Voice, Accountability and Human Development:
The Emergence of a New Agenda

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PART I – INTRODUCTION

These days, no fiery demand for social justice – or, for that matter, sober discussion of public policy – is complete without a demand that the powerful heed the voices of ordinary people, or that ordinary people be enabled to hold the powerful to account. Over the past decade, trailing in the wake of an amorphous 'governance agenda', the elastic concepts of voice and accountability have come to dominate not just the development discourse, but also the language of international politics, business and activism.

But the more talk there is of the importance of voice and accountability, the less these terms seem to mean, and the less relevance they appear to have for disadvantaged people. It is for these reasons that this chapter seeks to illuminate just what is meant by accountability, and to demonstrate why a commitment to genuine accountability – as opposed to initiatives that pass themselves off as such – is critical to achieving social justice, equity and a decent quality of life for the world's poor.

Perhaps not surprisingly, two other much-used terms – democratization and globalization – are part of the reason why the concepts of voice and accountability have taken on such currency in recent years. As liberal representative political systems replaced authoritarian regimes throughout much of the developing world during the late 20th Century, hopes were raised in the power of free expression, democratic deliberation and political choice to improve the lot of poor and vulnerable people. But neither constitutional checks and balances (the machinery of accountability) nor the sanction of the ballot (the definitive expression of voice) are proving sufficient to make governments live up to their promises. All too often, their decisions on how to spend public funds, administer justice, deliver services, promote national security and regulate economic activity favour more powerful social groups. Even worse, more and more of those groups seem to operate from beyond the reach of national politics. Multinational firms, transnational religious movements, international NGO networks, multilateral economic institutions – all are engaged in activities that affected the lives of ordinary citizens, but are not easily subjected to state, and therefore popular, control.

The failure of democratic institutions and the decline of national sovereignty have combined to generated pressure for new ways of making powerful actors, within and beyond the state, accountable for the impact of their actions on poor people. The response has often taken the form of efforts to increase 'participation', most notably through a proliferation of consultative exercises to elicit the 'voices of the poor'. Initially welcomed, these initiatives have increasingly been dismissed as tokenism. A growing chorus of critics has sought to shift the focus from capturing the voices of the marginalized to holding the powerful accountable. This, in turn, has forced a re-examination of the fundamental questions the lurk beneath the surface of this rather ambiguous term: *Who* is demanding accountability? *From whom* is accountability being sought? *Where* are they being held to account? *How* is accountability being delivered? And, perhaps most problematically, *for what* are people and institutions being held accountable? This new

inquisitiveness, and the increasing frequency with which these questions are being asked in normative form – i.e., Who *should be* demanding accountability? – are indicative of important changes underway.

The result has been the emergence of 'The New Accountability Agenda'. Existing mainly in fragments of conceptual innovation and practical experiment, the basic features of this agenda are nevertheless increasingly visible, manifested in a *more direct role for ordinary people and their associations* in demanding accountability across a *more diverse set of jurisdictions*, using an *expanded repertoire of methods*, and on the basis of a *more exacting standard* of social justice.

These four elements of the new accountability agenda (which correspond to the questions 'who', 'how', 'where', and 'for what') are still mainly an aspiration rather than a concrete reality. But efforts to put them into practice are more widespread than ever. In their most promising forms, they offer disadvantaged people opportunities to operationalise rights and to shift the terrain of governance from technical solutions to a more immediate concern with social justice. As ever, there is a need to distinguish what is new from what is useful.

This remainder of this chapter is organized as follows:

Part II defines accountability, setting out its multiple dimensions, contrasting the principle of accountability with its practical manifestations, and distinguishing it from the allied concept of voice while highlighting the critical role of certain *kinds* of voice in promoting accountability.

Part III demonstrates the variety of ways in which a lack of *genuine* accountability has deprived disadvantaged people of the opportunities that a more democratized and globalized world has promised, but failed, to deliver.

Part IV details the distinguishing features of the new accountability agenda, surveying a range of experiments and innovations that have sought, with mixed results, to operationalize it.

Part V reflects on the main lessons of this new agenda, offering some suggestions on considerations that must be borne in mind if this emerging agenda is better to serve the interests of poor people.

PART II – DEFINING THE CONCEPTS

2.1 What is accountability?

Accountability is often derided as a cure-all development buzzword: a fit subject for exhortation, but something that in most parts of the world is rarely achieved because it demands too much compassion of the powerful and too much undiluted civic virtue from ordinary citizens. To people weary of hearing about accountability – movements demanding it, governments promising to deliver it, aid agencies 'promoting' it – the concept lacks both practical relevance and analytical content. The sheer ubiquity of the term means that there is much truth to these criticisms. But significantly less so if the virtuous connotations presumed in popular usage are replaced with a more clinical, value-neutral definition.

Simply put, accountability describes a relationship where *A* is accountable to *B* if *A* is obliged to explain and justify his actions to *B*, or if *A* may suffer sanctions if his conduct, or explanation for it, is found wanting by *B*.[1] Accountability is thus a *relationship of power*. But it denotes a specific variety of power: the capacity to demand someone engage in *reason-giving* to justify her behavior, and/or the capacity to impose a penalty for poor performance.

Even on the basis of this rudimentary definition it is possible grasp at least two key distinctions.

The first is the difference between the two key *actors* in the accountability drama: the 'object' of accountability, the one obliged to account for his actions and to face sanction, and the 'agent' of accountability, the one entitled to demand answers or impose punishments. Many public bodies are both objects *and* agents of accountability. Legislators are accountable to voters, but are also legally empowered to hold executive agencies to account.

Second, we can distinguish between the two basic *forms* of accountability: having to provide information about one's actions and justifications for their correctness, and having to suffer penalties from those dissatisfied either with the actions themselves or with the rationale invoked to justify them. These aspects of accountability are sometimes called *answerability* and *enforceability*. They can also be thought of as weak and strong forms of accountability. Being accountable in the sense of having to explain one's actions is a lot less onerous than being subject to sanction.[2]

In practice, answerability and enforceability are equally important. Both are necessary; neither is sufficient. A system that provides for sanctions alone, without a formal process of reason-giving, can make judgments about either the validity of conduct or the appropriateness of sanction both less good and less fair. Moreover, there are often complicated divisions of labour in accountability relationships. Those entitled to demand answers from power-holders are not necessarily the same as those put in charge of deciding on and doling out penalties. In some

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[1] The basic components of this definition are drawn from Andreas Schedler, 'Conceptualizing Accountability', in A. Schedler, Larry Diamond and Marc F. Plattner (eds), *The Self-Restraining State: Power and Accountability in New Democracies* (Boulder and London: Lynne Rienner, 1999), pp. 14-17.

[2] Ibid, pp. 14-15.

instances, government agencies can enforce sanctions against politicians on the basis of explanations supplied to private agents in civil litigation. In other cases the information a firm provides to a regulatory agency can, when made public, stimulate a sanction in the form of a consumer boycott.

In other words, reality has a way of complicating definitional precision. A consideration of the *practical operation of accountability systems* highlights four further distinctions crucial to understanding why accountability is of direct relevance to human development.

First, actually existing accountability systems force us to confront the difference between *de jure* and *de facto* lines of accountability. In the real world there is very often a difference between whom one is accountable to according to law or accepted procedure, and whom one is accountable to because of their practical power to impose a sanction. Which is why the stripped-down definition of accountability is shorn of moral content: it does not specify who plays the roles of *A* and *B*, the objects and agents of accountability. In *principle*, of course, politicians are answerable to citizens. But in *practice* they are often more immediately concerned with the sanctions wielded by corporate interests, such as the withdrawal of campaign finance.

The conduct of governments, for instance, is often driven by the rewards or punishments offered by other governments or by international organisations. In aid-dependent developing countries, *de facto* accountability in many spheres of government activity is to external donors rather than to domestic institutions such as parliament, since the withdrawal of international grants and loans, or the threat of doing so if certain policy actions are not taken, constitutes a serious sanction. But, again, the reality is more complicated: when aid conditionalities are not adhered to and donors do not deliver punishments as promised, developing country governments come to realise that their accountability to aid donors is less strict than it might seem on paper. Such governments might, in practice, only be required to 'answer to' aid donors – that is, to inform them of their actions (and inactions) and to explain the reasons for them, including the circumstances that led to non-compliance with conditionalities.

When we hear people talking about the need for accountability, they are usually referring to one of two things – either ways of making *de facto* accountability relationships correspond more closely with those stipulated in law, or else insisting that moral claims be encoded into law, or at least be followed in practice. Either way, the emphasis is on placing a check on the authority of the powerful, both because their actions affect those with relatively less power (who nevertheless possess certain rights) and because those who hold *state* power do so, implicitly or explicitly, in the name of people who constitute a political community.

In common usage, then, 'accountability' is shorthand for *democratic* accountability – accountability to ordinary people and to the legal framework through which governance is effected. Accountability is conventionally conceived as a way of providing citizens a means to control the behavior of actors such as politicians and government officials to whom power has been delegated, whether through elections or some other means of leadership selection. That actors in the private sector have come to assume many more powers than they once did in large part explains why they have come to be seen as legitimate objects of direct , rather than mediated, accountability. Their manifest power over the public sphere has subjected them to a demand that

they be treated as holders of the public trust, and therefore a growing insistence that they answer to ordinary people, not just state institutions, for their actions, and perhaps suffer direct sanctions.

The concept of accountability can also be firmly located within the framework of democratic rights and obligations, to which recent Human Development Reports have reaffirmed their commitment, while arguing for a version more attuned to the interests of poor and disadvantaged people. As one writer put it, "Governmental accountability – that is, the duty of public officials to report their actions to the citizens, and the *right* of the citizens to take action against those officials whose conduct the citizens consider unsatisfactory – is an essential element, perhaps *the* essential element, of democracy".[3] Because of its renaissance over the past decade, the term accountability is explicitly used in recent constitutions like South Africa's. But its basic components – such as the obligation on governments to inform citizens of their actions and to justify them – have been prominent at least as far back as the United States Constitution, which, to take but two examples, requires the president, 'from time to time', to provide congress with 'Information of the State of the Union' and when vetoing any bill to publicly state his objections to the bill, which are then to be published in the congressional journal.

The second distinction of relevance to the practical operation of accountability systems is between *vertical* forms of accountability, in which citizens and their associations play direct roles in holding the powerful to account, and *horizontal* forms of accountability, in which the holding to account is indirect, delegated to other powerful actors[4]. Elections are the classic form of vertical accountability. But also in this camp are the processes through which citizens organize themselves into associations capable of lobbying governments, demanding explanations and threatening less formal sanctions like negative publicity. Vertical accountability is the state being held to account by non-state agents.

Horizontal accountability, on the other hand, consists of formal relationships within the state itself. It exists when one state actor has the formal authority to demand explanations or impose penalties on another state actor. Horizontal accountability takes a large variety of forms. Executive agencies must explain their decisions to legislatures, and can in some cases be overruled or sanctioned for procedural violations. Political leaders hold civil servants to account, reviewing the bureaucracy's execution of policy decisions. Bureaucracies are themselves constituted according to accountability relationships, subordinates answering to their superiors in a chain of command that ultimately leads back to political representatives, who wield a variety of sanctions. Accountability systems also empower independent agencies, such as regulatory bodies, auditors-general and anti-corruption commissions, to engage in detailed scrutiny of the actions and decisions of bureaucrats and politicians. The judiciary subjects all of these entities, and the relations among them, to further mechanisms of accountability by assessing their consistency with legal norms and the constitutional division of powers. In short, governments constrain themselves, at least in theory, through a complex web of accountability relationships in which the right of 'agents' of accountability to demand information and explanations is matched by the obligation of 'objects' of accountability to provide them, under threat of sanction.

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[3] Robert S. Barker, 'Government Accountability and its Limits', *Issues of Democracy*, vol. 5, no. 2 (August 2000).

[4] Guillermo O'Donnell, 'Delegative Democracy', *Journal of Democracy*, vol. 5, no. 1 (1994), pp. 55-69.

The third key distinction that must be borne in mind when examining the operation of accountability systems is the difference between *ex post* and *ex ante* accountability. *Ex post* accountability is, in a strictly definitional sense, the only true form of accountability. Holders of power are expected to take actions, the impacts of which can be assessed only after the fact by the agents of accountability, who may choose to impose sanctions if explanations for the decision, or its outcome, are deemed insufficient. But *ex ante* accountability does exist – for instance, when the decision-making process is subjected to questioning before an action is finally approved, as when government spending plans must be defended under cross-examination by opposition legislators, in which case the exercise of sanction can take the form of parliamentary rejection or substantial amendment. The distinction between *ex ante* and *ex post* accountability checks helps to underscore the degree to which the frequency of scrutiny and public justification is an important variable affecting the capacity of accountability systems to alter the incentives facing power-holders.

Fourth, it is essential to note that accountability is not synonymous with either the widely used term 'responsiveness' or with a subjective sense of responsibility. Responsiveness is the desired attitude of power-holders towards ordinary citizens: we wish them to be responsive to the concerns and problems of citizens, to listen with impartiality and fairness to divergent views, and to subject all expressions of need and interest to publicly-agreed rules for weighing and assessing the merits of claims and cases. Conventionally, public sector actors have a duty to be *responsive* to the members of the public with whom they interact, but to *account* for their actions to their seniors, who account to the legislature and the executive, to financial auditors, and to higher court judges. The responsiveness of public-sector actors is not governed by the same set or intensity of rules, checks, and constraints as the accountability of these actors. *Responsiveness* is a product of a somewhat intangible relationship between citizens and the state, a relationship based upon a culture of democratic tolerance, shared understandings of norms and morals in public conduct, and an ethos of public service based upon the trust which publics must, of necessity, place in bureaucrats, the police, politicians, and the judiciary when these bodies are accorded the right to act as custodians of the public interest.

The idea of responsibility is also closely related to accountability, and is also distinguished by the lack of formal compulsion. In other words, an actor may feel responsible for taking action to improve the lot of poor people, but may not be *required*, technically and legally, to account for her actions or non-actions. Responsibility, then, corresponds quite closely to the notion of moral accountability – being accountable to other people by virtue of your shared humanity rather than because of some formally stipulated contract that can be enforced according to an agreed set of standards. That businesses speak of corporate social responsibility rather than corporate accountability is not a mere difference of terminology. It is based upon the understanding that measures taken to mitigate the ill-effects of business activity fall into the category of voluntary action, commitments which are not to be enforced.

The boundaries of accountability are, however, in a constant state of flux. Political engagement of late has been geared towards pushing voluntary self-regulation into enforceable commitments – though not necessarily through state regulation. The objective is to transform the grudging admission among powerful actors that their influence over the lives of ordinary people amounts to moral responsibility into a more concrete set of mechanisms for achieving *de facto* accountability.

2.2 How is accountability different from 'voice', and why do they matter for human development?

Voice is a metaphor for the variety of ways in which people express beliefs and preferences. Voice can be expressed individually or collectively. It can stake out original claims or react to official decisions. Moreover, any of these variants may be peaceful or socially disruptive, and may take place within the arenas of civil society, between and inside political parties, through interactions between citizens and state institutions, or within the state itself. The 'voice' of socially excluded groups may be elicited as part of consultative exercises by public and private power-holders, with no promise that their views will be acted upon, or it can be asserted by right, with a legitimate expectation of consequent action. These distinctions do not exhaust the range of conceptual quandaries associated with the term, but are suggestive of the many factors that must be considered when seeking to understand the concept of voice or its application to problems of human development.

The term 'voice' is drawn from Albert O. Hirschman's classic study *Exit, Voice and Loyalty: Responses to Decline in Firms, Organisations, and States* (1970). Hirschman classifies voice as just one of three strategies through which people seek to exert influence. The other two – when they exist as practical options – are exit and loyalty. Exiting implies seeking an alternative to the existing organisation, when one is formally available, or else making do with some informal substitute. Loyalty implies improving one's prospects through attachment to the centers of power. In the context of governance, 'voice' is understood to describe how citizens express their interests, react to governmental decision-making or the positions staked out by parties and civil society actors, and respond to problems in the provision of public goods such as education and health services, infrastructure, or defense.

If discussions of accountability have grown tiresome, the same is doubly true for the recent preoccupation with voice. Through sheer repetition, the heart-felt plea that decision-makers must hear the voices of the poor has lost whatever resonance it might once have commanded. Simply listening to these voices, and doing nothing to respond to their insistent demands, has discredited the idea that promoting voice is central to improving human well-being. The voicing of preferences or judgments divorced from the necessity of consequent action is akin to shouting in the void – somewhat cathartic but ultimately ineffective. This has led critics to dismiss the 'participation industry', by far the fastest-growing sector of the aid and development business, as little more than purveyors of a sophisticated form of faith-healing.

There is much truth to this. The vast majority of participation exercises empower people only by default – by indirectly disseminating information about government initiatives and beneficiary entitlements, or by bringing isolated people together into self-help groups or users' associations required under programme guidelines. But the information provided is selective by nature. And the groups formed under such externally imposed circumstances are not easily sustained. Nor do they readily adapt themselves to other collective purposes.

Arguably, the most empowering effect of exercises designed to capture voice is completely unintended, which is to catalyze indignation at their failure to produce action. Whether initiated

by government agencies, non-governmental organizations, private-sector businesses, or party pollsters, attempts to elicit the voices of ordinary or marginalised people are ultimately conducted on terms dictated by the organizers. They are 'by invitation only'. They are the powerless answering to the powerful. Genuine accountability reverses this relationship, making the powerful answer to the stifled majority in whose name they act, under threat of sanction. Hence the growing desire to demote voice and focus on accountability. It is a logical progression.

Or is it? The fact is that voice and accountability are conceptually distinguishable, but inseparable in practice. For there to be answerability – the obligation of power-holders to justify their decisions and actions – someone has to be asking the questions. And if these questioners are to be drawn from beyond the ranks of government itself, then ordinary people must be endowed with voice. But the voice presumed in accountability relationships is very different from that of the irate but passive focus-group participant. The genuinely 'questioning voice' has access to information about the context in which decisions were taken, including the legal requirements governing the actions of power-holders and the public promises made prior to action. Information is never 'perfect', and asymmetries will always be a feature of the relationship between accountability objects and the agents that seek to hold them accountable. But the obligation that power-holders engage in reason-giving, that they rebut charges of incompetence and ulterior motive, forces a crucial transition from passive to active voice. Participation, within a relationship of accountability, becomes interrogation.

By comprehending the role of voice in the pursuit of accountability, it is possible to see that, in addition to its intrinsic value as a freedom that allows people to express beliefs and preferences, voice is related to human development instrumentally as well. There are in fact two ways in which voice is linked to human development by way of accountability. For not only is voice used to interrogate power-holders for their decisions and actions, or to render a judgment on the need for sanction or the form it should take; the freedom to express opinions – the interplay of *many* voices – is the means by which societies collectively evolve the standards of justice and morality against which the actions of the powerful are to be held accountable. It is this 'constructive role' for voice – a second type of instrumental value – that has been particularly evident in the emergence of a new accountability agenda.[5]

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[5] Amartya Sen, 'Democracy as a Universal Value', *Journal of Democracy*, vol. 10, no. 3 (1999), p. 11.

PART III – HUMAN DEVELOPMENT DENIED: HOW AND WHY A LACK OF ACCOUNTABILITY HARMS THE POOR

If nothing else, recent studies of poverty's multi-dimensionality reinforce an important point: that people experience deprivation across a variety of fronts. The *World Development Report 2000-01*, for instance, sees poverty as characterized by a lack of assets, security and power. Because the multiple forms of deprivation interact with and sometimes reinforce one another in unexpected ways, neither the World Bank nor the many other organizations that produced global poverty reports to coincide with the new millennium[6] can be faulted for failing to distinguish between causes and manifestations of poverty. They are often one in the same.

This holds true for accountability as well. Being unable effectively to demand accountability is both a *part* of being poor and one of the reasons *why* poor people remain poor. But it is nevertheless worthwhile to look at the ways in which some of the critical deprivations that afflict the poor can be traced back to a lack of genuine accountability.

This chapter examines deprivations facing poor people with respect to four key areas necessary for human development, including access to:

1. Sustainable Livelihoods, particularly land and fair wages.
2. Capability-Enhancing Services, particularly education and health-care.
3. Decent Environmental Quality, particularly clean air and unpolluted water.
4. Physical Security, particularly freedom from abuse (and neglect) by police.

A range of accountability institutions are supposed to prevent the systemic abuses that lead to these deprivations, or to punish those responsible for them and thus deter future violations. That they fail with depressing regularity is evident from the persistence of these deprivations.

As the analysis of case-study examples in this section of the report suggests, however, the *reasons for institutional failure* are not reducible to corruption, defined generically as the abuse of public office for private gain. The failure of accountability institutions – especially those that allow human deprivation to thrive unchecked – is caused by two inter-related, but analytically distinct phenomena: capture and bias.

The category of *capture* consists mainly of corruption, but also other forms of undue influence that do not, technically speaking, constitute corruption in that they stem from the intimidation faced by officials (from, for instance, politicians and the criminal underworld) rather than from an interest in direct pecuniary gain.

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[6] For instance, International Fund for Agricultural Development, Rural Poverty Report 2001: The Challenge of Ending Rural Poverty (Rome, 2001); Asian Development Bank, Fighting Poverty in Asia and the Pacific: The Poverty Reduction Strategy of the Asian Development Bank (2000); and UNDP, Overcoming Human Poverty (New York, 2000).

Bias-related accountability failures, on the other hand, occur when the poor remain disadvantaged because of built-in impediments to the reduction of the deprivations they face. This takes at least two forms.

First, accountability institutions may simply have *no remit* for punishing officials whose actions produce a pattern of bias against the poor. In other words, their terms of reference focus on procedural correctness rather than the achievement of positive outcomes for the poor. Even when policy or programme design – the eligibility for a welfare entitlement, for instance – is clearly biased against underprivileged sections of society, accountability systems are often unable to take action, or at least *perceive* themselves to be impotent to intervene.

Second, there are often anti-poor biases built into the mechanisms through which disadvantaged people are entitled to use accountability mechanisms directly, such as the access restrictions that face litigants who might wish to seek judicial remedies against powerful state or non-state actors.

The human development deprivations discussed in this section have their roots in the failure of four main accountability institutions, each of which fails for reasons of both capture and bias, as indicated in the descriptions below:

- *Reporting systems within bureaucratic hierarchies*, in which subordinates are accountable to their superiors, but in which disciplinary procedures are either insensitive to the special conditions facing the poor or too remote from the sites of injustice that require remedy, allowing collusion between officials and their supervisors.

- *Oversight or regulatory agencies* that fail to take action against the public or private bodies over which they exercise jurisdiction, either due to outright corruption or the undue influence exerted by political leaders or interest groups.

- *Electoral systems* that fail to create incentives for representatives to promote the interests of the poor, or which are infested with fraudulent practices or legally permissible avenues for influence peddling.

- *Judicial proceedings* that provide little direct or indirect protection for the poor because of the limited access they provide, their use of foreign languages, their reliance on investigative machinery of biased executive agencies, or simply bribery of judges and court officials.

Before proceeding further, it is worth noting that real world case studies of the sort discussed below have a way of spilling beyond conceptual boundaries. Though they are invoked to clarify rather specific issues, it should be understood that many of the examples cited relate to more than one type of deprivation; that any type of deprivation will, inevitably, have been produced by failures in more than one sort of accountability institution; and that each of these failures will have been caused by a combination of both bias and capture.

3.1 Sustainable Livelihoods

As with the other three categories of deprivation, the opportunities for disadvantaged people to engage in sustainable livelihoods is impaired by the failure of accountability institutions. A good deal of this is due to the anti-poor 'bias' variant of accountability failure. Economic policies routinely discriminate against people working in the informal sector, and in ways that can be remedied only by thoroughly overhauled accountability institutions, such as new performance criteria for programme administrators linked directly to pro-poor outcomes. But corruption and other forms of 'capture' also impede the ability of accountability institutions to defend the livelihood prospects of the poor.

The ability of the poor to achieve market gains, for instance, suffers as a result of corruption. Not only does the unchecked draining of public resources for such public goods as education and healthcare impair the market prospects of the poor, but the failure to enforce laws regulating market behaviour – which is due more to corruption than administrative incompetence – has dire consequences for many of their number. In the industrial sector, these largely concern labour and occupational-health standards. In rural settings, the problems include land-tenure arrangements, credit-market regulations, minimum wages for agricultural workers, and the collusive practices of officials charged with enforcing standards in the buying and selling operations of market centres. While these examples concern the economic relationships of the poor as *producers*, it is essential to recognise the ill effects that can also befall them as *consumers*. When policing of the market is lax, collusive relationships between firms and other organised economic agents (such as agricultural cooperatives) can impede whatever scant benefits poorer citizens may have been able to derive from their productive activities or from redistributive programmes implemented by the state.

Access and secure title to land are among the most important assets that can help people to improve their chances of a better life. However, many public actions ostensibly designed to promote access to productive resources fall prey to accountability failures. The Colombian government's National Land Reform Institute (Instituto Nacional Colombiano de Reforma Agraria, or INCORA) was founded in 1961 to reduce the gross inequalities in rural land ownership. Though INCORA's average annual budget in the late 1980s was roughly US$140 million, its work 'produced little visible effect'. Land reform legislation passed in 1994 failed to produce better results for the poor. Parliamentary questions raised from time to time sought to obtain at least a degree of answerability. But this form of oversight is a blunt instrument for securing accountability. The lack of more specific mechanisms of accountability within the programme itself was the more serious problem. The legislation provided for a 'land purchase grant', but the way this was structured 'created incentives for collusion between sellers and buyers to overstate land prices, divide the surplus between them, and let the government foot the bill'.[7] The poor were not in on this cozy arrangement. Conventional financial monitoring of such transactions was never going to be able to stamp out such abuses. On paper, the transactions appeared legitimate. This accountability failure was largely one of bias rather than capture.   The same is true of the role of local tribunals in failing to arrest the secular erosion of women's land rights in Uganda (see Box 1).

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[7] Klaus Deininger, 'Making negotiated land reform work: Initial experience from Colombia, Brazil, and South Africa', World Bank Land Policy Network Working Paper, June 1998.

Box 1

<u>Denial of Women's Land Rights in Uganda</u>

Access to and control of land is essential to women's livelihoods in rural Uganda, where they provide 80% of agricultural labour, supplying their families both with food and income from the sale of cash crops. But unresolved tensions between customary and civil law with regard to women's land ownership rights, as well as class and gender biases and outright corruption in the local tribunals for adjudicating land disputes, has produced a secular erosion of women's land rights. A study of the densely-populated Kabale District in south-western Uganda shows how local tribunals routinely fail to uphold women's land rights in their disputes with male relatives over the sale of family and homestead land. These disputes often involve adult sons or male relatives harassing elderly widows to relinquish the portion of their husband's land they have inherited, or else husbands selling family land without consulting their wives.

