Open Letter to the Open Government Partnership Steering Committee

29 April 2016

Dear OGP SC Members,

This letter from 66 civil society organisations raises concerns and presents proposals as to how to strengthen the role of the OGP in advancing transparency, accountability and participation in the countries and regions in which we work.

The letter arose out of discussions between civil society organisations at the Mexico Summit (October 2015) and a series of subsequent exchanges and discussions.

As the OGP comes up to celebrating five years since it was launched, we very much hope that the ideas and suggestions in this letter will help to contribute to building upon the achievements of the first phase of the partnership's existence so that during the coming period it has a greater impact on advancing the culture and practice of open government.

We strongly believe that for the OGP to have any credibility at all, and to avoid the multiple and repeated accusations of "openwashing", it must have a set of strong core criteria against which all participating countries are ready to be measured.

The four main eligibility criteria developed in 2011 were a very lose framework to give a guiding structure to the creation of the OGP. These broad criteria permitted a large number of countries to be eligible to join, something that was criticised by civil society from the outset.

We recommend that now, five-years into the OGP, and out of recognition that in the field of open government continued review and evaluation of base-line indicators is a good practice, these criteria be revised by the SC working with the participating countries and civil society. We attach in Annex A some thoughts on how the core criteria can be strengthened.

Strengthening the eligibility criteria does not mean automatically excluding countries, but it does mean setting a clear benchmark for them to meet within a set time frame, and it does set the bar a bit higher for new countries to join, something that is appropriate now that the OGP is up and running: it should be a club that it is desirable to remain a member of, not one that is watered down by new entrants.

In any case, we believe that there should be a set of key indicators, which are an elaboration of these entry criteria, against which progress should be measured. For example, rather than just having an access to information law, there should be a certain score on the global RTI Rating. Or there should be specific progress on the IBP scores.

Progress against the more detailed criteria should be within a set time frame – for example, within two years of membership or in the course of two action plans. The IRM system should

have built into it a system for measuring demonstrable and significant progress on core criteria by all participating countries.

Furthermore, when any country backtracks in any area covered by the eligibility criteria and its own levels of open government upon entry, this should be taken seriously and should trigger a review mechanism whose sanctions include the possibility of suspension from the alliance.

1. HRs standards and the enabling environment for open government

Whilst it is not and nor should it be the role of the OGP to investigate or set standards for a broader set of human rights issues, we are nevertheless concerned that in some participating countries, the current context of violations of human rights, limitations on freedom of expression and association, and threats to activists means that the enabling environment for open government is seriously compromised.

Indeed, the opening paragraph of the OGP Declaration recognises this when it states that participating countries are "committed to the principles enshrined in the Universal Declaration of Human Rights, the UN Convention against Corruption, and other applicable international instruments related to human rights and good governance."

Such a commitment to human rights is further recognised in the use by the OGP as one of the four eligibility criteria the Civil Liberties score in the Economist Intelligence Unit's Democracy Index.

Hence it is of great concern that a number of countries have been admitted to the alliance, in spite of having a poor record on civil liberties. The OGP currently includes five countries which score less than 5/10 on civil liberties and a further 21 with less than 7.5/10.[1] Without a minimal enabling environment, it is unlikely that open government can develop; having such countries as members of the OGP threatens to undermine the credibility of the initiative.

Furthermore, there are a number of countries where there have been serious attacks on core democratic rights such as freedom of expression and association since the country joined the alliance.

In cases where the prerequisites for open government are either not being met or are violated, the OGP cannot look aside. There should be a stronger and more transparent mechanism for address countries on the margins of open government and there should be evidence that a tough line is being taken.[2]

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[1] Data taken from the 2014 update, the countries scoring less than 5 are Azerbaijan, Côte D'Ivoire, Jordan, Tunisia and Turkey.

[2] A case in point is Azerbaijan, whose membership of the OGP undermines the credibility of the entire Partnership, and has done from the outset. In spite of all the concerns raised, we note that recent SC minutes state that "In the case of Azerbaijan, the government has begun working on a new action plan that addresses some of the issues that the criteria and standards subcommittee has discussed. There will be further monitoring and dialogue with the Government of Azerbaijan to ensure strong civil society

There should be an honest and open discussion within the OGP, including taking soundings from civil society as to how to handle such cases. For example, by having a different track, closer scrutiny and monitoring, and possible suspension mechanisms. Taking into account the perspective of national civil society is important, but also of the wider community engaged in OGP given that with some countries performing particularly poorly, there are fewer incentives for mid-range countries, which can frustrate the efforts of civil society in those moderately-performing countries.

