'UNDP AND THE RIGHT TO INFORMATION'

SEMINAR REPORT

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Acronyms

A2I	Access to Information
CHRI	Commonwealth Human Rights Initiative
CO	Country Office
CSO	Civil Society Organization
DGG	Democratic Governance Group
EITI	Extractive Industries Transparency Initiative
ICCPR	International Convention on Civil and Political Rights
LIMAC	Freedom of Information Foundation – Mexico
NGO	Non-Governmental Organization
ODAC	Open Democracy Advice Centre
OGC	Oslo Governance Centre
R2I	Right to Information

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1. Overview

For UNDP, the right to information is a key underpinning for work in democratic governance and is vital for promoting 'open governance' and the accountability of public decision makers as well as for strengthening transparency, participation and the rule of law. The right to information is not only fundamental for an open and democratic society but is a key weapon in the fight against poverty and in accelerating human development. In 2006, over 68 countries had comprehensive laws to facilitate access to state records and many more are in the process of enacting such legislation. This illustrates the growing recognition on the part of governments of the importance of access to information for enhancing democratic engagement, building confidence in government institutions and strengthening their credibility and effectiveness. However, in many States, including democracies, people are routinely denied access to official information—information that should be in the public domain. Only 32 of the countries in which UNDP is present have laws requiring the disclosure of government records.

The UNDP Oslo Governance Centre convened a seminar on the right to information to explore how UNDP can strengthen its support to promoting and protecting the right to information in countries where UNDP is working. The seminar built on several guidance materials and resources that have been developed under UNDP's Access to Information service line, particularly the Practical Guidance Notes on Right to Information Programming and Measuring the Impact of Right to Information Programmes.[1]

The seminar had three principal objectives:
1. To increase understanding of how the Right to Information is central to effective governance and development work.
2. To understand how UNDP and other development actors are currently supporting this area of work.
3. To use the discussions/recommendations from the discussions to input into an action plan for strengthening DGG/OGC's support to this area.

Key points to emerge from the seminar included:
1. The right to information is a cross-cutting area that contributes to the overall strengthening of democratic governance, primarily by increasing participation (including CSOs and media), accountability, transparency, access and distribution of power and delivery of public services.
2. The right to information is of vital importance to poor and marginalized people.
3. UNDP can support right to information in a number of ways without necessarily having a dedicated right to information programme, but it is critical that right to information is systematically integrated into all programming (not just governance), country office (CO) policy advice and other CO activities such as multi-stakeholder dialogue meetings.
4. There is a real need for COs to develop right to information strategies to support their poverty reduction/governance programming. The Common Country Assessment (CCA) or equivalent should include an analysis of the Access to Information (A2I) context which would inform such strategies
5. Responding to right to information challenges concerns both the 'supply' and 'demand' sides of information. Capacity and capabilities are central factors for both. On the supply side, UNDP can be most directly engaged working upstream. The right to information is a cultural and service delivery issue (like the delivery of other state public goods and services).

The seminar was moderated by Andrew Puddephatt, Former Executive Director of Article 19 and currently Director of Global Partners and was opened by the Norwegian State Secretary for Foreign Affairs, Raymond Johansen and Pippa Norris, Director of UNDP's Democratic Governance Group.[2]

The report is organized into eight parts based on the seminar programme (see Annex 2).

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[1] Available in French, English and Spanish at www.undp.org/oslocentre/access_dev.htm
[2] A full transcript of the State Secretary's speech is available at
http://odin.dep.no/ud/english/news/speeches/political_staff/032201-090014/dok-bn.html. Pippa Norris'
presentation and supporting paper are included as separate Annexes 3 & 4.

2. The Right to Information Context

Session Two focused on the right to information context seen from a UNDP Country Office (CO) perspective, the global perspective and from the perspective of UNDP's policy development on the right to information.

2.1 A global perspective on the right to information

Andrew Puddephatt presented a global view on R2I issues and trends (see appendix 4 for the presentation). He began by highlighting important expressions of the importance of R2I.

- In 1946, the UN General Assembly adopted Resolution 59(I), stating: "Freedom of information is a fundamental human right and ... the touch-stone of all the freedoms to which the United Nations is consecrated."
- From the UN Special Rapporteur: " Freedom will be bereft of all effectiveness if the people have no access to information. Access to information is basic to the democratic way of life. The tendency to withhold information from the people at large is therefore to be strongly checked".
- Article 19 of the Universal Declaration of Human Rights: "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers".
- Recognition of the R2I from regional bodies: Council of Europe, European Convention Court judgments, African Commission on Human and Peoples' Rights Declaration, American Declaration of the Rights and Duties of Man, The Commonwealth Heads of Government 1999.

The presentation also focused on key pressure points or catalysts for right to information which include the collapse of authoritarianism and the emergence of new democracies, guidelines or model legislation drafted by the Council of Europe and the Organization of American States to promote freedom of information, pressure from the World Bank, the International Monetary Fund and other donors as well as pressure from civil society.

The presentation also highlighted how the private sector is increasingly becoming engaged in the R2I agenda. In some countries there is a right to certain information from companies that are performing public functions where there are particular environmental concerns – Chile, USA, Canada. South Africa gives the right to access information held by private bodies, to protect rights. There are also a number of self-regulatory initiatives such as the Global Reporting Initiative, Sullivan principles, CERES principles (environmental), AA1000 Assurance Standard and the Extractive Industries Transparency Initiative – EITI.

