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## Chapter 5: Local Government Legislation and Experience

A number of developing member countries in South Asia have decentralized their governments and have included women as elected officials in local governments. As mentioned previously, the Aurat Foundation in Pakistan, the Khan Foundation in Bangladesh, and Shtrii Shakti in Nepal analyzed local government ordinances and their implementation with a focus on structural constraints for women. These NGOs also organized local and national workshops for the development, academic, and civil society communities to discuss women's issues related to governance and development. The following are the findings of the reviews.

### The Legal Framework for Local Government in Bangladesh

Bangladesh has a long tradition of local government, and the union parishad is its oldest component. As a representative body of an aggregate of 10 to 15 villages (or roughly 100,000 people), it has had recognizable form for more than a hundred years.<sup>73</sup> Its functions have varied and include a range of duties from collecting taxes in the early years, to duties related to rates, socioeconomic development, and general administration, to a more active role in government with the decentralization of central government that began in 1982.

The country is divided into six divisions each of which is subdivided into districts; there are 64 in all. In the rural areas, there are theoretically four tiers of local government with the *zilla* (district) parishad at the top. Next is the upazila parishad based on the old *thana* system; it is the lowest level at which the civil bureaucracy and line ministries operate. The upazila represents the police and all ministerial offices, including tax, magistrates courts, and officers dealing with all aspects of economic and social development. Upazilas are to be the link between the district offices and the union parishads or local people. There are 469 upazila parishads. The third tier is the union parishad. There are approximately 4,483 in the country. The fourth tier is the *gram sarker* (village level). It is not active everywhere although there are plans to have 39,768 of them.

In 1973, each union parishad was divided into three wards. Each ward elects one member to represent the ward in the union parishad. In addition, a chair and vice-chair were elected from the general ward population. In 1976, provision was made for two women and a farmer's representative to be nominated. In 1983, the system was altered with the passage of the Local Government (Union Parishad) Ordinance. Subsequent changes have occurred, the most recent being 1997 Act Number 20. Each union is now composed of 13 elected representatives including a chair, 9 members (1 from each ward) and 3 women elected to reserved seats based on 1 female representative for every 3 wards.<sup>74</sup> Standing committees undertake and execute the various functions of each union parishad. There are 13 committees in all. Women are to head one third of them and are further mandated to head the committee on women's and children's welfare, culture, and sports.

Urban local government is much simpler. It comprises six city corporations and 278 municipalities or *pourashavas*. Urban centers are subdivided into wards. Representatives from each ward and the city mayors are now all elected directly by the people, and seats are reserved for women in local urban bodies.

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<sup>73</sup> Khan Foundation. 2004. "The Local Government (Union Parishad) Ordinance 1983: An Analysis and Proposed Recommendations." Dhaka Bangladesh. Pg. 6. Hereafter noted as Local Government Analysis.

<sup>74</sup> It was only in an amendment to the Ordinance in 1993 that the nomination system was dropped and replaced with the election system for women representatives.

To understand the challenges the 12,000 elected women face, it is important to note the general situation of women in Bangladesh. Although divided by class, location, age, and religion, women are generally guaranteed equal rights with men under the Constitution. However, long traditions of patriarchy, seclusion, and the power of the family to exercise social control over male and female activities mean that most women are unaware of their rights and lack the means to realize them.<sup>75</sup> Variations in family legislation are based on religion. Hindus and Christians are the principal minority religions, while Muslims are the vast majority. Muslim women can inherit land and property but only half the share of their brothers, and one eighth the property of their husbands.<sup>76</sup>

Women generally are not well protected legally in cases of child support, male desertion, divorce, or adultery. Violence against women in the home, at work, and in public is commonplace, and while women's groups, NGOs, and donor-assisted programs work to ameliorate these realities, women and girls remain subject to abuse, prostitution, and trafficking. Bangladesh is one of four countries in the world where the life expectancy of women is slightly lower than that of men.<sup>77</sup> Women have less access to modern health care than men do and have higher incidences of malnourishment, chronic illness, and general poor health.

Unlike the situation of women in Nepal and Pakistan, women in Bangladesh have had places in government since 1972 when 30 seats were reserved for them in the national parliament. However, even with 2 women prime ministers in the last 14 years and with 10 women winning contested parliamentary seats out of 35 female candidates in 1996, there is still strong cultural and religious opposition to their participation in politics. The fundamentalist Islamic parties are particularly against women's participation, and while the major political parties may have an item of gender equity in their platforms, they do little in practice to push this agenda. Regardless of this opposition, the tradition of women's involvement in politics allowed women who participated in the project to use their training well and to be effective in their roles as elected members of the union parishads.

