

Global Assessment Report
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Human Rights and Accountability

Case Study

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This is a concept note on how to build accountability on basic human rights. Focusing on the right to information, it is from this right that other basic human rights can flow, and considering different cases studies to show that information empowers people to demand adherence to the whole range of their human rights and how the right has been used by ordinary people to change systems and redress grievances.

Building Accountability

Over the past two decades growing demands for influential actors to acknowledge their accountability in all spheres of public life have led to the creation of new procedures. Through many routes, formal accountability is being created: for actors to accept responsibility for the impacts of their action and inaction on human rights, to cooperate by providing information and entering into dialogue and to respond adequately to claims made.

Nationally, accountability procedures have been greatly strengthened in many countries through the constitutional recognition of human rights and the establishment of national human rights institutions and related arrangements such as ombudsman offices and antidiscrimination commissioners. And internationally, states have increasingly been held to account under both UN and regional mechanisms, on the basis of treaties ratified by countries and of generally applicable special procedures—such as special rapporteurs—under the UN Charter.

But accountability is not exacted only through such formal mechanisms. A diverse range of techniques is gradually coming together to ensure greatly increased acknowledgement of accountability from other actors, including corporations, NGOs and such multilateral actors as the World Bank, the World Trade Organization, the International Monetary Fund and the agencies of the United Nations.

As procedures of accountability are developed, they create important opportunities to collect information. By ratifying the human rights treaties, states make a commitment to submit reports on how much the rights addressed in each treaty are being realized in their country. For all six major treaties, NGOs are invited to submit alternative reports, giving them a valuable opportunity to present data supplementing the perspectives of official reports. When corporations sign on to codes of conduct and admit independent monitors onto their premises, they create a unique opportunity to collect detailed data on their practices.

Beyond the procedures of accountability, human rights are increasingly being used as criteria for designing and evaluating policy, creating a growing demand for indicators. Indicators can be used as a tool for:

- Making better policies and monitoring progress.
- Identifying unintended impacts of laws, policies and practices.
- Identifying actors who have an impact on the realization of rights.
- Revealing whether the obligations of these actors are being met.
- Giving early warning of potential violations, prompting preventive action.
- Enhancing social consensus on difficult trade-offs to be made in the face of resource constraints.
- Exposing issues that had been neglected or silenced.

Access to Information and Its Constraints

The right to information has long been recognized as a ‘Fundamental Right’ of a free citizenry. It is from this right that other basic human rights can flow. No society can claim to be truly free unless it has both the instruments and the practice of providing its people with access to information. No government that claims to be democratic can deny its people the ability to participate in governance or refuse to be transparent to its people. Whether called the ‘freedom of information’ as in most countries or the ‘right to information’ as more recent access laws are referred to, it is the duty of governments to guarantee this right by implementing access to information laws.

Access to information is critical for enabling citizens to exercise their voice, to effectively monitor and hold government to account, and to enter into informed dialogue about decisions, which affect their lives. It is seen as vital for empowering all citizens, including vulnerable and excluded people, to claim their broader rights and entitlements. But the potential contribution to good governance of access to information lies in both the willingness of government to be transparent, as well as the ability of citizens to demand and use information – both of which may be constrained in low capacity settings. A key question in this regard is: To what extent can access to information, and government transparency, advance the claims of poor and marginalized groups and make governments accountable?

Many commentators caution that access to information does not necessarily lead to greater citizen participation, state accountability and state responsiveness. In many developing countries, there are real structural and political barriers, which hinder both the capacity and incentives of governments to produce information, and the ability of citizens to claim their right to information and to use it to demand better governance and public services. These barriers include:

- Government may not be actively supportive of the right to information, particularly in contexts where there is a legacy of undemocratic political systems or closed government.
- Citizens may not be aware of their legal right to information, or, in some cases may be reluctant to assert it, either because of fear of a repressive regime, or a prevailing culture of not questioning authority. In other cases, there are structural barriers to poor people accessing and using information. For example, access to the Internet remains low in many developing countries, particularly in remote areas.
- The capacity of public bodies to provide information may be weak, and officials may be unaware of their obligations. In low capacity environments, record management and statistics generation may be insufficient to support access to information

Case Studies

The Commonwealth Human Rights Initiative’s (CHRI) publication, “*Our Rights, Our Information-Empowering People to Demand Rights through Knowledge*” showcases how the right has been used by ordinary people to change systems, redress grievances and realize other rights.