The presentation ended with some polling/survey evidence on the issue of 'trust'. This 'trust' data revealed that the most powerful institutions are the least trusted, that all institutions are affected – government, private sector and NGOs, that lack of trust is a serious problem if not addressed and that transparency is a vital part of restoring trust. The conclusions were revealing in that public trust in national governments, the UN and global companies is now at its lowest level since tracking began in January 2001. Since 2004, trust in government has declined by statistically significant margins in 12 of the 16 countries for which tracking data is available. The only national government with increased trust is Russia's, continuing its upward trend since 2001. The UN shows significant decline in trust from 2004 levels in 12 of the 17 countries for which data is available, suggesting an impact of the scandal over the Oil-for-Food Programme. ?NGOs remain the leaders in trust, but they also have to contend with some decline. In 10 of 17 countries for which data is available, trust in NGOs has fallen since 2004, in some cases sharply (e.g., Brazil, India, South Korea).

2.2 UNDP country office perspectives on the right to information

Country offices presented their views on the right to information issues and challenges currently facing the countries they work in as well as UNDP's response to these challenges. Views were presented from Indonesia, Syria, Yemen, Bulgaria, Mongolia, Ethiopia, Paraguay and Afghanistan. While these countries had very specific R2I concerns there were many challenges that were shared, including the following:

1. Hostile or indifferent governments

In many cases, governments may not see the value of having a right to information, particularly in countries in which there is a history and culture of secrecy. A right to information may also expose corrupt government practices and undermine personal and professional interests.

2. Working situations where media is suppressed, controlled or politicized
Access by journalists to official information in many countries is still not realized. In some cases where a right to information exists, journalists are not using it because they continue to rely on relationships they have developed with government sources. In post-conflict and developing countries, there is an urgent need to support media organizations' professional capacity development, particularly in the area of investigative journalism and the ability to reach out to marginalized groups.

3. Situations of conflicting laws (R2I v secrecy laws)
In many cases, there is a constitutional guarantee of R2I but with many exceptions ('clawback clauses') or laws that conflict with it such as state secrecy and individual privacy and criminal defamation legislation (e.g. provisions which provide for journalists publishing false allegations to be imprisoned). The 'war on terror' has meant that governments are relying more on state secrecy provisions which in turn undermine the right to information and the assumption of information access.

4. Laws that are not implemented or enforced
Some of the country office presentations revealed the existence of good right to information laws. The real challenge in these contexts was to move from law to practice, implementation and enforcement.

5. Cautious and conservative officials and cultural resistance
The culture of secrecy in many public administrations is a real barrier to the implementation of right to information. There is significant institutional resistance to change. In some cases, the release of information is left completely to the discretion of public officials. Furthermore, in several of the countries where a right to information exists, there are no programmes or guidelines for sharing information with the public, illustrating a lack of institutional commitment to follow through on the law.

6. Limited state and bureaucratic capacity
Institutional, technical and financial capacities also constitute an obstacle to the right to information. The capacity of public bodies to provide information is weak, and most officials are unaware of their obligations. There is also a lack of relevant mechanisms for people to access legal information on demand. For example in some cases, public bodies have become better at creating websites and proactively sharing information, however, access to the Internet remains low in many developing countries. The infrastructure and financial constraints of ensuring official information reaches remote areas is an additional but important obstacle to overcome. Technical capacity in terms of records management and statistics generation is an area which needs more focused support.

7. Awareness of right to information
Country office participants noted the lack of systematic measures to make people aware of, and provide feedback on, information in the public arena. The lack of awareness of citizens' rights both under the constitution and from new legislation presents a major challenge. In some cases this is compounded by public inhibitions against seeking information and a fear of asserting right to information at the local level.

2.2.1 UNDP's current response to right to information challenges in-country
UNDP is responding to these challenges in a multiplicity of ways. Participants confirmed that it was relatively rare for UNDP to support a dedicated R2I programme, but that access to information was often an integral part of other governance programmes, particularly programmes focused on improving transparency and accountability of government bodies. Anti-corruption programmes were a typical example of this. Other areas included:

- Supporting public administration reform programmes: financial management, human resources and e-governance initiatives
- Enhancing access to information through capacity development of National Human Rights Commissions, the Parliament, the courts, Office of the President – typical focus is on the creation of websites, public information centres, public discussions, communications capacities
- Raising rights awareness and civic education programmes through support to CSOs

- Establishing of tele-centers at sub-national levels (district)
- Facilitating information flows between state and non-state actors through multi-stakeholder meetings around a broad range of development and governance issues
- Supporting the development of government communications capacities
- Promoting and supporting government to better respond to the need for transparency and accountability over funds given in post conflict or post-disaster situations (such as the tsunami relief)

2.3 UNDP's policy and programming development on Access to Information

Elizabeth McCall, Civil Society/Access to Information Adviser and Alexandra Wilde, Governance Specialist, provided a brief overview of UNDP's policy and programming guidance on Access to Information (A2I). This began in 2001 as part of the Democratic Governance Thematic Trust Fund and became a fully fledged UNDP service line, along with E-Governance, in UNDP's Multi Year Funding Framework (MYFF) for 2004- 2007.

The key focus has been the development of programming related materials including a number of practical guidance notes in response to growing demand for technical support from COs. This can be seen in the current activities which are being undertaken by COs in all regions (http://undp.botterli.com/default.aspx). Practical guidance materials are developed in partnership with selected partner organizations as well as with practitioners from COs and other parts of UNDP.

Considerable emphasis has also been placed on understanding what other organizations are doing in this area. This has provided the basis for developing relationships and building partnerships with a wealth of other organizations including CSOs such as Article 19, the BBC World Service Trust, Panos and the Consortium for Communication for Social Change, and donors such as DFID, Sida, Norad and the World Bank.

