

# Capacity and Functioning of the Khasi Hills Autonomous District Council in Meghalaya, India

*A Rapid Policy Note for Furthering Research and Policy Dialogue*



**MEGHALAYA INSTITUTE OF GOVERNANCE**

INTEGRATED BASIN DEVELOPMENT AND LIVELIHOOD PROMOTION PROGRAMME



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## List of Acronyms

<b>ADC</b>	Autonomous District Council
<b>ADCC</b>	Additional District Council Court
<b>CAG</b>	Comptroller and Auditor General of India
<b>DCC</b>	District Council Court
<b>FY</b>	Fiscal Year
<b>GIA</b>	Grants in Aid
<b>GoI</b>	Government of India
<b>GoM</b>	Government of Meghalaya
<b>HD</b>	Human Development
<b>HDI</b>	Human Development Indicators
<b>KH-ADC</b>	Khasi Hills Autonomous District Council
<b>MDC</b>	Member of District Council
<b>STs</b>	Scheduled Tribes

## Overview

The nature of tribal society and governance in the North East of India presents complex institutional challenges. As a response to this context, constitutionally-mandated Autonomous District Councils (ADCs) were established in the 1950s to give greater autonomy to tribal societies and to safeguard traditional tribal practices. However, over time, challenges and bottlenecks appear to have emerged in the relationship between the ‘formal’ Indian state, the ADCs and ‘informal’ tribal institutions. This preliminary Note aims to fill some knowledge gaps and spark debate in terms of research and policy dialogue on the role of the ADCs. It does so through an institutional analysis and identification of the critical factors that affect the capacity and functioning of the Khasi Hills ADC (KH-ADC).

While the evidence base is incomplete, the Note’s initial findings suggest that the functioning of KH-ADC is constrained by external and internal factors that have weakened its autonomy, financial viability, accountability and relevance to ‘tribal’ constituents. Overall, the Note points towards three main messages: (1) the KH-ADC is constrained in fulfilling the functions it is mandated to perform; (2) contrary to popular perceptions, it is not only constrained by internal organizational drivers but also by a set of external drivers that are largely beyond its control; and, (3) if the KH-ADC continues on the trajectory it has followed in the past years – without any major reform efforts – its medium term viability and relevance could be seriously threatened. In conclusion, the main implication is as follows: if Meghalaya’s ADCs are to play the role envisaged by the Constitution, the State Government and the ADCs may need to take more pro-active steps to enhance their communication, trust-building and co-ordination in addressing selected governance and development challenges.

## 1. Introduction

**The North East of India is composed of eight so-called ‘Special Category States’<sup>1</sup>, which constitute a population of around 39 million people.** The states have officially been referred to as ‘Special Category States’ by the Government of India (GoI) because they have a large share of tribal population with relatively low population density, have hilly and difficult terrain and are strategically located on Indian borders. In addition, these states have, to different degrees, a checkered history of secessionist movements.

**This region, as such, presents some particularly complex institutional challenges.** One core challenge has been the need to balance pressures to form a unified ‘formal’ Indian state system with the imperative to include and preserve the traditional, ‘informal’ tribal institutions and practices of the majority tribal populations (Scott, 2011).

**In response, one critical intervention has been the establishment of Autonomous District Councils (ADCs).** In 1950, the Constitution of India established ADCs in the North East region. The core idea behind the ADCs was to set up a system of administration to give greater autonomy to tribal societies, to preserve and safeguard tribal groups’ established traditional practices and to act as a ‘meso-institutional’ linkage between the ‘formal’ State Government and ‘informal’ grassroots tribal institutions.

**In Meghalaya, there are three ADCs called Khasi, Jaintia and Garo.** These three ADCs were established in 1952 as part of the unified state of Assam. In 1972, Meghalaya was formed as a separate state and the three ADCs continued to exist. As such, Meghalaya has two constitutionally-mandated institutional structures: the State Government and the ADCs.

**However, the ADCs in Meghalaya, and other states, are understood to face challenges in fulfilling their mandated role.** There can be tensions between the state and the ADCs over jurisdiction, given that the ADCs have legislative, judiciary and executive powers. This leads some observers to refer to the ADCs as a ‘state within a state’. Moreover, various financial and institutional bottlenecks potentially limit the ADCs’ ability to undertake their mandated functions.

## 1.1. Rationale for a Policy Note

**Against this backdrop, the Note aims to further understanding of the Khasi Hills ADC (KH-ADC) in Meghalaya in order to identify areas for future debate and policy dialogue.** In particular, the Note responds to three main issues: (i) the Government of Meghalaya (GoM) has shown an interest in making progress on this complex topic, particularly in light of the difficult policy question of ADC's constitutionally-mandated activities within a complex and overlapping set of institutions; (ii) there are significant knowledge gaps and fragmented and outdated information in this field; and, (iii) there is a need to stimulate debate in an 'evidence-based' manner because our initial consultations suggest that various stakeholders have only a partial understanding of the ADCs.

**The Note specifically focuses on enhancing understanding of the factors that shape ADC capacity, functioning and viability.** Responding to our initial consultations, the Note focuses on two core questions:

- (i) What are the key drivers and factors that are impacting on the capacity, functioning and viability of ADCs?
- (ii) What are some of the potential steps that could be taken, in terms of further research and policy directions, to address the identified issues?

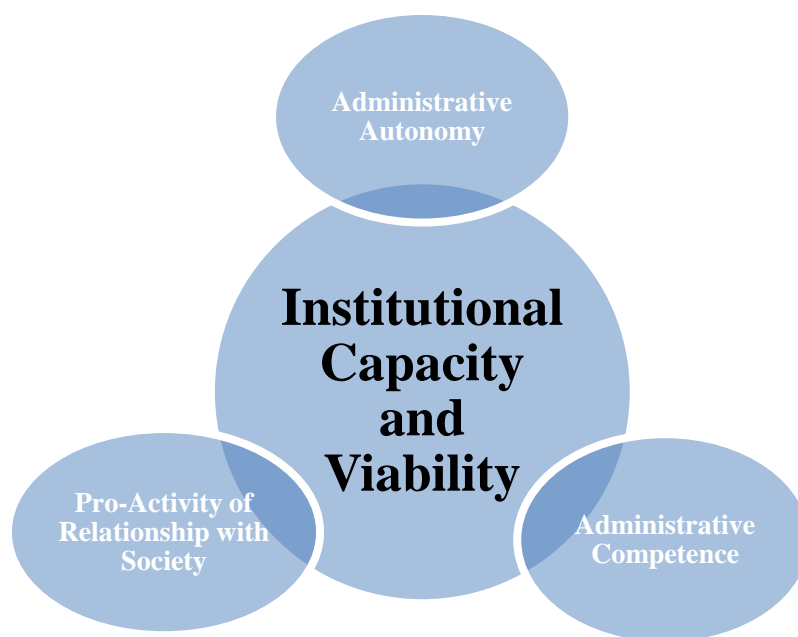
## 1.2. Analytical Framework

**In order to better assess institutional capacity and viability, the Note adopts a simplified analytical framework.** This framework was developed iteratively based on the latest institutional thinking in this field<sup>2</sup> and based on the empirical research collected on the KH-ADC. The framework helps identify some of the key drivers of institutional capacity and viability. This does not claim to be an exhaustive framework, but instead isolates some of the key aspects that emerged as most relevant in the review of the KH-ADC.<sup>3</sup> The main elements are now briefly summarized (also see Figure 1).

**'Capacity', the central element of the framework, refers to the ability of an actor or institution to execute its defined functions and exercise power.** Adapting the recent thinking on institutional capacity (Sen et al, 2014), three key elements are most relevant here: (i) *administrative autonomy* is important as Ministries and other public bodies often need to retain a degree of autonomy from undue influence; (ii) *administrative competence* has various dimensions, but the two dimensions of most relevance here are the effectiveness of monitoring and oversight mechanisms and the ability to ensure financial viability, and; (iii) *pro-activity of the public institution's relationship with society* refers to the ability of an institution to reach out to, mobilise and secure the trust and legitimacy of societal actors (Sen et al, 2014).<sup>4</sup> The degree of pro-activity also affects a public institution's 'relevance' insofar as institutions that lose their relevance to addressing the underlying problems of the broader society tend to become, over time, less viable and sustainable (Murphy, 2005).

**Cutting across this framework is an appreciation that 'history matters' and that the factors that can shape capacity can be internal and external to the institution itself.** 'History' matters for institutions by defining, but not determining, the limits of what is possible or likely in the present day and is likely to happen in the future. Drawing on insights from historical institutionalist literature (Wilkinson, 2006), the framework takes seriously the historical drivers of change and how they impact on today's performance of the KH-ADC and may shape its future. Finally, factors that shape performance and viability can be internal or external to the organization itself – as organizations and institutions are part of a broader, interconnected social, institutional and political ecosystem.