Under customary law in most parts of Uganda, women have fairly secure rights to land use, if not ownership, rights which are protected by the longstanding custom requiring husbands to consult their wives on land sales. Under the country's new Land Act, they also have fully equal rights to purchase property, but only 7% have the financial means to do so. Women rely, therefore, on community respect for their land rights under customary law. Village Local Councils (LCs), the lowest level of Uganda's local government system, share concurrent jurisdiction with magistrates over customary matters. When women in Kabale take their land disputes to these tribunals, however, they are confronted with demands for substantial informal payments, and they are not in a position to out-bribe their male relatives in order to obtain a favorable ruling. There is also collusion between land sellers and council members to reject women's pleas. Frequently the LC members themselves have purchased the land in question, and there is evidence that LC officials are amassing sizeable land holdings in part by denying the justiciability of women's land claims and their right to withhold consent to a land sale. LC officials also obstruct women's efforts to appeal negative rulings at the LC level by misinforming female litigants as to procedures for appeal, provoking delays that force appellants to file late and pay penalties.

Neither the local government department nor the Ministry of Justice have made provisions for combating these biased and corrupt legal processes at the local level. The evident gender bias in the functioning of LC tribunals is not checked by any local accountability system, and electoral processes are inadequate to correct for this because of women's difficulties in winning seats on the LCs, or in taking a stand against local patriarchy even when they do.

<u>Source</u>: Lynn S. Khadiagala, 'The Failure of Popular Justice in Uganda: Local Councils and Women's Property Rights', *Development and Change*, vol. 32 (2001), pp. 55-76.

Accountability institutions have also fared poorly in the task of ensuring that poor and vulnerable people have access to credit for productive purposes. This happens both directly and indirectly. The indirect form arises when failures related to other sorts of livelihood concerns take their toll on the ability of people to access credit. A study of the Kenyan case found that a lack of formal

educational attainments and insecure title over land were the main reasons why, in particular, rural women who try to diversify livelihoods through enterprise activities are denied credit.[8] The terms of reference for regulatory structures would need to be substantially redesigned for them to hold formal credit agencies accountable for biases of this sort. Fieldworkers on the Bangladesh government's anti-poverty rural micro-finance programmes are known to favor better-off villagers for credit, even though they are above the poverty line. This happens in NGO programmes as well.[9] And field workers have been known to turn a blind eye to the fact that loans intended for poor women may be used by their husbands instead, sometimes leaving wives with responsibility for generating repayments.[10]

The more direct route by which oversight mechanisms fail to ensure access to credit for the poor involves their inability to detect or prosecute cases of corruption in government credit programmes. This is particularly important as corruption in formal credit markets can affect the rates offered through informal sources.[11] A study by Transparency International Bangladesh found that people accessing credit from the formal banking sector paid a direct bribe of between 2-20% of the loan value. This wide range reflected the diverse socioeconomic profile of respondents, but the '[l]arger percentages are extorted from uneducated rural applicants'. Moreover, these farmers faced higher demands for bribes than the more affluent borrowers seeking commercial loans, 'because the bribe is usually shared with government officials that may be involved in the loan review process', including the many functionaries at the local level. The bribes received by local officials 'percolate up to District and higher levels and neutralize the monitoring function of the administrative hierarchy'.[12]

But these fees are just for obtaining the loan. In order to obtain an assurance from rural branch managers of state owned banks that they will not actually have to repay the loan, borrowers pay up to 50% of the value of the loan. These promises are not generally honoured, but an audit by Bangladesh Bank, revealed that branch managers had forgiven at least 1.6 billion taka in interest payments without authorization. These practices have other unfortunate knock-on effects on the chances of improving accountability systems. The very fact that poorer Bangladeshis are forced to collude in such illicit transactions – and to pay a fee for the right to access credit under such

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[8] Kimuyu & Omiti, 'Institutional impediments to access to credit by micro and small scale enterprises in Kenya', IPAR Discussion Paper 26 (Nairobi: Institute of Policy Analysis and Research, 2000)

[9] Imran Matin, 'Mis-Targetting by the Grameen Bank: A Possible Explanation', *IDS Bulletin*, Vol. 29, No. 4, October 1998, pp: 51-58, R.D. Montgomery, D. Bhattacharya, and D. Hulme, 'Credit for the Poor in Bangladesh: The BRAC Rural Development Programme and the Government Thana Resource Development and Employment Programme', in D. Hulme and P. Mosley (eds.), *Finance Against Poverty* (London: Routledge, 1996); and Anne Marie Goetz and Rina Sen Gupta, 'Who Takes the Credit? Gender and Power in Rural Credit Programs', *World Development*, vol. 27, no. 1 (January 1996).

[10] Rutherford, Stuart, *ASA: The Biography of an NGO*, (Dhaka: Association for Social Advancement, 1995); Brooke Ackerly, Brooke, 'Testing the Tools of Development: Credit Programs, Loan Involvement, and Women's Empowerment', *IDS Bulletin*, vol. 26, no. 3 (1995), pp. 56-68.

[11] Manash Ranjan Gupta and Sarbajit Chaudhuri, 'Formal Credit, Corruption and the Informal Credit Market in Agriculture: A Theoretical Analysis', *Economica*, no. 254, (May 1997), pp. 331-343.

[12] Jamal Munshi, 'Corruption in the Banking Industry in Bangladesh', Working Paper, Transparency International Bangladesh (March 2000).

conditions – undermines their willingness to play a role in demanding accountability or protesting against corruption.

The Transparency International study also notes a range of means by which unsuspecting farmers are duped, including one confidence-trick in which illiterate people are persuaded to sign papers that they are told entitle them to a grant. In fact, they have unwittingly agreed to pay back a loan for up to five times the amount of the 'grant' funds they are given. The remaining 80% goes to the con-men, who form a 'corruption syndicate', including local government representatives and police officers, 'to perpetrate the scam'. The Transparency International study is clear that the negative impacts on the poor are the result of multiple accountability failures, each of which reinforces the other.

> Members of Parliament, the Bureau of Anti-Corruption, the Judiciary, and the Police, that might have served as monitoring devices for the people are also agents of the political party that controls MOF [Ministry of Finance].… The Parliament's Standing Committee on Finance is the people's oversight agent that is supposed to discipline the MOF but it too is subject to stronger agency relationships to political parties.

Obtaining employment and safe working conditions, and getting paid a fair wage (or at least what was due), is another aspect of livelihood security that has continued to elude many of the world's poor. Accountability institutions such as labour inspectors have in many cases failed to make any impact, and often make things worse by simply taking bribes in exchange for non-enforcement of regulations. The labour inspectorate of the Portuguese government is facing just such charges.[13] This form of corruption also drives up 'employment-related' costs, reducing what employers are willing to spend on wages, benefits and occupational safety measures that would actually help workers trying to eke out a living.

As for the self-employed, the obstacles faced by the poor in obtaining formal business licenses pushes them into both economically and legally marginal activities such as sex work, scavenging or street hawking. Yet these same marginally illegal practices make the poor vulnerable to blackmail and bribery by officials, thus trapping them in self-reinforcing circuits of corruption and poverty (see Box 2 on rickshaw-pullers in Delhi).

Box 2

Making a Tough Job Much Tougher: Corruption in Regulating Rickshaw-Pulling in Delhi

Rickshaw-peddling is a physically demanding, dangerous, and poorly-paid job. The dangers and low rewards to this work are exacerbated by the failure of official regulatory systems to uphold safety regulations and limit the numbers of cycle rickshaws on the roads. In Delhi, for instance, there are simply too many rickshaws on the streets – at least twice the legally sanctioned number of 50,000 choke the roads. Most are in poor repair, to the point of making

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[13] http://www.humanrights.coe.int/cseweb/GB/GB3/GB32c.htm.

the job of rickshaw-pulling thoroughly dehumanizing. In spite of the fact that there are simple, cheap and accessible technologies available for upgrading cycle rickshaws and making the job of pulling them less physically depleting, *rickshaw wallas* do not invest in these because they do not own their rickshaws. Instead, they pay over double the value of a new rickshaw every year in rents to rickshaw contractors. A new rickshaw costs between Rs. 2,500 – 3000, and the daily rent paid by a *rickshaw-walla* is Rs 17 – 20, or Rs 7,200 a year.

Why do *rickshaw-wallas* not buy their own rickshaws in order to make bigger profits, and use some of that money for rickshaw-upkeep? Why does the state not support this by better regulating the number and quality of rickshaws on the roads? In fact, regulations do exist to control the number of rickshaws and to ensure that they meet safety standards, and this is done primarily by licensing rickshaws for the low cost of Rs 27 per year. In practice, this licensing system is the starting-point for municipal officials and police to extract, on an arbitrary basis, rents from rickshaw-pullers.

For instance, to obtain a license in the first place, at least Rs 500-600 of 'speed money' per rickshaw must be paid. This license, however, does not guarantee immunity from police harassment. The Municipal Corporation of Delhi frequently rounds up rickshaws, ostensibly to check their legal status, yet even owners of those that are licensed must pay a bribe of between Rs 30 and Rs 300 to have their vehicles released, over and above the daily storage fees charged while they are held by the Corporation. In addition, the Corporation can fine even license-holding rickshaws for a number of violations, such as missing accessories like reflectors or mud-guards. Fines are Rs 100 per vehicle. The raids are a pretext for bribery, not a means of improving road safety.

The unsurprising consequence of this system of arbitrary capture and charging of rickshaws is an erosion of any incentive to invest in safe and efficient cycle rickshaws, let alone to pay for a license. Large contractors operating fleets of extremely poor-quality rickshaws arrange to by-pass some of this police predation by purchasing licenses in bulk, paying hefty monthly *haftas* to the police, and recovering those costs from the daily rent paid by *rickshaw-wallas*.

Source: Madhu Kishwar, 'A Half Step Forward: The Thwarting of Economic Reforms in India', *Manushi*, nos. 92-93 (Jan-April 1996), pp. 58-59.

The opportunity even to have or keep a job is eroded by practices that over-ride, due to political connections, the working of accountability institutions. Many of China's former state-owned factories became unviable as a result of asset-stripping and outright looting by managers, making the chances of reviving them under private ownership almost unthinkable. This has become an increasingly regular feature of the country's capitalist transformation, reducing employment prospects for disadvantaged people.[14] And the inability of the anti-corruption agencies to take action in anything other than a symbolic (and highly politicized) fashion has increased the incentive for managers to embezzle resources, since they can do so with impunity.

The nascent efforts of China's independent union movement to counteract such tendencies have run up against these problems as well as the familiar constraints on the exercise of voice in the

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14 *Far Eastern Economic Review*, 9 June 2001.

context of limited political pluralism. And even in other, more liberal, political systems, the power of unions to act as an effective force to demand accountability has received setbacks from duplicitous government action.[15] In Sri Lanka the government's Board of Investment sets up officially mandated 'worker councils' in free-trade zones that act as an impediment to the emergence of active unions capable of either defending workers rights directly or insisting that enforcement agencies perform their functions properly. In Mexico, too, President Fox has failed to address the problem of these 'protection unions'. And rather than applaud the efforts of the employees' union of Philippine Airlines to engage in voluntary wage restraint in order to assist the rebuilding of the company and protect their jobs in 1999, the president's response was to override institutions for ensuring worker protection (including the courts) by proposing a strike ban and curtailing the right to association of employees.[16]

Another example of an institution that fails to provide accountability in the interest of workers is India's Board for Industrial and Financial Reconstruction (BIFR). The BIFR is supposed to ensure that ailing industries which receive government bailout packages adhere to the associated terms and conditions. These usually stipulate that government funds are earmarked for investments to upgrade plant and machinery in the hope of reviving the firm's competitive position, and thereby saving jobs. But not only does the BIFR not keep effective watch on the uses to which the company managements put the funds – or compel other government agencies to monitor or report on these activities – the BIFR refuses even to make public the terms of the revival agreements so that other actors in civil society can make inquiries to see if these are being fulfilled. In many cases, union officials that are allowed access to the relevant documents are themselves bought off by company managements, with law enforcement agencies taking a cut to continue protecting these collusive relationships.[17]

Though there has been much discussion in recent years of the plight of child workers, and the need for international agreements to outlaw the most egregious forms of child labour, it is important to note that legislation exists in many countries, but is not enforced – another failure of accountability institutions. Human Right Watch reports that Egyptian children employed by cotton-farming cooperatives work long hours, routinely face beatings at the hands of foremen, and are poorly protected against pesticides and heat. Most of the children are also well below the country's legal minimum age of twelve for seasonal agricultural work, according to the report. The Egyptian government has a responsibility to ensure compliance with the country's 1996 Child Law, but it fails in this duty by permitting cooperatives to employ children well below the minimum age for seasonal agricultural employment and without regard for the law's provisions governing the days and hours of children's work. The cooperatives have further subjected children in their employ to routine ill-treatment and failed to provide them adequate protection from occupational hazards, in violation of both the Child Law and relevant international conventions.[18]

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[15] *Washington Post*, 31 July 2001

[16] Philippines Human Rights Update, vol. 13, nos. 3-4 (1999).

[17] See Rob Jenkins, *Democratic Politics and Economic Reform in India* (Cambridge: Cambridge University Press, 1999), and Rob Jenkins and Anne Marie Goetz, "Constraints on Civil Society's Capacity to Curb Corruption: Lessons from the Indian Experience"*, IDS Bulletin,* vol. 29, no. 4 (October 1999).

[18] http://www.hrw.org/reports/2001/egypt/Egypt01.PDF

Finally, while the issue of environmental quality is addressed in a separate section, below, it is worth observing that unchecked environmental degradation also destroys livelihoods, particularly of poor people engaged in the primary sector or those with no access to formal employment. To take just one example, the people of Manicani in the Philippines have suffered as a result of siltation and soil erosion, which has devastated the opportunities for livelihoods in fishing and farming.[19] People's organizations have appealed to a wide range of accountability institutions to halt the activities of the Hinatuan Mining Corporation, but to little effect. Each agency has insisted that the responsibility lies elsewhere.

3.2 Capability-Enhancing Services

Appropriate and affordable basic services are essential for the poor to enhance their human capital base and to make the most of their physical assets such as credit or land. The key services for building human capital are education and health care. These are more effective when supported with other services such as sanitation, drainage, and waste collection, piped water, housing, roads and public transportation, without which health problems and time constraints on productivity can increase. Whether these services are provided by the state or the private sector[20], all over the world poor people experience serious obstacles to accessing and fully benefiting from basic capability-enhancing services, obstacles which are a combination of corruption and of bias in service delivery and design.

Poor people in need of health care may have to travel great distances for treatment, may be obliged to pay bribes to be seen by a health professional, may not receive appropriate treatment or may even be mis-treated or humiliated, and may leave ashamed, unwell, vowing never to return. Poor children may not be able to attend school because their parents cannot afford the 'informal payments' which must be made to ensure that the teacher attends class. The school may be too far away, the quality of teaching too poor, or the risks of abusive treatment by teachers too high to make attendance worthwhile.

It is well-known that elite biases among both designers of basic services and those who staff them produce a marked preference for urban and high-cost tertiary-level social services, such as hospitals and universities, as well as for new and high-technology investments in infrastructure, rather than in maintenance of existing facilities or their extension to poorer areas. This skewed distribution of basic services reflects the lack of voice of the poor in determining the types of public services that should be available, their physical location, terms of access to services, and

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[19] *Philippines Human Rights Update*, vol. 14, nos. 3-4 (2000).

[20] There is much current experimentation in both developed and developing countries today with privatisation of public services and public-private partnerships in service delivery. Private sector engagement in the provision of basic pubic services is supposed to increase efficiency through competition. The introduction of profit motives in service delivery is supposed to increase responsiveness to consumer choice, and also, in principle, to distance political considerations from decisions on service design and delivery. See for instance, Richard Batley, 'Public-Private Relationships and Performance in Service Provision', *Urban Studies*, vol. 33, nos. 4-5, pp. 723-751; or the discussion of this issue in World Bank, *The State in a Changing World: World Development Report 1997* (New York: Oxford University Press, 1997).

the nature of interactions between service providers and clients. This lack of voice, in turn, stems from a failure in representative politics that carries over to a lack of vigilance in national budgeting exercises that could, in theory, ensure that funds are devoted to primary-level services. Elite bias in public-service design and delivery is also reinforced by high-level corruption, which directs public funds away from basic social services and into investments that produce bigger commissions for corrupt officials, such as defense contracts and large-scale infrastructure construction projects, and diverts funds from the types and levels of services which the poor most desperately need, such as spending on text books and teacher training.[21]

Corruption in public-service funding and delivery has other distinct consequences for the poor. First, the poor simply have fewer options than wealthier service users for 'exit' – for replacing poor-quality public services by selecting from a range of private providers. For the poor, the costs of private provision may be even higher than the legal and illicit costs of public sector services, because private providers may impose surcharges for servicing the physically remote, unsafe or unpleasant living areas of the poor. For instance, in Angola, one NGO has found that poor people on the rural fringes of the capital city of Luanda pay hundreds of times more than those in built-up areas for their water supply as a consequence of having to purchase water in tiny quantities from private suppliers.[22]

Second, when it comes to everyday retail corruption, poor service users, because of their low social status and perceived lack of capacity to organize to expose corruption or press complaints, may be under more pressure from providers to pay bribes than wealthier service users. Where the poor are seeking their livelihoods in marginally illegal activities, such as sex work or gathering forest produce, their legitimate 'voice' is even weaker, thus increasing their vulnerability to the predatory interests of government officials. For instance, police officers in Delhi pay exceptionally high 'commissions' to their bosses for transfers to red-light areas, where earnings from bribes are known to be high and regular.[23]

Third, the illicit payments made by the poor represent a much greater proportion of their meager incomes than do payments made by wealthier service users, therefore impoverishing them further.

Accountability instruments such as administrative reporting procedures, professional and service-level performance standards, and oversight bodies often fail to correct for the social biases embedded in application procedures for basic services that end up disqualifying the most needy applicants. Long-distance travel, literacy or mastery of a non-local language, or eligibility requirements which demand possession of scarce formal documents, become insurmountable access barriers to basic services and act as screening mechanisms to exclude poor clients. In Thailand, a string of exclusions are triggered by the requirement that households supply a formal registration number given by municipal authorities in order to apply for water or electricity

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[21] P. Mauro, 'The Effects of Corruption on Growth, Investment, and Government Expenditure', *IMF Working Paper WP/96/98*, (Washington D.C.: International Monetary Fund, 1996).

[22] 'Development Workshop—Angola', in One World Action, *Influence and Access – Local Democracy and Basic Service Provision* (London, 1999), p 23.

[23] Madhu Kishwar, '"Naukri" as Property: Causes and Cures for Corruption in Government', *Manushi* No. 100 (Delhi; 1997), p.16.

connections. Informal housing erected in low-income or slum neighborhoods generally does not qualify for formal registration. Yet, without this registration number, parents cannot register the birth of their children, and without birth certificates, later on these children will not be able to enroll in school.[24] In Egypt, an identity card is needed in order to qualify for state services such as social security, pensions, credit programmes, as well as to get a passport, driving license, or register a complaint with the police. A gender bias in the distribution of these cards creates access barriers to essential public services, particularly for female heads of household (see Box 3). Accountability institutions will remain unable to address these problems until they adopt new norms for assessing performance.

Box 3

Female Heads of Households' Access to Social Security

In Egypt, without an identity card, the poor have great difficulty accessing subsidized goods, social welfare services, or getting their children into school. Identity cards, however, are not evenly distributed by gender. Because a woman's name can be added as a dependant on her father's and later her husband's identity card, girls and women tend not to be issued their own identity cards. Great care is taken to ensure that all boys and men, however, have ID cards, as Egypt's policy of compulsory conscription relies upon monitoring ID cards to ensure that all eligible men are drafted into the army, and men are penalized if they do not have their ID cards in order.

The registration of women as dependants on their fathers' and husbands' ID cards has two implications for their capacity to access public services. First, it means that their engagement with public service providers is mediated by male relatives, and presumably only done with male approval, thus reproducing aspects of female subordination to men within the family. Second, in cases of separation or divorce where women have left husbands or their natal families, they are left without a formal identity card of their own, and thus are stripped of an essential access requirement to the very public services for which they now have the greatest need. One Cairo-based NGO working with rural immigrant female heads of household in slum areas found that large numbers of these women lacked identity cards, and did not, therefore, access state welfare services. Yet the procedures for obtaining one were utterly intimidating to the illiterate women with whom they worked. They included obtaining a birth certificate, which necessitated a return to their natal village and embarking upon a string of applications there, and also obtaining the support of two government employees to confirm the applicant's identity and stamp her form. Even when these near-impossible, time-consuming and costly requirements were met, the final hurdle was filing the application in a police station, where women feared they would be subject to harassment and unnecessary delays.

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[24] K.S. Yap, (ed), 1992, *Low-income Housing in Bangkok: A Review of Some Housing Sub-Markets* – Division of Human Settlements Development, Asian Institute of Technology, Bangkok, cited in Yok-Shiu Lee, 'Intermediary Institutions, Community Organisations, and Urban Environmental Management: The Case of Three Bangkok Slums', <u>World Development</u>, Vol. 26, No. 6, 1998, p. 1004.

Source: Iman Bibars, *Victims and Heroines: Women, Welfare, and the Egyptian State*, (London: Zed Press, 2001), p. 17-19; Heba el-Kholy, 'Panel discussion on women-headed households', ICPD, Cairo.

Where poor people overcome access barriers to public services, they may encounter a fresh set of problems: contemptuous treatment by service providers, or else discrimination in service provision that endows poor clients with less of the public resource which is their due. Examples abound of high-handed, patronizing, rude, or outright abusive nurses, teachers, police, and local government officers (see Box 4 on the abuse of maternity patients by nurses in South Africa). Service providers may distinguish clients for abuse on grounds other than class. For instance, girls in many schools in Africa and elsewhere are the targets of sexual harassment and even rape by male teachers.[25]

Where service providers use their discretion to deny full services to their least privileged clients, patterns of discrimination may follow class, race, ethnic, or gender lines. Health care workers in India, for example, selectively provide less information on contraceptive choices and side-effects to poorer women or women from remote areas.[26] In Benin, elite and peasant patients receive radically different types of care from the same overworked nurses and midwives in the same service.[27] Accountability institutions that do not punish this behavior, or even reward it – when, for instance, school teachers are not punished for sexually abusing students, but pregnant girls are forced to leave school – are in need of reform. Accountability and responsiveness problems at this level are a product of difficult work conditions and an inadequate or non-existent professional service ethos. Workers who are demoralized, under-paid, and poorly resourced will seek to control the variety of demands which clients place upon them by limiting the information about services that they offer, limiting their contact with socially marginal clients, and exaggerating rituals of deference in order to build their own status and power in relation to clients.

Box 4

Abuse of Patients by Nurses in South Africa

Research on primary obstetric public health services in black and colored areas of the Western Cape Province of South Africa documents abusive treatment of maternity patients by midwives

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[25] Fiona Leach and Pamela Machakanja, with Jennifer Mandoga, *Preliminary Investigation of the Abuse of Girls in Zimbabwean Junior Secondary Schools*, UK Department for International Development, Serial No. 39 (London, 2000), pp. 17-20.

[26] N. Murthy, 'The Quality of Family Welfare Services in Rural Maharashtra: Insights from a Client Survey', in M. Koenig and M.E. Khan (eds), *Improving Quality of Care in India's Family Welfare Programme: The Challenge Ahead* (New York: Population Council, 1999).

[27] C. Sargent, Maternity, Medicine, and Power: Reproductive Decisions in Urban Benin (Berkeley: University of California Press, 1989).

and nurses. Abuse of women in ante-natal clinics included expressions of contempt, moral lecturing of unmarried mothers, and violation of patient confidentiality. Abuse of women patients in labour and post-natal women included verbal assaults, unreasonable demands to clean the floor or the linen, deliberate neglect of women in pain, and physical assaults such as slapping or beating women before, during, and after delivery. Abuse varied in intensity according to the class, race, and marital status of patients, with young black single mothers coming in for particularly punitive treatment. Nurses and midwives also imposed demanding entry-point rituals on expectant mothers, in order to limit their own work burdens and, in the process, socialize pregnant women into deferential attitudes towards the medical staff. For instance, in one obstetric clinic in an African township (Kwazola) with a quota of 30 new patients per day, nurses told expectant mothers that in order to be sure of a booking for their delivery, they would have to begin queuing by 3:00 or 3:30 a.m. for the 7:00 a.m. opening. Many pregnant women were reluctant to travel at that hour, given the distances they had to cover, the lack of public transport in the middle of the night, and the dangers of attack in the townships. This draconian requirement, however, kept bookings low, much lower than the clinic's quota.

Abusive treatment of clients is enabled by failures in formal and informal accountability systems. Formal systems of administrative control, performance assessment, and grievance-redressal, fail to register or punish maltreatment of patients. Although procedures exist to sanction staff who abuse patients, senior managers in the medical system say they can only act if specific complaints are made by patients. But patients rarely register formal complaints for fear of victimization and further abuse, or because their contact with the obstetrics system is so irregular that there seems little point in investing in improvements. Incentive and promotion systems likewise fail to note or punish abuse of patients, partly because the local nursing culture condones controlling behaviour. Salaries are at their lowest in primary health care clinics, and good performance at this level of the health care system does not trigger a rise through the ranks. On the contrary, primary obstetrics clinics can be the 'retirement posting' for nurses or midwives whose careers are felt to be over.

Informal accountability systems – the professional nursing ethics imparted through training and socialization in health facilities, or through nurses' professional associations – may even exacerbate these problems. Ideologies of patients' inferiority and nurses' intellectual and moral superiority, not an ethic of care and respect for patients, tend to be transmitted in these arenas. These accountability failures, combined with the relatively weak voice of a dispersed female clientele who are not in contact with the service in a sustained way over time, produce a poor-quality service and a longer-term negative impact on maternal health care.

Sources: Rachel Jewkes, Naeemah Abrahams and Zodumo Mvo, 'Why do Nurses Abuse Patients? Reflections from South African Obstetric Services', *Social Science and Medicine*, vol. 47, no. 11, 1998, pp. 1781-95; and Shula Marks, *Divided Sisterhood* (Johannesburg: Witwatersrand University Press, 1994)

Failures in reporting, audits, and disciplinary procedures within service bureaucracies allow corruption to thrive. The checks on impropriety which should occur via the upward flow of reporting and accounting within bureaucracies are easily undermined by collusion between superiors and subordinates. The clearest expression of this are the 'cuts' received by higher-level

officials for any illicit incomes earned by lower-level staff from bribes or sheer theft of funds, as seen in the example of the distribution of earnings from public works programmes in Nepal (Box 5).

