

ARUNA

THINGS TO DO

NAC

1. Get public consultations organised on
 - a. the RTI rules (already circulated to NAC)
 - b. the tribals and forest bill (annex A)
 - c. the seeds bill (annex B)
2. Get NAC to consider note on procedures (annex C)
3. Get NAC to write to the MoEF regarding discussions on revised NEP (annex D)
4. Get R&R policy on agenda (papers with NC)
5. Get discussion on anti-communalism bill on the agenda
6. Send out a letter regarding role in the NAC (annex E)

7. NMBS

Annex A

24 June, 2005

To
Mrs Sonia Gandhi
Chairperson
National Advisory Council
2, Motilal Nehru Place
New Delhi

Dear Mrs Gandhi,

As you are aware, the Draft Scheduled Tribes (Recognition of Forest Rights) Bill 2005 has been circulated for consideration to members of the NAC. This draft bill has generated a lot of public debate with some sections of the society supporting its early enactment while other sections have opposed it from various standpoints. Both sides have expressed very important issues concerning public welfare.

There are also concerns about the process followed in formulating this Bill, as there appear to have been no public consultations at any stage.

In order to understand the various points of view and then to take a decision on the proposed Bill, it is suggested that the NAC organise a day long consultation. This could involve representatives of some of the groups that have voiced support and opposition to the Bill, including various departments and ministries of the Government of India, and perhaps some representatives from some of the state governments.

With regards,

Yours sincerely,

Aruna Roy

Annex B

To
Mrs Sonia Gandhi
Chairperson
National Advisory Council
2, Motilal Nehru Place
New Delhi

24 June, 2005

Dear Mrs Gandhi,

As you are aware, the draft Seeds Bill has been circulated for consideration to members of the NAC. Along with the draft bill, the NAC secretariat also circulated some comments, based on a Stakeholder Consultation organised on 15th March 2005 by the Farmers' Commission.

These comments raise some very important issues and highlight the conflict between this draft bill and other bills. There is also an allegation that the draft bill is anti farmer and pro industry.

In order to understand the various points of view and then to take a decision on the proposed Bill, I would suggest that the NAC organise a consultation. Representatives of various stakeholders could be invited and could help the NAC to take a final view on the draft Bill.

With regards,

Yours sincerely,

Aruna Roy

Annex C

25 June, 2005

To
Mrs Sonia Gandhi
Chairperson
National Advisory Council
2, Motilal Nehru Place
New Delhi

Dear Mrs Gandhi,

You might recollect my meeting you before to discuss procedures for the consideration and disposal of matters in the NAC. In continuation of the earlier discussions, I have detailed some of the suggestions for your consideration. Specifically, I have suggested possible procedures for:

- Establishing a transparent, democratic and participatory process of consultations
- Handling of petitions received by the NAC and by its members.
- Monitoring the implementation of the Common Minimum Programme
- Initiating and reviewing new laws and policies to ensure implementation of the CMP.
- NAC meetings

As the NAC is just a year old, perhaps there is a need for all of us to contribute ideas about the processes and methods of its functioning. These ideas are for your consideration and for discussion with the NAC, if you think them appropriate.

With regards,

Yours sincerely,

Aruna Roy

1. The Process of Public Consultations

1. The NAC is uniquely placed as an institution that can ensure that the formulation of laws and policies draws upon the expertise of people outside the government. The NAC, through this process, if properly carried out, can also establish the principle of participatory democracy even in the formulation of laws and policies.
2. Towards these ends, the NAC should have the ability and the obligation to organise consultations and public debates on all proposed policies and laws, before they are finalised. It should also have the mandate of taking other selected issues to the public for a process of participatory decision-making.
3. For this purpose, the NAC can involve various networks of people's movements and organisation, who could have the issue debated and discussed in various parts of the country and at all levels, from panchayats and villages to cities. The networks could do this on their own, once the NAC made itself open to receiving suggestions from such consultations. These networks could then feed back the results of this participatory exercise and the NAC could facilitate the consultative interface between these networks and the concerned ministries.

2. Suggested Procedures for Dealing With Petitions

- a. Only those petitions would be taken up for consideration by the NAC that met with ALL the following conditions:
 - (1) That the subject matter of the petition was linked to the CMP or to other terms of reference of the NAC.
 - (2) That the petition did not deal with a problem or issue of an individual, but with those that affected a class or category of people, or affected the country as a whole.
 - (3) That the petition was sent not by one or two individuals but by either a large number of people or by representatives of mass movements and/or of credible NGOs/people's organisations.
 - (4) That one or more member(s) of the NAC owned the petition and were willing to pursue the issues contained in it.
- b. Once a petition has been accepted for consideration, an appropriate process would be followed, which could include the concerned member(s) of the NAC working with the NAC secretariat, between meetings, and having the matter properly examined, getting appropriate responses from the concerned agencies and departments and, where considered necessary, setting up small fact finding groups, by involving persons other than NAC members, where required. However, in all such cases the concerned NAC member would be the convenor of this group. The recommendations that emerged out of this process would be put to the NAC for its consideration and approval and, based on such an approval, sent to the government for necessary action.
- c. However, where a matter requires urgent action, the NAC could authorise the concerned member to formulate the recommendations and put them up to the NAC Chairperson, for consideration and appropriate action. These recommendations could be reported to the NAC at its next meeting.

