



LAW campaign

House Rent Legislation: Some issues

KHAN FERDOUSOUR RAHMAN

THE fixed income city dwellers comprising both middle and lower middle class households are in real trouble to tackle the rising house rent in Dhaka city. Most landlords, in the recent years, have increased their rentals in the excuse of increase in price of the essential commodities, construction materials, holding tax and cost of the utility services.

Bangladesh has almost become a city state with Dhaka as its capital, in which the house rent has increased nearly 285 per cent during the last 18 years, according to a survey conducted by the Consumers' Association of Bangladesh (CAB). A jump over 23 per cent in house rent was witnessed in 1991 and the trend continued later on. It was increased by 17.4 per cent in 2001, 13.49 per cent in 2002, 8.4 per cent in 2003, 9.96 per cent in 2004, 7.89 per cent in 2005 and 14.14 per cent in 2006. Further it has increased average by 21.48 per cent only in 2007. Separately in the same year, 21.68 per cent has increased for building accommodation, 18.57 per cent for semi-building accommodation, 23.33 per cent for tin shed hut, 26.98 per cent for mess accommodation and 16.88 per cent for slum dwellings. On an average, nearly 50 per cent of monthly income of a household is spent on house rent. However, ideally it should not exceed 20 per cent of income of any household.

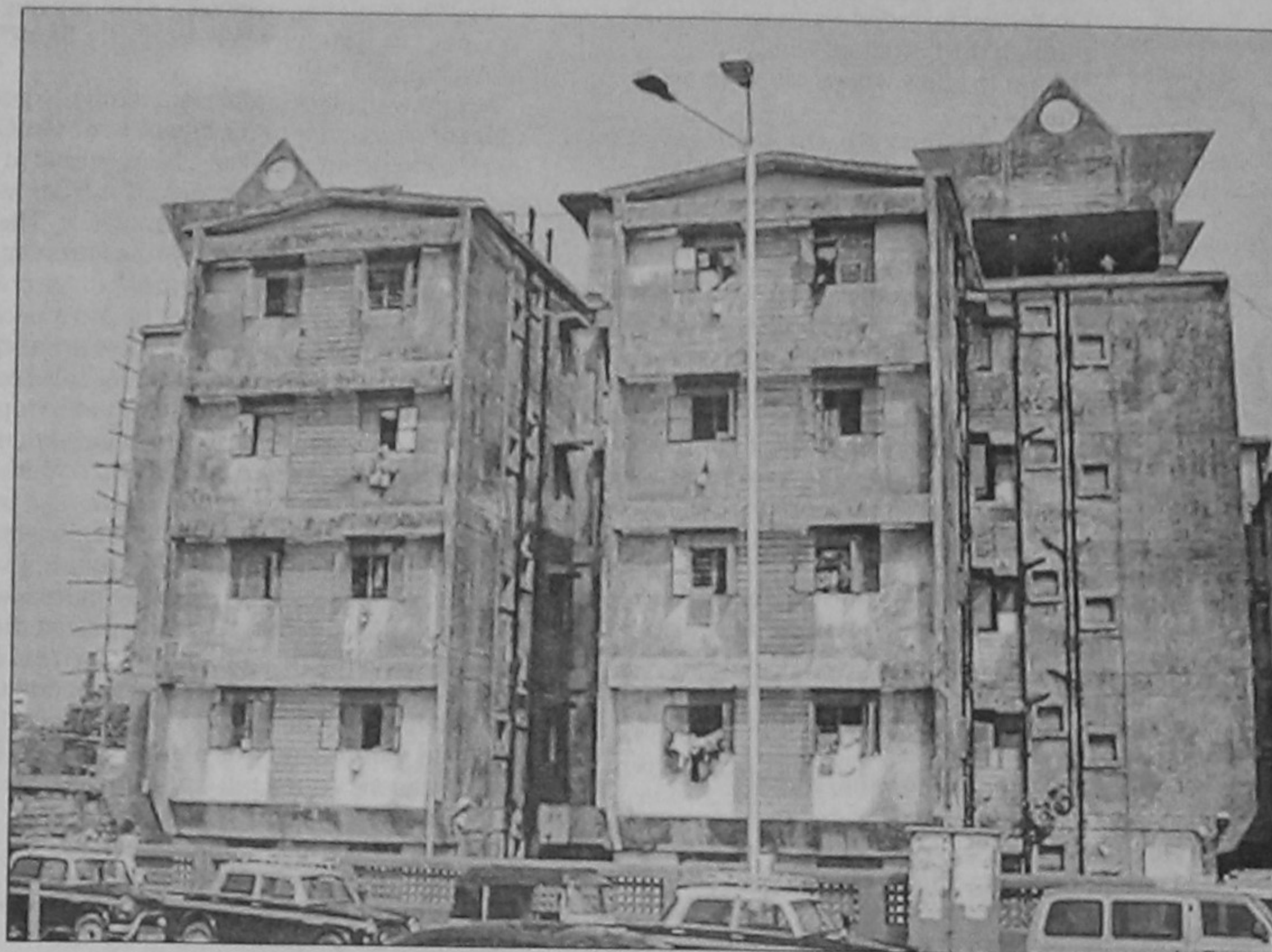
The high influx of population for the purpose of employment in Dhaka city has created the disparity between demand and supply, which has in fact caused increase in house rent. There is no specific statistics for Dhaka city regarding total number of landlords as well as tenants. But there are around 0.2 million holdings located in Dhaka

