

National Advisory Council

Record of Discussions of the 11th Meeting of the National Advisory Council held on 24th March, 2011 at 2 Motilal Nehru Place, Akbar Road, New Delhi

The 11th Meeting of the National Advisory Council (NAC) was held on 24th March, 2011 chaired by Smt. Sonia Gandhi. The following members participated:

Prof. M.S. Swaminathan, MP
Dr. Ram Dayal Munda, MP
Prof. Narendra Jadhav
Prof. Pramod Tandon
Shri Madhav Gadgil
Dr. Jean Dreze
Ms. Aruna Roy
Ms Anu Aga
Ms Mirai Chatterjee
Dr. A.K. Shiva Kumar
Shri Deep Joshi
Ms. Farah Naqvi
Shri Harsh Mander

2 Secretariat Report

2.1 Secretary, NAC summed up the contents of the Secretariat Report circulated earlier to Members by email. The members were apprised of the follow-up action taken in the case of (i) Proposed National Food Security Bill (ii) Forests Rights Act, 2006 (iii) Proposed Amendments to the RTI Rules. Council was informed of the visit of the Minister of State for Food and Public Distribution to the NAC on two occasions. The NAC was updated regarding the progress of (i) BPL Census, 2011 (Rural & Urban), (ii) proposed Communal Violence Bill (iii) MGNREGA – Social Audit Rules (iv) Land Acquisition and R&R Bill (v) Working Groups on ICDS, NRM, (vi) base-paper preparation on skill Development & Social security for Unorganized Sector, (vii) Inclusion of Domestic workers in the “Protection of Women against Sexual Harassment at the Work Place Bill. (ix) Response received from the Ministry of Health regarding the deaths in Jodhpur and Barwani.

2.2 On the subject of BPL Census, Secretary NAC highlighted that earlier Chairperson had written to PM on 10th November, 2010 suggesting the involvement of Registrar General and Census Commissioner of India (RGI) in the conduct of socio-

economic census which could form the basis from which various categories of eligible households could be identified. As the caste census would be conducted by the RGI professionally, duplication of efforts to identify BPL by the Ministry of Rural Development could thus be avoided. While initially, the idea did not find acceptance, there has been a rethinking and it appears now that this exercise might be undertaken by the RGI, in which case the list of priority and general households lists to be covered under National Food Security Bill could become available by the end of the year in respect of rural areas. The methodology for selection of urban "priority" and "general" households is yet to be finalized.

2.3 Secretary, NAC also mentioned about the letter that she wrote to former CIC, Shri Wajahat Habibullah and the response received from him on the issue of 'one subject matter' in an RTI application as in the proposed Amendments to RTI Rules. Shri Wajahat Habibullah had participated in the earlier consultation convened between the Working Group, DoPT officials and other experts on 8 February 2011 and made a reference to his judgement/ ruling.

3 National Food Security Bill

3.1 A brief summary of work done by the drafting committee was presented by Shri Harsh Mander, Convener of the Working Group and it was intimated by him that the WG is expected to submit the final draft to the Additional Solicitor General (ASG) by March 31, 2011. The Convener indicated that the following would be circulated to all Members:

- i) The legally vetted Draft National Food Security Bill, with Schedules
- ii) A note on legal opinions received
- iii) A note on suggestions received from the general public
- iv) A note on comments received from Government Departments

The Convener mentioned that the Bill is expected to be placed before the NAC in its next meeting on April 28, 2011.

3.2 The Convener proposed inclusion of the following items as "entitlements", which are presently under the "enabling provisions" in the Framework Note.

- o *Adolescent Girls*: All adolescent girl children aged 14 -18 years shall be entitled to at least one freshly cooked meal for at least 300 days a year and appropriate health, nutrition and education services at the local school or anganwadi.
- o *People living with TB, Leprosy and HIV/AIDS*: For categories of people who suffer from serious debilitating and stigmatised ailments such as leprosy patients, people living with HIV and those suffering from tuberculosis who require a food-cum-drug regimen as part of the treatment, governments shall ensure that they are able to access subsidised or free food.

3.3 He also proposed to include enjoining government to implement the National Policy for Farmers placed in Parliament in 2007, relevant and appropriate to the

fulfilment of this Bill, without further delay. He requested Dr. Swaminathan to brief the NAC on the National Policy for Farmers. The Convenor then requested for a discussion of the above proposals and a decision by the NAC on whether or not to include them in the Bill as proposed.

