts, rural development, administration and law with at least ten years of experience and an Officer of the Joint Secretary rank as Member Secretary.

8. Recognition of the Associations of the Local Authorities/Bodies

One of the positive developments in the post 1990 is the establishment of an umbrella organization to each of the local authorities/bodies that are involved in taking up the interests of the respective organization with the government and performing the advocacy activities on behalf of the organizations they represent. Such an organisation is formed by the respective local authorities/bodies through election. It is known as, National Association of Village Development Committee, Nepal (NAVIN) in the case of VDCs' association. The Municipality Association of Nepal (MUAN) represents all the municipalities. Whereas the DDCs' Association is known as Association of District Development Committees of Nepal (ADDCN). The

LSGA has recognized the existence of all these bodies and has made provision for their representation in the DMIC (Section 241.1.k).

9. Relationship between His Majesty's Government (HMG/N) and Local Bodies/authorities

Nepal has a unitary system of government. As such, local body/authorities do not have the same status as that of the HMG. It does not mean that they are just extended arms of Singh Durbar. They have been constituted as autonomous bodies with a certain legal status. Therefore, from the perspective of the institutional relationship between the two, the Act has made the following provisions:

- i. Formation of the Local Finance Commission (LFC) consisting of among others, the representative of the concerned association of the local body, to provide policy suggestions on taxes to be levied by local bodies on the basis of providing grants to the local bodies/authorities and the allocation of revenue between the Government and these bodies/authorities (Section 237).
- ii. The LSGA states that the concerned ministry has to classify its departmental programmes into village level, town level and district level programmes (Section 243). Although it is not specified, the classified programmes could be delegated to the respective unit of local body/authority by the government (Section 242).
- iii. The most important institutional relationship envisaged between the two is that the government would, as already indicated above, provide the service of its employee as the Chief Executive to each of the three bodies from among its regular civil servants. In addition, the government could also assign its civil servants to local bodies/authorities on deputation, on their request. Such civil servants are expected to be responsible to the concerned body in discharging their responsibilities (Sections 253 and 256).
- iv. Suspension and Dismissal are the other areas of relationship between the two agencies. In case, a local body/authority is found to be involved in any act that jeopardises the sovereignty, unity and nationality and communal harmony of the Kingdom of Nepal in violation of the Constitution of Nepal 1990 or in misappropriation of its own property or functions of the local body/authority are hampered by not convening the meeting of the concerned body for one year, such body could be suspended by the government after giving sufficient time to give clarification against suspension (Section 238). Once a local body is suspended, its responsibility will be assumed by the agency designated by the government and the government gives notice of such a suspension to both Houses of the Parliament. A matter pertaining to the suspension has to be decided within three months and in case the government decides to dissolve the local bodies/authorities, information about it with sufficient reasons has to be submitted to both the Houses of Parliament. However as per the Act fresh election has to be arranged within

one year of such dismissal (Section 238).

- v. With regard to the annual planning and programme preparation, the National Planning Commission and the sectoral ministries must make available the pre-estimation of resources to be made available to districts along with the national development policy, priorities and other guidelines thereof for the coming fiscal year before the initiation of the planning process within the month of Kartik (October/November). Also have to ensure that technical assistance is provided through its field offices to these bodies in carrying out their responsibilities (Section 243). Normally, there is a system of adding about 10 per cent of current year's budget as budgetary ceiling for the preparation of next years' programme by the government agencies as well as local authority/body.
- vi. Furthermore, HMGN, through regular monitoring has to: ensure whether local bodies/authorities have performed as specified by the prevailing laws; whether backward communities, women and children have been given due priority; and whether encouragement has been given to matters such as ecological balance and based on such monitoring, may provide necessary instructions to local bodies/authorities that are obliged to abide by such instructions. HMGN may formulate special programmes for strengthening and enhancing their capacities and may execute the same.

◆ Policy on Decentralization

Democracy presupposes an institutional framework through which people participate in the process of governance, articulate their interest, exercise their legal rights and meet their obligations. In a country where there is a parliamentary system of the government, no doubt the election to the parliament provides the opportunity for the people to participate in the political process of the country to reaffirm their confidence to or unseat the incumbent government and vote for a new government. But once elected to the legislatures, they are away from the National/State capital most of the time. For many voters they became out of reach and get the opportunity to meet or see them only at the time of election. Whatever facilities are made available to communicate to the capital in this context, are neither sufficient nor affordable for many. Furthermore the local problems are different from the national problems requiring attention and decision making authority at the local level to be enjoyed by the representatives to be elected for that specific purpose. Also the provision or arrangement for a structure at the local level helps the prospective leaders to learn the art of governing at the door-step. Furthermore, if more space is provided at the local level for the people to participate in the political as well as decision making process, they would not only own the political system but also feel part of the national main stream. These are reasons why political structure other than the parliament is created either through the constitution or government legislation in order to enable the people to participate at the different layers. In addition, the organisations established by the people or community voluntarily are also recognised by the state as a measure of involving more people, especially the

marginalised and dis-advantaged sections in the political process and decision-making process. Such structures at the local level in general parlance, are known as local bodies, both the organisations created by the people themselves and registered under the existing legal framework and those created by the government¹⁰ under the constitutional or legal arrangement.

Decentralization is generally a policy framework adopted by the government in the form of a programme or legislative enactment, to enable the people to participate in the political as well as decision-making process at the local level. In other words, it is a policy framework adopted by the government to empower the people in the management of their own (local) affairs. A host of writers¹¹, have dwelt upon decentralization as a concept, and the international agencies such as the United Nations Programme (UN) and the World Bank¹², have also contributed substantially in this field. The Indian University, Bloomington through their publication *Polycentric Governance and Development* have also dwelt upon this subject as one of the contemporary issues.

However, as a concept, it evokes different images for different people—policy-makers, scholars and administrators (Olowu 1999). Traditionally, decentralization was considered as a strategy to transfer authority to lower units within the organization or to field units (i.e. de-concentration) and the transfer of authority to local bodies (Maddick 1963). In addition, the terms such as privatization, deregulation and denationalization are associated with the term Decentralization. (Agarwal et al 1999) As such, Rondinelli considers Decentralization as 'the transfer of responsibility for planning, management and resource raising and allocation of them from the central government and its agencies to: (a)field units of central government ministries or agencies, (b)subordinate units or levels of government, (c)semi autonomous public authorities or corporations, (d)area wide regional or functional authorities, or (e)non governmental private or voluntary organisations' (World Bank, 1984). However for the purpose of this paper, the UN definition on Decentralization has been accepted as the basis for discussions. It defines decentralization as:

Transfer of authority away from the national capital whether by de-concentration (i.e. delegation) to field officers or devolution to local authorities or other local bodies (UN 1962).

