



ASIA-PACIFIC RIGHTS AND JUSTICE INITIATIVE

Case Studies on Access to Justice by the Poor and Disadvantaged

Lessons Learned From Access to Information Initiatives in India

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SUMMARY BOX

Categorisation of case study:

Lessons learnt from access to information initiatives in India.

Critical lessons for the sub-practice:

1. Framing rules to implement legislation offers a valuable window to implement change .
2. Training Government officials regarding access to information is important for imparting knowledge, overcoming resistance to new duties and addressing resource deficiencies.
3. Public hearings are an effective means of demanding accountability, and involvement of Government officials is key to their success.
4. Public hearings demand a high level of preparation and technical expertise, and careful monitoring and conflict management is important.
5. Public hearings are valuable learning experiences for Government officials from outside communities.
6. Information and Communications Technology represents a politically feasible entry point for UNDP in access to information initiatives.
7. Future access to information initiatives should be more demand-driven and focus on the information needs of citizens, taking into consideration the specific needs and obstacles of marginalised sub-groups.
8. Mobilisation around community-level information is far more challenging than mobilisation around individual-level information.
9. Access to information initiatives that generate quantitative data are most helpful.
10. Democratic Governance Thematic Trust Funds were extremely flexible and useful for the multidimensional nature of access to information initiatives.
11. Existing social networks are useful for mobilising community members around access to information.
12. The existence of a right to information law greatly facilitates public mobilisation.

Recommendations:

- ❖ Access to information is an inherently multidimensional issue, and UNDP should deploy a combination of initiatives, including rule definition, capacity building, popular mobilisation and technology deployment.
- ❖ UNDP should focus on framing model rules for implementing legislation as a key area for strengthening access to information.
- ❖ Public hearings should be used to mobilise community members, and conflict should not be avoided but channeled to positive ends.
- ❖ Comprehensive pre-initiative planning and analysis should be conducted to ensure that the most marginalised sub-groups are served by IT initiatives.
- ❖ While support from the host Government is critical, programme officers should make concerted efforts to ensure that information availability is demand- as well as supply-driven.

CATEGORISATION OF LESSON

Lessons learnt from access to information initiatives in India. Initiatives addressed both information demand and supply concerns, and included framing of legal rules; capacity building of Government officials and civil society; utilising Information Technology; and mobilising media.

BACKGROUND

Information is critical to obtaining justice. People often do not avail themselves of laws, rights and Government services, however, because they simply do not know about them. Judicial processes can be arcane, and ordinary citizens may have difficulty understanding their rights, locating legal aid and navigating court procedures. Information also is important to achieving justice in a wider sense: In this context, it may not involve any courtroom proceeding, but may entail ensuring that one's Government delivers on its promises. Thus, information is critical in demanding public accountability.

UNDP has launched several interrelated initiatives for enhancing access to information in India. These efforts fall under the general category of improving capacity to provide effective remedies. Because many of these are new and ongoing endeavours, comprehensive evaluations remain limited, although their effectiveness in helping to launch similar programmes elsewhere seems clear.

At the legal level, UNDP has contributed to defining the rules that govern access to information in India. India is a signatory to the Universal Declaration of Human Rights, which recognises the right to information as a human right. In addition, Article 19 of the Indian Constitution protects freedom of speech, which the Supreme Court has interpreted to include the right to information. The Indian parliament has recently passed freedom of information legislation, as have eight states. The degree of access afforded by these acts, however, varies widely because of significant exceptions for such issues like state security.

UNDP also has facilitated a process of framing model rules and regulations to help implement the new legislation. It has organised several conferences, including one at the National Law School of Bangalore, to bring together academics, NGOs and policy makers. Experts at these conferences formulated recommendations on the legal framework of access to information. While these forums have focused mainly on the national level, individual state laws on access to information also were discussed, and their definition may be an area for additional UNDP work in the future.

The India Country Office has supported building the capacity of community members and Government officials to exercise their rights and fulfill their duties under the new right to information legislation. Using Thematic Trust Fund resources, UNDP commissioned CARE India to conduct a right to information campaign for the urban poor in New Delhi. The CO further sponsored a project allowing community residents greater participation in the municipal budgeting process in the state of Karnataka. UNDP also has developed a module on freedom of information that will be used for training civil servants.