The main focus areas for UNDP's policy work on Access to Information are:
1   Communication for empowerment and civic education
2   Right to information
3   Media development

In addition to the production of practical guidance materials for UNDP COs around these three principal areas, activities also include an annual mapping and updating of a database of UNDP support to Access to Information, as well as a directory of international organizations working on Access to Information issues[3] and the provision of policy advice to COs through direct missions and responses to queries on relevant knowledge networks.

Raul Zambrano, the E-Governance Advisor, gave an overview of DGG's work in E-Governance. He explained that the E-Governance service line focuses on 3 areas:

1. Access and connectivity—in terms of material and skills
2. E-governance—the actual use of technology for tasks of governance such as accounting, managing passports
3. A2I—the way that access to information keeps up with technological developments (individuals can now own their communication channels, the commercialization of information, networking power)

UNDP is increasingly supporting telecentres to enhance access to information (Internet) in rural areas. In the 1990s most of them failed, but that was because the focus was on access with limited attention given to content, i.e. the information itself. Telecentres that charge for service are sustainable, but they often do not have the potential to train and acquire new expertise. Some also attempt to bring capacity building into communities, but these are less sustainable. Yuri Misnikov, Regional Policy Advisor for E-Governance at the Bratislava Centre, noted that UNDP is providing support to telecentres at the community level with a focus on partnerships and bringing people and partners together.

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[3] The database is available at http://undp.botterli.com/default.aspx

3. Making Right to Information a Reality for the Poor and Other Marginalized Groups

Making right to information effective for the poor and other marginalized groups was the focus of a panel discussion which included Bethan Grillo, Programme Director, Article 19, Richard Calland, Executive Director, Open Democracy Advice Centre (ODAC) and Charmaine Rodriquez, Project Coordinator, Commonwealth Human Rights Initiative (CHRI).

3.1 Women's use of the right to information

Bethan Grillo, Article 19, focused on the use of a right to information in the context of health issues, particularly as it relates to women (pregnancy, stillbirth and sexually transmitted diseases).

In 2003, Article 19 began a right to information programme in Peru focused on generating demand for information, as part of a larger right to information package to address the pervasive corruption in that country. The programme addressed reproductive and health rights because these were very difficult areas for marginalized people to access information. Peru also has a history of forced sterilization which was an issue on the international agenda.

Article 19 worked in four regions in Peru, and tailored their work to each. They found that that the poor were least able to access information and accordingly unable to exercise their rights. Women were clearly the most vulnerable group, and as a result their reproductive choices were extremely limited by cultural factors. The programme worked very closely with civil society initiatives to raise awareness on the importance of right to information, but also to strengthen civil society's capacities to gather information in order to put forward more effective arguments and advocacy in policy dialogues.

Some of the key lessons of Article 19's experience in Peru included:

- ü At a very local level, groups have been able to demand a more gender-equal distribution of resources.
- ü Civil society organizations that are committed to cooperation tend to be the most effective. Coordinating and transcending CSO hierarchies was a central challenge in mobilizing civil society to effectively push for legislation.
- ü Women are much more willing to use legislation to make collective complaints than individual ones, probably due to power disparities between individuals (doctors and women complainers). Institutionalizing collective complaint systems protected women against institutional or personal backlash.
- ü There was an opportunity to promote the R2I law's use within government such that regional government bodies could access information on centralized budgets and use that information to jockey for power within bureaucracies, which made them more willing to facilitate use of the same law by external actors
- ü Face to face communication is very important (for example the programme included an initiative in which door-to-door hairdressers provided information on sexual activity to women in small communities, as a way of making information provision non-threatening)
- ü An alliance between CSOs and the media is especially important at the implementation stage of projects involving legislation. The media has a potentially critical role to play in exerting force on government.

3.2 Right to information and the water sector in South Africa

Richard Calland, Executive Director, Open Democracy Advice Centre (ODAC) noted that the key question that must be asked is how does a R2I make a difference to the lives of poor people? Without such a test, there is a risk of adopting R2I rhetoric without making the needed connections to people's everyday lives. This was illustrated by two examples of ODAC's support to R2I in the water sector in South Africa.

A village with no clean water heard rumours that other local villages had been provided with water. Following failed attempts to gain information from authorities, frustrated villagers asked ODAC to pursue the case. ODAC took the case to the district council, where they	A community swimming pool was very important to a community, but rumours ran about a secret plan to sell the pool to a developer who would privatize it. These rumours led to a breakdown in trust. IDSLA used the law to bring some documents to light,

discovered that there was in fact a very good water plan to pipe water village by village over five years, and that in the interim water would be delivered in containers weekly. This showed that (1) secrecy is bad for everybody involved, because it destroys trust, and (2) if you can penetrate secrecy, you get action. In this case the government actually did its job, but failed to communicate the job it was doing to those affected.	getting the policy and decisions that had led to it reversed.

These examples illustrate how the R2I can make a real difference in the lives of poor people. However, while the lesson is simple, the process of making a R2I a reality is painstaking and requires significant cultural and mindset change. In each of these instances, the law was a necessary but not sufficient condition for the effective use of information. Middle class people seek information as a knee-jerk reaction when they are threatened, but poor people, even if they intuitively sense that they need information—which they often do not—are unable to act on that intuition due to lack of capacities and capability.

