

U4 Expert Answer



Right to information laws: Impact and implementation

Query

Is there any evidence that RTI laws help to reduce corruption and / or improve the quality of public services? If it helps, under which conditions? Is there evidence of approaches that are effective in implementing and encouraging use of RTIs?

Purpose

Contribute to the agency's work in this area.

Content

1. Do RTI laws contribute to reduce corruption and improve the delivery of public services?
2. What is required to achieve the potential benefits of RTI laws?
3. References

Summary

There is a broad consensus of the importance of right to information (RTI laws) in enhancing accountability and transparency, thus reducing the opportunities for corruption. Nevertheless, empirical evidence of the impact of RTI laws remains scarce. In general, several studies have found that access to information is positively correlated to control of corruption, but the actual impact of RTI laws seems to depend on a series of other factors. As demonstrated by several studies, the RTI law alone can have a positive impact and help in the solution of specific cases, but it is unlikely to bring sustainable change if not effectively implemented and

accompanied of other measures, such as guaranteed freedom of press and association, effective checks and balances mechanisms, including the prosecution and dismissal of public officials found to be involved in corruption, and coherent policy responses to problems detected in service delivery.

In addition, cases of successful implementation of RTI laws requires a strong leadership and political will as well as the establishment of independent and well-resourced oversight institutions, a clear legal framework and appeal mechanisms, training and capacity building of public officials, and awareness raising activities to inform citizens, civil society, the media and companies on how to exercise their right to know.

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U4 is a web-based resource centre for development practitioners who wish to effectively address corruption challenges in their work. Expert Answers are produced by the U4 Helpdesk – operated by Transparency International – as quick responses to operational and policy questions from U4 Partner Agency staff.

1 Do RTI laws contribute to reduce corruption and improve the delivery of public services?

Overview

Right to information (RTI) laws (also known as freedom of information or access to information acts) primarily aim at regulating the mechanism through which citizens can request information from public institutions. These laws define the scope (who can access what) as well as the exceptions and refusals to access information (Chêne 2012).¹

There is a broad consensus that access to information is very important in helping in the prevention and detection of corruption by making information available and promoting transparency and accountability. Right to information laws are also expected to improve public services by allowing citizens to engage more meaningfully in public life (FOIANet 2013). According to Mori, “the right to information is particularly powerful because it is a tool for claiming other rights” (Mori 2013).

However, the extent to which access to information will translate into sustainable actions and reforms and ultimately contribute to reducing corruption and improving service delivery seems to depend on a wide-range of factors. This answer looks at both empirical and anecdotal evidence regarding the impact of RTI laws on corruption and service delivery as well as at the main requirements in ensuring that RTI laws are exploited to their maximum.

Evidence of the impact of RTI laws at the macro level

There is little empirical research on how RTI laws have worked in practice, whether or not they have been adequately implemented and enforced, and whether they have been effective in fulfilling their stated goals of improving transparency, accountability, and service delivery, and consequently reducing opportunities for corruption (Dokeniya 2013).

¹ For more information on best practices in access to information laws please refer to a previous Helpdesk Answer: http://www.transparency.org/whatwedo/answer/good_practice_in_access_to_information_law

There is also little empirical evidence on whether access to information has led to corruption being de facto punished, the establishment of prevention mechanisms and safeguards, and the adoption of better policies and legislation.

The majority of empirical studies available aim at investigating the links between RTI laws and governance indicators, including corruption. However, the results are mixed. For instance, Islam (2006), upon investigating whether more transparency in the form of access to information affects governance, found that countries with RTI laws have lower corruption levels. Mungiu-Pippidi (2013) found that the existence of the Freedom of Information (FOI) Act is positively associated with lower corruption and a significant positive trend in controlling corruption. Studies have also shown a positive correlation between control of corruption and years of implementation of RTI laws. The older a RTI law in a country, the more the country tends to have lower corruption levels (Tandoc 2013).

While investigating the impact of switching from a weak to strong RTI law on corruption convictions for state and local government officials in the US, Cordis & Warren (2014) found that stronger RTI laws actually led to higher corruption conviction rates.

Other scholars found that RTI laws have a positive impact in curbing corruption if other conditions for accountability, such as media freedom and free and fair elections, are also satisfied (Lindstedt & Naurin 2010).