- d. It would be the responsibility of the NAC secretariat to monitor the status of all such recommendations, to keep the concerned members of the NAC informed accordingly, and to report on the progress made at each subsequent meeting of the NAC.

3. Monitoring the Implementation of the CMP

- a. The NAC secretariat should prepare a chart identifying the interface between the CMP and each ministry of the GOI. They should update this chart before each NAC meeting to show what action, if any, has been taken by every ministry to further the implementation of the CMP.
- b. The NAC secretariat should also incorporate the monthly reports received from the various ministries into this chart.
- c. The NAC would use this chart to monitor progress relating to the implementation of the CMP.

4. Initiating and Reviewing New Laws and Policies

- a. The NAC secretariat should prepare a list of all the new policies and laws that are mandated by the CMP. This list should be considered and prioritised by the NAC.
- b. The NAC should initiate the exercise of formulating suggestions for these policies and laws, in consultation with the concerned ministry. This process should also involve a larger consultation process, as outlined above.
- c. Also, all policies and laws being proposed by ministries, including amendments and additions to existing ones, should also be put up for consideration of the NAC and the NAC should ensure that these proposed amendments are also subjected to wider public consultation.

5. Procedure for NAC Meetings

Agenda Items

- a. Any NAC member could be introduce and agenda items by sending the details to the NAC secretariat at least 30 days prior to the meeting. The secretariat will place on the agenda the items so received on a first come first served basis, provided that the item is relevant to the NAC and can be fitted into the time available for the meeting. Where some items are left out because of lack of time, they will be accommodated in the next meeting on a priority basis.
- b. Where an item is urgent, it can be, at the request of the concerned NAC member, placed on the agenda on a priority basis and without necessarily being submitted 30 days in advance. However, a note justifying the urgency must also be included.
- c. These are in addition to the routine items placed by the secretariat on the agenda.
- d. Needless to say, the decision of the Chairperson on the agenda, notwithstanding the above, would be final.

Format of Presentations

- e. Ordinarily no presentation should be more than 15 minutes. These would be followed by a discussion, which does not necessarily have a time limit. However, in exceptional circumstances, the Chairperson can extend the time allowed for a presentation.

Process of Decision Making

- f. The Chairperson, or a nominee, after the consideration of each issue, should summarise the collective decision taken.

Minutes

- g. The NAC secretariat must take detailed minutes of the proceedings, and these minutes must be circulate to members before being put up for approval in the next meeting. The minutes should not just reflect the decisions taken but also record all the views expressed and the material considered.

Follow Up

- h. In each meeting, after the confirmation of the last minutes, the first item should be "action taken on last meetings minutes". The NAC Secretariat should, as a part of this agenda, present a status report on the follow-up of the decisions of the last meeting.

Transparency

- i. Having strongly advocated the Right to Information Act, the NAC should aspire to be a model of a transparent institution. Towards this end, all proceedings of the NAC, unless specifically decided by the NAC, should be *suo moto* put on the web and disseminated in other ways.

Annex D

24 June, 2005

To
Mrs Sonia Gandhi
Chairperson
National Advisory Council
2, Motilal Nehru Place
New Delhi

Dear Mrs Gandhi,

As you are aware, the Ministry of Environment and Forests, Government of India, has formulated a draft policy on the environment. The NAC had received requests from several NGOs and environmental and social activists from all over the country to review the draft policy as it was perceived by many to be very problematic. These NGOs and individuals had raised various objections and offered suggestions relating to the draft policy. The breadth of the objections as well as the fact that they emerged from all over the country and through several well-known individuals and organizations in civil society, prompted the NAC to examine the suggestions and points raised.

Subsequently, after examining the issue in some depth, the NAC held under its auspices two consultation meetings with representatives of some of the NGOs and of the Ministry of Environment and Forests (MoEF). The first of these consultations was organized in the offices of the MoEF on 15 February 2005. A memo on this consultation, by Jean Dreze, who was the only member of the NAC who attended, was earlier submitted to the NAC for circulation.