The Commonwealth Human Rights Initiative report provides case studies to show that information empowers people to demand adherence to the whole range of their human rights. By establishing the right to information in domestic law and by setting up public information systems, governments can enhance citizens' participation in governance, advance equitable economic development, reduce poverty and fight corruption.

Information: A Right to Realize All Rights

The right to information is a unique human right. Not only has its status as a fundamental right been recognized throughout international and regional human rights law, for example in Article 19 of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, but countless stories from around the globe testify to the power of the right to information as a tool in the hands of everyday people.

Information is power. Information provides people with the knowledge to demand political, economic and social rights from their governments – from the right to food to the right to be free from torture.

Although we live in the age of information, where knowledge can be accessed and shared at the click of a button, and span the globe in an instant, a lack of information continues to frustrate people's ability to make choices, participate in governance and hold governments accountable for their actions. This unfortunate fact is especially true for the poor and marginalized that need information the most. In particular, the lack of easily accessible information continues to prevent people from being aware of their human rights and demand that governments turn them into practical realities.

How do Governments Recognize the Right to Information? – By giving out information proactively.

International legal standards, declarations and endorsements have little practical value unless the right to information is also recognized at the national level by governments themselves. Domestic measures are also necessary to ensure that people are actually able to access information held by the government.

Although many people think that a government will only give people access to information once a law is enacted, there are in fact many ways for a government to share information with the people.

The first way a government can ensure that people have access to information, even in the absence of a right to information law, is to adopt a policy of publishing information proactively.

Chile - Organization of American States Rules to Enact Legislation on right to information

The Right to Information is a Human Right for All.

In the 1990s, a US logging company called Trillium was to undertake a mass-logging project in the Rio Condor Valley in Chile, which would deforest 285,000 hectares of native forest.

An environmental non-government organization called Terram was concerned that the Chilean government may have failed to carry out the environmental checks that are required by law in order to make sure that they have considered the damage the deforestation will have on Chile's delicate ecosystem. Terram asked the government for a copy of the assessment reports that should have been prepared before the project was approved.

Although Chile was required to compile this information in accordance with its Foreign Investment Statute, Terram was still waiting for the information eight years later. The government simply refused

to provide any substantial information on the assessments they had conducted. The only information that was ever provided was the total value of Trillium's investment in the logging project.

Frustrated by the government's silence, Terram staff appealed to the Chilean courts, claiming that their right to information had been violated and demanding that the government answer a simple question: had it carried out the proper environmental checks before giving the Trillium Corporation permission to cut swathes of native forest and destroy irreplaceable ecosystems?

All courts rejected the claim, including the Supreme Court, which stated that their request for information was "manifestly ill-founded and not of high public importance. Terram staff continued to pursue the issue, taking the case to the Inter-American Court of Human Rights with the claim that Chile had violated Article 13 of the American Convention on Human Rights – the right to freedom of thought and expression. The court held that Chile had indeed violated Article 13 of the Convention, and in doing so it was the first international tribunal to recognize that the public's right to freedom of expression necessarily includes the right to: "seek, receive and impart information".

The court concluded that the government has a positive obligation to provide information, which is in the public interest. Release of the information on environmental checks undertaken was clearly in the public interest as it concerned a forestry project that had sparked considerable public debate about its potential environmental impact. In this case, the government had failed to provide mechanisms to guarantee the right of access to public information and the court ordered Chile to establish a legal mechanism that guarantees the right of all persons to request and receive information held by public authorities.