Nonetheless, the majority of these studies investigate correlation and not causation, meaning that lowers levels of corruption may not necessarily only result from the adoption and implementation of RTI laws but could also be related to other factors.

Within this framework, some studies have also shown a negative correlation between the enactment of RTI laws and control of corruption. A reason for this could be either that more transparency can lead to an increased perception of corruption as more corruption cases are uncovered and the media publishes more on the topic (Dokeniya 2013) or that the effectiveness of RTI laws depends on the broader institutional and political environment. Escaleras et al (2010) found that in developing countries the enactment of RTI laws is associated with rising levels of corruption. According to the authors, this may be due to the fact that the effectiveness of FOI acts appears to be conditioned by a country's institutional arrangements

Evidence from case studies

While the empirical evidence regarding the impact of RTI laws on corruption and service delivery is limited, there are several case studies that demonstrate how RTI laws, and access to information more broadly, have helped citizens access services without having to resort to bribes, identify corruption and leaks, and avoid the mismanagement of public funds.

RTI and service delivery

In Bangladesh, while implementation has been slow, an increasing number of RTI requests have been formulated by non-governmental organisations (NGOs) and activists supporting poor and marginalised groups to access social programmes and public services such as health, housing. Prior to the enactment of the RTI law, these individuals have been unlikely to access such services without bribing public authorities (Institute of Informatics and Development 2012).

In India, studies and media reports show that RTI is being used by citizens, civil society and the media as a remedy to individual injustices, to obtain access to government programmes, investigate government policy and decision-making, and expose corruption and misuse of public resources (Surie 2011). For example, in the education sector, the disclosure of information relating to attendance of staff in schools has helped to assess teachers' absenteeism and students' dropout rates; leading to effective reforms in schools involved (Ansari 2008). Furthermore, the RTI law is also used by local NGOs to support poor families to gain access to public schools by enquiring about the availability of seats for the poor and the criteria for eligibility (Dokeniya 2013).

Similarly, the RTI law was used to assess doctors and nurses' attendance at health centres in the rural areas, leading to an improvement in health care facilities (Ansari 2008). Finally, the disclosure of the list of beneficiaries of the government's social programmes (unemployment benefits, gas subsidy, and grain subsidy, among others) has helped to identifying inconsistencies and wrongdoings (Ansari 2008).

RTI and good governance

There is also anecdotal evidence on the broader impact of such laws with regard to more sustainable changes. There have been cases where public officials and Ministers have been expelled from government due to

information disclosed through RTI requests, and instances where RTI findings have triggered reforms and created broader civil society mobilisation against corruption, such as in India., among others.

In the UK, NGOs and investigative journalists have used freedom of information requests to investigate the expenses of members of parliament. The information was leaked prior to the official response, but nevertheless helped to identify wrongdoings and led to the conviction and suspension of several members of parliament (Dokeniya 2013).

In Romania, the use of the RTI law by a coalition of civil society organisations (CSOs) for the creation of an integrity ranking of Romanian Universities led to an immediate improvement in university transparency. As of 2013, as a result of the study and the information disclosed, more than 25 percent of universities in the country have been proactively publishing procurement expenses on their website and advertising teaching jobs openly. The action also played a key role in the adoption of a new education bill in 2011, which introduced measures to limit nepotism. Unfortunately, according to CSOs in the country, this action has helped to achieve specific reforms and improvements but not to change the culture of favouritism and the broader corruption problems that permeates Romanian society. The problem is that without further systematic and sustainable change, the improvements achieved in the higher-education sector are now threatened (Romania Academic Society 2013).

In Brazil, as required by the Access to Public Information and Transparency Law, the government proactively publishes a series of budgetary information online. Media outlets have used the information to enhance supervision of governmental programmes, spot inconsistencies and expose corruption and wrongdoings. Such exposure led to investigations on several politicians and the resignation of several ministers in the last years (Alves & Heller 2011).

In Mexico, a local NGO used freedom of information requests to investigate the beneficiaries of the largest federal farm subsidy program. The information disclosed helped to review corruption and mismanagement of the programme. The list showed that the main beneficiaries of the programme were not Mexico's poorest and smallest farmers, but rather rich and productive farmers. The Minister of Agriculture was removed from office and after subsequent denounces the government established ceilings on the eligibility for subsidies (Dokeniya 2013).