City Corporation (DCC) area. Almost 90 per cent of about 15 million people in Dhaka city make their living on tenancy. The growing influx of people has resulted in an opportunity to the landlords to increase the house rent due to shortage of houses. The prerogative enjoyed by the landlords due to lack of legislative provision also allows them to develop a cartel to increase house rent.

The fixed and low income households are the worst sufferer affected by the frequent increase in house rent. But there is no control of house rent in absence of effective government measures. There is absolutely no authority to monitor the growth of house rent. Also there is no effective law to protect the rights of the tenants. In the website of DCC, monthly house rent rate of 10 different zones are shown, but these are not implemented on ground.

Rent Controller system was first introduced in this subcontinent during British rule. Rent Control Act was enacted for the first time in 1943. It was amended in 1953 in the then East Bengal of united Pakistan. As a continuation to this, the latest amendment was made back in 1991, which is known as Premises Rent Control Act 1991. There are total 36 sections in this act.

As per the law, house rent should be assessed at 15 per cent of the total cost of land and construction for a premise, which is in fact ignored in most of the cases. The law also says that the landlord cannot increase the rent unless the house has been remodeled or renovated. Increase of house rent should not be based on only cost of land and construction of house, but should also include the depreciation value of the house. It should be determined on the basis of location, space, amenities and



present market price; and also separately for commercial and residential areas.

In India, house rent is charged based on standard provision devised by the local authority. In Delhi it is to be maximum 10 per cent of construction cost and market price of land based on historical values, not as per current market value. There rent also decreases according to the life of property. In Pakistan it is practiced as per mutual agreement of both landlords and tenants at the interval of every three years of tenancy. In the USA, the Neighborhood Councils settle any dispute related to house rent between landlords and tenants following the process of alternative dispute resolution

(ADR). Those Councils act as innovative forums for all community stakeholders as quasi city entities that affect the lives of the citizen. The existing laws related to house rent contain lot of inconsistencies in terms of implementations. Both landlords and tenants are ignorant about the law in general. The law is biased towards the landlords in particular. The tenants are vulnerable to various exploitations made by the landlords in absence of effective rent control mechanism. There is no effective body to protect the rights of the tenants. Landlords in Dhaka city increase house rent at certain interval. There is no specific law as to when and to what extent it can be increased. Any rent related case

is to be finalized within three months in the Court of Rent Controller, but it does not happen as such. In practice the Assistant Judges of any area are appointed as ex-officio Rent Controller.

The law also mandates both landlords and tenants to sign a written house rent agreement. But many landlords do not comply with such provision. Some of them, among those who comply, do not provide original deed of agreement for tenancy to the tenants; instead they are provided with a photocopy. The tenants can not avail any legal protection from any court of law in absence of original deed agreement as such photocopy is not accepted in the court. Many landlords do not provide appropri-

ate money receipt upon receipt of rent. Few do not provide original utility bills, rather sometime avail undue advantages to impose personal consumption of utilities on to the tenants. Some even do not repair, the fittings on nonfunctioning and perform periodical maintenance. Most landlords demand a substantial amount of advance money as security deposit from the tenants before renting off a house. But legal provision allows only receiving rent of one month in advance. Even after paying such advance, if in any case the tenant fails to pay one month rent in time within seven days of the scheduled date, the court declares the tenant as rent defaulter and passes order to pay the rent within next 15 days. If it is not paid, then the court asks the law enforcing agency to take appropriate action so that the tenant vacate the house. In case the rent seems to be more to the tenant, the court will entertain this complaint only within six months of occupying the house.

House rent is to be made part of Consumers' Protection Act. House constructed for residential purpose should not be allowed to rent for commercial purpose. The tenants must be legally empowered and their rights are specifically mentioned and ensured. There must be a strong regulatory body to monitor the affairs related to house rent. An effective system must be developed immediately to solve the problem of mass people. There must be a comprehensive system in determining house rent, in which both landlords and tenants will find themselves in a win-win situation.

The writer is legal expert and author of many books.