The Khan Foundation noted problems with existing laws regarding elected female representatives. Some of the constraints that female representatives faced in the union parishads were: (i) the lack of any job description or clarification of their roles as members, (ii) improper implementation of the local government ordinance related to the allocation of development schemes to the female members, (iii) the lack of work assignments to female members, (iv) the exclusion of female representatives from the 13 standing committees, (v) lack of notification about the time of meetings, (vi) pressure by the chair to sign the minutes of a meeting even if the female members were not present at that meeting, and (vii) verbal abuse from male chairs and representatives.

Under the Local Government Act No. 20 of 1997, three wards are reserved for one female member, but each of those wards is also the constituency of one male member. That means the women have three male counterparts. This situation has created a problem as the males do not want to recognize the women as legitimate representatives of their wards. The fact that women have much larger constituencies than their male counterparts also poses particular problems, for example, the difficulty of meeting the expectations of such a large group. Moreover, women members have little access to union parishad funds for development schemes. This means it is difficult for them to channel resources to their constituencies. It is also harder for them to visit their wards and to meet the transportation costs to make such visits. They must face these constraints in addition to all the other difficulties women face in a predominantly male preserve. Chapter 8 lists recommendations for changes in the Act.

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<sup>75</sup> ADB. 2001. *Women in Bangladesh Country Briefing Paper*. Manila

<sup>76</sup> *Ibid.*

<sup>77</sup> *Ibid.*

## The Legal Framework for Local Government in Nepal

In the early 1990's, the political structure of Nepal changed from a, "...*panchayat* (local government) system with an absolute monarch to a constitutional monarchy with a bicameral parliament, an executive cabinet responsible to parliament, and an independent judiciary."<sup>78</sup> The constitution approved at that time guarantees fundamental rights and equal application of the law to all citizens without regard to ethnicity, caste, sex, or religion. The enormous diversity in ecological regions, cultures, and languages means that progress in human and social development is often uneven, and resources are not evenly allocated. This is particularly the case for women. They are still subject to strong patriarchal customs and values including early marriage, limited rights to divorce and remarriage, and unequal access to basic, education, health services, economic opportunities, and representation under the law including the right to inherit land, property, and wealth.

In the last decade, the Nepalese government introduced the Eighth (1991–1996), Ninth (1997–2002), and Tenth (2003–2007) Development Plans all of which made the decentralization of government operations and procedures a top priority. Devolving power and authority to local government was seen as a way to fight poverty. In 1999, the Local Self-Governance Act was passed and, "...is the major achievement of the government."<sup>79</sup> It is this Act that has provided for women's representation in local government bodies by both nomination and election. The Local Self-Governance Act Report notes that numerous tasks are now the responsibility of local bodies: management and delivery of almost all sectoral services; preparation of both long-term and short-term policies, plans, and programs; coordination of and partnership with NGOs and civil society in development; and promotion of the private sector in service delivery and revenue generation.

The country is divided into five regions that are subdivided into 75 districts. The Act establishes a two-tier system of local government with the district as the highest tier. The district development committee is the governing body. The basic tier of local government is composed of the local bodies in villages and municipalities. A village has three local bodies: ward committees, a village development committee (VDC) and a village council. There are nine wards in each village, and each ward has a committee that is composed of five members. One member is the chair, and one must be a woman. All members are elected by adult franchise. That means that in each village there would be a minimum of 9 women out of 45 ward committee members (20%).

The VDC is the executive body of local government and is composed of the chairs of the nine wards. Each VDC in turn elects a chair and vice-chair and nominates two additional members from the ranks of the ward. One of the nominated members must be a woman. That means that out of the total of 13 VDC members, only one must be a woman (roughly 8%).

The village council is the legislative body of local government. It consists of all 45 ward committee members and 6 members nominated from the poor, ethnic, religious, and tribal minorities 1 of whom must be a woman. That means that out of a total of 53 members, 10 must be women (approximately 19%). The councils meet only a few times a year.

In 1997, more than 100,000 women participated in the VDC elections, and 36,000 were elected. However, in other branches of local government, women were only marginally represented. For example, only 289 women were elected ward chairs out of a total of 3,999 wards. Of the 26 women who ran for membership in the district development committees, only 8 were elected, and only 1 woman was elected vice-chair. No elections have been held since 1997 because of the deteriorating political situation. The project therefore invited women whose elected terms had expired, women who had

<sup>78</sup> ADB. 2004b. *Report of the Review of Local Self-Governance Act in Nepal: RETA 6008*. Nepal.