Figure 1. A Simple Framework Capturing Key Drivers of Institutional Capacity and Viability



### 1.3. Methodology and Caveats

**The findings presented in this Note emerge from primary and secondary research undertaken between January 2015 and May 2015.** The research team conducted semi-structured interviews with a range of stakeholders, including officials of the State Government and Khasi Hills ADC, academicians from North Eastern Hill University and village headmen (see List of Consultations in the Annex). A review of relevant literature from academia, government and international organizations was also carried out. Given the sometimes-sensitive nature of this topic, none of the people consulted are cited.

**Before moving forward, it is important to note three key caveats.** First, due to time and resource constraints, this is a *preliminary* policy note that does not pretend to provide an exhaustive overview of the complex and contested issues at stake. Second, due to a lack of information and difficulties in accessing credible data, many of the points presented are tentative and would require further substantiation.<sup>5</sup> Third, this note focuses on only one of the three ADCs in Meghalaya, the Khasi Hills ADC (KH-ADC), so should not be generalized to all ADCs in Meghalaya or the North-East.

**The rest of the note is set out in four sections.** Section 2, by way of contextualization, provides further background on Meghalaya and its ADCs. Section 3 then identifies three key factors that are impacting on KH-ADC capacity and viability: (i) administrative autonomy and institutional overlap; (ii) administrative competence in terms of accountability and financial viability; and, (iii) the pro-activity of ADC relationship with ‘tribal’ constituents. Section 4 summarizes the Note’s main messages before Section 5 provides potential ideas for the way forward in terms of policy and research.

## 2. Background

### 2.1. Meghalaya: Development and Governance Snapshot

**The state has made progress in development, although some challenges remain.** Its economy grew rapidly at an annualized rate of 7.8 percent from FY05 to FY13 to US\$3.3 billion. However, the per capita income in the state is below the national average, and the gap between the state’s per capita

income and the national average has increased since 2005-06 (Rao et al, 2011: 5). In terms of poverty, a mixed picture emerges. One official source (2011-12 poverty rates) notes that around 12% of the population is below the poverty line. Urban poverty has reportedly witnessed a strong decline from 24.7 percent in 2004-05 to 9.26 percent in 2011-12; whereas rural poverty reduced by 1.47 percent from 14 percent in 2004-05 to 12.53 percent in 2011-12. There is, as such, a disparity between rural and urban poverty and about 80% of the Meghalaya population lives in rural areas.<sup>6</sup> Note, however, that there are differing statistics on poverty levels in the state: another government source notes that as much as 48.9% of the population is living below the poverty line (Rao *et.al*, 2011: 17).<sup>7</sup> The vast majority of Meghalaya's population belongs to the so-called Scheduled Tribes (STs).<sup>8</sup>

**In terms of public service delivery, further progress could be made in certain areas.** GoM recognizes challenges associated with its human development outcomes, especially in education and health. For instance, the GoM's 12<sup>th</sup> Five Year Plan (2012-17) notes that urgent efforts are required to bring down alarming levels of infant and maternal mortality (Planning Department, 2012). In 2005 (the latest available data on Human Development Indicators (HDI)), the HDI ranked Meghalaya at 26 among 32 states. One concern has been the state's deteriorating HD performance; Meghalaya was ranked 21<sup>st</sup> in 1981, 24<sup>th</sup> in 1991 and 26<sup>th</sup> in 2005 (Planning Department, 2009). These outcomes are explained, in part, by challenges within the public service delivery chain. A number of challenges have been identified in terms of weak planning and resource management, low front-line capacities and gaps in monitoring systems. More specifically, at least three main challenges are often mentioned: (i) the need to improve convergence between formal State Government structures, ADCs and grassroots tribal institutions in service delivery; (ii) the need to ensure that resources are used as intended and that existing mechanisms for oversight and redress are used as effectively as possible; and, (iii) the need to improve trust, participation and inclusion at the local level in the management and delivery of services (Rao et al, 2011).

## 2.2. The ADCs in Meghalaya

**Against this broader backdrop, it is important to briefly outline the genesis of the ADCs.** In 1947, the year of India's Independence, the GoI created the North-East Frontier (Assam) Tribal and Excluded Areas sub-committee to review the administrative set-up in the North-East. Observing the unique governance situation, the committee recommended establishing an administrative system to preserve the local customary practices.<sup>9</sup> In 1950, the Constitution of India guaranteed separate administration for tribal areas and established a number of ADCs in the North East region. The core idea behind the ADCs was to set up a system of local administration to give greater autonomy to tribal societies, to preserve and safeguard tribal groups' established traditional practices, customs and norms and to act as a 'meso-institutional' linkage between the State Government and informal grassroots tribal institutions.

**The functions, structure and financing of ADCs are outlined in the Constitution of India.** Article 244 (2) and Article 275 (2) along with the provisions in the Sixth Schedule of the Constitution outline the legislative, judicial, executive and financial powers of the ADC. The specific powers of the ADC as per the Sixth Schedule are summarized in Box 1.<sup>10</sup> The members of the ADC are elected by the tribal population for a period of five years. Although 'autonomous', the ADCs are deemed to be accountable to the GoI through the Governor of the state.

### **Box 1: Specific powers of the ADC as per the Sixth Schedule of the Constitution of India**

- **Legislative Functions:** District and Regional Councils are empowered to make laws with respect to land, forest, agriculture, social customs, appointment or successions of chiefs and village administration. However, the bills passed by the Council require assent of the Governor to be formally recognized as law.
- **Judicial Functions:** The ADC can constitute village councils or courts for the trial of suits and cases between Scheduled Tribes, with certain exceptions. It can appoint members and presiding officers of such village councils, and are also empowered to act as, or constitute separate courts of appeal.
- **Executive Functions:** The ADC may establish, construct or manage primary schools, dispensaries, markets, cattle pounds, ferries, fisheries, roads, road transport and waterways in the district. In



addition, the Governor may entrust either conditionally or unconditionally to the ADC or its officers' functions in relation to agriculture, animal husbandry, community projects, cooperative societies, social welfare, village planning or any other matter to which the executive power of the state extends.

- **Financial Powers:** In addition, the Constitution also provides a certain degree of fiscal autonomy by allocating revenue functions to the ADC. These include power to assess and collect land revenue, taxes on lands and buildings, taxes on professions, animals, entry of goods in the market, and maintenance of schools, dispensaries or roads. Further, ADCs receive share in royalties from licenses or leases for the purpose of prospecting for, or the extraction of, minerals. The proportion of share is mutually agreed between the State Government and the ADC.

**Between 1952 and 1972, several laws related to the ADCs' mandate were enacted to enable the execution of their functions.** The current ADCs in Meghalaya – Khasi, Jaintia and Garo – pre-date the formation of the state of Meghalaya. They were established in 1952 as part of the unified state of Assam, which had several diverse segments of tribal populations. Whilst it was part of the state of Assam (from 1952 to 1972), the KH-ADC introduced rules and regulations related to land allotment, social customs, administration of justice, and market administration. Evidence suggests that institutional arrangements under the unified state of Assam allowed the ADCs, as tribal entities, a good degree of independence in passing legislations related to their jurisdiction (Kama et al, 1998).

**Meghalaya was subsequently formed in 1972 and the three ADCs – Khasi, Jaintia and Garo – were retained.** In the 1970s, territorial transformation occurred in the region as tribal groups demanded statehood. Subsequently, the states of Meghalaya, Nagaland and Mizoram were carved out of Assam. In 1972, Meghalaya was formed as a separate tribal state. At the time, the three ADCs were retained without any significant change in their mandate or governance mechanisms, and it appeared that the role of the ADCs was, in many ways, similar to the State Government in these newly-formed states. As such, Meghalaya has two constitutionally-mandated governance structures: (i) the State Government; and, (ii) the ADCs.

### 3. Drivers and Factors Impacting on KH-ADC Capacity and Viability

**Although the Constitution provides well-defined powers for the ADC, there are notable institutional challenges in exercising such powers.** Derived from the review of primary and secondary data, this section discusses three overlapping and mutually reinforcing factors that have an impact on KH-ADC's capacity and viability. As mentioned above, there may be other factors that affect the KH-ADC's capacity, but these are the ones that emerged as most significant in this analysis.

#### 3.1. Administrative Autonomy and Institutional Overlap

**As noted above, one element of administrative capacity relates to the degree of administrative autonomy.** The historical aspect of this review identifies a gradual, but notable, expansion of the state's role over time in the policy and legal matters that had previously resided with the ADCs. Moreover, there are a number of policy and legal provisions in the broader institutional framework that limit the ADC's autonomy in practice. These main aspects are now briefly outlined (see Annex III for a more detailed breakdown).

**One key historical event, which has reduced the ADC's legislative autonomy, was the amendment to the Constitution in 1972.** The inclusion of Paragraph 12A in the Constitution mandated that, in the case of conflict, the State Government laws would prevail over the legislation passed by the ADCs. From thereon, the enactment of ADC laws required close co-ordination with the State Government and, ultimately, the amendment allows the State Government a much greater say in the passing of legislation compared to the past. As per this procedure, any bill passed by the legislature of an ADC is sent to the District Council Affairs Department of the GoM for clearance prior to forwarding it to the Governor. Some suggest that this has empowered the State Government at the expense of the ADCs.