For the OGP to be different from inter-governmental initiatives where "quiet diplomacy" is often a byword for complicity and compromise, the OGP needs to have clear and rigorous criteria for dealing with human rights violations by participating countries. This is not hard to do: between the wealth of experience and knowledge that the civil society groups engaged in OGP have, and the multiple international human rights mechanisms and rapporteurs, it would be easy for the OGP to structure a response mechanism that helps protect the credibility of the partnership. We call on the SC to establish an open process with civil society to develop this.

Similarly, where countries are not abiding by the mechanisms created by the OGP itself—for example, through lack of transparency on action plans – there needs to be a swift and transparent response mechanism when civil society raises concerns, something that is currently not the case.[3]

2. Real Participation and Co-Creation

In the OGP Declaration, countries commit to ensuring transparency and participatory policy formulation and decision making. A starting point for this is to involve civil society in the creation and implementation of the action plans.

When the OGP began, there was a lack of clarity about what such a process should entail. Guidelines for this have now been developed, although they could be further defined and tightened. Even so, many countries are falling seriously short of these guidelines.

It is understandable that, in the early days of the OGP, in the enthusiasm to get the initiative up and running, countries scrambled to pull together pre-existing plans and commitments to fill their action plans. Following criticism by civil society, in a handful of countries we have seen a maturing of the process and a move towards something more akin to co-creation, but far too many participating countries are still developing their action plans in the same way as at the start of the initiative.

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participation in the new plan." This is an unacceptably weak statement from with respect to a country which has, inter alia, imprisoned its OGP civil society interlocutors.

[3] In the case of Spain, civil society raised concerns about the lack of transparency around the OGP process, with the government now having gone to court to challenge the decision by the Transparency Council that it should release reports on progress against OGP action plan commitments. A CSO letter to the SC in October 2015 has, to date, gone unanswered and there has been zero transparency about any exchanges that might have taken place between the SC and the Spanish authorities.

Part of the OGP rhetoric is that "co-creation" of action plans. The reality in the majority of the participating countries fail to move beyond very basic participation processes in which there is no real empowerment and where consultations on the action plans are little more than checking a box once every two years. A majority of countries have not established any permanent dialogue mechanism with civil society. Furthermore, at the end of the day, it is the governments that are permitted to set the pace on this, rather than the OGP unambiguously requiring the establishment of a co-decisional mechanism.

This should be a matter of priority concern to the OGP Steering Committee. We recommend that the OGP establish a rapid response mechanism to investigate whenever civil society raises concerns about the lack of participation. The role of the IRMs should be to monitor the criteria for this and act as a hotline for civil society. When the IRM sounds the alarm there should be a steering committee level mechanism for suspending the implementation of the action plan until the issues has been resolved.

This new mechanism could lead to action plans which have fewer commitments in them and for which the negotiation process takes longer. This is a trade-off that we believe is worthwhile if we are to inculcate genuine participatory processes. Indeed, the new, possibly narrower but certainly also more focused, action plans would likely do more to advance open government than the current *pot pourri* of pre-existing administrative reform initiatives.

3. Tighter and more effective Independent Review Mechanism

One of the structural problems of the IRM is that action plans are only evaluated after one year of implementation. Another concern is that even if there are critical evaluations or recommendations for feedback from the IRMs, they are not always integrated into subsequent action plans, nor is there a structured mechanism to review the way in which the feedback from the IRM is processed by the government. This often undermines or at least renders ineffective the efforts made by many of the IRMs.

These concerns were discussed in various sessions at the Mexico summit. There are specific ways in which these structural deficiencies could be addressed and by which they costly and time-consuming IRM process could be made more effective.

We propose a review of the way in which the IRM functions. A reform of the mechanism could include having the IRMs conduct a review of new action plans at the outset of each two-year process to evaluate both the content (e.g.: are the action plans genuinely designed to advance open government; is there a real "stretch") and the process by which they were arrived at (e.g.: was civil society participation adequate; has there been sufficient analysis of the open government challenges facing the country).

4. More Responsive, Open and Democratic SC

A number of the changes to the way the OGP works, as proposed here, should lead to a more responsive and open SC.

