What’s up with the territorial council?

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IN the Bodoland Territorial Council of Assam, victims of violence were still in a state of shock in late July this year, when P. Chidambaram left office as Home Minister with a tasteless remark: ‘Ultimately, people of all communities would have to learn to live together in peace.’ While reporting extensively on the bloodshed, the media ran stories about the grievances of Muslims and Bodos alike, offering generous space to commentaries on the root causes of the conflict. There were heated debates about Bangladeshi infiltration, sprinkled with accounts of political conspiracy, and stories of ethnic or communal violence, apparently so deeply rooted that senseless killing, riots and torching of homes might ‘flare up’ again at any moment.

As a response to Bodo militancy for the cause of statehood, the Bodoland Territorial Council (BTC) was ostensibly created to bring peace. With the recurrence of violence, questions also resurfaced about the promise of peace through institutional arrangements such as the territorial council.

In colonial Assam and the Northeastern frontier areas, the hill districts were once administered under special provisions for Excluded Areas and Partially Excluded Areas under the Government of India Act, 1935. With Independence, the Sixth Schedule of the Constitution established autonomous district councils in the same areas, based on the premise that as exceptional areas inhabited by very different people – headhunters and Haimendorf’s ‘The Naked Nagas’ were brought up in the Constituent Assembly debate – their administration required a governance system that was different from that of the rest of India.

During the drafting of the Constitution, the proponents of the Sixth Schedule maintained that it was meant
to be a temporary measure that would help unify India rather than set up the Northeastern hills as forever apart, even at the risk of separation. After six decades, security analysts and the erstwhile underground still peddle the threat of separation, while new areas such as Bodoland have been brought under the Sixth Schedule, and more autonomy is allegedly offered by territorial councils. It seems that what was once created as ‘temporary’ has not only survived, but is spreading into the plains of Assam and making attempts at the Gorkha Hills as well. The Sixth Schedule is still alive and kicking. What happened and how?

Let’s return to the history. As mentioned, the Sixth Schedule of the Constitution established an exceptional governance structure which had its origins in the provisions for Excluded Areas and Partially Excluded Areas in the hills of Assam and the Northeastern frontier. With the 1935 enactment of these provisions, the British rulers institutionalized policies that were supposedly meant to protect the interests of the indigenous inhabitants, on the assumption that the hill people were unable to protect their own interests. The provisions therefore stipulated that only ‘tribals’ could hold land in these areas, while others were required to take special permission for purchasing land from the Deputy Commissioner.

The Sixth Schedule was drafted on the basis of recommendations by the Sub-Committee on the North East Frontier (Assam) Tribal and Excluded Areas (chaired by Lt. Gopinath Bordoloi) after consultations by the sub-committee with the ‘hill people’ during several tours of the region. During the Constituent Assembly debate on the schedule, members of the assembly raised the propositions that the schedule would keep the frontier areas safe, and its people ‘in a satisfied condition’, help them ‘grow according to their culture’ and avoid being ‘swallowed up by another culture’ (as expressed by Rev. Nichols Roy).

Others expressed their fears that the tribal people would be kept ‘perpetually away from the non-tribals’ (Kuladhar Chaliha), even to the extent that they might one day ‘combine’ with Tibet or Burma rather than India (Rohini Chaudhuri). These were countered by assurances that the schedule would help the hill areas to be unified with the rest of India. In the later stages of the debate, when the assembly discussed the inclusion of Dimapur and boundaries of the municipal area of Shillong (then the capital of Assam), some members of the assembly also revealed their doubts about the capacity of the district councils to deliver basic services and amenities, expressing concerns for the welfare of the townspeople (though not the tribals).

The problem facing the Constituent Assembly was the difficulty of balancing several important goals, i.e. to integrate, assimilate and unify tribal areas with the rest of India, to protect the interests of tribals, and advance the hill people, to educate them in self-government, to prevent them from seeking secession, whether to Tibet (China) or Burma, and finally to address the demands of hill people for self-government while also protecting resident non-tribals from being deprived of benefits and maintaining equal rights.

The Sixth Schedule was passed only after several amendments to the draft. As an outcome of the debate, the Constituent Assembly decided to revise a section of the draft that required the expressed consent of the hill people for any act of Parliament to be operational in their areas. They also decided that the hill councils should be brought under the purview of the state legislature rather than remain at the discretion of the Governor, as they had been in colonial times. Nevertheless, the schedule essentially perpetuated the colonial policy of exceptionality in the areas inhabited by the ‘hill people’, seeking to balance the concession to the region’s uniqueness with its integration into the Indian Union, and the devolution of decision-making power with the protection of the interests of the most ‘backward’ people of the region until they were ‘advanced’ enough to fend for themselves.

