

# three decentralisation and the status of local government

After the democracy system was introduced in Nepal in 1990 and during the subsequent process of planned development, policy makers and planners have stressed the need to involve the citizenry and to solicit their cooperation in the country's development. Consequently, local government institutions have been created to promote such popular participation.

Article 25(4) of the Constitution of the Kingdom of Nepal 1990 provides a basic framework for decentralisation, emphasising that, '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....' However, the weakest part of the Constitution is the omission of an effective infrastructure for local government and a clear-cut scheme for decentralisation. There is no specific provision made regarding the form and shape of local government institutions and the involvement of the people in them, although the preamble does underscore the need for 'the widest possible participation of the Nepalese people in the affairs of the State.'

## **The Local Self-Governance Act**

Three local government Acts, viz., the VDCA 1992, the Municipality Act 1992 and the DDCA 1992 were enacted to implement constitutional directives. These have now been repealed by the recently enacted Local Self-Governance Act 1998 (LSGA). The LSGA provides for two-tier local government bodies, one at the grass roots level and the other at the district level, thereby laying the foundation for participatory democracy and local development in Nepal through decentralisation and devolving power to locally elected bodies. The main aim of decentralisation, it was said, was to involve the local people to the maximum extent in the development process and to speed up development (Martinussen 1995). In line with the VDCA, Municipality Act, and DDCA, the LSGA also establishes local government bodies throughout the country to strengthen the base of democracy at the grass roots level and hand over power and responsibility to the people so they can manage their affairs through popular participation.

Among many other things, the preamble to the LSGA stipulates that it exists 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 decentralisation. The preamble further states that the LSGA aims to,

"Institutionalise the process of development by enhancing the participation of all the people including ethnic communities, indigenous, and down-trodden people

as well as socially and economically backward groups in bringing about social equality in mobilising and allocating means for the development of their own region and in the balanced and equal distribution of the fruits of development.”

## Village Development Committee

The village development committee (VDC) is the lowest tier of local government. At present Nepal has 3912 VDCs. Under the LSGA, HMGN is empowered to demarcate village development areas from any rural ‘ilaka’ of the Kingdom of Nepal by specifying its boundary. The government is further empowered to divide each village development area into 9 wards, as far as possible with equal populations. If changes must be made in the area of any village or ward area, HMGN may set up a committee of relevant experts to make changes in the boundary on the recommendation of the committee and with the approval of the Election Commission.

The village council (VC), consisting of 53 members, is the general body of a village development area. The VDC, the executive body of the VC, has thirteen members, including an elected chairperson, vice-chairpersons, nine ward chairpersons (one from each ward), and two members nominated from the VC, including one woman. VDC members’ terms run to five years. The VDC is an autonomous body with perpetual succession and a seal of its own. It may, like an individual, acquire fixed or floating assets and use or sell them, and can sue other bodies or be sued itself.

VDC meetings, presided over by the VDC chairperson or the vice-chairperson in the chairperson’s absence, must be held once a month. VDC decisions are based on a majority vote. The ward committee meets at least twice a month, its meetings presided over by the ward chairperson, and its decisions also based on a majority vote. The VC normally meets twice a year, the meetings being convened by the VDC chairperson.

Section 27 of the LSGA empowers a VDC to form a three to nine member advisory committee with representation from social workers, intellectuals, and persons with technical knowledge to assist the VDC in its work. Ironically, it does not mention the background of the people who might be selected for the committee itself. On the basis of current practice, it can be inferred that women and representatives of FUGs and NGOs get the least priority.

The powers and functions of VDCs under the LSGA are divided into 11 broad areas: agriculture; rural drinking water; works and transport; education and sports; irrigation, soil erosion, and river control; physical development; health services; forest and environment; language and culture; tourism and cottage industries; and miscellaneous. The powers and functions under the rubric of ‘forest and environment’ require and empower VDCs to launch afforestation on fallow lands, hills, slopes, and public land; and to prepare and implement programmes with regard to forests, vegetation, biodiversity, soil conservation, and so on in the village development area. They are also required to formulate and implement various programmes for environmental conservation, with the VDC and DDC being obliged to give priority to projects that help protect the environment.