**This constitutional amendment has also reportedly contributed to delays in the passage of laws.** Some observers note that the GoM review of certain Bills can be long and the government can ask a number of questions about the Bill without providing clear suggestions on the changes that are required. For example, although the list of bills pending for approval is not yet made public, a report by the Government of India suggests some of the bills passed by the ADC have waited for approval for over 10 years (Ministry of Law and Justice, 2001). There is reportedly no significant improvement in the situation today. In fact, news reports suggest that about 21 bills appear to be pending since 1994. The same reports also suggest a variety of reasons for the delays: (i) a lack of capacity or manpower within the State Government to process the bills in a timely manner; or (ii) the bills are in contravention of existing state laws, and have yet to be reconciled ('Legal cell to process pending bills' Shillong Times, 6 March, 2015). Finally, another key factor in delays is likely the fact that the Constitutional provision requiring the Governor's assent for bills passed by ADCs does not specify a time period within which the State Government must act.

**Another key event was the transfer of the primary education function from the KH-ADC to the state, which reduced the KH-ADC's role in the development arena.** As per the constitutional mandate, the ADC was responsible for primary education in Khasi Hills. This was arguably its key social policy function. The ADC was fully responsible and the State Government provided financial resources for management of schools such as staff salaries. However, in 1982-83, it was observed that despite the availability of financial assistance, KH-ADC did not pay monthly salaries to primary school teachers. There were also delays in submitting utilization certificates for the grants received from the State Government. This prompted the government to set up an independent enquiry by the S.K. Dutta Committee. In 1984, the Committee presented the findings with recommendations that management and control of primary education be transferred to the State Government for a temporary period. The S.K. Dutta Committee suggested "the function has to be re-entrusted to the District Council after the things are set in order" (Dutta, S.K 1985). However, Meghalaya enacted the Meghalaya Act, 1993 to permanently take over the function. As of now, there is limited evidence to suggest that GoM plans to return this primary education function to the KH-ADC or to build the ADC's capacity to implement such functions.


**Moreover, national policy provisions and conditions attached to ADC financial grants have limited its room for maneuver.** Certain functions under the ambit of ADCs are, however, also subject to national guidelines. For example, ADCs have competency over land, forest and mineral management, but the national government is responsible for developing environment guidelines. Two relatively recent decisions illustrate how this has curtailed ADCs' autonomy in regulating forests and minerals: (i) the Indian Supreme Court has imposed restrictions on forest-based products and cutting of trees; and, (ii) the National Green Tribunal has banned coal mining in Meghalaya citing environmental degradation as its cause. The pros and cons of these decisions aside, they have reduced ADCs' autonomy. Furthermore, ADCs mostly receive 'tied' grants from the central and State Government, which have certain policy and spending prescriptions and restrictions. Similarly, small civil works – such as the construction of village roads or footpaths – which were delegated to ADCs are now primarily undertaken and funded by the GoM as per the state's development plan. Although ADCs submit requests for grants based on the civil works projects identified by the Member of District Council (MDC), allocation often depends on the policy priorities of the State Government. The KH-ADC's financial dependence on the central and State Government – as outlined below – arguably compounds the challenge of it taking independent decisions. KH-ADC's current responsibilities vis-à-vis constitutional mandate is presented in Table 1 below. The colors represent the level of autonomy and engagement in regulatory, developmental and fiscal activities.

Table 1: List of Current Responsibilities of KH-ADC

<b>Domain Function</b>	<b>Regulatory</b>	<b>Developmental</b>	<b>Fiscal</b>
<b>Land</b>	Conduct land survey Provide no-objection certificate for mortgage		
<b>Forest</b>	Issue license for removal of forest produce and cutting trees Issue license for transit of forest produce	Support GoI's reforestation effort Ensure protection of forest cover	Collect royalties on trees, timber or forest produce
<b>Minerals</b>			Receives share of royalties on coal from the State Government
<b>Market Administration</b>	Approve market areas Issue license for setting up shops in market		Levy market tolls/taxes. Receives a share in taxes collected by Chief
<b>Civil Works</b>		Construct footpath, playground Construct village roads	
<b>Health and Sanitation</b>		Construct toilets under Member of District Council scheme	
<b>Education</b>			
<b>Taxes</b>			Collect taxes on profession, animals, and boats Receive a share of motor vehicle tax
<b>Social Customs</b>	Appointment of chiefs or headman; regulate marriage, inheritance		
<b>Administration of Justice</b>	Constitution of village councils and courts. Enforcement of decisions and orders of such Councils and courts		

 ADC is fully responsible and has autonomy

 ADC shares responsibility with State Government

 ADC does not have any responsibility

 Not Applicable

## 3.2. Administrative Competence

**The discussion now turns to the KH-ADC's 'administrative competence.'** As mentioned in the introduction, **there are two important aspects of administrative capacity and competence: (i) existence and effectiveness of oversight mechanisms, and (ii) financial viability and sustainability.** This Note now discusses these two aspects, with a particular focus on where oversight mechanisms could be strengthened, namely related to financial audits, transparency and mechanisms for ensuring accountability in intergovernmental transfers and issues relating to financial viability and sustainability.

### 3.2.1 Oversight and Accountability

**The KH-ADC is financially accountable to the GoI and GoM via mandated financial audits, however such audits are only partially implemented.** The Constitution provides for budget autonomy of the ADC with financial audits by the Comptroller and Auditor General of India (CAG). In addition, the State Government's auditing agency is also responsible for verifying the financial accounts of KH-ADC. However, it has been observed that these audits are not conducted regularly. Available evidence suggests that the last audit by the CAG was in 2009-10. The underlying dynamics that explain such delays would need further investigation and reform efforts. One ostensible reason for the delays is because the CAG requires financial reports to be presented in a specific double-entry accounting standard. However, the KH-ADC follows different accounting practices, and takes time to present the financial accounts in the CAG prescribed format.

**There are also unclear accountability and appeal mechanisms in terms of intergovernmental resource transfers to the KH-ADC.** Although the State Government and the ADC share revenues, there are challenges in terms of predictability and transparency in the process of intergovernmental transfers. Some officials note that the ADC is often not informed of the total revenue generated by the state. Officials at KH-ADC also mentioned delays in receiving the share of revenues from the government. These delays create uncertainty and make it difficult for the KH-ADC to undertake long-term planning. At present, there are also no actionable mechanisms in place in case the State Government fails to regularly remit revenues to the KH-ADC. Further, GoM has not yet established a State Finance Commission, which would be a constitutional committee of experts to review and recommend financial allocation for local government.

**The KH-ADC procedures also have some transparency deficits.** For instance, the KH-ADC has been accused of financial impropriety in the past, which affected its credibility and led to the changes in primary education functions. Moreover, the lack of transparency in its functioning has been a concern. For example, information on actual KH-ADC revenue and expenditure is not publicly disclosed. While budget documents are available on request, the breakdown of revenue and expenditure lacks clarity and is presented in a non-standard format. Equally, some reports suggest that the recruitment procedure followed in the KH-ADC is not regular and does not follow procedures used by local governments in India. Reports suggest that there is no recruitment policy, which creates opportunities for favoritism in the hiring process ('Will come up with' 2015).

### 3.2.2 Financial Viability and Sustainability

**For any state institution, to exercise its powers and sustain itself requires mechanisms to ensure financial viability and sustainability.** It has been difficult to access robust and comprehensive financial data on the KH-ADC. However, based on what is available, two interrelated challenges can be identified-- (i) limitations in the KH-ADC revenue administration capacities; and, (ii) trends indicating risks to the KH-ADC's financial sustainability,

**By way of background, the KH-ADC relies on two main sources of revenues to fulfill its functions.** The two revenue sources are the KH-ADC's own sources of revenues and government transfers. First, the KH-ADC's own revenue base largely includes taxes and license fees. The responsibility to collect

and enforce professional tax was delegated to the KH-ADC, but the motor vehicles tax continues to be collected by the State Government and revenue is later shared with the KH-ADC. Second, the government transfers include statutory allocation from the central government, grants for developmental activities and share in royalties from minerals and forest produce.

**First, the KH-ADC faces various challenges in terms of revenue administration.** Revenue administration involves assessment and enforcement of taxes and fees. In terms of the assessment of tax rates, the KH-ADC has limited autonomy. For instance, the ceiling for professional taxes is determined in the Constitution and cannot exceed INR 2500 per year: any change to the tax rate would require a constitutional amendment. Similarly, the State Government determines the motor vehicles tax rate, with no inputs from the ADCs. Further, the other sources of revenues such as market fees and tolls are applied as per the rules established in 1979 – the KH-ADC has not yet revised these rates since 1979. The other source of revenue from royalties of minerals is shared with the State Government, and the rate is supposed to be mutually agreed between the government and the KH-ADC. The initial share of royalties on minerals was decided to be 60:40 between the State Government and the KH-ADC respectively. In 1995, it was revised to 75:25, ostensibly due to revisions in royalty rates by the Government of India, and loss of revenues. Reportedly, the State Government demanded an increase in the share of revenue from the royalties in order to cover the cost of primary education, which was transferred from KH-ADC to the State. There is also no redress mechanism in place in case the State Government fails to remit tax revenues to the KH-ADC regularly. The officials at the KH-ADC mentioned delays in receiving the share of revenues from the government. These delays create uncertainty and make it difficult for the KH-ADC to do long-term planning. It is also not clear whether there is a third-party audit to confirm the veracity of the tax revenues.