Obviously, if the Sixth Schedule had worked as intended, the people of the hill areas would have become ‘advanced’ enough after sixty years that they no longer needed an exceptional system of governance? And if the people of Bodoland were already ‘advanced’ in the 1940s, then how did they slip backwards after Independence? We may have to examine the Sixth Schedule baby again, and the bath water as well.

While it was the British colonizers and their ethnographers who laid the foundations for ethno-politics in the form of ‘tribal’ categorization, evolutionism and nationalist ideology, it was the Sixth Schedule powers of autonomy (and the funds that came with it) that provided the real incentives for ethno-nationalism and ‘sons-of-the-soil’ politics. \(^1\) When the autonomous district councils were set up in the Sixth Schedule areas in the early 1950s, they were empowered to make rules and regulations for among others, the administration of land, jhum (shifting) cultivation and management of forests other than the reserved forests, animal husbandry, and traditional and customary institutions.

The powers of the district council were far less than those provided

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by the Constitution for the states, and of course nowhere near those of a sovereign territory. The district council was therefore seen by some stakeholders to give the hill areas too little autonomy. This gave rise to new political movements in the hills, some for statehood within the Union, others for sovereign independence. The politics of difference took hold.

The region has since become known not only as the home of a mosaic of ethnic groups, but also the war zone of a plethora of armed insurgencies, all demanding a separate homeland, either in the form of independence, statehood or territorial autonomy, and most based on claims of autochthony or indigeneity. The government’s responses have ranged from the deployment of security forces (starting in the Naga Hills in the mid-1950s), to efforts to address demands by negotiating agreements (particularly with armed groups since the mid-1990s), to the founding of new states, reorganizations never succeeded in gaining more powers for the two hill councils. In 1995, a memorandum of understanding was signed between ASCD and the Assam government, giving the two hill councils more resources and further subjects under their mandate.

Throughout these decades, statehood agreements and reorganizations never succeeded in curtailing militancy, which only grew and spread until it had taken hold in large parts of the region. On the contrary, new groups and factions often emerged as spoilers to settlements. According to the government, the granting of statehood and autonomous district status is a means to devolve decision-making and maintain the ‘demo-

cratic uniqueness’ of Northeast India. In effect, this provides ‘ethnic homelands’ to certain ‘successful’ groups. The Sixth Schedule now gives the district councils extensive powers of legislation and administration of justice, as well as powers to establish primary schools, assess and collect land revenue and impose taxes, issue leases for prospecting for or extracting minerals, and make regulations for the control of moneylending and trading by non-tribals. However, with development schemes and public works weakly monitored and funds poorly accounted for, the powers of the district council and the funds that go with them have become stakes in ‘homeland politics’.

While many of the hill areas of the Northeast have now attained statehood, there is little to indicate that militancy has thereby been reduced. On the contrary, in the ‘tribal’ areas of Assam and elsewhere, demands for statehood have increasingly been propagated by armed groups over the last decades. In Karbi Anglong, the United Peoples’ Democratic Solidarity (UPDS) was formed by a merger of two earlier groups, demanding a Karbi territory and the introduction of an Inner Line similar to the Inner Line Regulation of 1873 in place in Arunachal Pradesh, Mizoram and Nagaland. In the neighbouring district of N. C. Hills, Dima Halam Daogah (DHD) was formed in the mid-90s, after the surrender of most of the cadres of their predecessor, the Dimasa National Security Force (DNSF). DHD demanded a unified Dimaraji state comprising Dimasa-inhabited ar-


C of the security forces.4 which less than 2,000 were members recorded between 1992 and 2010, of Nagaland), more than 15,000 infected by militancy (Assam, Manipur and Nagaland), more than 15,000 in-flicted by militancy (Assam, Manipur and Nagaland), more than 15,000 infected by militancy (Assam, Manipur and Nagaland), more than 15,000 infected by militancy (Assam, Manipur and Nagaland). The victims of these conflicts were mainly the locals, and most often they were the very people that the militants were allegedly fighting for. In the three states of Northeast India most severely affected by militancy (Assam, Manipur and Nagaland), more than 15,000 insurgency-related fatalities were recorded between 1992 and 2010, of which less than 2,000 were members of the security forces.4

Contrary to the government’s current position on negotiations with the Maoists, armed groups in Northeast India have had an open invitation to the negotiating table, promising political settlements to address demands for territories, autonomy and the redrawing of administrative boundaries. Since 1997, the government has signed a string of ceasefire agreements with Northeastern militant groups, including both factions of the NSCN (IM and K), the National Democratic Front of Bodoland (NDFB), UPDS, DHD, and numerous Kuki groups under two ‘umbrella organisations’. The only tangible outcome of the decades-long peace process is the signing of a few settlements to establish ‘territorial councils’.