The second consultation was organized at the NAC office on 8 April 2005. This was attended by various NGO representatives, representatives of the MoEF including the Secretary, Dr. Pradipto Ghosh, and by Madhav Chavan, Jairam Ramesh, Jean Dreze, and Aruna Roy (Members), and Arun Bhatnagar (Secretary) and other staff of the NAC.

It was evident, from the deliberations which took place at this second consultation, that the issues being raised by the NGOs and prominent individuals deserved serious consideration. There were objections about the *process* followed to ensure the required degree of consultation for such an important and wide ranging policy, impacting multiple sectors. There were also *substantive* issues relating to the content and structure of the policy.

Though, during the second consultation, the MoEF representatives, specifically the Secretary, agreed to review some of the issues raised and to consider making the required changes. However, there were other issues, on which the Ministry did not appear to be receptive.

Perhaps the most worrying aspect of the draft policy was that in some areas it seemed to ignore, or even be in conflict with, the Common Minimum Program of the Government and as such not in line with current priorities. This seemed to be the case in matters related, for example, to tribal rights and the right to information. The MoEF did not seem to adequately recognize this and perhaps the reason why the draft policy did not reflect the stated priorities of the current government was that the policy was actually drafted before the current Government came to power and formulated the CMP.

It is, therefore, strongly suggested that in the revised draft policy be put on the web for public comments and that, before it is finalised, it be circulated to the NAC members for consideration.

With regards,

Yours sincerely,

Aruna Roy

Annex E

DRAFT

Dear Friends,

I have been meaning to write to you and share my experiences in the National Advisory Council (NAC), ever since I joined the NAC in June 2004. However, the first few months have been very hectic as we were trying to explore the possibilities that institutions like the NAC opened up and also testing the seeming constraints. This was also a time when many of us worked hard at getting the NAC to put its weight behind various progressive measures like the Right to Information and the Employment Guarantee Acts. As I consider myself a representative of various progressive and grass roots movements, in the NAC, it is now time to take stock and to share with all of you what I see as the potential for future action.

The NAC gets its mandate from the order of the Government of India setting it up, wherein its functions are described as follows:

- a) To monitor the progress of the implementation of the Common Minimum Programme;
- b) To provide inputs for the formulation of policy by the Government and to provide support to the Government in its legislative business.

In short, the NAC has a mandate to be involved in ensuring that the Common Minimum Programme (CMP) is properly implemented, that policy and law is properly formulated. This is, clearly, a very wide mandate, especially given the width of coverage of the CMP.

Unfortunately, neither the NAC secretariat nor the NAC members have the wherewithal to independently cover such a wide mandate and are, therefore, critically dependent on civil society groups and movements to support them. For example, the NAC sent to the government, in August 2004, suggested amendments to the Freedom of Information Act 2002. The NAC's recommendations were mostly based on the suggestions sent in by the National Campaign for People's Right to Information, which in turn had consulted a large number of RTI activists before formulating these suggestions. Similar was the case with the employment guarantee act.

However, for the NAC to meaningfully take up the issues raised by groups and movements, these issues must be addressed comprehensively and in a manner such that they can be directly taken to the NAC for consideration. The NAC members do not, on their own, have the time and facilities, and often the knowledge and wisdom, to be able to prepare the sorts of notes that the NAC requires to seriously examine the issue. The NAC works on the principle of consensus and, therefore, it is not enough to be able to address the concerns of some of the members, concerns of all the members have to be addressed and enough background has to be provided to ensure that even those members who are not familiar with the issue being raised can get enough from the documentation provided to be able to make an informed decision.

Therefore, as a member of the NAC I would welcome from groups and movements guidance on how we can better fulfil our mandate. I would welcome notes on issues that need

to be taken up at the NAC and where the NAC can play a progressive role. However, these notes must be comprehensive and self-contained.

The NAC also has a problem in dealing with issues that require immediate action. The NAC usually meets once a month and the agenda for each meeting is decided well in advance. If an issue has to be listed in the agenda, it has to be brought up in an earlier meeting and a slot found in a subsequent meeting. Therefore, the process takes at least two months, sometimes more. It is also difficult for the NAC to agree to intervene in matters that are clearly outside its mandate. For example, the NAC has found it difficult to respond to individual petitions regarding specific instances. It finds it much easier to take cognisance of petitions from groups and movements regarding policy matters or issues affecting a large number of people. Though the functioning of the NAC itself must be a subject for discussion both within and outside the NAC, till a different consensus emerges, we are committed to work in this manner.

Just as the encouragement and support that I got from all of you was the basis for my agreeing to serve on the NAC, so will it be the basis for my continuation on the NAC. Therefore, I write to you to request you all to continue your support and to keep in mind the constraints that I have described above.