Accountability, Transparency and the Rule of Law as Drivers for Inclusive Growth and Development

Background Paper on Accountability, Transparency and the Rule of Law within the Post-2015 Agenda

Introduction

The United Nations Millennium Declaration highlights democratic and participatory governance as one of its six fundamental values. More recently, in 2012 the UN General Assembly adopted the resolution 66/102, The Rule of Law at the National and International Levels, reaffirming its commitment to the need for adherence to the principles of the rule of law at all levels.¹

Yet, despite years of well-phrased commitments, we live in a world where a large proportion of the global population lives outside the protection of the law, and in countries that lack sufficiently accountable and transparent political institutions. This reality is especially apparent for the 1.5 billion people living in conflict- and post-conflict countries.

In 2008, the International Commission on Legal Empowerment of the Poor estimated that as many as four billion people live outside the protection of the law, meaning that they lack protection of their physical security as well as their property-, labor- and business rights. This translates into an environment of insecurity, vulnerability and fear under which no person can fully prosper. Lack of access to justice and the rule of law is an especially basic and essential problem, because without rule of law, the protection of all other rights is endangered.

When it comes to political accountability and transparency, the numbers are equally dire. More than every fourth person in the world lacks the ability to hold their government accountable for its performance, and the political institutions of their countries lack the transparency necessary to allow popular scrutiny of government performance.³ For example, in its most recent Open Budget Index, the International Budget Partnership found that national budgets in 74 of the 94 countries surveyed failed to meet the most basic requirements of accountability and transparency. 40 of the studied countries “[…] release no meaningful budget information.”⁴ The same survey found that only 7 of the 94 countries included in the study release “extensive budget information”, a figure emphasizing the universal character of the problem. In countries where transparency is lacking, political institutions cannot be fully

¹ A/RES/67/1.
accountable toward each other (“horizontally” accountable), nor toward the citizens and the civil society (“vertically” accountable).

This means, in effect, that a large proportion of the global population lives under conditions where they lack basic protection of their human rights, such as freedom from violence and harm, protection of property, legal identity and the full ability to influence institutions, legal reforms and social and economic policy. This is particularly true for women, people living in poverty, minorities, and other marginalized people in many countries. Millions of people continue to live in countries in which measures and institutions to hold the government accountable for its actions are weak or absent altogether.

This paper argues that the issues of accountability, transparency and rule of law have a natural place in the post-2015 agenda. These are essential for people to be able to empower themselves, and to become drivers of development. We know that well-functioning institutions can be a defense against the eruption of, and relapse into, violence and conflict. When institutions are weak, they fail to constructively solve conflicts of interests that are inherent in every society, and these conflicts can then instead turn into violence and war.

While recognizing that today’s development challenges are global, and not limited to any specific country, we choose to focus on the national level in this paper, as the state is the entity obliged to ensure the full realization of the human rights, according to international treaties such as the Universal Declaration of Human Rights. The state is responsible for implementing the policies required to create an environment where all people can contribute to the development of their societies. No geographic entity is doomed by nature or by history to be held back from achieving prosperity, and government policy is often the determining factor between success and failure.

However, the mere process and framework of accountability, transparency and the rule of law is not enough. What comes out of these structures and processes will, in the end, be determined by the social cohesion among people, as well as by the values and the political environment in society. Individuals have responsibilities and powers of their own to change and affect social norms and trends. Formal structures alone can never guarantee decent societies.

It is also important to acknowledge that there is no universal form for accountable and transparent political institutions, or for legal systems that provide the rule of law. The design and function of these can differ vastly between countries. This paper, however, defines some features that they all have in common, regardless of where or how they have been formed.

First, we go on to a deeper exploration of why accountability, transparency and the rule of law are vital for sustainable development and poverty eradication. Second, we discuss the role

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5 For more on this discussion, see, for example, OHCHR/UNDP (2012), Expert Consultation on "Governance and human rights: Criteria and measurement proposals for a post-2015 development agenda". Summary from the consultation held November 13–14th 2012 in New York.
of these issues within the post-2015 agenda. Third, we identify and discuss a number of challenges and possibilities with regards to their implementation.

Accountability, transparency and the rule of law: Why does it all matter?

Accountability and transparency

When governments know that their citizens are informed and are watching, their incentives to create good policies grow. Indeed, the Report by the Commission on the Measurement of Economic Performance and Social Progress defines the accountability of government as a strong instrument for good government performance. In its Dissemination Note: Accountability, the Institute for State Effectiveness describes the global discussion on accountability as being rooted in a number of common factors, one of them being that “[c]itizens have become keenly aware of services delivery, and therefore the functionality of governmental and non-governmental organizations indicated by the effectiveness and efficiency of delivery.”

One of the basic mechanisms required for real accountability is democratic governance. The democratic process is a fundamental cornerstone of accountability, because it is the main system through which people can hold their political leaders accountable for what they do. In well-functioning democracies, elected leaders who do not deliver on their promises will run the risk of not being re-elected. When their work can be continuously scrutinized, this pushes them to remain responsive to the desires of the people in between elections, and to strive to maintain efficient government institutions. This mechanism spans through all levels of government, both local and national. In many countries, local institutions and communities are equally important to, or sometimes more important than, national governance structures, and can be strong and efficient tools for accountability. In order to enable participation in the political process of accountability, the legal identity of the inhabitants of every country – such as the ability to hold and access birth certificates and to register for voting – must be ensured.