According to the LSGA, VDCs are required to construct and implement village level projects through user committees (UCs). If the UC requires any training, such training must be provided (Section 49). UCs are entitled to collect service charges from users who use the services of a project. The new legislation has strengthened the position of UCs, who are responsible for implementing and maintaining projects and creating environmental awareness. Nevertheless, the newly enacted LSGA has not clearly specified the rights, duties and functions of such UCs, nor their relation to the local government bodies.

Section 58(d) and (e) of the LSGA 1998 provides the VDC with the right to sell dried timber, fuelwood, twigs, branches, and bushes from the VDC area, as well as grass, straw and so on to generate income. Section 68 1(c) and (d) stipulate that the property of the VDC includes forests granted by the prevailing laws and HMGN, and the natural heritage of the VDC, respectively. These two Sections are inconsistent with each other, particularly Section 68(d), which includes natural heritage as the property of the VDC. Natural heritage as defined or interpreted covers forest, rivers, wetlands and so on. It is unclear if community forests would also be considered as VDC property, as the legislation appears to imply (by explicitly stipulating that the VDC has full rights over the forest granted by the prevailing forest laws and HMGN).

Similarly, the legislation provides a role for NGOs to enhance public participation and serve as links between the local government bodies and development activities. The VDC is obliged to encourage NGOs to identify, formulate, inspect, evaluate, and maintain village development projects in each VDC area (Section 51[1]). NGOs are required to implement the projects in coordination with the VDC. However, the rights, duties, and functions of NGOs are not defined.

Rule 89 of the Village Development Committee (Working Arrangement) Regulations, 1994 requires the VDC to prepare a list of users prior to constituting a UG<sup>3</sup>. The VDC is required to constitute a UG under a chairperson selected by the users. The VDC member of the ward is empowered to attend UG meetings and advise them. The UG has to invite the chief of the relevant district level office or its representative to UG meetings. Rule 90(1) requires the UG to:

- implement the project in an appropriate manner,
- make arrangements for the operation and maintenance of the project,
- mobilise public participation and labour required for completion of the project,
- maintain account records and inform users,
- follow the directives issued by the VDC in relation to the project, and
- convene the meetings of the UG at least once every month.

Under Rule 90(2), UGs are liable for punishment pursuant to prevailing laws if they do not fulfil their obligations or if they misappropriate funds. Rules 89 and 90 of the District Development Committee (Working Arrangement) Regulations 1994 contain exactly the same provisions.

## **District Development Committee**

The district development committee (DDC) is also an autonomous body with perpetual succession and a seal of its own. It is entitled to acquire movable or immovable property, and use or sell it like an individual. It can be sued and may sue others. The district council (DC) is the general body of the DDC. According to the LSGA, the DC consists of all the chairpersons and vice-chairpersons of each VDC within the district, all the mayors and deputy mayors of each municipality within the district, members of the DDC, members of the House of Representatives and the National Assembly from the district, and six persons nominated by the DC itself. The main functions of the DC under the LSGA include approving the budget, plan, and programmes submitted by the DDC, approving proposals relating to taxes, fees, tariffs,

<sup>3</sup> The interchangeable use of the terms User Group and Users Committee appears in the legislation and has therefore been maintained in this document.

loans or borrowings, and internal resources submitted by the DDC, and providing the necessary directives with respect to district level projects being implemented by the DDC.

DDC powers and functions are classed under 17 headings, and include agriculture; development of rural drinking water and settlements; forest and environment; irrigation, soil erosion, and river control; language and culture; and health services and tourism. Under the forest and environment heading, the DDC is required to develop a plan for the conservation of forests, vegetation, biological diversity, and soil, and to implement it or cause it to be implemented, as well as promote conservation of the environment.

Section 190 of the LSGA empowers DDCs to constitute different sub-committees to assist the DDC in its functions. Such sub-committees may have representation drawn from various sectors, including women and backward classes. Rule 84 of the DDC (Working Arrangement) Regulations 1994 requires the DDC to constitute four different committees: agriculture, industry, forest, and the environment.