These examples demonstrate the potential that RTI laws can have if effectively used. Nevertheless, the literature highlights that the enactment of RTI laws alone does not guarantee a reduction of corruption and / or improvements in service delivery. An effective implementation and an enabling environment are instrumental so that citizens can effectively use their right to information and hold governments accountable. The next section looks at what is required to achieve the goals of increased transparency, accountability and better service delivery.

2 What is required to achieve the potential benefits of RTI laws?

The effectiveness of right to information laws in both allowing citizens to have access to information of interest as well as to strength accountability depends largely on three main factors: (i) the existence of a solid legal framework; (ii) the effective implementation of the law; and (iii) the broader governance and political economy environment, including the existence of checks and balance mechanisms, strong media and CSOs, among others (Dokeniya 2013).

A solid legal framework

A solid RTI legal framework is crucial in ensuring the adequate implementation and enforcement of the law. Good practice in access to information points to a series of principles and key features that help making standards operational. They include, among others, clear procedures on who and what kind of information can be requested, which public institutions are covered, exceptions and refusals (For more information, please refer to Chêne 2012a).

Issues to be addressed by RTI laws that are specifically relevant during the implementation phase, include:

Clear request procedures and clear time-limits for completion of information requests

The existence of clear rules regarding request procedures and time-limits for responding to requests in the law may facilitate its implementation and reduce the discretion enjoyed by public officials (Neumand & Callan 2007).

The use of technology solutions can also make the process of requesting information easier. Several countries have adopted online platforms where citizens

can request information and also monitor the government's compliance with the law. In Brazil, for example, such a [platform](#) has been established by the Federal Government, where citizens can exercise their right to information, follow their request and select their preferred mean of receiving the information (e-mail, postal, or directly at the public body).

Proactive disclosure of information

Provisions on proactive disclosure of information, that is, the legal obligation of governmental bodies to anticipate potential requests and make information available in an active manner, have been increasingly included in RTI laws (Darbishire 2011).

International organisations and civil society groups have been calling for governments to proactively publish information on their structure, personnel, and contracts awarded, among others. Similarly, international and regional treaties have also covered the issue. The United Nations Convention against Corruption (UNCAC) promotes the proactive disclosure of certain classes of information as a means to curb corruption. The Council of Europe Convention on Access to Official Documents encourages signatory-countries to enact national rules on proactive publication of information in order to promote transparency and boost informed participation by the public in issues of general interest (Article 10).

The disclosed information should be made available through different channels (internet, radio, public libraries, and official gazette) to ensure that it reaches different sectors of society. It should also be timely, comprehensible, easy to find, presented in a user-friendly format and preferably free or provided at a very low cost (Darbishire 2011).

There is no best practice regarding which groups of information should be proactively made available, and countries have used different strategies. In Mexico, for example, the areas receiving the greatest number of access to information requests are usually proactively made available to the public (Darbishire 2011).

Oversight bodies

A formal institutional architecture is also key to ensuring the effective implementation of the law, allowing citizens to easily access information, regardless of its sensitivity. This includes the establishment of: oversight bodies, such as implementing commissions, and other

bodies within the public administration that supports the proactive and reactive disclosure of information.

Studies have shown that well-resourced bodies responsible for oversight and promotion of the law play an important role in ensuring the implementation of the law, developing guidelines and regulations, providing trainings and capacity building, promoting awareness of the law as well as ensuring that the necessary arrangements / systems to respond to requests are in place (Dokeniya 2013; Transparency International 2006).

In contrast, studies show that in countries lacking an independent and well-resourced oversight agency, the implementation of the law is weak and the RTI law is unlikely to lead to more transparency and accountability. In Uganda, for example, an executive oversight body was established but staffed with partisan individuals and without meaningful budget allocated for its operations. As a result, there is an implementation gap and distrust in the system and citizens, and the media and NGOs still resort to private connections to access public information (Dokeniya 2013). Similarly, in Bangladesh, in spite of the adoption of a RTI law in 2007, the media still “prefers” to use personal connections than the bureaucratic procedure of filing a RTI request (Institute of Informatics and Development 2012).

Another problem verified in the implementation of RTI laws in several countries relates to the fact that political will may be existent in the first years of implementation (or during the enactment of the law), but changes in government or changes in priorities may threaten the sustainability of RTI laws. This is the case in Romania where budget cuts have imposed challenges to the agency responsible for overseeing the implementation (Dokeniya 2013).