The democratic process of elections is, however, not enough for effective accountability to occur, and for political institutions to be inclusive. Without transparency in political institutions, and adequate knowledge of their rights and obligations, citizens cannot gain sufficient insights into government performance, leaving them unable to make informed political choices. On the other hand, when transparency exists, it provides a powerful tool for enabling people to hold their governments to account, not the least when it comes to corruption and nepotism. For transparency to gain full effect, it is necessary that a free and independent media and active civil society organizations are allowed to prosper, and that they are able to critically scrutinize the government.

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7 Institute for State Effectiveness (2012), Dissemination Note: Accountability. The report can be accessed through www.effectivestates.org.
Open information and data on the work of the government is crucial for the empowerment of citizens. Accessible information contributes to efficiency and a better basis for decision-making, strengthens the conditions for accountability and participation, and limits corruption and misuse of resources. Information in itself, however, is not always enough for real empowerment to occur. For all citizens to be able to access the information provided, the availability of suitable technological means to retrieve the information must be ensured.

The challenge of transparency is not limited to governments only. Transparency in the private sector is also important, to enable for critical scrutiny by the general public. Here, the Extractive Industries Transparency Initiative serves as a good example, striving to ensure that the financial benefits from natural resource extraction come to the good of society as a whole, by creating standards and methods for revenue disclosure and transparency.

In light of the above, we propose that accountability and transparency be integrated in the post-2015 agenda through arguing the role of:

- Transparent and accountable governments, both at the national and local levels
- An enabling environment for free and independent media and civil society
- Inhabitants’ ability to participate in the political processes
- Inhabitants’ legal identity

The Rule of Law

Rule of law is a moral imperative for all societies. Access to justice in peoples’ everyday lives, regardless of income, gender, disability, ethnic background or faith, is something the state must ensure. It is also one of the most fundamental enablers for individuals to drive change in their own societies and for creating better living conditions. The rule of law is not only a matter of justice – it is also a matter of fostering conditions that enable people to empower themselves.

This supposes that the rule of law not only works, but also that the laws that are implemented are designed to protect people’s rights and to empower them. Rule of law on its own does not achieve progress or protection if the laws are not designed to do so, and well-functioning legal structures do not necessarily protect the rights of people unless the laws that guide them prescribe such protection.

The UN Secretary General defines the rule of law as “a principle of governance in which all persons, institutions and entities, public and private, including the state itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and
which are consistent with international human rights norms and standards.8 There is much evidence to support a strong correlation between this principle – the rule of law – and the level of development in society.9

The link is intuitively comprehensible: when people know that their property and whatever they possess or create will fall under legal protection, their incentives and courage for initiative and entrepreneurship grow. The opposite is also obvious. The potential entrepreneur that exists within all of us is unlikely to fully strive for realizing her or his ideas, when knowing that whatever wealth is created will not be protected and might be taken away.

People living in poverty – whether small-scale farmers or “barefoot entrepreneurs” – are often unable to get business permits, insurances and access to the market, which often, in turn, makes it impossible for them not only to work within the judicial framework or to benefit from fair market prices. Lack of security also makes it impossible for them to apply for bank loans that could help them invest and expand their businesses.10 This is indeed the reality for a significant proportion of the global population, and for women in particular, since it is estimated that millions of businesses all over the world operate outside a legal framework.11

The rule of law is also vital for enabling large-scale investments to occur in a sustainable way. Foreign direct investment in developing countries is an important driver for global growth, and has enabled millions of people to leave poverty behind. Without the rule of law, long-term investors committed to business and social development will stay away. The same is true for domestic investments, which will be less likely to occur in a legally uncertain environment. The rule of law, and a supporting framework of laws and accountable and transparent political institutions, will similarly help to protect people from the adverse effects that large-scale investments sometimes can bring, such as environmental destruction.

Improving the rule of law is not just vital for creating an enabling environment for inclusive development and growth. It can also be a strong tool for increasing gender equality. In Women, Business and the Law, the World Bank studies the gender aspect of business regulations in 141 countries, concluding that where regulations that are discriminative toward women have been changed or removed, opportunities for women have been expanded, and women have been able to improve their lives, and to contribute to social and economic development.12 Moreover, beyond simply providing access to legal structures, justice systems have the potential to catalyse deeper cultural and social transformations towards gender

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9 See, for example, the World Bank’s overview of the topic, accessed through their website http://web.worldbank.org/WEBSITE/EXTERNAL/TOPICS/EXTLAWJUSTINST/0,,contentMDK:20934363~menuPK:1989584~pagePK:210058~piPK:210062~theSitePK:1974062,00.html. Much empirical evidence can also be found in Acemoglu, Daron and James A. Robinson (2012), Why Nations Fail. Crown Business.

