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Redressing Grievances and Complaints Regarding Basic Service Delivery

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Abstract

Redress procedures are important for basic fairness. In addition, they can help address principal-agent problems in the implementation of social policies and provide information to policy makers regarding policy design. To function effectively, a system of redress requires a well-designed and inter-linked supply of redress procedures as well as, especially if rights consciousness is not well-developed in a society, a set of organizations that stimulate and aggregate demand for redress. On the supply side, this paper identifies three kinds of redress

procedures: administrative venues within government agencies, independent institutions outside government departments, and courts. On the demand side, the key institutions are nongovernmental organizations/civil society organizations and the news media, both of which require a receptive political and economic climate to function effectively. Overall, procedures for redressing grievances and complaints regarding basic service delivery are under-developed in many countries, and deserve further analysis, piloting, and support.

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Redressing Grievances and Complaints Regarding Basic Service Delivery

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I. Introduction

People make mistakes. Local officials sometimes deny social grants to individuals and families who, under the terms of a program, are qualified to receive them. A teacher, in a pique of anger, might hit a student even though national legislation forbids corporal punishment. Health workers have forgotten appointments with patients who have walked long distances in poor conditions in hope of obtaining treatment. When these mistakes occur, it is important, as a condition of basic fairness and reciprocity, to facilitate the expression of complaints. Formal redress procedures in the social sector consist of official venues in which individuals can present their understanding of their entitlements, receive an attentive hearing, and be given an explanation or compensation. And formal redress procedures are useful, of course, not only for addressing mistakes, but in cases involving alleged corruption, negligence, or malfeasance.

Although there is a growing literature on institutional arrangements that amplify the voice of service users through added information, participation, and co-production, the topic of redress procedures has received less explicit attention.¹ This paper provides a preliminary assessment of the uses and limits of complaints procedures. (Although “complaints” and “grievance” redress procedures have somewhat different connotations, the terms are used interchangeably in this paper.) Section II summarizes some of the theoretical arguments involved and presents a simple conceptual framework. Section III presents design principles – some of which are in conflict with each other – for the development of redress procedures. Section IV examines three varieties of redress procedures – those within government and departments, independent institutions external to government agencies, and courts. Section V examines interventions on the demand side that are important for the functioning of redress procedures, including NGOs and CSOs, and the media. Section VI concludes.

Before going forward, a note on methods will be useful. Examples of redress procedures are interspersed throughout the paper. This set of examples – by no means comprehensive – is based on an online bibliographic review and conversations with development agency staff working in the social sectors. This review found few descriptions, and almost no thematic reviews or evaluations, of redress procedures in developing countries; as a result, OECD examples are provided where relevant. In addition, most available accounts of redress procedures in developing countries involved services outside the social sectors; and those, too, were included where relevant. This paper, then, begins to fill a gap in the developing country literature on basic service delivery.

II. What are redress procedures, and why are they important?

¹ For a summary, see Chris Stolk, “User Involvement and Service Delivery,” 2011.

This paper defines redress procedures as *ex post* reviews of service delivery transactions with particular end users. Here, the term “transaction” refers to omissions as well as actions, so that a review of the reasons for the non-receipt of a service that should have been provided, according to the end-user or her advocate, is also the potential subject of a redress procedure. This definition allows one to distinguish redress or complaints procedures from neighboring accountability-enhancing interventions. Budget monitoring and corruption reporting – whether based on new information technologies, public expenditure tracking, or another instrument – focus on the processes of service delivery governance rather than transactions with end users. Citizen scorecards, such as those developed by the Public Affairs Centre in Bangalore, sometimes ask end users to evaluate service transactions *ex post*, but their focus is aggregate performance rather than particular transactions; and they frequently focus on service delivery outcomes rather than the transactions themselves. Similarly, although social audits are *ex post* reviews, they tend to focus on governance processes rather than individual transactions. Information campaigns sometimes identify potential problems in specific transactions but do so *ex ante*. All of these related accountability-enhancing procedures share certain features and functions; in particular, they all have the potential to improve accountability relationships in the social sectors both by empowering clients and by providing information to policymakers. But redress procedures have a distinctive purpose, and these neighboring accountability-enhancing are not substitutes for them.²

Unique among these accountability-enhancing interventions, redress procedures address basic fairness for particular individuals. The word “redress” itself indicates their focus on rectifying something that has gone wrong. This means that redress procedures, if effective, are intrinsically valuable, even without any effect on subsequent accountability relationships.³ Redress procedures speak to basic fairness in two ways.

First, claims that make use of redress procedures typically seek some form of compensation for a service delivery transaction that has harmed a particular user or group of users. This alleged harm can take a variety of forms: the welfare of an end user might be unexpectedly lower as a result of a service delivery transaction (iatrogenic illness stemming from medical error or negligence is a paradigmatic case), the behavior of an end user might have resulted in humiliation or an affront to the dignity of the end user (here, think of a mild but very public instance of corporal punishment), or the end user might have been denied or received lower quality service delivery than she was entitled to receive (e.g., an official or private actor might have incorrectly deemed a client ineligible for a social grant). None of the other accountability-enhancing interventions mentioned above can substitute for this objective of grievance redress procedures. If a social audit or citizen scorecards, for instance, finds that a class of slum dwellers has unusually high

² On the relationship between social accountability and legal redress, see Vivek Maru, *Allies Unknown: Social Accountability and Legal Empowerment*, *Health and Human Rights* 12 (1) 2010.

³ But although they are intrinsically valuable, their value in any given instance may or may not, depending on the gravity of the harms involved, exceed their costs.

rates of exclusion from a conditional social transfers program, and even discovers the social and political drivers for this anomaly (such as corruption in the management of the municipality), that information might benefit future program participants and enhance future design; but by itself it does little to mitigate the harm done to a slum dweller who has been incorrectly denied a grant.

Second, redress procedures support the rule of law, even a minimal understanding of which holds that like cases should be treated alike.⁴ If a government, for instance, excludes people from social programs for arbitrary or whimsical reasons, the unpredictability of government action may make social coordination in related areas more difficult, and it may reduce the incentive for individuals and families to invest in human capital.

The ways in which redress procedures support the rule of law is evident from their design. Formal redress procedures typically attempt to standardize the procedures for the presentation, reception, and response to complaints in order that routinized and nearly identical practices apply to all individuals. Formal redress procedures typically aim to give reasons for an administrative decision, and to assess services against a widely available standard. For example, the Department of Human Resources, Labour and Employment in Newfoundland and Labrador (Canada) has a formalized redress process that includes a first level of internal review, where administrative decisions are reassessed against agency guidelines. Any decision communicated to the applicants must contain the reasons for the decision, notice of the right to appeal and all other information related to the appeal.⁵ If an appeal fails at that level, there is an external Income and Employment Support Appeal Board, which must also give clear reasons, in writing, for its decisions.⁶ In these ways, formal venues for redress tend to have a legal quality, even when they are not codified in laws or regulations. In other words, administrative procedures that support redress are the “regulation of regulation”: they oversee, in a rule-based way, the rules that providers interpret when delivering (or denying) services.

To highlight their legal quality, it worthwhile to note that there exist redress pathways even in the absence of legalized or formal channels. If an individual or family does not receive a service that he or she wants, they can use some personal or familial resource – wealth and influence, social connections and kin, a greased palm, a promise of political loyalty, a surrender of political or civil rights, physical force, mobilization and street protests – to obtain what they believe they deserve or want. These are quite common – and usually the most common – responses to unsatisfactory service delivery. These are typically extra-legal pathways, however, and they place social status and private resources, rather than citizenship and legalized entitlement, as the

⁴ Michael J Trebilcock and Ronald J Daniels, *Rule of Law Reform and Development: Charting the Fragile Path of Progress*, Edward Elgar 2008.

⁵ <http://www.hrle.gov.nl.ca/hrle/income-support/appealprocess.html>.

