



Indigenous Issues

[The occasional briefing papers of the Asian Indigenous and Tribal Peoples Network (AITPN)]
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RECOMMENDATIONS OF THE NATIONAL CONSULTATION ON THE REVISED DRAFT NATIONAL TRIBAL POLICY

Guwahati, Assam, 6 to 7 August 2006

In 2004, the government of India unveiled Draft National Tribal Policy. It held a series of regional consultations. Indigenous/tribal people's organizations too held similar consultations and provided comments and suggestions.

On 21 July 2006, the government of India released its revised Draft National Tribal Policy. This time, indigenous organizations were given only 20 days to provide their comments. AITPN organized a National Consultation and key recommendations adopted at the National Consultation are given below.

The participants of the National Consultation on the draft National Tribal Policy (A Policy for the Scheduled Tribes of India) from different parts of India, assembled in Guwahati, Assam on 6-7 August 2006 unanimously adopted the following Declaration:

1. Preamble

1.1 The National Consultation on the draft National Tribal Policy expresses serious concern about the very short time (10 August 2006 as the deadline for submission of views/comments/ suggestions while the policy was made public only on 21 July 2006) provided by the Ministry of Tribal Affairs for submission of views/comments/ suggestions on the revised draft National Tribal Policy.

The National Consultation urges the Ministry of Tribal Affairs to extend the deadline and organize regional and national consultations with full and effective participation of the Scheduled Tribes for finalizing the draft National Tribal Policy.

1.2 The National Consultation on the draft National Tribal Policy welcomes the revised National Tribal Policy which is required to address the historical injustices against the Scheduled Tribes. It is regrettable that it took over 60

years to draft such a National Policy on the Scheduled Tribes whose population is over 80 million.

1.3 The National Consultation also welcomes the statement of the draft National Tribal Policy which recognizes that “some of the terms used (e.g. primitive traits, backwardness) are also, in today's context, pejorative and need to be replaced with terms that are not derogatory.”

1.4 The National Consultation emphasizes that it is not heterogeneity in terms of “separate languages and dialects, customs, cultural practices and life styles” but homogeneity in terms of dispossession, land alienation, pauperization, displacement and the denial of good governance and the rule of law should be the guiding principles for development of a National Tribal Policy.

1.5 The National Consultation recommends that apart from referring to Articles 244, 244A, 275(1), 342, 338(A) and 339 or the Fifth Schedule and the Sixth Schedule of the Constitution and the Nehruvian Principles, the National Tribal Policy should also refer to other constitutional provisions relating to the Scheduled Tribes such as 243(d), 243 (t), 243 (P), 270, 330, 332 (2), 334 and 371 to ensure that the Policy takes a holistic approach.

1.6 The National Consultation reiterates that the underlying principle of the Nehruvian Panchsheel i.e. to create “an enabling framework for the tribal people to move according to their own genius in a system of self-governance while sharing the benefits of development, retaining the best elements of their tradition, cultural life and ethos” basically calls for granting of autonomy/self-governance to the Scheduled Tribes.

The Panchsheel reiterates the age-old recognized concept that development of the Scheduled Tribes is intrinsically linked with “territorial autonomy” for self-governance. Historically, the creation of autonomous “reserved areas” has been proven to be one of the effective means for self-governance and preserving the best elements of the tradition, cultural life and ethos of the indigenous and tribal peoples across the world. In the Indian sub-continent, the colonial British adopted the policy of “excluded and partially excluded areas” with regard to the tribal peoples. The same provisions be further strengthened and re-introduced where there have been lapsed to safeguard the identity of the Scheduled Tribes and guarantee self-governance.

1.7 The National Consultation highlights that the Autonomous District Councils under the 6th Schedule of the Constitution of India have so far proven to be inadequate to guarantee self-governance because of interference of the state governments. The Tribal Advisory Councils under the 5th Schedule have been perfunctory and the Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996 cannot be the panacea for the failure of the 5th Schedule and blatant violations of the provisions thereof.

1.8 The National Consultation expresses concern that the draft National Tribal Policy further weakens the Autonomous District Councils under the 6th Schedule and fails to provide any substantive recommendations for improvement of the administrative arrangements of the Scheduled Areas under the 5th Schedule.