It is important to support both the supply and the demand side of R2I, i.e. bureaucratic cultures of sharing information and the CSO watch-dog role. It is not enough to rely on what governments want to give, institutional conditioning is also key. For example, ODAC takes government officials from South Africa on study tours to Sweden to show how the culture of sharing and making information available is embedded. It is also absolutely critical for the promotion of R2I at different levels of government to identify and work with progressive and visionary individuals who understand what R2I is about and who will take it forward within the bureaucracy.

3.3 The right to information and 'social audits'

Charmaine Rodriquez, Project Coordinator, Commonwealth Human Rights Initiative (CHRI) focused on the right to information in India. India presents important learning on the use of R2I, particularly on how to make R2I a reality for poor people. A grassroots movement emerged in Rajasthan which focused on getting labourers copies of their employment contracts so that money allocated by the government as wages could be checked against employees who were actually working on public works. Poor villagers in effect carried out a 'social audit' by actively engaging in matching the money allocated to public works with the labourers assigned to those works. The social audit process empowered poor people to demand accountability from government. After the social audits, public hearings were organized at local level with government officials and the media. These hearings provided an opportunity for the poor labourers to speak for themselves. They generated a lot of attention both within the state and throughout the country and created the momentum for a R2I law.

India now has R2I laws at the national and state levels. In India R2I is seen as an individual's right, and is not much utilized as a media or opposition party right. The Indian R2I law is also distinct in that it provides for investigation of public works as well as public records. For example, if a road is thought to have been built with only one half of the required concrete, a sample of the road can be analyzed.

3.4 Issues arising from the plenary discussion on the right to information context

- The pressure to release information vs. the accuracy of the information. In contexts where there is a commitment to make information available, there is often a focus on editing and changing of minutes/records of public meetings as these are made available to the public. It is often said that R2I acts lead to governments writing 'in post-it notes'. It was noted that in New Zealand officials have to articulate their ideas in writing, if so requested. The problem is no longer only one of record releasing but also record making (e.g. the maintenance of email correspondence, what counts as a record?). There should always be legislation on record keeping as well as releasing. Someone is always vested with the authority and responsibility for how records are maintained.

- The right to information as a people's right rather than a media right. Media has a key role to play, but packaging the R2I as a media right can act as a disincentive for governments and also 'turn off' ordinary people (i.e. disempowering) because they don't think it belongs to them.

4. The Enabling Environment for the Right to Information

The legal and administrative regime for right to information was the focus of a panel discussion which explored the key elements of good right to information legislation, the role of the Ombudsman (the example of Norway) and the challenges in inculcating a culture of sharing and making information available within the civil service. The panel included Andrew Puddephatt, Director, Global Partners, Patrick Keuleers, Policy Advisor, Public Administration and Anti-Corruption, UNDP Bangkok Regional Centre and Kristan Brandt, Office of the Norwegian Ombudsman.

4.1 Elements of a good right to information law

Andrew Puddephatt sketched the key elements of an effective right to information legal regime which include:

1. A presumption of openness. Individuals have the right to seek information without giving reasons for their requests, but governments should give reasons for withholding information. The R2I further implies that governments should make clear what kind of information they hold, and publish a wide range of information without being asked. This is often a challenge because governments frequently don't know what information they hold. Thus R2I makes governments think about how they organize and categorize information.

2. A defined and limited series of exceptions. Some information should not be in the public domain if it is not in the public interest. Such exceptions should be specifically defined in law so that government representatives and laymen can agree on what they mean. Restrictions, if applied, should pass the "harm test", meaning that withholding the information would do more harm to the public interest than releasing it. Any restrictions should be applied to the content of information, not the type.

3. An efficient and effective appeals mechanism. In addition to the courts, a specialist body – the Ombudsman, a specialist Information Commissioner - should be established to provide an administrative remedy.

Examples of good right to information laws include South Africa, Mexico, Peru, New Zealand, India, and the UK. The rule of thumb when designing a law is that national and regional context matters. If you are in Eastern Europe, do not look to Western Europe, but look to examples and experience within the region. The state's interest in private information, enhanced by the "war on terror", means that it may be necessary to consider two types of legislation in parallel – the right to information exercised by individuals against public bodies, and the right to date protection, which protects personal privacy against state intrusion.

4.2 The Norwegian experience with implementing right to information

Kristan Brandt outlined the role of the ombudsman in Norway. The term 'ombudsman' has its roots in the constitutional practice and systems of government of the Nordic lands. The role of the ombudsman in Norway, who is a Parliamentary Ombudsman for Public Administration, is that of an independent representative of parliament, responsible for monitoring the implementation of international obligations. The Ombudsman for Public Administration is specifically instructed to do his/her utmost to ensure that the rights of the individual citizen are not violated by any act of public administration. R2I is an essential part of the ombudsman's office, and activities. Norway has a separate act governing public access to administrative documents, and appeals go first to an administrative body, only afterwards to the ombudsman. The ombudsman has discretion of exception regarding the release of documents. Institutional reluctance to release documents is in many instances due to institutional culture: civil servants fail to understand that they are holding information on behalf of the public (who are the true owners of the information) or the importance of releasing that information.

The right to information is an increasingly important aspect of the ombudsman's activities. To request information from the ombudsman one can email, send a letter, telefax or telephone, but you do have to specify which document you want, which can be an obstacle. There is a registry of public records which is publicly accessible and which can facilitate the information request. The ombudsman's office is only effective if the public administration respects his/her decisions, which they are not legally bound to follow.