**In terms of revenue collection enforcement, the KH-ADC also appears to be constrained.** The KH-ADC is constrained mainly by two overlapping factors: (i) its limited human and financial capacity to collect taxes at the front-line; and (ii) its limited independence to undertake and enforce tax collection. The KH-ADC has its office mainly in the capital city of Shillong with few frontline staff\* at other places. It is thus apparently dependent on the State Government and village chiefs for tax and fee collection. The State Government is mandated to collect royalties on *major* minerals, such as coal, and share it with the KH-ADC. Similarly, royalties on *minor* minerals, under the jurisdiction of ADC, is actually collected by the State Government in order to minimize the cost of collection and also to eliminate any chance of evasion. Further, the tribal governance structure in Meghalaya dictates presence of tribal ‘village councils’, which do not fall within the jurisdiction of the KH-ADC. This makes it challenging for KH-ADC to monitor activities outside Shillong. Therefore, the respective village chiefs collect the fee from the market, and they are supposed to share 10% of the market fees with the KH-ADC. However, voluntary compliance is low, with some observers mentioning that KH-ADC rarely receives its share of market fees. In addition, the broader institutional context makes it challenging for the KH-ADC to operationalize its tax enforcement functions. For example, the one-time motor vehicle tax is collected during the registration of vehicles. There is, however, an absence of enabling provisions in associated laws to facilitate collection of these taxes by the KH-ADC. Therefore, to ensure high compliance, the State Government collects these taxes and takes 40 percent of the share of revenue to cover collection costs. In spite of these challenges, it appears that neither the State Government nor the KH-ADC have taken pro-active or systematic measures to improve the KH-ADC’s revenue administration.

**Second, broader questions can be raised about the KH-ADC’s medium-term financial viability.** A review of the KH-ADC budget reveals a decline in its overall revenue (see Figure 2). From 2010-11 to 2012-13, the total revenue for the KH-ADC declined by 31 percent from Rs. 393,241,789 to Rs. 271,113,598. The budgetary analysis also reveals both the dependency on transfers from the government (namely ‘Grants in Aid (GIA)’) and the decline in absolute transfers from the government

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\* The information is based on inferences drawn from the budget details and interviews with KH-ADC representatives. The research team made efforts to gather data on the exact number of staff in KH-ADC; however, the ADC administration did not share the information with the team.

to the KH-ADC. For example, in 2010-11, the GIA for civil works contributed to almost half the revenues for the KH-ADC but this has declined drastically to around 5 percent of the KH-ADC revenues in 2013-14. The reasons for this notable, absolute and relative decline would need further probing. The royalties from minerals generated the second highest revenues, but the proportion contributed to the revenues declined between 2012-13 and 2013-14. Furthermore, in the same period that revenue declined, expenditure increased and exceeded total revenue. From 2010-11 to 2012-13, the total expenditure increased from approximately Rs.35.3 crore to Rs. 41 crore (see Figure 3).<sup>11</sup> The increase is more evident in the capital expenditures under the Civil Works and Development Department. Expenditure in other categories has marginally decreased over the years. The salaries and office expenditure contributes to a high percentage of the revenue expenditure. Breakdown of revenue and capital expenditure further reveals a revenue deficit for 2013-14. The KH-ADC relied on its surplus funds from previous years to cover the deficit however in order to overcome this deficit in sustainable manner, it appears the KH-ADC has requested for additional funds from the central government 2014-15 onwards.

Figure 2: Revenue of KH-ADC from 2011-2014 (in INR)

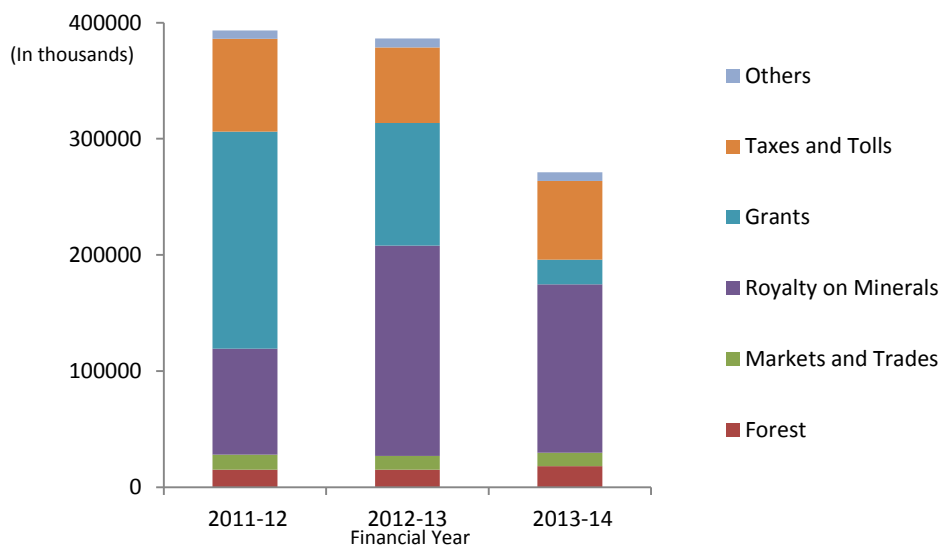
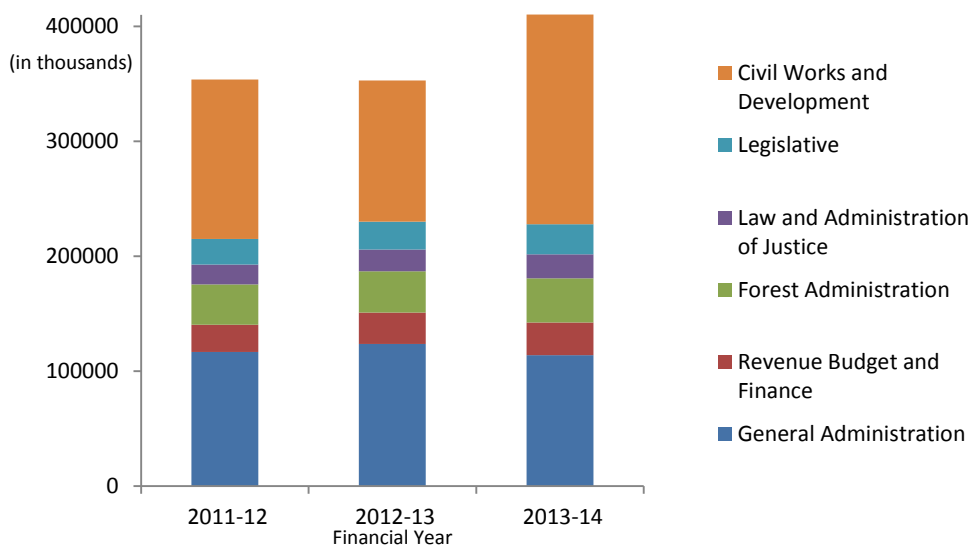


Figure 3: Expenditure of KHADC from 2011-2014 (in INR)



### 3.3. Pro-activity of the KH-ADC Relationship with Society

**An important factor that shapes the capacity of ‘state’ institutions to exercise power is the pro-activity of their relationship with society.** As noted above, this refers to the ability of such institutions to interact with and to secure the trust and legitimacy of, and relevance to, its societal constituents. This can impact on the institutions’ ability to remain relevant and thus viable.

**This is a particularly difficult area to be conclusive on, not least because of the weak evidence base.** However, two factors reflect both positive and negative drivers of change in this dimension: (i) The KH-ADC retains an important set of actionable functions in supporting and regulating key ‘tribal’ customs; and, (ii) the KH-ADC’s legitimacy with the broader tribal constituency is under question, although the KH-ADC’s more recent move to enact a Village Administration Bill may offer a potential avenue for strengthening its legitimacy. Each point is briefly discussed in turn.

**The KH-ADC retains important functions in supporting and regulating tribal customs and practices, which allows it to reach down to the grassroots.** The KH-ADC interacts with the grassroots customary institutions mostly on issues relating to the preservation of tribal culture and the appointment of village/tribal headmen. The village headmen play an important leadership role in local governance in the state. The legislation for the appointment and succession of tribal chiefs/headmen resides with the legislature of the KH-ADC and thus the GoM relies on the KH-ADC for officially appointing them. In addition, the KH-ADC has formalized the procedure for marriage, divorce and lineage as per the tribal culture and practices. The disputes arising between tribal groups are also fed through the courts and judiciary processes established by the KH-ADC.

