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Right to Information and Local Governance: An Exploration

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Abstract This paper attempts to explore issues related to right to information (RTI) and RTI laws, in the context of local governance. The paper focuses on four case studies—namely, India, Indonesia, Uganda, and Nicaragua—to highlight some of the complexities in campaigning for RTI laws and in implementing them. Based on these, a framework is developed as a tool to map alternative approaches to making local governance more effective and accountable. At present, there are two schools of thought: one focusing on supply-led or state-led mechanisms such as public expenditure tracking surveys, and the other focusing on a human rights-based approach with RTI law at its centre. The framework developed here suggests that these alternative approaches need not be considered mutually exclusive approaches but can be seen in terms of Dreze and Sen's argument of democratic *institutions* and democratic *practice*. Thus, activists can choose approaches that best suit a context at a given point in time as intermediate steps in the journey towards developing just and inclusive institutions.

Key words: Decentralization, Right to information, Local governance, Accountability

Introduction

A citizen seeking access to information is much like Kannagi in the ancient Tamil epic seeking justice at the court of Pandyan king for the wrongful execution of her husband. In that event, Kannagi had to break open her own silver anklet to reveal the rubies inside as proof that the anklet her husband was trying to sell was their own and not that of the queen whose anklet had pearls inside it and not rubies.

If human rights and development are 'ships passing in the night' (Alston, 2005), the right to information (RTI) is a searchlight on one ship that enables the crew of the other ship to examine the health of their vessel. A human right to information is implied by Article 19 of the Universal

Declaration of Human Rights, and by Article 19 of the International Covenant on Civil and Political Rights, both of which refer to the 'freedom to seek, receive and impart information and ideas of all kinds'. The scope for synergy between human rights and human development is well recognized (Hijab, 2000; Alston and Robinson, 2005; Alston, 2005; Fukuda-Parr, 2009). While activists of human rights-based approaches (HRBAs) tend to focus on making legal claims and seek judicial intervention and legal remedies, Sen (2004, p. 319) reminds us that human rights are ethical demands and they are not '... principally legal, proto-legal or ideal-legal commands'. Further, Sen (2005) points out that human rights and capabilities have many things in common but they differ in distinct ways. Human rights are rights to particular freedoms and capabilities are freedoms of particular kinds. Sen (2005, 2009) alludes to the distinction using the concepts of opportunity and process aspects of freedoms.

In Sen's writings, the objective of development is expanding substantive freedoms (Sen, 1999, 2009). Capabilities are the entire range of freedoms that a person can be or do. Sen (1985, 1992) distinguishes between well-being aspect and agency aspect of freedoms. 'A person's agency achievement refers to the realisation of goals and values she has reasons to pursue whether or not they are connected with her own well-being' (Sen, 1992, p. 56). RTI can be considered instrumental to the exercise of agency (although it is also instrumental to the achievement of some of the well-being freedoms). Dreze and Sen (1995, p. 14) identify five distinct ways in which education and health can be valuable. Of these, at least three—namely, instrumental social roles, instrumental process roles, and empowerment and distributive roles—are applicable to access to information as well.

The remarkable campaign for access to information signified by the grassroots organization Mazdoor Kisan Shakti Sanghathan (MKSS) in the western Indian state of Rajasthan pre-dated a wave of freedom of information laws in Europe and elsewhere.¹ This campaign especially highlights the instrumental process role and empowerment role of access to information such as muster rolls, wage bills and vouchers. As Dreze and Sen (2002, p. 352) noted, while strengthening democratic institutions (which includes clarifying various rights including RTI) is important, it is equally important to distinguish democratic practice from institutions and recognize the role of innovative campaigns such as those led by MKSS contributing to such practice.

Against this background, this paper aims to address three questions: where a statutory RTI does not exist, should non-governmental organizations (NGOs) and activists campaign for such a right? Or are there mechanisms through which they can improve access to information and to the effectiveness of local public services even without a statutory RTI? Where a RTI law has been promulgated, what could activists do to make it more effective? We begin with a brief overview of human rights and local governance in the next section. This is followed by a discussion of case studies of local governance and attempts to use a right to information law. Based on these, in the fourth

section a framework is developed for NGOs and civil society institutions to consider alternative courses of action to obtain information and to make local government institutions more accountable and effective. In the final section, some issues for further research are identified.

Human rights and local governance

During the past two decades, issues of institutions and governance have moved to the centre of discussions concerning economic development (see North, 1990; Rodrik *et al.*, 2004 ; Acemoglu, 2008; Helpman, 2008). However, the various approaches and strategies to improving governance can be broadly classified into two groups, namely: top-down, state-led (or supply side) interventions; and participatory (demand led) and person-centred interventions (Ackerman, 2005). The work of organizations such as Transparency International has no doubt contributed to raising awareness about corruption issues. However, such cross-country comparisons could encourage countries to prioritize reducing hurdles to 'doing business' and focusing on changing 'corruption perception' of international stakeholders while doing nothing to alleviate the problems of mis-governance that affect the ordinary citizens. Top-down or 'single agency' and 'vertical accountability' interventions such as national anti-corruption commissions are no doubt necessary. However, they are ineffective in addressing widespread corruption and lack of accountability in delivering local public services (see Heilbrunn, 2004; Doig *et al.*, 2005; Bardhan and Mookherjee, 2006; United Nations Development Programme, 2008, ch. 6).

