

Summary of Discussions
NAC Working Group on Transparency, Accountability and Governance meeting on the
Pre Legislative Process
20th July 2011

Aruna Roy, Convener, Working Group on Transparency, Accountability and Governance, presented the need and scope for a clearly defined and legally mandated pre legislative process.

- The legal mandate for such a process arising out of Section 4 of the RTI Act:
 Section 4 (1) (b) (vii):
 "Every public authority shall publish within one hundred and twenty days from the enactment of this Act, the particulars of any arrangement that exists for consultation with or representation by, the members of the public in relation to the formulation of its policy or implementation thereof;
 Section 4(1)(c):
 Publish all relevant facts while formulating important policies or announcing the decisions which affect public.

The proposed pre-legislative process is a process to ensure transparency, discussion, deliberation and public consultation on new policy, and legislation introduced by the Government.

One of the key principles that must govern any such pre legislative process is the need for transparency and provision of opportunities for participation through comment, suggestion, deliberation and disagreement.

- The presentation delineated a broad process that could be followed from the time the need for a legislation is proposed, the reasons thereof, till a draft is prepared by the concerned Ministry/Department. Once comments are received, the Ministry will follow the settled constitutional process of Government approval, and present the draft to the Cabinet and thenceforth to parliament for approval.
- The pre-legislative process begins with the Government sharing its intent to change policy. The first step is the presentation of the policy, with the principles and reasons for the change.
- The second is the presentation through a paper (Green Paper) which would have a look at the environment and other legal requirements and context of the reasons for the proposed legislation.
- This will be followed by the Government putting forward the Draft Legislation into the public domain.

Suggested modes of communication

- The pre legislative process needs to actively facilitate wide dissemination of information regarding policies and legislations through various modes of communication and mass media

- The role of the National Advisory Council is one of pre legislative deliberation and structured involvement through consultation of citizens in the drafting of legislation. It is a pre legislative process. The NAC is working with a "political mandate" and now needs to place itself in the "theoretical framework" of a comprehensive and democratic process. Not only defining its context, but spearheading the mode of deliberation that the government may adopt, bringing in the NAC as a platform for deliberation and defining other methods for soliciting people's opinions. The NAC has through its website and consultations delineated some of its important constituents. It is hoped that this will begin a dignified and informed debate on the process of legislation in a participatory democracy.

Amongst others the following issues were raised for discussion:

- More clarity was required in the definition of a "policy" and "decision"- what level of a policy decision will trigger off the required pre legislative process i.e. at the Ministerial level, Sub Ministerial level, Cabinet level etc
- Further details need to be outlined to ensure a semblance of uniformity in the pre legislative process that will be adopted by various Departments/Ministries. Is there a need for a nodal Department/Ministry to monitor the implementation of such a process and if so what will its role be ?
- Would such a pre legislation process be applicable to only those processes that precede legislations and impending legislations? Here it was felt that it is also important to bring within the ambit of the pre legislative process, those policy decisions that have an impact on legislations for example: changes made to the wage policy of the MGNREGA through a Government notification. What of those ?
- Concerns were raised about how State Governments would implement such a process and how the Central Government would ensure compliance.
- What would the role be of those subordinate legislations like rules, orders etc that can be considered a separate sub set within the pre legislative process and outline different processes of public consultation in their drafting ?

Suggestions	from	other	members	included:
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- Incorporation and use of radios to disseminate information regarding upcoming legislations etc
- It was suggested that in order to prevent a situation where the Government has to deal with an over load of responses/comments on impending legislations (The example of over 2700 comments on the Draft Prevention of Communal and Targeted Violence Bill, 2011 most of which comprising of "hate mail" was cited), it was felt that:
 1. A format be provided to solicit feedback.
 2. Responses received from the public must be fragmented and bunched up into the various kinds of issues.

3. The Government must not be obligated to respond to individual queries, but should be mandated to respond to the issues raised by the queries. This will also facilitate dealing with a large number of queries raised on key issues.
 - It was suggested that the Government must be obligated to provide substantive responses to issues raised by the public
 - It was suggested that even at the exploratory stage, each document that is placed in the public domain be translated into vernacular languages
 - It was suggested that Government responses to issues raised must be put in the public domain such that there is adequate time for further issues arising out of the responses can be discussed.
1. It was recommended that the organizing of a meeting with notable jurists and legal experts be held at the first instance to understand the constitutional requirements of a pre legislative process. In particular the specific mode through which a pre legislative process can be mandated , apart from its mandate being derived from section 4 of the RTI Act. What would be its Constitutional context, under what provision, would it be an executive order, policy decision etc.
2. It was suggested that a meeting be held also with the Department of Personnel and Training, GoI because of the initiative taken by them to constitute a Task Force to offer recommendations on the effective implementation of Section 4 of the RTI Act.

There will be a presentation on the NAC WG T, A and G Meeting on the Pre Legislative Process in the NAC meeting scheduled on the 28th July 2011.