⁶ *Id.*

basis of a justified claim. They do not, moreover, necessarily require a principled explanation from providers or administrators for the allegedly substandard service.⁷

In addition to the objective of basic fairness, redress procedures can enhance accountability relationships. In this respect (but not in the dimension of achieving basic fairness), they are substitutable with other accountability-enhancing reforms in basic service delivery, such as information campaigns, score cards, social audits, and the like. To see how redress procedures can enhance accountability, it is useful to distinguish two forms in which principals can monitor the behavior of their agents: “police controls” and “fire alarms” monitoring.⁸ In the former model, the principal conducts centralized, direct, and active monitoring of agents. This approach involves direct observation and is potentially time-consuming. Audits and performance reviews fit this category. In contrast, “fire alarms” monitoring is less centralized, less active, and less direct. It may also be less expensive for the principals because, to a significant extent, monitoring costs are outsourced to the public. Here, the principal establishes rules and informal practices under which the public and interested parties can bring instances of administrative inappropriateness to the attention of courts and quasi-judicial bodies. The incentive for individuals and others to participate in this kind of monitoring is that they can obtain compensation for administrative violations. It is argued, moreover, that “fire alarms” monitoring might overcome some of the difficulties of “police patrols” monitoring: the public is often in a better position to observe administrative violations than the principals, and performance standards against which service providers and administrators are judged are often written in an ambiguous manner, making police patrols monitoring difficult.

The reason for the ambiguity in performance standards is that substantial discretion is unavoidable in highly decentralized and difficult-to-specify practices such as classroom teaching and clinical practice. For instance, a rule might require that an individual be a resident or native of a particular community in order to qualify for a social grant or enroll in a university, but not specify the years of residence necessary to be considered an “indigene.” Or a rule might require government health care providers to offer effective treatments for a condition, but not specify the criteria for determining whether a course of treatment is indeed effective.⁹ In other instances, services in which there are constantly evolving technologies might hinder policy design, and make the use of fire alarms monitoring beneficial. For instance, updating pharmaceutical

⁷ For an interesting discussion of these issues, see Naomi Hossain, *Rude Accountability: Informal Pressures on Frontline Bureaucrats in Bangladesh*, *Development and Change* 41(5): 907-928, 2010.

⁸ McCubbins and Schwartz. 1984. Congressional oversight overlooked: Police patrols versus fire alarms. *American Journal of Political Science* 28: 16-79.

⁹ For a general account of this ambiguity, see Varun Gauri, *School choice in Chile: two decades of educational reform*. Pittsburgh, Pa.: University of Pittsburgh Press; L Pritchett and M Woolcock. 2004. "Solutions when the Solution is the Problem: Arraying the Disarray in Development." *World Development* 32 (2):191-212.

formularies is challenging because new technologies are always emerging. When individuals demand medications that are not available in public clinics, but to which they believe extent regulations entitle them, they provide information to policy makers regarding the extent to which the drugs provided are adequate to local needs and preferences.¹⁰

From this abbreviated account, it is clear that redress procedures might function as “fire alarms” for policy makers, allowing them to observe and effectively sanction the behavior of administrators and service providers who deviate from expected performance standards; as well as for politicians, who can use them to observe whether executive agency policy makers and administrators are properly implementing national legislation. For this to work, however, (i) the complaints procedures must be sufficiently utilized; (ii) they must be utilized for the kinds of transactions and kinds of users that the principal aims to monitor; and (iii) standard management processes need to incorporate information from the complaints process. These criteria might not hold in any particular environment, as a report on complaints handling in the UK’s NHS indicates.¹¹ As a result, it might be important to supplement redress procedures with other accountability-enhancing approaches.

Depending on the institutional environment and the mode of redress procedures employed, however, there are ways in which “fire alarms” monitoring can affect policy even without a high volume of complaints. Redress procedures are typically conceived as venues where individuals or groups can present claims that providers and administrators have not complied with existing policies – in contrast to venues, such as courts, in which claimants challenge the soundness, legality, or constitutionality of those policies – but the distinction is difficult to maintain in practice. The reason for this is that “wholesale” redress can be more efficient than “retail.”¹² In other words, if an identifiable formal policy or informal practice leads to a larger number of service recipients being improperly excluded denied a benefit, it will be less expensive for administrators to change the policy or practice than to deal with the complaints serially. For instance, in Guangxi, China, the People’s Congress passed regulation imposing tolls on non-residents, in violation of national laws. The easiest solution to this problem would have been for a court to declare the regulations invalid, but because courts did not possess such powers in China, toll-paying non-residents were required to take a retail approach, challenging each toll individually.¹³

¹⁰Daniel Brinks and Varun Gauri, A New Policy Landscape: Legalizing Social and Economic Rights in the Developing World: *in* *Courting Social Justice*, (Varun Gauri & Daniel M. Brinks eds., 2008)

¹¹ National Audit Office (UK), October 10, 2008, Feedback? Learning from complaints handling in health and social care. Available at: http://www.nao.org.uk/publications/0708/learning_from_complaints.aspx

¹² TOM GINSBURG, *The Judicialization of Administrative Governance: Causes, Consequences, and Limits*, *in* *Administrative Law and Governance in Asia: Comparative Perspectives*, (Tom Ginsburg & Albert H. Y. Chen eds., 2009).

¹³ Peerenboom, Randall P. 2009. "More law, less courts: Legalized governance, judicialization and *dejudicialization* in China." *In Administrative Law and Governance in Asia: Comparative Perspectives*, ed. T. Ginsburg and A. H. Y. Chen. London: Routledge. Page 185

In the basic definition above, redress procedures involve a “review” of a specific transaction. The word “review” was selected to reflect that the fact that, despite their legal or proto-legal quality, redress procedures can also involve hotlines, websites, letters, and other forms of complaint in which standard legal modes, including standards of evidence and public hearings, may or may not be utilized. In addition, although users typically demand some kind of compensation for the wrong that has occurred, just being heard is, in hierarchical environments, itself a kind of compensation.

More generally, what do individuals ask for when they ask for redress? In some cases, the claim is obvious or simple – they want a benefit that administrators have denied them. But in others, the demand is more complex. For corporal punishment, a student and his family might want an apology. A beneficiary improperly denied a social grant might demand interest on top of the grant amount. A victim of medical malpractice might ask for compensation, along with a reprimand or other punishment of the malfeasant clinician. An NGO might seek, in addition to redress for harmed members of the community on whose behalf it speaks, a change in policy so that future beneficiaries in the community will not also be denied benefits improperly.

Because the remedies that beneficiaries seek are varied, and because public law allocates different kinds of authority to different public officials on the basis of their bureaucratic position and their functional specialization, redress procedures necessarily consist of a number of linked redress systems. For example, an administrator might possess the authority to reverse a benefit decision; but to pay interest on the denied benefit or sanction the provider or offer an apology, she might have to forward the case to a higher level. This paper will employ a typology consisting of three forms of inter-linked redress organizations: redress procedures in government agencies, non-judicial entities external to line agencies, and courts.

Finally, legal scholars have long recognized that a pre-condition for the institutionalization of legalized venues and judicial review is rights consciousness.¹⁴ In many settings, in developing and developed countries alike, it is not enough that a redress venue exists. Low levels of literacy and political/social marginalization mean that many individuals, including ethnic minorities, will not take advantage of redress procedures even if they are available. It is important, then, to pay attention not only to the supply of redress procedures but to the demand for them, and to support organizations that stimulate and aggregate demand for redress. This paper will consider two such demand-side organizations: the media and NGOs. Measures to stimulate demand can include support (or a supportive legal environment) for NGOs/CSOs, granting access to independent media, and publicizing extant redress procedures.

¹⁴ See, for instance, Randall P. Peerenboom, *China’s Long March Toward Rule of Law*. Cambridge University Press, 2002. “But the biggest constraints on effective judicial review are the institutional or systemic obstacles discussed previously, including the low level of rights consciousness and unwillingness of many citizens to bring suit, a culture of deference to authority, and a weak judiciary.” P. 421

III. Basic design principles

Redress procedures can take a variety of forms. The structure of these procedures varies, and tends to be related to local history and context. The same is true of the linkages – the “referral networks” – among these procedures. How they are designed, and how they should be designed, depend significantly on historical factors, such as the authority of judges and the nature of the legal tradition (e.g. common law or civil law), the statutory authority of bureaucrats, and the extent of specialization in the service delivery agencies. It is important to build on the local legal and political culture, rather than importing an institutional form alien to the local landscape. Still, when designing a system of redress procedures, the following design principles are important to bear in mind.

Demand for redress. Effective redress procedures require i) an adequate venue in which complaints can be received and ii) sufficient demand. Weak or non-credible venues will undermine demand because service users will not bother to lodge complaints. In addition, many service users, particularly the most marginalized, will not believe they are entitled to complain, and as a result the sample of complaints received will bias “fire alarms” monitoring. Consequently, active measures to promote demand for redress will be necessary, along with efforts to lower the costs of accessing redress procedures. Lowering the cost of access can include lowering the economic, social, procedural, and geographic barriers that make access difficult, particularly for marginalized individuals and groups.¹⁵ If policymakers are concerned with the quality of service delivery for a specific subset of the population, the procedures might be designed to make access costs particularly low (or subsidized) for that group.