10 Commission on Legal Empowerment of the Poor 2008.

11 Ibid.

equality, such as enabling women to take on economic and political roles traditionally reserved for men, and ensuring freedom from violence.

In light of the above, we propose that the rule of law be integrated in the post-2015 agenda through arguing the role of:

- Participation by citizens in the design and management of functioning democratic public institutions
- Full and equal access to justice for all citizens in all countries

**Accountability, transparency and the Rule of Law within the Post-2015 Agenda**

The post-2015 agenda needs to be one that embodies the desires, aspirations and capabilities of all people, and these can only be channeled through accountable and transparent political institutions in which all citizens are allowed to have a voice. Accountability is necessary for achieving a development that includes all parts of society, because it gives all individuals – including women and men living in poverty – the ultimate power over political decision-making. If transparency, accountability and the rule of law are omitted from the post-2015 agenda, however, the agenda will lack sufficient conditions for ensuring implementation, because proper mechanisms for enabling people, civil society and the private sector to set the agenda for government action will be absent. Put simply, it will matter little whether or not governments pledge to achieve the development envisioned in the post-2015 agenda, if people cannot make sure that the implementation takes place, through accountable and transparent political institutions, under the rule of law, whether at the local, national, regional or global level.

Thus, the roles of accountability, transparency and the rule of law in the post-2015 agenda are two-fold: they are **cornerstones of democratic governance**, and they are **enablers for inclusive and sustainable growth and development**.

**Challenges and possibilities**

Many challenges to implementing accountability, transparency and the rule of law into the post-2015 agenda lie ahead. For example, these can only be practically implemented when governments are in place and where functioning government institutions exist. However, the most vulnerable people today live in countries where government institutions are weak or have collapsed altogether. The building of state institutions and the provision of public services remains a challenge in many parts of the world, especially in conflict and post-conflict situations. Given the lingering nature of many armed conflicts, witnessing frequent

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13 Here, it is particularly important to note that the promotion of gender equality and the empowerment of women is a prerequisite for full accountability in society, because of the high degree of gender inequality that persists all over the world.
relapses into violence and displacement, the post-2015 agenda cannot operate solely on a presumption of peace.

Addressing accountability, transparency and the rule of law in these environments calls for creative and constructive approaches. For instance, the challenge of transparency in these situations can be countered by combining information from different sources: objective data, governance progress indicators and stakeholder perception surveys. In difficult environments, public service functions in justice, health and education can be provided through mobile courts, mobile clinics, and mobile schools. There is a reservoir of successful and innovative development practice to draw on in this regard.

Also, in many of the countries where accountability, transparency and the rule of law are needed the most, governments will be most reluctant to introduce these, not the least because social elites in these countries often benefit from the present situation. However, this does not mean that these features can be left out of the post-2015 agenda. On the contrary, the scope of the challenge makes it even more important to take on. It is not a choice, but a fundamental necessity.

It is important to emphasize that accountability, transparency and the rule of law are universal challenges, and that scope for improvement exists everywhere in the world. For example, in many countries that are democratic, the proper mechanisms for full transparency in government affairs is still lacking, resulting in a shortage of accountability. Also, in countries where the vast majority of the population is protected by the rule of law, it sometimes does not protect all groups of people, often due to discriminatory social institutions and beliefs.

There are, however, many reasons to be hopeful about the possibilities for change. Increasing transparency and accountability in key aspects of governance is relatively easy once there is political will, and does not necessarily involve large costs. The increased use of new information technologies all over the world provides strong opportunities for increased transparency, and much can be achieved by simply making existing government documents open to the public.

Budget transparency is an illustrative example. Making the national budget process open and transparent does not need to be costly, and is a powerful tool for including the citizens in a key area of governance. A large proportion of national budgets in the world still lack transparency, but as the Open Budget Survey shows, much progress can be made within a relatively narrow timeframe. Over three consecutive surveys, an average of 20 percent

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improvement was reported for 40 of the countries surveyed, and some of the most substantial improvements were made by countries that had previously received the lowest scores.16

There are also indications that many countries are both eager and determined to increase the accountability and transparency of their work. The Open Government Partnership, an international initiative seeking commitments by governments to improving accountability, transparency and other aspects of governance, has gained over 40 new participating countries since its foundation, and many others are currently developing their commitments.17 Similarly, there are causes for hope for global improvements in the rule of law. One of the most recent manifestations of the global commitment was the UN General Assembly High Level Meeting on the Rule of Law 2012, where member states and international organizations confirmed their commitment to upholding the rule of law as a principle of governance, and also made concrete pledges as to how it should be taken from words to reality. Independent watchdog entities, such as the World Justice Project,18 are developing indexes and other tools for global monitoring of state performance within the area, and much indicates that many governments are making constructive use of the data and the indicators.

These initiatives are only a few of many examples of how governance can be strengthened through relatively swift and easily implemented measures. As this paper attempts to show, improving accountability, transparency and the rule of law in the world is both necessary and fully possible. These are some of the most important bases for any well-functioning society, and the post-2015 agenda can never be complete, or achievable, without them.

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16 International Budget Partnership 2010.
18 More information about the project can be found through their website, http://worldjusticeproject.org/, accessed on January 7th.