

Players or Spectators?

Observations on CSO
participation in the Open
Government Partnership

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OpenTheGovernment.org (OTG) has served to coordinate the work of US civil society organizations on the US National Action Plans since the inception of the Open Government Partnership in 2011. As the US was one of the founders of the initiative, both the government and civil society have been learning what to do and how to do it as we go along. At the 2013 OGP summit in London, OTG heard from its civil society colleagues a common frustration and confusion about how civil society has been consulted or collaborated with throughout the creation and implementation processes.

So, it was an exciting opportunity for us to host a Mandela Washington Fellow this year. We proposed that the person placed with us would research and produce a report on the experiences and examples of collaboration between OGP governments and civil society to identify best practices. We were very pleased with the placement of Mr. Kags with us; we see him as a colleague-in-arms in the struggle for greater collaboration with our governments to promote openness and accountability. And we are even more pleased to have as colleagues the folks at Open Institute in Nairobi, Kenya.

We look forward to hearing your thoughts on the following report.

A handwritten signature in black ink that reads "Patrice McDermott". The signature is fluid and cursive, with the first name being particularly prominent.

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Al Kags

Mandela Washington Fellow
Founder, The Open Institute



I had the good fortune of being among 500 young African leaders selected to participate in the inaugural cohort of the Mandela Washington Fellowship this year. The Fellowship involved spending six weeks in one of 20 universities around the United States (25 fellows to a university), followed by a Presidential Summit with the patron of the fellowship, President Barack Obama, with the First Lady Michelle Obama and other senior officials in the US government, civil society and the private sector also in attendance.

A few of us had the privilege to stay in the US for a further two months, during which we would intern in an organization with which we are matched, in order to be exposed to best practices in leadership and in our sector. I was perfectly matched to intern at OpenTheGovernment.org, a coalition of civil society organizations committed to making the US government more open in order to ensure integrity and accountability of government institutions.

Based in Nairobi, Kenya, Open Institute is a think-do tank that works with governments and civil society organizations on open government, promoting transparency, accountability and multi-stakeholder participation in governance as key characteristics of an open government.

Working in an organization that is cut from the same cloth in Kenya, I was excited to be working with this group because I knew that it would enhance my knowledge of the sector and its workings. In the eight weeks that I was there, I was not disappointed.

Open Institute has been actively involved in the Open Government Partnership (OGP), contributing to Kenya's first and second National Action Plans, representing African civil society organizations in the steering committee of the OGP Open Data Working Group, and involved as convening partners of the OGP Africa Summit in 2013. As I continued to work with OpenTheGovernment.org, it became evident that we are curious on the same issues facing OGP and was therefore tasked with embarking on a series of conversations (both online and offline) with different leaders in the civil society space and governments in various countries to learn from their experiences, and make observations and determine trends from their insights. These would encompass

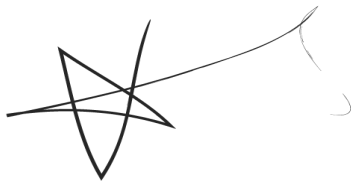
observations made since the establishment of OGP and since their countries joined the global initiative.

Originally, this was meant to take shape in the form of a formal type of survey with formal observations and opinions. This was however changed as the exercise continued and lead to a different approach with more informal discussions with government officials and civil society representatives from various countries including Tanzania, Kenya, Sierra Leone, Moldova, Ukraine, Indonesia, South Korea, Spain, Brazil, South Africa and Malaysia. Further to this, I conducted a short, cursory literature review to support the findings made from the discussions I had had.

In the introductory discussions with many practitioners, I made my first observation: that the management of the OGP process and the relationship between governments and CSOs is fragile and tenuous. CSO representatives across the board agreed that they would speak frankly only if they spoke off the record because they needed to remain in a position to continue collaborating with government through this process.