3.4 On the issue of *Adolescent Girls and People living with TB, Leprosy and HIV/AIDS*, members pointed out that these had been included under the section "Enabling Provisions" in the earlier recommendations of the NAC, the Framework and Explanatory Notes and there that it did not appear to be appropriate to include any more legal entitlements at this stage in the Bill.

3.5 Dr. Swaminathan said that it is for the first time in Independent India that such a policy was framed for farmers in 2007 based on the recommendations of the National Commission on Farmers (NCF). He mentioned briefly that the NCF has the following three objectives:

- i. To improve economic viability of farming by substantially increasing the net income of farmers and to ensure that agricultural progress is measured by advances made in this income.
- ii. To introduce measures which can help attract and retain youth in farming and processing of farm products for higher value addition by making it intellectually stimulating and economically rewarding.
- iii. To mainstream the human and gender dimension in all farm policies and programmes, like greater involvement of mahila kisans etc.

3.6 Secretary, NAC drew attention to the preface of the National Policy of Farmers, 2007 wherein it has been stated the "*The National Commission on Farmers (NCF) under the chairmanship of Prof. M.S. Swaminathan submitted its final report in October 2006. The NCF prepared, along with its final report, a draft National Policy for Farmers incorporating its main recommendations. Based on the draft prepared by the NCF and after consultations with State Governments and the Central Ministries concerned, Government of India approved the National Policy for Farmers*". The National Policy for Farmers was adopted by the Central Government in 2007 for implementation.

3.7 Prof. Pramod Tandon mentioned that the two points mentioned by the Convenor in 3.2 above were proposed to be part of the enabling provisions. Before taking a final decision on including these as entitlements, more inputs are required. There is need for some estimates on financial implications before they are included as legal entitlements. As regards inclusion of National Policy on Farmers, 2007 he was of the view that instead of suggesting that an existing policy of the government be implemented, in the proposed Bill, it may be more appropriate to use general terminology such as "*revitalization of agriculture..., improve economic viability of farming by substantially increasing the net income of farmers ... greater involvement of Mahila Kisans*"

3.8 Dr. Narendra Jadhav stated that the draft NFS Bill should not be overloaded with bringing such additional suggestions as new entitlements in the Bill at this stage. He agreed with Prof. Tandon that the financial implications of non-PDS proposals have only

been briefly discussed and the final implications have not been gone into in detail. He was opposed to any additions under the legal entitlements at this stage. He however added that the two suggestions made by the Convenor with regard to adolescent girls and people living with certain diseases are very important and should be retained under the enabling provisions. On the issue of stating in the Bill that the Government implement the National Policy for Farmers, 2007 without further delay was telling the government to implement its own policy. Since the Government already has a national policy/ mission on almost all subjects mentioned under the "enabling provisions", it does not appear to be necessary to reiterate in the Bill that Government implement its own policy. He added that efforts should be made to expedite the comments from the Solicitor General/ASG and move forward.

3.9 The NAC agreed to stay with its earlier recommendations for the proposed NFSB and not add any new entitlements at this stage. This implies that the two items proposed for inclusion as legal entitlements may continue to remain under enabling provisions. Also, there appeared to be no need to mention in the Bill that the Government implement its own National Policy for Farmers which it announced in 2007.

3.10 Dr Jean Dreze expressed concern at the BPL methodology and in view of the fact that the NFSB roll-out rests on the identification of three categories under the proposed NFSB, whereas the Ministry's (MoRD) methodology is geared towards identifying APL and BPL, it was felt that NAC should engage fully with MoRD in this exercise.

3.11 On the social inclusion approach for identification of priority groups, it was pointed out by the Convener that the Chairperson wrote to the Minister of Rural Development on February 2, 2011, requesting that the Ministry take note of NAC recommendations for mandatory inclusion of the 8 vulnerable groups, and giving the next highest priority to inclusion of SCs and STs, as it finalizes its BPL methodology. The Minister of Rural Development in his reply of February 28, 2011, informed the Chairperson that only the first 2 categories suggested by NAC, namely PTGs and Mahadalits, would be mandatorily included. 4 of these categories were listed in the deprivation indicators: Single women headed households; households headed by a minor; destitute households dependent on alms; and homeless households. Each of these would get a score of 1, along with SC and ST. Those households with highest scores would get included. 2 categories were not even listed here: bonded workers, and households with disabled bread earners.