4.3 The right to information and public service culture

Patrick Keuleers, UNDP Policy Advisor, Public Administration and Anti-Corruption explained that the right to information is creating many 'democracy windows of opportunity' in developing countries and is illustrated by the media explosion in Afghanistan. There is also a huge increase in institutions and institution building, but this is only having a small effect on limiting corruption. There is therefore a real need for an R2I law. However laws alone will not change the situation markedly for ordinary citizens. What is required is a change in civil service culture, especially in East Asia, where countries enjoy tremendous economic development not accompanied by open government. Even where there is political and organizational commitment to R2I, there is an issue with capacities and resources to make information available. UNDP could be much better at integrating capacity building for access to information in public administration reform programmes. E-governance can play a role if it is seen as being less about technologies and more about the willingness of the government to engage and interact with people. An interesting example is the UNDP Tsunami database, where NGOs are the ones dragging their feet in yielding information, not governments.

4.4 Issues arising from the plenary discussion on the right to information context

UNDP could be much better at integrating capacity building for access to information in public administration reform programmes
- There needs to be more attention given to the relationship between poverty (a country's position on the HDI) and that country's R2I regime. Some poor countries are finding ways to effectively operationalize a R2I even though they have limited resources.

5. The Role of the Media and Civil Society in Promoting and Protecting the Right to Information

The role of the media and civil society in promoting and protecting the right to information was the focus of a panel discussion which included Edet Ojo, Executive Director, Media Rights Agenda, Issa Luna Pla, Vice President, Freedom of Information Foundation – Mexico and Dan Dionisie, Policy Analyst, UNDP Regional Centre, Bratislava.

5.1 The role of the media

Edet Ojo, Executive Director, Media Rights Agenda noted that it is important to remember that R2I is essential to human development. Without information it is difficult to function effectively at any level: 'We cannot eat without knowing where lunch is.' 'You cannot live without knowing where to get medicine'.

Much more research is needed on the link between information and human development. In a sense a life without access to information is not feasible. Media is critically important to give effect to R2I laws. In Africa, the media is a main source of information for many people as access to the Internet is limited. The obvious conclusion is to ensure that there are procedures and mechanisms to provide us with the reliable information we need, whatever form they take.

It is especially critical not to heed arguments that R2I needs to wait for development because R2I itself ensures the legitimate accounting of resources in the process of development. Without R2I the process of development is prone to hijacking and corruption.

5.2 The role of civil society

Issa Luna Pla, Vice President, Freedom of Information Foundation – Mexico, A.C (LIMAC) explained that a Right to Information law was enacted in Mexico in 2000 after 25 years of advocacy and cooperative lobbying efforts between academics and media owners. There was a targeted and long-term campaign that used a number of different discourses to 'sell' the R2I to different target groups. For example, an administrative discourse was used in dealing with government to explain how to improve civic participation and decision-making. The media benefits had to be framed in terms of markets. "Nobody really cares about human rights, but they want to look legitimate." The strategy was to combine different discourses in one strategy. The motives for legislating R2I of course vary. Readdressing past crimes is a good reason but can be accompanied by government fear which blocks efforts. Trust is a good motivation.

Civil society was very determined to get an independent commission or ombudsman for the Mexican law and this has resulted in the establishment of a quasi judicial body that reviews cases before they get to court. It has binding powers on agencies for disclosure. Civil society also performs an important function by publicizing and advertising laws, which is essential because if nobody makes use of these laws they will flounder (as of May 2006, less than 1% of the Mexican population had made an official request under the legislation). Civil society is using these laws for budget analysis and to fight for migrant rights. There is a large effort to bring these rights to the poorest communities. In terms of the use of the R2I Act, only 9% of requests come from media, academics (33%) and individuals (26%). Others (business, government) account for the rest.

Obvious obstacles to progress include the fact that civil society often "ignores their rights" and that government is often not efficient. Publicity is also important in this regard, especially in informing the public of laws and rights through a commonly defined strategy between civil society and media.

There is a real challenge in that even though the government does not set any limitations on civil society's distribution of information, CSOs do not know how to turn data into reports that can have a sustained media effect.

5.3 Civil society in Romania and the right to information:

> "The law creates only a virtual space for R2I, but CSOs have a crucial role in
> pushing the envelope and setting precedents"

Dan Dionisie, Policy Analyst, UNDP Regional Centre, Bratislava, stated that at the centre of the Romanian experience with right to information was a coalition of NGOs that mediated between the government and its opposition to draft the Romanian R2I law. Many of the NGOs have remained engaged in the R2I process through monitoring, implementation and capacity-building activities. Relatively reliable information exists, showing significant progress in quantitative terms of how many requests are filed and granted. During the initial period of implementation of the laws there have been a number of prominent court rulings which have produced a lot of awareness of the legislation. More recently, the law has been used by media to investigate corruption. There are few denials or exceptions, and in 2005, 95% of 710,000 requests were granted.

Capacity is a key constraint and administrative habits change only gradually. More than one half of the requests made are verbal, and the criteria for what can be requested are quite loose. The scope of the R2I has expanded organically in practice without any change in the law, which has been interpreted to include privatization and public procurement contracts. One of the conclusions to be drawn is that transparency has increased faster than the institutional capacity to cope with it. There is a long way to go from having a legal framework in place to its effective implementation.

In terms of self-regulation, it may be helpful to have someone in charge in the government who can be held accountable. In Romania's case there used to be a minister of public information.

5.4 Issues arising from the plenary discussion on the right to information context

- It is important in terms of the implementation of R2I that government bodies have information officers who are responsible for monitoring the implementation of the law, while responsibility should be at the top of hierarchies. It is not uncommon to see R2I units set up in ministers' offices to oversee implementation and to be a nodal point in the administration.