The Constitution of the Kingdom of Nepal 1990, as already stated elsewhere, through one of its provisions on Directive Principles and Policies has accepted 'Decentralization' as a policy framework for the association of the people at the local level too in the planning and development of the country through the local authority/body. And towards translating this spirit of the Constitution, the government has enacted the LSGA. But one of the problems of Nepalese decentralization experience whose history goes back to the Constitution of Nepal 1962 and under whose provisions various measures were undertaken between 1965 and 1982¹³, was the lack of clarity with regard to concept. In other words, it was not clear whether the government wanted to have the devolutionary or deconcentration type of decentralization

system in the country. The consequence of all these was that the district administration and sub district level offices of the government rather than the then local authority/body remained an important organization to, for all practical purposes, the people in relation to the civic and development activities. Against this context, if the LSGA is judged from its preamble, principles and policies of local self-governance, the LSGA seems to be geared towards the establishment of the devolutionary type decentralization. The preamble of the Act, among others, states that it is expedient to:

Make provisions conducive to the enjoyment of the fruits of democracy through the utmost participation of the sovereign people in the process of governance by way of decentralization,

Institutionalize the process of development by enhancing the participation of all the people including the ethnic communities, indigenous people and down trodden as well as socially and economically backward groups in bringing out social equality in mobilizing and allocating means for the development of their own region and in the balanced and equal distribution of the fruits of development,

Constitute local bodies for the development of the local self governance system in a manner that they are able to make decisions on the matters affecting to day to date needs and lives of the people, by developing local leadership...

In order to achieve these, the government (HMG/N) in relation to decentralization, as per the LSGA, would pursue the following principles and policies for the development of local self-governance:

Devolution of such powers, responsibilities, and means and resources as are required to make the local bodies capable and efficient in local self governance,

Building an development of institutional mechanism and functional structures in local bodies capable of considering for local people and bearing responsibilities,

Devolution of powers to collect and mobilize such means and resources as are required to discharge the functions, duties and responsibility and accountability conferred to the local bodies,

Having the local bodies oriented towards establishing the civil society based on democratic process, transparent practice, public accountability and people's participation, in carrying out the functions devolved on them,

For the purpose of developing local leadership, arrangement of effective mechanism to make the local body accountable to the people in its own areas, and

Encouraging the private sector to participate in the local self-governance in the task of providing basic services for sustainable development.

(Section 3, Local Self-Governance 1999)

Despite making such provisions in the LSGA, it further mentions that the concerned ministry has to classify its departmental programmes into village level, town level and district level programmes (Section 243). Although it is not specified, the classified programmes could be delegated to the respective unit of local body/authority by the government (Section 242). If it is only for the purpose of planning and management of the programmes by the ministry/department concerned, there was no need to have such a provision in a law that deals with the powers and functions of local authorities/bodies. If this provision was included for the purpose of delegation from the ministries and departments to the local authority/body, the wordings in both the preamble of the Act and Section 3 (principles and policies of local self-governance) should have been framed along the lines of deconcentration/delegation type of decentralization. Since the LSGA contains both these provisions, one could say that Nepal still suffers from conceptual clarity with regard to decentralization.

Since July 2002, no elected representatives at the local bodies exist because the then government headed by Sher Bahadur Deuba did not extend their term upon the completion. Nor it could hold fresh election to these bodies. As a result, for the first time since the establishment of a countrywide network of local authorities/bodies and election to these bodies in 1962, the country is having no local authorities/bodies with elected representatives. At present the VDC, municipality and DDC are run and managed by the village development secretary, chief executive officer and local development officer (secretary DDC) who are the members of civil service. Therefore, whatever services are provided at present by these bodies are through the government employees not by the people's representatives.

II. Civil Society/Non-government Organisations (NGO's)

Although in the modern times, civil society/non-government organisations¹⁴ emerged in the form of Shree Chandra Kamdhenu Charkha Pracharak Guthi with a view to raise the awareness of the people against the then Rana Oligarchy, around 66 years ago, which was followed by the establishment of organizations such as Paropakar Sanstha (established to provide the health services), and the Red Cross Society of Nepal (NPC 1997), their history in the country dates back to ancient times. Civil societies existed in the form of social, cultural, philanthropic and religious groups. Traditionally, civil society in Nepal grew as duty-based associations.

Long before the government showed its presence in various socio-economic activities through its field offices or made the legal arrangement for the establishment of local authority/body, people were being provided service by the local communities through the formation of community organisations. In other words, the local communities had formed various types of organisations for providing services

of different kinds, such as education, drinking water, trails and tracks, to the communities concerned and protecting the interests of the communities concerned. There are thousands of such organisations. Such organisations from the point of formation could be broadly into two groups: community formed organisations on their own and sponsored organisations or formed by other organisations (Dhungel 1993, Bhattachan 1997 and Acharya 1997).

Community own formed organisations are the integral part of the Nepalese society and the existence of such organisations' has been a well-established tradition in Nepal (Messerschmidt 1987). Such organisations are 'small groups (self-help groups) of users binding together as neighbourhood families, productive, productive activities, common property management or public works development' (ibid.). The main criterion of such organisation is that it is formed by the members of the community or ethnic group on their own initiative with a view to get involved in an activity, be it religious, philanthropic/charitable, use of common pool resource. As to the types of such organisations, Bhattachan (1997) classifies them into six categories: agriculture labour based organisations, forest resources based organisations, credit based organisations, socio-cultural based organisations, religious based organisations, political based organisations.

Sponsored organisations are those ones, which are formed and organised by an external agency that is involved in the planning and management of development programmes, poverty alleviation or involved in the charitable works. Various agencies, government and non-government have been forming users groups under their programmes. The banking and financial institutions such as, Commercial Banks, Agriculture Development Bank, Nirdhan [designed along the lines of Grameen Development Bank of Bangladesh,] five regional rural development banks [Grameen Vikas Banks] and some other development, such as Self Reliant Development Bank, Chhimeki Development Bank, DEPROS Development Bank, Small Farmers' Development Bank etc. (Source: Nepal Rastra Bank 2005 [2062/8/20] have their own users groups formed among their programme beneficiaries. The Poverty Alleviation Fund (PAF), a government established autonomous fund has its user' groups formed from among its beneficiaries. Governmental sectoral ministries, such as Women, Children and Social Welfare, Agriculture and Cooperatives, Waters Resources etc. have also adopted the formation of users groups as a strategy to run or manage their departmental programmes, Production Credit Rural Women Programme (PCRW) implemented under the Ministry of Women, Children and Social Welfare is one of the known programmes which has its own women groups in the districts of the country. Research institutions, such as Institute for Integrated Development Studies [IIDS] in its action programme called as the Self Reliant Development for the Poor by the Poor (SRDPP) has formed users' groups from among its beneficiaries. Other non government organisations, such as King Mahendra Trust for Nature Conservation (KMNTC), The Nepal Red Cross, The Family Planning Association of Nepal (FPAN), SAPROS, RSDC, Pro-public, etc. involved in the nature conservation and protection environment, health, disaster management, rural development or poverty alleviation programmes or public advocacy programmes

have formed their own users groups in the areas covered by their programmes. The international non-government organisations (INGOs), whose current number is, as indicated below 135, too have been forming such programmes. Cooperative societies are the other groups at the local involved in the income generating as well as community development activities.