Empowering the Scheduled Tribes and/or further decentralization and strengthening federal features of the Constitution are indispensable for human development of the Scheduled Tribes.

1.9 The National Consultation also regrets that the draft National Tribal Policy remains silent on the right to freedom of religion of the Scheduled Tribes. Various State governments have enacted and have been enacting so-called Freedom of Religion Acts which in practice deny the right to freedom of religion of the Scheduled Tribes and defacto reduces all the Scheduled Tribes to be followers of Hinduism.

1.10 The National Consultation also recommends to give due recognition to the traditional institutions like village councils of the Scheduled Tribes and provide financial assistance to these institutions in tribal majority States like Mizoram and Nagaland where the provisions of the 73rd and 74th Amendments to the Constitution of India on the Panchayati Raj Institutions have not been extended. The traditional tribal institutions should be provided financial assistance at par with financial assistance provided to the Panchayati Raj institutions.

1.11 The National Consultation also calls upon the Ministry of Tribal Affairs for deletion of irrelevant statement on political participation (4.1) and reference to "UPA" government to ensure that it's a national policy and not of a government of a particular party.

2. Need for policy

The National Consultation welcomes the recognition that “there is no single policy which looks at the issue of protection and development of Scheduled Tribes in an integrated and holistic manner”.

The National Consultation, however, regrets that the draft National Tribal Policy fails to take a holistic approach. For example, the draft National Tribal Policy in its Objectives calls for “empowerment of tribal communities to promote self-governance and self-rule as per the provisions and spirit of the Panchayats (Extension of Scheduled Areas) Act, 1996” and excludes the empowerment of the Autonomous District Councils under the 6th Schedule.

The National Consultation recommends to the Ministry of Tribal Affairs to give equal emphasis on the empowerment of the Autonomous District Councils and the institutions under them.

3. Guiding principles and objectives

3.1 The National Consultation affirms that the draft National Tribal Policy must not only be “guided by the principles enshrined in the Constitution of India for social, economic and political empowerment of Scheduled Tribes (Articles 14, 15(4), 16(4), 16(4A), 46, 243(d), 244(1), 244(2), 275(1), 330, 332, 335, 338A, 339(1), 340, 342, extension of 73rd and 74th Amendments of the Constitution to the Scheduled Areas through the PESA Act, etc.)” and the Nehruvian Principles.

The draft National Tribal Policy must also be guided by other constitutional provisions such as 243(d), 243 (t), 243 (P), 270, 330, 332 (2), 334 and 371 which deal with Scheduled Tribes and international conventions like ILO Convention No 107 which has been ratified by the government of India, the ILO Convention No 169 concerning Indigenous and Tribal Peoples in Independent Countries and the Draft United Nations Declaration on the Rights of Indigenous Peoples which has recently been adopted by the United Nations Human Rights Council.

In addition, the draft National Tribal Policy must also be developed based on the experiences of implementation or lack thereof of the provisions enshrined

in the Constitution of India for protection and promotion of the rights of the Scheduled Tribes.

3.2 The National Consultation reiterates that self-governance must form the cornerstone of the draft National Tribal Policy. Without ensuring self-governance, the draft National Tribal Policy is bound to meet the same fate as those of the constitutional provisions.

4. Objectives of the Policy

4.1 The National Consultation recommends that the draft National Tribal Policy should recommend developing a legislative framework for preventing alienation of lands owned by the Scheduled Tribes and restoring possession of illegally/wrongfully alienated lands within a specific time frame of 2015.

4.2 The National Consultation calls upon the Ministry of Tribal Affairs to undertake a holistic approach by equally focusing on tribal areas and scheduled areas including the institutions operating in these areas.

The National Consultation therefore recommends that the draft National Tribal Policy should also include recommendations for empowerment of the institutions under the 6th Schedule as well as the village council institutions or similar institutions in Tribal majority States where the provisions of the 73rd and 74th Amendments to the Constitution of India on Panchayati Raj have not been extended.

Cultural and traditional rights

4.3 The National Consultation asserts that recognition, preservation and promotion of their languages must form an integral part of cultural rights of the tribal peoples.

The National Consultation therefore recommends the recognition, promotion and preservation of tribal languages including education in mother tongues at least at primary level and the right to choose form of scripts (Roman or other scripts) if particular tribal communities do not have their own scripts.