Having agreed to this, I resolved to make this paper an informal conversation builder - the first step towards more robust debate and more formal research that will hopefully lead to better understanding of the situation. This paper is not scientifically researched according to any established methodology. It is simply notes from my conversations, a brief review of literature and the observations that arose from them.

This is the exciting beginning of a stimulating process to gather and develop knowledge that will help sustain the mission of OGP.



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The Backstory

The Open Government Partnership was established in 2011 as a multilateral initiative that aimed to secure commitments by governments around the world to promote transparency, empower citizens to better contribute to public processes, fight corruption and harness technology for better governance. It is an international platform for domestic reformers committed to making their governments more open, accountable and responsive to citizens.

The idea behind OGP was to create a platform upon which countries could systematically undertake the journey towards openness in an inclusive and measurable way. As a multilateral and voluntary initiative, OGP operates in a way that fosters inclusiveness for all countries. The requirements to entry (which is in itself a process) are low enough for most countries to be a part of the process. A key thing to note is that rather than being an end to work towards, joining OGP marks the beginning of a process that countries make towards being more open, inclusive and democratic.

For countries to join OGP, they sign the Open Government Declaration that commits them to, among other things, increase the sharing of information about government activities, support civic participation, implement the highest standards of personal integrity of public officials and increase the usage of technology for openness.

Having signed the Declaration, governments are then encouraged to develop a two-year Action Plan structured around four key areas: Fiscal Transparency, Access to Information, Income and Asset Disclosure and Citizen Engagement. In doing so, governments are encouraged to forge a platform for multi-stakeholder engagement. This, in a sense, means that the Action Plan should include the input by stakeholders, who include all arms of government as well as civil society players, media and individual citizens. There is then an Independent Review Mechanism (IRM) to assess the level of implementation of the Action Plan.

Civil Society Participation

Martin Tisné, the Director of Policy at the Omidyar Network and a steering committee member of OGP has, on numerous times, stressed the importance of civil society participation in OGP. He actually terms it as one of three “rules” of OGP:

“Civil society participation is the defining factor of the Open Government Partnership. Civil society sit on the OGP steering committee, are represented at co-chair level, are involved in the drafting, co-creation and implementation of OGP national action plans”

The designers of OGP, among whom was Tisné, envisioned that civil society was to be involved in all the steps of the process for OGP. These steps include the deciding by a country that it should join OGP, the development of the first OGP Action Plan, the

implementation of the plan (provide support and monitor) and its eventual review (including participating in OGP's Independent Reporting Mechanism).

In almost every gathering where open government has been discussed, such as the UN General Assembly in New York, the US-Africa Leadership Summit and many others, CSOs have had a special session to meet with governments and each other.

In the conversations that I had in the preparation of this paper, I asked the following main questions that yielded to the observations that I make here:

1. What are the attitudes of government towards CSOs and vice versa? How do these attitudes lead to the progress that countries make in OGP?
2. What is your own assessment of CSOs participation in OGP in your context?
3. What are the capacity gaps that should be filled to strengthen CSO Participation?
4. Are CSOs Players or Spectators in OGP in your context?

Undertaking a brief literature review of the engagement of civil society organizations from five geographical regions, namely Africa, Europe, North America, South America and North East Asia, I also selected a handful of countries that are either developing their first Action Plan or already implementing their second.

Foremost, it is worth noting that I found that there is a scarcity of literature by civil society organizations detailing their experiences with OGP, at least where the countries identified above are concerned. This makes it quite challenging to assess the level at which CSOs in every country were engaged or left out by the government.

Most of the literature that surfaced in this paper emerged from the OGP's own website, where perspectives from external bodies was not distinct from what was already available. The lack of literature and evidence therefore supports my earlier observations where participation of civil society needs to improve and increase in number, as this gap exposes few voices that provide the breadth for OGP to be truly multilateral. While the assumption is often made that the government is not reaching out to civil society on OGP and issues related to it, the lack of documentation by civil society suggesting that they have reached out to government without prompting is telling.