The first of these was the Memorandum of Settlement on the Border Section of the Sixth Schedule, 1997 (M SOS-BS). The Memorandum of Settlement on the Border Section of the Sixth Schedule, 1997 (M SOS-BS) was signed on 10 February 2003. Another settlement was signed with the Gorkha Janmukti Morcha (GJM) in July 2011, on the creation of a Gorkhaland Territorial Administration. As with the BTC, the areas covered by the new ‘territory’ were not previously included in the Sixth Schedule, but in the case of Gorkhaland, the signatories also made it their rallying cry to oppose the state government and other stakeholders with regard to Sixth Schedule inclusion. A year after the signing of the settlement, GJM candidates won the first elections to the territorial council, after all other contestants withdrew. In the meantime, a third settlement was signed with UPDS in November 2011, on the establishment of a Karbi Anglong Autonomous Territorial Council (KAATC) in the erstwhile Karbi Anglong Autonomous District.

The view of Northeast India as a site of ‘ethnic conflict’ has become the standard frame employed by researchers, commonly used also among Indian analysts. As noted by Biswas and Suklabaidya:5 ‘It seems that the selective struggle with the state, claim of national identity by an ethnic community and its politics of difference have to be filled with events of violence.’ The truth of the matter is not quite that simple. As for the much-hailed ‘peace talks’, it is curious how the government selects the armed groups they invite to the negotiating table.

A case in point is Black Widow, or DHD (Jewel), one of the two DHD factions with whom the government has now negotiated a settlement on a Dima Hasao Autonomous Territorial Council. Banned as a ‘terrorist outfit’ in 2009, the group was forced to surrender after a major counterinsurgency operation was launched against them. This was after Black Widow members were caught in an attempt to transfer large amounts of N.C. Hills district funds to weapons dealers, obviously to bolster their arms supply.

The newly established National Investigation Agency (NIA) examined the politician-insurgent nexus involved in the misuse of district funds, recent ‘ethnic clashes’ in N.C. Hills, allegedly carried out by Black Widow and other armed groups, were left to the state police. These ‘clashes’ left more than sixty people dead and hundreds of families in relief camps, but they were apparently not qualified as ‘terrorist activities’ and thus not within the NIA mandate. As soon as Black Widow had given up arms they were generously invited to negotiate, in tri-partite meetings held separately from (but parallel to) the government’s talks with the rival faction, DHD (Nunisa). Despite objections from the Nunisa faction, who had been negotiating since 2003, the talks with the Jewel faction produced quick results, ‘succeeding’ in the changing of the district name to Dima Hasao. It is obvious that Kautiyan tactics remain popular with India’s security establishment.

The 2003 Bodo Accord introduced the territorial council as a new sub-state governance structure, in effect promising to provide for more self-rule than the autonomous district councils. As far as institutional innovation is concerned, as can be understood from the numerous footnotes in the Sixth Schedule, the BTC is exempt from Paragraph 1 of the Sixth Schedule, regarding the rights of the Governor of Assam. Moreover, rather than the ‘not more than thirty’-member district council (as per Paragraph 2; four to be nominated by the Governor, the rest to


be elected on the basis of adult suffrage), the BTC shall consist of ‘not more than forty-six’ members, forty elected on the basis of adult suffrage, thirty of them reserved for Scheduled Tribes, five for non-tribal communities, five open for all communities, and the remaining six to be nominated by the Governor from amongst the ‘unrepresented communities of the Bodoland Territorial Areas District’, of which at least two shall be women.

Despite the initial promises of the territorial council to protect the rights of the tribals, it is now facing criticism from within the Bodo community for its lack of decision-making and financial powers. In the meantime, other plains tribes such as Mising, Rabha, Tiwa, and Koch-Rajborgshi have been demanding territorial councils of their own, arguing for the need to protect their tribal identity. Not to forget two major ‘clashes’ involving Bodos and Muslims in 2008 and 2012, leaving hundreds of people dead or missing and several lakhs displaced.

The Sixth Schedule was constituted for the governance of the previously Excluded and Partially Excluded areas such as, and no efforts were made at the time to draw up boundaries between the territories of individual ‘tribes’. Though ethnically designated in name, the district councils were thus not set up as administrations for tribal homelands. Later on, administrative boundaries were increasingly drawn up along ethnic lines, in a process of ‘tribalization’ that served to create ethnic enclaves. With the reservation of thirty seats in the Bodoland Territorial Council for tribals, the ‘tribal homeland’ model was also institutionalized. Fortunately, the settlement on the Karbi Anglong Autonomous Territorial Council (KAATC) does not replicate the Bodo Accord with regard to reservations.

According to the KAATC settlement, the new council will have fifty members, of which six will be nominated by the Governor and forty-four elected, ‘to give greater representation to people living in remote and isolated clusters of villages.’ None of the seats will be reserved. On the other hand, one could have hoped that the participation of women in the KAATC was ensured by way of reservations for women among the members to be nominated.