Access to privileges

4.4 The National Consultation recommends that in addition to nomadic and semi-nomadic tribes, a separate section be made for the shifting cultivators among the Scheduled Tribes and specific recommendations be made for their development through need based specific programmes.

Intellectual Property Rights

4.5 The National Consultation recommends that the draft National Tribal Policy should recommend necessary changes in the Bio-diversity Act and Patents Act etc for recognition, “conservation and protection of the intellectual property regime of the Scheduled Tribes” and their utilization with free, prior and informed consent of the Scheduled Tribes.

5. Strategy

5.1 The National Consultation welcomes the statement for reorientation of the “institutional arrangements in the Scheduled/ Tribal areas, including strengthening and revamping of the administrative machinery to improve governance and delivery in districts”.

In this context, the National Consultation recommends administrative reorganization of the tribal areas/scheduled areas to ensure greater political participation in self-governance and development. In this regard, the Autonomous District Councils under the 6th Schedule should be further empowered and the Bhuria Committee's recommendations be fully implemented.

5.2 The National Consultation also recommends –

- to provide equal emphasis for the development of the Tribal Areas and Scheduled Areas;
- delete reference to single line administration; and
- all developmental funds including Tribal Sub Plan and Centrally Sponsored Schemes allocated for the tribal people be earmarked by the

Planning Commission or any other Ministry/department for utilization by the relevant authorities/agencies.

6. Alienation of Tribal land: Tenurial Insecurity

The National Consultation recommends that

6.1 Alienated lands be restored to the tribals by 2015 with the burden of proof placed on those who have appropriated the lands of the tribals illegally or by force or inducement;

6.2 A National Land Commission be set up “to prevent the growing incidence of tribal land alienation and restoration of alienated land to the tribals in accordance with the provisions of the Fifth Schedule and Sixth Schedule” with adequate funds and powers;

6.3 A Central law on the “Recognition of (Scheduled Tribes) Land Rights Act” be adopted, inter alia, to address loopholes in the State Acts prohibiting transfer of tribal lands to non-tribals and commercial entities and to recognize oral evidence in the absence of records in the disposal of tribals' land disputes;

6.2 The proposed high level empowered committee [6.1(d) of the National Tribal Policy] headed by the Chief Secretary of a State or any other Committee must have majority representation from the Scheduled Tribes;

6.4 The work of the proposed high-level empowered committee should be reported on an annual basis before the State assemblies; and

6.5 Land records of the tribals both in 5th and 6th Scheduled Areas and tribal areas be computerized.

7. Tribal Forest Interface

7.1 The National Consultation recommends that the Forest Rights (Recognition of Scheduled Tribes) Bill, 2005 should be enacted at the earliest and that it should not be extended to non-tribals.

8. Shifting Cultivation

The National Consultation recommends that

8.1 Shifting cultivation/Jhum cultivation be recognised as a separate agricultural sector;

8.2 All measures including providing of budgetary allocations for awareness raising through village councils, traditional administrative set-ups of the indigenous and tribal peoples, Autonomous District Councils etc be taken before demarcation of community and individual jhum lands owned by indigenous and tribal peoples;

8.3 A special fund be created for providing grants and loans to the shifting cultivators for development of their jhum lands; and

8.4 A research center on shifting cultivation be established in North East India to improve shifting cultivation.

9. Displacements, Rehabilitation and Resettlement

The National Consultation recommends that

9.1 A “National Commission on Forced Evictions/Displacement” should be set up to study incidents of forced evictions of tribal peoples from their lands since the constitution came into force and ensure resettlement and rehabilitation of those who have been displaced and their descendents consistent with the guarantees provided under the constitution (5th Schedule and 6th Schedule and other related provisions);

9.2 The community rights/ collective rights of the Scheduled Tribes including over lands must be recognized;

9.3 Forced evictions/ relocations/ displacement of the Scheduled Tribes shall be prohibited except due to natural disasters;

9.4 Evictions/relocations/ displacements in the name of armed conflict or national security or security of citizens be prohibited;

9.5 Tribal peoples be given the right to free, prior and informed consent while undertaking any project in their areas since the stage of conceptualization of the project and no development project, private or State, be launched unless and until all potential victims are fully resettled and rehabilitated first;