I keenly read through the Action Plans from these countries observing for language on civil society engagement. There was acknowledgement of the contribution made by civil society in most Action Plans. However, there was indication that in many of these countries, consultations and involvement of CSOs was either lacking or very minimal.



Observations

1. The case of 'they'

In many countries, governments and civil society organisations treat each other with some level of suspicion. “Governments don’t want to be open and we as

CSOs have to force their hand and often manipulate them to get them to move and be open,” a South African CSO official said to me, adding that often it is a case of “two steps forward one step back”, citing the South African so-called ‘Secrecy Act’¹ as an example.

On the other hand, governments view civil society as insensitive and reckless. Speaking at the US-Africa Summit with two senior officials from Uganda and Cameroon, a Kenyan government official remarked:

“The fact of the matter is that as a government official I have to weigh implication of information that is released because information taken out of context or incomplete information can have adverse effects on the stability of the nation. CSOs do not have such responsibilities and they simply pander to the whims of their ‘pipers’ who pay them. We need responsible CSOs.”

It is this suspicion that in part makes the relationship between CSOs and government so tenuous.

Lack of trust in the government among the public has also been a challenge that hinders public participation. The government of Peru had a huge challenge fostering trust (perhaps due to a long-standing culture of secrecy) and hence getting citizens to actively participate in the OGP initiative. Even though the first Action Plan was constructed around four ambitious pillars with high potential impact, its implementation was problematic. There is therefore need to raise public awareness on the importance of the OGP process in order to have relevant engagement.

2. CSOs have been instrumental in getting countries signed up to OGP

With respect to all the countries that I spoke to, CSOs that work with government on governance issues have been at the forefront of advocating for their countries to join OGP. From Twaweza and Foundation for Civil Society in Tanzania, Transparency International in numerous countries, the Open Government Institute in Moldova, Open Institute in Kenya, to Society for Democracy Initiatives in Sierra Leone.

¹ The Protection of State Information Bill (2011)
<http://www.ssa.gov.za/Portals/0/SSA%20docs/Media%20Releases/2010/Summary%20of%20the%20Protection%20of%20Information%20Bill.pdf>

Emmanuel Saffa Abdulai is one CSO leader who narrates about such progress as the passing of the Freedom of Information Bill in Sierra Leone, the lobbying of which took ten years. He states:

“CSOs have been pushing for open government long before OGP came in to the picture. Sierra Leone is the country to watch as it steadily moves to open up its systems to citizens.”

In many instances, CSOs are at the frontline of demonstrating that open government has a direct synchrony to the strategic objectives of the country. Some government officials are still chary about joining OGP because they are not convinced that it is to the benefit of the country - or that their citizens are ready to consume data, given the high poverty and illiteracy levels:

“I support you when you say that governments must create spaces for citizens to contribute to governance. But I am not sure that majority of our citizens have the literacy or the capacity to digest governance information at any significant scale, for them to be effective. We must build that capacity first.”²

3. CSO participation in the development of Action Plans can improve and be made meaningful

Meaningful engagement is lacking where the development of the OGP Action Plan is concerned in many countries.

IRM reports and members of civil society organizations in some OGP participating countries have revealed that the Action Plans were formulated within government ministries without consultation with civil society. This is particularly true for Spain where the Independent Reporting Mechanism’s Progress Report (2012-2013) reads:

“The government of Spain made no public consultation process for the development of its first action plan. There was no opportunity at this stage to define the action plan under a participatory fashion, nor to conduct discussions among government officials, members of CSOs and citizens in order to define commitments and joint tasks for implementation, monitoring and evaluation.”³

² Comment by Alfred PM on <http://www.alkags.me/how-sustainable-is-ogp/>

³ Independent Reporting Mechanism (IRM): Spain Progress Report 2012 - 2013
http://www.opengovpartnership.org/sites/default/files/Spain_Final_2012_0.pdf

