



Stakeholder Consultation on Governance
Functioning of Councils under the Sixth Schedule of the Constitution

9 – 10 May, 2012
Guwahati, Assam

A Report

Organised Jointly By:

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Introduction

Good governance in local self-governments is crucial for the entire cycle of development from planning through to social audit. There is increasingly a lot of focus on planning from below; and rightly so. There is equal emphasis on social audit of service delivery, social justice and infrastructure development programs.

Governance at the village and district level is influenced by the provisions of law, practices, citizen awareness and the vibrancy of civil society. It requires devolution of powers to institutions of governance and active participation of all the citizens and special protection and encouragement for those sections of the society that have been traditionally on the margins of the decision-making processes. Civil society plays an important role in building citizen awareness, ensuring participation, openness and transparency in governance and advocacy for legal and policy changes.

The 73rd Amendment to the Constitution was brought about to address the issues of governance and give a constitutional and legal frame to the village level participatory processes with special provisions for women, Scheduled Castes and Tribes. The amendment mandates the devolution of "such powers and authority as may be necessary to enable them to function as institution of self-government". This was considered necessary for development and social justice.

These amendments applied to part IX of the Constitution of which the tribal areas in the country are not a part which fall under the part X of the Constitution. Art. 243M specifically excluded the application of the provisions of part IX to the scheduled and tribal areas.

The union government therefore set up in 1994 a committee of Members of Parliament and experts to 'make recommendations on the salient features of

the law for extending provisions of Part IX of the Constitution to the Scheduled Areas'. Though the committee came out with recommendations for areas governed by both the Fifth and Sixth Schedule, the parliament enacted a law to extend the provisions of the 73rd Amendment to Fifth Schedule areas only in the form of Panchayats (Extension to Schedule Areas) Act, 1996.

The organizers of the Consultation have been keen to engage with the issues of governance in the Sixth Schedule areas. This is an area that is lacking in attention at the national level. The organizers met with the Minister for Tribal Affairs in the Union Government, Shri V. Kishore Chandra Deo and Shri Hrusikesh Panda, Additional Secretary, Ministry of Panchayati Raj, Government of India, New Delhi, to find out the steps the government is taking to improve governance in the Sixth Schedule areas. Different central ministries, it appears, have been engaging with the state governments concerned and the ADCs to press for the adoption of the provisions of the 73rd Amendment. Draft laws for that purpose applicable to Assam and Meghalaya have been prepared.

The Consultation on the functioning of the ADCs with a special reference to governance was held in Guwahati on 9-10 May, 2012. The participants included senior elected representatives in the ADCs, students' unions, civil society organizations, academics and researchers. A note on recommendations was drafted at the end of the deliberations. A small delegation of organizers and participants met the Chief Minister of Assam, Shri Tarun Gogoi, who promised the team that his office will give due considerations to the recommendations of the Consultation in any changes that may be initiated in the system of governance in the ADCs of Assam. He, however, stressed that the communities in these areas themselves will have to decide the future system of governance in their areas.

Inaugural Session

Ravi Hemadri and Damyanty Sridharan welcomed the participants on behalf of the organizers and introduced the topic of the Consultation.

The Consultation was held in the context of concerns around governance in the autonomous district councils under the Sixth Schedule of the Indian Constitution. While there has been a lot of research and social action in the last couple of decades on local self-governance by the Government and Non-Government agencies elsewhere in the country, there is hardly any focus on the tribal autonomous councils in the north eastern part of the country. The purpose of the consultation was to bring together the existing experience and knowledge in the spheres of governance, particularly related to the delivery of basic services and infrastructure development in these councils and come out with a strategy to work towards change.

DAJI focuses on improving the democratic functioning of local self-governments through research, campaigns and advocacy. FES supports civil society organizations working to build capacities of women and youth to maximize their participation in the process of governance.

The Inaugural Session was chaired by Prof A. C. Bhagabati while Mr. Rajib Lochan Pegu, Minister of Water Resources, Government of Assam was the Speaker

Highlights:

- Traditionally, land in the hill tribal areas was communally owned and civil life was under customary laws.