The district councils of Northeast India have been entrusted with many regulatory powers, but little in the way of developmental powers. Though more and more competencies and subjects have been transferred to them, they remain dependent on funds from the state government. A common complaint is that these funds are diverted. The KAATC settlement thus includes a clause promising that: ‘An effective procedure to release funds (coming from both state and the central governments) to the KAATC will be put in place to ensure their utilization for the intended purpose without diversion or delay.’ Another concern is that development schemes are imposed on councils in a top-down manner. The KAATC settlement has tried to address this by ensuring that also the development functions and functionaries of all devolved subjects are transferred to the territorial council. Moreover, the settlement opens up for private-public partnership in health care and education.

In the hill areas, shifting cultivation (jhum) was the way of life, and still is for many. Jhum land used to be held communally, and village headmen and village councils were important in the management of land and resources. Under the Sixth Schedule, these lands were formally transferred to the District Council, and the role of the village headmen and village councils was left unrecognized. Unlike the three-tier Panchayati Raj system, the Sixth Schedule provides no structure for decentralization to the village level. In an effort to address this, the KAATC settlement has a clause stipulating that, ‘Appropriate amendments will be proposed in the 6th Schedule of the Constitution to facilitate and ensure devolution of administrative powers and stimulate developmental activity at the grassroots level by constituting village level local governance units, e.g. Village Councils/gram sabhas.’

The structures introduced in the Bodoland Territorial Areas and Karbi Anglong under the KAATC include several measures towards further decentralization, in terms of the number of subjects devolved to them, the inclusion of several administrative districts under each territorial council, and in the case of the KAATC settlement, a proposal for the constitution of village level councils. Perhaps even more importantly, the KAATC settlement addresses key weaknesses in the administrative frameworks in which the councils are forced to operate. There can be quite a lot of value-added in the creation of the aforementioned procedures for the release of funds to the councils to ensure utilization for the intended purpose ‘without diversion or delay.’

The territorial council has been presented as an institutional invention for empowerment, as well as a solution to decades of violent conflict. Although there are promising new initiatives, especially in the KAATC settlement, it is difficult to find any value-added in the new institutions as long as they are designed on an ad hoc basis, and played out as exclusive concessions to this or the other armed group. The government should stop privileging militant actors as the exclusive negotiators.
Civil societies need to be involved in the discussions as well, and should be encouraged to participate as equally important representatives of ‘the people’ in negotiations over important issues such as autonomy frameworks. As long as the government’s divide-and-rule tactics are continued, and tribalization prevails, settlements can only pacify one group at the expense of others, and political volatility will be sustained.

Against the backdrop of this sorry scenario, there is not much use in discussing who will end up as empowered. What is clear, though, is who is being disempowered every day in the secretive and exclusive processes of so-called ‘peacemaking’. The territorial council can obviously serve as a face-saving mechanism for some, including stakeholders in the government, and a political platform for others, such as the ‘successful’ signatories of settlements who can now enter into party politics. This is where we can also find fertile soil for fresh power contestations.

India is not the only country in the world marred by violent ethno-politics. Although intra-state conflicts around the world are fought over a variety of different issues, such as control over natural resources, discrimination, or inequitable distribution of economic and political power, most have an ethno-political dimension and all of these conflicts are embedded into a specific territorial context. In order to address the grievances, very often concerned stakeholders advance demands for sovereignty changes, in terms of federalism, autonomy, self-government, or even secession. Decentralized governance has increasingly been regarded as an instrument for transforming conflicts in a peaceful manner.

In spite of the expectations, however, not much attention has been devoted to the peacebuilding outcomes of decentralization. Drawing cases from Macedonia, Aceh, Bolivia and the Southern Philippines, studies so far reveal mixed results as regards the prevention, or contrarily, exacerbation of conflict after decentralization. What seems to make the key difference is how decentralization is actually implemented and under what conditions decentralized institutions are allowed to work. We should also factor into the equation potential political struggles to control funds channelled into newly established institutions.

In this regard, the KAATC settlement offers some hope. It proposes that a committee comprising representatives of the state government and the council may monitor and review the regular release of scheme-based funds to the council. The parties to the settlement have also agreed to evolve and implement a new system of auditing projects, with the participation (where necessary) of experts from for instance NABARD. Moreover, an independent body is to be constituted by the Government of Assam to recommend establishing a proper basis for fund allocations and sharing of tax proceeds between the state government and Sixth Schedule institutions.

Finally, the settlement promises a thorough revision of the Assam Autonomous District (constitution of District Councils) Rules (1951) by the end of 2012, to incorporate the changes and ‘reflect the spirit of empowerment and devolution in governance at the ground level.’ Let’s hope that these promises are kept. No institution can guarantee peace, but there is still a chance that the territorial council can be a step in the right direction. We need to learn from the past, but we also need to stop blaming the victims, and give people a real chance to live in peace.