As to the number of such organisations, no exact figure, other than those affiliated with the Social Welfare Council (SWC) under the Social Welfare Act 1992 and Cooperative Act 1992 is available due to the absence of central registry for such organisations. By the end of July 2005, 18,126 organisations, (national non-government organisations), as would be indicated in the subsequent paragraphs, were affiliated with the SWC. By the end of the last fiscal year 2004 and 2005 (From July 15 2004 to July 14, 2005), there were 7,716 registered cooperative societies including the primary and district level societies, in the country.

◆ **Policy and Legal Environment for Civil Society/Non-Government Organisations Policy Environment**

Ever since the beginning of the planned development in 1956 AD (First plan 1956–61), the country has already implemented nine periodic plans and it is under the Tenth Plan (2002–2007 AD) period. But poverty still remains one of the major development problems. Gap exists in terms of the existence of facilities between the urban and rural areas, where most of the people are living. This is why current periodic plan, Tenth Plan: 2002–2007 has accepted ‘accelerating human development through a renewed emphasis on effective delivery of services... as one of the four pillars of poverty reduction strategy’ (The Tenth Plan/PRSP 2003). For this, it emphasises the role of all the actors i.e. the government, the local authorities/bodies, non-government organizations (NGOs), community based Groups (CBOs) and international non-government organisations (INGOs) in the delivery of services. The ‘plan relies heavily on the Private sector, NGO’s, INGOs and Community Based Groups (CBO’s) for carrying out economic activities, infrastructure development and service delivery where ever, both in partnership with central and local governments and agencies and to complement the role of the government’ (Ibid. p. 38).

During the National Development Forum (NDF) meeting of 2004, the government had reiterated that in the context of the ongoing insurgency and growing difficulty for the government to provide services at the local level, it (the government) would ‘use whosoever or whatever mechanisms that will work—non-government organizations (NGOs), INGOs, community-based organizations and social organizations...’ (Agenda for Reform 2004). Especially the role of the NGO, INGO have been emphasised in the management of primary education and health care and that of the CBO’s in the rural drinking programme (The Tenth Plan/PRSP 2003: 53).

Legal Environment

So long as the organisations, especially the CBO’s intend to work informally, there is no need for them to be registered with the government. But they would not enjoy the legal status for the purpose to sue and to be sued. More than to sue or to

be sued, unless an organisation is registered it would not be able to avail the services provided by the government. Because of these reasons, those who decide to form an organisation either on their own initiative or on other's initiation prefer to be registered with the competent government authority. There are four laws, which the organisations resort to get registered. They are: Society/Association Registration Act 1977¹⁵, Social Welfare Act 1992¹⁶, the Company Act 2005¹⁷, and the Cooperative Act¹⁸ 1991.

Organisations that are formed with the purpose of profit making and sharing among their shareholders come under the purview of the Company Act 2005. Organisations that are formed under the principle of the cooperatives with the purpose of making profit and sharing such profits/dividends come under the purview of the Cooperative Act 1991 and there were 7,716 registered cooperative societies in the country by July 2005. Other organisations than these, come under the purview of the Society/Association Registration Act 1977 are either profit making bodies registered under the Company Act or cooperative societies registered under the Cooperative Act. Because of the fact that the cooperative societies and companies are profit-making body, they are not considered as the NGOs from the point of view service delivery and planning and managing agencies of development programmes at the local level. Only those organisations, thus, that intend to involve in those activities, which are voluntary, non-profit and philanthropic are registered as the NGOs. In addition the NGOs are required to be affiliated with the Social Welfare Council (SWC) under the provision of the Social Welfare Act 1992.

Social Welfare Council consists of nineteen members (maximum) and Minister or the Minister of State responsible for social welfare is its chairperson. The other members of the Council are: Vice-chairperson, Treasurer, President Social Committee, House of Representatives (HoR), Member, responsible for the social service at the National Planning Commission (NPC), representatives of the Ministers of Home, Local Development, Finance, Health, Education and Culture and not more than four persons at least one women nominated by His Majesty's Government from the social workers, three persons nominated by His Majesty's Government from among various social organizations and institutions, and Member Secretary.

The Council is mandated to: a) To run or cause to run the social welfare activities smoothly and effectively, to extend help to the social organizations and institutions and to develop co-ordinations among them and to supervise, follow-up and carry out evaluations of their activities; b) To extend or cause to extend help and support to establish social organizations and institutions, their development, strengthening and extensions; c) To perform liaison work between His Majesty's Government and social organizations and institutions; d) To provide advisory service to His Majesty's Government in order to formulate policies and programmes directly related to social welfare activities and other social services; e) To establish and conduct or cause to establish and conduct a fund, for the social welfare activities; f) To work or cause to work as a center for dissemination of information and documentation to the affiliated service oriented organizations and institutions with Council; g) To conduct or cause to conduct training, studies and research

programme in the areas related with social welfare; h) To carryout or cause to carryout the physical supervisions of the properties of those social institutions and organizations affiliated with the Council; i) To carry out or cause to carry out the necessary functions to implement the objectives of this Act; j) To make or cause to make contract or agreement with the local, foreign or international organizations and foreign countries; and k) To collect grant from the national and international agency and to manage the received grant (Social Welfare Act, 1992).

With regard to the link agency of the Council within the government organisation, it is the Ministry of Child, Women and Social Welfare (MoCWSC) through it maintains the relationship to the government.

There were 18,126 organisations were registered and affiliated with the SWC by July 2005. Of these, 10,284 involved in the community and rural development activities; 3,065 were involved in youth service; 1,577 were involved in women/gender related activities; 1,023 were involved in environmental protection activities; 603 were involved in child welfare activities; 487 in moral development activities; 408 were involved in health services; 387 were involved in handicapped and disabled activities; 230 were involved in education activities; and 62 were involved in Aids and Abuse control activities.

From the point of view of their distribution to the five development regions, the largest number, 11,239 was from the Central Development Region followed by 2,390 organisations from Western Development Region. Only 1,025 were from the Far Western Development Region. From the point of view of districts, the total number being 75, the largest number of associations, 5,969 were from the district of Kathmandu, which falls under the Central Development Region.

In addition, 135 international NGOs were registered/affiliated with the SWC by the first week of December 2005. The largest number was from the USA. Then followed by the UK, Japan, Germany, France Switzerland and others. For the current FY, 2062/2063 (2005/2006 AD), the total budget (annual) of these INGOs has been NPR 4.29 billion.