- At the time of the framing of the constitution, the focus was to protect the customs and customary practices including land systems. The makers of the Constitution took grassroots participation for granted.
 - Women became excluded from public life despite the fact that the hill communities were matrilineal.
 - Planning and audit processes are yet to emerge as a people's process at the grassroots.
1. *Varying nomenclature is used to refer to District Councils in different states that are under the Sixth Schedule in the Northeast. In Meghalaya, Mizoram and Tripura (hill districts), they are called Autonomous District Councils. In Assam, there seven of the 28 districts are under the Sixth Schedule. Of these, in the four Bodoland Territorial Areas Districts (BTAD) they are referred to as Territorial Councils; in Karbi-Anglong, it is called Karbi Anglong Autonomous Council and in Dima Hasao district, it is called Dima Hasao Autonomous Council. In this statement of recommendations we use 'District Council' to represent all the Councils that exist under the Sixth Schedule.*

Session Two: Overview of Governance in the Sixth Schedule Areas

The session was chaired by Hasina Kharbhii and the Speakers included Mr. Fabian Lyngdoh, Prof K. B. Saxena and Mr. Prodeep Daimary

The powerful force of economic globalization, and along with it the movement of global capital, is all encompassing. It has the capacity of co-opting the elite in tribal communities. It is only with a properly working democracy at different levels of decision making that this can be averted.

Highlights:

- Problems in governance arise because traditional authorities represent the elite section and not the common people. Village Councils are not organically linked with the Autonomous District Councils (ADC). A major concern today is that the village Dorbars in Meghalaya are being used by the State Government for serving its own ends.
- Traditionally a man among the Khasi people represents all the women of his family/clan and their views in public. Single mothers would be represented by their uncles. But now that clan system has almost disintegrated; it is no more active as it was in the past.
- A bill has been initiated to allow women's participation in the Shillong Dorbar. In order to provide actual protection and benefits to the communities, the ADCs should not only simply preserve the cultural practices but at times, should also interpret these social customs going by the changes coming with time. It has to be understood that customs are self editing

manuscripts and in course of time, necessary changes should be allowed.



- In the Indian Constitution there is a hierarchical distribution of power with the Central Government as the head, lying above the State Governments which are again superior to the Autonomous District Councils.
- Marginalization comes as a part of the modernization process. Sections of the people become marginalized in the process. There have been a variety of movements of the marginalized aimed at changing the socio-political structures. There is a need to accommodate the progressive character of many movements.
- There is a need for role clarification to resolve the conflict between State Governments and ADCs.
- As far as village jurisdiction is concerned there is no way ADCs can avoid their institutionalization. Sharing power with them is the only way for ADCs to strengthen themselves against the might of the state machinery.
- Under the constitutional provisions the District Councils under the Sixth Schedule are classified as local authorities placed at the disposal of the Governor. Hence the Governor acts on the advice of the State Government and thus the ADCs become subordinate to the State Governments.

- A District Council being a Local Self-Government is by definition a subject included in the State List. Even though created under a constitutional mandate, the District Councils under the Sixth Schedule are not a unit of the Union Government.

Day 2

Session Three: Roles and Responsibilities of the Councils and the Government in providing basic services and development - I

The session was chaired by Damayanti Sridharan and the Speakers included Saito Basumatary, Rosanna Lyngdoh and Luke Daimary

Education in the Sixth Schedule areas is weak with some variation amongst them. The ADCs in Meghalaya, particularly the Khasi Hills Autonomous District Council (KHADC), is doing well whereas the BTC in Assam comes out as poorly managed.

Highlights:

- There is a lack of vision among the leaders; there is no focus on improving welfare services; people have job cards but no work under MGNREGS. Even out of the meager 35 kg of grains under the PDS, 5 kg is diverted.
- The Bodoland Territorial Council (BTC) has a lot of powers and autonomy over government functions but so far there has not been any social legislation.
- Any change will need a new paradigm shift to fulfill the aspiration of all people living in the council. This can be possible through proper

planning from a people's perspective.

