

Project Notes

Note No. 39

Model Municipal Law

Creating an Enabling Legislative Environment for Empowering Urban Local Bodies

The Model Municipal Law (MML) was developed to facilitate the implementation of the decentralization initiatives of Government of India (GoI) as articulated in the 74th Constitutional Amendment Act (CAA) and later reinforced by the reform agenda set out under the Jawaharlal Nehru National Urban Renewal Mission (JNNURM). The Law aims at facilitating state governments to amend their municipal acts such that they can institutionalize reforms aimed at empowering ULBs and enabling them to function as institutions of local government. The MML document consists of (a) a policy options paper for framing municipal laws; and (b) the law for one set of policy options. The entire process of developing the MML was anchored by the Ministry of Urban Development and Poverty Alleviation (MoUD&PA). It is envisaged that the MML would provide a conducive legislative framework for implementing GoI's urban reform agenda.

Background

Since the early 1990s Government of India¹ (GoI) has undertaken several initiatives aimed at decentralizing urban governance. The 74th Constitutional Amendment Act (CAA) was one such initiative, which recognized urban local bodies (ULBs) as the third tier of urban government by assigning them specific civic functions. The 74th CAA required state governments to amend their municipal laws in order to empower ULBs “with such powers and authority as may be necessary to enable them to function as institutions of self governance”. While state governments ratified the amendment they have found it difficult to implement its provisions in totality. The functional devolution to ULBs hasn't been supported by adequate transfer of revenue sources. Further, the financial autonomy of ULBs has been undermined as they have to seek state government approval for any revisions in tax rates and user charges and have limited powers to institute new taxes. The existing legal framework as defined by the state municipal acts was not conducive for implementing the provisions of the 74th CAA in its true spirit. It is in this background that the Ministry of Urban Development and Poverty Alleviation (MoUD&PA), GoI, initiated the process for drafting a Model Municipal Law (MML).

Model Municipal Law

Objectives

The main objective of the MML is to facilitate implementation of the 74th CAA provisions. The MML

aims at strengthening current municipal laws to enable ULBs to play their role more effectively and efficiently. Specifically, MML aims at simplification of municipal byelaws; introducing specific provisions for financial management and enhancing municipal revenue; and allowing entry of the private sector in urban infrastructure development. It was envisaged that the MML would provide an enabling legislative environment for implementing GoI's urban reform agenda.

Process of Development

The MML has been developed by the Times Research Foundation (TRF), Kolkata, on behalf of the USAID Financial Institutions Reform and Expansion [FIRE (D)] Project. It was finalized in October 2003 following a series of consultations with MoUD&PA officials, state government representatives (urban development secretaries), and sector experts.

The document was forwarded by GoI to all state governments with an appeal to make appropriate amendments to their corporation and municipalities acts guided by a set of prescribed steps (refer Box 1). State governments were advised to set up committees to review the existing acts, finalize a state level agenda, identify the role of town planning acts vis-à-vis the municipal acts, and the legal basis for the District and Metropolitan Planning Committees (DPCs and MPCs). Following these steps the committees were to draft the new acts.

¹ Through the Ministry of Urban Development and Poverty Alleviation (MoUD&PA).

To provide impetus to adoption of MML across states, a National Workshop was organized by the MoUD&PA in collaboration with National Institute of Urban Affairs (NIUA) and USAID FIRE (D) Project in November 2003. For wider dissemination, four regional workshops were organized at Jaipur, Kolkata, Hyderabad and Pune during 2004-05. Further, to review the status of implementation of the MML provisions across states a National Roundtable was organized in July 2007. This meeting was attended by representatives from fifteen states.

USAID FIRE (D)'s Role

- Technical and financial support for developing the MML
- Generating awareness on MML among state governments through regional and national workshops
- Facilitating periodic assessment of implementation status through meetings
- Assisting state governments of Uttaranchal, Karnataka, Orissa and Delhi in implementing the MML provisions

Salient Features

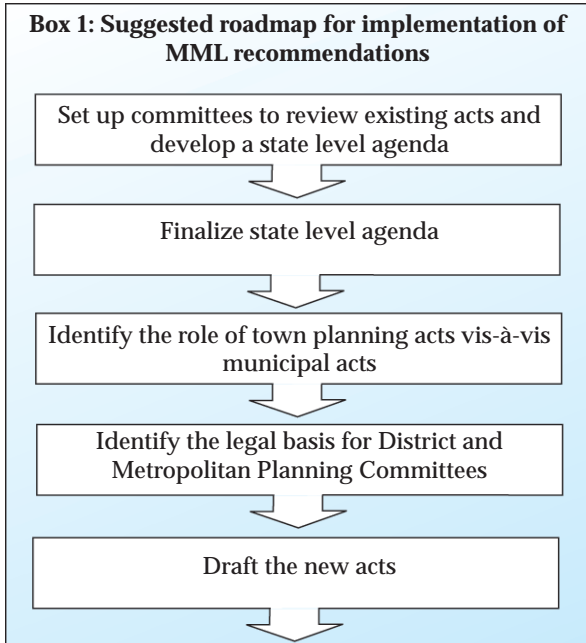
The document consists of (a) a policy options paper for framing municipal laws; and (b) the law for one set of policy options. The MML serves as an illustrative example of how, based on a set of policy options, state governments can orchestrate their legal framework guided by their own choices.