Cost and benefit. The more accessible that redress procedures are, the more likely that the benefits associated with them will be realized, including the monitoring of agents and the increase in information to policy makers. On the other hand, excessive time spent on redress procedures (on the part of users as well as providers and policy makers) can reduce the efficiency of service delivery. Balancing accessibility of redress against its potential to reduce efficiency is a design challenge.

As a general principle, it will be less costly to resolve complaints at the point of service delivery, where information about service practices is clearest and where transaction costs are lowest. Typically, access to redress procedures tends to become more costly as one moves from

¹⁵ For instance, a World Vision cash and food transfers project used a mobile community help desk, staffed with full-time officers, to collect and respond to complaints. A review found that 45% of complaints were related to demands to understand the reasons for exclusion from the benefits, 29% were related to registration, and 26% to corruption. See Stephen Devereux and Michael Mhlanga. 2008. Cash Transfers in Lesotho: An Evaluation of World Vision’s Cash and Food Transfers Pilot Project. Brighton, UK, and Maseru, Lesotho: Centre for Social Protection, Institute for Development Studies, and Mhlanga Consulting Services.

government agencies to external non-court entities and then to courts, and as one extends quasi-legal attributes to the resolution processes within frontline ministries. (But redress procedures sponsored by NGOs might be less costly to access than those provided by government agencies.) Still, for the system to function effectively, and for the realization of some of the expected benefits from redress – particularly basic fairness – the possibility of independent review is important. As a result, it is important not to set the cost of accessing independent review too high. Clear and accessible pathways for referring unresolved disputes upward should be available and understandable.

There are no easily available figures on the cost of putting redress procedures in place, nor data on how big a factor cost plays in setting policy around redress procedures. However, the cost-benefit analysis clearly becomes less important as more important rights come into play. A commentator on administrative law in Canada states:

It is difficult to discern any cost-benefit criteria used consistently by legislatures to determine when a right of appeal to a court is an appropriate form of redress or, if granted, how broad the right should be. However, there seems to be an emerging pattern that, in the absence of some strong reason to the contrary, there should be a statutory right of appeal to a court from *independent administrative agencies with the power to make decisions restricting the exercise of an individual's common law rights* (human rights tribunals, land use planning appeal tribunals, vocational and professional licensing, for example) or *refusing some significant social security benefit*" (emphasis added). . . . The one main exception is in the area of labour relations and employment, where legislative policy has generally steered towards avoiding court intervention.¹⁶

Independent review. The possibility of independent review gives service users greater confidence in the objectivity and neutrality of the dispute resolution process. The institutional attributes of independent agencies typically include funding sources that are somewhat autonomous of political powers and some degree of insulation from politically, economically, and socially powerful individuals and groups. Courts typically serve the function of providing independent review of administrative law decisions, including redress procedures. (Of course, in many developing country settings, courts are independent of neither, in a *de facto* sense, executive nor social power). But it may be useful to establish independent arbitration or review at a stage even prior to courts because access to courts is typically too costly for many service users.

Absent the expectation of a credible and effective response, service users may avoid grievance procedures altogether. In the UK, for example, the most recent report on customer satisfaction at

¹⁶ David J. Mullen, *Administrative Law: cases, text and materials*, 2003, 23.

The Pension Service (TPS), one of the sub-agencies of the Department for Work and Pensions (DWP), found that only 6% of all contacted customers had made a complaint to TPS.¹⁷ Customers who had never complained to TPS were asked if they had ever considered complaining. Seven percent of contacted customers had considered complaining but had never done so.¹⁸ The report included a table of the reasons customers did not complain, with the majority of customers claiming that they “thought nothing would happen as a result of the complaint.”¹⁹ While TPS and the DWP as a whole have made efforts to address customer satisfaction and be responsive to their needs, the internal redress procedure currently in place suffers from a lack of legitimacy. A higher percentage of customers who had complaints would probably put in formal complaints if they believed that an independent party would look at them objectively.

Ethiopia’s Productive Safety Net Program empowers a local appeals committee, which is independent from the targeting and graduation structure of the program, to hear complaints and grievances. The program uses a standardized client card that lists a charter of rights and responsibilities, among which are enumerated the right to appeal a decision and the responsibility to report abuses. A study found that, of households that described the targeting process as unfair, 23% had lodged a complaint.²⁰

Legality. Redress procedures vary in the extent to which they exhibit legal attributes. These include standards for the kinds of evidence to be presented (including third party verification of the accuracy of the claims and the administrative responses to them), the public availability of both the complaints petitions themselves and the reasoning behind the dispute resolver’s response, and the incorporation of other trial-like characteristics (such as adversary legalism) into the procedures to be used.²¹ Obviously, courts are more likely to exhibit these legal attributes than other redress procedures; but if venues outside of courts are empowered to handle significant harms, such as sexual assault on the part of a medical provider or a teacher, or a significant loss of earnings from the denial of benefits, they will likely need safeguards to ensure the quality of the adjudication process, even if those safeguards are not identical to the legal ideal. In instances such as sexual assault, redress procedures will need credible guarantees of anonymity for the complainants. On the other hand, making complaints public and accessible to NGOs, journalists, and others, wherever possible, will multiply the “fire alarms” monitoring power of redress procedures. Of course, as legal safeguards increase, so do the costs of providing the redress procedures.

¹⁷ DWP, 2007, The Pension Service Customer Survey 2007, Research Report no. 532, 140.

¹⁸ *Id.*, at 143.

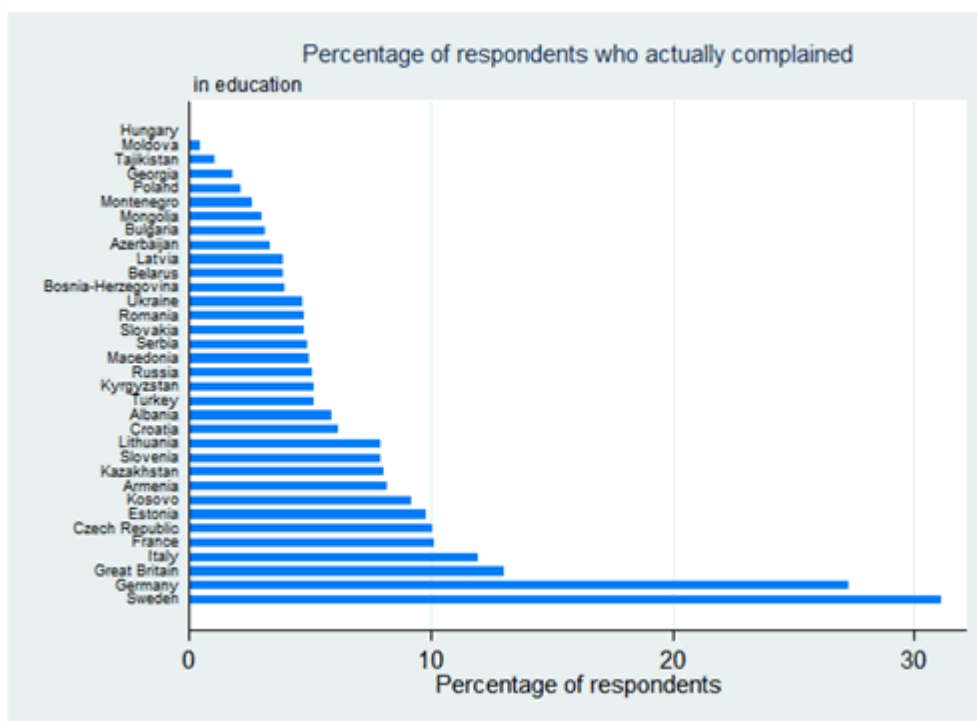
¹⁹ *Id.*, at 144, Table 8.2: “Why did not complain after considering.”

²⁰ Will Wiseman, Designing and Implementing a Rural Safety Net in a Low Income Country: Lessons Learned from Ethiopia’s Productive Safety Net program 2005-2009. World Bank.