- There is evidence of child labour in mining areas of Jaintia Hill district. Entrepreneurs are having easy access to mining in Jaintia Hill district, thereby imposing cheap child labour on the tribal communities.
- Because of extensive coal mining activities in the Jaintia Hills, the rivers are turning acidic.
- The number of enrolments in the elementary and secondary schools is not increasing. Girls outnumber boys in the dropout category because of early marriages.
- The northeast on the whole is doing well but in the field of education the situation in tribal areas is bad.

Session Four: Roles and Responsibilities of the councils and the Government in providing basic services and development - II

The session was chaired by Mrinal Gohain and the Speakers included Kamal Medhi, Obed Killing and Raju Narzary

Environmental impacts include drying up of rivers, surface cracks over the mines, drastic forest and wildlife loss. All these impacts pose long term threats to people's livelihoods.

Highlights of the Discussions

- The situation in Meghalaya is a good example of how the traditional village level institutions functioning around the village headman have been weakened vis-à-vis the power of the ADCs.

- All mining laws are applicable for Meghalaya notwithstanding the provisions of the Sixth Schedule.
- NRHM now operates as a bureaucratic exercise with very little role for people and village institutions. Though Village Development Committees have been constituted, they don't get any funds for the implementation of programs.
- Women are completely marginal to the governance structure. The BTC does not have even a single elected member.
- Population projections show the youth are the future of India. Youth are also stakeholders in the democratic dividend. They have to actually play a major role in the process of decision making at all levels. Youth empowerment will bring many positive changes in the country as they are the instruments of change.
- In a situation where the emergence of democratic practices has been thwarted both due to cultural inhibitions and conflict, it is the youth who can contribute the most to the development of democratic aspirations.

Session Five: People's participation in governance

The session was chaired by Fabian Lyngdoh and the Speakers included Mrinoy Teron, Mandvi Kulshreshta and Kwrwmdao Wary



Highlights of the Discussions

- Lack of participation of common people in governance and the dominance of officialdom in all matters is the cause of continuing unrest in the tribal areas. It also results in continuing inequality between different areas in Assam and within the country.

Some places have witnessed the rise of women. But in Bodoland, the plight of women in general and Adivasi women in particular, is pathetic. Cases of women trafficking are very frequent. These women suffer severe poverty.

- People of ADCs have to democratize according to their own systems. They should take the best from their traditional systems and amalgamate them with liberal democratic principles and practices. There is no need to emulate the legal framework and practices in the Panchayati Raj system.

Session – Six: Women's Participation, empowerment and leadership in governance.

The session was chaired by Prof Archana Sharma; Speakers included Uddipna Goswami and Shahnaz Yasmin Haque

The benefit of devolution of powers within the ADCs reaching every citizen in these areas is challenge to all democratic forces. Women are enfeebled due to the cultural practices having become even more stringent in the face of conflict and modern power to

men in the form of state power. Some places have witnessed the rise of women. But in Bodoland, the plight of women in general and Adivasi women in particular, is pathetic. These women are the sufferers of severe poverty.

In the north east there is slight difference between the status of women in the plain and the women in hills; though the women in plains are not in a very good condition themselves. However, tribal women in the hill areas are suffering more under control of a patriarchal society.

Women can contest for all seats no matter reserved or unreserved; but in reality they are not allowed by the community to contest for seats that are not reserved for them in areas where there is reservation.

Both men and women have equal rights – they should equally share power. But, whenever question of power comes, there is an automatic structure where women are expected to stay away from sharing power. A gender perspective is required in decision making.

Highlights of the Discussions

The schemes and services provided by the Government are unable to cater to rising demand and do not capture the aspirations of young people. Not much has been done towards including youth perspective in the governance system

- The provision of benefits of the devolution of powers within the ADCs to every citizen is a challenge to all democratic forces.
- The mainstreaming of women is paradoxical. While they need to be active members of society and politics, they also need special protection, positive discrimination and support.
- Economic and social empowerment is also required along with political empowerment.