Parallel to the development of the 'top-down' institutional measures to improve governance, right to information issues came to prominence along with other participatory and 'horizontal' accountability mechanisms. Perhaps the most important, although not the only, mechanism, for realizing the human right to information is a right to information law. Although the earliest freedom of information law was passed in Sweden in 1766, only 13 countries had right to information legislation as of 1990. Even when freedom of information came to be emphasized, during the initial phases, the emphasis was mainly on freedom of information to journalists and media and for data protection issues in relation to storing of information on computers. However, the focus has since changed to broader aspects of citizens' right to know and over 80 countries have promulgated right to information laws by 2009 (Mendel, 2009). Although discussions of HRBAs are relevant to RTI, only, in the past two decades RTI law has emerged as a crucial element of HRBAs and efforts to secure empowerment of citizens and making government accountable. In this context, RTI can also be considered a meta-right as something that leads to better protection and enjoyment of other rights (Sengupta, 2009).

The Universal Declaration of Human Rights and other international instruments do not necessarily identify the specific role of local government.

The word 'state' is used in its broadest sense to mean all levels of government and therefore, all responsibilities, duties of care and commitment to justice that apply to higher levels of government also apply to local government. Viewing local governance through a human rights lens requires a shift in perspective from one of 'service delivery' to consumers to one of agency (of citizens) and a recognition that the purpose of local government is to meet the obligations as duty-bearer on behalf of all citizens who are the right-holders (International Council on Human Rights, 2005, pp. 22-23).

While HRBAs are not the magic bullet to resolve dysfunctional institutions, they can help provide for person-centred remedies. A few examples may be useful to highlight the role of human rights in local governance issues. What may appear to be purely technical aspects of governance, such as planning regulations or urban development projects, can in fact involve issues related to some of the most fundamental human rights as was highlighted in the famous Indian case of *Olga Tellis v Bombay Municipal Corporation* in the Supreme Court of India (1985). In that case, the action of Municipal Corporation to clear slums on the pavements of Bombay and eviction of such slum dwellers (without providing alternative accommodation) was challenged as being unreasonable and unjust. The Justices of the five-member bench emphasized that for the urban poor, living in a particular location in a city, is the only instrument of livelihood and the denial of that right to livelihood is tantamount to denial of their right to life. Another example of a controversy with regard to human rights and sub-national or local governance concerns public funding for Roman Catholic religious schools but no other religious groups in Ontario, Canada, notwithstanding the United Nations Human Rights Committee decision in 1999 that this was discrimination (United Nations Development Programme, 2000; Allison, 2007).

Where local government action or inaction is interpreted in the context of human rights, remedial measures have been sought through public interest litigation. Examples include *M.C. Mehta v Union of India* (concerning urban air pollution in Delhi) and various others where right to life is interpreted widely to encompass a right to healthy environment (see Rao, 2004; Muralidhar and Desai, 2000).

The above examples suggest that where human rights protections exist in national law, it may be possible to improve local governance through legal reviews. However, a legal remedy is only a small and a minor part of a human rights perspective. As the UN Office of the Human Rights Commissioner (n.d.) emphasized:

The true test of 'good' governance is the degree to which it delivers on the promise of human rights: civil, cultural, economic, political and social rights. The key question is: are the institutions of governance effectively guaranteeing the right to health, adequate housing, sufficient food, quality education, fair justice and personal security?

Case studies on using access to information with or without formal RTI laws

The methodology for this study includes analysis of secondary sources of information as well as semi-structured questionnaire surveys with selected programme officers of Oxfam GB and its affiliates in a number of countries. The four case studies reported here are selected to highlight divergences in local government institutions and the potential role of RTI.

India

In the federal structure of India, until 1992, local governance was entirely subject to the whims of state governments. This changed when the 73rd and 74th constitutional amendments in 1992 laid out a clear framework for the governance of local institutions in rural and urban areas, respectively. These amendments also provided for independent election commissions to conduct elections to the local government institutions and a state finance commission to provide transparent frameworks for transfer of funds from state government to local government. However, while all states implemented the mandatory aspects of the amendments, there has been considerable variation in the effectiveness of implementation. As Bardhan and Mookherjee (2000, 2006) argue, corruption can actually increase with decentralization due to increased scope for elite capture, distributed nature of institutions and the significant transaction costs in monitoring public spending. Two alternative approaches to improving accountability of local government institutions became prominent. Samuel Paul (1994, 2002) and colleagues at the Public Affairs Centre used surveys to collect information about quality of service in the delivery of various public services and used these 'citizen scorecards' to highlight governance problems. This approach is akin to the 'new public management' approaches and Weberian reforms in the UK, Canada and elsewhere focusing on creating a customer orientation in public service organizations (see Hood and Heald, 2006; Guy Peters and Pierre, 2007; Ferlie *et al.*, 2007).