While the case was progressing, there were a number of interesting developments. In August 2005, the Chilean Constitution was amended to state that acts and decisions of a state body are for public use and that: "Only a law with a special quorum can establish their secrecy of confidentiality." The Inter-American Court of Human Rights commented that this provision falls short of fulfilling people's right to access information and that domestic legislation was also required. During the case, Trillium withdrew from the project.

Solomon Islands – People First Network for Confidence Building

In an effort to build the trust and confidence of the Solomon Islanders in their government, a special project called 'PFNet' (People First Network) was established in 2005 by the non-governmental organization Rural Development Volunteer Association (RDVA) in association with the Solomon Island's Ministry of Rural Development.

The objective of the PFNet project is to: "support peace-building and poverty reduction through improved access to information and increased capacity for communications in rural areas". In order to do this, PFNet established a network of rural community email stations located across the islands in accessible public areas such as local schools and provincial health clinics. The second aspect of the project was the establishment of an Internet café in the capital, Honiara. In addition, PFNet compiles a local and international news briefing, which is emailed to the computer stations and is freely available to the public.

However, providing the public with the physical tools to access information is only one aspect of respecting their right to information – the public must also be provided with the means to use the tools that they are supplied with. The PFNet project recognized that people need practical assistance to make use of unfamiliar information technology and therefore provided two people per email station to

assist them. These operators transcribe and relay information to any individual who requires assistance so that access is not inhibited by illiteracy.

The outcomes of PFNet have been extremely positive. The project has been accredited with aiding peace-building efforts and increasing political and social stability in the Solomon Islands through keeping people informed and guarding against the spread of false information.

Encouraged by the positive outcomes of PFNet the Solomon Islands opened its first official government website in 2006 to: “enhance its information and communication technologies in order to enhance its services to the people and to promote transparent and effective government”. The website proactively provides the public with press releases, policy papers, draft bills and official documents.

By increasingly making information available through proactive disclosure and enabling information sharing, the Solomon Island’s government is working toward greater transparency and building the public’s confidence.

Slovakia – Right to Information Law Empowers People to Protect their Forests

In Slovakia, deforestation must be carried out in accordance with a forest management plan, which is prepared by the company proposing to cut down trees. This plan, envisaging the next ten-year period, must be approved by the government and then supervised closely by a state oversight body. The approval of a Forest Management Plan by the Ministry of Agriculture should indicate that the proposal is ecologically sound.

Until 2005, the development of a forest management plan involved only three actors – the company proposing the deforestation, the Ministry of Agriculture that accords its approval to the plan and the state oversight body. Proactive disclosure of information related to any forest management plan to the public was not compulsory and as a result, members of the public were not given the opportunity to be informed and to participate in the planning, management and protection of their environment.

Between 2000 and 2004, various deforestation projects were underway in Eastern Slovakia. At this time a large environmentalist group known as the Vlk (‘Wolf’) Forest Protection Movement began submitting requests for information on proposed forest management plans to the Presov.

City administration and the Ministry of Agriculture under the newly introduced Act on Free Access to Information, 2000. Vlk requested the information believing that the public should be allowed to participate in decisions to approve deforestation plans, and have access to all relevant information about the environment in which they live, including its management and protection.

Vlk’s requests for information were rejected by both the city administration and the Ministry on the ground that the Plans were “classified” information. However, Vlk were determined to access the data and took their claim to the Supreme Court, arguing that the government’s refusal to provide the information was a breach of their rights under the Act on Free Access to Information.

The Supreme Court ruled in Vlk’s favour, holding that the government had acted illegally and that information on forest management and administration is not subject to classification under the law. Interestingly, the court also ruled that the government had classified the information without following the correct processes. Following the court ruling, the government released the information on the forest management plans.