**There are reasons, however, to note that the KH-ADC legitimacy with and relevance to tribal constituents have been questioned.** There is limited available evidence to suggest that the interaction between the KH-ADC and grassroots tribal institutions is particularly strong or frequent. Tribals approach the KH-ADC when they need certificates for land or have to register cases against other tribals. However, as key service delivery functions were taken over by the State Government, the

#### **Box 2: The Khasi Autonomous District (Village Administration) Bill, 2014.**

The Khasi Hills Autonomous District (Village Administration) Bill, 2014 aims to codify, provide and make provision for the administration of villages in the autonomous district of Khasi Hills. The provisions of the Bill strengthen governance by enhancing transparency in decision-making, improving accountability and encouraging community participation. It empowers Dorbar Shnong\* to create Village Development Council to govern the socio-economic development as per the traditional tribal culture but within the governance structure of democratic India. Some of the functions of Dorbar Shnong include:

- Ensure general discipline, social order and tranquility in the village in cases of intra and inter village affairs.
- Protect and conserve of all community lands.
- Maintain a population register in the village where the name of each household and its residents is recorded.
- Issue statutory certificates such as residential certificates, birth and death certificates.
- Restrict the manufacturing, sale and use of non-biodegradable materials such as low density plastic bags and to ensure proper and scientific disposal of waste.
- Assist and provide local information as may be required by the District Council, the State Government or any other authority through the Chief and his Dorbar and the Executive Committee.
- To ensure financial accountability of the Executive Dorbar, Village Development Council and village-based voluntary organizations and to organize social auditing through active participation of all inhabitants of the village.

The Village Development Council plans to ensure participation of men, women, and youth in welfare and socio – economic development of the village guided by Khasi tribal culture. In addition, the Bill outlines the roles and responsibilities of the traditional chiefs such as Rangbah Shnong and Rangbah Dong, thereby establishing clear line of accountability in traditional governance structure.

relevance of the KH-ADC in the day-to-day socio-economic affairs at the grassroots has declined. In addition, the limited funding available with the KH-ADC has made the tribal institutions more predisposed to interact directly with the State Government for public services such as health, employment and education. Furthermore, the heads of the traditional tribal institutions (i.e. the village headman) are the primary point of contact.<sup>12</sup> Direct interaction between the KH-ADC and the wider tribal population is somewhat limited: the Member of District Council (MDC) meets the heads/chiefs of village council to discuss the issues related to villages without significant consultations with the citizens. Moreover these MDC meetings with chiefs/headmen are reportedly infrequent. These factors have allegedly created distance between tribals and the KH-ADC as well as fuelling negative popular perceptions of the ADC. Anecdotal and newspaper evidence suggests, then, that many tribals no longer view the ADC as an important or relevant actor in the state. In different popular sources, the ADCs are accused of financial mismanagement, a lack of transparency or of being ‘politicized’ institutions that serve a narrow membership’s interests. These findings would require further substantiation.

**On the other hand, the KH-ADC has recently taken steps to potentially enhance some of its legitimacy with tribal institutions by supporting the codification of tribal practices in village administration.** It has introduced the Khasi Hills Autonomous District (Village Administration) Bill in 2014 with the intention to facilitate stronger ‘bottom-up’ governance. As per the draft Bill, each village, in accordance with the Khasi tribal practices, will have a council to participate in the socio-economic programs and policies related to land, public services, maintaining law and order, and peace and tranquillity of the village (see Box 2). At present, these functions are ‘informally’ carried out by the traditional institutions, which limits their participation in and their authority over the large formal state institutions. The Bill was passed by the KH-ADC legislature, but it has not been passed by the State Government because it was reported to be in conflict with the state laws. At the time of writing, the KH-ADC and the State Government are in the process of negotiating this Bill.

#### 4. Conclusion: Key Messages

**The purpose of this policy note was to better understand the KH-ADC in Meghalaya by identifying key factors that shape its capacity, functioning and viability.** As mentioned in the introduction, this has scratched the surface of this topic given that it is a preliminary Policy Note for discussion, the evidence base is weak and only one of the three ADCs has been studied. Nonetheless, a number of issues emerged from the analysis, which are briefly summarized here.

**The note points towards three main messages:** (1) the KH-ADC, currently, is constrained in fulfilling the functions it is mandated to perform; (2) contrary to popular perception, it is not only constrained by internal organizational drivers (i.e. endogenous factors) but also by a set of external drivers (i.e. exogenous factors) that are largely beyond its control; and, (3) if the KH-ADC continues on the trajectory it has followed in the past years – without any major reform efforts – it may cease to be a viable and relevant institution over the medium term.

**First, the KH-ADC’s administrative autonomy has been constrained by historical developments and policy and legal provisions at the state and national level.** At least two main historical events since 1972 had quite significant impacts on ADC autonomy: (i) the 12A amendment of the constitution mandated that in the case of conflict, the State Government laws would prevail over the legislation passed by the ADC, which has contributed to reduced legislative autonomy and delays in the passage of laws; and, (ii) the transfer of the primary education function from the KH-ADC to the state eliminated one of the KH-ADC’s key roles in the development arena. Furthermore national policy provisions – such as national control over environmental policy – and conditions attached to ADC financial transfers severely affect the KH-ADC’s powers and autonomy.

**Second, existing oversight mechanisms such as financial audits, transparency provisions and accountability mechanisms in intergovernmental transfers could be strengthened.** While financial audits are required by the CAG and GoM auditing agency, they have not been conducted regularly.



There are also unclear accountability and appeal mechanisms in terms of intergovernmental resource transfers to the KH-ADC. There are challenges in terms of the predictability and transparency in the process of intergovernmental transfers. This includes notable delays in transfers from the state to the KH-ADC and weak mechanisms of appeal in case of transfer issues, which can limit the KH-ADC's long term planning capacities.

**Third, the Note points to risks related to the KH-ADC's financial viability driven by weaknesses in its revenue administration capacities and by trends that point towards financial stress.** In terms of revenue administration, KH-ADC's capacity for assessment and enforcement of taxes and fees leaves much to be desired. In terms of assessment, the KH-ADC has limited autonomy within the Constitution, and the State Government is largely in the driver's seat. And, enforcement is constrained by at least two overlapping factors: (i) limited human and financial capacity to collect taxes at the front-line; and (ii) limited independence to undertake and enforce tax collection. This has led to a prominent role for the State Government in collecting the taxes under the KH-ADC jurisdiction. Furthermore, red flags could be raised in terms of the KH-ADC's medium-term financial viability. Analysis of the annual budgets from the period 2011-12 to 2013-14 reveals: i) a decline in overall revenue; ii) high dependency of the KH-ADC on external grants; a significant decline (i.e. downward fluctuation) in grants made to the KH-ADC from the State/National Government; and an increase in expenditure that was not matched by revenue and so was covered by the previous years' surplus.

**Fourth and finally, there are reasons to be both pessimistic and optimistic about the capacity of the KH-ADC to maintain its legitimacy with and relevance to tribal constituents.** On the one hand, the KH-ADC retains an important set of actionable functions in supporting, preserving and regulating tribal customs. This can buttress its relevance as it continues to play a role in the appointment and succession of village headmen; in marriage, divorce and lineage; and in resolving disputes. On the other hand, there are reasons to note that the KH-ADC legitimacy with and relevance to tribal constituents is on shaky ground. The interaction between the KH-ADC and grassroots tribal institutions has arguably reduced because key service delivery and development functions were taken over by the State Government. Further, the infrequency of meaningful interaction between the KH-ADC and the range of tribal constituents has reportedly led to some 'distance' between tribals and the KH-ADC. Related to this, popular perceptions of the KH-ADC are, in some quarters, somewhat negative. However, the KH-ADC's more recent move to enact a Village Administration Bill may offer a potential avenue for strengthening its legitimacy.

## 5. Ideas for Steps Forward

**In light of the above, what steps could be taken in terms of operational and policy actions and research in this area?** We start this brief discussion with the recognition that there are no 'magic bullet' solutions or blueprints. The governance ecosystem in Meghalaya, of which the ADCs are a part, is complex and deep rooted in its history. Moreover, further research would be required to substantiate the findings and to provide more granular details. Nonetheless, based on this analysis, some avenues for policy dialogue and future research have emerged, as summarized here.

### 5.1. Potential Policy and Operational Implications

**Two broad policy implications flow from this Note.** First, attempts to improve the capacity of the KH-ADC would need to focus on *both* internal and external factors. Even a reform-minded ADC bureaucrat could face challenges given the broader external pressures beyond his/her control, as outlined above. Second, the KH-ADC future could be at serious risk if there are no concerted reform efforts to re-orientate its institutional trajectory. Some more specific ideas are provided below.

**There are various issues to debate in terms of the KH-ADC administrative autonomy.** As noted above, a range of factors limits the KH-ADC's administrative autonomy. It is not this Note's place to enter into the pros and cons of increasing or decreasing ADCs administrative autonomy; however, some

areas for policy dialogue could be highlighted. First, delays in the passing of ADC legislation due to conflicts over state and ADC jurisdiction (related to paragraph 12A) may need to be addressed, adjudicated and resolved in a transparent manner. Second, the grant-making system and processes (from central and State Government to the ADC) may need to be reviewed in order to reduce unnecessary conditions and to potentially increase the proportion of predictable untied funds available to the ADC. This is not, however, a straightforward issue. On the one hand, the KH-ADC's lack of autonomy arguably impacts on its ability to be truly responsive to grassroots tribal priorities. On the other hand, if there are concerns about giving the KH-ADC too much discretion – due to issues of mismanagement – then mechanisms of oversight and accountability may need to be simultaneously strengthened (as noted below).