COURT corridor

NEPAL: SC punishes the messenger

The Supreme Court of Nepal, during an emergency five-hour hearing of the full court on September 19, retaliated against the president of the Nepal Bar Association (NBA), Bishwa Kant Mainali, and his remarks two days earlier against the legal malady of judicial corruption in the country. In reaction to his statement that, in effect, asserted that without a proper accountability mechanism a judgeship was a license for corruption a fairly commonplace view in Nepal as well as other Asian countries the Supreme Court decided to prohibit Mr. Mainali from practicing law in any court in the country for six months effective from the date of the hearing. This decision the first time in the history of Nepal that such action has been taken against the president of the NBA. Apparently the result of a two-hour strike by judges in the Kathmandu Valley. It is worth noting that the Supreme Court denied Mr. Mainali his inherent right to be heard and given a fair chance to defend himself in the legal proceedings against him.

In the present context of the development of democracy in Nepal following the overthrow of the monarchy and the re-establishment of Parliament, there is an intense debate in civil society about the need for radical changes within the judicial system of Nepal, which, like all other sectors of Nepalese society, has a reputation of being corrupt under previous regimes. Recently, the NBA decided to fight corruption in the judiciary and to study the controversial judgements rendered by the courts.

The judges, however, instead of seeking to weed corruption out of the judicial system, have remained critical of the NBA's decision. The full bench of the Supreme Court termed the decision of the NBA to study court judgements illegal and sought clarifications from the NBA on the issue.

Clearly, what seems to be taking place is not merely an action against a lawyer for, at worse, making an inappropriate remark but rather an attempt by the judiciary to obstruct an emerging debate on judicial corruption in Nepal. At the same time, the judiciary seems to continue to live in conservative mindset that they are above and beyond the concept of the rule of law and are accountable to law. The action of the judges to strike for two hours, urging action to be taken against NBA President Mainali, and the decision of the Judges Society of Nepal, an umbrella forum of judges in the country, to join the protesting judges demonstrate a widespread fear among these members of the legal fraternity against public debate on judicial corruption.

Sadly, judicial corruption is a menace threatening the independence of the judiciary in many countries of Asia. The Asian Human Rights Commission (AHRIC) has held two regional consultations on this issue with the first consultation, "Asia: Towards the Elimination of Corruption and Executive Control of the Judiciary," held in February 2006. Both of these consultations, which were attended by participants from many Asian countries, spent a great deal of time analysing numerous causes of corruption of the judiciary in the region. In the statement of the first consultation, the participants defined judicial corruption as follows:

"Judicial corruption concerns acts, behaviour or attempted acts that impair the search for or the submission of truth in the delivery of justice. This pertains to investigations and pre-trial processes in addition to actual trial process.

"This includes any act or omission from any source, whether bribery, intimidation or any other act, committed with intent or reasonable foreseeability that judicial or quasi-judicial orders, judgements and other issuances will result in corruption. Judicial corruption includes the acceptance of patronization offered by the people in power, leading to subversion of the administration of justice, causing bias." (See <http://www.ahrchk.net/pub/mainfile.php/books/223/> for the consultation report.)



Nepal Supreme Court

A serious debate on judicial reforms is already belated. No serious discussion on democracy and the rule of law can take place without thorough study and debate. Radical judicial reform is a precondition for democracy. In the context of Nepal's young democracy, any impediment to a proper discourse on judicial corruption and the way to overcome it will gravely damage the prospects for the future development of democracy in Nepal.

The judiciary should not use their judicial position in any way to obstruct the discourse to establish accountability and transparency regarding the judiciary. After all, it is the judiciary that has to ensure accountability and transparency in all areas of public life. If the judiciary itself objects to a strong public debate on its own accountability and transparency, then it will not have credibility in the eyes of the people to take to task the executive in any other arena of government.

Massive protests by lawyers against deadened legal systems and practices is becoming one of the signs of hope in Asia. The lawyers' movement of Pakistan has provided a shining example of the desire of lawyers to see a clean system that can serve the best interests of the people. Perhaps in the background of the resurgence of democracy in Nepal such a movement is now very much a need of the hour.

The AHRIC is alarmed by the decision and urges that any action against Mr. Mainali, the president of the NBA, should be taken by the courts only within the framework of the law and principles entrusted in the concept of due process rights with due regard to proper legal standards concerning contempt of court. Abuse of contempt of court laws, which is a common practice in many Asian countries, will be damaging to Nepalese democracy. In such abuses, the judiciary itself is the ultimate loser. We call upon the NBA, all lawyers and the people of Nepal to conduct the struggle for judicial accountability in an appropriate manner and with due regard to the importance of the judicial role for the enhancement of democracy.