III. Interface between Local Authorities/Bodies and Civil Societies/ Non-Government Organisations with respect to Planning and Management of Development Programmes

Participation envisages involvement of all men and women through organisations representing gender, language, culture and religion charities, business, social and community development works, etc. in the decision-making process (UNDP, 1997). At the local level, various civil societies (non-government organisations and CBOs) are involved in the planning and management of programmes/projects of local importance. Decentralization as a policy framework not necessarily dwells with the role of the local authority/body's role in the planning and management of development programmes but also accepts, as based on UN's definition of the term, the role of the civil society/NGOs in these matters. The LSGA, as already indicated above, too recognizes the role of these organisations in

the planning and management of development programmes and it prescribes the following processes for this purpose:

With regard to planning and management process at the Village Development Committee Level, the Section 51 of the states that:

- i. The Village Development Committee will have to encourage the non-governmental organisations for the identification, formulation, approval, operation, supervision, evaluation, repair and maintenance of the village development programmes within each village development area.
- ii. The projects of the non-governmental organisation will have to be managed through its own resources and the resources obtained from the Village Development Committee as well as the District Development Committee.
- iii. The organisation concerned will have to submit a full description of the project to the Village Development Committee.
- iv. The non-governmental organisation will have to manage projects keeping in coordination with the Village Development Committee.
- v. The Village Development Committee may implement and manage plans through non-governmental organisations.

Section 115 of the Act provides the procedure for the Municipality of coordinating the development plans and programmes with those of the non-governmental agencies. In accordance to which, while formulating plans and implementing programmes the Municipality will have to maintain coordination with governmental, non-governmental and donor agencies in the following manners:

- i. To avoid duplication between the Municipality and the concerned agency on investment to be made in any service sector,
- ii. To ensure complementarity among the investors, and
- iii. To adopt a method, whereby the inhabitants of the Municipality can have maximum benefit from the investments

In addition, the Act through its Sections 116 and 119 have made the following provisions too:

- i. The non-governmental organisations will have to manage their programmes by entering into an agreement with the Municipality, and

- ii. The Municipality may form consumer's groups from amongst the persons receiving direct benefit from the project for its implementation.

From the point of view of the non-governmental organisations, they have to:

- i. manage and implement projects, in coordination with the Municipality,
- ii. maintain accounts for their transactions, get them audited and submit the same to the concerned Municipality, and
- iii. submit a full description of the project to the Municipality.

With regard to the responsibility of the Municipality towards the non-governmental organisations, Section 121 of the Act states that the Municipality would:

- i. encourage the non-governmental organisations in the identification, formulation, operation, evaluation, repair and maintenance of the town development programmes within its area
- ii. may implement and manage plans through non-governmental organisations.
- iii. provide resources to non-governmental organisations to undertake development projects

With regard to the planning and management relationship between the DDC and non-government organisations/civil society, Section 208 of the Act states that the District Development Committee may:

- i. form consumer's groups of the people who would receive direct benefit from the development projects while implementing the projects included in the district development plan (DDP).

In addition, Section 209 of the Act states that Consumer's Groups and Non-Governmental Organisations will have to:

- ii. implement and manage projects, in coordination with the District Development Committee,
- iii. maintain and up-date the records of accounts of their financial transactions,
- iv. submit a report of the accounts of their transactions to the DDC, which would get accounts audited, and

- v. collect service charges from the project beneficiaries for the repair, maintenance and operation of the project.

◆ **In practice:**

The LSGA, from the point of view of implementation, is already six years old. By this time, one has to assume that all of its provisions including those related to the relationship between the units of the local bodies/authorities and the civil society/non-government organisations were in actual use or implementation. In order to find out the real situation, the concerned officers at the secretariat of the Kavre¹⁹ DDC were approached. According to Audit Officer and Information Assistant, by the end of the last fiscal year, Ashar 2062, there were 850 civil society/ NGOs registered under the Society/Association Act 1977. In addition, there were 952 community-based organisations established under the DLGSP, and a few more community based organisations established under the departmental programmes such as DACW, PCRW, Forest. Also there is a NGO coordination committee in the district as well as a NGO Desk in the DDC secretariat. Most of the Civil Societies/NGOs were involved in the community development programmes. Of the civil societies/NGOs 350 are affiliated with the NGO desk of the DDC secretariat. The DDC secretariat, as per these officers does not have the information about the budget of the civil societies/NGOs. With regard to the reflection and coordination of their programmes in the annual plan of the DDC, it was told that the programmes of only 5 to 10 percent of the total Civil societies/NGOs are reflected. Similarly, about 2 percent of the total development budget of NPR of 50.9 million were implemented by the Kavre DDC during the last fiscal year, 2004/2005. The civil society/NGO in order to get its registration renewed from the district administration office, now as per the decision of the council of ministers, has to get the recommendation from the concerned DDC secretariat. This arrangement, as per these officials might facilitate the DDC Secretariat to have the coordination between the programmes of the DDC and the Civil Society/NGOs.

As already indicated above, 18,126 Civil Societies/NGOs were affiliated with the SWC by the second week of July 2005. Of these 5,969 organisations (32.93 percent) were in the district of Kathmandu. In order to find out whether these organisations and Kathmandu DDC have been following the provisions of the LSGA in the planning and management of their annual plans and programmes, the Local Development Officer (LDO), the Secretary to the Kathmandu DDC secretariat was approached. According to this officer, the Secretariat has a NGO desk/unit with two assistant level staffs to look after the NGO related matters. Because of the requirement for the NGO to have the recommendation from the DDC for getting annual renewal of its registration from the district administration office, it is possible for the DDC to keep track of and have the co-ordination with the activities of the NGOs working within the district. But in practice, the DDC secretariat is yet to have the programmes of all NGOs reflected in the annual programme nor the DDC secretariat has been monitoring their programmes. It was told by the LDO that only 5 to 10

percent of the NGOs are in contact with the DDC secretariat with a view to co-ordinate their programmes with those of the DDC. With regard to the implementation of the DDC programme by the NGOs, the Kathmandu DDC is going to channel the fund of Npr.1.2 to 1.5 million out of the development expenditure of Npr. 100 million through the NGOs during the current Fy 2005-2006 (2062-2063 BS). The Kathmandu DDC, as per its current programme, it would prepare a profile of the NGOs registered in the district of Kathmandu during the current fiscal year 2005-2006 (Approved Annual Programme 2005-2006).

During the discussion with this contributor one of the founding members of the Women Foundation Nepal, Kathmandu based NGO which implemented income generating activity in a village of the district of Parsa, one of the Tarai districts from the Central Development Region, indicated that there is no coordination between the programmes of the NGOs and DDC. There is no formal contact between their NGOs and the Parsa DDC secretariat. Nor the latter has tried to find out what they are doing. Rather the WDFN in order to have the support of the DDC secretariat in case of need, has kept it informed of their programme. In other words, NGOs provide the information about their programmes to the concerned local bodies/authorities just to keep them on loop so that whenever there is a need they could rely on their help and assistance.