**Related to this, there could be a discussion about if and how to enhance the KH-ADC's role in development.** An open and transparent debate may be needed at the relevant policy levels to discuss – in an evidence-based manner – if and how the KH-ADC could play a meaningful role in development in the state. More specifically, the KH-ADC could play a potentially enhanced role in the governance and development arena, if facilitated by the State Government. If desirable, an 'activity mapping' exercise could be undertaken in given sectors to identify which tasks could be carried out more effectively and efficiently between the different institutional tiers. Then, a plan could be laid out for transferring certain functions to the KH-ADC for building ADC capacity to undertake such functions, and for co-ordination between the different involved agencies. For example, the KH-ADC as a meso-level institution could participate more prominently in monitoring or implementing government programs at the village level. The government could also consider designing institutional arrangements to allow for greater participation of the KH-ADC at the district level: it could be involved in planning of primary education or health activities and this could be enabled, for example, through strengthening the role of the KH-ADC at the District Rural Development Authority. In short, these ideas resonate with earlier recommendations by an expert committee (Ministry of Panchayati Raj, 2006). In that review, the expert committee recommended reorienting ADCs towards development, and strengthening links between different levels of government.<sup>13</sup>

**The mechanisms of oversight and accountability – of the KH-ADC and between the GoM and the KH-ADC – may need strengthening in various ways.** Certain interrelated areas for improvement may include: ensuring that systems are strengthened to enable regular on-time financial audits; ensuring more predictable and timely intergovernmental transfers to improve medium-to-long term ADC planning; and, enhancing the transparency and accountability/appeal mechanisms within intergovernmental transfers to monitor and resolve bottlenecks in transfers. Related to this, the GoM has taken a positive step by announcing the future establishment of a Finance Commission to review financial allocations and transfers; it would be important that this Commission is established as soon as possible and it supports systematic financial allocation for local government. More broadly, given that the KH-ADC is perceived – in some quarters – as mismanaging resources, it may be important for it to enhance its public transparency and accountability mechanisms, such as through more pro-active disclosure and strengthened grievance redressal.

**The financial viability of the KH-ADC would also require attention if the KH-ADC is to be sustainable.** A major institutional problem for the KH-ADC appears to be the fact that revenues are not keeping pace with expenditure. A range of measures would need to be reviewed, selected and implemented to address this issue. One aspect relates to revenue administration. The revenue administration capacity of the KH-ADC – both assessment and enforcement – could be improved. This may require the delivery of capacity building and training support to the KH-ADC from the central and/or State Government. It may also require greater co-ordination between the State Government and the KH-ADC in tax assessment and enforcement in the areas where overlapping jurisdiction are clearly identified. Moreover, the KH-ADC may need to identify and implement internal cost-saving measures – while not compromising on its core functions – and the central and State Government may need to increase predictable and adequate lines of funding to the institution. Further, the accounting standards/practices followed by the KH-ADC while reporting its revenues and expenditure could adhere

to national accounting standards. Regular audits could also be conducted as mandated in the sixth schedule.

**A final area relates to the KH-ADC's relationship and legitimacy with the tribal groups it was originally established to represent.** It appears that if the KH-ADC is to strengthen its relevance and retain the trust of various constituents, it would need to better deliver, and *show* itself to be delivering. In this regard, it may be important to identify some 'quick win' or 'lower hanging fruit' reforms for the KH-ADC to undertake. The Village Administration Bill may be an important step in this regard, but it is still locked in a delay that would require some attention. Moreover, the KH-ADC – even within its currently constrained internal and external environment – could focus its attentions on establishing stronger linkages with the tribal institutions it is mandated to represent. This could involve implementing a strengthened public communications and outreach program to pro-actively and regularly engage a wider range of citizens – beyond the MDC and village heads. This could include more pro-active disclosure of information as mentioned above.

**Finally, perhaps a pre-condition for progressing on the above would be to deepen and strengthen dialogue and communication between the GoM and the ADCs.** The channels of productive dialogue between state institutions and the ADCs may need to be opened further. Currently, there is limited pro-active communication and co-ordination. A starting point may be to hold a joint workshop to discuss issues for collaboration going forward – this could involve a series of workshops with the different ADCs in Meghalaya. Other ways of strengthening communication could include: more pro-active disclosure on the part of the ADC; more regular meetings between the ADCs and GoM officials; and, more regular consultations between the ADCs, the public and the tribal constituencies.

### **Box 3: KH-ADC: Potential Operational and Policy Changes**

#### **Short to Medium term (Operational)**

- In order to enhance transparency, financial and operational information of the KH-ADC could be disclosed regularly. The KH-ADC might consider adopting national accounting standards while reporting its revenues and expenditure. This would also facilitate regular audits mandated in the Sixth Schedule. A CAG Audit could be undertaken to further unpack the revenue and expenditure of the KH-ADC since 2011.
- Efforts could be initiated to comprehensively map untapped, but eligible, revenue sources and put in place a plan for strict enforcement of tax and fee collections.
- The KH-ADC could strengthen communication and outreach to the tribal constituency to more pro-actively engage with them. This would also enable the KH-ADC to present itself more positively to people and be more transparent in terms of its functioning.

#### **Medium to Long term (Policy)**

- The State Government could facilitate the KH-ADCs role in development functions. The KH-ADC, as a meso-level institution, can participate in monitoring or implementing government programs at the village level.
- Build capacity of the KH-ADC via strengthening of financial, human, technical and other capacities. This could possibly include strengthening its ability to execute developmental functions related to education, health and sanitation.
- Consider transferring education function back to the district council or consider more clearly sharing responsibilities between the state and ADC in education delivery.
- Intergovernmental transfers may need to be systemized and made transparent.

## **5.2. Avenues for Further Research**

**Based on this Note's preliminary analysis, various avenues for further research can be proposed.** This Note has uncovered a range of issues that could potentially be the subject of further research, as

briefly summarized in Box 3. The broad backdrop, as mentioned at the outset, is that there is a paucity of evidence on the ADCs, which could be addressed.

**Box 4: Selected Issues for Further Research on the ADCs in Meghalaya**

- **Conduct deeper and comparative analysis of the ADCs.** More thorough and detailed analyses of the ADCs' capacity and functions and their underlying drivers could be undertaken to draw further insights and further substantiate the findings presented here. This could include the treatment of certain issues that were not covered by this analysis, such as human resource appointments and incentives, or the political economy factors that explain the observed capacity deficits. Furthermore, this analysis could focus on – and compare and contrast – each of the three ADCs in the state, as KH-ADC differs from the Garo and Jaintia ADCs. This would help foster more evidence-based discussion in the state.
- **Better understand popular perceptions of the ADCs.** Further research would be needed to gauge popular perceptions of the ADCs in the state. In spite of polarized debates, there is actually very limited evidence on how the ADCs are viewed and why. Surveys could be undertaken in this regard, which would help to more accurately gauge popular preferences and design policy responses accordingly.
- **Try to understand the ADCs' impacts at the front-line of service delivery on the ground.** Similarly, relatively little is still known about how the ADCs influence outcomes 'on the ground' at the front-line of public resource management and delivery. Analyses of its role, impacts and challenges in certain sectors or delivery programs could be assessed in order to help tailor improved responses. Moreover, 'activity mapping' could be undertaken in different sectors/services to map the role of the ADCs and other tiers of governance in service delivery chains and what concrete reforms would be required.
- **Unpack the reasons for oversight and accountability deficits.** Further analysis of *how and why* current ADC-related oversight and accountability mechanisms need strengthening would be welcome. This would include analysis of why there are delays in auditing, of how to strengthen existing mechanisms of accountability and appeal and of how to ensure the State Finance Commission plays an effective role.
- **Undertake more extensive budgetary analyses.** Finally, the ADCs may need to undertake detailed budgetary analyses and reviews to identify and resolve challenges regarding financial sustainability.

## **Annex 1: Provisions of the 'Sixth Schedule'<sup>14</sup>**

### **Provisions of the Sixth Schedule of the Constitution**

Under the Sixth Schedule, separate provisions have been made for the Administration of Tribal areas in Assam, Meghalaya, Tripura and Mizoram, as defined under Paragraph 20 of the Schedule. These provisions have been made in exercise of the enabling provisions given in Articles 244(2) and 275(1) of the Constitution. The Sixth Schedule identifies and designates certain tribal areas as autonomous districts. It provides for the constitution of District Councils and Regional Councils for autonomous areas, consisting of not more than thirty members each, of whom not more than four persons shall be nominated by the Governor and the rest shall be elected on the basis of adult suffrage for a term of five years (an exception has been made in respect of the Bodo Territorial Council). The administration of an autonomous district is to be vested in a District Council and of an autonomous region, in a Regional Council (Para 2). The Sixth Schedule endows Councils with legislative, judicial, executive and financial powers, as follows.