Spain fully completed five of its first Action Plan commitments and is in the process of completing/reviewing seven more, with one yet to begin. The formulation of this Action Plan occurred entirely within the Ministry of the Presidency, which acknowledged that the lack participation of civil society was credited to lack of time. Criticism of the Action Plan itself came under fire for being weak, vague, subject to exaggeration and, again, not having undergone a public consultation. In light of these criticisms, Access Info Europe called for a full public consultation on the proposals and raised a series of concerns about the Spanish government's OGP Action Plan, including:

- The Access to Information law drafted fell short of the international standards
- The Action Plan inadequately referenced public participation, despite containing some remarkable proposals
- Some proposals contained in the Action Plan have no bearing on open government.

Helen Darbshire, the Executive Director of Access Info Europe, remarks that Spain's Action Plan "shows that the Spanish government needs to do much more work to understand what precisely is open government and a participatory democracy."⁴

Some governments have confessed that there were challenges that limited effective CSO engagement. For instance, the government of Tanzania credits the dissatisfying implementation of its first OGP Action Plan to insufficient participation by the civil society and general public owing to limited finances and perhaps, the newness of the OGP concept in the country. Despite the concerted efforts to draw in civil society and public participation through various platforms to collect diverse views, Tanzania fell short on its outreach and consequent engagement during the drafting of its first Action Plan.

Commitments made under the Open Government Partnership reflect Mongolia's experience and aspiration to develop an open and transparent government. The adoption of its Anti-Corruption Law and the Law on Information Transparency and the Right to Information in 2011, as well as accession to the UN Convention Against Corruption in 2005 were important milestones on the way to joining OGP.

However, the government of Mongolia (which is developing its first Action Plan) admits that they are experiencing a major challenge with increasing transparency and civic engagement. They have cited that this is owed to their Information Transparency and Information Access Right Act, coupled with the

⁴ Spain in OGP - Access Info Europe <http://access-info.org/spain/237-spain-in-ogp>

absence of transparency standards, performance indicators and tools for monitoring the accountability of government decisions:

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“Despite the fact that the new practices of public engagement are being introduced, some government policies and decisions are still being passed without consultation with public in advance.”⁵

“Truth be told, in South Korea the government simply did the action plan and unveiled it to civil society days before the deadline. There can be no meaningful engagement when it is an after-thought,” Lucy Park, a South Korean civil society official from Team POPONG told me.

In Kenya, where there has been a good record of CSO engagement in the past, there has been an increase in CSO engagement as the country develops its Action Plan. But, as Mutava Asiyu, an activist and journalist noted to me, “meaningful engagement cannot constitute meeting with a handful of friendly organizations over tea and cookies and then submitting an action plan.”

The South African government thrived in their ability to engage both citizens and civil society across the country. The government held public participatory dialogues and undertook a consultative process with the South African NGO Coalition (SANGOCO⁶), also involving National and Provincial Legislatures and civil society (including labor, business, civic and faith-based bodies). South Africa’s main focus was to increase public integrity, provide security and effectively manage public resources. Its Action Plan was therefore focused on strengthening the instruments of combatting corruption, strengthening mechanisms for meaningful citizen engagement and development of an accountability management framework for public servants. Through this exercise, they had input from different stakeholders across the country, representing views from all nine provinces, as well as individual civil society inputs from organizations such as the Open Democracy Advice Centre and the Centre for Economic Governance.

Canada also embodied the multilateral approach within their own borders, with their first Action Plan informed by their consultations with citizens from across the country, members of civil society, the private sector, key federal departments and agencies, and other levels of government.

⁵ National Action Plan of Government of Mongolia on Open Government Partnership
<http://www.opengovpartnership.org/country/mongolia>

⁶ SANGOCO is the largest single umbrella body of civil society organisations in the Southern African region

Participation of CSOs at the international level has supported a stronger country-level process and outcomes in many of the OGP member countries. As Juan Pardinás⁷ argues, Mexico's civil society was initially disappointed by the lack of consultation and weak commitments in the initial Action Plan. They were only able to make an impact and empower the reformers in government by having civil society on the steering committee alongside government officials.