Source: The Asian Human Rights Commission or the Asian Legal Resources Centre

HUMAN RIGHTS analysis

A better job of answering to women

AHEAD of a high-level meeting of world leaders on the Millennium Development Goals (MDGs) next week, a new report, Progress of the World's Women 2008/2009, Who Answers to Women? Gender and Accountability, released by the United Nations Development Fund for Women (UNIFEM), reveals that much stronger accountability mechanisms for tracking progress on gender equality are needed in order to meet national and international commitments to women's rights. Accountability to women begins with increasing the number of women in decision-making positions, but it cannot stop there.

Implementation still has a long way to go in translating commitments to women's rights into changes in women's lives. To date, women are outnumbered 4 to 1 in legislatures around the world; over 60 percent of all unpaid family

workers globally are women; women still earn on average 17 percent less than men, and about one-third of women suffer gender-based violence during their lives. In some parts of the world, 1 in 10 women dies from pregnancy-related causes, even though the means for preventing maternal mortality are cost-effective and well known.

Gender gaps on this scale are symptomatic of an accountability crisis. Governments and multilateral organizations have a responsibility to do a better job of answering to women. Progress 2008/2009 points out that accountability mechanisms work for women when they can ask for explanations and information from decision makers, and, where necessary, initiate investigations or get compensation. Women must be included in oversight processes, and advancing women's rights must be a key standard against which the perfor-

2008/2009 report demonstrates that one of the most powerful constraints on realizing women's rights and achieving the Millennium Development Goals is a deficit of accountability to women

mance of public officials is assessed and, if necessary, sanctioned.

"If any man asks why I support better accountability to women, here's my response: because a government that answers to women will answer to you too," said UN Secretary-General Ban Ki-moon.

"As world leaders convene to discuss the Millennium Development Goals next week, Progress 2008/2009 shows us that backing international commitments made to women with stron-

ger accountability measures would bring us a lot closer to achieving the MDGs," said UNIFEM Executive Director Inés Alberdi. "This report highlights the challenges that remain for gender equality to be realised in practice, but it also draws attention to the efforts of millions of women who expose discrimination, demand redress and have changed the meaning of accountability. It emphasizes the important role that multilateral organizations must play in improving their own accountability and in tracking investments in gender equality," she added.

Progress of the World's Women 2008/2009 provides an assessment of each of the Millennium Development Goals from a gender perspective and focuses on five key areas where urgent action is required to strengthen accountability to women: politics and governance, access to public services, economic opportunities, justice, and the distribution of international assistance for development and security. In each of these areas the report details means of building state capacity -- or good governance -- from a women's rights perspective.

"Good governance needs women, and women need good governance," said Anne Marie Goetz lead author of the report. "Women have a different perspective on accountability because they often experience accountability failures differently from men. This report argues that good

governance needs women's engagement -- just as gender equality requires states that are accountable and capable of delivering on promises of women's rights."

Key findings and recommendations are

* Multilateral aid and security institutions can do much more to meet their own commitments and standards on gender equality. To date, no agreed system-wide tracking mechanism exists within multilaterals such as the United Nations and the International Financial Institutions, to assess the amount of aid allocated to gender equality or women's empowerment.

* Public service delivery that responds to women's needs is the real litmus test of government accountability. Women continue to face barriers to health, education and agricultural support services. They are denied access because health clinics and schools are often too distant or costly, agricultural services are geared towards male farmers, and government services routinely target employed, literate or propertied men.

* One form of accountability failure is corruption, and women's experiences are different from those of men. In developed countries, 30 percent more women than men perceive high levels of corruption in the education system, and a gendered difference in perceptions of corruption are seen

in most other parts of the world as well. Women may also experience corruption differently from men, for instance, when sexual extortion is one of the forms in which informal payments are extracted.

* Even though in the last decade the number of women parliamentarians at the national level has increased by 8 percent to a global average of 18.4 percent, developing countries will still not reach the "parity zone" of 40.6 percent until 2045. Quotas or other special measures are effective in ensuring progress: women hold an average of 19.3 percent of parliamentary seats in countries that applied some form of electoral quota, compared to 14.7 percent in countries with no quotas.

* Real improvement in women's access to justice needs gender-based changes in law enforcement and informal justice institutions. For example, the presence of an all-female women contingent in Liberia is encouraging women to engage with the police. Similar examples can be found in other post-conflict contexts, such as Timor-Leste and Kosovo.

* Women are extremely vulnerable to shifting patterns in global markets in the absence of measures that protect them, such as during the recent food crisis, for they not only assume primary responsibility for feeding their families but also contribute as much as 50.80 percent of agricultural labour in Asia and Africa. Similarly, women's employment and migration are also shaped by global trends. The "brain drain" from South to North of people with tertiary education has recently become feminized, with more professional women migrating than men. This has implications for women's economic leadership in developing countries.

This is an abridged version of the report 'Who Answers to Women? Gender and Accountability' released by UNIFEM.

Source: United Nations Development Fund for Women.



UNIFEM/UN