An alternative approach was to press for a right to information law. The work of MKSS has been well documented and researched (see Roy and Dey, 2001; Mishra, 2003). The campaign initially started with a limited purpose of accessing information in relation to wages that landless labourers were supposed to have been paid for public works that are a common feature of drought relief and famine relief measures in Rajasthan. A number of public hearings or *jan sunwais* were arranged in 1994 and 1995 whereby copies of official documents concerning development works revealed the extent of diversion or mis-appropriation of such resources. Subsequently, a 'sit-in' demonstration by the MKSS activists led the chief minister to give a verbal assurance in the state legislature that government supports people's right to have access to information. However, this verbal assurance was largely ignored and the demand for a right to information law continued for several

years. Several state governments such as Tamil Nadu, Goa and Madhya Pradesh started to introduce state laws during the period 1997-2000. Eventually, Indian Parliament passed the national right to information act in 2005. This law requires all public authorities to provide '... as much information *suo motu*' at regular and periodic intervals using all media including the Internet. In every authority, a public information officer (PIO) needs to be designated. Such PIOs have the duty to deal with requests from any person for information. Any person can make a request in writing asking for information. When a request is received, the PIO is obliged to accept the application and provide the information or reject the application if the information sought relates to exclusions mentioned in Sections 8 and 9 of the Act. These include considerations such as sovereignty or national security or specific legal judgements forbidding disclosure or issues related to intellectual property, fiduciary confidentiality and personal safety. The act also provides for central and state information commissions, the appointment of information commissioners and for any person to complain to such information commissioners if they are unable to obtain any information from the PIO.

When governments use scorecard methods or surveys such as public expenditure tracking surveys (PETS) as a mechanism to improve performance, the resulting commitment to accountability is arbitrary (and not formalized). Also, the relationship is cast as that between a consumer and service provider. Used in this manner, such tools can militate against ethos of right to information rather than strengthening it. The main difference is that in the campaign on RTI law, the relationship is that between state and citizen and the RTI law clarifies an obligation on the part of the state to provide information (in the wider context of Article 19 of Universal Declaration of Human Rights). Scorecard or survey methods can be used within a context of rights to complement to RTI law or to facilitate the exercise of RTI law.

Has the RTI law helped in improving local governance? It is probably early days. However, evidence from grassroots organizations suggests that the RTI law has contributed to empowering citizens or grassroots organizations to demand accountability from government at all levels. For example, an organization called 'the Fifth Pillar' in southern Indian state of Tamil Nadu seeks to educate various volunteers to use RTI to enforce greater accountability in public services. The MKSS-inspired 'social audits' or public hearings whereby the accounts of local government institutions are examined and discussed during public gatherings are now being used in other states such as Delhi (by Parivartan), Andhra Pradesh (Aakella and Kidambi, 2007) and in Kerala by the state information commission. These examples suggest that the role of civil society organizations has been crucial. A study by Pricewaterhouse-Coopers (2009, p. 27) noted:

Civil Society Organizations and social activists are enhancing the reach and awareness of RTI among the masses. It is mostly with the support of the social activists and Civil Society Organizations that a

person in a village is able to use the RTI Act for ensuring his basic rights. However given the geographical size & population, the reach of Civil Society Organizations and social activists is limited.

While the Constitution's 73rd and 74th amendments provided for constitutional protections to local government institutions, those measures did not anticipate or provide for controlling corruption and institutional capture. Although the constitutional amendments provided for much-needed and 'necessary' conditions for improving local governance, these were not sufficient to guarantee that people can exercise their agency and take part in decision-making processes concerning services from local government. Perhaps the RTI law would not have been effective in the absence of the Constitution amendments. Also, well before RTI law came into effect, there was already well-established precedence of judicial activism. The Supreme Court and the High Courts have used human rights arguments to intervene in or direct government policy.

Indonesia

It appears that the tumultuous political and economic events² of 1997-1998 may have contributed to a 'big bang' form of decentralization introduced in Indonesia by Laws 22 (local autonomy) and 25 drafted in 1999 and introduced in 2001. This law has been revised in by Law 32 of 2004 (regional governance). At sub-national level, various layers exist, such as provincial, regency, city, district, sub-district, and village (with further two types: *desa* and *kelurahan*). Among other things, there is a transition from 'traditional' and appointed positions of authority to elected offices as the 2004 law provides for elected head of local government. Hofman and Kaiser (2006, p. 113) are of the opinion that '... a range of accountability mechanisms (including elections, central oversight, and judicial sanction) will need to be strengthened given the initial conditions of governance and service delivery underlying Indonesia's decentralisation'.

Local governance is a complex matter in any context and more so in a context as in Indonesia that is undergoing transition in terms of social, political, and economic factors. According to the Governance Matters database (Kaufman *et al.*, 2007), Indonesia has remained in the bottom 25% of countries in control of corruption throughout the past decade. According to Transparency International's (2007) Global Corruption Barometer, 31% of respondents reported to have paid a bribe. On a scale of one to five where one is least corrupt and five is most corrupt, only three institutions of social and political life—namely, religious bodies, media, and NGOs—have scored less than three; many others including political, legal, and service providing institutions scored above four. Corruption perception can create self-fulfilling prophecy. In such a context, increasing citizens' trust in state institutions would remain a significant challenge. Corruption is not the only issue with regard to improving governance in general, and local governance in particular. However, the issues

are symptomatic of underlying institutional challenges. These can be particularly constraining for NGOs to work on 'supply' side and work with state institutions when NGOs are perceived to be less corrupt and state institutions are perceived to be more corrupt.

After much campaigning by local activists, the Openness of Public Information Act was passed by federal government in 2008 but came into effect only from April 2010. Although it has many similar features to the Indian RTI act, the following crucial differences set them apart:

- a. The person requesting information needs to justify or provide reasons in Indonesian law. (This is not the case in Indian law.)
- b. The law excludes some aspects of state owned enterprises and also private organizations that may be implementing projects on behalf of government. (Indian act does not have these exclusions.)
- c. The Indonesian law also applies to NGOs that receive substantial funds from overseas.