Box 5

Systematized Corruption in Nepal's Public Works Bureaucracy

The cost of diverting or disabling the accountability mechanism represented by each point in administrative hierarchies at which officers report on their actions, or are subjected to oversight reviews or audits, is represented by the payments that lower-level officers pay to those higher up. In Nepal as elsewhere corruption is said to be 'systemic' in that it pervades most of the public administration, and 'systematized' in that there is a 'ladder' of payments out of illicit earnings from lower to higher officers in the hierarchy. These payments follow fairly standardized percentages or 'cuts' of the illicit earning. Sometimes called 'commissionisation', this puts great pressure on lower-level civil servants to charge bribes to clients or simply to misappropriate funds meant for public goods. In the Department of Roads and Irrigation, a typical distribution system for the distribution of 'black money' is as follows:

- -10% to the district audit office
- -10% to local politicians; or if they are not there, to local engineers and overseers
- -25% to the direct overseer
- -15% to the district engineer
- - 35% to the overseeing accountant, the Department, and the Ministry in equal amounts
- - 5% for entertainment costs.

This arrangement reflects the bargaining position of each control point on the government hierarchy.

Posts within the civil service are 'auctioned' according to the rents likely to be earned. A large extractable surplus is made in new infrastructure projects through rigged bidding processes for contracts, over-invoicing for materials and labour, manipulation of labour productivity norms and wage rates, and routine outright seizing and resale of subsidized materials or grain for labour payments. In the case of anti-poverty public works programmes such as Food-for-Work or drought relief rural works programmes the result of over-estimation and under-invoicing is that 40%-50% of budgeted resources are shared among cooperating contractors, government engineers, local bureaucrats, ministry supervisors and auditors.

Sources: Patrick Meagher, 'Roads Without Destinations: A Case Study of Governance and Rural Infrastructure in Nepal', Working Paper no. 246 (College Park, Maryland: Center for Institutional Reform and the Informal Sector, January 2000), pp. 4-5, 15-17; M. Beier, K. Upadhyaya, and H. Achanga, 'Using Food-for-Work to Promote Self-Help and Participation: Experiences form a Nepalese Emergency Project with Long-term Benefits', *Mid-Term Evaluation for the Ministry of Forestry* (Kathmandu, 1993); Edward Clay, 'Rural Public Works and Food-for-Work: A Survey', *World Development*, vol. 14, no. 10/11 (1986).

Beyond the failure of audit institutions and oversight agencies to control for corruption in funding for and the delivery of services, inadequate disciplinary and reporting systems within the public administration are the greatest culprits for the many exclusions, humiliations and poor-quality services endured by the poor. Performance standards used to asses quality in public services may fail to measure whether access barriers to the poor have been lowered, or to assess whether their particular needs in relation to services such as health, education or housing are addressed. Regulatory oversight bodies and licensing systems run by independent or government-supported professional bodies are very unlikely to report to the disadvantaged clients of services; their reporting patterns are oriented towards the top levels of the bureaucracy and government. Informal accountability institutions that cultivate quality controls among service providers, like the peer reviews and self-regulation that are provided by medical associations or teacher training systems, may not only fail to encourage professionals to address the particular problems and needs of the poor, but usually function to preserve the self-interests of professionals over their clients.

3.3 Decent Environmental Quality

Stories of poor people suffering ill health or losing their livelihoods as a result of environmental degradation emerge with depressing regularity in newspaper articles, NGO briefings, and the reports of government agencies and international organisations. Rivers polluted by industrial effluents, once-fertile soil become too salty to farm. The causes of policy failure are often complex, involving local contingencies and forces operating from much further afield. But the disastrous impacts on the well-being of the poor can almost always be traced back to a lack of genuine accountability.

This may seem simply a different way of expressing a familiar grim fact – that those who suffer have no power, or no 'voice' in the decisions that affect their lives. But this is not always, strictly speaking, the case. There is often ample scope for free expression: the chance to march in protest demonstrations, speak at local public hearings, comment on the findings of environmental impact assessments. But the offending projects – whether government dams (see Box 6) or private-sector factories – so often go ahead anyway.

Why? Because officials responsible for assessing risks and enforcing regulations have few incentives to perform either task with the diligence which they are duty-bound to employ. The chances of being penalized for faulty decisions after the fact – even when they were made in the face of clearly articulated, fully documented and logically incontrovertible opposition – are minute. Which means that at the time clearly environmentally disastrous projects are being approved, the formal obligation of public office-holders to answer for their provisional decisions, to justify them on the basis of firm and independently verified evidence, are met with shoddy reasoning and cavalier indifference – mockery of answerability. In other words, when the institutions of *ex post* accountability are lacking, *ex ante* voice has almost no chance of being heeded.

The effects of both sorts of failure have been felt by Thai villagers living in the basin of the Mae Klong river. They have borne the environmental brunt of industrialization in the region. After a

local dumpsite used by the Siam Pulp and Paper Company was flooded in 1996, people in the villages of Wang Sala and Chuk Matum were exposed to contaminated water from their wells. People who were already poor were forced to pay for water from clean sources. In theory, the firm's activities were subject to a range of regulatory controls. Regulations of the Ministry of Industry, administered by its Factory Control and Inspection Bureau, oblige firms to line the base of waste disposal sites with plastic sheeting in order to protect the soil from contamination. In addition, rules issued by the Science and Technology Ministry's Pollution Control Department required sites to have their foundations compressed by a mechanized roller, so that the soil would be compact enough to minimize the risk of leakage. The inability of these agencies to enforce these rules is a classic form of accountability failure. While no credible proof of corruption was produced to explain this failure, officials in Thailand's regulatory agencies (like those in many countries) are notoriously prone to bribery by those who should be the subject of their scrutiny.

But in the case of Wang Sala, two other, more subtle, causes were at work besides corruption. First, the failure of accountability agencies to perform their allotted functions was hampered by the existence of intermediaries. Siam Pulp and Paper did not directly perform the site preparation, nor was it directly involved in the haulage, waste disposal or site management activities. Its much smaller subcontractor could more easily conceal its activities from regulators. Second, the ability of direct pressure by local residents to compel government agencies to take action was limited by their already insecure livelihood prospects. For many, employment with the company was their only hope of a better wage. Fear of losing their jobs made them refrain from open criticism or protest action. One local youth told a visiting researcher: 'My parents warned me not to speak out against the factory, because that is where I can get a job in the future'. Intimidation – linked to, but distinct from, corruption *per se* – is a major reason why there is insufficient pressure on regulators to enforce rules that should protect the poor.

Corruption, on the other hand, is a major reason why accountability institutions in South-East Asia have failed to stem the air pollution problems that afflict the region. In 1995 Indonesia placed a ban on burning forest to clear land, but plantation owners regularly flouted it. The executive director of the Rubber Association of Indonesia explained that burning was much cheaper than manual clearing, and that paying off local officials to turn a blind eye to persistent violations was relatively simple and straightforward. Bribes in fact flowed into many levels of the bureaucracy, and were shared out up and down the administrative hierarchy, ensuring a conspiracy of silence in which supervisors were almost guaranteed not to penalise junior officers for their obvious failure to enforce regulations, and juniors (if they knew what was good for them) returned the favour by not whistle-blowing on their senior colleagues. It was only when the annual 'haze' began to spread over Malaysia and Singapore in 1997, forcing Indonesia to declare a national emergency, that international embarrassment catalysed a crackdown. This did little more than show up the lack of domestic accountability.[28] The fact is that the 1997 burning was not the worst to have affected Indonesia, and poor farmers had long suffered ill-health and damaged crops. But not only had they not been protected; the government had pinned the blame on farmers' 'slash-and-burn' agricultural practices.

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[28] Far Eastern Economic Review, 2 October 1997.

Though Indonesia's government has stepped up indirect forms of accountability in more recent years – for instance naming and shaming corporate culprits – Malaysia has not taken the idea of information-led accountability to heart. Even when Indonesian forest fires were affecting Malaysia in the summer of 2001, the Malaysian government still refused to release data on the extent of air pollution or its likely health effects, fearing bad publicity would harm the tourist industry. This is consistent with the failure of Malaysia's regulatory bodies to skirt accountability by siding with powerful interests rather than with ordinary or disadvantaged citizens. The country's Clean Air Action plan was torpedoed by a group of influential ministers in 1994 on the grounds that it would be 'too costly'.[29]

Accountability agencies not only fail to protect the environmental quality experienced by the poor, they often collude in covering up serious abuses. In November 1998, nearly 3000 tons of toxic waste were dumped in an open field in the southern town of Sihanoukville, Cambodia. Scavengers combing through the waste soon fell sick. One person reportedly died. Instead of conducting the thorough investigation they had promised, Cambodian politicians arrested protestors who had blamed corruption for the failure of the authorities to uphold environmental standards. A few low-level officials were arrested, but these are widely seen as scapegoats. Back-up mechanisms of accountability also failed. As a Human Rights Watch Report put it, 'the judicial process against those responsible for the public health menace falls short of providing the thorough investigation and accountability promised by the Cambodian government and ensuring that the necessary checks and balances are put in place to prevent new cases of dumping'.[30]

BOX 6

Social and Environmental Impacts of Accountability Failures in Big Dam Projects

The lack of accountability in large dams projects around the world has led to adverse social and environmental consequences for disadvantaged people. The depletion of fish stocks, the water-logging of land and the loss of forest cover have directly affected the livelihoods of poor people reliant on these vital resources. The social costs include involuntary relocation of thousands of people, a high proportion of whom come from marginalised groups such as indigenous communities. This in turn leads to many further deprivations including a decline in the standard of living, an increase in health problems (including infant mortality and morbidity), and livelihood insecurity due to the loss of common property resources.

Dam-building agencies have rarely been accountable, and have been notably un-transparent in the way they implement these projects. The failures of the conventional channels of accountability – from elections to courts to regulatory bodies – stem from both outright *corruption* and more subtle forms of policy *bias*. Both sources of failure are found in the much criticized World Bank-funded dam in Lesotho. Allegations of large-scale bribery have been widespread. This, for some critics, explains why the project was initiated without the critical environmental

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[29] *Down to Earth* (New Delhi)), 15 August 2001.

[30] http://www.hrw.org/reports/1999/cambotox

studies on erosion and downstream impacts. Moreover, pervasive corruption in the project is thought to have made that the social fund, which accompanied this project of virtually no use to the affected communities. Anti-poor biases in the operating procedures of the relevant accountability agencies were also in evidence: none of the regulatory bodies, nor even the courts, were prepared to challenge the fact that the poor in South Africa's townships, who suffer from water inequity dating to apartheid, will not be able to afford the project's expensive water.

A more general bias-related accountability failure is the routine practice of overlooking gender differentials in the impacts of large dams. These include the widening of gender disparities in a society, either by imposing a disproportionate share of costs on women or through unequal allocation of benefits generated. For example, in Sri Lanka, the Mahaveli project introduced tenure arrangements that undermined women's rights to own and control land. The Sardar Sarovar Project in India neither allocates land in the name of married women nor compensates them for the loss of income previously generated through the collection of forest products.

Oversight mechanisms designed to increase the accountability of project implementation agencies for the impact of their actions on women have been a huge disappointment. For example, even though the Asian Development Bank approved a gender policy in 1998, a review of its dam projects indicates that the projects were largely oblivious to gender aspects of forced displacement. The World Bank's Operation Evaluations Department acknowledges that commitments to respect the specific needs of women have been ignored. The World Commission on Dams has issued excellent guidelines that include the need for informed and prior consent of indigenous people's and ethnic minorities, public acceptance before it is implemented and a thorough investigation of alternative projects. But they risk being ignored by countries and by agencies such as the World Bank, which is in fact watering down its own resettlement guidelines.

These norms continue to be flouted with impunity by national dam-building agencies. A good case in point is the proposed Ilisu dam in Turkey. The project is expected to create a large reservoir of 300 sq kms, violating the rights of thousands of Kurdish people. Internationally accepted practice dictates that an Environmental Impact Assessment Report (EIAR) for projects involving involuntary resettlement should include a full resettlement action plan. The Ilisu EIAR has produced only a partial plan – failing, for instance, to incorporate an 'indigenous peoples plan' or to assess the legal rights of the Kurdish minority – and even this has not been disclosed to those affected by resettlement. This undermines the capacity of opponents of the dam to demand further justification for the proposed actions. It is clear that the mere existence of international guidelines cannot produce accountability if oversight agencies lack the political will to enforce them, or if – as is often the case – there is no one that can be held accountable when agencies pass the buck among themselves.

Sources: Lyla Mehta, 'Beyond the World Commission on Dams', *Science and Public Affairs* (February 2001); World Commission on Dams, *Dams and Development: A New Framework for Decision-making* (London: Earthscan, 2000), Corner House Research et al, 'Resettlement: Review of EIAR for the Ilisu Dam and HEPP', mimeo, September 2001.

Another case of a cover-up – undermining the official transparency on which accountability must rest – comes from Bangladesh. Arsenic contamination of water from tube wells built by NGOs

for poor communities came to the attention of doctors at Dhaka Community Hospital (DCH) in 1996.[31] But the government had been warned of contamination in 1984, and found at least one arsenic-contaminated well, though it refused to make the information public, and none of the oversight agencies was able to force it to do so. Wells continued to be built. In 1993 both the government and the WHO were officially informed through a letter sent by an Indian doctor, an international expert on arsenic. But still no action was taken. In 1995 a delegation of representatives of the government and the Bangladesh offices of UN agencies went to an international conference on arsenic poisoning in Calcutta but on their return they continued sinking tubewells and refused to acknowledge the existence of arsenic. Internal accountability procedures were unable to force them to do so. When the DCH attempted to expose the problem, its doctors were accused by the government of being 'scaremongers' and officials attempted to intimidate the media into not reporting news of the allegations.

Finally, in January 1997, survey results from 14 of Bangladesh's 64 districts were published showing high levels of arsenic toxicity in tubewell water. It was another three months before the problem was publicly acknowledged in a WHO statement saying that arsenic in drinking water was a 'Major Public Health Issue' which should be dealt with on an 'Emergency Basis'. It was a further two years before UNICEF admitted publicly on US television that it had been 'a part of the problem'. Internal mechanisms within each of these agencies not only failed to fix the problem in a timely manner, but no disciplinary action was taken against officials responsible for the cover-up. An indication of the government's lack of commitment to seeking accountability was a warning from the Health Ministry to DCH staff who were organising a conference at which international experts were to debate the causes and solutions to the problem. The Health Ministry cautioned them against allowing anything 'subversive' into conference documents, and insisted that these be submitted for official approval before the conference.[32]

The courts have in some instances filled the accountability gap created by failed regulatory systems, oversight mechanisms and political processes. One study that documents the almost Kafka-esque bureaucratic breakdowns that have destroyed large parts of the urban environments inhabited by Calcutta's poor also highlights some of the ways in which the judiciary has stepped in to take up the slack. But even then it is mainly middle-class groups which possess the financial and social capital necessary to sustain public interest litigation cases on these issues. Investigative agencies and court officials tend to be dismissive of the evidence provided by poorer citizens, even when they form associations to press their claims.[33]

A study of the Nigerian oil industry highlighted the role of accountability failures within the legal system in producing detrimental environmental and social impacts. Adverse effects faced by the poor included soil, water and air pollution, and the loss of arable land. In this case, the capacity of the courts to handle highly technical detail – and their refusal to award damages or uphold

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[31] 'Poisoned tube wells built by NGOs in Bangladesh', *New Internationalist* 332, March 2001.

[32] Liz Mantell 'Millions in Bangladesh face slow poisoning from arsenic-contaminated water', *World Socialist*, 2 December 1998, http://www.wsws.org/news/1998/dec1998/bang-d02.shtml

[33] Hans Dembowski, *Taking the State to Court: Public Interest Litigation and the Public Sphere in Metropolitan India* (Delhi: Oxford University Press, 2001).

convictions of perpetrators – in the face of claims by judges that they are 'unqualified' to rule upon these matters has the effect of allowing industrial groups to operate with impunity.[34]

3.4 Physical Security

The poor are often the primary victims of violent crime and human rights abuses, whether committed by fellow citizens or by state agents such as the police. Certain types of violations of physical security affect specific vulnerable groups almost exclusively. Crimes such as rape and domestic battery, for instance, are mostly suffered by women and children, while racial and ethnic minorities can be subjected to systematic, organized physical assault.

While physical insecurity is itself a form of diminished human development, it also undermines health and well-being, and causes poor people to shy away from investing in their futures or broadening their income-generating efforts. Girls may not be sent to school for fear of sexual assault on the way there or in the classroom. Where violence is perpetrated by the police, and left unpunished by the courts, the poor rarely expect to receive fair treatment from state officials. They may avoid engaging with the state and accessing the public services that might help them out of poverty. The physical abuse of the poor and other socially marginalised groups by security personnel fundamentally weakens the state's role as a guardian of the moral order and a protector of its citizens. One reaction to a lack of safety and security is for communities to form self-help policing initiatives that can evolve into vigilantism, compounding the security problems of rival social groups, and undermining general respect for the law.

In some countries, the police, far from acting as defenders of public order and security for all citizens, can be the agents dispensing violence and terror. Or they can preside over polarized justice systems, by under-policing or ignoring lawlessness and violence in poor communities, whilst protecting the property and rights of the wealthy. Latin America is one of the regions in the world that suffers from very high levels of police abuse of suspects and prisoners, as well as the abuse of lethal force for the suppression of social movements or for the control of crime in poor neighborhoods. Police impunity in many Latin American countries is a legacy of years of military authoritarianism, where not only are the police accustomed to controlling, rather than protecting, but where the state's apparatus of coercion has sometimes been deliberately shielded or exempted from the institutions of democratic constitutionalism and civilian control as part of the deal struck by military authorities in transitions to democracy. In Columbia, and until recently, Brazil, the police were subject to their own system of justice through military courts whose conviction rate for torture and the abuse of deadly force is very low.

Outside of periods of political repression under dictatorships, the main victims of physical abuse in police custody, and arbitrary use of lethal force, are the poor and racial minorities. In Brazil, killings by the military police, who do much of the patrol work in urban areas, amount to a substantial proportion of all intentional homicides, particularly targeting young men and people

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[34] J. G. Frynas, 'Environmental and Social Impact of the Nigerian Oil Industry: Evidence from Nigerian Court Cases', Universität Leipzig, Institut fur Afrikanistik. University of Leipzig Papers on Africa, Politics and Economics, no. 33, (2000).

of African descent in low-income areas.[35] Though the military police have justified these killings as a means of controlling violent crime, studies of the thousands of police killings over the years show that more than half of those killed had never had any contact with the criminal process, and few were even suspected of a violent crime when they were shot.[36] Those who are arrested are likely to experience physical abuse in custody, or even torture, which reformers in the civil police system have acknowledged to be a common practice.[37]

This kind of police violence, which involves street shootings of suspects of ordinary crimes and routine physical abuse or even torture of suspects, amounts to vigilantism, bypassing the criminal justice system and tackling crime by eliminating criminals outright. It is vigilantism that specifically targets the poor. The police rarely kill middle-class people. Today in Latin America, the individuals targeted for killing, arrest and abuse in custody are those who commit the crimes of the poor, such as petty theft or illegal squatting. In some countries, the police are supported in this crusade against the poor by laws which give them extensive powers to detain categories of people deemed a threat to the status quo. In Venezuela, the 1939 Vagrancy Law allows police to detain persons deemed a social threat for up to five years. In Argentina, police edicts allow the federal police to detain people for up to 30 days for vagrancy, drunkenness, or even cross-dressing.

That impunity in the exercise of police powers constitutes a form of 'social cleansing' is supported by evidence indicating that the victims of police excesses are not just those accused of specific crimes, but also social outcastes, such as homosexuals or street children.[38] Other social groups whose associational power might threaten the political dominance of urban elites are also targeted. In Brazil and Mexico, the police have been associated for generations with killings of peasant squatters and union leaders in rural areas, to a degree that amounts to outright suppression of social movements.[39]

Multiple accountability failures produce this impunity in police behavior which fundamentally erodes the physical security of the poor. The administrative systems to discipline the police are weak. According to human rights monitors, police disciplinary systems are untransparent and in some countries, such as Ecuador and Paraguay, entirely unresponsive to complaints of torture.[40] A report on pervasive police abuse in the United States reinforces this point:

> Perhaps most important, and consistently lacking, is a system of oversight in which
> supervisors hold their charges accountable for mistreatment and are themselves reviewed

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[35] US Department of State, Country Reports of Human Rights Practices (1995).

[36] Paul Chevigny, 'Defining the Role of the Police in Latin America', in Juan E. Mendez, Guillermo O'Donnell and Paulo Sergio Pinheiro (eds), *The (Un)Rule of Law and the Underprivileged in Latin America*, (University of Notre Dame Press, 1999), p.55; and Caco Barcellos, *ROTA 66: A Historia De Policia Que Mata* (Globo: Sao Paulo, 1992).

[37] US Department of State, *Country Reports of Human Rights Practices* (1995), p. 345.

[38] Paul Chevigny, 'Defining the Role of the Police in Latin America', in Mendez et al (eds), *The (Un)Rule of Law…*, p. 61.

[39] Human Rights Watch, *World Report* (1996).

[40] Ibid, p. 57

and evaluated, in part, by how they deal with subordinate officers who commit human rights violations. Those who claim that each high-profile case of abuse by a 'rogue' officer is an aberration are missing the point: problem officers frequently persist because the accountability systems are so seriously flawed.[41]

The organizational culture of the police, which should act as an accountability institution by supporting professionalism and respect for the law, reinforces the difficulties of checking police lawlessness. It is characterized by tolerance for police brutality that acts as a rite of passage, inducting newer recruits into violent behavior, implicating them in misconduct, and thus discouraging them, and more senior officers, from whistle-blowing or pursuing reforms from within. This culture of corruption and brutality is exacerbated by problems common to the public services in developing countries: police are often under-trained, under-paid and under-respected, and therefore lack incentives to eschew the incomes and privileges which they earn through extortion and cultivating a climate of fear. Thus inadequate financial auditing to expose illegally acquired income is also a missing accountability ingredient here.

But the biggest culprit for the failure to establish democratic control over the police is the judiciary. Judicial systems support the police's assault on the poor by prosecuting and convicting crimes committed by the poor, and not elite crimes, such as tax evasion or financial crimes. The judiciary also fails to prosecute crimes from which the poor suffer more than other groups, particularly violent crimes in low-income neighborhoods or in rural areas. Brazil's Pastoral Land Commission notes that of the 1,730 killings of peasants, rural workers, trade union leaders, religious workers and lawyers committed between 1964 and 1992, only 30 cases had been brought to trial by 1992, and just 18 of these resulted in convictions.[42]

Not only does the judiciary show much less zeal in prosecuting crimes committed by the middle class than those committed by the poor against the property of the middle class, the judiciary has not been diligent in investigating or punishing police abuses. One reason for this is police interference with investigations and trials. Forensic evidence is tampered with or destroyed, and both witnesses and prosecutors are intimidated with threats of violence.[43]

Many countries lack effective agencies of oversight to regulate and reform police and justice systems, such as police complaints authorities or ombudsmen, independent judicial commissions or national human rights commissions. Where such agencies exist, they can be directly undermined by the police if they appear likely to threaten police impunity. For instance, in the Mexican state of Sinaloa, the president of the Human Rights Commission, Norma Corona Sapien, was murdered in 1990, and a police commander was accused of the killing. During the trial, six prosecution witnesses were murdered.[44] The ability of Human Rights bodies to contribute to

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[41] Human Rights Watch, *Shielded from Justice: Police Brutality and Accountability in the United States* (New York, 1998), http://www.hrw.org/reports98/police/uspo14.htm

[42] Cited in Paulo Sergio Pinheiro, 'The Rule of Law and the Underprivileged in Latin America: Introduction', in Mendez et al (eds), *The (Un)Rule of Law…,* p. 7.

[43] Paul Chevigny, Edge of the Knife: Police Violence in the Americas (New York Press, 1995).

[44] US Department of State, *Country Reports of Human Rights Practices* (1993), cited in Chevigny, *Edge of the Knife*, p. 62.

accountability can also suffer when they are 'captured' by individuals or groups lacking commitment to human rights (see Box 7, on El Salvador's Procurator for the Defense of Human Rights).

Box 7

<u>Why More Commissions are Not the Answer: The El Salvador Case</u>

The Procurator for the Defense of Human Rights (PDDH) was created in 1992 to combat democratic misuses of state authority, based on the classic model of the Swedish Ombudsmen. Eduardo Peñate Polonco was elected to head the PDDH in 1998 while under investigation by the same body for his previous conduct as a trial judge, including charges of corruption. The bitter political wrangling that accompanied this appointment demonstrates that, in practice, concepts such as judicial independence prove much less straightforward than expected.

Public recognition and support for the PDDH grew during the mid-1990s, yet the government was simultaneously 'de-institutionalizing' it, by among other actions, steadily reducing its budget. It was soon clear that the Assembly was not going to reappoint the activist Procurator. After a long deadlock over who to appoint as successor, the main parties finally found they could agree on Penate. At this time, he had nine complaints filed against him on such grounds as retardation of justice and violation of legal principles. The leftist FMLN withdrew support, but the rightist parties (the PDC, ARENA and PCN) remained firmly behind Penate, and so the appointment was confirmed.

In the following year, the PDDH 'suffered a sustained loss of credibility due to high staff turnover, apparent mismanagement of funds, and a visibly reduced emphasis on the investigation of human rights complaints'. A strong Procurator is not perceived to be in the partisan interests of the ruling legislative coalition. CSOs and parties with a stronger stake in the PDDH's vitality have been too fragmented and ineffective to resist.

<u>Source</u>: Michael Dodson, Donald W. Jackson, and Laura O'Shaughnessy, 'El Salvador's Procurator for the Defense of Human Rights and the Dilemmas of Institution-Building', *Human Rights Review*, vol. 2, no. 3 (2001).

Corruption and intimidation of the judiciary account in part for the failure to prosecute police impunity. But a bias in favor of police impunity and against a fair hearing for the poor is built into several important procedural aspects of the legal system. For instance, most Latin American justice systems rely heavily on the written dossier, putting a great value on confessions and other declarations by suspects and witnesses. This is characteristic of continental civil code traditions, in contrast to concentrated oral hearings. Human rights activists argue that judicial systems that

consider confession the key form of evidence create incentives for the use of torture.[45] The emphasis on written procedures also creates access barriers – alienating non-Spanish speakers and illiterates – and encouraging a delegation of judicial powers to poorly trained and inadequately supervised para-legals who have to prepare written dossiers on the basis of which a judge decides a civil case. This is a delegation of power to a less accountable actor, and it creates huge potential for abuse. Other access barriers that keep the poor from prosecuting abuses against them more effectively are laws of legal standing, which make it impossible for the poor to sue the government collectively in civil suits (for instance in public interest litigation) and thus overcome informational, financial, and psychological barriers to holding officials to account.