9.6 Rehabilitation should be considered an enforceable right of the displaced and indispensable duty of the state;

9.7 The Land Acquisition Act, 1894, the National Policy on Resettlement and Rehabilitation for Projects Affected Families-2003, the Coal Bearing Areas (Acquisition and Development) Act, 1957 and the National Mineral Policy, 1993 and all other such central and provincial laws facilitating alienation of land of the tribal peoples should be appropriately amended to ensure free, prior and informed consent; and

9.8 "Benefits in monetary terms" should be in addition to all benefits accruing from the projects and such benefits should be shared with the victims of forced evictions/displacement and their descendents, through employment as well as by making the victims and their descendants as share-holders of the projects.

10. Enhancement of Human Development Index Education

The National Consultation recommends that

10.1 Availability, accessibility, acceptability and adaptability be clearly enunciated for the success of the educational programmes for the Scheduled Tribes;

10.2 A detailed programme on providing free and compulsory high quality elementary education to indigenous and tribal children be prepared separately, concomitant budgetary allocations be made and implemented as a priority;

10.3 An in-depth analysis of the reasons for high drop out rates including the shortcoming of the present incentives for school attendance be conducted to suggest remedial measures;

10.4 The right to education through mother tongue of the child at least at primary level be recognized and adequate resources be allocated;

10.5 An evaluation of the various programmes/ schemes undertaken for increasing education amongst the tribals including the requirement of Ashram (residential) Schools in Tribal Sub-Plan areas be conducted and the recommendations of the evaluation be implemented;

10.6 Mechanisms for timely disbursement of scholarship be evolved by the Central and State governments;

10.7 The pedagogy be prepared with full participation of tribal peoples;

10.8 The right to secondary education for tribal peoples be made free and compulsory as it prepares students for vocational and higher educational opportunities. Special attention should be paid to the “most vulnerable communities amongst Scheduled Tribes”; and

10.9 Provisions of scholarship for students pursuing higher education including in foreign countries be provided.

Health

Allopathic/Modern system of medicine

The National Consultation recommends that

10.10 Deletion of the proposal that “instead of having several single or two doctor PHCs in the tribal areas, where doctors rarely go, since they have to be all by themselves without any conducive company, it would be better to have only a few multi-doctor institutions at central locations with 4-5 doctors each;”

The National Consultation reiterates that even if the road network in the tribal areas is considerably improved, physical accessibility to the proposed multi-doctor hospitals by the tribals will remain a problem. Therefore the proposal should be rejected and the PHCs in tribal areas must be continued.

The multi-doctor hospitals with super-speciality care should be set up at central places to supplement the PHCs;

10.11 The Ministry of Tribal Affairs should hold consultations with the Ministry of Health to take necessary administrative measures to make it mandatory for all government doctors for serving in the rural areas for a period of 10 years with five years exclusively in tribal areas;

10.12 All the vacancies of medical staff in the tribal areas be filled up within a period of one year positively after the adoption of the National Policy and the State governments will be required to report to the Ministry of Tribal Affairs; and

10.13 Take note of the positive effects of the Nagaland Communitisation of Public Institutions and Services Act of 2002 under which village health committee is empowered to manage, coordinate and monitor its health services and is responsible for buying medicines, paying salaries, maintaining accounts, planning expenses and focusing on public health issues and consider extending similar legislation to other tribal areas.

Traditional System of Medicine

The National Consultation recommends that

10.14 All measures be taken for protection of vital medicinal plants, animals and minerals necessary to the full enjoyment of health of indigenous peoples; and

10.15 A model “Traditional and Alternative Medicinal Act” be adopted with a view to (i) improve the quality and delivery of health care services to the tribal peoples through the development of traditional and alternative health care and to integrate it into the national health care delivery system, and (ii) to seek a legally workable basis by which tribal societies would own their knowledge of traditional medicine and the government would provide resources to enable the tribal peoples to design, deliver and control such services so that they may enjoy the highest attainable standard of physical and mental health.

Livelihood opportunities and Migration

The National Consultation recommends that

10.16 In order to multiply the livelihood opportunities of the tribal peoples, special programmes like vocational courses and cottage units should be started in the tribal areas to train and provide gainful employment to the Scheduled Tribes.