3.12 Convenor suggested the following:

- All 8 categories should be included on a mandatory basis, after applying exclusion criteria. Since mahadalits are not notified in many states, households in which one or more members are engaged now in manual scavenging should be of mandatory inclusion. This list should also include denotified tribes.

- Since SC and ST must get highest priority for inclusion after the mandatory categories, they should have a score of 2 rather than 1, which is the score of all other vulnerability criteria.
- The Sachar committee noted that Muslims suffer grave development deficits comparable to SC and STs, therefore Muslims should be included in the vulnerability criteria with a score of at least 1.

3.13 It was pointed out by Prof Narendra Jadhav that a set of recommendations has already been communicated to the government on the issue of mandatory inclusion of 8 vulnerable groups as mentioned in the Saxena Committee Report and the next highest priority to be given to SC and STs. There appears to be no need to make any changes to the NAC's earlier recommendations. Ms Aruna Roy suggested that Minorities as a whole and not just the Muslims be given special scoring. Several members expressed concern at the fact that the recommendations of the NAC had not been fully appreciated by the MoRD. JS, NAC suggested that there is a Core Group on BPL, where a meeting could be organized with NAC Members, but this was not agreed to by Members.

3.14 No additions were agreed to and the NAC reiterated its earlier recommendations conveyed to the Minister of Rural Development in the Chairperson's letter of 2 February, 2011 which was follows:

It was agreed in the NAC that the proposed National Food Security Bill shall provide for mandatory inclusion of highly vulnerable Groups, as given below, to protect these Groups from exclusion errors. These Groups form part of the recommendations of the Saxena Committee Report submitted to the Ministry of Rural Development in August, 2009:

- i. Households "Particularly Vulnerable Tribal Groups" (PTGs).
- ii. Designated most discriminated against SC Groups, called "Maha Dalit Groups" if so identified by the state.
- iii. Single women-headed households.
- iv. Households with disabled person as bread earner.
- v. Household headed by a minor.
- vi. Destitute households which are dependent predominantly on alms for survival.
- vii. Homeless households.
- viii. Any member of the household is bonded labourer.

The NAC recommended, that after the inclusion of these categories, the highest priority should be given to the inclusion of Scheduled Castes and Scheduled Tribes in the identification of "Priority groups" under the proposed NFSB.

It was suggested that a meeting be convened to enable NAC Working Group members to provide inputs towards formulation of the BPL survey methodology in order that the NAC recommendations are suitably operationalized.

4 Communal Violence Bill

4.1 Ms Farah Naqvi, Convenor briefly updated the Members on the progress. She said she has personally spoken to the ASG who has assured her that positively the Draft Bill, legally vetted by the latter, will be sent to NAC by 28th March, 2011. She added that the

ASG has made substantial changes in some areas of the Bill, keeping in view the constitutional provisions, and thus it is proposed to circulate the vetted Draft to the Drafting Committee and the Advisory Group members who had different views on some of them, obtain their inputs and then subsequently circulate it to the WG of NAC.

4.2 On the subject of consulting the Ministries of Home, Law and Justice at the same time as placing the Draft on the public domain, she said that the basis for the proposal is that the Solicitor General was completely involved in articulating the basic principles and very much involved in design of architecture of the Bill. Now, the ASG is working on vetting of the Draft. Thus, two senior law officers of the Government are engaged in the process and thus, seeking the comments of the Government separately was not required. It was also the view of the ASG that the Draft Bill should retain its integrity.

4.3 The Convenor proposed the following steps between March 28 – May 25, 2011 (NAC meeting) :

Step 1: Circulation of Draft Bill to Drafting Committee, Advisory Group, NAC WG for final comments & feedback

Step 2: Approx 10 days collate all feedback; revert to ASG for amendments if any

Step 3: Final Draft Bill circulated on email to full NAC for approval

Step 4: Final Draft Bill presented to NAC on April 28th, 2011

- ✓ Placed in public domain (website) for citizens feedback as draft-in-progress

- ✓ Given to Ministry of Home Affairs & Ministry of Law for feedback as draft-in-progress

Step 5: May 25th, 2011 NAC takes view on GOI & Citizens feedback, and decision on recommending CV Bill to GOI

4.4 Prof. Pramod Tandon made a request that at the time of circulating the draft Bill to WG, the same may also be copied to all Members. Also that it be treated as a Working Group draft-in-progress till it is finally approved by the NAC. This was agreed to by the Convenor.