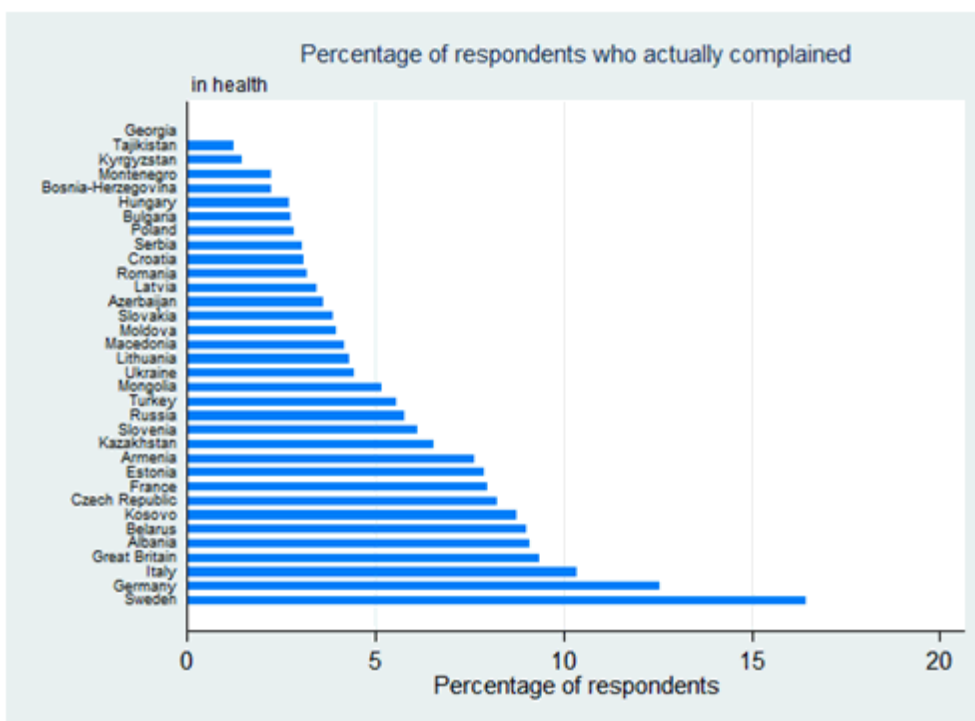
²¹ See Robert A. Kagan, *Adversarial Legalism: The American Way of Law*. Harvard University Press 2003.

Political economy concerns. One can sketch a system on paper that is fully consistent with optimal design principles, but the realities of political and economic power often hinder the implementation and operation of such a system. What are the political conditions under which well-designed redress procedures have emerged? There appears to be no general study of this in the literature. But a casual review suggests that effective redress procedures seem to have emerged under broadly the same conditions that have facilitated the emergence of autonomous and effective courts: sufficient rights consciousness in the population, and the existence of a functioning democracy with relatively competitive electoral systems. That is not to say that grievance procedures will not appear, or are not useful, absent those conditions. In fact, courts play useful roles in many authoritarian states. But courts are most powerful when the two conditions hold. It is likely that the same is true of redress procedures.

Recent data from a representative survey in thirty-six countries, in respondents were asked if they actually complained about services, supports this. For both health care and education, the highest frequencies were found in Sweden, Germany, Italy, and Britain, countries where basic service delivery is relatively good, whereas lower frequencies of complaints were found in countries such as Georgia, Tajikistan, and Kyrgyzstan. In other words, complaint frequencies appear to be more closely related to the credibility of redress procedures than to the quality of the services themselves.²²



²² Life in Transition Survey (LiTS), 2010



IV. The supply side

Redress procedures within government agencies

It is possible for line agencies to establish a variety of venues for the receipt of complaints and grievances, including dedicated mail boxes, email addresses, text messaging systems, telephone hotlines, interactive websites, office windows, and complaints handling officers. These can be established inside service provision points, such as hospitals or schools, or in separate offices within the ministries. They can be specialized complaints receipt venues, focusing on a particular kind of problem, or they can be open to any kind of comment or complaint.²³

One form of specialized complaints venue is the project-related complaints handling procedure, which may focus exclusively on donor investments. A stocktaking exercise of World Bank human development projects approved from in fiscal years 2008-2010 found fifteen projects that supported or attempted to integrate grievance/complaints procedures in the social protection sector (whether in the Bank projects or in the broader government programs), two such projects in the education sector, and just one in health.²⁴ Not all of these references to grievance or

²³ “Designing Effective Complaints Handling Procedures,” presentation, David Post and Sanjay Aggarwal, World Bank, April 21, 2010.

²⁴ “Agency ESW Stocktaking Exercise,” World Bank, Office of the Chief Economist for Human Development, January 2011.

complaint handling procedures in these projects and programs were designed as general reviews of transactions with end users. For instance, the Kyrgyz Republic Health and Social Protection Project focuses on serious allegations on the part of auditors, and public complaints regarding the imposition of informal fees, rather than on the variety of complaints end users might have. A concern regarding complaints handling procedures that focus primarily on donor-financed operations, to the exclusion of more general complaints, is that they may weaken the complaints handling capacity of the government more generally, either by drawing staff and talent away, or undermining client confidence in the government's processes.

A noteworthy grievance redress procedure is that incorporated into the newly expanded Philippines' Conditional Cash Transfer Program, whose focus is grievances expressed regarding the broader government program, rather than within a Bank-supported project per se. Grievances are entered into a publicly accessible database that tracks the nature, origin, location, and status of complaints, including targeting errors, payment irregularities, fraud, and corruption. The database takes in complaints from text, various websites, and a hotline. In the first quarter of 2010, some 13,500 complaints were received. A survey of one region found that 13% of the population had complaints about the program.²⁵ This is not surprising given the rapid expansion of the program, which went from 376,000 households in 2008 and expanded further at the beginning of 2009 to cover one million households beneficiaries, or approximately 20 percent of the poor. The complaints system provides an important information source for course corrections as the program expands.

As the section on design principles, above, indicated, redress procedures within line agencies should address issues concerning confidentiality, transparency of the redress process, accessibility, speed and responsiveness, and authority. The publication of regular reports on the number and nature of appeals is a useful way to monitor the transparency of the redress process. For instance, Manitoba's Family Services and Consumer Affairs department, for example, puts out Annual Reports on the Social Services Appeal Board, which includes information such as Board Membership, Financial Information, Appeal Activity, Requests for Reconsideration, and Summary of Advisory Activities. For the 2008-2009 fiscal year, there were 540 appeals, with the vast majority of them in the area of income assistance.²⁶ Most of the appeals were also made on the basis of insufficient assistance.²⁷ The publications also provide detailed information on the number of requests for reconsideration, including their disposition and the program breakdown.

The last concern mentioned above, authority, refers to the kinds of redress available in line ministry redress procedures. Generally speaking, it will probably most effective – both for engendering client confidence and for efficiency of resolution – to delegate as much authority to the officials that staff line agency redress procedures as is consistent with public law, and as

²⁵ World Bank, Manila Office, Human and Development and Governance Units. Philippines: Strengthening the Governance Dimension of the Philippines' Conditional Cash Transfer Program, December 2010.

²⁶ Annual Report 2008-09, 12.

²⁷ 15.

political economy concerns would recommend. In other words, some of the most effective redress procedures grant significant discretion to officials to award money, impose penalties, offer apologies, and even change certain policies. This is illustrated in the examples below.

In the UK, the Department for Work and Pensions (DWP) in the UK has a clear process for dealing with complaints. The first step is to send a complaint to the manager of the office that dealt with the claim. Then they have separate complaints departments for each of their sub-agencies: The Pension Service, Job Centre Plus, Child Support Agency, Debt Management Organization, and Disability and Careers Service.²⁸ Their account of the redress process makes clear that they both have the authority to correct wrongful decisions, and are open to third-party independent review: “If you think our decision is wrong, you can ask us to explain it. If you still think it is wrong after we have explained, we will look at it again. For some decisions, you may also be able to appeal to an independent tribunal who can change the decision if they agree that it is wrong.”²⁹

Similarly, the National Health Service describes a formal complaint procedure, detailed on its website. The procedure starts with contacting the patient’s hospital or primary care trust, also known as local resolution.³⁰ In order to help facilitate the complaint procedure, there are two available services. One is the Patient Advice and Liaison Service (PALS), local to each hospital, which offers confidential advice, support and information on health-related matters to patients, their families and their care givers.³¹ The second available service is the Independent Complaints and Advocacy Service (ICAS), which is a national service that handles complaints about NHS care or treatment.³² The local ICAS office can be found through the hospital manager or by calling a regional office number available on the NHS website.³³

In Canada, appeals regarding the decisions of the Department of Human Resources, Labour and Employment lays are described on their website, and include three main steps³⁴:

- 1) Consult the Client Services Officer Supervisor or Manager
- 2) The First Formal Level of Appeal – the Internal Review: “The Internal Review will consist of an examination of written documentation, but may include direct contact with you via telephone.”
- 3) The Second Formal Level of Appeal – the Income and Employment Support Appeal Board: “If you are not satisfied with the decision of the Internal Review you can appeal to the Income and Employment Support Appeal Board. To do this you must forward an Application for Appeal to the Executive Secretary of the Board.”