Despite this initial disappointment, strong CSOs on the ground working to enhance public participation and consultations were a major facilitator of the successes that have been experienced in Mexico. The same can be said of South Africa. As a result of the intervention by CSOs in Mexico, they redrafted a stronger Action Plan, which included exciting progress on consumer protection and greatly expanded access to school budget information.

4. The number of CSOs that engage with government are few in each country

"We monitor the open government space but we are not directly involved. We have too much work advocating for Human Rights and Democracy," a Sierra Leone CSO Chief Executive remarked to me.

In each of the countries that I spoke to, I found that the number of CSOs that are active in OGP work tend to be very few. In Kenya there are six organizations, Tanzania about five, Indonesia six or seven and Korea two. Others are likely to come for a meeting if called but in general many organizations see OGP as outside the scope and only loosely related to their work.

This is also partly caused by insufficient publicizing of the OGP initiative. Even in some countries where considerable effort has been expended to consultations, a number of relevant stakeholders are unaware of the process. The South African IRM Progress Report states that while some NGOs are aware and have been tracking the initiative, others are still in the dark. The IRM for Mexico also suggests that the consultations were mostly carried out within the country's capital.

"We still have a lot of work to improve the engagement between CSOs and government and to increase participation," Nanda Sihombing, an OGP specialist in Indonesia said to me. "At least now we have a mailing list of the various organizations that work around OGP and we have improved engagement somewhat."

⁷ Former OGP Steering Committee member and the General Director of the Mexican Institute for Competitiveness (IMCO)

Olga Crivoliubic⁸ discusses that the main conclusion from the two independent reports carried out in Moldova is that the process was difficult to implement. She attributes this to insufficient monitoring mechanisms, insufficient human resource and an only partial awareness of the importance of the Open Government Partnership Initiative. This indicates that there is need for government officials as well as CSO stakeholders to have increased awareness of the initiative to acquire a deeper understanding of the roles and responsibilities they ought to undertake.

In Chile, the government (which says it's committed to increasing public access to government information) created a domestic OGP working group to elaborate a proposal for the country Action Plan. This working group was made up of only four NGOs, the Controller General and the Commission for Transparency. This is the team that came up with the Action Plan, which they subjected to public consultation before submitting to the public. Whether this was sufficient engagement of CSOs is quite questionable. Chile's progress report actually cites that CSOs interviewed indicated that the 'consultations' placed more emphasis on presentation of information by government hence impeding substantive dialogue on the commitments to be included in the Action Plan.

The government of South Korea went even further to state in its first Action Plan that it would commit to providing a two-way communication channel with its citizens, as well as continuous consultations with its civil society. The reality here, however, is that engagement with civil society was not sustained and the commitment not upheld, as this engagement was rushed and hurried before the deadline, like an "after-thought".

If we are to learn from Chile and South Korea, continuous engagement can only be realized where government and civil society alike would need to work together to foster the environment necessary for OGP and open government as a whole to prosper.

5. The voluntary nature of OGP is a challenge as much as it is a blessing

A concern that a number of CSOs have expressed relates to the nuances of the voluntary nature of OGP. The first involves the electoral cycle. Every four two five years, people elect a new government and often the public officials change - or their priorities change.

⁸ Independent Assessment of the Progress of the First 2012-2013 OGPA Implementation in Moldova (2 July 2014) Open Government Partnership Blog
<http://www.opengovpartnership.org/blog/olga-crivoliubic/2014/07/02/independent-assessment-progress-first-2012-2013-ogpa-implementation>

In Indonesia for example, Nanda tells of the impact that the change in the Information Commission had on the momentum that had been gained in OGP. There was a significant slowdown, which was stemmed as Indonesia took up the co-Chair position at the OGP. In Kenya, after the elections that saw a change in government and the exit of the erstwhile OGP champion, Bitange Ndemo, momentum reduced significantly until nearly a year later in June 2014 when the new government had received some advocacy.