While it is too early to evaluate the effectiveness of RTI legislation in Indonesia, NGOs and civil society institutions have been using HRBAs in terms of participatory assessments.

A recent project of Oxfam called 'Driving Change' was aimed at making government policies and budgets more pro-poor. Among other things, the project focused on improving public service delivery at district and national levels and also on local development planning. However, there appears to have been some resistance from some civil servants and (regional/local) parliament members with regard to the participatory and rights-based approach used in the project. In response to our questionnaire, colleagues working with an NGO in Indonesia commented that, even as institutions are emerging, local government is vulnerable to '... re-emerging form of authoritarianism ... [especially due to] a lack of local parliament's capacity to control and monitor formal governance practices'. They felt that the issue needs to be addressed both from 'supply' and 'demand' sides and the deficits of representative mechanisms need to be addressed through various mechanisms and instruments of 'direct/deliberative democracy', especially for the voices of the poor to be heard and to make local government responsive to those needs. This relates to the issue of not merely strengthening democratic institutions but finding ways to improve democratic practice.

Uganda

Under the framework of Uganda's 1995 constitution, the Local Government Act of 1997 provides a framework for local government with five layers; namely, village, parish, sub-county, county, and district. According to the policy statement of the Ministry of Local Government (2007):

... The decentralisation policy has transformed the local governance landscape in this country. Today, every local government is

able to: initiate, formulate and approve budgets and development plans; provide social services to the people; legislate on issues which are local in nature; appoint its own civil servants, supervise and monitor their performance.

There is also some evidence to suggest that with the decentralization reforms, an increased share of government resources are transferred to local government.

However, critics may argue that this is an optimistic assessment and that governments are unlikely to be critical and open about their own functioning. For instance, Francis and James' (2003) observation cited by Robinson (2007, p. 11) suggests an alternative assessment:

... Decentralisation has not been able to arrest the deterioration in agricultural services, and that the improvements in social services are attributable to increases in central conditional funding rather than the very limited scope which decentralised institutions have provided for local decision making.

Among the many interesting observations in Azfar *et al.* (2006, pp. 238-239) about Uganda, two points may be highlighted: that '... people who used community leaders as their main source of information on local politics were significantly less likely to have heard of reports of corruption ... than people who rely on media as their main source of information';³ and that education and income predicted which individuals participated in local committees such as education committee and health committee (although such 'elite' capture of local committees also led to improved services). The former highlights the importance of understanding traditional sources of power and the latter emphasizes the need to anticipate the role of educated individuals and create opportunities to co-opt such individuals to be champions of rights-based programming in local governance.

According to responses from development workers to our questionnaire in this research, local government units in Uganda lack tax-raising powers and depend mainly on handouts from national government. Improving financial integrity of local government may be crucial to improving the nature of participation by local citizens.

Ugandan constitution provides for freedom of information. The access to information act was passed in 2005 and came into effect in 2006. As per section 5 of the act, every citizen has the right of access to information. As in Indian law, here too a person's access to information is not affected by the reasons for requesting such access or an information officer's assessment of why the citizen may be seeking such information. The act includes a long list of exclusions where the access to information request can be rejected. Unlike in Indian law, in the Ugandan law no central focal point (such as information commission) is provided for. Each minister is supposed to report annually on the number of access to information requests. At the time of

writing, no information was available on the government websites on the number of such requests and how the act is being implemented.

Nicaragua

Nicaragua's Human Development Index of 0.699 in 2007 places it amongst medium human development countries. However, poverty is widespread and Nicaragua's human poverty index is 17%, which is significantly higher than that of Bolivia (11.6%) or Honduras (13.7%). As in most countries in Latin America, inequality is a major development challenge in Nicaragua too. Poverty is concentrated especially among some regions such as the Caribbean coast and in the rural areas. More than 58% of population lives in urban areas in some 189 urban localities and some 7500 dispersed rural communities (World Bank, 2008). One of the reasons for discussion on accountability issues is that there is a formal law requiring a transfer of resources from national to local government without the necessary mechanisms to ensure that such funds are properly used. The Municipal Transfer Payments Act of 2003 provided for four percentage points of tax revenue to be transferred to municipalities starting in 2004, gradually increasing by one percentage point each year until reaching 10 percentage points by 2010 (Inter-American Development Bank, 2008). The Inter-American Development Bank report noted that: 'The institutions responsible for implementing social policies suffer from serious structural problems, including a shortage of infrastructure, institutional fragility, weakness in policy formulation and investment planning, shortcomings in human resources, and scant financial resources' (2008). Improving transparency of public spending has been considered a priority.

Although Nicaragua's constitution did not provide for a right to information, the RTI act introduced in 2007 provides for comprehensive measures to ensure citizens' access to information (Mendel, 2009). However, we do not have any information to evaluate whether and to what extent RTI law has been effective in Nicaragua.