²⁸ <http://www.dwp.gov.uk/contact-us/complaints-and-appeals/>

²⁹ *Id.*

³⁰ NHS, “How to Complain,” *available at*:

<http://www.nhs.uk/choiceintheNHS/Rightsandpledges/complaints/Pages/NHScomplaints.aspx>

³¹ The local PALS office can be found by searching at <http://www.pals.nhs.uk/officemapsearch.aspx>.

³² *Id.*

³³ *Id.*

³⁴ <http://www.hrle.gov.nl.ca/hrle/income-support/appealprocess.html>

In France, complaints about charges, reimbursements or access to health (Couverture Maladie Universelle) should first go to the local *Caisse*, normally the *Caisse Primaire d'Assurance Maladie (CPAM)*, or the *Régime Social des Indépendants (RSI)* for those in business.³⁵ Complaints against refusal of affiliation or reimbursements should be appealed to the *Commission de Recours Amiable (CRA)*. Appeals must be made within 2 months of formal notification of the decision contested. The CRA should make a decision within one month of receipt of all the documents.³⁶

Some of the most well-specified redress procedures within line agencies exist in developed countries, but these are feasible in low-income countries as well. The design of Kenya's Hunger Safety Net Program (HSNP) emphasizes that "grievance and redress procedures" are necessary to the social protection and rights program and identifies three levels of redress procedures: community, district, and national. At the community level, there are to be grievance committees responsible for investigating and seeking redress. At the district level, the HSNP is designed to have a grievance front office to receive complaints. Those complaints that cannot be addressed by the district office are forwarded to the national grievances coordinator.³⁷

Grievances are based on a "National Charter of Rights" that is (in theory) developed by HSNP in conjunction with the communities and disseminated at the community level.³⁸ There are also to be rights committees at the community levels who are to oversee overall developments in the community and ensure that grievance and redress procedures are strictly followed by the communities, leaders, and implementing partners. The rights component begins with community education and mobilization. To date, according to the website, HSNP has created a charter of rights in illustrated form to disseminate among different ethnic groups. The HSNP is setting up a Management Information System to network and share information with all its partners. All complaints received are to be logged into the Management Information System and reviewed regularly by the National Programme Coordinator.³⁹

A number of urban areas in South Asia are developing complaints and redress procedures. In Gujarat's State Employees State Insurance schemes (ESISs), a Local Committees and Regional Board representing employers, employees and scheme administrators have been created to address grievances.⁴⁰ And since April 1999, an independent cell exists to deal with public grievances at the regional level. Recently, a website also gives the address and contact

³⁵ "French Health System – Complaints," available at: <http://www.french-property.com/guides/france/public-services/health/complaints/>

³⁶ *Id.*

³⁷ HSNP, About Us, http://www.hsnp.or.ke/HSNP%20Web%20index_files/Page382.htm.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ http://esicvadodara.org/index_grievan.html.

information of the Public Grievance/Complaint Officer and provides an online form that could be filled out to submit complaints or grievances directly.⁴¹

Similarly, India's Employees Provident Fund Organization has recently set up a new Grievance Management Portal through its website.⁴² The portal allows subscribers to register a grievance, send a reminder or clarification, view status or change password. The Grievance Registration Form is detailed, requiring (potentially compromising) personal information, information about the officer to which the grievance pertains, and allows a description of the grievance up to 5000 characters.⁴³ The municipality of Rajkot, in Gujarat, also has an SMS-based grievance redressal system for civic problems.⁴⁴ Pakistan's Benazir Income Support Programme similarly has an online grievance redressal system.⁴⁵

The Hyderabad Metropolitan Water and Sewage Board, in the state of Andhra Pradesh, India, simplified and standardized the complaints process starting in the mid 1990s. This occurred in the context of a variety of service innovations that included a citizen's charter, a single window cell for services, management reforms, higher levels of publicity, and a focus on customer care. This package of reforms led to improvements in customer perceptions, and a reduction in wait times. Improved perceptions were accompanied by an *increase* in the number of registered complaints, as well as an improvement in the efficiency of complaints redress.⁴⁶

In April, 2003, in Mumbai, the Praja Foundation and the Municipal Corporation of Greater Mumbai jointly initiated the Online Complaint Management System, which streamlines complaints on urban public services into an online database for tracking performance.⁴⁷ This initiative lasted until 2007, when the municipality launched its own system, which includes ten phone lines with 24 hour coverage, an email address, a website portal, a fax number, courier paper complaints, and verbal complaint registries.⁴⁸

A final example involves Lok Satta, a civil society group, that worked with municipal authorities in Andhra Pradesh to establish citizens charters, complaints procedures, and an agreed upon fine

⁴¹ http://esicvadodara.org/index_com.html

⁴² <http://www.epfindia.gov.in/Index.htm>

⁴³ <http://epfigms.gov.in/grievanceRegnFrm.aspx?csession=uljrSg1SYwz&#>

⁴⁴ For a description, see Yamini Aiyar, Bala Posani, Abhijit Patnaik and Manakini Devasher, Institutionalizing Social Accountability: Considerations for Policy, The Accountability Initiative, 2009:

http://www.accountabilityindia.in/sites/default/files/working-paper/36_1255255017.pdf

⁴⁵ <http://58.65.177.220/grievance/Grievance/login.aspx>

⁴⁶ Jonathan Caseley, Blocked drains and open minds: multiple accountability relationships and improved service delivery performance in an Indian city. IDS Working Paper 211. December 2003:

<http://www2.ids.ac.uk/gdr/cfs/pdfs/wp211.pdf>

⁴⁷ <http://www.praja.org/our-project-online-complaint-management-system.php>

⁴⁸ A description can be found here:

<http://unpan1.un.org/intradoc/groups/public/documents/APCITY/UNPAN012838.pdf> And the complaints portal itself is here:

<http://www.mcgm.gov.in/irj/portal/anonymous?NavigationTarget=navurl://1541a2917b15d1b4a1a0713c12eb56ff#>

of 50 Indian rupees per day for a delay in the delivery of public services. A qualitative evaluation of this initiative has been favorable.⁴⁹

Independent redress institutions

External non-judicial redress procedures include tribunals, ombudsmen, public inquiries, a variety of sector-specific entities, such as labor relations boards, and civil society organizations. It is difficult to generalize about this heterogeneous collection of actors, but a few comments are possible. First, these entities typically exist outside the formal bureaucratic apparatus and sometimes possess little or no public authority to compel parties to accept their findings. Their judgments are often advisory only. Second, their authority typically rests somewhere between the line agency power to examine internal compliance with extant rules and the judicial function of reviewing the adequacy of extant rules, regulations, and even, in the case of constitutional courts, laws. Third, these are most useful when the incoming pathways from line agencies to them, as well as the outgoing pathways from them to courts, are well-publicized and widely known.

In the UK, there are both public sector and “private” sector ombudsmen. Public sector ombudsmen investigate complaints about local councils, government departments and the NHS. Private sector ombudsmen investigate complaints about a range of businesses and industries. However, many private sector ombudsmen have a “statutory basis, and are approved by the regulator for their sector, or by the relevant government department.”⁵⁰ Public sector ombudsmen can usually only review how a decision was made, looking for cases of *maladministration* and *suffering as a result* of the maladministration.⁵¹ In contrast, private sector ombudsmen can “generally consider whether a decision taken by an organization was *fair and reasonable*, taking into account *standards of good practice* within the industry or profession.”⁵²

Ombudsmen can recommend or order the following remedies: explanation, apology, change in practice, out-of-pocket expenses, compensation. They can also ask an organization or government department to review other similar complaints. However, recommendations are not binding. Awards made by private ombudsmen are binding through membership of the ombudsman scheme, meaning that a company could lose its membership if it does not comply. One cannot appeal an ombudsman’s decision, but they have their own complaints process and some have independent reviewers who will investigate complaints about their procedures.