In accordance with Section 202 of the LSGA, DDCs must select those projects which can contribute to the protection of the environment and which have the maximum participation of the local people and labour force. While fixing priorities for the district development plan, first and second priority must be given to programmes that assist in raising agricultural production as well as programmes that help to protect the environment. While formulating the district development plan, the DDC is obliged to follow a participatory planning process. It is required to constitute UGs from the district beneficiaries while implementing projects under the district development plan. UGs and NGOs are required to implement such projects in coordination with the DDC. However, it is not clear whether the UGs include FUGs. Although UGs and NGOs are repeatedly referred to in the LSGA, the legislation does not provide a definition. This lack of clarity, whether deliberate or unintentional, reflects a weak law-making process and leads to ambiguities and conflicts.

B.K. Shrestha argues that the UGs, once seen as the mainstay of devolution and community participation, are formed only on paper, more to fulfil the requirements of the rules than to ensure sustained local development. Creating and strengthening UGs within communities is an exercise in institution building, and sustained support is therefore needed for their proper institutionalisation. However, in addition to lack of support from the government bureaucracy, non-beneficiaries are included in the UGs to provide benefits to political workers of local political parties and local leaders (Shrestha 1996).

Section 215 (2) of the Act empowers the DDC to levy taxes on wool, resin, herbs, slate, and sand; on animal products such as bone, horn, feathers, and leather; (except those prohibited by prevailing law); and on other goods as prescribed at the rate approved by the district council, not exceeding the rate specified in the district development area. Section 218 empowers the DDC to sell the sand in the rivers and canals, as well as boulders, stones, soil, and driftwood found in its area.

The High Level Decentralisation Coordination Committee (HLDDC) report entitled 'Decentralisation and Local Self-Governance' (DLSG) recognised that the contradictory provisions of the Forest Act and the Nepal Mines Act relating to local government income accruing from natural resources have periodically caused disputes to arise. The report, therefore, recommended repealing those provisions of the Forest Act and the Nepal Mines Act which are inconsistent with the mobilisation of resources from driftwood, mines, stone, and sand within the area of local government (HLDDC 1996).

Decentralisation will bring procedural dilemmas for which solutions are elusive. Administrators experience a lack of information and professional respect in relationships with politicians. Bureaucrats are accustomed to being in control, and better informed than their 'citizen' counterparts. Another dilemma will arise from a lack of clarity regarding the functional boundaries between the roles of parliamentarians and district level politicians. Local politicians will want parliamentarians to 'stay out' of local politics and to focus their energy on legislation, policy, and Kathmandu (Shrestha 1996).

### **Attitude of VDCs Towards FUGs**

Community forestry is more successful when the VDC and FUGs work together with confidence and in good faith. Experts believe that, with some exceptions, VDC members generally feel they can cooperate with forest user groups. VDC representatives know that community forest is common property and that FUG income is used for community development. Moreover, VDC members are also members and users of community forests themselves. Recognising the importance of coordination between the VDC and FUGs, the DoF has planned orientation/training programmes to teach VDC members more about community forestry. Some VDCs have already started cooperating with FUGs. For example, one VDC in Palpa District provides a guard at its own cost to protect a community forest.

Some VDCs, however, view FUGs as institutions that in the long run should not be promoted. Such VDC members believe either that the VDCs should manage community forests or that the FUGs should be under the control of VDCs. This problem should be resolved soon by close consultation between members of the Federation of Community Forest Users of Nepal and members of the Federation of VDCs.

Undoubtedly the VDC is an elected body with a larger mandate than the FUGs. The VDC mandate includes the overall development of its area, but the two institutions both work to benefit local people. If linkages and mechanisms for coordination between the VDC and FUGs are developed, these institutions would complement each other well. Unless such cooperation develops, a sizeable gap is likely to develop between the management and sustainable use of natural resources as well as with regard to development activities at the VDC level. This could thwart the principles and policies of decentralisation and local autonomy, which include directing efforts to create a civil society based on a democratic process, on transparency, on accountability to the people, and people's participation in the process of planning work for the local authorities, as well as developing an effective mechanism for making local authorities responsible towards the people in their area, with a view to developing local leadership.