Along related lines, UNDP has led capacity building initiatives for senior Government officials through exposing them to grassroots initiatives on access to information. The CO has worked with civil society organisations that organise public hearings where community members review Government information and demand accountability from officials. Public hearings by Mazdoor Kisan Shakti Sangathari (MKSS) in Rajasthan and Parivartan in the Sundarnagari area of Delhi have brought Government officials in direct contact with NGOs and the community.

UNDP likewise has focused on facilitating access to information through Information Technology. In partnership with the Department of Personnel and Training, the CO has established computer kiosks at six

pilot sites where citizens can access information about Government laws and public services. Through interactive technology, citizens can transact with the Government, for example, by filing grievances over the Internet.

Finally, UNDP has initiated a project to build the capacity of the media. It is encouraging the media to report on how people are using recently recognised rights to information to demand greater accountability from Government. The CO is helping to build capacity of the media to utilise right to information acts, rather than personal contacts and informal mechanisms, to gain information on development matters and report it to the public.

FINDINGS AND CONCLUSIONS

Lessons on Output/Outcome

Framing rules to implement legislation offers a valuable window to implement change.

The passage of a national right to information law in India created a unique opportunity to enhance access to information. While the passage of national legislation is often noted as a landmark event, however, it is the formulation of myriad subsidiary rules and regulations that often dictates how the legislation will actually operate. These important, behind-the-scenes tasks are frequently given to low-level bureaucrats; the result can be shoddy, ill-conceived rules that undermine the original scope and purpose of the law. Following the passage of India's right to information law, UNDP facilitated a process to define its implementing rules. Academics, policy experts and civil society representatives drafted a set of model rules, which were presented to the Government. While the extent to which these model rules informed the actual rules is uncertain, they represented a critical input at a critical time.

Training Government officials regarding access to information is important for imparting knowledge, overcoming resistance to new duties and addressing resource deficiencies.

Workshops with local Government officials revealed that less than 5 percent of them were aware of the right to information act. Furthermore, several officials focused their attention on the act's secrecy exemptions as providing a potential excuse for not supplying requested information. This reflected the need for institutional and cultural changes in order for the legislation to operate effectively.

Public hearings are an effective means of demanding accountability, and involvement of Government officials is key to their success.

Very often, citizens are not even aware that Government is falling short of its commitments because those commitments are not widely publicised. Furthermore, they frequently lack a mechanism for confronting Government with its failed promises and demanding accountability. UNDP's sponsorship of Government officials in two public hearings allowed the public to learn about promised Government services in the area of food security and development projects. They also provided a forum for members of the community to confront Government officials with proof that commitments had not been fulfilled. The forums brought to light pervasive examples of fraud; while they were not geared toward justice issues per se, they could be adapted to address inequities in the justice system.

The public hearings proved effective at mobilising community members to demand accountability. In the wake of the Delhi hearing, local officials pledged greater transparency in construction projects. The success of this initiative was further illustrated by formation of a residents' association to monitor neighbourhood construction.

However, participation of public officials was the key to success of the hearings because it provided a genuinely interactive atmosphere. This can nevertheless be difficult to secure because officials can expect to be targets of public criticism at these meetings.

Public hearings demand a high level of preparation and technical expertise, and careful monitoring and conflict management is important.

UNDP's experience with public hearings reveals that intensive preparation and pre-hearing community awareness campaigns are critical. The period for preparing the community and Government officials can take upward of eight months. Furthermore, these hearings can demand a high level of technical expertise. In the case of the Delhi hearing, engineering experts were necessary to scrutinise Government contracts to determine the exact specifications for roads, pumps and waterworks.

Another lesson is that public hearings necessarily give rise to conflict. In a rights-based approach, conflict is not to be suppressed or avoided, but managed toward productive ends. Unruly political speech and, in some cases, small skirmishes frequently interrupted one hearing. Measures must be taken to ensure healthy dialogue while maintaining decorum and public safety. Furthermore, hearing moderators must be tactful and should try to defuse any antagonism that may alienate the Government officials whom the community would like to be more sympathetic to local concerns.

Public hearings are valuable learning experiences for Government officials from outside communities.

The public hearing experience is illuminating not only for Government leaders of the neighbourhoods involved, but also for officials from other jurisdictions. Organisers of the public hearing in Rajasthan, which was on food security, invited officials from Karnataka and other states to attend as observers. Karnataka officials responded to complaints of Rajasthani citizens by streamlining the public distribution system in their own state, including raising the margins for food traders so that inadequacy of margins could not be used as an excuse for malpractice.