Migration:

10.17 The National Consultation recommends that the draft National Tribal Policy recognize trafficking of the Scheduled Tribes in the name of migration.

Creation of critical infrastructure

10.18 The development of critical infrastructures like road, electricity, telecommunication etc in the tribal areas at par with the areas with general populations should be prioritized with free, prior and informed consent of the Scheduled Tribes; and

10.19 Adequate additional funds should also be made available for development of infrastructures in the tribal areas and such funds should not be diverted for other purposes/projects or left unutilised.

11. Violent Manifestations

The National Consultation recommends that the above heading be changed to “Increasing violence and militarization in tribal areas”.

The National Consultation also recommends that

11.1 All the State governments ensure that the right of life and liberty of the Scheduled Tribes is not violated by involving them in armed conflict either through force or inducements;

11.2 The displacement of the Scheduled Tribes shall not be ordered (through force or inducements) for reasons related to the conflict unless the security of the Scheduled Tribe civilians involved is in danger or imperative military

reasons so demand. Should such displacements have to be carried out, all possible measures shall be taken in order to ensure that the civilian population may be received under satisfactory conditions of shelter, hygiene, health, safety and nutrition;

11.3 All the draconian laws such as the Armed Forces Special Powers Act be repealed; and

11.4 Militarisation in the name of development and national security be stopped and de-militarisation of the tribal areas should immediately be undertaken. In addition, creation of inter-tribal and inter community conflicts be treated with serious concerns and all efforts to use such means to control violent manifestations be stopped with immediate effect.

12. Conservation and Development of Particularly Vulnerable Tribal Groups (PTGs)

12.1 The National Consultation welcomes the use of the term “Particularly Vulnerable Tribal Groups (PTGs)” instead of the Primitive Tribal Groups (PTGs); and recommends that the abbreviated form of the “Particularly Vulnerable Tribal Groups” be changed to PVTGs.

13. Empowerment

13.1 The National Consultation recommends giving over-riding effect to the constitutional guarantees, including PESA over both central and state laws in so far as such laws relate to governance in tribal areas.

14. Gender Equity

14.1 The National Consultation recommends insertion of the words, “including free tuition and special classes” after 15.3 (a) Special literacy programmes drives”; and

14.2 Priority be given to Scheduled Tribes women in all programmes for development and special programmes like vocational courses and cottage

units be started in the tribal areas to train and provide gainful employment to the tribal womenfolk.

15. Enlisting Support of NGOs

The National Consultation recommends that

15.1 Fifty per cent of all proposed grants meant for the tribal areas should be directly channelised and implemented and monitored through tribal people's institutions and organizations and programmes be undertaken for capacity building of the tribal NGOs;

15.2 The current process for granting funds be reformed and advisory council consisting of tribals, persons working in tribal areas and representatives of the Ministry of Tribal Affairs be formed to screen the project applications and mandatory requirement of approval from the State government be done away with; and

15.3 The current budget heads for grant of funds be revised after necessary consultation with tribal peoples.

16. Tribal Culture and Traditional Knowledge

Tribal arts and Crafts

16.1 The National Consultation recommends that adequate resources and incentives including finance should be made available to tribal artists and craftsmen for procurement of basic tools and implements as well as in rewards; and

16.2 The National Consultation further recommends that adequate resources be allocated for development of tribal museums.

Traditional Knowledge

17.1 The National Consultation recommends that collective rights of tribal peoples over their traditional knowledge be recognised and necessary amendments be made in the Biological Diversity Act of 2002 and Patents Act;

17.2 The National Consultation also recommends that-

- adequate resources should be provided for documentation, promotion and preservation of traditional knowledge and wisdom of tribal peoples;
- provisions should also be made for financing tribal researchers to do research on traditional knowledge and wisdom;
- mechanisms for benefit sharing of traditional knowledge by the community be created and necessary amendments be made in the Biological Diversity Act of 2002; and
- transfer of traditional knowledge and wisdom of tribal peoples to non-tribal areas without guarantees for benefit sharing and the right to free, prior and informed consent be banned.