Perhaps the most disturbing accountability failure behind the inadequate prosecution of crimes of violence against the poor is at the level of public tolerance for police brutality directed against the poor. Although Latin American publics are as scandalized as any other by gross abuses of lethal force, particularly in the cases of police massacres of prisoners and suspects, many observers comment that there is a high level of approval for policing aimed at containing 'dangerous classes' and protecting the property and privileges of elites, even if this impinges on the right of the poor to physical security. A Brazilian human rights advocate, for instance, argues that 'throughout the continent, impunity is virtually assured for those who commit offences against victims considered "undesirable" or "subhuman"', and that the law and the police serve as a form of 'border guard' not just protecting elites, but acting as an elite instrument of domination and oppression.[46]

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[45] Ligia O. Bolivar, 'Comments', in Mendez et al (eds), *The (Un)Rule of Law…*, p. 43.

[46] Paulo Sergio Pinheiro, 'The Rule of Law and the Underprivileged in Latin America: Introduction', in Mendez et al (eds), *The (Un)Rule of Law…*, p. 7.

PART IV – MAPPING THE NEW ACCOUNTABILITY AGENDA

The institutional failures described in the previous section, and the stunning range of human deprivations they have permitted to persist, have catalyzed demands for the creation of more effective ways of delivering genuine accountability for the poor. But the heightened rhetoric about the importance of holding the powerful to account, and the proliferation of institutional experiments designed to operationalize this lofty aim, are only partly attributable to dissatisfaction with conventional mechanisms for checking the abuse of power. In the last two decades of the twentieth century, two huge currents of social, economic and political change have altered the understanding of accountability and profoundly influenced efforts to improve the functioning of accountability systems.

The first is *democratization*, or the great wave of transitions from authoritarian rule that saw scores of countries in Latin America, Africa, Asia and Eastern Europe adopting more or less liberal, representative systems of governance during the 1980s and 1990s. These political changes were accompanied by heightened expectations about the ability of representative government to improve respect for human rights and foster the redressal of past inequities. But the extent to which democratic systems in developing countries have resolved problems of social inequality, poverty, and conflict has been highly uneven. Democracy has not necessarily reduced social inequalities. Poor people, women and other socially excluded groups usually do not find themselves or their interests represented in politics. The role of traditional political parties in shaping inclusive policy platforms is being undermined by corruption, a loss of faith in party politics, or by identity politics designed to advance the interests of narrowly defined social groups. Many new democracies are facing profound destructive challenges as citizens' expectations of responsive governance are left unfulfilled. In some developed countries, low voter turn-out, declining party membership, and pervasive distrust of politicians, are also expressions of public skepticism about the responsiveness and accountability of public actors. The failures of liberal democracy are seen to have broken the direct link between people's voice and the accountability of public office-holders, ills which systems of representation were originally intended to cure. Key institutions that are part of conventional accountability systems in representative democracies, such as political parties and legislatures, are seen to have become less reliable as instruments for articulating and aggregating voice or for enforcing sanctions against improper public-sector actions.

The second, and related, current of change affecting accountability systems is *globalization*. Historically, liberal representative institutions were forged within the confines of sovereign nation-states and are associated with a territorially bounded definition of citizenship. Yet the interconnected social, political and economic relationships that characterize a more globalized

world have empowered a new range of actors – such as multinational corporations and transnational social movements – whose actions often escape popular control and yet affect greatly the survival prospects of the poor. The influence of the IMF or the World Bank, or the disciplines of global capital markets, can severely limit the range of policy options facing governments – or are at least seen to be limiting them. Global diasporas can alter the political balance back 'home', and change the ways that social groups perceive and pursue their interests. This proliferation of non-state and transnational actors poses enormous challenges for conventional accountability institutions. Conceived around state-run oversight mechanisms, they are increasingly unsuitable for protecting the interests of ordinary people lacking access to the benefits of this globalized world.

None of this means that people have given up on the possibility of accountability. In fact, globalization has arguably heightened expectations of accountability by creating a convergence of standards (most notably, despite continued disagreements, in the area of human rights), by extending the geographic reach of legal regimes and bringing misdeeds to the attention of the global media audience. Democratization, moreover, has raised the ability of publics to voice their discontent with the current arrangements for delivering accountability.

Nor have the challenges posed by imperfect democratization and unbalanced globalization led people to abandon the possibility of *redesigning conventional institutions* like electoral systems, courts, bureaucracies and auditing agencies. Arguably, the bulk of the world's efforts to improve accountability consist of what are by now fairly mainstream initiatives at fixing these traditional pillars of accountability:

- *Electoral reforms*, such as variants of proportional representation systems and 'reserved constituencies' for disadvantaged groups;

- *Legal and judicial reforms*, such as the creation of human rights commissions or specialized bodies for the promotion of women's interests;

- *Civil service reforms*, such as result-oriented management schemes and market-based approaches to service delivery; and

- *Reforms to systems of public-sector oversight*, such as the worldwide spread of anti-corruption commissions, ombudsmen, auditors-general and parliamentary public accounts committees, and the proliferation of programs designed to increase the technical capacity of those that already exist.

But while these kinds of efforts are widely regarded as necessary, they are increasingly viewed as insufficient for the scale of accountability-related deprivations facing a world of blurred jurisdictions in which new concentrations of power threaten the stability of long-accepted institutional forms.

It is these sorts of concerns that are driving the emergence of a *New Accountability Agenda*.

Many readers will question whether anything so grand as a new agenda yet exists – a view that reflects a healthy skepticism about such bold claims. There are, after all, a great diversity of agendas, and these are constantly in flux, changing in response to the unfolding of events. But the analytical purpose of this report is to support the claim that something like a new agenda is *in*

the making, and to outline its main features. The Report's other function – that of advocacy – is to promote the refinement of this agenda to ensure that it supports the objectives of human development.

But of what does this new agenda consist? Above all, the new accountability agenda is characterized by an *expansion* of accountability along the many dimensions of this concept. To put this slightly differently, there is now a wider spectrum of legitimate responses to the fundamental questions that must be asked when seeking to understand the reality of accountability. That is, the defining features of the new accountability agenda emerge from the answers to the questions 'who', 'from whom', 'where', 'how', and 'for what' – that is:

- *Who* is seeking accountability?
- *From whom* (or what) is accountability sought?
- *Where* (in which forums and over what extent of geographic coverage) is accountability being sought?
- *How* (through what means) are the powerful being held to account?
- *For what* (which actions, and against which norms) is accountability being sought?

Elaborating the contours of the new agenda along five different dimensions is a daunting task. Fortunately, its inherent logic reduces the number of analytical categories considerably. For while the *impetus* for a new agenda emerges from these five questions, the actual *manifestation* of the new accountability contains, in fact, only four key elements: (1) a *more direct role for ordinary people and their associations* in demanding accountability across (2) a *more diverse set of jurisdictions*, using (3) an *expanded repertoire of methods*, and on the basis of (4) a *more exacting standard* of social justice.

These four elements of the new accountability agenda thus correspond to the questions 'who', 'where', 'how', and 'for what'. As we shall see in Section 4.1, the question 'from whom' becomes less relevant when we recognize that the institutions from whom accountability is being sought are, more or less, the same as they have always been, and that it is the *New Roles* being played by those who seek to hold them to account that is the most significant change underway.

Further compression is achieved by examining two of the key questions – *where* accountability is sought, and *how* – in tandem, largely because they are so closely linked in terms of the practical operation of the new accountability agenda. Thus section 4.2 examines the *New Methods* for seeking accountability (the 'how') that have emerged in response to the changing shape of accountability *jurisdictions* (the 'where').

This leaves just one remaining question: *For what* are the powerful being held to account? Section 4.3, on *New Standards* of accountability, focuses on the changing norms against which the actions of power-holders are being judged.

Thus, the diverse efforts that are seeking to fill the gaps left by the failure of conventional accountability institutions, and which arguably comprise a new agenda in the making, are discussed in three distinct sections:

1. 'New Roles for Accountability Actors'
2. 'New Methods across New Jurisdictions'
3. 'New Standards of Accountability'

Making sense of something as diverse and amorphous as the sometimes ill-defined pressure for greater justice in the world – which, arguably, is what accountability for human development is all about – is a task fraught with methodological difficulties. Choices must be made. Accountability initiatives could, for instance, have been sorted according to the specific *activities* for which power-holders are being held to account, such as public spending, corporate behavior, and the promotion of national security, or the *instruments* used to promote accountability, such as market mechanisms and global treaties, or even the *actors* involved in these processes such as international organizations and transnational civil society networks. In fact, each of the subsequent chapters in this Report is focused on either an activity, and instrument or an actor. But for their larger relevance to be grasped, it is necessary to situate them first within the currents of thinking and practice that comprise the emerging agenda.

The real-world examples used to illustrate the importance of each of the new agenda's key features are not necessarily *typical* of accountability relationships as a whole. They are instances that capture what is emerging, and what might be built upon by people and institutions concerned to make the actions of the powerful better able to produce opportunities for poor and marginal people to improve their lives. Moreover, none of the experiments is *ideal*, either in conception or execution. Some of the most promising will be difficult, if not impossible, to replicate exactly. And while all are capable of helping to orient accountability towards the objectives of human development, some will be of more help than others.

4.1 New Roles for Accountability Actors

There is a widespread perception of a vast expansion in the <u>type and diversity</u> of actors involve in accountability processes – that is, in the range of *agents* seeking accountability and *objects* being held to account. This is not, strictly speaking, true.

There has, however, been an increase in the sheer <u>number and visibility</u> of both agents and objects. National chapters of the Berlin-based Transparency International continue to be born, and the proliferation of national Human Rights Commissions persists. This clearly raises the number of agents out there. New objects, from whom accountability is sought, are also to be found: the World Trade Organisation, established in 1995, is perhaps the most obvious case, but multinational corporations are often cited in this connection as well.

And yet, while some of the actual organisations themselves might be newly established, the range of actors – both agents and objects – has not really expanded much at all. The essential <u>types</u> remain the same.

Agents demanding accountability, such as international NGOs, have long been with us, as have investigating commissions. The idea of civil society organisations acting as accountability agents is nothing new – indeed, it is a cornerstone of liberal political theory. They are a classic catalyst

for vertical accountability. There is also a remarkable constancy among the type of *objects* being held to account. Even that most high-profile of 'new' accountability objects (the global corporation) is not only not new, but has long been subjected to accountability demands: multinational firms have had to answer to regulators in home and host governments, to shareholders, to trade unions, to the courts and to publics at large. Even the WTO's predecessor, the General Agreement on Tariffs and Trade (GATT), was answerable to the member-states of which it was collectively constituted.

What *has* changed are the tools used by agents to achieve their objectives, and the area over which they seek to impose accountability. Both of these issues – and indeed the inter-relation between the geographic scope of operation and the choice of technique – are addressed in the next section (4.1) on 'New Methods across New Jurisdictions'. And objects of accountability must adapt not only to these new methods, but also to rapidly changing norms of conduct, the subject of the subsequent section (4.2) on 'New Standards of Accountability'.

These two dimensions of change, however, imply a third, which is that accountability actors – even if they are still recognizably the same – find themselves playing *new roles*, performing alongside actors with whom they had rarely shared the stage. No actor has been liberated from type-casting more than civil society. Their dramatic range expanded, citizens and their associations are playing three new roles:

1. First, they have assumed positions as quasi-official agents, either attempting to substitute for failing state accountability institutions, or *participating directly* in formal accountability processes as fully vested players.

2. Second, they are playing a more central role in *creating new formal accountability mechanisms*. Rather than just being self-replicating, civil society is driving the proliferation of official institutions that seek accountability from governments, business and other objects.

3. Third, civil society organisations have *themselves* increasingly become objects of accountability.

In the discussion that follows, we treat these three trends in turn, focusing the analysis on the extent to which each new role has (and has not) opened spaces for disadvantaged people to benefit from changing relationships of accountability.

4.1.1 Direct Engagement in Accountability Functions

To understand the significance of citizens and their associations participating directly in official accountability mechanisms, it is helpful to return to the distinction between horizontal and vertical forms of accountability. While citizens and civil society have traditionally been relegated to participation in vertical channels of accountability – voting, advocacy – they have now begun to take part in those horizontal channels which, because they involved state agencies checking the power of other state agencies, excluded non-state entities by definition. In other

words, the search by citizens and their associations for new *roles* has caused the vertical-horizontal distinction to blur.

This blurring represents a shift towards augmenting the limited effectiveness of civil society's watchdog function by breaking the state's monopoly over responsibility for official executive oversight.   This new 'hybrid' form of accountability[47] is not hugely widespread, but a number of recent examples do suggest insights as to how citizens might prompt more satisfactory performance from authorities, or even see sanctions enforced for manifestly poor decision-making or outright corrupt behaviour. For instance, the Podar Cuidano, an Argentine civil society organisation (see Box 8), has played a role similar to that of an electoral commission, and indeed has begun to engage directly with this institution

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Box 8

<u>Shifting Roles for Non-State Actors: The Poder Cuidano in Argentina:</u>

The case of the Poder Cuidano in Argentina exemplifies two of the key shifts underway in the roles undertaken by accountability actors. First, by closely monitoring the internal workings of political parties, the PC is a civil society organization that has assumed some of the accountability functions that previously were exercised solely by state agencies such as the electoral commission. As one analysis put it, the PC has 'filled the vacuum left by government institutions that were supposed to bring transparency to the electoral process, but failed.'[48] Second, the PC's scrutiny of political parties demonstrates the extent to which parties, like many other traditional agents of accountability, have increasingly become the objects from whom accountability is sought.

The PC's approach to 'developing mechanisms of citizen control' involved the creation of, first, a database of Argentine politicians – including their professional profiles and political platforms – and then subsequently, 'a project aimed at full-fledged financial disclosure of electoral campaigns for the Federal District's city council (1997 and 2000) and for presidential elections (2000).[49] This kind of transparency, which included candidates declaring their personal assets, did not in itself provide all of the elements of accountability. But it did add an increased element of *answerability* to complement the process by which an *enforcement* mechanism – in the form of voter choice – could be exercised by ordinary people over their elected representatives. In this sense, it was a substantial step towards making 'politicians more accountable to public opinion by requiring them to comply with normative standards of democratic governance…turning what has traditionally been either a passive or partisan voter into an

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[47] Anne Marie Goetz and Rob Jenkins, 'Hybrid Forms of Accountability: Citizen Engagement in Institutions of Public-Sector Oversight', *Public Management Review*, vol. 3, no. 3 (September 2001), pp. 363-83.

[48] Luigi Manzetti, 'Keeping Accounts: A Case Study of Civic Initiatives and Campaign Finance Oversight in Argentina', Working Paper No. 248 (College Park, Maryland: Centre for Institutional Reform and the Informal Sector, 2000), p. 35.

[49] Ibid, p. 36.

informed citizen'.[50] Moreover, the data on personal assets could then serve as baseline information against which successful candidates' financial rectitude could subsequently be assessed by comparing their assets prior to election with those held after a term in office.

The PC also created a methodology whereby the spending of parties during election campaigns could be monitored. This is ordinarily a job for an electoral commission, but where such institutions are not fulfilling this important function, a space has been created for non-state actors to assume these duties – in some cases in partnership with the state, and in others in a direct bid to shame the relevant state institutions into performing their appointed functions more effectively.[51]

Sources: Luigi Manzetti, 'Keeping Accounts: A Case Study of Civic Initiatives and Campaign Finance Oversight in Argentina', Working Paper No. 248 (College Park, Maryland: Centre for Institutional Reform and the Informal Sector, 2000), p. 35; Roberto de Michele, 'The Role of Civil Society in Fighting Corruption: The Experience of Argentina', mimeo, Buenos Aires, 1999.

But by far the clearest case in which the vertical and horizontal forms of accountability are being hybridized is found in the north Indian state of Rajasthan, where a grassroots organization called the Mazdoor Kisan Shakti Sangathan (MKSS), or Workers and Farmers Power Association, has turned ordinary people into financial auditors, substituting for inefficient and corrupt official auditing agencies. Its investigations have in many cases catalyzed state agencies to then continue the process of tracking expenditure. And the result has been legislative reform to the system of local government so that, throughout Rajasthan, village-level accounts now *must* be subjected to scrutiny by a village meeting to which all residents are invited.

The MKSS's campaign to secure minimum wages for employees on government drought-relief works revealed the role of corruption in the underpayment of wages. It became clear that local authorities were billing the central and state governments for amounts that far exceeded what workers were paid. To combat this and other forms of fraud that deprived the poor of development resources – such as inflated estimates for public-works projects, the use of poor-quality materials and over-billing by suppliers – access was required to key financial documents that have long been kept secret by local officials. The MKSS needed not just aggregate balance sheets, but also supporting documentation, like employment registers and bills submitted for the purchase of materials, which could then be cross-checked against official data.

Until a right-to-information law was passed in Rajasthan in 1999 – largely as a result of the protest and lobbying efforts of the MKSS – its activists obtained this documentation by appealing to the virtue of sympathetic bureaucrats. But its key innovation was the *jan sunwai* (or 'public hearing'), an open-air forum where the government's official records are presented alongside the testimony derived from interviews with local people. The information is read aloud to assembled villagers, who are invited to give further testimony that identifies discrepancies between the official record and their own experiences as labourers on public-works projects or applicants for

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[50] Ibid, p. 37.

[51] Roberto de Michele, 'The Role of Civil Society in Fighting Corruption: The Experience of Argentina', mimeo, Buenos Aires, 1999.

means-tested anti-poverty schemes. Through this direct form of 'social audit' many people discovered that they had been listed as beneficiaries of anti-poverty schemes, though they had never received payment. Others were astonished to learn of large payments to local building contractors for works that were never performed. This approach depends upon a principle of collective and very local verification of official accounts, as it is only at the local level that the many small diversions of funds, which go unnoticed in massive formal audits, can be detected.

The involvement of civil society organizations in the once-closed arena of financial auditing is in many ways a natural extension of the movement over the past decade for citizens' groups to participate in budgeting. This has taken two main forms – formulating the budget, and analyzing it after the fact – which correspond to the categories of *ex ante* and *ex post* accountability outlined in Part II of this chapter. Perhaps the most well-developed examples of participatory budget formulation are to be found in the experience of the municipality of Porto Alegre, Brazil.[52] Budget analysis by civil society organizations – either after they have been initially presented for legislative endorsement, or indeed after they have been executed – has also flourished in recent years, and indeed budget analysis from a gender perspective is one of the accountability tools discussed in this report. But while both may be important in helping to provide a framework in which a more precise form of *answerability* might be engendered, neither possesses the potential for catalyzing the *enforceability* that is implied by direct involvement of citizens in detailed auditing functions. This is because discrepancies located in financial accounts can serve as documentary proof of malfeasance, and thus trigger sanctions against those who abuse the public trust.

There are, however, some indications that the focus is shifting from the 'softer' form of accountability found in budget analysis to the 'harder' variety represented by popular auditing. An early move in this direction was the work of the Mexican civil society network FUNDAR, which helped to bring an end to the use of a Presidential secret account that operated independently of congressional approval.[53] In Canada, Native American women have 'broken ranks' with their tribal communities to form something called the First Nations Accountability Coalition. Affiliated groups in British Columbia have organized meetings at which they 'prod tribal leaders to open up closely guarded tribal accounts for public scrutiny'.[54] In the summer of 2000, one of the movement's leaders collected testimony at 13 public hearings across Canada, and presented the findings, in the form of a 200-page report, to the Canadian Parliament. The First Nations Accountability Coalition faces one of the same obstacles as the MKSS: official secrecy. Despite Canada's progressive freedom of information legislation, and the fact that many tribal budgets are largely funded by the federal government, the accounts are not made publicly available.

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[52] Abers, Rosalind, 'From Clientalism to Cooperation: Local Government, Participatory Policy, and Civic Organising in Porto Alegre, Brazil', *Politics and Society*, vol. 26 no.4 (1998), pp: 511-538.

[53] Warren Krafchik, 'Can civil society add value to budget decision-making? A description of civil society budget work', Background paper for the Exploratory Dialogue on Applied Budget Analysis as a Tool for the Advancement of Economic, Social and Cultural Rights, International Budget Project, mimeo (Washington, D.C, n.d.).

[54] 'Canada's Tribal Women Fight (Mostly Male) Graft', *New York Times*, 1 January 2001.

The notion that citizens and their associations are legitimate participants in accountability processes conventionally confined to state agencies is increasingly found in mainstream development organizations. The Poverty Reduction Strategy Papers (PRSPs) required of all countries seeking debt relief under the Enhanced Highly Indebted Poor Countries Initiative (HIPC2) must spell out not only national priorities for combating poverty, but also mechanisms for monitoring the achievement of the stipulated objectives. Involvement of civil society organizations in monitoring the achievement of poverty targets is in some cases limited to participation in data analysis activities. But in a few cases it has gone beyond this, and indeed beyond the monitoring of aggregate expenditure outturns across major budget headings. In Uganda, a tripartite system (involving government, NGOs and donors) for tracking the flow of funds from the finance ministry through line ministry accounts down to service-delivery units such as schools has begun operation.[55] Similar plans are afoot in Malawi, where the Malawi Economic Justice Network, a coalition of civil society organizations, is seeking to extend this concept all the way down to the auditing of input purchases, whether schoolbooks, maize seeds or medicines.[56]

These rather exceptional cases must be clearly distinguished from other forms of citizen engagement that often amount to little more than 'barking dog' advocacy on the margins, as when citizens monitor public perceptions of service delivery to highlight discrepancies between popular opinion and official records of targets met. In the absence of openings for direct citizen influence on service providers, one civil society response is to publicise details about the gaps between government commitments and actual delivery, in the hope of embarrassing officials into a response. A good example of this is the 'Report Card' method used by the Public Affairs Centre, an NGO based in the south Indian city of Bangalore. Report Cards on urban services reflect the findings of public opinion surveys conducted in low-income neighbourhoods in major Indian cities. They report on the perceived quality and appropriateness of a range of public services. They are compiled by professional survey teams, using quantitative methods, in the hope that the unimpeachably rigorous research techniques will enhance the credibility and legitimacy of the results. These surveys have both merits and shortcomings,[57] but most importantly they do not involve financial or even actual performance auditing, and thus do not represent a challenge to the state's monopoly over horizontal institutions of accountability.

On the other hand, when such mechanisms are combined with other, more systematized, forms of institutionalizing voice, more substantial movement in the direction of genuine accountability can result. Fiszbein found that in Colombia citizens' direct participation in service delivery, combined with instruments for surveying local opinion, 'promoted accountability' by increasing citizens' awareness of local governments' actions, thereby enhancing their ability to assess the

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[55] Government of Uganda (Ministry of Finance, Planning and Economic Development), 'Poverty Monitoring Strategy for Uganda' (Kampala, October 2000); and Uganda Debt Network, 'Civil Society Participation in Uganda's Poverty Monitoring System' (Kampala, June 2001).

[56] Malawi Economic Justice Network, 'Outline of Proposal to Monitor Priority Poverty Expenditures' (Lilongwe, August 2001), p. 18.

[57] Rob Jenkins and Anne Marie Goetz, 'Accounts and Accountability: Theoretical Implications of the Right to Information Movement in India', *Third World Quarterly*, vol. 20, no. 3 (1999), pp 603-22

validity of government justifying rationales[58]. Increased participation led to increased demands for effective local governments, which in turn increased the political costs of inefficient and inadequate public decisions. One result was that local authorities began sanctioning bureaucratic personnel (mainly through transfers) in order to satisfy local expressions of voice.

It is important to recognize that the movement towards direct civil society participation in official accountability processes has taken shape only gradually, and they have drawn inspiration from existing institutions. In countries with long-established democracies and constitutional rights regimes, such as India and the USA, citizens and their associations have used their right to litigate as a way of bringing themselves directly into what were once closed official processes.[59] Indeed, principles of hybrid accountability are inherent in judicial branch of government. It is clearly an institution of public oversight, operating in the mode of horizontal accountability – one part of the state checking potential abuses by others. But when adjudicating cases brought by members of the public, the judiciary's orientation shifts to allow it to act as a mediator between the otherwise incommensurable vertical and horizontal axes. It is through this means that citizens can begin entering the horizontal process of in-depth monitoring of government. Using the tools available through litigation, individual citizens and activist groups become part of an official fact-finding process. Discovery motions lead to the availability of government-held information that can incriminate officials who may never have expected such detailed scrutiny of their decisions.

Moreover, courts in some countries are being reformed to increase access and direct participation of poor people. This has involved making legal language less archaic, and removing some of the power of intermediaries. Through the expanded jurisdiction for Public Interest Litigation (PIL) in some countries, people's organizations have achieved a rare level of direct involvement in generating accountability to the poor. (Another important development is the growing application of international human rights law in domestic courts, or the growing recourse to international tribunals when domestic options have proven unsuccessful – discussed in further detail in Section 4.2.1).

In many countries the law only allows the injured party or an individual with a direct legal interest to bring a case to court. This has posed obstacles to access to justice for the poor, since, acting in an individual capacity, they may lack the resources (legal literacy, money to meet the costs of litigation, etc) to file a case. Also, the focus on an individual plaintiff makes it difficult to bring cases of concern to a broad class of disadvantaged citizens. In recent years countries such as South Africa, India, and Bangladesh have liberalized the rules of standing so that anyone acting on behalf of a person or a group of people can bring a case to court. This simple change has greatly enhanced poor people's access to justice. One of the main innovations of India's celebrated Public Interest Litigation (PIL) movement is also a simple procedural reform, initiated by the judiciary itself: any citizen is allowed to file a case simply by writing a letter to the court. This has had an enormous impact on widening access to justice for the poor and other categories of marginalized people. The PILs filed by such people or their supporters have resulted in legal

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[58] Ariel Fiszbein, 'Emergence of Local Capacity: Lessons from Colombia', Poverty Reduction and Economic Management Group Working Paper (Washington, DC: The World Bank, 1997).

59 D.S. Grant, 'Allowing citizen participation in environmental regulation: An empirical analysis of the effects of right-to-sue and right-to-know provisions on industry's toxic emissions', *Social Science Quarterly*, vol. 78, no. 4 (1997), pp. 859-873.

and policy reform addressing bureaucratic corruption and inefficiency, the social oppression of women and 'backward' caste groups, industrial pollution and environmental degradation, the treatment of displaced persons, and state violence. Indian courts have also experimented with other procedural changes such as the use of non-adversarial proceedings and the appointment of commissions of inquiry to report on matters of common interest to the poor.

Organizations representing groups of disadvantaged people have litigated directly against state accountability institutions themselves, charging them with failing to perform specified duties – whether due to incompetence, corruption, inadequate resources, or insufficient legal authority. By using court discovery procedures to obtain sensitive information, non-governmental actors have demonstrated the role that state oversight agencies should have assumed. And by engaging in the process of demanding reason-giving, in a forum that institutionally *requires* formal responses, PIL has had at least a symbolic impact, and in some cases has arguably contributed to the mobilizational capacity of the litigating organizations, thereby strengthening other forms of voice. Even so, the proportion of poor people (or their organizations) able to use courts and legal process effectively remains minute.