⁴⁹ Public Affairs Foundation Bangalore, India, Karen Sirker, and Sladjana Cosic Empowering the Marginalized: Case Studies of Social Accountability Initiatives in Asia. World Bank Institute Working Paper. 2007. http://www.sasanet.org/curriculum_final/downloads/PM/Working%20Papers%20&%20Case%20Studies/01%20Empowering%20The%20Marginalized%20-%20Case%20Studies%20of%20Social%20Accountability%20in%20Asia.pdf

⁵⁰ http://www.adrnow.org.uk/go/SubSection_15.html

⁵¹ http://www.adrnow.org.uk/go/SubSection_15.html. However, the Health Service Ombudsman can investigate complaints about poor treatment or service.

⁵² http://www.adrnow.org.uk/go/SubSection_15.html.

The Office of the Independent Adjudicator (OIA), in the UK, is an independent body that is set up to review student complaints against Higher Education Institutions in England and Wales.⁵³ Any complaints or appeals procedures of the higher education institution must be exhausted before bringing a complaint to the OIA. An application must be made within 3 months of the date of the completion of any complaints or appeals procedures at the institution. The OIA has a comprehensive complaints process but it only applies to higher education institutions.

Challenges to income support and related social decisions in Canada may appeal to a third level of review, which, as described above, consists of the Income and Employment Support Appeal Board. For health insurance appeals in France, there is also an ombudsman system through an official and ‘independent’ *Conciliateur* who can be contacted through the local *Caisse* or RSI. The ombudsman’s decisions are non-binding but are generally respected.⁵⁴ There is also a main independent ombudsman, the *Médiateur de la République*. The *Médiateur* helps settle disputes with civil service departments but his jurisdiction is much broader than health or social welfare.⁵⁵

In France there is a special tribunal that is called the *Tribunal des affaires de sécurité sociale* (TASS). The TASS judges conflicts between social security agencies and the insured and contributors and between social security and health professionals. Applications may be made to TASS if the insured is not satisfied with the decision of the CRA or if the CRA did not make a decision within a month of receipt of all necessary documents (an implied rejection).⁵⁶

Brazil’s Programa Bolsa Família is explicitly subject to external monitoring by several organizations, including the Tribunal Contas da União, the Controladoria-Geral da União, the Ministério Público, and publicly constituted councils at the municipal level. While the first two organizations focus on transparency and accountability more generally, the last two have the attributes of external redress processes in which individual transactions are reviewed. Data on complaints with the program do not appear to be aggregated into easily available and standardized datasets. A survey of 5,604 families in 2006 found that 9% should have been paid but were not (or were paid improper amounts), but it is not clear if these were uncovered on the basis of regular complaints or on the basis of the administrative review and the survey. Overall, the focus of the agencies that monitor irregularities in the PBF appears to be on families improperly included in the program, rather than those improperly excluded.⁵⁷

⁵³ The Office of the Independent Adjudicator for Higher Education, homepage, available at: <http://www.oiahe.org.uk/>.

⁵⁴ “French Health System – Complaints,” available at: <http://www.french-property.com/guides/france/public-services/health/complaints/>.

⁵⁵ <http://www.mediateur-republique.fr/en-20-citoyen-Contact>

⁵⁶ “Tribunal des affaires de securite sociale,” available at: http://www.legislation.cnnav.fr/doc/cont/cxgen/tass/BNL-EX_CONT_CXGEN_TASS.htm

⁵⁷ Controle e transparencia na gestao do Programa Bolsa Família, 1 Mostra Nacional de Estudos sobre o Programa Bolsa Família.

Civil society organizations can also play an important role in the development of complaints procedures. The Chilean Initiative Reclamos is a private initiative whose original aim was to promote dialogue between consumers and private companies, and to facilitate the resolution of complaints. The web portal is enormously popular, receiving 800,000 unique visitors per month in a country with population of about 17 million; but the focus has moved from facilitating consumer-producer dialogue to cataloging and highlighting complaints that are then picked up by journalists and used by other consumers. Users also use the portal to complain about basic service delivery on the part of government agencies and departments.⁵⁸

Similarly, Kiirti, created by a former Amazon employee in India, is a broadly applicable technological platform for monitoring complaints; but its most widespread use has been for the lodging of complaints against auto rickshaw drivers in Bangalore, India. The major impediment to its use appears to be the lack of sufficient staff on the part of the Regional Transportation Office to follow up on the complaints. As the Commissioner colorfully put it, “We are still experimenting with e-Governance, which I personally have been working on since 1991, and we need to realize that it is just a topping, not the pizza itself.”⁵⁹

These last two examples make clear that access to complaints procedures can be dominated by middle class concerns and priorities. The section on Demand, below, will highlight this problem and describe approaches that might ameliorate these concerns.

Courts

The extent to which courts hear and redress the failures of line agencies and providers to comply with their statutory and contractual obligations, versus the extent to which courts review the regulations that govern service delivery in light of the law and the law in light of the constitution, depends on local legal traditions, institutional configurations, and political circumstances. Although exceptions are numerous, courts in countries with civil law traditions, generally speaking, tend to shy away from judicial review of the laws themselves. Civil law jurisdictions typically carve out a specialized legal domain, administrative law, to assess bureaucratic actions, and locate administrative judges either in specialized courts (Germany, Austria), or in councils of state (France, Belgium, Italy). These courts apply a variety of tests to assess the “legality” of administrative actions (as in the German conception of the *Rechtsstaat* or the French *Etat de Droit*), with the tests typically focused on a review of administrative decisions, rather a review of the laws that guided administrative choices. (This is true in theory; in reality, civil law courts inevitably find themselves interpreting law).⁶⁰ Civil law courts often do, however, second guess administrative choices, and assess the substantive reasoning of administrators.

⁵⁸ See Archon Fung, Hollie Russon Gilman, and Jennifer Shkabarur. Technologies of Transparency for Accountability: An Examination of Several Experiences from Middle Income and Developing Countries. The Open Society Institute. October 1, 2010.

⁵⁹ Ibid, p. 49.

⁶⁰ John Merryman, *The Civil Law Tradition*, Stanford University Press, 1985.

In contrast, courts in common law countries, although they generally do enjoy the power to assess the substance of laws, have typically refrained from second guessing the substantive rationale for administrative choices, confining themselves to a more formal review of the processes that administrators followed (e.g., Did administrators act in conformity with the law and within their delegated authorities?). In Canada, for instance, the case *Council for Civil Service Unions v. Minister for the Civil Service* (1985) established that the only grounds for judicial review of administrative action were illegality, irrationality, and procedural impropriety.⁶¹ Still, however, common law courts sometimes do scrutinize administrative choices despite the doctrinal reluctance to do so.

In the United States, for instance, common law courts have compelled authorities to grant hearings to individuals to explain or review their decisions, compelled agencies to improve their record keeping, to explain the underlying scientific basis of their decisions, and to assess the basis of administrative actions so as to be sure that they were not “arbitrary and capricious.”⁶² Ultimately, the requirement to investigate potential arbitrariness led U.S. courts to take a “hard look” at the substance of administrative reasoning. That tendency remains, even though in 1984 the US Supreme Court tried to roll back judicial investigations that focused on the substance of administrative decision making.⁶³

An expanding area of concern is the application of administrative review in common law countries where services have been privatized or contracted out. One of the reforms that the UK Law Commission suggested concerned the identification of those activities that, even if implemented by private actors, are “truly public” and hence subject to a kind of administrative scrutiny – and hence clients to a kind of redress – that is distinct from that which exists under private law.⁶⁴ The Law Commission suggested creating a category of cases that would be considered “truly public.” The Commission formulated a definition derived in part from the concept of the “emanation of the state” from EU law.⁶⁵ This is where private bodies have “special powers beyond those which result from the normal rules between individuals.”⁶⁶

As a result of divergent conceptions of what judges are supposed to do, courts in civil law countries typically operate at the “retail” level when working to redress grievances, whereas common law courts are more comfortable operating at the “wholesale” level. In the area of

⁶¹ [1985] A.C. 374 (“Judicial review has I think developed to a stage today when without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds upon which administrative action is subject to control by judicial review. The first ground I would call “illegality,” the second “irrationality” and the third “procedural impropriety”).

⁶² Tom Ginsburg, *The Judicialization of Administrative Governance: Causes, Consequences, and Limits*, in *Administrative Law and Governance in Asia: Comparative Perspectives*, (Tom Ginsburg & Albert H. Y. Chen eds., 2009), pp. 12-14.