4.5 **The NAC agreed to the proposal of the Convener at para 4.4 above.**

4.6 Smt Aruna Roy endorsed the proposal of the Convener and said that repeated negotiations and dialogue with the Government on the proposed recommendations takes an unduly long time in finalizing the recommendations. She said that while the Government is indeed a stakeholder, there are many other stakeholders whose voices are normally never heard and NAC is the forum for such people. She felt that NAC's character as an Advisory Body should not be compromised by indulging in prolonged negotiations with the Government. She suggested that the NAC should organize independent consultations from its own budgetary resources. She recalled the problems faced by the Convener of WG on Tribal Development as some of the names of experts

and grass root organizations were not acceptable to the Ministry. She suggested for a review of the NAC procedures in this regard.

4.7 Shri Harsh Mander said that similar problem has been faced with the NFSB also. It was decided to place the Framework Note in the public domain only after consultations with government and final approval of NAC to the framework note to be put in public domain. Now there is a difficulty in incorporating any suggestions from Ministries or public as the NAC agreed upon Recommendations have already been communicated to the government, the Framework Note, based on the agreed upon recommendations, sets the boundaries that cannot be transgressed. This renders the entire exercise of seeking comments/ feedback futile. In future, he suggested that the NAC should put out proposals as Working Group drafts –in-progress in the public domain for feedback from stakeholders including government, obtain all inputs, finalize the document and then place it before NAC for final recommendations.

4.8 There was general agreement that **the proposals of the NAC Working Group will be placed in the public domain for comments at the same time feedback from and consultations with Ministries may be held. Only after suggestions of the public and the Government have been considered would the Working Group proposal be presented to the NAC for approval.**

5. Proposed Amendments to RTI Rules

5.1 Smt. Aruna Roy, Convenor of the Working Group stated that the Working Group had a very fruitful meeting organized by the Secretariat with DoPT and Civil Society Members on 8th February, 2011 and on 25th February, 2011 with Secretary, DOPT, when there was a fair amount of discussion and consensus reached on most of the proposed amendments as well as the recommendations of the WG. She said that since the last meeting of the NAC, only one issue remained to be resolved and that was restricting the subject matter to only one in the application. It was decided in the last meeting that one more consultation may take place with the DOPT on this particular issue. Accordingly a request was made to DOPT, but it was first informed that the MOS (Personnel) will give time after 13th April. However, subsequently, it was informed that the Minister will meet with Members of NAC on 23 March, 2011 which did take place. Convenor, along with Shri A K Shiva Kumar, Member, Shri Dhiraj Srivastava, PS to CP and two other civil society members participated in the discussions.

5.2 Convenor said that the response of DOPT in the meeting was not as expected, especially when the Members were meeting them as representatives of the Chairperson & NAC and not in their individual capacities. She felt that it was embarrassing to have such consultations where it appeared that the mindset was already decided before the Meeting. Smt. Roy held that the NAC being an advisory body should not get converted into a negotiating body with the government. She felt strongly that procedures need to be revisited in a way that NAC formulates its recommendations and that the institution of NAC itself is not trivialized in the course of consultation.

5.3 She said that the final view of the MOS(PP) was that they would refer the matter to Ministry of Law and Justice and subsequently, send it to PM for his approval. She quoted the revised formulation of the DOPT which was as under:

"Provided that the request for information shall ordinarily relate to only one subject matter and shall ordinarily not exceed 500 words, excluding the address of the Central Public Information Officer and the address of the applicant, and provided further, no such application shall be rejected on the above grounds".

She said deleting the reference to subject matter does not require consultation with Law Ministry and definitely not the approval of PM as it is only Rules we are discussing here and not an Act. She therefore requested clear decision of the NAC on her proposal to recommend deletion of the relevant portion of the above formulation with regard to one subject matter.

5.4 Shri Shiva Kumar said that it was indeed very awkward to have consultations with Ministries in such an atmosphere. The spirit with which the meeting was held was surprising. Such situations need to be avoided in future. Smt. Aruna Roy said that the Secretariat should have shared the response from Shri Wajahat Habibullah with the Convenor in time. She could also have written and got responses in support of her proposal. She added that out of the total applications made under the Act, a survey has revealed that only 3 percent are contentious.