6. Non-UNDP Perspectives on Important Entry Points for Supporting Right to Information

A panel of the civil society participants engaged in an interactive question-and-answer session on the critical issues and important entry points for supporting the right to information. Questions included:

1. What is the relationship of the right to information to freedom of expression, the right to communicate and the right to know?
2. What are the windows of opportunity for R2I where there is no R2I law or immediate prospects of one?

3. How does change happen and how has it happened in terms of countries that go through a process of transformation?
4. How can we build demand for information with specific groups in society, particularly youth?
5. What is the role of the media in the promotion and use of a right to information?
6. How should the capacity deficits of national and local governments be best addressed in order for them to institute and oversee a right to information?

6.1 The relationship of the right to information to freedom of expression, the right to communicate and the right to know

Article 19 on Freedom of Expression of both the UN Declaration on Human Rights and the International Convention on Civil and Political Rights (ICCPR) states that the right to freedom of expression includes not only freedom to 'impart information and ideas of all kinds', but also freedom to 'seek' and 'receive' them 'regardless of frontiers' and in whatever medium.

Freedom of expression is the undisputed international right, in all international treaties. It has a number of rights packed into it including the right to information. Seeking and receiving implies a human right to information. Although the R2I has never appeared as an independent right in any global UN treaty, it is guaranteed by a number of regional treaties and declarations by bodies such as the Council of Europe and other bodies. The media functions as a channel through which the individual right to freedom of expression is given a public form. It operationalizes the right but is not a privileged right-holder per se.

In recent years, monopolistic and oligarchic control of media channels provoked calls for a right to access to communications. Ten to fifteen years ago the debate arose in UNESCO about this right, which became polarized along cold war lines. Many campaigned for this right, especially in Africa, but it is not legally recognized. There is widespread acceptance and agreement of the right to information but the right to communicate is a politically contested area. See appendix 5 for a background note on these issues.

The right to information does not necessarily extend to a state duty to provide information pro-actively. This hinges on the legal interpretation of the word 'seek'. This word is not in the European Convention on Human Rights. An interesting question about the right to protect freedom of expression is whether the state should have a regulatory role over the media - by providing a framework for public broadcasters, for example, to allocate wavelength among different types of broadcasters. The European approach contrasts to the American in that the US favours market liberalization while Europeans prefer a public broadcasting element among private broadcasters – a debate evident in the reconstruction efforts in the Balkans. The European model is more dominant in the reconstruction of Iraq. There is increasing dissatisfaction with the public service broadcasting model in Africa, especially South Africa and Zimbabwe. In the Nordic experience, public broadcasting is legislated clearly, but enforcement does not lie with the state. 'Public' means the government subsidizes it, but the board monitoring it is not owned by the state.

6.2 Windows of opportunity where there is no right to information law or immediate prospect of one

There is potential to move on the R2I agenda even when there is no R2I law or prospect of one. In some countries, the prospects may look unpromising on the surface, but there may be officials within government who are willing to supply some information (titles of land, birth certificates etc.). It is important to work with these individuals and state institutions and build up a coalition. It was noted that some states in India with no R2I law can be very slow legislators, so instead of pushing for legislation, CSOs are placing a focus on instilling information-sharing practices within governmental departments, to encourage officials to disclose information and set precedents for changing bureaucratic cultures. Support can also be provided to enhancing horizontal cooperation and information between government departments so that bureaucrats can themselves understand the utility of having access to government held information. It is also important to watch for and seize opportunities to push the R2I agenda, e.g. elections or corruption scandals.

It is also important to bear in mind that it is possible to push the R2I agenda without specific legislation. In these circumstances it is possible to make use of and build on other legal frameworks such as the constitution and international treaties (the reporting to treaty bodies is an important entry

point). Focusing on service delivery, i.e. advocating the importance of information for more efficient and effective public service delivery, can be a good 'carrot'.

Selection of entry points will be influenced significantly by attitude and culture in each national context. Cultural change is a long-term process and not all entry points need to be immediate.

6.3 Initiating change and transformation

It is important to find the scenario that one can work with: sometimes this is the rule of law. It is also important to identify and work with groups and sectors of society to mobilize them and support their efforts in demanding R2I. UNDP and other development organizations can drawn upon drivers of change analysis. There is much focus on supporting the development of institutions for bringing about change in countries - but institutions are driven by individuals. There needs to be more focus on support mechanisms for individuals in government who can be seen as progressive rather than deemed 'dissidents'. In some situations, it may also be important to avoid using human rights language and position rights issues in a more pragmatic way that is likely to be more acceptable to decision makers. In effect introducing and advancing the R2I through less sensitive entry points (the 'back door').

6.4 Building demand for information with specific groups in society such as youth

Youth are an especially important group to work with and stimulate their demand for greater access to information. Young people can be empowered by providing them with information and helping them to bypass the minefields of social power networks like teachers and family members. Reproductive and sexual health information is especially important for the young, and using information and communication mechanisms that are relevant to this age group is key in building awareness of where to get information, to engage with them to find out what information they want and need, and to learn about what obstacles they face. Building rights awareness in formal education is also an important entry point.

Technology is a key entry point. Young people are often early adopters and intermediaries between new technology and parents. ICT is especially important for UNDP support as it can provide a way of promoting greater access to information in collaboration with government in a politically palatable way.