In part, the voluntary nature of OGP applies to both governments and civil society. Taking the example of Tanzania from above, civil society had limited participation in the OGP process, owing to finances (and lack thereof) that may have impeded their ability somewhat in actively engaging. I spoke to a South African organization that supports citizens right to an education at any age and the Executive Director said to me that they care about citizens and OGP is not quite related to her work.

Therefore, it can be said that the coordination of efforts around OGP are wanting, given the voluntary nature of the initiative.

6. The IRM Process should be made stronger

The Independent Reporting Mechanism process that has been done in the past has received a cool review from CSOs in some of the countries that I spoke to. In Kenya, none of the organizations that sit in the Open Government Working Group met with the IRM specialist from OGP who was conducting the review. Muchiri Nyaggah, the Policy Lead at Open Institute said, “We actually heard that there was someone around who we would meet but we never saw them - I am not sure what the report actually says.” Kenya is in the process of releasing its second Action Plan.

Recommendations

Self-Assessment Reports and the reports of the Independent Review Mechanism conducted in the different countries brought to light challenges that limited the successful implementation of OGP Action Plans. In summary, the observations noted in this study are:

1. The case of ‘they’

Indifference, hostility, mistrust and a culture of secrecy among and between government and civil society has hindered progress on engaging citizens and civil society on OGP.

2. CSOs have been instrumental in getting countries signed up to OGP

On the forefront of the open government movement, CSOs efforts in advocating for their countries to join OGP have preceded government’s own. To wit, there is resistance by governments to join OGP due to their uncertainty on the benefits of joining the initiative to their country.

3. CSO participation in the development of Action Plans can improve and be made meaningful

Public participation around OGP is a major challenge for most governments, some of which cited that the factors included limited time, resources, finances, the ‘newness’ of the OGP concept, limited access, absence of information and absence of measurable standards for transparency.

4. The number of CSOs that engage with government are few in each country

Among CSOs, there was a considerable lack of awareness and insufficient publicizing on OGP. And even those who were well aware of OGP found the initiative to be outside their scope and only loosely related to their work. Beyond the wistful and hurried engagement that has been experienced among civil society in the past, there is need to foster sustained, continuous engagement.

5. The voluntary nature of OGP is a challenge as much as it is a blessing

Momentum on OGP gains is greatly impacted due to varying election cycles in different countries, resulting in changing priorities as well as public officials within government. As a result of the voluntary nature of the initiative, coordination of efforts around OGP are left wanting.

6. The IRM Process should be made stronger

Recommendations:

1. There needs to be increased awareness of OGP among civil society and citizens in OGP participating countries. Further, civil society should proactively prompt government on progress for OGP-related activities.
2. The OGP process should consider formulating a guideline on how civil society should be involved in the development of National Action Plans and their implementation, taking into account guiding appropriate timelines for gathering feedback from the public, among citizens and civil society alike.
3. There needs to be concerted efforts by government to take OGP across the country for increased representation and meaningful contribution. Lessons from South Africa, Canada and Mexico show that for civil society engagement in-country to succeed, concerted efforts need to be made to take OGP across the country.
4. There should be guidelines and mechanisms to gauge commitments made in Action Plans to ensure that they are robust, well thought out, realistic (yet ambitious) and of high quality.
5. Develop a methodology for a way in which civil society can undertake independent monitoring on the implementation of Action Plans.
6. CSOs and governments should include the OGP consultations in their budgets and possibly fundraise for OGP-specific activities or involvement.
7. Governments should strive to facilitate better coordination of efforts in driving public participation and engagement.
8. CSOs need to secure high-level political support, adequate resources, and promote the institutionalization of a culture of openness, not just of government but so too in their own organizations.

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