In the response to the questionnaire, Nicaragua colleagues pointed to some current projects to support democratic governance in Nicaragua, which are aimed at realizing right to information. Two issues have been highlighted in that response: first that the responsibility for local government has shifted to the Instituto Nicaraguense de Fomento Municipal from the government; second that even though local government now has more resources than it did 10 years ago, their capacity is very limited and there is limited scope for improving accountability under the current regime. This observation echoes with other studies (Anderson, 2006). A conclusion of a study of public administration in Latin America (Nef, 2007, p. 332) seems relevant here:

... Historically, the administrative experience of Latin America has been molded by numerous failed attempts at modernisation and

cyclical crises. This results in a protracted condition of institutional under-development ... Without political and institutional development, addressing real issues such as poverty, unemployment or lack of effective citizenship ... are mere epiphenomena.

A similar negative tone is noticed in a study of human rights ombudsman institutions in El Salvador and Guatemala, where widespread corruption and capture of judicial institutions necessitated the setting up of ombudsman institutions (Dodson and Jackson, 2004). In contrast to these, an optimistic conclusion is reached by Faguet (2006, p. 147) with regard to success of decentralization in Bolivia. He concludes:

... Detailed empirical evidence shows that decentralisation made public investment more responsive to the real local needs of Bolivia's citizens and shifted resources toward poorer, mostly rural districts. (Faguet, 2006, p. 147)

It appears that there is no formal RTI law in Bolivia comparable with RTIs discussed here. However, it appears that political mobilization and more effective participation contributed to more effective use of existing provisions in Bolivia for demanding accountability than in the case of Nicaragua. This suggests the important role of political leadership. These experiences seem to indicate that in Nicaragua and elsewhere, creating a RTI is but a first step in improving local governance.

Learning from the cases: towards a framework

Issues related to local governance are complex and there is considerable variation from one country to another in the level or degree to which right to information is defined and clarified. The four case studies are mere examples of these variations and complex interactions. Many complexities and local realities are difficult to capture within the research methods I have used. However, from these experiences (and others not discussed here) it is possible to develop a model or a framework. The framework proposed here is not a substitute for grounded and context-based analysis. It is developed as a tool to recognize the dynamic nature of development of a RTI law and taking the process of creating such a statutory right to its logical conclusion whereby the values of openness and transparency become embedded in the culture of institutions and become second nature (so that a citizen does not need to take recourse to legal remedies).

For simplicity, let us consider two dimensions: one of formalizing a right to information, and the other of effectiveness using information for accountability. Figure 1 shows this two-dimensional space in the form of a rectangle.

For simplicity, let us consider the starting point to be the bottom left-hand corner. (The label 'autocracy' applies only to the information regime

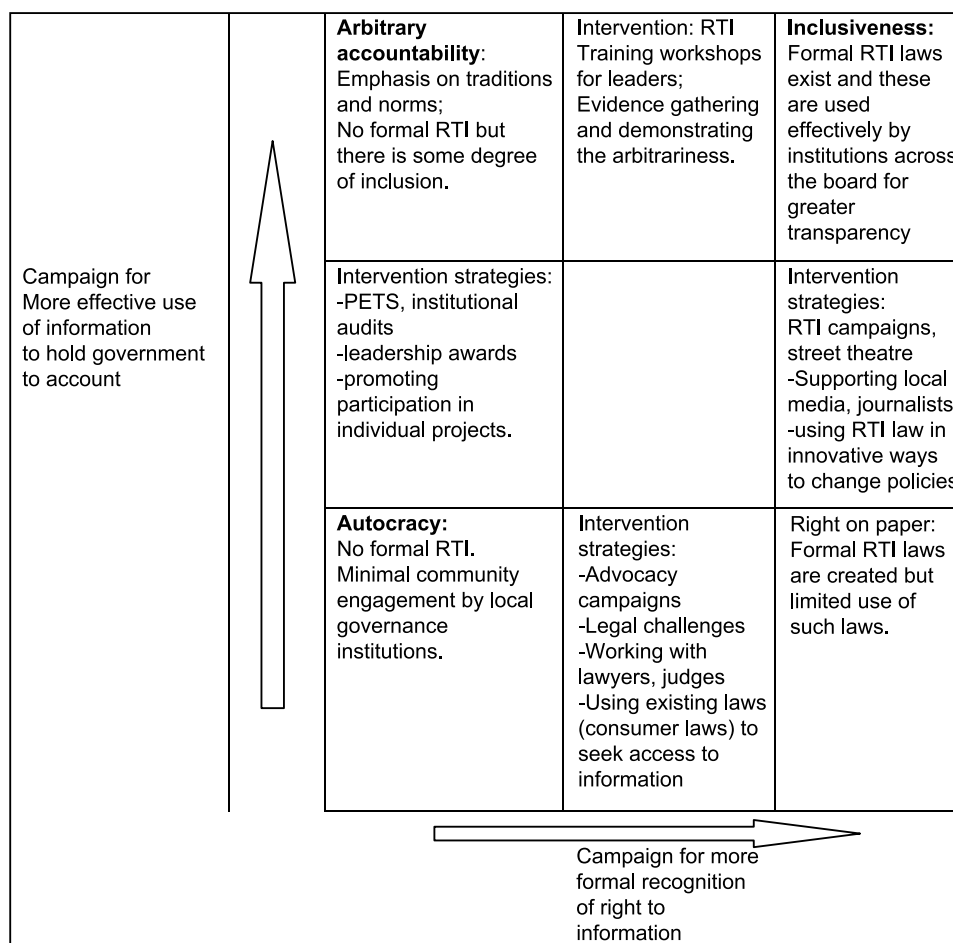


FIGURE 1. A formal right to information and making access to information effective.