The planning and programming division in the SWC was approached to find out what they had to say in relation to the coordination between the programmes of the DDC and Civil Societies/NGOs. The Director of the Administration Division, who used to be chief of the Planning Division, indicated that once a NGO gets affiliated with the SWC, it does not have to get its affiliation renewed every year. Because of this fact, the SWC does not have the total picture in terms of the programmes being undertaken of the NGOs affiliated with it. They even do not know how many of the 18,126 affiliated with it (SWC) are active. Nor they have the information about the nature of the programmes undertaken and the fund raised for the programmes. It was also told that NGO's become active only when they receive the funding support.

From all these examples, it can be said that co-ordination between the programmes of these bodies is still a pious wish in most of the cases. Each organisation, i.e. DDC Secretariat and the NGOs has been implementing its plans and programmes without taking into consideration what other organisation is doing in the district.

IV. Promises and Achievements

1. With regard to the Implementation of LSGA:

The LSGA is already six years old. Within these years, in course of the implementation of its provision, the government has: (i) established the High Level Decentralisation Implementation Monitoring Committee (DIMC) and its working committee, (ii) prepared and approved an work/action plan, (iii) has delegated the responsibility of operating and managing 1500 primary schools of various districts and 1184 health institutions (sub-health post, health posts and primary health centres) of 25 districts, the agriculture extension and livestock programme to the

local authorities/bodies, which HMG/N Officials like to call of devolution of authority to local bodies/authorities, (iv) and have formed a Local Fiscal Authority Commission²⁰ (LFAC) under the Chairpersonship of the Vice-Chairperson of the NPC (Ministry of Local Development). According to the officials of this ministry, thinking is going on 'to run and manage rural infrastructure programme through DDC'.

◆ Unsatisfactory Progress in the Implementation of the LSGA Provisions

But when considered from the point of view of the implementation of the LSGA in the context of its preamble, it is yet to be implemented in the real sense of the term. The action plan is yet to be completely implemented. The government is yet to enact a separate law, as per the Section 255 of the LSGA for the personnel management of the employees who work in the local authorities/bodies. Hence except those employees who are hired under the administrative grant and from their own resource, the civil servants who are working in the local authorities/bodies are still accountable to their parent government ministries. The DDCs are yet to establish the subject matter units within their organization, for the opening of which they have to have the prior consent of the government (Section 257).

According to the officials of the Association of the District Development Committees (ADDCN), a few DDCs had sent their request for the permission to open the subject matter units in their organizations during the fiscal year 2000/2001 (2057/2058 BS). For example, the Kaski DDC had made a request for the permission to establish tourism industry unit, Kavre DDC had requested for the permission to establish a unit for women development, and Morang DDC for cottage industry. But the requests were returned back by the Ministry of Local Development (MoLD) and wanted some more information about their demands. Meanwhile the term of the elected representatives of the local authorities/bodies expired. And the idea of establishing subject matter units got lost.

Mere elaboration of the planning process for district-level projects in the law without the intention to follow them by the Singha Durbar has helped neither to initiate the planning from below nor institutionalize the process of having peoples' participation in the governance and development process. Under the present system, it is uncertain, except for the VDC, how much a DDC would receive grant until it has the actual release of fund after the approval of budget by the national parliament. By the time the grant is received, a DDC might find that it has been allocated less than what had been requested. In such a situation, readjustment of some projects/programme would naturally be needed. Some of the originally submitted programmes/projects may have to be dropped.

Furthermore, during the identification and finalization of the district-level programmes, the personality of politicians, (i.e. who has influence at Singha Durbar or which local leader has strong connections within its corridors) play the crucial role. It is the interest of the departmental minister, her/his personal relationship with other politicians or MPs, and vote banks—*Aphna Karyakarta* (our/my workers) of the party in power are the main basis on which district-level programmes are

decided. Consequently, such practices caused most of infrastructure projects not only suffer from lack of sufficient fund, but also remain incomplete for years and the resources go waste.

The agriculture and livestock extension activities may have been delegated to the DDC. But it is the district-level agriculture and livestock office of the Ministry of Agriculture (MoA) that plans and manages the respective programmes. What has happened is that the budget from the government goes to the District Development Fund (DDF) – from where it is released to the respective district-level offices. Similarly, since the local community has been made responsible for the management of primary schools, the budget related to these schools is directly released to the management committee.

With regard to health centres, the programme budget is directly released to the health centres; and only the administrative expense is released through the local authority/body. Hence in reality, the body/authority is responsible only for the planning and management of the small infrastructure works since these activities come under the purview of the Ministry of Local Development (MoLD), the nodal ministry for the implementation of the LSGA. Because of such arrangement, the officials of the MoLD feel that the local authorities/bodies have been bypassed in the name of devolution. Further they feel 'had the responsibility of managing the programmes been devolved along with the establishment of the local service, the bodies/authorities would have become the real planner and manager for the devolved functions in the real sense'.

During the study on decentralization in May/June 2000, I, in an interaction with the member-in-charge of local development and decentralization in the NPC, wanted to find out the intention of the government with regard to the implementation of the devolutionary type of decentralization. The answer was 'the local authorities/bodies do not have the capacity to take up all the development activities within their areas of jurisdiction. And they would be entrusted with the responsibility of only those activities that require simple know how to plan and manage.'

There is a tendency in Nepal to have high-level committees that, too, headed by politicians, for overseeing the implementation of programmes or policy measures. The LSGA too, as already indicated has made the provision for the formation of a DMIC headed by the Prime Minister of the country without realizing whether the Prime Minister would be able to devote time or what implications such a committee would have on the responsibility of the departmental Minister. First of all, the Prime Minister would not have the time to devote to a programme that falls under the purview of a Minister. Second, even if the Prime Minister may find time for chairing the meeting of the committee, she or he would hardly be in a position to find out what happened to the decisions made due to his/her pre-occupation with so many activities.

Actually during five years of implementation of LSGA, the DMIC has met three times only. Since more than two years, it has not met at all. Similarly, the working committee, according to MoLD officials, has met only seven times and has not met since more than two years. It has also failed to be effective, because first of all it did

not get the drive from the ministry. Secondly, the appointment of the experts was always decided on the basis of 'who knows whom on political ideological ground rather than on merit'. Because of such system, one of the senior officials at the ministry feels that a system of having a panel of advisors rather than appointing experts on a full time basis should be initiated. I do not know whether he would be able to put his views before the political level for consideration and approval.