The policy options paper provides issues and options for drafting a new law. The law is organized into eight sections, namely, preliminary; constitution and government; financial management of municipalities; municipal revenue; urban environment, infrastructure and services; urban environment management, community health and public safety; regulatory jurisdiction; and powers, procedures, offences and penalties.

The MML aims at providing a conducive legislative framework for empowering ULBs and implementing GoI's urban reform agenda covering the following aspects— constitution and government; financial management of municipalities; internal revenue generation by municipalities; and provision of urban environmental infrastructure and services through private sector participation (PSP).

Constitution and government:

- The MML provides for a unified law for all the three levels of ULBs².
- The Law provides for executive powers to be vested with an empowered standing committee that has authority to operationalize the constitutional mandate endowed on ULBs.



- An indirect election has been provided for the position of mayor/ chairperson with a five-year term.
- Ward committees have been proposed to promote decentralization and for ensuring proactive community participation.
- Recognizing the varying managerial, technical and financial capacities across different types of municipalities and to manage the mismatch between functions and finances, municipal functions have been classified as *core functions* (including water supply, drainage, sewerage and solid waste management, etc.); *functions assigned by the government*, which are to be undertaken subject to underwriting of the costs by the concerned level of government; and *other functions*.
- The MML provides for dissolution of an elected body in case it defaults in performance or due to abuse of power after giving due notice and review by a committee. In such cases a new election is to be conducted within six months of dissolution.
- The MML also has provisions for recall of municipal councilors.

Financial management of municipalities:

- The MML has enabling provisions for introducing a modern system of accounting based on a municipal accounting manual, which is to be prepared by the state government.
- The Law provides that all municipalities must prepare a financial statement containing an income and expenditure statement, receipts and payment account, and a balance sheet for assets and liabilities.
- The MML provides that the receipts and expenditure of municipalities must be maintained under separate accounting heads for water, drainage and sewerage,

² Municipal areas have been classified on the basis of population into three categories, namely, (a) larger urban areas having a population of more than 3 lakhs; (b) smaller urban areas - Class A: municipal areas having a population of more than 1.5 lakhs but not exceeding 3 lakhs, Class B: municipal areas having a population of more than 75,000 but not exceeding 1.5 lakhs, Class C: municipal areas having a population of more than 25,000 but not exceeding 75,000; (c) transitional areas having a population not exceeding 25,000. State governments have been empowered to exempt Class "C" municipal areas/nagar panchayats and industrial townships from the provisions of the act.

solid waste management, road development and maintenance, and general account. ULBs are also required to prepare and submit an inventory of immovable municipal properties along with the annual budget.

- Aimed at facilitating transparency and accountability provision has been made for the constitution of a municipal accounts committee³.
- The Law provides for appointment of a professional Chartered Accountant (CA) as an auditor. The CA is to be chosen from a panel selected by the state government.
- The MML recommends a comprehensive debt limitation policy to replace the normal requirement for state government approval. The debt limitation policy would lay down the general principles for borrowing based on a ULB's financial capacity.
- Provisions have also been made for credit rating and issue of bonds by ULBs to enable them to access capital markets and financial institutions for capital investments.

Internal revenue generation by municipalities:

- The MML has provisions aimed at empowering ULBs to generate revenue from internal sources.
- The Law provides for reform of property tax, which is an important internal revenue source for most municipalities. An area-based property tax assessment system has been proposed along with other reform measures such as unique premise numbering system and self-assessment of property tax.
- The Law has numerous provisions for augmenting other sources of internal revenues, including surcharge on transfer of lands/buildings, entertainment tax, tax on deficit parking spaces for non-residential properties, toll on roads and bridges, etc.

- Reference has also been made to the need for implementing SFC recommendations.

Provision of urban environmental infrastructure and services:

- The MML provides that any municipality can, on the basis of an agreement, involve any private sector (company/firm), Non Government Organizations (society/trusts), or Community Based Organizations (CBOs) for financing, construction, operation and maintenance of projects for supply of urban environmental infrastructure and services.
- The Law provides that all sub-soil water resources are vested with municipalities.
- The MML provides that states should set up a Municipal Regulatory Commission.
- The Law proposes adoption of necessary steps to meet the Hazardous and Bio-medical Waste Handling Rules and Solid Waste Handling Rules of Ministry of Environment and Forests (MoEF), GoI (2003).

Status of Implementation

Majority of states have initiated the necessary actions to incorporate the various provisions of MML. Three states, namely Orissa, Bihar and Sikkim, have already revised their municipal acts in accordance with the MML provisions. Another four states, namely Rajasthan, Madhya Pradesh, Andhra Pradesh and Uttaranchal have prepared draft municipal acts. Another eight states have set up committees/working groups to review their municipal acts on lines of the MML.