Armed with the knowledge that the government had failed to follow the correct processes with regards to the formulation of forest management plans, Vlk spearheaded a public initiative to demand the expansion and increased protection of national forest and nature reserves in Slovakia. Vlk's work paid off. The government expanded two nature reserves from their original 50 hectares to 400 hectares affording the area greater protection under Slovakian law than a mere classification as a national park.

The struggle to get information released as a result of the Supreme Court's judgment created public awareness about the dangers to the environment and the value of openness in decision-making. This generated pressure for changes in the law on the protection of forests. In 2005, amendments were made to the Act on forests to allow civil society groups to access the information and background material used in developing forest management plans. Importantly, the new amendments set a precedent for public participation in the development of forest management plans by allowing non-governmental representation at official meetings. This opened up the whole process to a much larger and more diverse audience. This is particularly important when it comes to protecting a country's often scarce but coveted natural resources. Assured transparency reduces the risk of collusion between powerful commercial interests and closed government systems. It also reduces the possibility of subverting internal procedures for private gain and circumventing detailed but often unknown rules and regulations.

Access to information about procedures not only led to the expansion and protection of nature reserves but gave Vlk the knowledge and power needed to demand crucial changes to the forest management law. Most importantly public participation in the planning, management and protection of the forests in Slovakia was institutionalised because of the use of right to information.

India – World Bank Influence in Water Project Hinders Critical Reforms to Delhi's Water Supply

In 1998, the Delhi Jal Board (DJB), which manages the supply of water to the 13 million residents of Delhi, was granted a World Bank loan to privatise this essential service and provide round-the-clock water supply.

The DJB invited bids from interested parties through public tender for providing consultancy services for this project. The multinational corporation, PricewaterhouseCoopers (PwC) was short-listed in 2001. Alarmed by the DJB's move towards privatisation which had the potential to deprive Delhi's poorer inhabitants of inexpensive access to water, a local non-government organisation *Parivartan* intervened to find out whether all had been done according to established financial and technical norms. They sought details of the tender process using Delhi's Right to Information Act and were given about 4,000 pages of information. The documents revealed that PwC had consistently ranked lower in the financial and technical evaluation as compared to other bidders and had actually failed to clear the evaluation testing. Furthermore, the records revealed that senior DJB officials had been aware of this and had expressed their opposition to PwC being short-listed at the end of the tender process. So why was PwC chosen despite its poor performance?

The documents showed that the World Bank had repeatedly intervened in the tendering process insisting that: "at least one consultant should be short-listed from a developing country. "While PwC is a multinational firm, it has a subsidiary firm registered in Kolkata in India and was made to appear as if it were a local entity.

The information also revealed the extent of the World Bank's influence in PwC's successful bid. One civil servant had noted in the record of internal deliberations that the privatisation move "could be in jeopardy if the suggestions of the World Bank were not agreed to". As a result, PwC was reinstated by the DJB with higher marks than originally given and eventually short-listed.

If the intended aim of the project was to ensure efficient delivery of 24-hour water supply to all the city's population, the information released showed that in its proposed form the outcomes would be far from this. It was revealed that promises of massive profits were made to water supply companies, which would have resulted in a significant increase in the price of water for all consumers while round the clock supply would not have been available in the poorer settlements of the city where the majority of the population live. Accessibility to water would actually be reduced and many people would be unable to afford water at all.

With these revelations the DJB and the World Bank came under intense media and public criticism. As a result, the Chief Minister of Delhi announced that the DJB would not move ahead with the recommendations of the World Bank or consider the final list of successful candidates. Instead, the government held a public hearing over the issues to identify alternative solutions to Delhi's water supply problem. At the hearing, PwC's recommended blueprint for water reforms in Delhi was heavily criticized for mirroring structures established in places such as Manila, where the privatization of water had failed to deliver the benefits initially promised.

Parivartan also highlighted the need for transparency within international financial institutions such as the World Bank that are not subject to the jurisdiction of any country's legal system for their policies and decisions.