⁶³ *Chevron USA v. NRDC*, 467 U. S. 837 (1984)

⁶⁴ *Administrative Redress: Public Bodies and the Citizen*, A Consultation Paper, The Law Commission, Consultation Paper No. 187. Available at www.lawcom.gov.uk/docs/cp187_web.pdf, page 77.

⁶⁵ Case C-188/89 *Foster v. British Gas* [1990] ECRI-3313 at p840.

⁶⁶ *Id.*, at 20.

health policy, civil law courts in Latin America have recently emerged as an extremely active retail redress procedure. In Brazil, over the last decade, there have been estimated 100,000 cases in which courts have reviewed whether individuals received medical treatments (mostly medications) to which they were arguably entitled under the terms of the 1988 Constitution and the operational guidelines of the SUS. The state of Sao Paulo alone spent around US\$130 million in 2007 to comply with judicial orders.⁶⁷ Figure 1 below illustrates the recent explosion in health cases in the courts of some Brazilian states – generally, in the relatively wealthier south and southeastern states. Similarly, the Colombian courts heard more than 142,000 claims regarding health cases (mostly, that health insurers had unfairly denied them treatments or medications) in 2008 alone.⁶⁸ In Costa Rica, there have been a larger number of constitutional claims against the social security agency (CCSS), and overall personal claims have increased every year since 1997.⁶⁹ In all three of these countries, claimants have won the large majority of cases, but there have been concerns that the middle class individuals have availed themselves of judicial redress much more frequently than the most marginalized individuals and groups.

Another retail model is court-administered mediation or alternative dispute resolution. In India's common law system, the courts have played an important role in creating new venues for redress. In a significant ruling, the Indian Supreme Court allowed patients to use Consumer Protection Courts, in addition to ordinary courts, to obtain compensation and redress in cases involving medical malpractice.⁷⁰ The Indian courts also oversee alternative dispute resolution forums known as "People's Courts" (*Lok Adalats*) in which redress claims from a variety of sources are subject to judge supervised mediation. There is concern, however, about the effectiveness of these forums.⁷¹ In the UK, the recent Law Commission report has sparked a debate about the use of alternative dispute resolution to address administrative redress.⁷²

Specialized courts can also be used to handle redress claims at the retail level. In Switzerland, the Federal Insurance Court, located in Lucerne, is responsible for social insurance law as part of administrative law. As a court of last resort, it renders judgment on appeals of decisions by cantonal insurance courts and by other authorities in federal insurance cases.⁷³

⁶⁷ Octavio Ferraz, Right to Health Litigation in Brazil: An Overview of the Research, SSRN Working Paper, May 15 2009.

⁶⁸ Alicia Ely Yamin and Oscar Parra-Vera, Judicial Protection of the Right to Health in Colombia: From Social Demands to Individual claims to Public Debates, *Hastings International and Comparative Law Review* 33:2 2010

⁶⁹ Bruce Wilson, Rights Revolutions in Unlikely Places: The Cases of Colombia and Costa Rica, forthcoming *Journal of Politics in Latin America* 2/2009: 59-85.

⁷⁰ *Indian Medical Association v. V P Shantha* AIR 1996 SC 550: (1995) 6 SCC 651

⁷¹ Marc Galanter and Jayanth K. Krishnan, Brad for the Poor: Access to Justice and the Rights of the Needy in India, *Hastings Law Journal* 55 2004 p. 789

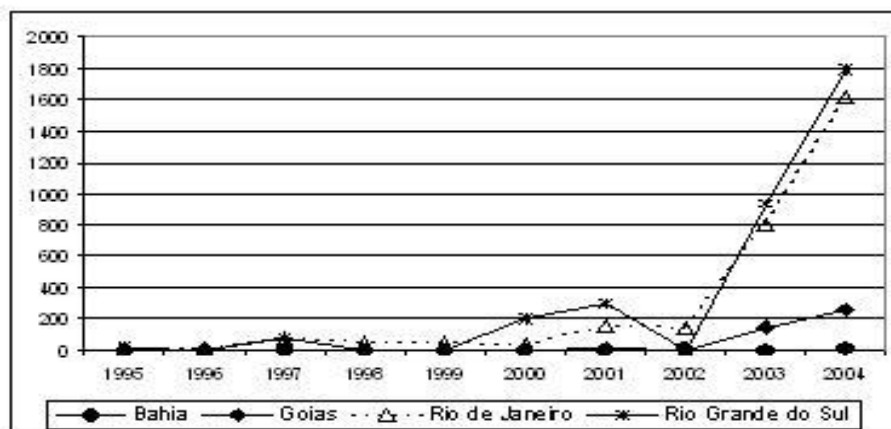
⁷² Administrative Redress: Public Bodies and the Citizen, A Consultation Paper, The Law Commission, Consultation Paper No. 187. Available at www.lawcom.gov.uk/docs/cp187_web.pdf. See also Kirkham, Richard(2008) 'Quiet Moves Toward Proportionate Dispute Resolution: The Law Commission's Consultation Paper on Administrative Redress', *Journal of Social Welfare and Family Law*, 30: 2, 163 — 174; and Mullender, Richard (2009) "Negligence, Public Bodies and Ruthlessness," *The Modern Law Review*,

⁷³ <http://www.bger.ch>

The “wholesale” approach to redress is exemplified in the social grants cases in the common law courts of South Africa. To root out alleged corruption in the awarding of social assistance, in the late 1990s the Eastern Cape suspended the payment of almost all social grants, including grants for disability. When the Legal Resources Centre and other NGOs pressed the provincial government about the legality of that action, the provincial authorities agreed to establish a “Pensioner’s Friend” and related offices to redress wrongful suspensions of assistance. Those claiming to have been wrongfully denied payments were asked to reapply. But the provincial authorities did not staff the new offices effectively, and redress requests languished. Since that period, tens of thousands of applicants have brought petitions to courts for back payment of those grants along with (in some cases) interest, penalties, and legal costs. Magistrates courts in South Africa granted many of these petitions, but the province still remained slow to comply. Subsequently, the High Court, the Supreme Court of Appeal, and the Constitutional Court intervened repeatedly. But after encountering continued bureaucratic and political delays, these courts moved from a retail to a wholesale approach, beginning around 2004. In *Mashavaha v President of the RSA*, the Constitutional Court effectively removed provincial control over the grants and re-centralized the administration of those social assistance grants in the Eastern Cape. That wholesale measure was deemed to be more effective than a continual, serial approach to redress.⁷⁴

In summary, courts, though expensive, remain an important option for redress in the social sectors. Their availability, the extent of their powers, and their relationship to extant redress procedures within line ministries depend on local legal traditions. In providing redress, courts can operate at either the retail or wholesale levels.

Figure 1: Health cases in 4 state tribunals, by date of filing



⁷⁴ See (Berger 2008) For background see also *Njongi v Member of the Executive Council, Department of Welfare, Eastern Cape* 2008 (4) (CC) (28 March 2008). Also *Mashavaha v. President of the RSA* 2004(12) BCLR 1243 (CC) (6 September 2004)

V. The demand side

In general, low levels of literacy and political/social marginalization mean that many individuals, including ethnic minorities, will not take advantage of redress procedures even where they are well designed.⁷⁵ It is important to stimulate demand. Measures to stimulate demand can include explicit financial support (or just a supportive legal environment) for NGOs/CSOs, granting access to independent media, and publicizing extant redress procedures.

NGOs/CSOs

A basic problem with redress is that many people do not feel entitled to the services they receive. Basic service delivery is, in these circumstances, understood to be a favor of the patrón, a dispensation from a Big Man, or charity from the upper classes, rather than an entitlement. In other words, there has not occurred that transformation of outlook in which, as Hannah Pitkin puts it, "I want" has become "I am entitled to."⁷⁶ This transformation occurs more often, of course, after a certain threshold of human development and democratic freedom are achieved; still, many individuals in high- and middle-income countries do not access redress procedures even when they are available. Often, civil society organizations and non-governmental organizations can raise rights consciousness, sponsor and initiate access to a redress procedure, or make a claim for collective redress that brings together resigned, fatalistic clients with those who are more motivated and entitled.