Orissa	<i>The Orissa Municipal Corporation Act, 2003, is based on MML. The Government of Orissa had constituted a State Level Committee under the chairmanship of Director, Municipal Administration, for drafting the new act. The Regional Centre for Urban and Environmental Studies (RCUES), Lucknow, was involved in drafting the law.</i>
Bihar	<i>The State Government issued an ordinance, Bihar Municipal Bill, on Feb. 1, 2007 based on MML. The State Assembly approved this bill on March 28, 2007.</i>
Sikkim	<i>FIRE (D) project carried out an initial review of the State Municipal Act. TRF assisted the State Government in framing a new law based on MML. The State Assembly passed the Sikkim Municipalities Bill, 2007, in March 2007.</i>
Rajasthan	<i>The Government of Rajasthan has awarded the task of formulating a new municipal act based on the MML to City Managers Association, Rajasthan (CMAR). CMAR prepared an issues paper, which was placed before the Cabinet Sub-Committee. Based on policy directions from the Government, a draft Bill has been prepared and submitted to the Departments of Finance and Law for review.</i>
Madhya Pradesh	<i>The State Government has taken a policy decision to frame a unified municipal act replacing the M.P. Municipal Corporation Act, 1956, and M.P. Municipalities Act, 1961. A consultant was assigned the task of drafting the new act after incorporating the MML provisions. The draft law is currently being reviewed by a steering committee under the chairmanship of the Principal Secretary, Urban Administration and Development Department.</i>
Andhra Pradesh	<i>The State Government appointed Dr. MCR HRD Institute, Hyderabad, to prepare a draft municipal law based on MML. The Municipal Administration and the Urban Development Department (MA & UDD), Andhra Pradesh, has constituted a high level committee to discuss and finalize the combined act for municipalities and corporations.</i>
Uttaranchal	<i>The State Government formed a committee, chaired by the Minister (UD), to prepare the new municipal law. The committee prepared a draft policy options paper based on MML. The draft paper was discussed in two state level workshops. The State Government is currently drafting the bill.</i>

³ The municipal accounts committee is on the lines of a Public Accounts Committee.

MML and JNNURM

The Jawaharlal Nehru National Urban Renewal Mission (JNNURM), GoI's flagship program for urban development, aims at effective implementation of decentralization initiatives as envisaged in the 74th CAA. The MML lays down the basic legislative framework relating to the mandatory and discretionary reforms outlined in JNNURM, which aim at empowering ULBs consistent with the provisions of the 74th CAA. The MML will help state governments amend their municipal laws to implement the following reforms at the state and ULB level.

JNNURM Reform Agenda	Provisions under MML
MANDATORY REFORMS – STATE LEVEL	
Implementing the provisions of the 74th CAA	<i>The MML makes enabling provisions for implementing the 74th CAA:</i> <ul style="list-style-type: none">• Executive powers vested with an empowered standing committee• Five-year term for mayor/chairman• Provision for wards and ward committees• Functions classified in terms of core, assigned by government, and others• Dissolution of elected council only after review by a committee• Re-election of dissolved council within six months• Representation to municipalities on District/Metropolitan Planning Committees• Reference to implementation of SFC's recommendations
City Planning	<i>The MML discusses the following aspects related to city planning:</i> <ul style="list-style-type: none">• Provision for implementation of development plans by municipalities• Easy planning approvals for small-sized buildings designed by architects• Changes required in public health engineering, utility boards, TP/development authority laws
MANDATORY REFORMS – ULB LEVEL	
Accounting Reforms	<i>MML enables accounting reforms.</i>
Property Tax	<i>MML gives various options for property tax assessment:</i> <ul style="list-style-type: none">• Property tax assessment system on area or capital value basis• Provision for self-assessment system for PT• Unique property numbering system• Private sector participation in advertisement tax collection
User Charges	<ul style="list-style-type: none">• Setting up of a regulatory commission• Annual subsidy report

It is envisaged that the MML will provide an enabling legislative framework for state governments to achieve the laid out milestones to access the central government assistance.

Ms. Shikha Shukla, FIRE (D)'s pro-poor and gender consultant, wrote this *Project Note*. Mr. Chetan Vaidya, Director NIUA and formerly FIRE (D)'s Deputy Chief of Party, made valuable contributions. All Project Notes are available online at www.niua.org under *newsletters* and at www.dec.org under *title search* "FIRE (D) Project Note".

Indo-US Financial Institutions Reform and Expansion Project – Debt Market Component FIRE (D)

The mission of the Indo-US FIRE(D) Project is to institutionalize the delivery of commercially viable urban environmental infrastructure and services at the local, state and national levels. Since 1994, the Project has been working to support the development of demonstration projects and of a sustainable urban infrastructure finance system. Now, the Project is also pursuing this mission through:

- Expansion of the roles of the private sector, NGOs and CBOs in the development, delivery, operation and maintenance of urban environmental infrastructure;
- Increased efficiency in the operation and maintenance of existing water supply and sewerage systems;
- Strengthened financial management systems at the local level;
- Development of legal and regulatory frameworks at the state level;
- Continued implementation of the 74th Constitutional Amendment; and
- Capacity-building through the development of an Urban Management Training Network.

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