and not to the nature of polity.) Prior to the RTI law, the information access regime can be described as autocratic even in a democratic society such as India. Movement along the horizontal axis from left to right suggests a greater degree of formal articulation of right to information; movement along the vertical axis suggests a greater degree of effectiveness in using access to information to hold government to account. In relation to Dreze and Sen's (2002) arguments mentioned earlier, we can consider horizontal movement as improving *democratic institutions* and vertical movement as improving *democratic practice*. Theoretically, it is possible that local governance institutions can be very effective in understanding and delivering the services that people want even without a formal RTI ('arbitrary accountability'). It is also possible that no matter how well RTI is articulated (no pun is intended) or how well the law has been drafted, by itself, it may not be adequate to improving governance (hence 'right on paper' but not in reality).

Civil society institutions or activists have various pathways and different roles to play in different contexts. Where a formal RTI law is essential to securing agency freedoms of individuals and improving the effectiveness of governance, then the priority should be to campaign for a formal RTI (or movement along horizontal axis). It may also be effective to campaign for a formal RTI if political or economic circumstances have led to 'big-bang' style reforms such as the drafting of a new constitution in South Africa or new municipal laws as in India or Indonesia. The case studies discussed in the previous section indicate that campaigns for RTI laws can take a long time to succeed.

In many contexts, notwithstanding a commitment to HRBAs, institutions and activists may need to take a pragmatic approach of demanding RTI laws in the long term but trying to find ways to improve governance using other mechanisms ways of obtaining information in the short term (i.e. movement along vertical axis). Approaches such as citizen scorecards, PETS, participatory budgeting exercises can be considered here. The MKSS experience seems to suggest that, based on successful demonstration of such approaches, solid grassroots support can be developed for articulation of a demand for RTI law (and thus subsequent movement from the top left corner to the top right corner in Figure 1).

What is new in this framework? This framework is helpful in placing both supply-led and demand-led approaches to local governance within the context of HRBAs. It shows that these are not mutually exclusive alternatives. The framework also suggests that civil society institutions or activists in a given context can assess their context and choose from a range of strategies and decide how to allocate effort towards campaigns for formal articulation of RTI laws and towards other approaches to obtaining information and improving opportunities for participation and public or social audits even when formal statutory rights do not yet exist.

In the framework above, the evolution of MKSS appears to have proceeded along the vertical axis in the first instance from 1990 to 1995 (bottom left to top left) and then in the second stage from 1995 onwards in terms of a campaign for a formal RTI law (along the horizontal axis from top left to top right). On the other hand, the work of organizations such as the Fifth Pillar seems to have started from the bottom right-hand corner to move vertically to top right.

In the cases of Indonesia, Uganda and Nicaragua, promulgation of RTI laws may have contributed to a movement along the horizontal axis. However, whether RTI law has resulted in any effective and lasting improvement in governance depends very much on how well the law itself is implemented and how democratic practice and participation demands accountability from state institutions.

Conclusion

Human rights laws can be considered 'formal' constraints on behaviour and are part of an institutional landscape of a society. However, as North (2003)

points out, the effectiveness of institutions depends on how well the formal constraints match with the informal constraints such as contextual and cultural norms and codes of behaviour. There is a tendency to perceive decentralization to be an efficient mode of delivery of services from administrative or financial viewpoints. Devolution is ultimately about the freedoms of individual citizens and how well these are protected. A right to information law can be a useful tool to make local government accountable to such poor men and women. However, an 'all or nothing' approach to RTI can be misleading in two ways: first, the emphasis shifts to creating a formal legislation without creating the necessary 'duty bearers'; second, once the RTI law is promulgated, it can lead to complacency. The framework developed here highlights that formal law may be necessary but not sufficient. Both formal and informal mechanisms can be used by NGOs and communities to hold local government institutions to account. NGOs and grass-root organizations in some contexts can achieve more in holding local government to account through participatory or community-based audits and public deliberation of budgets rather than waiting for a formal RTI to be introduced. Likewise, such approaches need not be abandoned as soon as RTI law is promulgated. In fact, such approaches may be crucial to make RTI law work for the ideals that led to its creation in the first place. While the non-payment of wages to workers motivated MKSS in its first stage, even after RTI law has been promulgated and a rights-based employment act—the National Rural Employment Guarantee Act (NREGA)—has been introduced, the problems of contract-farming and diversion of resources seem to have continued elsewhere in states such as Orissa (see Dreze, 2007). Corruption and problems of governance are important hurdles to development in all four case-study countries discussed here. However, the case studies also highlight that while making local government institutions accountable is a complex process, a rights-based approach in general, and RTI law in particular, can contribute to clarifying accountability.