For more information on oversight bodies, including an overview of the main roles and functions of Information Commissions and other bodies, please refer to a previous Anti-Corruption Helpdesk Answer available upon request (Chêne 2012b).

Effective appeal mechanism

Individuals who have their RTI requests denied or ignored by public bodies should have the possibility of challenging the decision. Within this framework, as important as having a strong and independent oversight institution is to have clear rules regarding the appeal mechanism as well as independent and impartial

bodies to evaluate these appeals. Individuals seeking information should also have an inexpensive option of going to court against the offending institution if necessary (Transparency International 2006).

In Europe, litigation has been an important tool in ensuring access to public information and it has also helped to develop specific interpretation and jurisprudence in the area (Transparency International 2006; FOIANet 2013). In 2009, a Hungarian CSO appealed to the European Court of Human Rights to claim its right to access public information. The court decision emphasised the importance of disclosing information (FOIANet 2013).

Sanctions

Sanctions are also important in ensuring the effective implementation of the law. Institutions as well as the head of departments failing to provide information in the terms of the law should be punished (Transparency International 2006).

Research shows that the majority of RTI laws provide for sanctions for public officials who destroy or alter documents. Sanctions for the failure to meet deadlines or create obstacles for citizens aimed at accessing information are however less common (Neuman & Calland 2007).

Effective implementation

RTI laws have been enacted in more than 90 countries in the past years. Nevertheless, many of these countries face real challenges related to implementation, including poor proactive disclosure by governments, failure to process requests, poor record management systems, lack of resource or infrastructure, low levels of demand, and low level of awareness by public officials and citizens, among others (Neuman & Calland 2007).

In South Africa, research shows that more than 40 percent of requests to access information are ignored by public authorities (FOIANet 2013). In Spain, a recent study showed that in 2013, Spanish institutions ignored 57 percent of access to information requests (Access Info Europe and Fundación Ciudadana Civio 2014).

The lack of political will is often the main challenge to be overcome in the implementation phase. Nevertheless, there are several measures that can help

to successfully implement RTI, and in turn, get closer to achieving the law's desired impact; these include:

Timely regulation of RTI laws

The timely regulation of RTI laws is fundamental not to lose momentum and ensure the early implementation of the law. Delays in providing guidance and developing the internal system necessary to implement the law can have severe consequences and create a toothless legislation. Uganda approved the RTI law in 2005 and only six years after, in 2011, regulations to support its implementation were passed (FOIANet 2013). This certainly has had an impact on implementation and on the engagement of civil society and the media, as discussed throughout the answer.

Appropriate staffing and resources

As it is the case with other laws, appropriate staffing and resources are fundamental in ensuring effective implementation of the law. Research has shown that in many countries the lack of time, money and personnel is regarded as the largest issue in RTI compliance both at the federal and local levels. Research shows that adequate resource allocation is also seen as a sign of political will. Consequently, governments failing to provide the necessary resources to implement RTI law are risking not being taken seriously by public officials (Neuman & Calland 2007).

There is also a lack of understanding and knowledge regarding the costs of effectively establishing access to information systems. The majority of government do not have specific budget resources and rely on already employed public officials who take on this additional task. A few countries have established separate budget lines for access to information efforts, but the amounts vary quite significantly. For instance, in Mexico, the government spends approximately 0.033 percent of GDP to finance its access to information system. In Canada, this amount is much lower: 0.0007 percent of GDP (Neuman & Calland 2007).

Records management:

Many countries that recently enacted RTI laws have very poor record keeping and archiving systems, which makes the implementation of the law a more difficult and costly task. To start addressing the problem, RTI advocates suggest that governments instead focus on creating a system to archive and manage current and future generated information (Neuman & Calland 2007). An incremental approach, starting with agencies

receiving the record number of requests, may help to reduce costs and make the adoption of a record keeping system feasible. The adoption of proactive disclosure in areas of interest may also be a solution in more easily managing records while giving access to the wider public (Dokeniya 2013; Neuman & Calland 2007).

Training of public officials/ information officers:

It is critical that public officials are involved early in the process of enactment and/ or implementation of RTI laws to facilitate the paradigm shift from secrecy to openness. Awareness raising, training and capacity building is thus instrumental so that officials understand the law, and can have their information management and dissemination skills improved.