6.5 The role of the media in the promotion and use of a right to information

The role of the media varies from country to country, but it makes sense to get the media on board because they often have institutional backing, and getting the media to use the R2I law is also an important way to activate it. One of the big problems is the low level of awareness among the public at large about the laws, and the media has an important role in dissemination and awareness raising. In Bolivia the media did not necessarily want a R2I law because it disrupted the special 'supply chains' for information and links with government. The media need to recognize that R2I will not necessarily help the daily journalist, but will help longer term investigative journalism.

There are examples of good collaboration between media and civil society: an NGO worked with a newspaper on a campaign called 'Tell them you know' (where?) that used the paper as its platform but with the NGO's agenda and advertisements about free workshops held by the NGO. In many cases, the big media conglomerates may be the only ones who can afford to move government on R2I issues. In this respect, it also important to involve media owners on R2I and not just journalists. There are also examples in Colombia, for example in Bogotá there are several initiatives between CSOs and media to monitor government bodies.

6.6 Addressing the capacity deficits of government for effective implementation of the right to information

One approach is to get a R2I in place and then start demanding information as a way to force the state into learning how to operate. Another argument is that capacities can be built through other programmatic entry points such as e-governance. It is then not about allocating extra funds to new activities but about streamlining and getting better bureaucratic procedures. In many ways, it is about reinventing government. Access to information is a service delivery issue and there needs to be greater acknowledgement of the need to build capacity for supply. Again, it is important to identify those people within government who are willing to push these ideas.

In terms of training, Article 19's experience is that it is better to train mixed groups of public servants and civil society as they have complementary expertise. However, there are circumstances where government is just not comfortable in cooperating with civil society. Training public officials by themselves is good for promoting increased understanding within the system and mainstreaming R2I in public sector reform. Training government officials together with CSOs is a good opportunity to build a common understanding of problems. In terms of mainstreaming, in India, the Commonwealth Human Rights Initiative has been trying to get R2I into the modules of India's training institute, so that it becomes a systematized requirement for all civil servants.

In terms of bringing about a change in culture within the public sector it is useful to take groups of selected government officials on study tours to countries in which R2I is firmly entrenched both within the public administration and the national culture (Sweden was cited as an example). This can build goodwill among supporters of R2I and create a reservoir of people who can interact, create network events, (annual awards, dinners and seminars).

7. Supporting Right to Information in UNDP Programming

The issue of how to support the right to information in UNDP programming was addressed in small group work. The main issues and considerations that emerged from the group discussions and fed back into plenary included:

1. Dedicated vs. mainstreamed approach to R2I in UNDP programming
2. The political sensitivity of R2I
3. Working with CSOs
4. UNDP support to implementation and enforcement of existing legislation
5. Transparency and UNDP

7.1 A dedicated vs. mainstreamed approach to right to information in UNDP programming

Participants agreed that it was not necessarily a case of integrated programming vs dedicated programming but a continuum dependent on country context and especially political contexts. UNDP needs to focus on R2I not just in governance programmes but across all activities. It would be useful if DGG could support COs to develop R2I strategies by providing them with/pointing them towards the tools and guidance they need to develop such a strategy and connecting them with regional specific expertise. The R2I strategy would include a component to identify the target groups. What information do they need? How can UNDP can support these groups by facilitating the supply of information?

Each CO should have a R2I strategy which would be incorporated into all development programming (baseline information would feature as part of the CCA). The Human Rights Based Approach (HRBA) can provide a good platform for doing this. However, as with the RBA, in some complex political contexts it is important to support R2I by more indirect means.

In order for such a strategy to become a reality, DGG/OGC needs to work more closely with the regional offices and ensure that toolkits are user-friendly, i.e. can be used readily in dialogue with partners and can be easily integrated into the Centre's work. This also requires a better understanding from DGG/OGC on what the Centres are working on so that collaboration can be more strategic. It is also important that toolkits are validated in different regions. This can be done by finding and using R2I champions in the COs. COs need to be aware of the breadth and depth of guidance that is available and DGG/OGC need to make sure that it is user-friendly. More focus needs to be placed on how DGG can more effectively stimulate CO demand in this area. When that demand is in place, contextualized R2I strategies can be developed and operationalized.

7.2 The political sensitivity of Right to Information

Given the political sensitivity of R2I, there needs to be more focus on political analysis to understand what room there is for moving in this area. R2I changes the power relationships. It is not only about access, but it is how parties accept each other and how power balances influence the distribution of information. However, UNDP, while recognizing the politically sensitive considerations, needs to move forward in this area. The organization has a strong international legal and normative framework to push the rights-based agenda. Those who are sensitive tend to be those with power, and UNDP is

here to help the poor and most groups. Participants felt that there is a gradual widening of legitimate pressure points in most of the countries in which UNDP works.

7.3 Working with Civil Society Organisations

UNDP needs to ensure that partnerships are in place with appropriate CSOs so that R2I strategies impact on marginalized groups.   Working with CSOs is an increasingly important part of UNDP's work if the MDGs are to be achieved. A scoping exercise as part of a R2I country strategy will show us how much UNDP can do with civil society in this area.

7.4 UNDP support to implementation and enforcement of existing legislation

The assessment of implementation challenges, in cooperation with other partners, must be a key part of the R2I strategy for COs. UNDP is well positioned to focus on strengthening the capacities of suppliers of information by bringing CSOs around the table with government, by identifying the mechanisms and conditions that will support reform efforts and by assisting with government evaluation of implementation.

7.5 Transparency and UNDP

Transparency is mandated by the UN charter and UNDP has specific obligations of transparency to its board members. However, the culture of the organization does not always support transparency and internal accountability mechanisms need to be strengthened. There is general agreement that we are not a model organization. UNDP has an Information Disclosure Policy (IDP) and the organization is increasingly putting more information on the websites, but there is considerable room for improvement including building the capacity of UNDP staff to ensure that they implement the IDP.