### **Legislative powers of District and Regional Councils**

Under Para 3, District and Regional Councils are empowered, with the assent of the Governor, to make laws with respect to:

- a) the allotment, occupation or use, or the setting apart, of land, other than any land which is a reserved forest for the purposes of agriculture or grazing or for residential or other nonagricultural purposes or for any other purpose likely to promote the interests of the inhabitants of any village or town;
- b) The management of any forest not being a reserved forest;
- c) The use of any canal or water-course for the purpose of agriculture;
- d) The regulation of the practice of jhum or other forms of shifting cultivation;
- e) The establishment of village or town committees or councils and their powers;
- f) Any other matter relating to village or town administration, including village or town police and public health and sanitation;
- g) The appointment or succession of Chiefs or Headmen;
- h) The inheritance of property;
- i) Marriage and divorce;
- j) Social customs.

Under Paragraph 2(7), the District or the Regional Council is empowered to make rules inter alia, regarding formation of subordinate local Councils or Boards and their procedure and the conduct of their business, with the approval of the Governor. In addition, Paragraph 10 empowers District Councils to make regulations for the control of money-lending and trading by non-tribals.

### **Judicial Powers of District and Regional Councils**

Paragraph 4 provides for Regional and District Councils to constitute village councils or courts to the exclusion of any court in the state for the trial of suits and cases between Scheduled Tribes within such areas, with certain exceptions. The Regional or District Council can appoint members and presiding officers of such village councils. The Regional and District Council are also empowered to act as or constitute separate courts of appeal.

### **Executive functions of District Councils**

The range of executive functions of District and Regional Councils vary from Council to Council, based on several amendments made to the Sixth Schedule. The common range of executive functions are laid out in Paragraph 6, under which District and Regional Councils are empowered to establish, construct or manage primary schools, dispensaries, markets, cattle pounds, ferries, fisheries, roads, road transport

and waterways in the district and may make regulations for their regulation and control. It is also specifically empowered to prescribe the language and the manner in which primary education shall be imparted in the primary schools in the district. Functions relating to agriculture, animal husbandry, community projects, cooperative societies, social welfare, village planning or any other matter to which the executive power of the state extends can also be entrusted to Councils.

### **Financial powers of District and Regional Councils**

- a) Constitution of District and Regional Funds: Para 7 constitutes, for each autonomous district, a District Fund and, for each autonomous region, a Regional Fund to which shall be credited all moneys received respectively by the said District and Regional Councils. The accounts of the District and Regional Councils are to be maintained as prescribed by the Comptroller and Auditor-General of India, who is also entrusted with their audit.
- b) Powers to collect taxes and fees: Paragraph 8 gives powers to Regional and District councils to assess and collect land revenue and to impose taxes within their jurisdictions such as on lands and buildings, on professions, trades, callings and employments, animals, vehicles and boats, on the entry of goods into a market, tolls on passengers and goods carried in ferries and for the maintenance of schools, dispensaries or roads.
- c) Entitlement to Royalties: Para 9 entitles the District Council to receive a share of the royalties accruing each year from licenses or leases for the purpose of prospecting for or the extraction of minerals granted by the state government in respect of any area within an autonomous district as agreed upon with the government. Disputes in this regard are to be referred to the Governor for settlement.
- d) Indication of resources to be credited to Councils: Under Paragraph 13, estimated receipts and expenditure pertaining to autonomous districts which are to be credited to or are to be made from the State Consolidated Fund shall be first placed before the District Council for discussion and then shown separately in the annual financial statement of the state to be laid before the legislature of the state under Article 202.

## Annex 2: Structure of the KH-ADC

The KH-ADC carries out its mandated functions through three branches that are briefly explained now: Legislative, Executive, and Judicial.

### 1. Legislative

Under the Sixth Schedule of the Constitution, the Council is mandated to legislate and enact laws with respect to land, forest, water resources, the establishment of village or town committees or councils and their powers; village or town police, public health and sanitation; the appointment or succession of Chiefs or Headmen; the inheritance of property; marriage and divorce; and social customs.

The legislative council is composed of 30 members, 29 elected by the people and one member nominated by the Governor. Each term of office is five years and the Council meets at least three times a year. The Council elects a Chairman and Deputy Chairman whose duties are similar to the speaker and the Deputy Speaker of the State Legislature. The business of the council is conducted by the Chairman in accordance with the normal parliamentary practice and procedure envisaged in The Assam and Meghalaya Autonomous Districts (Constitution of District Councils) Rules, 1951. The Legislative Council is supported by the Secretariat, which mainly looks after the administrative matters pertaining to the legislative functions of the Khasi Hills Autonomous District Council.

The council is responsible to approve the Annual Budget of the ADC. The bills on laws and regulations passed by the Council need the assent of the Governor.

### 2. Executive

The Executive wing of the KH-ADC is headed by the Chief Executive Member, who is elected by majority votes in the session. Departments that are within the Executive Committee are General Administration Department, Law Department, Revenue, Budget and Finance Department, Forest Department, Education Department, Civil Work and Development Department and Enforcement Department. Below is a brief description of each department:

- **General Administration Department:** The Department is responsible for day-to-day functioning of the Executive Branch. There are two separate wings: a) administration of the Elakas and, b) affairs of town committee. In addition, the Finance and Account Unit functions under the GAD and is responsible for managing the District Fund and activities such as preparation of Council's Budgets Estimates of receipts/revenue and expenditure; loans, investment and control of expenditure and preparation of monthly and annual accounts. The Information Technology unit implements the IT technologies to develop present working processes, utilize IT applications in developmental schemes/projects, use IT tools to help the process of good governance, etc.
- **Revenue, Budget and Finance Department:** The Department consists of four wings: Land Administration, Market Administration, Taxation and Fishery.
  - **The Land Administration Department** deals with all the issues concerned with land.
  - **The Market Administration Department** plays a vital role in regulating the operation of markets in Khasi Hills.
  - **The Taxation Department** is responsible for issues dealing with collection and sharing of royalties in KH-ADC.
  - **The Fishery Department** is a new department under which Lailad fishing pond had been set up.
- **Forest Administration Department:** The department is responsible for management of forests under its jurisdiction. Under the Forest Act the department is responsible for registration of private forest and village forest, mapping, GPS Survey. It collects forest royalties from minor forest like timber and shares of forest royalty, which goes to the KH-ADC.

- **Education Department:** The department is responsible for primary schools that continue to be under the ADC.
- **Civil Works and Development Department:** The department is responsible for implementing developmental schemes by the State Government delegated to the KH-ADC through grants. Schemes such as village roads, footpath, footbridges, renovation, construction of playgrounds, etc. are incurred under the plan schemes.
- **Enforcement Department:** Responsible for protection of tribal land and interest.

### 3. Judiciary

Three classes of courts have been provided: Village Court, Additional District Council Court and the District Council Court for the trial of cases. In the District Council we have three Courts that are the Subordinate District Council Courts, the Additional Subordinate District Council Court and the District Council Court. The District Council has also vested powers to the Headman and the Syiem, the Sirdar for trying suits and minor cases like theft, land encroachment, quarrelling and arguing, assault, and so on, within their own jurisdiction and classified them into Village Court headed by the Headman and Additional Subordinate District Council court that falls under the supervision of the Syiemship, Lyngdohship, Wahadadarship etc, and these Courts are only added to support the 3 above mentioned courts.

- **Village Courts:** The Village Court was constituted for the trial of suits and cases in the village with the Headman, Sirdar, Syiem Raid, Basan, Lyngdoh, Lyngskor and other members elected by the village adults to try minor cases at different level when litigation is within the tribal areas and party or parties involved are tribals.
- **Additional Subordinate District Council Courts:** The Additional Subordinate District Council court was constituted for the trial of suits and cases within the Syiemship, Lyngdohship, Sirdarship, Wahadadarship not triable by village courts and to be presided over by the Syiem, Lyngdoh, Sirdar, Wahadadar, as the case may be with such number of Myntris or customary elders and hears appeals from the decision of the village courts both civil and criminal.
- **Subordinate District Council Court:** The Subordinate District Council Court was constituted for the trial of suits and cases within the Syiemship, Lyngdohship, Sirdarship, Wahadadarship not triable by the Additional Subordinate District Council Courts or the Village Court and the Magistrate First Class can exercise powers to give judgment and order to the parties based on proper evidence, witnesses and support documents.
- **Additional District Council Court (ADCC) and District Council Court (DCC):** The ADCC is headed by the Additional Judge and the DCC is headed by the Judge and tries both the Civil and Criminal cases. The Judge and Additional Judge of the District Courts of the Khasi Hills ADC are conferred with powers for the trial of offences punishable with death or imprisonment or life time imprisonment and transportation for life under the Indian Penal Code or under any Law applicable. The DCC are under the direct supervision by the Hon'ble High Court of Meghalaya.