It is important to distinguish between the legal obligations placed by a RTI law on a state versus the moral obligations underlying such RTI laws. RTI laws can be considered to have been effective only when their influence results in transforming the culture of local government institutions from 'right on paper' providers of information to inclusive institutions promoting and protecting citizens' right to participate in governance. This requires improving 'formal' institutions such as RTI laws, clarifying the locus of general and specific obligations⁴ in terms of relationship between citizens and local government, and acting as an arbiter or guardian of citizen interests in terms of relationship between citizen and other (market) institutions. There is considerable work to be done by non-governmental organizations and civil society institutions to use RTI laws to achieve such transformation. At the same time, it is important to recognize that RTI law is one side of a coin that will remain incomplete without necessary measures for data protection and privacy issues (see O'Neill, 2002, p. 92). There is a danger that a single-minded emphasis on RTI law may hasten the process of articulating RTI without the necessary institutional architecture for regulating and

governing information access. There is also a need for further discussion on developing information regulation regimes appropriate to the given contexts. There is an urgent need to find ways to balance the requirements of RTI with restraints that the state institutions may want to impose on the grounds of public order and safety. At the moment, these two aspects appear to be evolving independently. We can foresee the risks this divergence presents in terms of the scope for state institutions to negate or counter the moral arguments underlying RTI laws with claims of terrorist or security threats.

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Notes

- 1 Looking back at the introduction of Freedom of Information Act in the UK in 2000, former Prime Minister Tony Blair (2010) comments in his memoirs that he might have been naive to introduce such a law. When seen against this, the MKSS campaign in 1994-1995 appears well ahead of its time.
- 2 The East Asian Financial Crisis of 1997-1998, protests and Suharto resignation in May 1998.
- 3 Azfar *et al.* (2006) point out that in Uganda there is a significant difference in the sources of information for national elections and local elections. For the former, national radio and local radio are the main sources (being used by up to 65% respondents) whereas these are reported to be sources of information by less than 20% when it concerns local elections. For such elections, the main source of information for over 70% of respondents was 'community leaders'.
- 4 On the nature of general and special obligations and some possible problems related to these, see Wringe (2005).

References

- Aakella, K.V. and Kidambi, S. (2007) 'Challenging corruption with social audits', *Economic and Political Weekly*, 3 February, pp. 345-347.
- Acemoglu, D. (2008) 'Interactions between governance and growth', in D. North *et al.* (Eds), *Governance, Growth and Development Decision-making*, The World Bank, Washington, D.C, pp. 1-8.
- Ackerman, J. (2005) 'Social accountability in the public sector: a conceptual discussion', *Social Development Paper 82*, The World Bank, Washington, D.C.
- Allison, J.D. (2007) 'United Nations conventions and Canadian classrooms: a critical history of "Waldman v Canada"', paper at presented at 48th annual meeting of International Studies Association, Chicago.
- Alston, P. (2005) 'Ships passing in the night: the current state of human rights and development debate seen through the lens of Millennium Development Goals', *Human Rights Quarterly*, 27, pp. 755-829.

- Alston, P. and Robinson, M. (Eds) (2005) *Human Rights and Development: Towards Mutual Reinforcement*, Oxford University Press, New York.
- Anderson, L. (2006) 'Authoritarian executive? Horizontal and vertical accountability in Nicaragua', *Latin American Politics and Society*, 48(2), pp. 141-169.
- Azfar, O., Livingston, J. and Meagher, P. (2006) 'Decentralisation in Uganda', in P. Bardhan and D. Mookherjee (Eds), *Decentralisation and Local Governance in Developing Countries*, The MIT Press, Cambridge, MA, pp. 223-256.
- Bardhan, P. and Mookherjee, D. (2000) 'Capture and governance at local and national levels', *American Economic Review*, 90(2), pp. 135-139.
- Bardhan, P. and Mookherjee, D. (Eds) (2006) *Decentralisation and Local Governance in Developing Countries*, The MIT Press, Cambridge.
- Blair, T. (2010) *A Journey*, Hutchinson, London.
- Dodson, M. and Jackson, D. (2004) 'Horizontal accountability in transitional democracies: the human rights ombudsman in El Salvador and Guatemala', *Latin American Politics and Society*, 46(4), pp. 1-26.
- Doig, A., Watt, D. and Williams, R. (2005) 'Measuring "success" in five African Anti-Corruption Commissions, U4', [<http://www.u4.no/pdf/?file=/themes/aacc/finalreport.pdf>], accessed 15 July 2010.
- Dreze, J. (2007) 'NREGA: dismantling the contractor raj', *The Hindu*, 20 November, [<http://www.hindu.com/2007/11/20/stories/2007112056181000.htm>], accessed 11 January 2011.
- Dreze, J. and Sen, A. (1995) *India—Economic Development and Social Opportunity*, Clarendon Press, Oxford.
- Dreze, J. and Sen, A. (2002) *India—Development and Participation*, Oxford University Press, Oxford.
- Faguet, J. (2006) 'Decentralising Bolivia: local government in the jungle', in P. Bardhan and D. Mookherjee (Eds), *Decentralisation and Local Governance in Developing Countries*, The MIT Press, Cambridge, MA, pp. 125-152.
- Ferlie, E., Lynn, L., and Pollitt, C. (Eds) (2007) *The Oxford Handbook of Public Management*, Oxford University Press, New York.
- Fukuda-Parr, S. (2009) 'Human rights and human development', in K. Basu and R. Kanbur (Eds), *Arguments for a Better World: Essays in Honour of Amartya Sen*, Oxford University Press, New York, pp. 76-98.
- Guy Peters, B. and Pierre, J. (Eds) (2007) *The Handbook of Public Administration*, Sage, London.
- Heilbrunn, J. R. (2004) *Anti-corruption Commissions: Panacea or Real Medicine to Fight Corruption?*, World Bank Institute, Washington, D.C.
- Helpman, E. (Ed.) (2008) *Institutions and Economic Performance*, Harvard University Press, Cambridge, MA.
- Hijab, N. (2000) 'Human rights and human development: learning from those who act, Background paper', *UNDP Human Development Report 2000*, UNDP, New York.
- Hofman, B. and Kaiser, K. (2006) 'Decentralisation, democratic transition and local governance in Indonesia', in P. Bardhan and D. Mookherjee (Eds), *Decentralisation and Local Governance in Developing Countries*, The MIT Press, Cambridge, MA, pp. 81-124.
- Hood, C. and Heald, D. (Eds) (2006) *Transparency: The Key to Better Government?*, Oxford University Press/British Academy, Oxford.
- Inter-American Development Bank (2008) *Nicaragua: IDB Country Strategy with Nicaragua 2008-2012*, IDB, Washington, D.C.
- International Council on Human Rights (2005) *Local Government and Human Rights: Doing Good Service*, ICHR, Versoix.
- Kaufman, D., Kraay, A. and Mastruzzi, M. (2007) *Governance Matters VI: Aggregate and Individual Governance Indicators*, The World Bank, Washington, D.C.
- Mendel, T. (2009) *The Right to Information in Latin America: A Comparative Legal Survey*, UNESCO, Quito.
- Ministry of Local Government (2007) 'Ministerial policy statement for financial year 2008-09', Government of the Republic of Uganda, Kampala.