A variety of NGOs and CSOs have played this role. Some have had international links whereas others have been domestic. Some have focused on direct legal strategies themselves, such as the Legal Resources Centre in South Africa, mentioned above, while others have focused on consciousness raising and building a sense of entitlement, such as Samata and Nijera Kori in Bangladesh. Some are state-sponsored entities, such as the *conselhos da saúde* and other "instâncias de controle social" in Brazil, while others have little connection to governments. It is difficult to generalize about the role of NGOs and CSOs in stimulating and organizing demand for redress. The main policy to support this form of demand stimulation would be to establish a facilitative legal, financial, and political environment for organizations that can play such roles.⁷⁷

One of the crucial roles that NGOs can play, with respect to demand for redress procedures, is the direct provision of legal and quasi-legal support to marginalized individuals and groups. As the World Development Report 2000 noted:

⁷⁵ "Rights, Responsibilities and Social Protection. The Dynamics of Supply and Demand: An Issues Paper," Julie Gaunt and Naila Kabeer, 1.

⁷⁶ Hannah Pitkin. 1981. Justice: On Relating Public and Private. *Political Theory* 9:327-352.

⁷⁷ For information on tax policies, registration, funding, and other policies that are supportive of NGOs/CSOs, see issues of the *International Journal of Not-for-Profit Law*: <http://www.icnl.org/knowledge/ijnl/index.htm>

Even when the legal system is well run, poor people face constraints in using it. Poor people typically have little knowledge of their rights and may be deliberately misinformed. . . . Almost any form of legal assistance is of value. But comprehensive services from independent legal service organizations are especially valuable to poor people, and the demand for such services is high. Standards should be developed to make them even more effective. Legal service organizations also need financial support from donors and civil society, but they have to be allowed to function autonomously, taking direction from poor people themselves.⁷⁸

There are many such organizations that specialize in litigation in the social sectors, now in existence in developing countries. Some of the most prominent include the Human Rights Law Network, the Lawyers Collective, and the People's Union for Civil Liberties, in India; the Legal Resources Centre and the AIDS Law Project, in South Africa; Acao Educativa and the various offices of the independent Ministerio Publico, in Brazil; the Jakarta Legal Aid Bureau, in Indonesia; and the Center for Economic and Social Rights, in Nigeria.⁷⁹

But there are risks to outside funding of legal services NGOs. One risk is the introduction of a mediating actor (dependent at least in part upon foreign donors or political actors for its funding) between the demands of the poor and the claims made, and thus the potential loss of the rights bearers' ability to set priorities. This mediated intervention, via NGOs, moreover, requires legal devices that may or may not be available in a given country. India's PIL, Brazil's *ação civil pública*, and abstract constitutional challenges to legislation are examples of legal devices that effectively grant standing to civil society or state-sponsored third parties to assert the claims of those who otherwise lack the resources to do so. Nigeria has much more restrictive standing rules that limit the participation of civil society groups, and there seems to be no equivalent to Brazil's *Ministério Público* in any of the other countries. The degree to which direct effects will favor already privileged groups will depend on the availability of these legal devices and of charitable or state resources to pursue claims. The more that courts act in response to the collective claims of public-interest actors, the more the benefits are likely to extend beyond the middle and upper classes in urban settings.

Media

There is a two-way communication process that is important for redress procedures. First, agencies and redress venues can provide information to clients about the existence and functioning of redress procedures. Second, independent media can provide information to

⁷⁸ World Development Report, 2000, pp. 103, 105.

⁷⁹ See Varun Gauri and Daniel Brinks, *Courting Social Justice: Judicial Enforcement of Social and Economic Rights in the Developing World*, Cambridge University Press, 2008.

dispute resolvers regarding significant failures in basic service delivery; and independent media can publicize notable grievances and complaints, thus amplifying the “fire alarms” and generating pressure to address them wholesale.

Booklets, flyers, websites, and advertisements in radio and television are means by which line agencies can share information about how redress procedures work. The Department of Work and Pensions in the UK has a booklet entitled “If you think our decision is wrong” that explains in detail how to appeal a decision and what happens during the appeals process. The booklet also contains a list of other sources of information, all the relevant deadlines, and a copy of the appeal form that can be filled out and submitted.⁸⁰ The booklet and the website are written in clear and colloquial language, which ensures that the process is accessible to the general public. The DWP has also numerous reports assessing the effectiveness of its programs.⁸¹ India’s ESIS website lists the address and contact information of the Public Grievance/Complaint Officer. There is also an online form that could be filled out to submit complaints or grievances directly.⁸² However, on the Indian ESIS complaints website, there is no further information on either the procedure or the standards that would be used to judge grievances or complaints. There is also no information on previous complaints that had been filed or how they had been settled.

Independent media investigative journalists can amplify claims for redress. Although news media are also “agenda setters” and “gate keepers,” it is their function as “watch dogs” that is most important in aggregating and amplifying demand for redress.⁸³ Although news outlets sometimes focus on scandalous or titillating events, rather than day-to-day disrespect and unfairness, if the denials are egregious or frequent, a news outlet might run a story on them. This can then lead to a response on the part of officials who staff a redress process. And if redress is provided and subsequently publicized, the process may raise the hopes of other citizens, who might be more inclined to demand redress for themselves in the future.

At the same time, tropes in the news media tend to follow patterns available in the popular imagination. For example, when designing social policy, Brazilian policy designers typically anticipate efforts by unqualified individuals to fraudulently attain benefits, but are less likely to anticipate the bureaucratic processes that will lead to the denial of benefits to qualified individuals and families. Both the law establishing and the regulation implementing the Bolsa Família program included detailed sections on procedures to identify and penalties to punish fraud, but do not describe standard redress procedures to give unjustly excluded individuals and

⁸⁰ DWP, February 2009, “If you think our decision is wrong,” available at: <http://www.dwp.gov.uk/contact-us/complaints-and-appeals/#ac>

⁸¹ Their database of recent reports (1990-2010) can be searched at <http://research.dwp.gov.uk/asd/asd5/rrs-index.asp>

⁸² http://esicvadodara.org/index_com.html

⁸³ Pippa Norris and Sina Odugbemi, The ideal roles of the news media in the public sphere, Harvard-World Bank Workshop, May 29-31, 2008. The paper is available at: http://www.hks.harvard.edu/fs/pnorris/Conference/Conference%20papers/Norris_Odugbemi%20The%20roles%20of%20the%20news%20media.pdf

families a fair hearing.⁸⁴ In much the same fashion, “articles mentioning errors of inclusion of the non-poor [in the Bolsa Família program] were more frequent than articles reporting on errors of exclusion of the poor.”⁸⁵

In summary, a two-way information channel facilitates the awareness and use of redress procedures. Line agencies can provide information about the existence and use of redress procedures, and independent news media are important for supporting the aggregation of demand for redress procedures.

VI. Conclusions

Redressing grievances and complaints regarding basic service delivery is important for basic fairness. In addition, redress procedures can help address principal-agent problems in the implementation of social policies and provide information to policy makers regarding the effectiveness of their policies. To function effectively, a system of redress requires both a well-designed and linked supply of supply of redress procedures and, especially if rights consciousness is not well-developed in a society, a set of organizations that can stimulate and aggregate demand for redress. On the supply side, there are three kinds of redress procedures: administrative venues within line agencies, non-judicial public venues such as ombudsmen and panels outside line agencies, and courts. On the demand side, the key institutions are NGOs/CSOs and the news media, both of which require a receptive political and economic climate to function effectively. Overall, redress procedures are under-developed in many developing countries, and deserve further analysis, piloting, and support.

Looking forward, the following are areas where further analytic and operational research would be useful. First and most basically, a comprehensive review of the kinds of redress procedures used in developing countries, and some account of their value or impact, remains to be done. Second, further work is needed on the conditions under which redress or grievance procedures should be conducted in a wholesale mode, and when in a retail mode. Third and more generally, analytic and comparative research on the conditions for effective administrative law, what it means for the separation of powers, and its value for development, is just beginning, and needs more analytic work as well as more case studies.⁸⁶ Finally, important work remains to be done on the linkages between the supply of and demand for redress mechanisms; and particularly on what explains high levels of utilization in some settings but not others, and on what role the media plays in both generating demand for grievance procedures and stimulating compliance with the findings of the bodies involved in administering redress.

⁸⁴ Lei No 10.8326 de 9 de Janeiro 2004; Decreto No 5.209 de 17 de Setembro 2004

⁸⁵ Kathy Lindert and Vanina Vincensini, *Bolsa Família in the Headlines: An Analysis of the Media’s Treatment of Condition Cash Transfers in Brazil*, Summary of Results, April 1, 2008, p. 2.

⁸⁶ See for instance Susan Rose-Ackerman and Peter Lindseth, editors, *Comparative Administrative Law*, Edward Elgar 2010.