Session Seven: Transparency and Accountability in local governance

The session was chaired by Bela Bhatia and the Speaker was Bernard Rongphar

Highlights of the Discussions

- Land transaction in Karbi Anglong is a major issue of transparency and a source of corruption. Under Jhum cultivation prevalent earlier there was no need for private ownership of land. The introduction of non-traditional crops like rubber and ginger led to private ownership.
- The real beneficiaries of the Government's agricultural development programmes are the elites of the local communities.
- There is a sheer lack of opportunities for exchange of views, knowledge and experiences among ADCs. Thus there are many hurdles to learning from one another. For example, there is reservation for women in the tribal councils in Tripura. What has been the experience there? We don't know! We could certainly benefit from learning their experience, knowledge and practices.
- There is a lack of transparency across all government functions and at all levels in the whole country. The situation in the North East is even more difficult because of its border area location and the presence of conflict zones. The Government pumps in a lot of money without mechanisms to ensure the money is used properly.

Session Eight: Youth perception and participation in Governance

The session was chaired by Mandvi Kulshreshta; Speakers included Sarso Bey, Hadat Basumatary, Swgwmsar Boro and Ranjeeta Kar.

Highlights of the Discussions

- Development and governance in North Eastern

States has been a point of discussion amongst youth.

- The strong and age old societal system doesn't entertain presence of youth in governance matters even at the local level.
- Such consultations need to have strong follow up; otherwise the energy created here will be lost.



Recommendations:

Following are the observations and recommendations made at the end of the 'Consultation on Governance: Functioning of District Councils under the Sixth Schedule of the Constitution of India'. The Consultation was jointly organised in Guwahati on 9-10 May, 2012, by Development and Justice Initiative and Friedrich-Ebert-Stiftung, India Office. The focus areas of governance debate were: delivery of basic services, infrastructure development and management of natural resources. Participants included representatives of civil society organisations from the ADC areas of Assam and Meghalaya, academics, elected representatives and students. Village level processes and autonomy of the ADCs to plan, execute and monitor the delivery of services and undertake development were discussed.

Following observations and recommendations were made:

- **Basic Services:** It was observed that services provided by the local bodies and by Government departments lack democratic participation in terms of planning, implementation, monitoring and audit across all services including the Public Distribution System. A majority of the Centrally Sponsored Schemes are being entirely planned and managed by the government departments with some stake of the ADCs.

It is recommended that participation of the community, particularly of women members, be ensured in all programs and projects that provide basic services and have the financial resources to build infrastructure such as school buildings, anganwari centres, rural hospitals, village roads etc. A social audit by the community, with equal participation of women and men, of all such programs and services provided by the ADCs and Government

departments should be mandatory. Such mechanisms should be put in place immediately.

- **Village level institutions:** It is observed that indigenous tribal people in the states covered by the Sixth Schedule have traditionally had strong systems of community participation in decision making. However these fora, called by different names among different communities, excluded women and youth. Moreover, the structure and practices of collective decision making systems have not been codified.

The Sixth Schedule itself focused more on the cultural and religious autonomy of the communities. In a changed context where states have the responsibility to uphold the rights of children, women and other marginalised sections of the population, it is imperative that full participation of these sections be ensured. Also that decision making institutions become a product of cultural practices combined with open, free and fair elections based on adult franchise.

Therefore, it is recommended that traditional collective decision-making bodies be codified. Village level forums for participation of all adults of the community with constitutional recognition and powers should be constituted. An elected executive body with at least 33% of the seats reserved for women be put into place with elections conducted by an independent commission. These institutions be empowered to plan, implement, select beneficiaries, monitor and audit all the services and programs of the Central and State Governments and ADCs.

Any legislation leading to the creation of these institutions should follow broad-based consultations in the areas concerned. Legislation and constitution of village institutions should be done within a time-

frame agreed between the concerned ADCs, State and Central Governments.