5.5 Prof. Tandon agreed with both the other Members on the need to have a positive constructive deliberations with Government and that the response from them could have been more appropriate, but on the issues per se he did not agree to delete the one subject matter and gave examples of large number of applications received where many questions are clubbed into one.

5.6 Shri Harsh Mander mentioned that they met a range of people dealing with RTI at the recent Shillong Convention. In his view, the clause restricting the subject matter is too subjective. He thus opined that NAC may err on the side of the people rather than on the side of government functionary.

5.7 NAC decided to recommend that the restriction to "one subject matter" be dropped from the purview of the proposed amendments to the RTI Rules. The final recommendation of the NAC in this regard is as follows:

"Provided that the request for information shall ordinarily not exceed 500 words, excluding annexures, the address of the Central PIO and the address of the applicant. Provided further that no application shall be rejected on the above ground"

6. Land Acquisition and Resettlement and Rehabilitation

6.1 Shri Harsh Mander made a brief presentation on the subject and the process outlined by him for the work program of the Working Group on the subject was agreed to by the NAC.

6.2 NAC-I had reflected carefully on these issues, and made detailed suggestions about these proposed legislations. But what is now being considered by the Government of India falls short of these recommendations on many grounds. Land acquisition and involuntary displacement have resulted in great distress and resistance – and often violence – in many parts of the country. NAC-II therefore constituted a Working Group on the Land Acquisition (Amendment) Bill 2009 & Resettlement and Rehabilitation Bill, 2009. Since NAC-I had already considered these in great detail, and time is short if the NAC perspective is to be considered by Government of India (it is learnt that the Bills are already under consideration of Cabinet for final passage), it was felt that a quick round of consultations could lead to a Discussion Note to be discussed by the full NAC.

6.3 A Working group meeting was also held on 19 March, in which JS, NAC and Director, NAC from the Secretariat also participated. A note is being readied for consideration of NAC on 24 March. It is based on the promise that it is important that these proposed statutes are reviewed once again to make them more just, and to ensure that the processes of acquisition and involuntary displacement are made more transparent and just, and those affected by the development projects are made partners in development. After approval by NAC, the recommendations could be sent to the GOI.

6.4 NAC members agreed with the course of action proposed by the Convener.

7. Working Groups: Updates by the Convenors

7.1 The Conveners of the NAC Working Groups on ICDS Reforms, Domestic Workers Issues (Ms Mirai Chatterjee), Denotified Tribes (Prof Narendra Jadhav), Urban Poverty (Shri Harsh Mander), Transparency & Accountability (Smt Aruna Roy) - with regard to Lok Pal Bill and issues pertaining to Mahatma Gandhi National Rural Employment Guarantee Scheme (MGNREGS), Tribal Development (Sh Harsh Mander) - with regard to Panchayats (Extension to the Scheduled Areas) Act, Natural Resources Management (Sh Deep Joshi) in convergence with MGNREGS with special focus on rainfed areas presented the work programme of the respective Working Groups. The brief presentations made with regard to each Working Group may be seen in the Annexures.

7.2 NAC took note of the updates and generally agreed on the proposed work programme by various Working Groups.

8. **Other issues**

8.1 Ms Anu Aga referred to the subject of Right to Education and desired to have a Working Group which she would like to convene along with Ms Farah Naqvi after May, 2011. This was agreed to by the NAC.

8.2 Ms Mirai Chatterjee referred to maternal deaths in Madhya Pradesh and Rajasthan and mentioned that subsequent to the issue being taken up with the Ministry by the NAC Secretariat, there has been some progress. The objective should be to put in a system in place. Secretary, NAC informed the Members of the response received from the Ministry of Health and Family Welfare on the day of NAC meeting and intimated that the information will be shared with Members in due course.

8.3 Ms Mirai Chatterjee also referred to the issue of street vendors where policy is there, but implementation is far from satisfactory. She informed that the matter is being pursued by the Secretariat who are following it up with the concerned Ministries.

8.4 Dr. Jean Dreze informed the Members about the incident in Jharkhand where Shri Niyamat Ansari a MGNREGA worker had been brutally murdered.

The next meeting of the NAC is scheduled to be held on 28th April, 2011.

Meeting ended with thanks to the Chair.