PIL has shown that it is possible for citizen-litigants to enter into legal-constitutional accountability institutions to become active demanders of answerability in a forum that carries the weight of enforceability. This combination of answers and sanctions is precisely what most citizen-initiated approaches to 'hybrid' accountability aim to achieve. However, there are important barriers to the effective use of PIL, particularly by poor people, including cost, time, biases in the courts, and the near-impossibility of having favourable decisions *implemented* by a hostile bureaucracy.

PIL has arguably also triggered a subsequent interest by social movements in adopting, almost mimicking, legal processes. This has taken the form of procedurally complex public hearings, of which the MKSS's approach is but one variety. Non-governmental groups in a range of countries hold 'public hearings' when formal accountability institutions – such as environmental regulators, police investigators, or human rights commissions – fail to provide information, consult citizens or conduct thorough investigations. This is particularly true for controversial infrastructure projects likely to have damaging environmental impacts, such as large dams (see Section 3.3). The logistical arrangements surrounding the collection of evidence, both for one-off hearings as well as for the researching of faux-official 'status reports' on incidents of police violence, are formidable and represent a 'legalisation' of social action. Instead of demanding an enquiry, such activist-led initiatives conduct enquiries themselves, and if successful in conveying their evidence to a larger constituency, are sometimes in a strong position to demand at least *ex-officio* inclusion in official investigations.

The substitution of citizens' informal institutions for state accountability institutions inevitably runs into problems of legitimate authority, controls on power, and at the same time, limited impact. Where such institutions function as, in effect, surrogate courts, without a democratic mandate or due and universally applied process, and with, in the end, rather limited resources for investigating official wrong-doing, some miscreants may evade prosecution, while others may become scapegoats. It is precisely for this reason that the MKSS stages its public hearings infrequently, and with great care, and is now focusing its efforts on generalizing this process through the recently reformed local government institutions. But these problems points to the

desirability and indeed necessity (from a civil society point of view) of ensuring that efforts to engage in horizontal accountability functions have as their ultimate objective inclusion as equal participants in formal state institutions of oversight.

4.1.2 Civil Society Involvement in the Creation of New Official Accountability Institutions

By instigating the creation of new international regimes on issues like the environment, human rights and gender discrimination, NGOs are playing roles in forging new inter-state accountability institutions. While there are several historical precedents for this type of activity – the international anti-slavery movement in the 19th Century being the classic example – over the past decade transnational civil society networks have grown deeper and broader, creating new moral and epistemic communities.

Keck and Sikkink see growing 'transnational advocacy networks' as comprising non-governmental research or advocacy organizations, local social movements, foundations, the media, churches, trade unions, parts of intergovernmental organizations and parts of national governments. Their tactics involve generating politically usable information, calling upon symbols and stories to make sense of situations to distant audiences, and holding powerful actors accountable for their previously stated policies or principles.[60]

One of the first global-level successes occurred when NGO advocacy on environment issues played a substantial role in the adoption of the Montreal Protocol on Substances Depleting the Ozone Layer in 1987. Comparable achievements became more common in the late 1990s. During that period, the NGO Working Group on the Security Council emerged as an important interlocutor of the UN's most powerful body, while the Jubilee 2000 Campaign changed thinking and policy on poor countries' international debt. NGO mobilization played a significant part in forcing governments to abandon secret negotiations for the Multilateral Agreement on Investments in 1998.[61] One of the most clear-cut successes was on the banning of antipersonnel landmines, which went from being seen as conventional weapons to anathema in a relatively short space of time (see Box 9).

Box 9

<u>The Role of Civil Society in the Creation of the Ottawa Mine Ban Treaty</u>

The International Campaign to Ban Land Mines (ICBL), a diverse NGO coalition, was the prime mover in the Ottawa Mine Ban Treaty of December 1997, which banned the use of anti-

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[60] M. E. Keck and K. Sikkink, *Activists Beyond Borders: Advocacy Networks in International Politics*. (Ithaca: Cornell University Press, 1998).

[61] http://www.globalpolicy.org/ngos/analysis/anal00.htm

personnel landmines. Later that year, the ICBL, along with its founder Jody Williams, were awarded the Nobel peace prize for helping to create a fresh form of diplomacy.

The ICBL contributed to a rapid reversal in international policies toward land mines. It was only in 1995 that Belgium became the first country to pass domestic legislation banning the use of landmines. Just 32 months later, 122 states signed the comprehensive ban convention. Representatives of NGOs were heavily involved in the process. Many were included states' delegations to preparatory meetings and review sessions, part of a new pattern of 'unconventional diplomacy' involving civil society in international negotiation processes.[62]

In October 1996 a conference was held in Ottawa to promote a pro-ban movement. It was attended by ICBL members and government representatives. About fifty government representatives made a final declaration for an immediate and total ban. A committee was established to draft the treaty in Vienna in February the following year, thus beginning the 'Ottawa process'. As a result of the ICBL's prodding, this process shifted away from the conventional (and slower) tracks – the Review of the 1980 Convention on Certain Conventional Weapons process and the negotiations within the UN Conference on Disarmament. At the end of the Brussels conference held in June 1997, 97 countries signed what was known as the 'Brussels Declaration' to demonstrate their commitment and willingness to sign the Ban Treaty at the end of the year.

The significance of this case is that transnational civil society mobilized action on an issue that had previously been seen as the business of states alone. Weapons and security are at the heart of state sovereignty. NGOs played a major role in seeking to create an official intergovernmental mechanism through which states could be held accountable for commitments to humane standards in the conduct of warfare. NGOs initiated the landmine ban by placing the issue on the international political agenda, resulting in intense media and public attention, or 'cognitive agenda setting'. Perhaps as importantly, they helped to articulate and codify the landmines issue into international law by changing how governments perceived the legality of landmines and the effects of landmine use – which has been called 'norm agenda setting'.[63] NGOs thus became 'moral entrepreneurs' whose tactics included 'grafting' taboos from previously de-legitimized practices of warfare (e.g. chemical weapons) onto the landmine issue, and instigating and exploiting debates that put mine proponents on the defensive. [64] It has also been noted that states have proved receptive to being 'taught' what is appropriate or useful, rather than just responding to external or internal material demand.

Sources: R. Price, 'Reversing the gun sights: transnational civil society targets land mines', *International Organization*, vol. 52, no. 3, (Summer 1998); K. R. Rutherford, 'The evolving arms control agenda: implications of the role of NGOs in banning antipersonnel landmines', *World Politics*, vol. 53, no. 1 (October 2000).

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[62] R. Price, 'Reversing the gun sights: transnational civil society targets land mines', *International Organization*, vol. 52, no. 3, (Summer 1998).

[63] K. R. Rutherford, 'The evolving arms control agenda: implications of the role of NGOs in banning antipersonnel landmines', *World Politics*, vol. 53, no. 1 (October 2000).

[64] Price, 'Reversing the gun sights'.

The Coalition for an International Criminal Court (CICC) was indispensable to the 1999-2000 Rome treaty establishing a permanent International Criminal Court (ICC). NGOs played an important role in supporting a series of regional conferences (Dakar, Guatemala City, Canberra) that spurred awareness and acted as training sessions on the issues raised by the draft text. The CICC coordinated more than 200 NGOs attending the conference, and promoted new forms of interaction between governmental and non-governmental actors. During the conference they were given space to do a tremendous amount of advocacy work, and the press likened the NGO influence to that of a major government. The extent of 'partnering' with governments and the degree of consultation with the UN Secretariat provided a model for future negotiations.[65] Another important element was the ability of NGOs to mold negotiations towards issues that affected marginalized groups. Thematic caucuses, such those devoted to women's and children's issues, played a vital role in ensuring that issues like gender crimes and crimes against children were addressed in the treaty, and that adequate provision was made for victim and witness protection.

NGOs have also played significant roles in *following up* international treaties and major conferences. In the follow up to the Fourth World Conference on Women in Beijing in 1995, women's NGOs have been very active in creating national institutional mechanisms for the advancement of women. National machineries have a crucial role to play in monitoring the implementation of the Beijing Platform for Action and are thus useful – though not unproblematic – mechanisms for accountability. They have the difficult task of analyzing how government actions result in tangible changes in women's lives. For example, in Jordan, where the national machinery is composed of high-level government officials and representatives of civil society, each participating government and civil society body is required to submit regular progress reports,[66] which can lead to acrimonious disputes. Despite these and other difficulties, civil society has demonstrated a capacity to bridge the gap between the creation of institutions for international accountability – bodies to which governments must answer – and the establishment of national mechanisms that can engage in domestic enforcement action against agencies that fail to fulfill these commitments.

4.1.3 From Agents to Objects

Private actors such as national and local NGOs, religious associations, political parties and international public actors such as the UN, the World Bank, and the IMF, which have been so important in seeking to improve national accountability institutions, are increasingly themselves coming under the glare of public scrutiny to answer for their use of resources and the relationship between leaders and members. In part this is motivated by a desire to avoid charges of the 'pot calling the kettle black'. Those challenging corruption must show themselves to be beyond reproach. Political parties are coming under scrutiny for this reason, with particular attention being paid to the ways they obtain campaign finance, as well as to their mechanisms for leadership selection and internal democracy (see Box 8 on the Podar Cuidano).

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[65] Human Rights Watch. *World Report* (1999).

[66] http://www.un.org/womenwatch/daw/csw/ecn6-2000-pc2.pdf

The interest in holding non-public actors to account is also triggered by accountability conundrums caused by the growing power of these actors in public affairs. At local levels, where NGOs and other private actors are taking on tasks conventionally managed by the state – for instance the delivery of social services, or the management of public amenities – the *lines of accountability are becoming increasingly blurred*. The privatization of service delivery and some other state functions has confused the public perception of the formally accountable actor: is it the state or the private provider? This has catalyzed the search for means through which communities can hold these actors directly to account. At the international level the power of actors such as corporations or global economic institutions can have the effect of *reversing the lines of accountability* such that the state responds to these actors rather than the other way around. This limits the mechanisms available to control their actions, and has provoked the extension of accountability jurisdictions into the global arena, which is an important focus of the next section (4.2).

NGOs, though not subject to the same accountability relationships that govern the public sector or industry, are subject to the need to maintain their legitimacy with members and client groups, as well as credibility with funders and government agencies with which they interact.[67] Nevertheless, there is increasing concern about generally weak accountability systems in development NGOs.[68] Accountability gaps can result in undetected and unprosecuted mis-treatment of beneficiaries and staff, as well as financial irregularities. For instance, in Orissa, India, where NGOs employ over 20,000 people, junior-level NGO workers have lodged a series of complaints of abusive treatment and even rape by superiors with the National Human Rights Commission and the State Women's Commission.[69] A common accusation leveled at NGOs in many developing countries is that they are fronts for harvesting the foreign funds available for this sector. These are known as 'briefcase' NGOs in Uganda. Perhaps a more common problem, however, is that the lack of effective internal and external oversight mechanisms, combined with inadequate leadership and weak constituencies, places some NGOs somewhere between a confidence trick and plain inefficiency.[70]

In this context, some NGOs are keen to steal a march on their critics by cleaning up their internal accountability mechanisms. Examples of NGO accountability innovations designed to build direct answerability to service users include social audits of project implementation and public audits of accounts. This exercise can satisfy critics concerned about a lack of transparency in the use of foreign and government funds. In the case of the public audit held by the Social Work and Research Centre in India in 1997 (see Box 10), this demonstration of probity and transparency served also to build the credibility of the SWRC's support for anti-corruption campaigns in the state. But where these new institutional mechanisms are not in place, less formal avenues of accountability can come into play to check abuses by NGOs. As one report on the role of NGOs

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[67] Peter Schwartz and Blair Gibb, *When Good Companies Do Bad Things* (New York: John Wiley & Sons, 1999), pp. 132-138.

[68] Michael Edwards and David Hulme (eds), Non-Governmental Organisations – Performance and Accountability: Beyond the Magic Bullet (London: Earthscan Publications, 1995).

[69] 'The Rot Within: Junior Workers are Harassed by their Seniors and Toothless Laws Fail to Protect Them', *India Today*, January 8, 1999, p. 41.

[70] Aili Mari Tripp, *Women and Politics in Uganda,* (Oxford: James Currey, 2000), p. 117.

in relief operations in Kenya put it: 'Increasingly, the beneficiaries themselves decide who gets what', which means that in practice, 'the NGOs are accountable'. One aid beneficiary was quoted in this report as saying that 'if Oxfam misbehaves, we'll tell the government: get them out of here. We think we can do that'.[71]

Box 10

Public Audits for Transparency in the Voluntary Sector

Some development NGOs are taking steps to enable their memberships and critics to scrutinize their activities. In July 1997 the Social Work and Research Centre (also known as the Barefoot College) in Rajasthan (India) threw open its books for public scrutiny. In an extremely well-publicized event, it convened a panel of assessors composed of eminent people from the media, judiciary, police, and social work to preside over a review of its spending over the previous ten years. Over 300 villagers, as well as local and state-level politicians and the press, were invited to scrutinize records of spending on night schools, family planning camps, employment-generation schemes for women, and projects on drinking-water and solar-lighting and reclaiming-wastelands. Receipts, invoices and wage-employment registers were on display, as were details and statements of all bank accounts held by the NGO. The salary of the director was revealed, as were the salary registers from 1986 to 1996 for 400 full- and part-time staff. Amounts received from foreign funders and government sources were detailed, along with any other sources of income such as awards from foreign organisations. Details of foreign trips taken by the director and others were provided.

Though this was an impressive display of transparency, through which the SWRC was subjected to probing questions from its local constituents and outside critics alike, it is worth noting that it has not become institutionalised as an accountability mechanism, nor have rights or procedures been established to enable SWRC's beneficiaries to review spending regularly, demand a justification for spending from the leadership or enforce sanctions for inappropriate spending. The exercise was a response to allegations from local and state politicians that SWRC was channeling foreign funds to a local organisations that was not registered to receive outside funds, not to demands from the membership to review spending.

In contrast, victims of the devastating cyclone which hit the east Indian state of Orissa in early 2000 *did* begin to pose questions about the uneven coverage of NGO and government relief operations. To answer to these concerns, Action Aid India held village-level 'social audits' in Orissa to review its emergency work. These were public hearings to audit the Food-for-Work relief programmes and the delivery of other relief supplies like housing material and emergency rice. They served as an opportunity to criticize the organization of relief-delivery and to air complaints abut the composition of disaster-recovery committees – for instance, about the exclusion of women from these committees. They enabled the NGO to provide a more appropriate service. But, like the SWRC's public audit, though this method imposes requirements of answerability on the NGO leadership, it does not provide NGO clients with means of enforcing sanctions should the need arise.

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[71] 'NGOs Step in Where Governments Fear to Tread', *Financial Times*, 15 July 2001.

Sources: Bunker Roy, 'Transparency in the Voluntary Sector: A First Step', *Economic and Political Weekly*, 29 November, 1997; ActionAid India, 'Social Audit Update', Super Cyclone Social Reconstruction Project, (Kherasa, Jagatsinghur, Orissa, February 18, 2000).

Successful national and global NGOs are undergoing organizational transformations which make them more closely resemble large corporate bodies than the small voluntary societies from which they originated. Historically they have tended to substitute informal control mechanisms, which rely upon the incentives created by shared ideologies or faiths, for the 'harder' accountability mechanisms involved in formal bureaucratic reporting measures. This is now proving inadequate to inculcate huge new staff cohorts with the same degree of probity and selfless commitment shared the organizations' founders, or to ensure consistency in service quality across far-flung operations. Breakdowns in the capacity of ideology, religious morality or socialization to promote probity are evident in reports of financial scandals and human rights abuses within faith-based organisations. These scandals are driving previously subordinated and newly empowered memberships to insist on new and explicit controls on religious leaders, as well as socially just standards of accountability to enable churches to catch up with changes in social norms, for instance around women's and children's rights (see Box 11 on calls for Church Accountability).

Box 11

From Solidarity to Accountability: Faith is not Enough to Ensure Probity

Christian Churches around the world are being subjected to increased calls for accountability, both to prevent corrupt practices and to satisfy members' demands for just treatment.

In 1998 the eighth assembly of the World Council of Churches adopted a series of recommendations aimed at empowering women against oppressive structures. An open letter from members (entitled 'From solidarity to accountability') called for churches to fulfill their duties of solidarity with women, including breaking the culture of silence around violence and abuse and creating restorative justice processes for victims. In response the assembly agreed, among other things, to encourage churches to provide opportunities for women to speak out about the issues of violence and abuse, and to encourage the use of languages and policies to combat the exclusion of people from leadership positions on the basis of gender, age, race, cultural background and disability.

In 2001 a major new campaign was launched demanding that the Vatican be held accountable for the measures it is taking to protect women against harassment.[72] A demonstration was held outside the Vatican's UN Mission in July 2001 following reports in the US *National Catholic Reporter* (16 March 16 2001) of the sexual harassment, exploitation and even rape of Roman Catholic nuns by priests. According to supporters, despite being briefed on the facts of sexual

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[72] http://www.calltoaccountability.org

violence against nuns in 1995, the Vatican has taken no action to end this abuse. One of the many petitions of this campaign calls for the Vatican to reveal measures it has taken to secure justice for women; to cooperate with local civil authorities by providing evidence and assisting with the prosecution of Catholic church officials involved in rape and other sexual violence; and to issue a public apology for all forms of violence against women, including sexism, committed by its church officials.[73]

There are numerous other cases of increased calls for accountability in churches, including financial accountability to guard against corruption. The Seventh-day Adventist (SDA) church's recent troubles included scandals over interest-free loans to church officials and the misuse of the Parsonage Exclusion as a tax benefit.[74] Members for Church Accountability is a group of SDA church members concerned about improving accountability within the SDA church.[75] Arguing that recent events (including an elder's resignation after being 'involved with business entrepreneurs') have exposed flaws in the church's leadership structures, they concentrate on three areas: reform in financial accountability; policy-compliance reform; and representation reform.

Sources: http://members.aol.com/advmca/home.htm; http://www.truthorfables.com/Members_for_Church_Accountabilty.htm; http://www.8thdaycenter.org/AccPetit.htm; http://www.calltoaccountability.org

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The new levels of scrutiny to which non-public and global economic institutions are being subjected are even prompting them to ensure that their own internal accountability mechanisms can compensate for inadequate pubic accountability mechanisms when they engage in co-production of services, or participate in new oversight agencies. This appears to be a concern driving the World Bank's approach to creating a new pubic oversight agency for monitoring the use of new oil revenues in Chad (see Box 12).

Box 12

Accounting for Oil Revenues in Chad

Chad is expected to experience something of an oil boom in the years to come. The emerging institutional set-up for ensuring that the riches help to benefit the country as a whole – and in particular the poor majority – is a good example of how new pressures for accountability force a range of key actors to adapt.

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[73] http://www.8thdaycenter.org/AccPetit.htm

[74] http://www.truthorfables.com/Members_for_Church_Accountabilty.htm

[75] http://members.aol.com/advmca/home.htm

The World Bank has been the object of increased demands in recent years – from both protestors and the governments that collectively own a controlling interest in the Bank – to increase its accountability to disadvantaged people in the countries in which it operates. The World Bank is, in financial terms, a small player in the deals being struck between the Government of Chad and the international oil companies. So the issue of how the government accounts for the funds provided by the World Bank is much less critical than the larger question of how to ensure that the government's share of the oil proceeds is not stolen or wasted by officials. But the Bank's participation in the project provides critical bridge financing and is crucial in cementing the deals with oil companies, because it signals that the Government is a reputable player. The Bank is using this leverage as a way of pushing the government and the oil companies into creating a novel accountability mechanism.

Because of the fear that the oil firms and the government will collude to skim off funds from the oil revenues, the Bank has insisted on the creation of an 'independent accountability board'. Its mission will be to oversee not only the negotiation of agreements and the collection of funds, but also to ensure that a percentage of the oil profits is ploughed into social development. The board will include several representatives of civil society organisations as full members. There are substantial fears, however, that this kind of arrangement will encounter difficulties, and in the absence of elements of a larger accountability *system* – functioning courts to adjudicate disputes in the functioning of the board, and a strong electoral commission to make elections more free and more fair – this kind of mechanism on its own will fail to safeguard the interests of the poor. Perhaps more importantly, the means for ensuring the accountability of the board's non-governmental representatives are inadequate. Even if their commitment to financial probity could somehow be ensured, the forms of intimidation to which they could be subjected by politicians who command the security services are uniquely broad in scope, making independence of action by this agency unlikely.

Part of the pressure on the World Bank to insist on these kinds of oversight mechanisms stems from earlier accountability failures in Bank-funded projects. A recent independent report on the need to learn lessons from past mistakes referred specifically to the Chad pipeline project.[76] The report recalled the massive displacement produced by the Guatemala's Chixoy Dam, built in late 1970s and early 1980s with financing from the World Bank and the Inter-American Development Bank. The Guatemalan military massacred the Amerindian Rio Negri community which was in the way. The report argues that the World Bank could have done more to prevent this atrocity – in effect substituting internal for external accountability as an interim measure. The context of civil conflict is common to both the Guatemala and Chad cases, and the report demands that the Bank insist upon more accountability, less impunity, and a greater willingness to share information broadly.

Sources: 'Chad's Wait for Its Oil Riches May Be Long', *New York Times*, 16 May 2001; World Bank documents located on www.worldbank.org; and http://www.advocacynet.org/pdf/resource/Report-Princeton-Chixoy-Executive-Summary.pdf.

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[76] http://www.advocacynet.org/pdf/resource/Report-Princeton-Chixoy-Executive-Summary.pdf

4.2 New Methods across New Jurisdictions

The increasing extent to which actors in accountability relationship are assuming new roles inherently implies the emergence of new methods. For instance, direct citizen involvement in auditing, of the sort mentioned in the discussion of the MKSS, involves new means of securing financial autonomy: the public hearing. It is nevertheless helpful to treat these two aspects of the emerging accountability agenda separately so that the other factors driving the adoption of new methods can be discerned, and their implications for the objective of enhancing human development more clearly understood.

This section examines new methods that have emerged as a result not merely of there being a greater number of actors in the accountability business, but because of the new opportunities that arise as a result of the changing nature of boundaries. It thus focuses on the relationship between '*where'* accountability is being sought, and '*how'* it is being sought.

The survey of new methods begins from the premise that we are witnessing a general reorganization of 'accountability jurisdictions', the spaces within which accountability can be legitimately sought. This reorganization – the 'where' – has three key dimensions, each of which has changed the way people and institutions have sought to place checks on the powerful (the 'how'):

1. First, a geographically expanded legal sphere, as well as the ability of civil societies to engage in surveillance across national borders, has produced efforts to make human rights abusers answer for their actions, and to make firms and governments liable when they fail to comply with international environmental and labor regulations, no matter where these abuses occur.

2. Second, the reorganization of accountability jurisdictions has also been manifested by the proliferation of local-level arrangements for ensuring fairness in resource distribution and in seeking justice.

3. Third, the borderless world of cyberspace has created not only a new site of accountability; it has also thrown up new ways of bringing people together to demand it.

4.2.1 Globalizing accountability jurisdictions

Accountability (like impunity) no longer stops at national boundaries. Ex-heads of state enjoying domestic immunity for human rights abuses are being charged under the domestic laws of other states, and arrested for trial or extradition when they travel. Corporations that profit from abusing labor rights or ignoring environmental protections in host countries are being chased by their victims to courts in the corporations' home bases. These initiatives are globalizing jurisdictions for the prosecution of violations of human and environmental rights. Other initiatives are somewhat less adversarial, and involve controlling large corporations through new regulatory devices (process standards) monitored through self-governing structures that involve states, international agencies, private firms and NGOs. It is, in other words, not just the *scope* of

accountability jurisdictions that are being stretched in these cases; the *methods* for demanding answers and enforcing punishments are evolving too.

Accountability of Former Heads of State

The initiation and pursuit of criminal prosecutions by national courts using domestic law against human right abusers in other countries is heralding a new era of judicial activism and restructuring accountability jurisdictions. International legal instruments for trying crimes against humanity such as international human rights regimes and specialized war crimes courts (Nuremberg, Tokyo, the UN Criminal Tribunals for the Former Yugoslavia and for Rwanda) have been in existence for half a century. But some contemporary human rights prosecutions are altering the geographical, institutional and legal space for holding human rights abusers and corrupt officials to account.

The best example of this are the efforts since 1996 to hold General Augusto Pinochet, leader of a military government that ruled Chile between 1973-1990, accountable for crimes of kidnapping, torture, and murder committed while he was in power. What makes this case a departure from other efforts to hold former dictators accountable for crimes in office is that a single country, Spain, was asserting its jurisdiction primarily through *domestic*, not international, laws (See Box 13). Thus a former dictator was threatened by a legal action brought not through an international court, but rather through a unilateral decision made in the judicial system of a single country. The appeal by national courts to universal jurisdiction to punish the most heinous crimes against humanity means that sovereignty cannot be claimed as a cover for domestic atrocities, and that abusive ex-heads of state are not secure anywhere.

Box 13

Prosecuting Pinochet

In July 1996, the Spanish magistrate Baltasar Garzon began proceedings in a Spanish federal court against Pinochet and other Chilean military junta leaders and members of the DINA (the secret police) for kidnapping, illegal detention, torture and murder committed in Chile and other countries between 1973-89. Garzon was able to do this because of the deep penetration of international human rights law into the domestic legal order in Spain. In the mid-1980s, jurisdiction for universal crimes (crimes against humanity) was inscribed into the Spanish Penal Code and other bodies of domestic law. The Spanish Constitution also notes that 'validly enacted international treaties, once officially published in Spain, shall form part of the internal legal order'.[77] Spanish law also recognizes the principle of 'individual international responsibility', a key statue in international law which expressly denies immunity attached to the official capacity of a person accused of a crime against humanity. These provisions enable Spanish courts to prosecute offenses perpetrated by non-Spanish actors, including state functionaries, against non-Spanish citizens.

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[77] M. Feitlowitz., 'The Pinochet Prosecution: The Genocide Controversy', 2001, www.crimesofwar.org

Two years later, a Spanish extradition request obliged the British government to put Pinochet under arrest while on a visit to the UK for medical treatment. After protracted preliminary questions in the British courts dealing with the immunity of a former head of state, and the scope of the extradition enquiry, Pinochet faced extradition and trial in Spain for torture and conspiracy to torture. This was eventually dropped on health grounds, and he was returned to Chile. The decisions of the Spanish courts and the UK House of Lords which interpreted international law to override the immunity of a former head of state empowered Chilean legal activists, such as prosecutor Juan Guzman, to challenge the Chilean amnesty for Pinochet, and several months after his return the Chilean Supreme Court upheld an appeals court decision to lift Pinochet's amnesty and the immunity of other army officers. Using international law, the Chilean judiciary was emboldened to gather testimonial and forensic evidence of mass graves and concentration camps, and Guzman brought 105 civil actions against Pinochet. In early 2001, judicial proceedings against Pinochet were again dropped on health grounds (dementia), but trials of his subordinates are on-going.