In many countries, the lack of awareness of RTI is still a reality even years after the enactment of the law. For instance, in India, more than 30 percent of rural public information officers surveyed in a study did not know the provisions of the RTI law (Dokeniya 2013). In Bangladesh, the majority of public officials are still not aware about the law. As a result, many of them refuse to accept RTI requests from citizens (Institute of Informatics and Development 2012).

Awareness raising and trainings are usually provided by dedicated institutions responsible for overseeing the implementation of the law and focus on making sure that all public officials are aware of their obligations and duties resulting from the law (The Carter Center, no year).

In Brazil, the office of the Comptroller General conducted a survey prior to the enactment of the RTI law to investigate public officials' views with regard to access to information. Based on the results of the survey, guidelines and trainings have been developed to support the implementation of the law. The body is also responsible for supporting local level officials in implementing the law and a series of trainings targeted to these officials are being conducted. The Office also offers online courses ("Towards a culture of access to information") for public officials at all levels (Controladoria Geral da União 2014a). The results have been positive: In the first six months of implementation (the law came into force in 2012), over 460 thousand requests were made to federal bodies, with 85 percent being responded to positively – this is assessed as very

encouraging both in terms of citizen's participation and officials' responses (FOIANet 2013).

In some countries, NGOs also provide training to government officials. These trainings have been successful not only in improving the implementation of the law but also in promoting a closer relationship between government and civil society (Transparency International 2006). In Bosnia Herzegovina a group of NGOs have organised trainings for information officers at well levels of government. According to assessments, these efforts, combined with efforts to raise awareness of citizens, businesses and companies, have slowly exhibited positive results (Transparency International 2006). In Indonesia, CSOs have also worked with public bodies to assess implementation challenges and provide trainings to officials (FOIANet 2013).

In addition, implementation of the law can benefit from the creation of information officers or similar positions where a civil servant is officially responsible for dealing with RTI requests (Dokeniya 2013). For instance, RTI laws in Mexico and Peru requires the appointment of designated information officers in each public body (Neuman & Calland 2007).

Awareness raising of citizens, media, companies, and CSOs

The demand for information is essential to send governments the right message with regards to transparency and accountability and the necessity of making public information available.

CSOs, besides making use of RTI themselves, are key in supporting the building of demand for the right to information and raising public awareness of their right and how to exercise it (UNDP 2006).

For instance, several platforms have been created by civil society groups to help citizens fill right to information requests, appeal from denials, as well as access previous requests and answers from government bodies. Such platforms are available in countries such as [Australia](#), [Brazil](#), [Czech Republic](#), [European Union](#), [Germany](#), [Hungary](#), [New Zealand](#), and [Spain](#), among others. These online platforms facilitate citizens' access to information and also serve as a monitoring tool regarding public bodies' responsiveness.

CSOs have also published a series of guidelines and provided trainings to citizens, the media, other CSOs

and grassroots organisations, and companies on how to access information. The non-for-profit organisation Article 19 has published a series of guides, one of them focusing specifically on journalists and on how they can use the right to information law as part of their daily research and reporting ("Legal leaks" Toolkit for Journalists). Access Info Europe also developed guidelines to citizens on how to request information in specific countries, see for example the guide [Ask the EU](#).

Moreover, as part of a project investigating access to information laws and practices in the MENA region, Transparency International also published a [training material](#) on the right to information that can be used at schools, universities, trainings for citizens, and public officials, among others.

Governments are also responsible for conducting external awareness raising campaigns focusing on the general public, in addition to raising awareness and providing trainings to public officials. Governments can also raise awareness about the law by linking the right to information with other e-government and citizen participation initiative, such as participatory budgeting and social programmes.

Performance monitoring

Monitoring an agency's access to information functions is essential for ensuring the effective implementation of the law as it allows for making better decisions regarding the establishment of rules, the allocation of resources and the required system adjustments and training needs (The Carter Center).

Public bodies responsible for the implementation of the law should include monitoring as part of the implementation plan. The collection of statistics regarding number of requests, topics of interest, average time for responses, reasons for denial/ refusal, among others may be an easy way of understanding needs and gaps. In Brazil, the portal designed for receiving information requests contains a section on [statistics](#) where up to date data on the above mentioned areas is available.