<sup>79</sup> Ibid.

been nominated for positions in councils, and female leaders from various community organizations to participate in capacity building.

The NGO Shtrii Shakti and a national consultant reviewed the Local Self-Governance Act and prepared policy recommendations for improving the situation of the elected and nominated women members. The review pointed out that the language and thinking of the act are primarily male oriented. Males have the majority of positions at all levels of government and the Act consistently uses masculine pronouns. One of the major structural problems of the Act is that elected female members are not specifically included in the executive bodies of local government though they are included in the legislative bodies. For example, a woman elected to a ward committee is automatically part of the village council (the legislative body), but the council meets once or twice a year only to approve the budget. The VDCs, on the other hand, are the executive bodies of local government and have control over development activities. The Act includes nominated female representatives in the VDCs, but they are not elected by a constituency which makes it difficult for them to be effective.

Various committees and subcommittees are formed to handle local government responsibilities, but there is no provision in the Act for women to be included on them. This includes membership on the critically important decentralization, implementation and monitoring committee, the accounts committee, the arbitration board, and the coordination committees. There is also no provision that women must be part of the quorums necessary to hold meetings at all levels of local government nor is it compulsory that women or ethnic minorities be present for meetings to be held.

Gender and minority issues are treated under “miscellaneous,” “social welfare,” or under the separate category of “women and helpless people.” Their issues are not mainstreamed into the policies of the local bodies, and there is no provision for gender or minority issues to be included in local projects. The VDC is expected to give priority to projects that provide direct benefit to women as well as backward classes and children. However, there is no mandate to include these segments of the population in project feasibility studies. The Act only indicates that priority is to be given to projects on the basis, “...of the number of the population to be benefited from the project and the type of benefit.”<sup>80</sup> This means that in reality, few projects are designated for women, backward classes, or children. Chapter 8 lists recommendations for changes in the Act.

## The Legal Framework for Local Government in the North West Frontier Province Pakistan

In 2000, the Musharraf government announced a new system designed to devolve power and authority to local government bodies chosen by local electorates. This plan was eventually enacted in 2001 as the Local Government Ordinance and involved four fundamental principals: “devolution of political power, decentralization of management functions, diffusion of the power-authority nexus, and distribution of resources to the district level.”<sup>81</sup> This was an historic modification of the governance structure in Pakistan. The Aurat Foundation reviewed the NWFP Local Governance Ordinance in 2000.

A significant part of the Ordinance was the reservation of 33% of seats for women in all tiers of local government. This provision is the result of a long struggle by women activists and civil society organizations to improve the rights of women who have been systematically discriminated against and oppressed by longstanding patriarchal and feudal customs that limit their mobility and participation in the social life of the country.

<sup>80</sup> Ibid.

<sup>81</sup> ADB. 2004c. *A Gender Review of the Legal Framework for Local Government in NWFP, Pakistan: RETA 6008*. Pakistan.

Domestic and other forms of violence are common in families, in society, and in the state as a means of controlling women.<sup>82</sup> The legal rights of women were curtailed with the introduction of *sariat* law and the Muslim Family Law which decrees, "...unequal rights (of women) to inheritance, termination of marriage, minimum age of marriage and natural guardianship of children" among other disadvantages.<sup>83</sup> In addition, women are unequally represented in other ways in the legal system both in the courts and under the law, and are largely absent from political parties and governing bodies such as parliament. Their socioeconomic indicators highlight the challenges they face. The United Nations Human Development Indicators for Pakistan finds that women's literacy rates are low, at about 28%, participation in the paid labor force is about 11%, their earned income share is only 20%, and the mortality rate for female children between the ages of 1 and 4 is 12% percent higher than that of males.<sup>84</sup>

The new local government structure has three tiers of representation: 96 district councils at the highest level; 305 tehsil and 30 town councils at the next level; and 6022 union councils at the lowest level. Elections were held for all union councils from December 2000 to July 2001, and over 36,000 women were elected to fill mainly the reserved seats. This represented almost 29% of the 126,462 seats available.

In NWFP, women were elected to 3,963 union council seats representing 69% of the 5742 seats reserved for them. Approximately 1,779 seats were left vacant most of which were in four districts (Upper and Lower Dir, Batagram and Kohistan) where anti-woman campaigning made it difficult to fill them. In the tehsil councils, 175 women were elected to the 201 seats reserved for them (87%) and 26 were left vacant. In the town councils women were elected to all 30 seats reserved for them. At the district level, 278 women (88%) were elected to 315 reserved seats; 37 were left vacant.