In spite of the failure to prosecute Pinochet directly, this case has signaled the end of impunity for public acts in violation of international law. A direct consequence of the Pinochet proceedings was the arrest in February 2000 in Senegal of Chad's former dictator, Hissene Habre. This was the result of a civil, not a state action, when Habre's victims – survivors of torture and terror – traveled to Dakar to testify in court. In this case the domestic legal system was unable to uphold the action. Habre's arrest was overturned by another court and the judges were fired.

Sources: M. Feitlowitz, 'The Pinochet Prosecution: The Genocide Controversy', (www.crimesofwar.org, 2001); R. Lagos, and M. Munoz, 'The Pinochet Dilemma', *Foreign Policy*, (Spring, 1999) pp. 26 – 39; and R.J. Wilson, 'Prosecuting Pinochet: International Crimes in Spanish Domestic Law', *Human Rights Quarterly*, vol. 21 (1999), pp. 927-979.

The cases of private prosecutors seeking to make human rights charges against ex-heads of state from other countries has implications for the balance of power between politicians and the judiciary in domestic accountability relationships. The increased willingness of judges to apply European and international law in the face of executive resistance, and the support for this by a public tired of impunity, raises the importance of judicial review as a means of holding pubic bodies legally accountable, and implies a shift of power from politicians to judges. Trans-national rights regimes such as the European Charter, with its 50 rights that underpin European life, and the 1998 European Human Rights Act, raise the possibility of the development of constitutional rights that transcend national rights regimes, giving more power to individuals and the judicial system in relation to politicians.[78]

Another implication of cases where international law is used by one country to try perpetrators of atrocities that occurred elsewhere is that accountability relationships may be viewed on a global, not a national scale. The assertion of universal jurisdiction for crimes in international law enables states to take unilateral action against human rights abusers, no matter where they come from, when the opportunity arises. This was the case with the June 2001 convictions of two

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[78] D. Woodhouse, 'The Law and Politics: More Power to the Judges – and to the People?' *Parliamentary Affairs*, vol. 54 (2001), pp. 223-237.

Rwandan nuns in Belgium for genocide. In this case, the state was prosecuting on the basis of an international law that allows its courts to hear cases of atrocities committed by war criminals seeking sanctuary on its territory, even if the atrocities occurred abroad.[79]

The global reach of activist judges and the assertion of universal jurisdiction for crimes against humanity have raised concerns about the unevenness of this means of accountability. The emerging trend of bringing civil actions against human rights abusers is inevitably opportunistic: arrests cannot be made unless the individual in question has left the security of his or her own country. Actions so far, therefore, have been rather sporadic, and this kind of judicial activism does not represent the coordinated and comprehensive investigation and trial of human rights abusers that is needed to hold them to account.

The growing need to address human rights abuses in a more comprehensive and continuous way than provided for through specialized war crimes tribunals has produced pressure for institutional developments in two directions: first, for the establishment of a permanent international institution with global jurisdiction – an International Criminal Court – and, second, for more effective prosecution of human rights abuses at their source, through indigenous local legal instruments such as the local justice tribunals in Rwanda (discussed below).

While war crimes tribunals provide the forum for trying prominent human rights abusers, they are inevitably highly selective: not only are very few people tried, but very few wars are considered for judicial investigation. Inevitably such selectivity implies that global power relations determine what actions and individuals will be tried. In response to this problem, there has been a push for a more permanent international criminal court that could function more autonomously of geopolitics. In 1999 in Rome, 120 countries agreed to establish a global legal institution, an International Criminal Court. These types of international legal institutions hold citizens of sovereign states accountable to global society, not just to citizens of their own countries. Other supra-national legal institutions have been used by domestic civil society groups to hold states and their domestic legal systems to account for failing to protect the rights of their own citizens (see Box 14 on Roma rights in Bulgaria)

Box 14

<u>Using Supra-National legal Institutions to Address Domestic Human Rights Violations</u>

In 1998, the Budapest-based European Roma Rights Centre took a case of torture and degrading treatment of a Roma in police custody to the European Court of Human Rights in Strasbourg. The Roma Rights Centre represented a Roma teenager, Anton Assenov, who had been beaten by Bulgarian police. The European Court ruled against the Bulgarian government in finding that it had violated Assenov's rights to physical security in police custody. It also ruled against the government for failing to make an official investigation of the incident. This was a

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[79] *The Economist*, 16 June 2001.

landmark ruling in that it extended the scope of international law by making the right to an investigation part of the right to be free of official mistreatment.

Source: Mary McClymont and Stephen Golub, *Many Roads to Justice*, (The Ford Foundation, 2000) p: 293-4.

Although international human rights law is increasingly internalized to the domestic legal regimes of countries that sign international human right treaties, enforcement mechanisms remain weak. For instance, although the rulings of the Inter-American Court of Human Rights in Latin America are accepted as binding by 21 of the 34 members of the Organization of American States, very few of these have enforcement mechanisms built into their national laws. It is often left up to NGOs and other civil society groups to monitor Inter-American Court rulings and see that they are enforced in domestic courts.

Litigating Against Corporations

Multinational corporations are the second major target of judicial activism through geographically expanded legal jurisdictions. UNCTAD estimates there to be 60,000 parent corporations world-wide, with over half a million foreign affiliates.[80] This is a burgeoning set of transnational actors which are felt to have growing influence over economies but to be insufficiently accountable for the impact of their activities on the environment or the welfare of workers. The failures of both developed and developing country governments to defend domestic interests in the face of these companies' commercial activities are feeding the perception that governments are increasingly upholders of commercial interests at the expense of human development or environmental protection.

Central to an emerging 'foreign direct liability'[81] legal instrument is the notion of holding parent companies to account in their home jurisdictions for the actions of their subsidiaries elsewhere. Actions are brought by citizens (and occasionally states) that have experienced negative environmental or health impacts as a result of corporate activity. Cases include litigation in the US against Texaco over its environmental impacts in Ecuador; Unocal in relation to alleged human rights abuses associated with its investment in Myanmar; Freeport McMoran over the environmental impacts of its copper mine in Irian Jaya; and against Union Carbide following the Bhopal disaster (where the state of India was itself the plaintiff on behalf of the victims).[82] In the UK, actions have been brought against Rio Tinto over its Rossing uranium mine in Namibia, and against Thor chemicals for mercury poisoning suffered by workers in its South African mercury recycling plant. In Canada the mining company Cambior faced litigation over pollution from its

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[80] UNCTAD, 'Foreign Direct Investment and the Challenge of Development', *World Investment Report* (Geneva, United Nations, 1999).

[81] Halina Ward, 'Securing Transnational Corporate Accountability through National Courts: Implications and Policy Options', *Hastings Comparative and International Law Review* (March 2001).

[82] In the Bhopal case, the decision of the lower court in the US was that the US was not the appropriate legal forum and the case was sent back to Indian courts. See Upendra Baxi and Amita Dhanda, *Valiant Victims and Lethal Litigation: the Bhopal Case* (Bombay; N.M. Tripathi Pvt Ltd, 1990).

gold mine in Guyana. Central to all of these claims is the demand that home countries accept increased responsibility for regulating the negative extraterritorial impacts of multinational firms.

This form of transnational litigation takes two lines of argument. Most of the US-based litigation is concerned with corporate compliance with the norms of international law, using the 1789 Alien Tort Claims Act which allows foreigners to bring civil claims against a party in the US that has violated laws or treaties to which the US is signatory. Alternatively, litigation in the UK or Canada (and to some extent the US also) is concerned to make parent companies ensure that their behavior as direct investors elsewhere matches the standards of care that would be expected of them at home. Foreign litigants acquire legal standing on the basis of an English legal provision which allows courts to hear a case if there is no other appropriate legal forum. A recent House of Lords judgement allowed 3000 South Africans to bring an action against an English asbestos company in the UK rather than in South Africa where the injuries were sustained, because a lack of appropriate legal representation meant that the South African litigants would not likely enjoy full access to justice in their home country (See Box 15). Aside from the still unresolved implications of this decision for company law (which separates the identities of parent companies and their subsidies, thereby limiting parent company liability), this decision takes courts into politically sensitive decision-making about judicial systems and the administration of justice in countries hosting multinational operations.

So far not one of the major foreign direct liability cases has resulted in a clear win for the plaintiffs, though some cases (for instance against Thor Chemicals in the UK) have been settled out of court. However, these efforts have usefully opened up corporate governance for scrutiny, and triggered efforts to re-work company law in the light of economic globalization in order to end the legal fiction that parent companies are distinct from their subsidiaries. Legal challenges to the impunity of corporations in exploiting labor or environmental resources have prompted greater corporate interest in establishing and adhering to voluntary production and social standards, to which we turn next. However, adversarial legal tactics have potentially negative effects. Instead of prompting greater transparency from corporations as they become more concerned about good practice, a legal risk-management approach might result in greater secrecy about environmental and human rights impacts. Framing corporate accountability as a matter of holding firms to production and environmental standards which apply in their countries of origin may be difficult to justify if different environmental or social standards are deliberately chosen by host country democracies, and indeed may be seen as a new form of eco- or social imperialism.[83]

Box 15

Justice Away From Home: Prosecuting Asbestos Poisoning

A group of South Africans suffering from asbestos-related conditions contracted while working

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[83]   Ward, 'Securing Transnational Corporate Accountability…', p. 12

for Cape Asbestos SA (Pty) Ltd during or before the 1970s were told they could sue the British parent company, Cape plc, which pulled out of South Africa in the 1970s and now works in asbestos removal. Cape closed its British operation in 1968 because of the high incidence of asbestos-related disease, but let the South Africa operation go on for another decade.

In 1979, when Cape sold its South African operations, no trust fund had been established and no medical scheme was put in place. Many former workers have asbestosis, a disease that destroys the lungs and eventually kills its victims, has no cure, and can lie dormant for up to 40 years.

Cape had argued the case should be fought in South Africa on the grounds that it was the most natural jurisdiction. The Law Lords' decision in mid-2000 to uphold the plaintiff's appeal for the case to be tried in the UK meant that for the first time British courts have been confronted with a group action from foreign workers.

If the case were moved to South Africa, the five Law Lords found, 'the probability is that the plaintiffs would have no means of obtaining the professional representation and the expert evidence which would be essential if these claims were to be justly decided. This would amount to a denial of justice'.[84] The verdict upheld the Law Lords' groundbreaking 1997 decision to allow former Rossing Uranium engineer and throat cancer patient Eddie Connelly to pursue his case in England because funding was not available for a trial in Namibia.[85]

The South African government had approached the House of Lords at the same time as the plaintiffs. 'The allegations against Cape did not take place in a legitimate legal system and the new South African Government cannot afford to determine every wrong of the old regime through its judicial system', the South African government noted in its submission. The discriminatory health and safety laws, which left South African workers unprotected, or significantly underrepresented, against known risks as a matter of South African law were against the law of humanity'.[86]

In May 2001 a trial date was set for April 2002. At the time of writing Cape plc was said to be considering proposing an out of court settlement. The number of claimants involved had grown to over 4500, although at least 60 had died while the proceedings continued.

Sources: *Multinational Monitor*, vol. 21, no. 9 (September 2000); http://www.whitelung.org/alerts/cape.html

Alternatives to Litigation: Voluntary Certification Schemes

An increasingly popular alternative to litigation as a method for pursuing accountability is the development of schemes for voluntary certification. 'Process standards' – and programs for certifying adherence to them – continue to proliferate, but their common characteristic is the

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[84] *Multinational Monitor*, vol. 21, no. 9 (September 2000).

[85] http://www.whitelung.org/alerts/cape.html

[86] *Multinational Monitor*, vol. 21, no. 9 (September 2000).

desire to increase the reliability of the information on which consumers make decisions. They are based on a belief that a good proportion of consumers are willing to pay more for products that have been produced in ways that minimize negative social and environmental consequences. They are a method for coping with the uncertainty and lack of familiarity that arises when transactions take place across jurisdictional boundaries – that is, where neither government-imposed criteria of accountability, nor the capacity of governments to enforce them, are uniform.

One of the most familiar programs is Rugmark, a scheme that certifies products that are created without child labor (See Box 16). Programs like Rugmark arise not only as a way of avoiding the costs and difficulties of private litigation, but also as a means of overcoming the political and practical problems of enforcement mechanisms based on the threat of government-imposed trade sanctions. Proposals for sanctions-based regimes are a major point of controversy in discussions on the shape of the international trading system. Detractors – including most developing country governments – see them as a threat to their sources of comparative advantage, and a disguised form of protectionism. Advocates of regimes for enforcing labor and environmental standards through the use of sanctions see them as the only method with strong enough 'teeth' to force compliance.

Box 16

Rugmark: Certifying Child Free-Free Production

The Rugmark initiative was established in 1994 to address the problem of child labor in hand-knotted carpets in South Asia. It was set up by consumer groups, carpet manufacturers, bilateral donors such as the German Agency GtZ and international organisations such as UNICEF. Manufacturers perceived a potential threat to the carpet industry from the possibility of external boycotts. Under the Rugmark scheme, goods made without child labor are labelled as such and production facilities are monitored and inspected. In addition, education is provided for child workers who lose their livelihoods when firms agree to be bound by the terms of the scheme. Funding is derived from 1 percent of the market value of carpets from importers for schools and training programmes and 0.25 percent of the value of the carpets from exporters for financing inspections. The first school was opened in 1996 and a rehabilitation centre run by the South Asian Coalition on Child Servitude was also established. In the first year of Rugmark's operation, unannounced inspections revealed 760 children working illegally on 408 looms. By September 1996, enforcement action had led to the decertification of 164 looms where violations had been found. While there have been some successes, the fear is that child workers may simply end up employed in more hazardous industries, and there are reports that many carpet manufacturers are moving from the Indian state of Uttar Pradesh to neighbouring Bihar, where child labor is abundant, particularly to remote villages where monitoring becomes more difficult, if not impossible.

Sources: J. Hilwitz, 'Social labelling to combat child labor: some considerations'. *International Labor Review*, vol. 136, no. 2 (1997); UNICEF, *State of the World's Children 1997*; M. Sharma, 'Marked for life', *New Internationalist*, no. 292, p.29.

But in the case of trade standards on the use of child labor, practical difficulties arise that can make them counterproductive – for instance, driving dismissed child workers further into poverty – though in some cases novel multipartite agreements have been developed to cope with these complex circumstances (see Box 17 on the case of the Bangladeshi textile industry). While the factors affecting the viability of trade-sanctions-based regimes may vary from issue to issue, the idea that they can undermine the very objectives they were meant to advance has reinforced the movement towards voluntary compliance schemes. Despite this, a number of trade-sanctions-based agreements are in existence, including provisions in the North American Free Trade Agreement, the US Generalized System of Preferences, and the recently negotiated bilateral trade agreements between the United States and Chile, Singapore and Jordan. Nevertheless, the international political stalemate (partly but not entirely on North-South lines) on the question of permitting sanctions within the context of the World Trade Organization has made the voluntary certification route the main avenue of accountability efforts by default. How much support they retain will depend on how well they perform in changing the behavior of firms.

Box 17

Dangers of Sanctions-Based Enforcement of Standards: Bangladesh Textile Industry

In 1993, a news report broadcast in the United States exposed the employment of child labour in Bangladesh by contractors of Wal-Mart, a large US retailer. The fear of consumer boycott led Wal-Mart to cancel contracts with Bangladeshi textile manufacturers. In 1994 the threat of legislation in the US that would prohibit imports produced with child labour, and the possibility of further consumer pressure in the US to end US textiles trade with Bangladesh, resulted in mobilisation of the Bangladeshi textile industry to protect their trading relationships with US importers. An estimated 50,000 children were dismissed. A number of studies concluded that many of these children ended up in the informal sector in workshops subcontracted by textiles enterprises, working in worse conditions.

Concerned about the impact on child workers and their families, the Bangladesh Garment Manufacturers and Exporters Association (BGMEA) and ILO/UNICEF (supported by the Government of Bangladesh and the US Department of Labour) signed a Memorandum of Understanding (MOU) in 1995 to end employment for children under 14 years of age. The agreement requires manufacturers to subsidise schooling for ex-child workers and pay stipends of US$ 6.88 per month to those that leave the factories to attend the schools. It allows the ILO to design a monitoring system, offers employment to family members of ex-child workers, prohibits factories from hiring new underage workers, and ensures that factories re-employ ex-child workers when their schooling is completed. The stipends and monitoring are jointly funded by the BGMEA, ILO and UNICEF.

A 1995 survey found child workers in 43 percent of BGMEA member factories. By early 1998, only eight percent of BGMEA factories still employed child workers. The absolute number of children working in factories also declined. In October 1998 only 35 children were found compared with hundreds of children earlier. By 1999, 8,193 ex-child workers had been

withdrawn from the textile industry and enrolled in the education programme. This number gradually decreased to 3,351, as some children reached the age of 14 and were eligible to work. This also meant a drop in the number of schools established under the MOU.

Sources: R. Rothstein, 'The Starbucks solution: can voluntary codes raise global living standards?', *The American Prospect*, vol. 7 no. 27 (1996); CUTS, 'Eradicating child-labour while saving the child - who will pay the costs?', *CUTS Briefing Paper No.5,* (Jaipur: CUTS Centre for International Trade, Economics and Environment, 1999); ILO, *IPEC action against child labor: Achievements, lessons learned and indications for the future* (Geneva, ILO, 1999); and Commonwealth of Australia, *Report on Labour Standards in the Asia-Pacific Region.* (Commonwealth of Australia, Party on Labour Standards, 1996).

There are by now a vast array of standards-based schemes. Indeed, as one review of the literature argued, 'a major problem' in promoting compliance, 'lies with the large number of standards. Making sense of such standards can be a bewildering and complex undertaking'.[87] In practice, the proliferation of voluntary agreements has made it difficult for consumers – who in many cases represent the means of enforcement – to understand the criteria used to assess compliance with standards, or to be sure that the mechanisms for assuring compliance are effective.

These problems have been manifested by embarrassing failures of the monitoring mechanisms used in these certification schemes. The US-based Social Accountability Initiative (SAI), which assesses the production methods used by supplier firms, had certified that a footwear production facility in China's Guandong province had satisfied the requirements of its SA8000 factory conditions standard. But in 2000 when investigators from the US National Labor Committee inspected the factory, which is owned by a Taiwanese company, 'they found dormitory rooms packed with up to 28 people and work shifts that normally ran to 12 hours'. Moreover, they learned that the management had recently fired workers who had gone on strike against withholding of wages and excessive hours, and that '[w]orkers had also been coached to lie to SA8000 inspectors'.[88]

These kinds of failures have been at least part of the reason why there has been renewed interest in a different variant of non-compulsory accountability promotion: the multilateral pact. The UN Global Compact, because of its association with the Secretary General's office, has been perhaps the most high profile, but it lacks many essential features of enforcement. The Guidelines for Multinational Enterprises, substantially revised in 2000, adopts a more complex structure – one that brings governments more directly into the process (See Box 18). This most recent swing of the pendulum (moving governments into non-official processes) is, in a sense, the mirror image of the movement towards non-governmental involvement in official processes, discussed earlier.

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[87] Khaldi Nadvi and Frank Waltrung, 'Making Sense of Global Standards', *IDS Working Paper* (Brighton, UK, 2001).

[88] 'Sweating it Out', *Far Eastern Economic Review*, 10 May 2001.

Box 18

<u>Multilateral Codes of Conduct: State-Corporate-NGO Partnerships in Promoting Accountability</u>

In June 2000 33 countries signed up to an OECD-endorsed code of conduct for how firms should conduct business outside their home jurisdictions. These Guidelines for Multinational Enterprises – a revised version of a procedure originally adopted in 1976 – include provisions on labor relations, environmental protection, consumer affairs, the promotion of local economic development, and even how to contribute to the fight against corruption.

The way in which the Guidelines are to be used reveals important changes in the methods for achieving accountability. Governments, rather than non-governmental human rights groups, are responsible for investigating allegations that firms are violating provisions of the code of conduct. But the complaints themselves need not be initiated by governments, though the exact rules of eligibility for who is authorised to initiate a complaint are a matter of controversy: there is still no consensus among governments, or between governments and business interests, on which agents are considered legitimate enough formally to demand answerability.

The act of investigating the complaint rests with the National Contact Point, or NCP, a government office located within each of the countries that have endorsed the Guidelines. The NCP, which in some countries is multipartite (with regularized involvement from trade unions, business associations and NGOs), is empowered to engage in negotiations with a firm that has been found to have violated one or more provisions of the code. If the NCP is not satisfied with the firm's proposed remedial action, or the implementation of the remedy, it is then able to issue a report about the allegations, its findings, and the outcome of the mediation talks with the firm.

In other words. the function of answerability is subjected to a separation of powers (or division of labor), in which civil society can initiate demands for answerability, but only government officials are able actually to secure the answers through an investigative process. The function of enforceability is also delegated to yet another sphere, the larger court of media and public opinion. The NCP's report on the findings of its investigations does not trigger formal regulatory or legal proceedings. Media pressure and public opinion are expected to bear the full burden of catalyzing a popular backlash against erring firms. Fear of a tarnished corporate image is deemed a sufficient incentive to prevent firms from violating the code of conduct in the first place.

This type of accountability mechanism suffers from at least four key shortcomings. First, like any system that puts power in the hands of a delegated representative, there is no guarantee that the NCPs will not become either directly corrupted, making them unwilling to pursue genuine cases with vigor, or else indirectly pressured by political forces acting on behalf of business interests that back them. Second, mechanisms that rely on public pressure, or even the threat of consumer pressure, place a sometimes unrealistic faith in the ability of citizens to keep abreast of the latest information about corporate behavior, or even to care enough about it (when they are aware) to take punitive action such as changing their consumption patterns or signing petitions. Too much may also be expected of the media, which is compromised in some cases by patterns of corporate ownership, as well as by its short attention-span. Third, the enforcement mechanism relies on consumer power, which is more the province of the middle class than the truly disadvantaged. This implies that accountability will not be directly *to* the poor, though depending on the nature of complaints investigated it could represent indirect

accountability in the interests *of* the poor. Fourth, there is the risk that the complaints procedure could be abused. The U.S. Council for International Business, which was heavily involved in the consultative process that produced the revised guidelines, fears that firms could have their reputations smeared by competitors, who would lodge complaints as a way of 'grabbing market share'. These kinds of opportunistic complainants would provide another chance for an unprincipled NCP to engage in corrupt behavior, in effect blackmailing firms with threats of negative findings even when there had been no wrong-doing. Such vicious circles have been the bane of conventional accountability efforts, and despite the novel features of the OECD approach, they could very well re-establish themselves in a new guise.

Sources: *OECD Observer Policy Brief: The OECD Guidelines for Multinational Enterprises* (Paris, June 2001); OECD website (www.oecd.org); OECD, 'Summary Report of the Chair of the Meeting on the Activities of National Contact Points' (Paris, 21 September 2001), and Susan Ariel Aaronson, 'Hitting the Wrong Target: Going after Predatory Global Business', http://www.tompaine.com/opinion/2000/10/05/index.html.

4.2.2 Alternative accountability mechanisms at the local level

Political decentralization and devolution of development decision-making and budget control to the lowest possible level is assumed to produce increased public sector accountability. This assumption rests on the principle of reducing the number of intermediaries between citizens and the decision-making, spending, and project-execution processes, with the expectation that citizen scrutiny and the responsiveness of public agents will both intensify with the shrinking of physical and social distance between the two.[89] A number of decentralization experiments take the principle of eliminating intermediaries as far as physically possible, by endowing respected local leaders with the legal responsibility to adjudicate disputes, or by assigning decision-making power and financial control over development projects to village assemblies, and entrusting small project execution teams, composed of the very people who will benefit from the investment, with responsibility to construct, operate, and maintain the project. Citizen engagement in adjudicating local disputes, or in planning and even delivering services, make for a much more palpable sense of voice and influence in the public sphere than do more conventional forms of engagement such as voting for a candidate to represent one's views, or lobbying through a civil society organization, where there is scant connection between one's views and official actions.

Local tribunals using customary law and employing respected local people as magistrates are, it is hoped, able to open up access to justice, take pressure off the courts, and speed up dispute resolution. They are based upon the notion that reputation, trust and reciprocity can substitute for cumbersome formal procedures such as cross-examination, formal representation and the

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[89] But enthusiasts of local government *do* worry that local control over resources will to translate in practice into local elites cornering an undue share of government resources.   Specific pitfalls related to both equity and efficiency are highlighted in *World Development Report 1997: The State in a Changing World* (Washington, DC: The World Bank, 1997), pp. 124-29. See also Remy Prud'homme, "The Dangers of Decentralisation", *World Bank Research Observer*, vol. 10, no. 2, pp. 201-20; and Richard Crook and Alan Sverrisson, 'To What Extent Can Decentralised Forms of Governance Enhance the Development of Pro-Poor Policies and Improve Poverty-Alleviation Outcomes?' *IDS Working Paper129* (Brighton, UK, 1999).

collection of evidence.[90] This is the justification for setting up 'Alternative Dispute Resolution' mechanisms at the local level, an area in which there is currently much experimentation in Latin America.[91] The contemporary experiment to empower local tribunals in Rwanda to hear some of the backlog of cases of genocide to which the overstretched formal national and international justice system are unlikely to attend is another example (see Box 19). There is much controversy over the appropriateness of these efforts to localise the accountability institution of the law through these parallel and informal justice systems, because they assign a morality to localities that obscures the capacity of elites to use these institutions for the purpose of social control.[92]

Box 19

Traditional Yet Unconventional: Local Forms of Prosecuting Genocide Participants in Rwanda

Given the procedural formality of the UN International Tribunal in Arusha, Tanzania, it is not surprising that the wheels of justice are moving very slowly. Only nine cases have been decided since 1994 – eight convictions and one acquittal. A widespread fear that endless delays will allow those responsible for acts of violence to escape punishment has catalyzed the search for new mechanisms of accountability. The government is now seeking to adapt a traditional system known as Gacaca, or 'justice on the grass', which refers to the fields on which community elders adjudicate disputes.

An important feature of Rwanda's genocide was that, in terms of implementation, it was a decentralized affair. Those who actively participated in the violence certainly received inspiration and direction from above, but the killing and maiming took place locally. The only people who can provide testimony to the events are people from the locality. So it is at this level that cases will be adjudicated, by local 'judges' selected by local people. In October 2001, the process of identifying the quarter of a million people who will act as judges began. Each citizen is entitled to volunteer names of suitable candidates of probity and rectitude to act as judges. Elections are only held if someone objects to a particular nomination.