Information and Communications Technology represents a politically feasible entry point for UNDP in access to information initiatives.

Access to information initiatives are sensitive issues for Governments and, for obvious reasons, they are often reluctant to embrace them. To that end, programme officers must take special care to propose initiatives in a manner that is politically correct. Two factors can help determine attractiveness: the potential for expanding scale and consistency with UNDP Country Programme objectives. Information and Communications Technology (ICT) has proven to be a good entry point for UNDP in access to information initiatives because it addresses both of these challenges.

Future access to information initiatives should be more demand-driven and focus on the information needs of citizens, taking into consideration the specific needs and obstacles of marginalised subgroups.

While the ICT initiative was effective, it was largely supply-driven. However, a widespread survey to ascertain specific informational needs of citizens would ensure a more demand-driven approach and greater participation. At the same time, anecdotal evidence indicated that the most marginalised subgroups still may have been left out. For example, men used the pilot site computer kiosks to a far greater extent than women. To overcome this, certain ICT centres could be earmarked solely for women or special timings adopted when only women could use the equipment. Furthermore, ICT initiatives could be further adapted to better accommodate individuals of limited literacy, through the use of graphic and audio interfaces. Future sites also could incorporate design elements to encourage access by people with disabilities. In addition,

while ICT proved a promising intervention, an ideal strategy may include a combination of ICT and more traditional means of accessing information, such as community radio.

Mobilisation around community-level information is far more challenging than mobilisation around individual-level information.

The importance of accessing information that directly affects an individual's or a business' well-being is fairly easy to communicate, since there are direct benefits and it is not difficult to conceptualise access to that information as a right to be asserted. More difficult, but more potentially powerful, is convincing individuals of the importance of community-level information, since community members may be reluctant to assert their right to this information because communal projects "do not belong to me." Taking ownership of community assets is an important step in political self-awareness and demanding accountability from the Government.

Access to information initiatives that generate quantitative data are most helpful.

[The following lesson learned comes from Commonwealth Human Rights Initiative, a Delhi-based NGO with whom UNDP has partnered on access to information initiatives.]

Commonwealth Human Rights Initiative (CHRI) operates several programmes throughout India to build capacity in Government officials and citizens regarding access to information. In one initiative, CHRI partners with the state Public Affairs Centre to test the new right to information legislation that had been passed there. The NGOs enlisted 100 people to file right to information applications with Government agencies and then monitored the status of those applications. After the prescribed time had passed for responses, numerous participants still had not received their desired information. The NGOs generated a report on the matter and held a public meeting to disseminate results. The main strength of the programme was the creation of quantitative data that could show how responsive or non-responsive various Government agencies had been.

Lessons on Process

Democratic Governance Thematic Trust Funds were extremely flexible and useful for the multidimensional nature of access to information initiatives.

Right to information is an inherently crosscutting issue, and a compelling opportunity is created to address several issues at once. In the case of public hearings, access to information was used as a tool to address issues relating to food distribution and development projects. Given the multifaceted nature of access to information, identifying a funding source that is sufficiently flexible can be a challenge. To that end, the Democratic Governance Thematic Trust Fund was extremely helpful.

Operational Lessons

Existing social networks are useful for mobilising community members around access to information.

During the UNDP-commissioned CARE India right to information campaign, disseminating information was a significant challenge, given that residents were often illiterate, poor and politically marginalised. At one site, programme personnel successfully used savings groups to aid in educating and mobilising the community. Savings groups, in which neighbourhood residents contributed to and drew from a communal fund, represented established informal networks. The high levels of trust and familiarity associated with such groups made them an ideal entry point for larger community mobilisation. Furthermore, because women traditionally play a strong role in the groups, such a strategy ensured their active participation.

The existence of a right to information law greatly facilitates public mobilization.

[The following lesson learned also comes from CHRI.]

CHRI personnel found that mobilising local communities was much easier if the state already had passed access to information legislation. Without such a pre-existing legal environment, many citizens had difficulty conceptualising access to information as a right to which they were entitled.

RECOMMENDATIONS

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- ❖ UNDP should focus on framing model rules for implementing legislation as a key area for strengthening access to information.
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