While women were eager to avail themselves of new opportunities in government, most were unacquainted with the duties and responsibilities of an elected official. Their lack of public experience and education in many instances also posed significant problems. Especially difficult was the disregard and often disrespect shown to women by male councilors. Such treatment often meant women were denied access to important information, were not informed of meeting times, were denied copies of the budget, and were not appointed to serve on union committees. There was a general feeling among many male councilors that women did not belong in office and that if they were included, they should deal only with social welfare or other "women's issues." Decisions were frequently made without consulting female representatives. In some cases, male family members of the elected female officials attended council meetings in their stead.

While the law provides for the devolution of political power to most areas of NWFP, it excludes the provincially administered tribal areas. This means that women living in these areas are not covered by the Ordinance and, given the prevailing adherence to tribal law, are not covered by the national constitution or by other government legislation. The federal government should extend the Ordinance to include the tribal areas and should add a clause detailing, "...the right of women to vote, to stand as candidates, and to act as public representatives."<sup>85</sup> The Aurat Foundation and the partner NGO Sarhad Rural Support Program further recommended that the Ordinance be amended to include (i) budget allocations and revenue for development work by women councilors; (ii) council budgets for women councilors; and (iii) reserved seats for women in other government institutions, e.g., the Provincial Local Government Commission.

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<sup>82</sup> ADB. 2000c. *Women in Pakistan: ADB Country Briefing Paper*. Manila.

<sup>83</sup> ADB. 2004c.

<sup>84</sup> According to the UNDP gender empowerment measurement ranking of 94 countries, Pakistan ranks 92<sup>nd</sup>.

<sup>85</sup> ADB. 2004c.

In terms of the general definition of obligations and responsibilities of elected officials, no particular mention is made about the rights and responsibilities of women councilors at any tier of local government. In effect, this means women officials are overlooked or are seen as dealing solely with women's issues. This lack of legislative clarity is a, "...serious constraint on women's effective participation in Local Councils on an equal footing with their male colleagues."<sup>86</sup> The duties and responsibilities of women councilors should be clearly stated and should include both the special interests of women and the interests of their entire constituencies.

The assessment of the sections of the Ordinance dealing with the district councils noted that a gender-neutral government means that women's special needs and constraints go unrecognized. Decisions made about development activities including budget allocations and project selection serve to reinforce the interests and advantages already enjoyed by males. Women are recognized as users of government only in terms of health, population planning, and education. All other constraints they face are allocated to the realm of social welfare. Additionally, at the district level, power and authority have been assumed by the *nazim* (chairperson). Given that other provisions of the Ordinance have not been introduced, it is likely that local union councils will have difficulty influencing the decisions made by the *nazim* and his officers.



Workshop with women councilors

Problems female officials face in local bodies are (i) the rights and responsibilities of the women members are not designated in the Ordinance (ii) there is no provision ensuring that women (and not male family members) will be present at council meetings; (iii) women are not included on important committees; (iv) women lack information about the budget and do not have access to funds; (v) often the *nazims* spend women's funds without consulting their female councilors; (vi) women councilors are not assigned to assist women in the community to form citizens' community boards (CCBs) which have access to a certain percentage of the development budget; and (vii) female representatives are not included on subcommittees. Women on the union councils, for example, are directly elected and have a

constituency to serve. They are under pressure to perform, but they have little access to council funds.

The review further noted that a number of provisions of the Ordinance had not been introduced effectively. These included (i) the formation of CCBs through which 20% of the funds for development activities are to be raised and allocated and (ii) village and neighborhood councils and *musalihati jrga* (arbitration councils). Financing for local government activities is uncertain, and there is no provision for the equal distribution of funds to men and women councilors. In addition, the Ordinance does not adequately address the relationship of local government councils with the provincial assembly, and while there is provision for a local government commission, no women have been appointed

<sup>86</sup> Ibid.

to it because of objections from the provincial government. The oversight to be provided by the district ombudsman has not been instituted as no ombudsmen have been appointed.

Clearly, existing provisions of the current Ordinance must be fully implemented and additional legislation or amendments need to be enacted in order to rectify the weaknesses that exist. While legislation itself will not solve the gender problems in local government, it can provide a legal framework that female activists and civil society organizations can use to continue the fight for more equal representation of women. Recommendations for changes in the union councils and other tiers of local government are in Chapter 8.

To summarize, women in all three countries face an uphill battle to become effective members of local government councils. While they have the advantage of legislation to legitimate their presence in local government bodies, there is not much else to aid them in their endeavors.