People charged with engaging in violence will be tried in the villages where their alleged crimes took place. The judges will be assembled into 19-judge 'benches', and will collectively decide cases on the basis of testimony provided by local people. The mainstream court system will judge those charged with 'Category 1' offences – ringleaders and those who were particularly cruel or responsible for the deaths of large numbers of people – but all others will face the Gacaca process. The Gacaca judges will be given legal training, and are due to begin work in late 2002.

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[90] Jorge Corra Sutil, 'Judicial Reforms in Latin America: Good News for the Underprivileged', in Juan E. Mendez, Guillermo O'Donnell and Paulo Sergio Pinheiro (eds) *The (Un)rule of Law…*, pp. 255-77.

[91] Mauro Cappelletti, 'Alternative Dispute Resolution Processes within the Framework of the World-Wide Access to Justice Movement', *The Modern Law Review*, vol. 56, no. 3 (1993), pp. 282-296.

[92] Mahmood Mamdani, Citizenship and Subject: Contemporary Africa and the Legacy of Late Colonialism, (Pricneton NJ: Princeton University Press, 1999), pp 110.

It is too early to judge the effectiveness of this experiment, though it is clearly part of a wider trend towards adopting non-conventional means of ensuring accountability. But the risk remains that the desire to substitute new methods for those that are seen to be failing the poor will overpower the necessity of learning from past mistakes. The accountability of these new accountability mechanisms will need to be addressed. But oversight institutions will find it difficult to monitor developments in such a large number of localities. Decentralized initiatives are known to fall prey to skewed local power relations. An even more alarming prospect, as the *Economist* magazine pointed out, is that there is 'no guarantee that people involved in the genocide will not be selected as judges'.[93]

Sources: 'Rwanda's genocide: Search for speed and reconciliation', *The Economist*, 6 October 2001.

Community engagement in dispensing justice or managing projects is not synonymous with accountability. On the contrary, elite capture and the use of local funds to fuel patronage networks is one predictable outcome of devolved justice or project implementation. To avoid this, some decentralization models have placed substantial accountability or vigilance tools more directly in the hands of local people. Bolivia's Law of Popular Participation empowers elected community leaders in Vigilance Committees to call for local audits and even trigger the suspension of funding to local governments shown to be corrupt (see Box 20).

Box 20

Local Vigilance Committees in Bolivia

Bolivia's 1994 Law of Popular Participation empowers democratically elected municipal councils to design and implement local development policies and programmes, with finance transferred from the central government. *Organizations Territorial de Base* (Community Based Organisations) are given jurisdiction over a given territory and assigned rights and duties covering a range of social, infrastructural, productive and environmental matters. Because they co-manage funds with the municipality, they are empowered to scrutinize the municipality's use of assets and income. The feature of the law of Popular Participation that is considered the most progressive is the creation of a new institution, the Vigilance Committee, composed of six elected CBO leaders. It acts as a 'watchdog' on the municipal council, assigned the task of ensuring that community projects and priorities are reflected in municipal budgets and expenditures.

It is also empowered to wield a legal instrument called a *denuncia* against local councils that are suspected of corruption. The VC can call for regular audits of local government, and if it detects corruption, it can lodge a complaint with the national executive branch, which passes it on to a special committee of the Senate, which can in turn suspend central funds to the erring council until the case is resolved. Although these Vigilance Committees can and have been captured by

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[93] Rwanda's genocide: Search for speed and reconciliation, *The Economist*, 6 October 2001.

elites, they have been able in other cases to expose corruption and unseat errant local politicians.

Source: James Blackburn and Jeremy Holland, *Who changes? Institutionalizing Participation in Development*, (London; Intermediate Technology, 1998).

Kerala offers perhaps the strongest model of devolved accountably responsibilities. A new right to information at the local level opens for scrutiny all planning documents, including those related to beneficiary selection and estimates, bills and receipts for input to public works. Photocopies are supplied free on demand. At the site of every public work, a daily notice lists the names of workers and wages earned, materials purchased with unit costs, quantities and transport charges. This act of transparency has already revealed a tendency for women workers to be paid, illegally, less than men, and for all workers to be paid more than the nationally prescribed rates for anti-poverty public works employment.[94]

The selection of beneficiaries for national anti-poverty resources such as credit, subsidized housing and latrines, and homestead plots for landless people – normally a highly politicized process because of the use of these resources to reward clients in patronage networks – is subject to particularly intense public scrutiny in Kerala. Numerical weightings – 'relative backwardness points'[95] — are assigned according to criteria of need that are agreed in village assemblies.[96] Eligibility criteria for anti-poverty benefits are published locally, and applicants must complete forms and attend a village assembly meeting at which all applications are publicly assessed and ranked according to the previously established criteria. A sub-committee, composed of local politicians, government officials, citizen members of planning groups and volunteer resource persons, verifies the list of beneficiaries to ensure that no one is mis-representing their eligibility. The advantage of this system is that poor decisions can be disputed by appealing to publicly agreed and measurable criteria of need. The great transparency in the composition and publication of beneficiary lists ensures that skewed resource distribution patterns (or attempts to disguise them) become more immediately apparent and may provoke citizen protests.

In spite of this formidable array of measures for local accountability, there is relatively little take-up in Kerala of opportunities to hold local officials to account. Efforts to invoke rights to information about the basis for beneficiary selection can be met with delaying tactics or demands for payment.[97] Some of the pubic notice boards for posting local spending information have been transformed into cinema poster hoardings. And there are plenty of accounts of malpractice in local spending, exclusion of the poor, women, and scheduled castes from planning and decision-

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[94] Harsh Mander, 'Towards Direct Democracy: Gram Sabhas and the Law', National Society for the Promotion of Development Administration, Research and Training, Mussoorie, India (April 1999), p. 9.

[95] Harsh Mander, 'Towards Direct Democracy…'.

[96] Government of Kerala, 'Procedure for Selection of Beneficiaries', Appendix to Government Order (P) No. 181/98/LAD DT. 02/09/98 (Thiruvananthapuram, Local Administration Department, 1998).

[97] Centre for Rural Management, 'Institutional Reform and Movements for Right to Information and Anti-Corruption: The Kerala Situation', Report no. 5 (Kottayam, Centre for Rural Management, mimeo, October 2001), submitted to the research project, Grassroots Anti-Corruption Movements and the Right to Information in India', Institute of Development Studies, University of Sussex.

making, including direct and sometimes violent suppression of their efforts to participate.[98] This attests to the limits of putting the onus of vigilance on those who have the least time for, and the most to lose from, challenging the local power-holders on whom they most likely depend for employment or patronage.

Too many efforts to localize planning and service delivery through citizen engagement have enabled local elites to corner an undue share of government resources, or else have lost their initial energy through paralysis or a lack of technical sophistication.[99] The growing evidence that 'power at the local level is more concentrated, more elitist, and applied more ruthlessly against the poor than at the centre'[100] has in some contexts promoted a re-engagement of central authorities to support local people in their struggles against power-holders, or to defend minimum performance standards. Recognised by students of local government as the 'ironic paradox of decentralization',[101] this selective engagement of central authorities in local service delivery has in some cases been successful in building the autonomy of service providers in relation to local elites, while at the same time building their direct accountability to service users.

Selective central engagement to hold local powers to account has produced an important new model for service delivery, recently given the seemingly contradictory label of 'accountable autonomy'.[102] This approach offers, on the one hand, better information to providers about client needs (and to clients about providers' plans) through the device of regularly bringing the two together to review problems in service delivery and find local solutions. This builds the responsiveness and direct answerability of providers at the local level. On the other hand, central line managers remain involved in monitoring these local deliberative processes, ostensibly with a view to checking the tendency towards license or dissipation in local decision-making. The involvement of central actors defends the autonomy of service providers in relation to local elites, and also back-stops local accountability mechanisms through externally-imposed oversight and sanctions. One of the best-known examples of this approach to designing accountable and responsive local services is the Health Agent Program in Ceara state, Brazil (see Box 24). Another is the on-going experiments with local school management in the city of Chicago, USA (Box 21).

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[98] Centre for Rural Management, 'Institutional Reform and Movements for Right to Information and Anti-corruption: The Kerala Situation', Report nos. 3,4, and 5 (Kottayam, Centre for Rural Management, mimeo, October 2001), submitted to the research project, Grassroots Anti-Corruption Movements and the Right to Information in India', Institute of Development Studies, University of Sussex.

[99] See Remy Prud'homme, "The Dangers of Decentralisation". For a review of the dangers of localism and the liabilities of small group deliberation, see John Gastill, *Democracy in Small Groups: Participation, Decision-Making, and Communication,* (Philadelphia, P.A.: New Society Publishers, 1993).

[100] Keith Griffin, 'Economic Development in a Changed World', *World Development*, vol. 9, no. 3 (1981), p. 225.

[101] John Harriss, 'The Dialectics of Decentralisation', *Frontline* (Chennai, India), vol. 17, no. 13, June 24 – July 7, 2000.

[102] Archon Fung, 'Accountable Autonomy: Toward Empowered Deliberation in Chicago Schools and Policing', *Politics and Society*, vol. 29, no. 1 (March 2001), pp. 73 – 103.

Box 21

Local School Councils in Chicago – A New Central-Local Partnership to Improve Schooling

A crisis in Chicago's education system, which by 1987 had been labeled 'the worst in the nation' by the then Secretary of Education William Bennett, triggered a profound reorganization of management and control systems to devolve considerable authority over day-to-day management and longer term planning to school staff and parents. Since 1988, elected Local School Councils, with representatives of parents, the community, teachers, and the school's principal, have governed Chicago's schools, with powers that make the Chicago school system the most decentralized and participatory urban educational system in the US. LSCs are responsible for hiring, firing, evaluating, and determining the job definitions of the principals of their schools. They approve and monitor school budgets, develop three-year 'School Improvement Plans', and control discretionary state funds allocated to schools in poorer areas. This system creates the short feedback loop between planning, implementation, and results assessment – a way of combining ex ante and ex post accountability – which is one reason why local management is regarded as delivering services better tailored to community needs.

Central authorities offer training to LSC representatives in order to build technical capacity (in budgeting, planning, and curriculum development). Central authorities monitor performance outcomes in order to provide accountability in the school system. When fewer than 15% of students score at or above national norms on standardized reading tests, the school in question is put on 'academic probation'. But rather than re-establish centralized direction over laggard schools, the first step of central authorities is to strengthen the quality of community engagement in school planning and problem-solving. Frequently this means mediating deadlocked conflict on the LSC, or using publicity and open debate to expose and weaken the grip of particular self-interested local groups over school management.

This new structure is neither centralized nor decentralized. It gives much more power to local educational staff and clients than the previous top-down and expert-based approach to schools management. However, LSCs remain dependent on central offices for various kinds of technical support, and accountable to them for both process integrity and performance outputs. The main corrective measure that central authorities impose on failing schools is not punishment, but a renewed investment (through community mobilization, dispute resolution and mediation, and building technical skills) in effective community collaboration over schools management. This has the effect of altering the incentive structure of education providers – teachers and school principals report directly to parents, creating a client-centered, problem-solving approach that re-directs their responsiveness reflexes downwards towards clients rather than upwards to superiors. The result has been an improvement in test score performance of Chicago schools, even though in the decade that this experiment has been underway, students entering the public school system have become increasingly disadvantaged and less well prepared.

Source: Archon Fung, 'Accountable Autonomy: Toward Empowered Deliberation in Chicago Schools and Policing', *Politics and Society*, vol. 29, no. 1 (March 2001), pp. 73-103.

4.2.3 Cyberspace as a means and arena of accountability

The internet is an excellent example of the way in which the creation of new methods of promoting accountability (the question of 'how') coincide with the emergence of new arenas within which accountability can be pursued (the question of 'where'). The worldwide web and its associated toolkit of electronic mail, discussion lists and chat rooms offers new techniques for a range of agents seeking accountability. For example, US states' environmental agencies are using the internet to provide citizens with information, gather public input on agency decisions, and foster networks of interested citizens, even if they still offer limited opportunity for online interaction.[103] Korean civil society organisations have used the internet for advocacy and campaigning to make effective demands for political reform. Although only reaching a portion of the population, their recent efforts included disseminating information about election candidates, and listing several who were deemed unfit for election.[104]

But the worldwide web is not just a *tool* for surveillance and communication, it is also a new, but geographically unconfined '*space*' – a digital environment within which it becomes possible to both force answers from powerful actors about their behavior and mobilize other agents (official and unofficial) to impose punishments on those whose conduct is found unacceptable.

Pursuing this logic, Allen Hammond and Jonathan Lash have asked whether the rise of something they call 'Cyber-Activism' is 'creating a kind of civil accountability that imposes novel checks and balances on the power of global corporations, providing new ways of articulating and enforcing social values – in effect, giving rise to new forms of governance?'[105]

Cyber-activism, they argue, is indeed 'an intensified, Internet-enhanced form of voluntary social activism directed against major corporations that run afoul of social or environmental expectations'. They cite in this connection the process by which Nike was pushed into reforming itself. After labor abuses at Nike production facilities in the developing world had been publicised through the internet, the company's management initially tried to brush off the charges. Eventually, it pursued a radically different strategy, and its CEO admitted publicly that '[t]he Nike product has become synonymous with slave wages, forced overtime and arbitrary abuse'. Finally, Nike used the internet to promote the reforms it was undertaking in order to improve the conditions of workers and the environments of the localities in which it operated, a strategy which other companies, most notably the oil giant Shell, subsequently adopted with much success.

Another successful case is the campaign by Rain Forest Action and Greenpeace against Home Depot, the world's largest lumber retailer, which resulted in the company's management undertaking to cease sourcing timber from endangered forests and from suppliers that engaged in unsustainable harvesting practices. The key feature of this campaign was that it involved not only these two well-known NGOs, but also a larger constellation of accountability agents that,

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[103] T. Beierle and S. Cahill, 'Electronic democracy and environmental governance: a survey of the states', Discussion Paper 00-42 (Washington, D C: Resources for the Future, October 2000), www.rff.org/CFDOCS/disc_papers/PDF_files/0042.pdf

[104] http://www.independentsector.org/pdfs/srf01/kim.pdf

[105] Allen Hammond and Jonathan Lash, 'Cyber-Activism: The Rise of Civil Accountability and Its Consequences for Governance', *Information Impact Magazine* (May 2000), http://www.cisp.org/imp/may_2000/05_00hammond.htm.

were it not for the internet, would have remained invisible, dispersed and rendered impotent by their isolation. These included 'hundreds of environmental organizations and grassroots groups that built public awareness through e-mail, Web sites, advertising and media stories and coordinated protests in stores across North America'. As one commentator put it, 'even as the technology revolution is empowering corporations, it also is giving new leverage to regulators and consumer groups'.[106]

Hammond and Lash refer to this general phenomenon as 'civil accountability', inferring that internet and communications technology have fostered a new form of civil society geared towards a new type of accountability-enhancing activism, operating in a new de-spatialized environment. Some of the issue networks formed are catalysed by well-known organizations like Amnesty International, but

> their real power results from the actions of ad hoc communities of interest formed in cyberspace. Such communities are not located in a geographical place, rarely have a formal structure, do not go through long periods of door-to-door solicitation and organizing, and do not raise funds from foundations.[107]

But while the ability of autonomous networks to defy the conventional constraints on activism is what makes them so promising as a more direct channel of accountability, it is their disregard for the conventions that underlie established accountability institutions that makes them problematic. In particular, the notion of due process is undermined by the immediacy of the reputational penalties imposed on both public and private actors. Criteria for weighing information are usually vague and subject to change without notice, and the scope for malicious misinformation enormous. Which is why the need for perhaps more formal accountability mechanisms to regulate this type of behavior is becoming more apparent, and the demand for it is growing. While it will never be possible to solve the problem of infinite regress – the need for watchdogs to watch over watchdogs, *ad infinitum* – the question of how to strike the right balance will similarly remain with us.

For this reason, some web-based accountability agents are seeking to promote a more structured approach, employing more rigorous methodologies to provide information, on an ongoing basis, about the actions of powerful actors. The press – a more conventional form of this activity – has always found it difficult to separate its news-reporting and editorializing functions. Agents of 'cyber-accountability' will be no exception. Nevertheless, web-based organizations like Corporate Observer Europe, and many others like it, seek to engage in world-wide surveillance, using local affiliates to build a global picture of the activities of multinational firms. They focus on *creating* transparency, rather than simply demanding that it be instituted, in the sense of taking information in the public domain or available through the work of local investigators, and actively disseminating it through the internet. The underlying principle is that for dispersed voices to enforce accountability, passive transparency must be supplemented by active watching, and that this requires a coordinated, if unofficial, channel.

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[106] David Ignatius, 'A Global Marketplace Means Global Vulnerability', *Washington Post*, 21 June 1999.

[107] Ibid.

The World Resources Institute (WRI) is creating a particularly ambitious form of internet-based decentralized-yet-global surveillance. They call it Global Forest Watch, and as with the other examples, it is not, on its own, a fully assembled accountability mechanism. The objective is for it to serve as a tool that can enhance the substance of accountability relationships – informed questioning leading to more serious answerability. Through a collaboration among more than 100 scientists, the WRI in 1997 produced maps that indicated the location of what was left of the world's old forests. This information-supply catalyzed an interesting demand response from forest-protection groups in many countries. Their concern was not simply in formulating a one-off campaign to bring whoever was responsible for forest depletion to book, but rather in contributing additional information, in a uniform format, to build a more sustained instrument for pursuing accountability.

The local groups will keep tabs on the activities of logging companies, and register their findings in the on-line database, including indications of where practices have violated internationally recognized sustainable-harvesting standards. This will create a constantly updated visual representation of the world's forest cover, including indications of the actions of individually-named firms. The aim of Global Forest Watch is to systematize the anarchy of fragmented surveillance to help it contribute a new tool to struggles for accountability – that is, 'to become a kind of Human Rights Watch for endangered forests, a disciplined Internet community that ensures a fair and objective scrutiny of the practices of all forest product companies.'[108]

Another variant of cyber-accountability is to subject the detailed functioning of formal accountability institutions to scrutiny, and to publicize the findings in real-time form on the internet. An important example of this is the work of the Public Service Accountability Monitor in South Africa (see Box 22). There are serious questions about the potential for this type of initiative – external monitoring of accountability systems – to catalyze the sort of public outrage that would make them effective. This reservation is all the more pertinent given the serious equity concerns inherent in the nature of the technology. While the internet can help to publicize how the actions of the powerful negatively affect the poor, and in some cases reveal, in painful detail, the failures of accountability institutions designed to protect disadvantaged people, cyberspace is a forum that, in its current form, largely excludes the poor from active participation. Accountability *to* the poor is replaced by what may be, for the time being, the second-best solution – accountability for protecting the interests *of* the poor.

Box 22

Real-Time Monitoring of Accountability Processes

The Public Service Accountability Monitor, based in South Africa's Eastern Cape province, keeps track of 'individual cases of misconduct and corruption and the reactions of the responsible departments to these cases' and 'monitors the performance of individual

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[108] Hammond and Lash, 'Cyber-Activism…'.

departments' compliance with regulations and implementation of disciplinary procedures'.[109] The non-profit groups that operate this programme take advantage of the highly developed transparency and right to information provisions in the South African constitution and related legal instruments. Were government accountability agencies not obliged to divulge details of their own oversight and enforcement activities, it would not be possible for the PSAM to subject them to an independent analysis to determine whether they are conforming to procedural standards, before posting the raw data and legal analysis on the web. In other words, this is a non-official watchdog keeping the official watchdog under surveillance. As the programme's management puts it, their objective is to 'follow-up', in minute detail, the 'cases of public sector corruption and maladministration…in an objective and politically non-partisan fashion'.

The fairly straightforward methodology is based on verified information obtained through a standard process. First, the PSAM compiles reports of 'misconduct, corruption and maladministration' by monitoring the press, and documents produced by the government's Special Investigating Unit, the Auditor-General's office, the Parliamentary public accounts committee and NGOs. Each case is entered into the PSAM database, and assigned a researcher. Based on consultations with legal advisors, the researcher analyses which regulations have been breached and which disciplinary procedures should have been implemented. The researcher then conducts a thorough investigation in order to establish the basic details of the case, before conducting tape-recorded telephone interviews with representatives of the concerned departments. The representatives are selected in consultation with the Director General's Office of the Eastern Cape and, when police cases are involved, the Provincial Commissioner of the South African Police Service. The interviews are based on a pre-prepared list of questions about the case and its relations to relevant legislation, management procedures and public service rules.

A transcribed copy of the interview questions and case summary is sent to the Director-General of the Provincial Administration and the Speaker of the Provincial Legislature requesting them to take cognisance of the case and to pursue appropriate action. Finally, the case information is published on line, including responses from all the actors involved.

The starting point for the project is a belief that 'when public resources are abused through corruption and maladministration it is ordinary members of society, and in particular the poor and unemployed, who suffer the consequences'.[110] 'The PSAM believes that if public officials who have been found guilty of acts of gross misconduct, corruption or maladministration continue to be employed, this sets the precedent that misconduct will be tolerated by public service management'. And for public officials to be held accountable, the public must 'be reliably informed' about not only the general level of service delivery outputs, but also 'the performance of individual departments and officials within the public service'. And on this score, the PSAM recognizes that there are serious institutional shortcomings to the accountability agencies in the South African system.

The Auditor-General's office is only able to obtain funds for its investigations from the government institutions it audits, and many of these refuse to pay, or claim a lack of funds. When audits do take place, the fact that it must await submissions from the relevant entities

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[109] Most of the information on this case is drawn from background documents and case material posted at http://psam.ru.ac.za.

[110] Colm Allan, 'Civil Society and Public Accountability: The Need for Active Monitoring', Presentation to the 9th International Anti-Corruption Conference, 10 -15 October 1999, Durban.

being subjected to the audit means that its access to information is limited, in many cases, to general aggregate financial statements which cannot be cross-checked against other documentation.

The Public Protector has the power to investigate and report on a wide range of activities within the public service, but the only interventions it can then engage in are 'mediation, conciliation and negotiation'. It has no enforcement powers, and its recommendations can be ignored by departments under investigation.

The Heath Special Investigating Unit (SUI) cannot investigate any case until it has obtained authorisation from at least four different government departments, after which a Presidential proclamation may be forthcoming before it can investigate any case. And while there are quasi-judicial mechanisms – the Special Tribunal attached to the SIU – that may order any official found guilty to repay the misappropriated funds, and can recommend disciplinary action and criminal prosecution, the SUI itself 'has no mandate to monitor or enforce these recommendations'.

Visitors to the PSAM's website can find regular updates on specific cases, or can receive automated email notifications of new updates. A posting of 13 June 2001, for example, included new details of the Department of Agriculture's failure to discharge its accountability function: it had, contrary to disciplinary procedures, not suspended an official convicted for the rape of colleague's 12-year old daughter. While on bail pending the outcome of his appeal, he remained on the residential premises of the educational institution in which he worked, and raped another colleague's daughter – a nine-year-old. The PSAM dossier documents that the Department conducted no investigation and never charged the official with misconduct. The PSAM also obtained and posted the Department head's explanation for why no disciplinary measures were taken, which was that the matter was a subject of legal proceedings. The PSAM then posted the relevant regulations that discredited this justification, and provided evidence that in fact the Department had no written record of the case at all.

Source: http://psam.ru.ac.za.

4.3 New Standards of Accountability

New popular understandings of accountability are emerging that go beyond the conventional usage of the term. These standards relate mainly to the conduct of power-holders (what they are accountable *for*), but also such related issues as the appropriate standard of evidence, the suitability of the proposed sanction, and the legitimacy of the chosen arena. Accountability has traditionally been based upon an assessment of whether procedures have been followed diligently, not whether a desirable outcome has been produced. To use the idea and mechanisms of accountability to pursue social justice is to elevate a *popular expectation* about democratic governance – that it should be responsive and egalitarian – into a *formal objective* of institutions of public oversight. To assess accountability processes and failures from the perspective of social justice means bringing a normative concern with the quality of the outcomes of public decisions and actions to our review of the fairness of accountability procedures, or the soundness of accountability institutions. In other words, accountability systems are expected to not just satisfy

concerns with process integrity, but also respond to norms of social justice. In the context of development, this means holding state and non-state actors accountable for their contribution to the opportunities for poor people to realize substantive freedoms.

This final element of the new accountability agenda – the shift in the standards of probity and justice used in accountability relationships – is to some degree implicit in the previous three. When the actors in accountability relationships begin assuming new roles, and use new methods to do so across jurisdictions of variable size, inevitably the standards against which conduct is judged are bound to shift.

There are, however, two reasons why it is useful to examine this element of the new accountability agenda separately.

First, the appearance of social justice and equity as measures of accountability reflects the way new standards of public morality have emerged from successful challenges to failing or grossly biased accountability relationships in institutional arenas beyond the 'official' public sphere. In arenas such as the family, market, and identity community, socially inequitable relationships have often been neglected or tolerated by the state on the grounds that they are best dealt with through voluntary mechanisms or through customary dispute resolution. The rules governing accountability relationships – who must explain their actions to whom, who suffers sanctions from whom – are specific to each institutional arena, shaped by the contractual terms of the relationships into which individuals enter (e.g.: marriage, wage labor, charity-beneficiary). As weaker parties to these arrangements elicit state support to combat sexism, racism, or other forms of disadvantage in these non-state arenas, expectations are created that institutions of public-sector oversight should address these same social inequities in all of activities they audit, disputes they adjudicate and performances they evaluate.

Changing norms are not just the *result* of there being new sorts of actors and new forums for seeking accountability; they are also an important *cause*. Something must have changed in the perceived legitimacy of non-governmental actors for them to have become – as they have in some instances – accepted partners in state-run accountability institutions, or for women's objections to sexism and autocracy in Christian churches to have received a response. It is hard to escape the conclusion that there is a relationship of reciprocal influence between the *processes* of accountability (the relationships between agents and objects, and methods and arenas) and the *standards* to which these processes are expected to conform. When previously excluded or overlooked social groups demand more direct accountability, systems of justice and standards of fairness must confront the reasons why they were overlooked or excluded in the first place, and begin to challenge the elitist biases which may have produced this exclusion.

The second reason for examining the issues of standards separately is the on-going contestation over standards, with dominant parties in accountability relationships anxious to limit expectations about what they should be accountable for, and less powerful actors pressing to make the achievement of social-justice outcomes the measure of probity in public actions. In the context of globalization, for instance, we have seen that some standards of accountability are lowered: deregulation and the competition for inward investment allows firms to choose locations offering the least onerous regulatory environments. But globalization has in another sense driven standards up by revising expectations about corporate responsibilities. It has done this chiefly by

diffusing new understandings of basic human rights. Globalization has also provided small non-governmental organizations the technology required to network with counterparts around the world – and thereby to gain access to information on the activities of governments, firms, and even other NGOs, and ultimately to disseminate these damning reports to a worldwide audience of concerned citizens, state agencies and multilateral actors.