Concerns were raised about the Bank's lack of willingness to disclose information that could greatly affect poor people's right to access water in Delhi. The Right to Information Act became a useful tool for preventing the denial of access to water to the disadvantaged sections of society in the name of privatization. An examination by interested citizens using access laws provided an X-ray into the minutiae of the entire process, including the attitudes of officials and the extent of forces driving decision-making. As more and more public functions, like the provision of health care, water, power and transport are privatized, it is important that people are able to get information from the bodies involved in providing these services, not merely from governments. Recognizing this, some right to information laws extend their coverage to place a duty on private bodies carrying out public functions. Even where private bodies are not providing public services, their activities need to be open to public scrutiny if their work affects people's human rights.

Canada – Tape Exposing Police Racism Compels Canada to Address Inequity Issues

In 1942 Canada's Department of Defence acquired the "Stoney Point Reserve" from Canada's aboriginal community (the First Nations) in order to establish a military base. After being forcibly removed from the area, the local First Nations community – the Stoney Point Band – began an ongoing struggle to reclaim their land, which resulted only in inadequate compensation and promises that one day it may be returned to them. Tired of the department's empty promises, the Stoney Point Band held an unarmed protest at the Ipperwash Provincial Park in September 1995.

This park is the site of an ancient burial ground, a sacred area, which they wished to protect from further defilement and destruction. On the night of September 6, the heavily armed Ontario Provincial Police (OPP) approached the park with the intention of removing the peaceful protestors. However,

the situation turned violent and resulted in the tragic death of an unarmed protestor – Dudley George. The entire incident was recorded on video by the Ontario police.

The exact nature of that night's events may have remained secret indefinitely as the Conservative Party-led government at the time stoutly refused to hold a thorough enquiry. However, Canada's Access to Information Act, proved useful, unearthing a disturbing and important aspect of the case – members of the OPP had used provocative and racially abusive language to lure the protesters out of the park.

In 2004, the Canadian Broadcasting Corporation (CBC) used the Access to Information Act to acquire a copy of videotape that the police made of the event. Although the camera's lens was covered, it continued to record voices and sounds during the entire incident. This audio recording, which contained evidence of members of the police force using abusive language and racial insults directed at the protesters, confirmed incitement and revealed deep-seated racist attitudes in the police force.

As soon as the videotape's contents were exposed, the Ontario Provincial Police Association issued a public apology and began a thorough investigation into the night's events. The acting sergeant who shot and killed Dudley George was found guilty of criminal negligence causing death and was imprisoned.

The newly elected Provincial Government in Ontario also set up a Commission of Inquiry to investigate the entire incident. In May 2007 Honourable Sidney B. Linden, who led the inquiry released the Commission's findings, stating that the Ipperwash tragedy highlighted the importance of holding public officials and institutions accountable for their actions. Importantly, the murder of Dudley George was found to signify racial prejudice within the police force, which the Commission sought to address with recommendations to government for change.

The Commission also recognised that lack of education about the country's history and relationship with its aboriginal people contributed to racial tension. It recommended the development of a comprehensive public education plan regarding Canada's treaty obligations with the First Nations people.

The Commission made a strong recommendation for the creation of a Ministry of Aboriginal Affairs for ensuring that indigenous issues received the "priority and focus" they deserved. It also recommended that the government recognise the treaties made with the First Nations people, which allow non-aboriginal people to settle in Ontario, and which set out a duty to consult with the First Nations people in any area in which there is a proven or asserted aboriginal right.

The Commission of Inquiry of the Ipperwash tragedy revealed racial inequalities and tensions in Canada and provided the starting point from which to address them. For change such as this to occur, it is crucial that people have the right to know about the shortcomings and flaws in their systems of governance. The fullest revelation of information makes the invisible and accepted – here institutional discrimination toward segments of the public embedded in the police – visible and helps put an end to denial. In this instance, evidence disclosed under Canada's Access to Information Act played a key role in bringing these shortcomings to the public's attention.

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