18. Administration of Tribal Areas

18.1 Fifth Schedule Areas:

a. Governor's report

The National Consultation recommends that

- measures be taken to ensure full compliance for timely submission of the reports under Clause 3 of the Fifth Schedule and article 244 of the Constitution of India;
- a detailed "Guidelines on Reporting Under Clause 3 of the Fifth Schedule and article 244 of the Constitution of India" be prepared by the Ministry of Tribal Affairs in consultation with tribal peoples in order to ensure that true situation is duly reflected in the governor's report; and
- the Governor's report be made public immediately following the submission to the Ministry of Tribal Affairs by the concerned State government and be uploaded in the website of the Ministry of Tribal Affairs.

b. Tribal Advisory Councils

The National Consultation recommends that

- the governor should ensure that Tribal Advisory Council (TAC) consists of tribal leaders who are neither elected in the State legislature nor employees of the State government to ensure that the members could give full time to the TAC;
- Measures be taken to ensure that all the concerned State governments having Scheduled Areas appoint members of the Tribal Advisory Councils;
- Specific budgetary allocations be made for Tribal Advisory Councils from Grants-in-Aid assistance to the State government for their proper and regular functioning;
- Rules be framed to ensure that the TAC meetings are held regularly, at least four times in a year at quarterly basis and their reports be made public;
- Mechanisms be developed for implementation of the TAC recommendations; and
- TACs should not be formed in the States having Autonomous District Councils under the Sixth Schedules.

18.2 Sixth Scheduled Areas: Autonomous District Councils

The National Consultation recommends that

- The powers and subjects of the Autonomous District Councils should be uniform and include subjects listed under the 11th and 12th Schedule.

In addition, the Autonomous Councils be further empowered by taking the following measures:

- Delegation of power to deal with law and order and police administration;
- Enabling to receive direct funding from the central government;

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- Empowering to provide direct advice to the governor by the Council;
 - Remit and control its service cadre; and
 - Provide direct access to the Planning Commission
 - the provisions of the 6th Schedule be extended to areas on the demand of the tribal communities after considering ethnic contiguity and size of the population;
 - the Central funding for Plan expenditure be given directly to the ADCs instead of routing all funds through the State Governments;
 - the implementation of centrally funded projects from various departments of the Union Government be entrusted to the ADCs with strict audit by the Comptroller and Auditor-General of India;
 - the provisions of the Anti-Defection Laws be made applicable to all the Sixth Schedule areas; and
 - in the States such as Manipur where the Sixth Schedule or Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996 do not apply, an intermediary elected tier representing all the tribal communities proportion to the number of population of each community be developed at the district level.

18.3 Personnel Policy

The National Consultation recommends that officers/personnel belonging to tribal communities be preferably posted in the tribal areas.

19. The Regulatory and Protective Regime

19.1 National Commission for Scheduled Tribes

The National Consultation recommends that

- the National Commission for Scheduled Tribes be provided with adequate financial resources and staff;

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- the National Commission for Scheduled Tribes must submit its Annual Reports regularly; and
 - all information including the Annual Reports and Special Reports and follow up actions be made public and disseminated widely.

19.2 SCs & STs (Prevention of Atrocities) Act of 1989

The National Consultation recommends that

- the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act of 1989 should be strictly enforced;
- expenses for the functioning of the Special Courts be borne by the Central government; and
- separate data on atrocities against the Scheduled Tribes be collected and recorded in the light of the separation of the National Commission for Scheduled Tribes.

20. Research and Training

The National Consultation recommends that

- an evaluation of all the Tribal Research Institutes be conducted by the Programme Evaluation Organisation of the Planning Commission; and
- the National Institute for Tribal Affairs should be made an autonomous institute.

21. Communication Strategy

The National Consultation recommends that

- there should be a comprehensive strategy for dissemination of information in the tribal areas about the constitutional and legal provisions affecting the Scheduled tribes, their rights and duties, different schemes of the State and Central Governments, the system of

governance etc to enable them to take informed decisions on issues governing them; and

- the Sarpanch / Gaon Burah / Headman of the respective village or the Chief of the respective tribe and educated youth of the areas concerned on specific honourarium basis should be engaged for this purpose.

22. Monitoring, Evaluation and Review Mechanisms

The National Consultation recommends that the annual review report of the implementation of the National Tribal Policy that would be undertaken by the Ministry of Tribal Affairs should be laid before the parliament as well as be evaluated and reviewed by tribal institutions and organisations.