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- Mishra, N. (2003) 'People's right to information movement: lessons from Rajasthan', *Discussion Paper Series 4*, Human Development Resource Centre, UNDP, Delhi.
- Muralidhar, S. and Desai, A. (2000) 'Public interest litigation: potential and problems', in B. N. Kirpal *et al.* (Eds), *Supreme but not Infallible—Essays in Honour of the Supreme Court of India*, Oxford University Press, New Delhi, [<http://www.ielrc.org/content/a0003.pdf>], accessed 11 January 2011.
- Nef, J. (2007) 'Public administration and public sector reform in Latin America', in B. Guy Peters and Jon Pierre (Eds) *The Handbook of Public Administration*, Sage, London, pp. 323–336.
- North, D. (1990) *Institutions, Institutional Change and Economic Performance*, Cambridge University Press, Cambridge.
- North, D. (2003) 'The role of institutions in economic development', *ECE Discussion Paper 2003-2*, UN ECE, Geneva.
- O'Neill, O. (2002) *A Question of Trust*, Cambridge University Press, Cambridge.
- Paul, S. (1994) 'Public services for urban poor: report card on three Indian cities', *Economic and Political Weekly*, XXIX, pp. 3131–3134.
- Paul, S. (2002) *The State of India's Public Services: Benchmarks for the New Millennium*, Public Affairs Centre, Bangalore.
- Pricewaterhouse-Coopers (2009) *Understanding the 'Key Issues and Constraints' in Implementing the RTI Act*, Central Information Commission, Delhi.
- Rao, M. (2004) *Public Interest Litigation in India: A Renaissance in Social Justice*, Eastern Book Company, Delhi.
- Robinson, M. (2007) 'Does decentralisation improve equity and efficiency in public service delivery provision?', *IDS Bulletin*, 38(1), pp. 7–17.
- Rodrik, D., Subramanian, A. and Trebbi, F. (2004) 'Institutions rule: the primacy of institutions over geography and integration in economic development', *Journal of Economic Growth*, 9(2), pp. 131–165.
- Roy, A. and Dey, N. (2001) Chasing a right, *Frontline*, 18(7).
- Sen, A. (1985) 'Well-being, agency and freedom: the Dewey Lectures 1984', *Journal of Philosophy*, 82(4), pp. 169–221.
- Sen, A. (1992) *Inequality Re-examined*, Oxford University Press, New York.
- Sen, A. (1999) *Development as Freedom*, Oxford University Press, New York.
- Sen, A. (2004) 'Elements of a theory of human rights', *Philosophy and Public Affairs*, 32(4), pp. 315–356.
- Sen, A. (2005) 'Human rights and capabilities', *Journal of Human Development*, 6(2), pp. 151–166.
- Sen, A. (2009) *The Idea of Justice*, Harvard University Press, Cambridge, Mass.
- Sengupta, A. (2009) 'Elements of a theory of the right to development', in K. Basu and R. Kanbur (Eds), *Arguments for a Better World: Essays in Honour of Amartya Sen*, Oxford University Press, New York, pp. 80–100.
- Transparency International (2007) *Global Corruption Barometer*, TI, Berlin.
- UN Office of the Human Rights Commissioner (n.d.) 'Good governance', [<http://www2.ohchr.org/english/issues/development/governance/>], accessed December 2010.
- United Nations Development Programme (2000) *Human Development Report 2000: Human Rights and Human Development*, Oxford University Press, New York.
- United Nations Development Programme (2008) *Tackling Corruption, Transforming Lives: Accelerating Human Development in Asia and the Pacific*, Macmillan, Delhi.
- World Bank (2008) *Project Appraisal Document—Republic of Nicaragua Rural Water Supply and Sanitation Project*, The World Bank, Washington, D.C.
- Wringe, B. (2005) 'Needs, rights, and collective obligations', in S. Reader (Ed.), *The Philosophy of Need, Royal Institute of Philosophy Supplement 57*, Cambridge University Press, Cambridge.