8. Next Steps: Recommendations and Commitments

The final session of the seminar included a brainstorming focused on what each UNDP participant will do following the seminar at country, regional and headquarter (DGG/OGC) levels to bring greater focus on R2I in their work.

8.1 Country office level

- UNDP Bulgaria: R2I/A2I is to some extent already being incorporated into programmes but not necessarily systematically. Projects need to be reviewed more systematically using the tools that have been developed as part of the A2I service line. The CO could be more proactive in addressing the government's capacity for implementation as well as capacity deficits. The learning and knowledge of this seminar will be shared with other CO staff members.

- UNDP Indonesia: The CO has a mechanism for reviewing new projects. A greater focus on R2I will be relevant here. There is also a bimonthly learning session in which the work on R2I will be presented.

- UNDP Afghanistan: Integrate R2I into existing programmes.

- UNDP Yemen: Develop an A2I strategy with many components (including identification of resources). It would be useful for regional offices to share CO experiences so that COs can be ready to expand networks.

- UNDP Mongolia: R2I has special relevance to two projects the CO is supporting (access to justice and decentralization). A concrete R2I component could be included in this work.

8.2 Regional office level

- Regional centres need support from Headquarters in helping to stimulate demand for clients. DGG/OGC can help with this by building awareness of the R2I toolkits so that the regional centres can support COs, who are the primary clients.

- Regional centres are occasionally asked for policy advice from government on specific initiatives including reform strategies, 'blue ribbon' reports. In such cases R2I is advocated but now there is a greater awareness there to make it more systematic. There needs to be much more effort put into integrating R2I into direct policy advice.

- Regional centres can be more effective in working on R2I if DGG/OGC provides a more regional flavour to the toolkit materials.

- There needs to be more clarity about how the regional centres can work with the OGC and better mechanisms for this purpose need to be established. When it comes to gathering information, OGC gets requests. OGC has the expertise but cannot serve the whole world, so it should focus on partnerships.

8.3 Headquarters level (DGG/OGC)

- HQ will be better at disseminating information on what it is that they do. This is a matter of urgency that also links to their outreach with regional and country offices. HQ has fairly good relationships with regional centres and COs, but needs help in stimulating demand within COs for much more systematic integration within broader governance programmes. Information is sent to COs and often through the knowledge networks but there could be sharper targeting so that it gets to the right people.

- HQ will intensify its efforts in actively looking for R2I 'champions' in each region at the country level.

- COs operate on limited resources and with limited human capacity. Regional specific expertise on R2I is needed to bolster CO efforts. HQ will make its updated list of organizations and resource people on R2I available so that they can assist in supporting COs and regional centres.

- The link between A2I and e-governance should be made more obvious. HQ will strengthen the linkages between A2I and e-governance so that ICT is more integrated into the support that HQ provides.

- HQ needs to move more from 'push' mode to 'pull' mode in terms of the advice and policy development support (the knowledge networks are especially important in this regard).

- DGG/OGC needs to maintain a specialist on R2I/A2I so that there is a specific focal point with expertise in this area to support COs (this person should be easy to contact, provide solid advice and help locate resources). Having clear specializations in BDP is critical for COs to be able to connect with the right person in HQ.

- DGG will be better at producing practical guidance that is more holistic, i.e. as part of a larger governance diagnostic tool.

- DGG should explore how R2I can be strengthened as part of the HRBA framework.

- DGG should establish a formal measurement mechanism to monitor the use/contribution of the various DGG produced knowledge products.

- DGG should ensure the involvement of COs in the development of knowledge materials to ensure that they continue to meet a demand from COs.

Seminar Closed

Annex 1: Seminar Programme

<u>Day One: Monday 22 may</u>

Opening of the seminar

9.00 – 10.30 (Plenary)	Welcome
	Opening remarks
	Introductions
	Workshop objectives
Tea and coffee break 10.30 – 10.45	

Setting the context

10.30 – 11.45 (Plenary)	Right to information Perspectives
	Country Level
	Global Level
	The Access to Information Service Line
Lunch 13.00 – 14.00	

Making the right to information effective

14.00 – 15.15 (Plenary)	Panel discussion on making the right to information effective for poor and marginalised people
15.15 – 15.30 Tea & coffee break	
15.30 – 18.00 (Plenary)	Panel discussions on the right to information and the watchdog function Part One: the law and institutions Part Two: the role of civil society and the media
Reception 18.30 – 19.30	

Engaging in right to information work

9.00 – 9.30 (Plenary)	Introductions and Review of Day 1
9.30 – 11.00 (Plenary)	Panel discussion on challenges, issues and opportunities for engaging in right to information work: perspectives from non-UNDP actors
11.00 – 11.15 Tea & coffee break	
11.15 – 12.00 (Group work)	Challenges and opportunities for UNDP in using the right to information in governance and poverty reduction programming
12.00 – 13.00 Lunch	
13.00 – 13.45 (Group work)	Challenges and opportunities for UNDP in using the right to information in governance and poverty reduction programming
13.45 – 15.00 (Plenary)	Making right to information a priority: report back from groups and brainstorming on the way ahead.
15.00 – 15.15 Tea Break	
15.15 – 15.45 (Plenary)	Ideas for further discussion and action
15.45 – 16.00 (Plenary)	Seminar closed
19.00 Seminar Dinner	

Annex 2: Participants List

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