◆ Heavy Dependence on Government for the Funding

The local leaders, because of fear of becoming unpopular among the voters prefer to have more grants coming from the government than on relying on their own resources. According to the findings of the Local Authority Fiscal Commission 2000 (2057 BS) (L AFC), 74 to 74.3 percent of the total income of 75 VDCs of 30 districts for the fiscal years 1997/98 (2054/2055 BS) and 1998/99 (2055/2056 BS) came from the government grant. Similarly for the same fiscal years, the income of 34 DDCs from sources other than the government grants was to the tune of 17.8 to 21.1 percent of the total income.

In another study conducted in the two DDCs, one that of the Kavre DDC and another of Morang DDC²¹, it was found that the incomes sources from other than the government grant for the fiscal years (1999/2000 and 2000/2001) were in the tune of 39 percent and 79 percent respectively for Morang DDC and 37 percent and 50 percent respectively for Kavre DDC (Dhungel 2002).

From the available information it becomes clearly evident that the VDCs and DDCs are dependent on the government for carrying out the development activities. According to the findings of the LFAC, between 51 to 64 percent of the development expenditure were met by the 31 DDCs from the government grants during the two fiscal years, 1997/98 (2054/2055 BS) and 1998/99 (2055/2056 BS). From their own resources 32 DDCs had spent between 33 to 40 percent (LFC, 2000). In the case of the VDCs, between 74 to 74.3 percent of the development expenditures were met by 75 VDCs of 30 districts from the government grant (Ibid).

The DDCs have been spending their own resources for meeting their administrative expenses. For example, the Morang DDC had spent 48.66 per cent for development works from their internal source in the fiscal year 1999/2000. Whereas, Kavre DDC had spent 4.44 per cent in the similar purpose in the fiscal year 1999/2000 (Dhungel 2002).

But the situation of municipalities in this context was better while compared to their rural counterparts and district level unit. The contribution of the government grant in the total income of all the 58 municipalities for a period of four years (fiscal years 1995/96 (2052/2053 BS) to 1998/99 (2055/2056 BS) was between 7 to 16 percent (LFAC 2000).

All these indicate that the local bodies are heavily dependent upon the government for financing development activities or in delivering services. But over the years there has been decrease in the amount that is transferred as grant from the government to the local authorities/bodies. For example, the budgeted amount (included in the budget known as red book) to the local bodies for the year 1999 was

Npr. 4,126.3 million, i.e. 14.5 percent of the amount allocated for national development purpose. It was Npr. 4,987.2 million i.e. 17.2 percent of the allocation for development purpose in the year 2003. But, the government actually released Npr. 3,672.3 million in the year 1999 and Npr. 3,837.1 million in the year 2003 (HMG/N Details of Expenditure [budget/Redbooks]). The on-going conflict and increasing security expenses could be the reasons, among others, for curtailment in actual release. According to the World Bank, for 'the fiscal year 2003-2004 the share of local bodies in public spending was around 5 percent, largely financed by transfers from the central government' (Nepal Development Policy Review 2004).

These figures indicate how much difference exists between what is promised and what is achieved so far. But we should not forget that the country is in deep crisis due to the insurgency waged by the Communist Party of Nepal (Moist) for the last nine years. This definitely has implications for the government's capacity for disbursing fund to local bodies/authorities and even to its expanding capacity. In the given context, it can be assumed that the local bodies may have not been able to spend whatever was released as most of the VDCs are running their offices through district headquarters, but 1,683 VDCs (Karki and Bhattarai, nd.) even do not have their offices since they were burnt down by the CPN/Maoist.

◆ Contradictory Provisions

In addition, the LSGA, when considered from the point of its preamble and principles and policies of self-governance wants to establish the devolutionary type of decentralization. If the devolution type of decentralization is to be turned into reality, the local authorities/bodies should be made responsible for the total planning and management of whatever activities have been identified as their powers, functions and duties. There should be no functions similar to those mentioned in the LSGA to be performed by the sectoral ministries at the local level. In other words, the government was to completely withdraw from those functions that fall under the purview of the local authorities/bodies. But, as already indicated elsewhere, ministries concerned are required to classify their programmes into village level, municipal and district level programmes (Section 243). This means that they may delegate the identified functions to the respective level of the local authorities/bodies—VDC, Municipality and DDC.

If the intention of the lawmakers was to have the deconcentration type of decentralization, there was no need to provide the detailed list of activities under the different sectors as the powers, functions and duties of the VDC, Municipality and DDC in the Act. Similarly when the Act itself has identified the detailed list as the powers, functions and duties of the VDC, Municipality and DDC, there was no need to indicate that the ministry concerned would classify its departmental programmes into village, municipal and district level programmes. Furthermore, the DDC, as already indicated, is not authorised to have subject matter unit within its organizational structure without the permission of the government.

◆ **Local Service Act Yet to be Enacted**

The government was to enact a law on 'Local Service' (Section 255 of the LSGA) for the management of the personnel to be associated with the local authorities/bodies. So far it is yet to be framed. And only a small section of the employees working at the local level, i.e. mostly subordinate staff actually are under the direct control of the respective local authority/body and their personnel administration is managed through the Local Self Governance Regulations, 1999. The development activities are planned and managed by the field staff of the respective ministries and are accountable to their parent ministry and not to the local authority/body. And for their placement and transfer, it is not required for the agency concerned to have the prior consent of the local authority/body concerned. Thus it is evident that the LSGA, like the then acts on VDC, municipality and DDC, suffers from the problem of conceptual clarity.

◆ **Existence of Laws Not Conforming with the LSGA Provisions**

Despite the implementation of the LSGA for more than six years there are still 23 laws that are not in conformity with its provisions. So long as they are not synchronised with this law, the LSGA would remain incomplete from the point of view its implementation. The government has been promising to deal with this issue but the real action is yet to take place.

◆ **Absence of Elected Officials at the Local Authority/Body**

Above all, since July 2002, no elected representatives at the local bodies exist because the then Sher Bahadur government did not extend their term upon the completion. Nor it could hold fresh election to these bodies. As a result, for the first time since the establishment of a countrywide network of local authorities/bodies and election to these bodies in 1962, the country is having no local authorities/bodies with elected representatives. At present the VDC, municipality and DDC are run and managed by the government nominees and employees of these bodies, especially the village development secretary, chief executive officer of the municipality and local development officer (secretary DDC).

The election to the municipality is due on Feb. 8, 2006. But no body knows when the next election to the VDCs and DDCs would be held due to the on going insurgency caused by the Communist Party of Nepal (Maoist).

◆ **Silver Lining in the Dark Cloud**

From the point of view of implementation of the provisions of the LSGA, no substantial progress may not have been made. However, the proponents of the decentralization in Nepal should feel satisfied for one thing. That is the establishment of the national-level umbrella organisations of each of the local authorities/bodies, as already stated above, National Association of Village Development Committee, Nepal (NAVIN), Municipality Association of Nepal (MUAN) and Association of District Development Committees of Nepal (ADDCN). The emergence of these associations as strong pressure groups and the advocacy roles they are playing

is commendable. They have emerged as the force to be reckoned with and no government is in a position to forget their presence and their existence has been formally recognised by the government by providing them the ex-officio membership in the composition of the DMIC.