The survey of the way changing standards are affecting the operation of accountability institutions examines three contemporary phenomena:

1. First, the problem of *moral-procedural lag*, where accountability procedures have not kept pace with changing popular expectations of probity and justice in public and private actions. Often this happens because of the resistance of power-holders to upward revision in the standards of accountability;

2. Second, a move to *specify citizen rights to accountability* by expanding citizens' rights to information or to litigate in cases of poor performance; and

3. Third, the trend towards *rebuilding the sense of trusteeship* and probity amongst public servants through performance standards jointly determined by citizens and service-providers.

4.3.1 The Moral-Procedural Lag

The phenomenon of a disconnect between more exacting standards of accountability and insufficient means for enforcing them still plagues efforts to hold corporations to account. Popular demands that even indirect impacts of corporate operations be subjected to a high standard of social justice and equity are have not been matched by reforms to domestic and international law. In October 2001, at a hearing in the European Parliament, Premier Oil, a British petroleum firm, was accused by the NGO Earth Rights International of having been a party to human rights violations (including forced labor) through its operations in Burma. What is striking is how out of sync with changing standards of accountability was the firm's official response to the charges. According to Premier Oil's Corporate Social Responsibility Officer, 'There are no international sanctions that do not allow our operation to go ahead there' – a legalistic formulation that, while broadly technically correct, neglects the changing criteria against which powerful organizations are being judged in the court of public opinion, a barometer to which Members of the European Parliament are acutely sensitive. As the reporter for the London-based *Guardian* newspaper put it, Premier's contention was that 'it could not be held responsible for the behavior of troops it retained to protect its pipeline and employees'.[111] But, in fact, not only was the firm being held 'responsible'; it was also being held *accountable* (in a strictly *de facto* sense) in that changing standards of public morality had forced it to at least answer for its alleged conduct.

The idea of new standards of accountability against which actions are judged does not always involve more rigorous enforcement. Most Truth and Reconciliation Commissions are based on the idea that officials who abused their power during authoritarian regimes are obliged to provide

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[111] Andrew Osborn, 'British Oil Firms Accused of Burma Abuses', *The Guardian* (London), 12 October 2001.

answers about their actions – for instance, what happened to disappeared persons – but that *in exchange* the state forfeits its right to impose penalties. This is answerability without enforceability. Indeed, answerability – the obligation to divulge the 'truth' – is obtained at the expense of enforceability because otherwise the still powerful offenders would not likely submit to a public cross-examination, preferring to hide behind legal protections. There are doubts, as in the case of South Africa's Truth Commission, about the value of voice delinked from institutional, as opposed to moral, accountability. Some clinical studies have found that the victims of abuse, or families of those killed, derive little psychological benefit from these processes.[112] Some commissions can use the information obtained in order to mount further investigation and prosecution through normal judicial processes or administrative tribunals. But even where they do not, truth commissions demonstrate a means of imposing new and exacting standards of answerability by enabling ordinary people to cross-examine their oppressors.

4.3.2 Specifying Rights to Accountability

In the face of the proliferation of more exacting standards of accountability, public-sector actors have tried to contain and channel citizen expectations through two diametrically opposed approaches to standard-setting. The first approach is to publicize performance standards in order to focus the efforts of service providers on minimum and feasible performance, and to provide clients with a benchmark against which they can measure the quality of services they actually receive, and for which they can hold service providers to account – through citizen monitoring, for instance. However, few standard-setting exercises, such as citizens' charters or performance targets, provide citizens with a legal entitlement to pursue redress for sub-standard performance.

A more radical response to new expectations of accountable performance is to extend to citizens full rights to information and rights to sue providers, or else statutory rights to the service in question (education, employment, health care). This implies a more extreme vision of accountable public sector management than many states can entertain. It reverses the political-administrative control system from one in which the state controls society on the basis of a democratic mandate from the people, to one in which society controls the state more directly through legal accountability mechanisms.

There is evidence that citizen command of rights to information and litigation has the effect of empowering citizens in relation to providers, and in some cases of triggering a public sector response. In the case of the Maharashtra Employment Guarantee Scheme in India, statutory rights to employment (and to unemployment benefits) give poor people the grounds to challenge collectively any failure on the part of local authorities to create jobs. There have been a number of successful Public Interest Litigation cases which have secured government admissions of responsibility, though none yet has secured actual pay-outs of lost wages. The Government of India has recently (August 2000) made education a statutory right. This may yield some fruitful citizen monitoring and litigating efforts, particularly where universal access to education has been

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[112] Brandon Hamber and Richard A. Wilson, 'Trauma, Liminality and Symbolic Closure: The Legacy of Political Violence in South Africa', in *Proceedings of the American Psychological Association*, and forthcoming in Edward Cairns (ed), *Memory in Conflict: Social Memory in Post-Conflict Situations* (London: Palgrave, 2002).

further supported by such experiments as the Education Guarantee Scheme (soon to be followed by a Healthcare Guarantee Scheme) in the state of Madhya Pradesh.

States have been more willing to grant citizens statutory rights in relation to controlling the excesses of market agents. Here there is some very strong evidence of success. A study that examined the effect on environmental regulation of the state-sponsored right-to-know and right-to-sue provisions in the US found that such rights are highly effective in holding industrial polluters to account. The study found that efforts to engage citizens in environmental regulation through the more conventional means of consultation, public hearings, and so on, tended to be cosmetic measures. But states that armed citizens with the right to sue polluting industries, and with state-funded right-to-know programmes providing information on toxic emissions, had lower rates of toxic emissions over time.[113]

One problem with rights-based provisions for transparent governance, is that this is a demand-driven approach which puts the onus upon citizens to demand their rights, or when these are denied, to initiate proceedings against service providers. Demand-driven approaches can put certain categories of client in a disadvantaged position, if they are from marginalized groups who are unaware of their rights in the first place, or who are geographically or socially distant from providers and are therefore not well-equipped to press demands. Rights-based approaches to service delivery do not necessarily oblige government workers to initiate, *suo moto*, a service or provide information to a particular client group. A good example of a rights-based program that was stillborn for this reason is a Madhya Pradesh scheme which guaranteed tribals' rights to their original land. No land was ever returned, as few tribals were aware of this scheme, and few bureaucrats saw good reason to take on powerful interests controlling tribal land.

It has been a constant theme of this chapter that transparency and access to information is essential to accountability, and standards of what constitutes genuine transparency are changing fast, if not faster, than the criteria against which the substantive actions of firms and governments are judged. In this sense the new accountability agenda is about enriching the more conventional notions of accountability and ways of bringing it about. The United States Government Performance and Results Act of 1993 requires all federal government agencies and departments to measure the results of programs and services they provide. It is intended to improve program effectiveness by promoting a new focus on results, service quality and customer satisfaction. It is thus indirectly a part of the new accountability agenda, in that such efforts help to increase the base of information on which agents of accountability can challenge officials. Though not automatically linked to penalties for poor performance, such measures constitute an *indirect* form of answerability – by responding to the prefabricated question, 'what have you achieved?'. Access to this information facilitates more *direct* forms of answerability by enabling auditors, legislators, and ordinary citizens subsequently to ask more pointed questions, such as 'why, given the clear evidence of non-achievement, should we support continued expenditure?' There has been a strong backlash against the proliferation of information and reporting requirements in public administration – measurable indicators, performance benchmarks, service charters – because they appear overly bureaucratic, excessively costly, and infinitely manipulable. All of

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[113] D. S. Grant, 'Allowing citizen participation in environmental regulation: An empirical analysis of the effects of right-to-sue and right-to-know provisions on industry's toxic emissions', *Social Science Quarterly*, vol. 78, no. 4 (1997), pp: 859 – 873.

which is very often true. But just as it is important not to jettison the concept of voice in the rush to embrace the hard-edged certainties of accountability, it is also necessary not to abandon the instruments with which a more evidence-based approach to reason-giving and explanation-demanding can be constructed.

But even as this chapter has stressed the necessity of information and transparency, it has warned that access to information is not a sufficient condition for producing accountability. Efforts by people and NGOs in Angola to keep tabs on the use of resources derived from petroleum revenues is a good example of this. One report states that 'Angolans cannot hold the government to account for the oil funds because there are no reliable figures and no way of finding out how much money is there in the first place'.[114] But this reveals only part of the truth. The lack of information is just *one among many* impediments to achieving accountability, though a critical one. But, again, the shifting standards of what are considered sufficient levels of transparency are changing the outlook. BP Amoco in Angola began publishing information that was once considered far too confidential to share with the outside world, including the total net production of each BP oil block, the level of payments made to Sonongal (the petroleum parastatal) as part of revenue-sharing agreements, and the amounts paid in taxes and other bonus payments. Just having this information will not be enough to force either Amoco or the government to begin doing business in ways the benefit poor people. But without it, any hope of more socially desirable outcomes is almost impossible to imagine.

4.3.3   The Return to Trusteeship

In the field of public service delivery, a few contemporary efforts to elicit a responsible use of discretion by 'front-line' service providers are producing new standards of service provision and a new type of government worker, closer in training, character and commitment to the NGO workers with whom they have so often been unfavorably compared. A classic obstacle to more responsive service delivery is the difficulty of finding a balance, for front-line service providers, between responsiveness to the dictates of hierarchical superiors in administrative accountability systems, and enough discretion to enable them to react creatively to local needs. The fact that unchecked discretion has resulted in opportunistic entrepreneurship by local officials[115] produced a 'New Public Management' bias towards enhanced hierarchical accountability systems and the introduction of competition with private sector providers in the 1980s and 1990s.[116]

But there is a competing view that holds that a bureaucratic culture that provides some significant degree of discretion serves the interests of democratic accountability better than one which stresses strict central control.[117] This is because while checks and constraints on discretion may

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[114] Lara Pawson, 'Fields of Dreams', *BBC Focus on Africa* (June 2001), p. 34.

[115] Robert Klitgaard, 'Incentive Myopia', *World Development*, vol. 17, no. 4 (1989), pp. 447-59.

[116] A. Gelb, J.B.Knight, and R.H, Sabot, 'Public Sector Employment, Rent Seeking, and Economic Growth', *The Economic Journal*, vol. 101 (September 1991), pp. 1186-99.

[117] Judith Tendler, *Good Governance in the Tropics* (Baltimore, MD: The Johns Hopkins University Press, 1995); Colin Campbell, 'Turning Full-Circle? Public Choice, Problems with Implementation and the Return to Trusteeship in Public Service', paper prepared for delivery at the 18th World Congress of the International Political Science Association, Quebec City, August 1-6, 2000

minimize corruption, their punitive nature fails to educate pubic officials into using their moral agency in ambiguous situations, or to build their personal and institutional resources to behave with probity when faced with ethical challenges. This is precisely what some recent accountability measures such as the US Whistle Blower Protection Act (see Box 23) attempt to reward.

BOX 23

<u>US Whistle Blower Protection Act of 1989.</u>

This act protects those who make 'disclosures regarding illegality, abuse of authority, gross waste, gross mismanagement or substantial and specific danger to public health or safety. Though not especially new, the idea behind the act reflects at least four of the concerns driving more recent concerns with accountability.

First, it conveys a sense in which public servants are expected to conform to higher standards of probity, including intolerance for malpractices in their midst.

Second, it opens to public scrutiny accountability relationships within the state, particularly the bureaucratic chains of command that can, in the name of administrative accountability, actually smother genuine accountability to ordinary citizens.

Third, though a piece of government legislation, it is one around which focused civil society activism has sprung up: The Government Accountability Project (GAP) is a U.S.-based 'nonprofit, nonpartisan public interest group' that defends the rights of employees who "blow the whistle" on illegal or potentially harmful activities of government agencies. Its main focus now is on implementing the law in the US, which includes defending those punished for whistle-blowing, and disseminating the idea internationally.

And, fourth, whistle-blowing is embedded in the idea of international human rights. The GAP is in fact 'looking for test cases to develop a precedence of whistleblower protection as a human right in tribunals such as the Inter-American Commission on Human Rights and the European Court of Human Rights.

There are a wide variety of ways in which the legislation has been used. Whistleblowers at a nuclear facility in Ohio alerted regulatory authorities to environmental and safety standards violations, and the resulting investigation helped to prevent the completion of a similar plant. After a police chief fired a whistleblower who had reported him for cruel and racist behaviors at a Veterans Administration hospital, the police chief was dismissed, prosecuted on several charges, while the whistleblower was reinstated'.

Source: http://usinfo.state.gov/journals/itdhr/0800/ijde/devine.htm

A more radical example comes from the state of Ceara in Northeast Brazil, where the standards of service delivery in a range of sectors improved dramatically in the 1990s through, among other things, an investment in the quality of discretion and responsiveness of the lowest-level pubic sector workers. Between 1987 and 1994, two successive reformist governors turned around mediocre public agencies in the health, agriculture, informal-business-support, and public works sectors to produce responsive and effective pubic services. These generated palpable human development gains in what had been one of Brazil's poorest states. Most impressive of all were the reforms to a rural preventive health service which, in the space of five years, increased preventive health coverage from 30 to 65% of the state's population, contributed to a 36% drop in infant mortality, and tripled coverage of some vaccines (See Box 24).

In this and other public services, the key to reforms was not, as in so many public-sector accountability-related reforms, a standardization of tasks and a multiplication of reporting requirements upwards in the chain of command. Far more important were measures to build probity, commitment to clients, and new poverty-sensitive standards of care. This was achieved by rupturing the control of local politicians over program budgets and personnel, and creating conditions for field workers to use their discretion in developing a locally appropriate service. Field workers did not use this expanded discretion to limit their workload and constrain client demands, as is so often the pattern where service providers are over-worked and under-motivated.[118] Instead, a sense of commitment to clients produced 'self-enlarging' interpretations of worker responsibilities, resulting in new and high standards of care. The maintenance of massive publicity for reform experiments meant intense and constant public scrutiny of these programs, helping to limit self-serving behavior.

Box 24

<u>The Health Agent Programme in Ceara, Brazil: Worker Discretion Builds New Standards of Care</u>

This program required the recruitment of 7,300 new basic community health workers (mainly women) and 235 nurse-supervisors to carry out infant vaccinations and child preventive health campaigns. Recruitment of these non-tenured, low-skill field workers from the same communities in which they were to work was conducted centrally by the office of the state governor. This bypassed the patronage systems of the local mayor, and even the control of the health department. The state lavished an unusual amount of publicity on the large local recruitment process, thereby ensuring that considerable public prestige was given to attainment of the job on merit. This socialisation of both successful and unsuccessful job applicants, and indeed the local communities, to the programme's social 'mission' during the hiring process was the first step in building the state-citizen sense of joint purpose which has sustained the programme. Unsuccessful applicants and community members were encouraged from the start to act as unofficial monitors of the programme and to report both poor performance and success stories.

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[118] See Michael Lipsky, Street-Level Bureaucracy: Dilemmas of the Individual in Public Services (New York: Russell Sage Foundation, 1980).

Non-material incentives helped to develop job commitment and responsible use of discretion. The three months' training was more than tenured public sector workers normally received. Health agents were immediately noticed and welcomed by local communities, thanks to their 'uniform' of a white T-shirt emblazoned with the programme's name, blue backpacks filled with supplies, and their substantial presence – between 30 and 150 – in the locality. The enormous publicity given to the 'noble' mission of improving local health also endeared workers to the local community, something that contributed to their job satisfaction. Together, these elements produced an unusual sense of 'calling' in the health agents, which became an informal accountability mechanism, producing self-monitored responsiveness in service delivery.

New standards of care evolved as a result of close interactions between individual health workers and their clients, mothers receiving health agents in the privacy of their homes. The need to establish trust with clients prompted an expansion of the job into simple curative interventions such as removing stitches, treating wounds, taking sick children to hospital, as well as a range of socially supportive tasks such as cutting children's hair, helping with childcare, or assisting with cooking or cleaning.

Accountability systems relied in part upon building tremendous publicity and public interest in the program, resulting in exposure of any poor performance, but also in rewards (public prizes and celebrations) for successes. The 'self-expanding' nature of the work, the way the job evolved into a mothers' support system, created new public expectations from public sector workers. In other words, health agents came to be held to account for new standards of care, including the demonstration of empathy, responsiveness and integrity.

Source: Judith Tendler and Sarah Freedheim, 'Trust in a Rent-Seeking World: Health and Government Transformed in Northeast Brazil', *World Development*, vol. 22, no. 12 (1994), pp. 1771-91.

The notion that self- and peer-imposed constraints and a sense of 'organizational mystique' should act as an informal accountability institution and produce raised standards is not new.[119] It is the basic rationale for the cultivation of elite work cultures around the civil service and other professions (such as law or medicine), where extremely difficult entry-level qualification tests, extended apprenticeships, and peer review of performance, are intended to perpetuate high performance standards. What is new about cases such as health agents in Ceara is the inclusion of lower-level bureaucrats or front-line workers to the public service meritocracy, rather than the use of more conventional top-down accountability tools usually deployed to control this category of staff.

These experiments come with organizational reforms typical of successful private-sector endeavors: the emphasis is on flexibility and client-centredness, a problem-solving approach rather than the delivery of centrally-determined products, and great publicity for innovations and successes. The publicity is important for demonstrating just what standards of performance and outcomes should be expected of government employees. It is creating new notions of trusteeship

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[119] Merilee S. Grindle and Mary E. Hilderbrand, 'Building Sustainable Capacity in the Public Sector: What Can Be Done?', *Public Administration and Development*, vol. 15 (1995), pp. 442 - 463.

in public workers that rely less upon self-assigned, elitist, and inevitably patronizing mandates and more upon explicit and publicly negotiated notions of the obligations of public service providers.

Although there is a groundswell of public intolerance for corruption around the world, it is not always the case that more exacting standards and expectations of good governance are in evidence, particularly in relation to the behavior of politicians. France's Cour de Cassation ruled in October 2001 that, while still in office, President Jacques Chirac was not only immune from prosecution on charges of corruption, stemming from the period when he was mayor of Paris, but that he could even be questioned by investigators probing several cases of misappropriated public funds. Older standards of accountability (which protect acting heads of state from prosecution) were applied on the question of answerability as well as enforceability. And by dismissing the jurisdiction of the relevant horizontal channels of accountability – legal proceedings, administrative inquiries – the court had effectively placed all of the burden for checking abuse by power-holders on vertical channels of accountability. They required French voters to throw Mr. Chirac out of office before there would be even a chance of him being held accountable. The lawyer pursuing the case against Chirac argued that the judges had 'in effect turned the French electorate into a jury', and had 'sent a clear message to the nation: you must decide whether the president should be pursued or whether to wait for another five years, which amounts to an amnesty'. Unfortunately, as we have seen, electoral institutions are often very ineffective in achieving this type of accountability. According to an analyst from the French BVA polling agency, which has measured Chirac's continued appeal despite the negative publicity he has faced as a result of the allegations of impropriety, 'The question of honesty just isn't central to Chirac's voter appeal'.[120]

This last example demonstrates that a precondition for accountability institutions to function properly is shared social expectations about propriety in the behavior of politicians and administrators. Unsurprisingly, cultivating a culture of raised expectations about public-sector probity, and raising awareness about citizens' rights to demand this, is often the first step in donor or civil society efforts to support accountability reforms.

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[120] 'Chirac Ruled Immune to Prosecution', *The Guardian* (London), 11 October 2001.

Part V – CONCLUSIONS

Much of the contemporary concern with accountability failures, particularly in developing countries, is driven by the way they drain resources for growth and development. This Human Development Report moves beyond this to investigate the implications of accountability failures for social justice, equality and poverty reduction.

This chapter has delineated the relationships between accountability failures and the deprivations suffered by the poor and other socially excluded groups in order to demonstrate how the improved functioning of institutions of public and private sector oversight might promote human development.

But it has also argued that even were conventional accountability institutions to work with much greater efficiency, a number of biases in the conduct of public servants and the terms of access to public resources would persist unchecked, and continue to reproduce social exclusions. This reflects, among other things, the problem of the weak voice of the poor and other socially marginalised groups, who have difficulty in making accountability institutions – from legislatures to court rooms to the office of the auditor-general – respond directly to them, or indirectly to provide redress for the injustices they experience.

Another problem highlighted in this chapter is that spatial reorganisations of power – globalisation and localisation – are endowing old actors as different as multinational corporations and traditional authorities with new powers to affect the life-chances of the poor, yet leaving conventional state-based institutions of regulation and oversight underprepared to control their actions.

The persistence of these problems has triggered a wide variety of experiments to increase accountability. Some of these are simply the diffusion of well-known mechanisms, such as anti-corruption commissions and auditors-general, while others represent a redesign of conventional institutions, such as reform to electoral systems to bind political leaders more closely to the wishes of their constituents.

It must be borne in mind that these kinds of reforms must be part of any agenda for enhancing the ability of ordinary people to hold the powerful to account. But the focus of this chapter is on the emergence of a new accountability agenda, the defining characteristics of which are summed up the thematic headings under which the empirical case material has been presented:

New Roles for New Actors in Accountability Relationships

- Efforts by citizens to engage directly in horizontal accountability functions which have been found wanting; for instance in financial auditing (through participatory budget analysis and review), or legal review of public decisions (through Public Interest Litigation).

- Civil society creativity in promoting the foundation of new official accountability institutions, particularly at the international level.

- Sensitivity to a need for internal accountability from the private actors (NGOs, political parties, religious bodies) which have spearheaded efforts to hold states and firms to account, and from the international public actors, such as the IMF, the World Bank, and the UN, that are promoting accountability improvements in developing countries.

New Methods across New Jurisdictions

- A simultaneous globalisation and localisation of accountability jurisdictions. Globalized jurisdictions compensate for the failure of national accountability institutions to control the human rights or environmental abuses of public officials or multinational corporations. Localised jurisdictions facilitate much more detailed and intimate oversight functions and more locally appropriate enforcement mechanisms

- Novel methods of investigating abuses of power and demanding answers of power-holders, methods inspired by the new spatial arenas (local, global, and the de-territorialized world of cyberspace) within which accountability struggles are being fought.

New Standards of Accountability

- More exacting standards of accountability that revise expectations of the process integrity and performance outcomes for which power-holders should be held to account. There is an incipient sense that democratic accountability must be judged according to substantive, not just procedural criteria – in other words, that power-holders must be held to account for enabling human development by promoting social justice and equality.

It is, however, important to recognise that this is not a coordinated, or even internally consistent, agenda. It is emerging from a wide variety of spontaneous initiatives the world over. It has dramatic implications both for the way we think about accountability, and for contemporary approaches to promoting good governance.

The initiatives described in this chapter, many of which are elaborated further in this Report, considerably challenge the classic distinctions through which accountability is defined and with which this chapter began. Citizen engagement in horizontal institutions of accountability, for instance, is blurring the conventional distinction between vertical and horizontal accountability mechanisms. Efforts to augment citizen voice in planning, auditing, or determining service delivery standards are expanding space for *ex ante* accountability rather than confining them to *ex post* accountability. And new, more exacting standards of accountability, combined with a decreasing pubic tolerance for weak enforceability, are raising awareness (if not yet closing the gap) between *de jure* and *de facto* accountability.

Almost all of the initiatives surveyed above put a great premium on voice as the animator of both demand- and supply-side accountability efforts. But it would be a mistake to draw a policy conclusion that accountability for human development can exist *only* when the poor are *directly* involved in mechanisms for checking abuses of power. Such a conclusion would not only be

unrealistic, it would also be unfair: it, in effect, asks the poor themselves to shoulder an intolerable burden, and insists that those who have the most to lose from challenging power, and who have the fewest defences, should take the greatest risks. Improving accountability is a slow and frustrating process, and until it begins to pay off, the poor will inevitably have to find ways of coping with the existing reality. And an important feature of the survival strategies of people operating sometimes on the margins of society is to keep a low profile in order to avoid having what are often semi-legal means of maintaining their livelihoods taken away from them in reprisals against their attempts to play a more active role in governance. This highlights not just the need for the poor to develop alliances amongst other social sectors, but also the continued relevance of investing in the sense of trusteeship and commitment to impartial and responsible public service in politicians, bureaucrats, judges, and other official and non-governmental personnel.

The Risks of A la Carte Accountability Systems

Finally, it is essential to grasp the implications of an essential characteristic of the new accountability agenda: its *ad hoc and fragmented nature*. While informal approaches can be as effective – if not more so – than officially planned strategies, and the combined effect of such a diverse range of niche forms of accountability can prove more flexible than the monolithic structures associated conventional state-dominated systems, it is also true that they can leave important gaps unfilled.

The move from conventional state-dominated accountability systems to an uncoordinated set of overlapping initiatives in fact parallels some of the changes that have characterised the manufacturing industry in recent years. The analogy is not as far-fetched as it sounds. Where manufacturers once themselves fabricated almost all of the parts of which their products were made, delivering to clients a complete system, they now increasingly assemble products from readily available components, supplied by a wide range of firms, each with its own specialised niche. Accountability, similarly, used to be something delivered, fully assembled, by the state – through its regulatory agencies, courts, bureaucratic reporting systems, and so on. The functions of answerability and enforcement came from the same supplier, so to speak, even if through different subsidiaries. But these days the components of accountability systems are contracted out to different firms altogether: one getting the contract for enforcement, another for answerability. The old anti-trust regulations separating suppliers in the horizontal and vertical sectors of the accountability industry have been effectively abolished. And the cross-border restrictions to the promotion of accountability are being lifted progressively, just as they are in international trade.

While it would be foolish not to recognise the extent to which all this functional differentiation and flexible specialisation can increase the productivity of accountability institutions, neither can we downplay the risks. Just as when a computer-buyer purchases her laptop, printer, scanner modem and mouse from different suppliers, and finds that they are not fully compatible – and even worse, the support contract does not extend to the essential task of making the components work together – so do people in the new world of dispersed accountability-provision find themselves caught in situations where it is difficult to know where to point the finger of blame, or

where to go for redress. As one critique of the operational implications of multi-level governance in the European Union put it:

> A further challenge to some applications of subsidiarity stems from the requirement of accountability. Subsidiarity can prevent the public from placing responsibility for actions on particular officials, who may appeal to vague and complex notions of comparative effectiveness and limited room for independent action. Such responses hinder accountable government.[121]

Moreover, the fragmented nature of today's accountability systems are even more prone to market failure than private-sector activity. Where business suppliers will normally step in to fill an under-served market, responding to the price signals that accompany increased demand, in the process of producing accountability there is little to prevent an oversupply of voice-related initiatives, and an undersupply of enforcement. Demand goes unfulfilled.

Above all, just as the global market provides hundreds of brands of breakfast cereal for those with the money to buy them, and not nearly enough drinking water for those without, it will take conscious interventions – by the state as well as other actors – to correct for the failure of new modes of accountability provision to work for the poor. It is not enough to expect the promising but incomplete profusion of initiatives surveyed in this chapter to reach a pro-poor equilibrium. The emerging agenda must be actively shaped if it is to have a positive impact on human development.

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[121] http://www.arena.uio.no/publications/wp99_21.htm