Governance and political economy environment

Studies have also shown that the governance and political economy environment plays a key role in determining "the ability of RTI to translate into

accountability outcomes and broader governance improvements”, such as if corruption and non-performance were punished. Some of the factors identified include active and strong civil society and media groups and the capacity of the legislature, judiciary, and other checks and balance mechanisms/institutions.

Strong civil society and media

CSOs and the media are particularly important in realising the potential of RTI laws as a tool to scrutinise government activities (Dokeniya 2013). Active and engaged CSOs and journalists are instrumental in supporting the enactment and implementation of RTI laws as a way of achieving their intended goals of increased transparency and accountability. Therefore, an environment where freedom of expression and freedom of association is respected and encouraged is essential for a successful implementation of RTI laws.

The experience with RTI so far shows a wide range of initiatives that can be undertaken by CSOs to support the effective implementation of the law as well as contribute to reduced corruption and increased accountability.

For instance, CSOs are instrumental in promoting best practice standards for access to information policies (UNDP 2006). In Africa, the cooperation between CSOs and the African Commission on Human and People’s Rights led to the adoption of the African Platform on Access to Information and of the Model Law on Access to Information for Africa (FOIANet 2013). In several Asian countries, CSOs have been actively involved in the drafting process of RTI laws to be proposed by the government. This is the case in countries such as Malaysia, Mongolia, and the Philippines (FOIANet 2013).

They can also play a role in denouncing / blocking amendments aimed at restricting the scope of RTI laws. In South Africa a secrecy bill introduced in 2010 would have limited people’s right to access information. CSOs launched a campaign ([Right2Know](#)) which helped to raise awareness of the public, influence the final text of the bill and delay its approval. As of 2013, a less threatening version of the law was still pending discussion in the Parliament (FOIANet 2013). Similar efforts took place in India, Moldova and the UK, where CSOs successfully managed to avoid amendments restricting citizens’ right to information.

CSOs are also key in monitoring the implementation of RTI laws. In several countries CSOs attempts to access information by filing access to information requests have also served to monitor the implementation of RTI laws. Other approaches include comparative analyses of laws and implementation efforts (for example, [RTI Rating](#)), and analysis of proactive disclosure (Dokeniya 2013; FOIANet 2013; Transparency International 2006).

As the previous examples show, CSOs have also been using right to information requests to support poor and rural communities to access public services, monitor social programmes, disclose corruption and wrongdoings, and hold government to account.

In the US for example, the non-governmental organisation [POGO](#) (Project on Government Oversight) accesses information through the Freedom of Information Act, to shed light on the government’s activities in several areas of the administration, including public contracting, health and science, energy, financial sector, and security., among others.

Often times, the media and CSOs also function as a bridge between citizens and governments, requesting detailed and technical information and presenting it to citizens in a more user-friendly and context-specific context. Several open-data related initiatives serve this function.

Broader regulatory environment

RTI laws usually contain a list of exceptions setting out the circumstances under which requests can be refused, usually based on an overriding public interest that justifies non-disclosure. In order to avoid abuses and discretion by public officials, the law should include a detailed but narrow list of exceptions (World Bank 2004).

In addition to have limited and well-defined exceptions, it is fundamental that the right to information law is harmonised with transparency clauses in other laws. There are for instance laws which contain confidentiality or secrecy clauses on issues not explicitly specified among the exceptions. This may create confusion and allow public officials to exercise discretion, denying access to critical information (Dokeniya 2013). For example, an analysis of the statistics provided by the Brazilian office responsible for the implementation of the RTI law shows that in 2014 alone more than 10 percent of the cases where the government denied access to information were related to secrecy

provisions prescribed by other laws (Controladoria Geral da União 2014b).

An option to harmonise the legal framework is to include in the RTI law an article stating its primacy over other laws dealing with to information. This has been done in Jamaica and in the state of Sinaloa in Mexico (Neumand & Calland 2007).

Appropriate checks and balances

As previously mentioned, the success of RTI in curbing corruption will depend to a great extent on the government's capacity to act upon irregularities disclosed. An effective law enforcement, judiciary, parliamentary committees, as well as audit and anti-corruption institutions are thus instrumental to ensure corrective and punitive actions (Dokeniya 2013).

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