2. With regard Civil Society/NGOs

◆ Lack of Actual Information on Civil Society/NGOs

With regard to the number of programmes/projects, no exact number of such programmes/projects undertaken by the Civil Society/NGO's affiliated with it is available with the SWC. Similarly, no information about the exact amount channeled to these bodies including internally raised resources or received in the form of a grant is available. According to the knowledgeable source it runs into several billions. According to the Planning and Programme Division of SWC, they had the information of activities being undertaken by some NGOs for the three Fys 2001/2002 to 2003/2004. According to this division 164 NGO's had undertaken 334 programmes/projects in the Fiscal Year 2001/2002. In the following two Fiscal years (2002/03 and 2003/04), 205 and 262 NGOs undertook 423 and 630 programmes respectively. When checked why the SWC does not have the total picture of the programmes of all the NGOs affiliated with them, the answer was that first of all it is not necessary for the NGOs to have the annual renewal of their affiliation. Once a NGO gets affiliated with it, it does not have to renew its affiliation. Therefore, they have to depend to the district administration offices for the latest situation of the registered NGOs since at the beginning of every fiscal year each and every NGO has to get its registration renewed. While getting so it has to provide the progress report of its activity and the audit report to the district administration office concerned. Based on such report the district administration office is supposed to provide the information to the SWC. But in fact, according to the SWC, there has no regular communication between them and district administration offices in this regard. And they do not have the capacity to monitor the activities of all the NGOs affiliated with it. According to the Official of the SWC in the given situation, its monitoring capacity is next to impossible for them to keep track of all the NGOs in terms of their activities and funding sources.

◆ Heavy Dependence on the external funds

With regard to the funding capacity of the NGOs, it seems that they are heavily dependent upon external source. When checked the percentage of resource raised by the NGOs for meeting the programme cost, it was told by the SWC that the NGOs had only raised 5.46 percent of the total cost from the internal resources in the FY 2001/02. In the following two years 2002/03 and 2003/04, the amount raised internally was only 3.67 and 4.03 percent respectively. This raises a fundamental question, whether the NGO's would be able to sustain their activities once the external support ceases to exist. In the light of the experience the country had in the rural development field, ie. integrated rural development projects (collapse of the projects after the withdrawal by the funding agency), undertaken by the government with

the help of the donors in the nineteen seventies/eighties, it can be safely concluded that the NGO's would not be able to sustain the programmes once the external support is withdrawn.

◆ Lack of Accountability

Another issue that is often raised is the issue of the transparency and accountability with regard to the working style of the NGO's. In other words, mostly one would find the lack of transparency in the workings of the NGOs. Similarly, it is difficult that to pinpoint to whom the NGO's are made accountable to for the commission and omissions in the discharge of the functions despite the fact they have to inform about their programmes to the local authorities/bodies. Normally, the local authorities/bodies are not concerned with what is happening in their area through the NGOs; nor the monitoring function of the funding agencies seems to be effective as they are away from the actual scene of activity. Similarly, not all the NGO's are registered with the SWC nor it gives serious attention to monitor the activities undertaken by the affiliated NGOs.

Conclusion:

Local Bodies including those established in the local authorities and bodies have become the part and parcel of the Nepalese public life. And despite the fact that there has been weakness on the implementations of the provisions of the LSGA, Nepal is not in a position to forget the important role these bodies, especially those established by the communities in the various fields. This is why the current periodic plan (2002-007) has emphasised the important role of the local bodies in the various sectors, especially in the delivery of services in the social sector. Despite the fact that more than six years of implementation, the LSGA has not taken of the ground. Therefore the government should assess why it has happened so by taking the help of professionals and see that its provisions are designed in such a way, if needed through amendment so that the devolutionary type of decentralization is implemented in the country.

Notes

- 1 The northern range [Himalayas] is covered with snow over the year where the highest peak of the world, Mt. Everest, stands. The middle range is captured by gorgeous mountains, high peaks, hills, valley and lakes. The southern range [Terai] is the gangaitic plan of alluvial soil and consists of dense forest area, national park, wild life reserves and conservation areas (source: Nepal in figures 2003).
- 2 The names of the development regions (from east to west) are: Eastern Development Region with its headquarters at Dhankuta in the district of Dhankuta, the Central Development Region with its headquarters at Heutada in the district of Makawanpur, the Western Development Region with its headquarters at Pokhara in the district of Kaski, the Mid-western Development Region with its headquarters at Birdendranagar in the district of Surkhet, and Far Western Development Region with its headquarters at Dipayal/Silgurhi in the district of Doti.
- 3 The names of the fourteen administrative zones (from east to west) are: the Mechhi Zone

with its headquarters at Chandragarhi in the district of Jhapa, the Kosi Zone with its headquarters at Biratnagar in the district Morang, the Sagarmatha Zone with its headquarters at Rajbiraj in the district of Saptari, the Janakpur Zone with its headquarters at Janakapur in the district of Dhanusa, the Bagmati Zone with its headquarters at Kathmandu in the district of Kathmandu, the Narayani Zone with its headquarters at Birgunja in the district of Parsa, the Gandaki Zone with its headquarters at Pokhara in the district of Kaski, the Dhawalagiri zone with its headquarters at Baglung in the district of Baglung, the Lumbini Zone with the headquarters at Butwal in the district of Rupendhehi, the Rapti Zone with its headquarters at Tulsipur in the district of Dang, the Bheri Zone with its headquarters at Kohalapur in the district of Banke, the Karnali zone with its headquarters at Jumla in the district of Jumla, the Seti Zone with its headquarters at Dhangarhi in the district of Kailali, and the Mahakali zone with its headquarters at Mahendranagar in the district of Kanchanpur.