Once the village level fora are legislated and constituted, these institutions will have the overall power and responsibility to plan, implement, select beneficiaries, monitor, audit and ensure transparency and accountability of all Government and ADC programs. They will supersede all other existing mechanisms at the village level.

- Funding to the ADCs: It is observed that ADCs lack full financial autonomy and programs implemented by their agencies suffer from delays in disbursement of funds which impede their ability to serve the people.

Therefore it is recommended that mechanisms for ADCs to receive direct funding from the Central and the State governments be put in place.

- Transparency and Accountability: It is observed that there is a lack of transparency in planning, implementation and financial transactions. One of the reasons being the absence of an institutional mechanism for larger participation in the governance process. Lack of transparency also impedes accountability which in turn affects efficiency in the use of resources, funds and services.

Open fora involving all the adults of a village/ village circle should be put in place under different service delivery and development schemes where complete information in relation to the concerned department/schemes, including financial details such as audit reports should be placed for approval.

Programs to educate the people, particularly the women and youth on the Right to Information Act should be promoted and the law should be fully implemented.

These changes in the functioning of service delivery and development schemes should be implemented urgently.

- Ownership and management of natural resources: It is observed that diverse changes in resource use are taking place in the ADC areas. Coal mining, illegal clearance, and promotion of monoculture is destroying the environment and livelihoods, particularly in Meghalaya. Such activities and projects are taking place without any consultation and approval of the local communities. A multitude of laws, policies and rules of the State and Central Governments create a lot of confusion for affected people and those interested in ecological conservation.

It is recommended that different laws, policies and rules applicable to projects seeking to change existing resource use and environmental conservation be harmonised in an open and transparent manner for bringing clarity.

Village institutions be empowered to be consulted on any proposal that seeks to change existing resource - use and turn down any appropriation or use of natural resources by private owners, the Public Sector and Governments. Existing activities/projects should also be reviewed in the same spirit.

List of Participants

S. No.	Name	Designation and Organization
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2.	Mr. Hadat Basumatary	Student, Udalguri College, Udalguri, Assam
3.	Mr. Saito Basumatary	People's Rights Forum, Assam
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9.	Mr. Prodeep Kumar Daimary	Member of Council, Legislative Assembly Bodo Territorial Council, Udalguri, Assam
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11.	Mr. Sarba Narayan Deori	Ex. Dy. CEM Deori Autonomous Council, Assam
12.	Mr. Bidya Singh Engleng	MLA and Parliamentary Secretary, Karbi Anglong ADC, Assam
13.	Mr. Vidyadhar Gadgil	Tata Institute of Social Science, Guwahati
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20.	Mr. Tasadula Ariful Hussain	North East Social Trust, Bokakhat, Assam
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23.	Ms. Ranjeeta Kar	Student, Guwahati
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33.	Mr. Rajib Lochan Pegu	Minister of Welfare of Plain and Tribal & Backward Classes (Specific portfolio: ADCs in Plain Areas)
34.	Mr. Melvil Pereira	North Eastern Social research Centre
35.	Mr. Jannis Pferdtner	Centre for Environment Education, North East Guwahati
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.... The Sixth Schedule focuses itself entirely on the district tier and does not concern itself with tiers under-pinning it. The result is that in some Sixth Schedule areas of the North East, no democratic or even sometimes traditional institutionalised tiers are found below it, i. e. at the sub-district level...

...the estimated receipts and expenditure pertaining to an autonomous district council are first to be placed before the district council for discussion and thereafter be shown separately in the annual financial statement of the State to be laid before the legislature of a State under Article 202. It has been reported that the discussion in an ADC is treated by State authorities as a mere formality leading to the complaint that no real autonomy has been conferred....

[Excerpted from the REPORT OF MPS AND EXPERTS TO MAKE RECOMMENDATIONS ON THE SALIENT FEATURES OF THE LAW FOR EXTENDING PROVISIONS OF THE CONSTITUTION (73rd) AMENDMENT ACT, 1992 TO SCHEDULED AREAS (Bhuria Committee)], 1994.