### Annex 3: Functions of the ADCs in Meghalaya

Pre-State Formation								Post State Formation							
	1953	1954		1958	1959	1960	1971	1972	1979	1984	1995	1996	1997	2014	2015
<b>LEGISLATIVE FUNCTIONS</b>															
<i>Power to make laws and regulations related to</i>															
Allotment, occupation or use, or the setting apart, of land	ADC responsible	ADC responsible	ADC responsible	ADC responsible	ADC responsible	ADC responsible	Shared with State Gov't	Constitutional amendment of 1972	Shared with State Gov't	Shared with State Gov't	Shared with State Gov't	Shared with State Gov't	Shared with State Gov't		
Management of forests				ADC responsible	ADC responsible	ADC responsible	ADC responsible	Constitutional amendment of 1972	ADC responsible	ADC responsible	ADC responsible	ADC responsible	ADC responsible	ADC responsible	ADC responsible
Use of any canal or water-course for the purpose of agriculture															
Regulation of the practice of jhum or other forms of shifting cultivation															
Establishment of Town Committees						ADC responsible	ADC responsible	Constitutional amendment of 1972	ADC responsible	ADC responsible	ADC responsible	ADC responsible	ADC responsible	ADC responsible	ADC responsible
Matters relating to village or town administration								Constitutional amendment of 1972							Shared with State Gov't
Appointment or succession of Chiefs or Headmen					ADC responsible	ADC responsible	ADC responsible	Constitutional amendment of 1972	ADC responsible	ADC responsible	ADC responsible	ADC responsible	ADC responsible	ADC responsible	ADC responsible
Inheritance of Property								Constitutional amendment of 1972							
Marriage and Divorce		ADC responsible	ADC responsible	ADC responsible	ADC responsible	ADC responsible	ADC responsible	Constitutional amendment of 1972	ADC responsible	ADC responsible	ADC responsible	ADC responsible	ADC responsible	ADC responsible	ADC responsible
Social customs								Constitutional amendment of 1972					ADC responsible		
Control of money-lending and trading by non-tribals		ADC responsible	ADC responsible	ADC responsible	ADC responsible	ADC responsible	ADC responsible	Constitutional amendment of 1972	ADC responsible	ADC responsible	ADC responsible	ADC responsible	ADC responsible	ADC responsible	ADC responsible
<b>JUDICIAL FUNCTIONS</b>															
<i>Powers related to administration of justice</i>															
Constitution of village councils and courts	ADC responsible	ADC responsible	ADC responsible	ADC responsible	ADC responsible	ADC responsible	ADC responsible	ADC responsible	ADC responsible	ADC responsible	ADC responsible	ADC responsible	ADC responsible	ADC responsible	ADC responsible
Establish procedure to be followed by the court	ADC responsible	ADC responsible	ADC responsible	ADC responsible	ADC responsible	ADC responsible	ADC responsible	ADC responsible	ADC responsible	ADC responsible	ADC responsible	ADC responsible	ADC responsible	Shared with State Gov't	Shared with State Gov't
Enforcement of decisions and orders of such Councils and courts	ADC responsible	ADC responsible	ADC responsible	ADC responsible	ADC responsible	ADC responsible	ADC responsible	ADC responsible	ADC responsible	ADC responsible	ADC responsible	ADC responsible	ADC responsible	ADC responsible	ADC responsible

EXECUTIVE FUNCTIONS															
<b><i>Powers of the District Council to</i></b>															
Establish, construct, or manage primary schools,															
Establish, construct, or manage dispensaries															
Establish, construct, or manage roads and road transport															
Establish, construct, or manage waterways															
Establish construct or manage fisheries															
REVENUE FUNCTIONS															
<b><i>Powers to assess, collect and impose taxes</i></b>															
Revenue in respect of lands		ADCs are empowered to levy land revenue but it is not collected by the Council due to traditional customs/community ownership of land.													
Taxes on lands and buildings, and tolls on resident persons within such areas.															
Taxes on professions, trades, callings and employments;															
Taxes on animals, vehicles and boats															
Taxes on the entry of goods into a market for sale therein, and tolls on passengers and goods carried in ferries															
Taxes for the maintenance of schools, dispensaries or roads.															
<b><i>Licenses for leases for the purpose of</i></b>															
Prospecting for, or extraction of, minerals															

## Annex 4. List of People Consulted

The following people were consulted in Khasi Hills, Meghalaya during the development of the Note:

- 1) Mr. W. Syiemlieh Secretary, Executive Committee, Khasi Hills Autonomous District Council
- 2) Mr. Adelbert Nongrum Chief Executive Member, Khasi Hills Autonomous District Council
- 3) Mr. R.S. Wanniang, Joint Secretary, Khasi Hills Autonomous District Council
- 4) Mrs. B. Basaiawmoit, Joint Secretary, Khasi Hills Autonomous District Council
- 5) Mr. D.G. Syiemiong, Joint Secretary, Khasi Hills Autonomous District Council
- 6) Mrs. S. Saiborne, Accounts Officer, Khasi Hills District Council
- 7) Mr. Lyngdoh, Secretary, District Council Affairs Department, Government of Meghalaya
- 8) Mr. C.W. Momim, Chief Engineer, Public Works Department, Government of Meghalaya
- 9) Mr. Pankaj Jain, Deputy Chief Executive Officer, Meghalaya Basin Development Authority, Government of Meghalaya
- 10) Chief Forest Officer, Forest and Environment Department, Government of Meghalaya
- 11) Prof. Nongkyrinh, Department of Sociology, North Eastern Hill University
- 12) Prof. Umdor, Department of Economics, North Eastern Hill University
- 13) Prof. L.S. Gassah, Department of Political Science, North Eastern Hill University
- 14) Ms. Patricia Mukhim, Editor, The Shillong Times

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<sup>1</sup> Assam, Manipur, Meghalaya, Nagaland, Mizoram, Sikkim, Tripura and Arunachal Pradesh

<sup>2</sup> The evidence suggests that the issue of state capacity is critical to explaining delivery and development outcomes. As one key report puts it: “What explains the differences in the quality of public service provision in developing countries? A key determinant is state capacity – the ability of state agencies to deliver services, and to implement policies and programmes” (Sen et al, 2014).

<sup>3</sup> Like all frameworks, this Note’s framework has partial coverage. However, it provides useful framing devices to focus and order the discussion and thinking on the ADC. It certainly does not attempt to provide an exhaustive coverage of the factors that shape institutional capacity. For instance, due to time and resource constraints, and a lack of available evidence, issues of human resources, appointments and incentives of the ADC – a potentially important area – were not analysed here.

<sup>4</sup> As Sen et al, 2014 note: “A third dimension of state capacity is the proactivity of state organisations. Ministries and other public bodies...also need to engage with relevant actors in society and mobilise and energise them into supporting particular development goals. In other words, even state agencies that are meritocratic and embody clear career progression criteria might not be able to engender growth or reduce child mortality if they are too inward-focused on the protection of their turf and ignore the needs, demands and input of different societal groups”.

<sup>5</sup> Indeed, the Note draws on available evidence and, in certain places, it draws on anecdotes and ideas from a range of sources to give a fuller picture of the ADC, while recognizing that further research would be required.

<sup>6</sup> Some of the cited challenges in maintaining development in the state include: low agricultural productivity, unsustainable cultivation practices resulting in ecological degradation, centralized systems of governance and planning, remoteness of the region, absence of proper connectivity and transport infrastructure, lack of adequate flow of trade and investments, weak market infrastructure and institutions and insurgency amongst others (Rao *et.al*, 2011: 9).

<sup>7</sup> The reasons for this disparity in statistics needs further investigation, although it is not the scope of this Note.

<sup>8</sup> Schedule Tribes are those tribes identified by the Indian Constitution as socially disadvantaged groups, and are therefore granted special consideration and support such as via political, constitutional and social safeguards.

<sup>9</sup> Note that the practice of local self-government in the tribal areas has been shaped by the governance practices during the British era. The enforcement of separate regulation of a ‘Scheduled District’ in 1874 provided provincial sovereignty to select areas.

<sup>10</sup> Please refer to Annex 1 for the complete list of provisions in Sixth Schedule

<sup>11</sup> The increase is more evident in the capital expenditures under the Civil Works and Development Department. Expenditure in other categories has marginally decreased over the years. The salaries and office expenditure contribute to a high percentage of the revenue expenditure.

<sup>12</sup> While the village headman is considered to be a representative of the citizens, available evidence suggests that the fact that the average citizen has little direct interaction with MDCs contributes to a sense of distance between the ADC and the average citizen.

<sup>13</sup> Also, in 2001, the National Commission to Review the Working of the Constitution suggested empowering ADCs and traditional institutions. The recommendation included formalizing a three-tier structure – formal village councils (traditional institution), ADCs and the State Government, where the state legislature was “overall supervisory and policy-making body that Constitutionally delegates powers to local governing bodies but is not associated with the daily running of detailed projects.”

<sup>14</sup> Summarized version taken verbatim from *Planning for the Sixth Schedule Areas*, Report of the Expert Committee, September 2006, Government of India