- 4 With regard to the use of the term, the official English version of the Constitution of Nepal 1990 uses the term 'Local Authorities'. Whereas Local Governance Self-Act 1999 uses the term 'Local Body'. Therefore both of these terms are used in this paper.
- 5 Fifteen members, three from each of the Development regions, of the house are elected in accordance with the law on the basis of the system of single transferable vote by an electoral college consisting of the Chief and Deputy Chief of the village and town level local authorities and the chief, deputy chief and the members of the district level authorities: (Article 46 (c) of the Constitution of the Kingdom of Nepal 1990).
- 6 Each village unit for the purpose of election is divided into nine wards and each ward elects four representatives including one women, (one chairperson and four other members) and it is the chairperson who represents the respective ward in the executive wing of the VDC.
- 7 For the purpose of the election, the area of the municipality is divided between nine to thirty wards and each wards elects five, one ward chairperson and other four members including one women member and it the Ward chairperson, who represents the respective ward in the executive wing of the municipality
- 8 President and Vice-president are elected by the elected members of each village and municipal councils in the district from amongst themselves. The area members are elected by the members of the village and municipal councils of a particular area from amongst themselves at the rate of one member for each area (Section 176.2).
- 9 With regard to the Accounts committee at the village level, the Village Council would constitute an Accounts Committee with a Chairperson and two other members from amongst its members (Section 26.2). Regarding the composition of Accounts Committee of the Municipality, the Municipal council would form an Accounts Committee with a maximum of five members (One chairperson and other members) from among its members (Section 94.2). Similarly, the District Council would form an Accounts Committee of maximum of five members (One Chairperson and other members) from among its members (Section 188.4).
- 10 A body is created by the government under the constitutional or legal regime 'to manage the matters concerning the inhabitants of a particular locality or district by the local people directly or through representatives chosen from their midst, out of the funds wholly or largely raised locally and acting in accordance with the duties and powers conferred on them by the competent political authority, or a sort of legislature in general' (Dutta nd). One may come across differences between these bodies in different countries in terms of the powers and functions exercised by them. In some countries they may be exercising developmental as well as law and order-maintaining powers

while in others, like in Nepal, they may be exercising only developmental responsibilities. Similarly, in terms of nomenclature, one may not find any uniformity. The local body is known as local authority, local government unit, local council, etc, and the term is used interchangeably (ibid.)

- 11 Some of the writers who have done work and are known as experts on Decentralisation are: Henry Maddick, Dennis Rondinelli, G Shabbir Cheema and Elinor Ostrom and Dele Olowu.
- 12 The important publications of these agencies are: UN: *Decentralisation for National and Local Development*, and the World Banks' publication *Decentralisation in Developing Countries: A review of recent experience*.
- 13 Some of the most important ones were, a twelve year 'Decentralization Programme, 1965', the 'Local Administration Act, 1965' (latter known as the 'Local Administration Act 1971'), 'District Administration Plan 1975', 'Decentralization Act 1982' and its Regulations 1984.
- 14 Both these types of organisations, have been accepted as Civil Society by the London School of Economics Centre for Civil Society in its definition of the term. According to its definition, 'Civil society refers to the arena of uncoerced collective action around shared interests, purposes and values. In theory, its institutional forms are distinct from those of the state, family and market, though in practice, the boundaries between state, civil society, family and market are often complex, blurred and negotiated. Civil society commonly embraces a diversity of spaces, actors and institutional forms, varying in their degree of formality, autonomy and power. Civil societies are often populated by organisations such as registered charities, development non-governmental organisations, community groups, women's organisations, faith-based organisations, professional associations, trades unions, self-help groups, social movements, business associations, coalitions and advocacy groups. Examples of civil society institutions: non-governmental organizations (NGOs), private voluntary organizations (PVOs), peoples' organizations, community-based organizations, civic clubs, trade unions, gender, cultural, and religious groups, charities, social and sports clubs, cooperatives, environmental groups, professional associations, academia, businesses, policy institutions, consumers/consumer organizations, the media, citizens' militia, and religious organizations' (Source: http://en.wikipedia.org/wiki/Civil_society). Civil society organizations include, as per UNDP, organizations like 'trade unions; non-governmental organizations; gender, language, cultural and religious groups; charities; business associations; social and sports clubs; cooperatives and community development organizations; environmental groups; professional associations; academic and policy institutions; and media outlets. Political parties are also included, although they straddle the civil society and the state, if they are presented in parliament' (UNDP 1997). Accepting these definitions, the term civil society is used to denote all organisations including Non government organisations (NGOs) has been used for the purpose of this paper.
- 15 In accordance with this Act, a group of seven or more people who want to form an association, club, council or research organisation for the purpose of undertaking social, religious, literary, cultural, scientific, educational, philosophical, physical development, economic, occupational and philanthropic could get the organisation registered under this Act with the district administration office through the submission of an application and the document containing the objectives, programmes, funding sources and the names of office bearers. At the beginning of every fiscal year, the registration organisation have to get its registration renewed.
- 16 This Act has been prepared and promulgated with an objectives of brining about the

- coordination among the social organisations and to raise the status and dignity of those organisations and individuals associated with the social welfare association and organisation. And it also intends to enable the disadvantaged and disable people or the section of the society for the purpose integrating the social work and social service in the development programmes and thereby contribute to the integrated development of Nepal and the Nepali Society. The responsibility performing these functions have been entrusted to, by this Act to the Social Welfare Council (SWC). It has also defined the types of programme that would come under the purview of the social welfare and social work. In accordance to which, programmes related to the child, old, dis-advantaged/helpless and disabled people; safeguarding and upholding of women rights and interest; rehabilitating those who are involved in child crime, drugs and social evils, providing livelihood opportunities to unemployed, poor and illiterate people; management of and preservation of religious and other trusts and activities related to these organisations; and activities undertaken to protect the rights of marginalised community or groups. All the organisations registered with the district administration office under the Society/Association Registration Act 1977 to undertake these activities have to get affiliated with this council.
- 17 In accordance with the preamble of this Act, it has been enacted with the purpose of promoting or motivating the investors to invest in the field of trade and industry as per the principles of economic liberalisation so that it could contribute in bringing dynamism in the economic development of the country and to ensure the simple and transparent procedure in the establishment and running of the companies. This law authorises any one or more than one persons could establish a private profit and non-profit making company limited. But for the purpose of the establishment of the public company, at least there has to be seven share holders. All those interested to apply to the Office of the Company Register under the Ministry of Civil Supplies, Industries and Trade and Commerce through the submission of an applications and MOU and Rules of running the company.
 - 18 A group of minimum of 25 persons (belonging to farming group, a skill, low income group, labour, landless, unemployed, or social worker) join their hands as share holders and decide to form a cooperative society with the purpose joining hands for the economic and social conditions of the shareholders need to register as a cooperative with the cooperative office of the government. For the sake of the registration, the promoters have to submit the Memorandum of Understanding signed by the share holders to the cooperative office.
 - 19 The district of Kavre is located 30 kilometer east of Kathmandu. It is connected with the nation's capital (Kathmandu) by a highway, had a population of 385,672 in the year 2001. It has 87 Village Development Committees, 3 municipalities, and these areas are divided into 3 election constituencies for the purpose of election to the House of Representatives (HOR) and 15 areas for the election to the District Development Committee.
 - 20 In addition the chairperson, the Commission comprises Secretaries of the Ministry of Local Development and Ministry of Finance, Representatives of the Association of District Development Committees (ADDCN), Nepalese Association of Municipalities (MUAN) and National Association of Village Development Committees, Nepal (NAVIN) and Federation of Nepalese Chambers and Industries (FNCCI), one financial expert nominated by the chairperson are the members and the government nominee as the member secretary. (Ministry of Local Development).
 - 21 Morang is one of the Tarai districts from the eastern development region.

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