There are other measures that should be taken to bring the values of the OGP to its own mechanisms.

In the first instance there is a need for greater transparency. For example, there is no public information about the full teams working with the SC members, either on the government side or on the civil society side (the seconds are not named online). There should be contact information available for all members of the SC, both governmental and civil society.

There should also be fuller transparency of all meetings, including the regular calls of the civil society members of the SC. There should be an insistence on more information being made public about the various working groups.

In addition, there needs to be a more open and participatory process for selecting SC members, a process which is just entering a new round. For example, we propose that for this round there be webinar public hearings for all those on the short list of future candidates.[4]

There also needs to be a discussion about how to ensure that the civil society representation on the SC is more representative. There needs to be a debate on what form this should take, but at the very least the process by which the selection committee is formed should be more open. Furthermore, in the absence of actual voting (which would be complex and hard to make representative), then a system by which civil society can raise concerns, or question the candidates, and even present objections, could be developed, as well as ongoing mechanisms for input into the SC once in place.

5. Financial Support for Civil Society Engagement

One of the biggest challenges for civil society is having funds to engage fully with the OGP. Even supposing that there were mechanisms for co-creation of action plans, making the most of this opportunity would be a challenge for organisations in a number of countries. More in-depth participation, such as joining the SC is also something that is hard for many people to do given the time dedication required.

It is positive that there are travel grants for participating in OGP summits, but this is not sufficient in the absence of funds to continue engagement back home.

It is positive that there is a Civil Society Support Unit, but this is not sufficient.

Furthermore, there should be an evaluation of how better to empower the Support Unit so that it can help civil society to address the agenda of serious concerns set out in this statement.

As the civil society network around OGP, we call for a more structured dialogue with donors as to how support the work of national CSOs in engaging with this mechanism.

Organisations and Individuals

Access Info Europe - Helen Darbishire
Alianza Regional - Moises Sanchez
Africa Freedom of Information Centre - Gilbert Sendugwa

[4] This did take place thanks to logistical support from the World Bank

Acción Ciudadana (Guatemala)
Acción Ciudadana Frente a la Pobreza y la Desigualdad (México) - Héctor Rubio
Affinity Group of National Associations (AGNA), (South Africa) - Patricia Deniz
APES (El Salvador)
Asociación Civil por la Igualdad y la Justicia (Argentina) - Renzo Lavin
Asociación Nacional de la Prensa (Bolivia)
Asociacion por los Derechos Civiles ADC (Argentina)
Cainfo (Uruguay)
Centro de Estudios Ambientales y Sociales (Paraguay) - Raul Quiñonez
Child Goals Achievement Foundation (Nigeria) - Chris Arinze A.
CIP-Centro de Integridade Pública (Mozambique) - Jorge Matine
Ciudadan@s por la Transparencia (Mexico) - Cynthia Dehesa
Ciudadanos al Día (Peru) - Caroline Gibu
C-Libre (Honduras)
Costa Rice Integra (Costa Rica)
CPI Foundation, Public Interest Advocacy Center (Bosnia and Herzegovina) - Zoran Ivančić
Derecho, Ambiente y Recursos Naturales (Peru) - Aída Gamboa Balbí
ECD Manyara (Tanzania) - Kenedy N Axwessoo
Espacio Público (Venezuela)
Ezequiel Santagada, Instituto de Derecho y Economía Asunción (Paraguay)
Facultad de Ciencia Política y Relaciones Internacionales (CONICET), (Argentina) - Dr. Alejandro Álvarez Nobell
Freedom of Information Center of Armenia (Armenia) - Liana Doydoyan
Fundación Ciudadanía y Desarrollo (Ecuador) - Mauricio Alarcón Salvador
Fundación Conocimiento Abierto (Argentina) - Yamila García
Fundación Cuidadano Inteligente (Chile) - Pablo Collada and Manuel Barros
Fundación Democracia sin Fronteras (Honduras)
Fundación Multitudes (Chile) - Álvaro V. Ramírez-Alujas / Paulina Ibarra
Fundación Violeta Barrios de Chamorro (Nicaragua)
Fundamedios (Ecuador)
FUNDAR - Centro de analisis e investigación (México)
FUNDE (El Salvador)
FUSADES (El Salvador)
Gobierno Abierto, Centro de Pensamiento (Spain) - Oriana Oviedo Ojeda
GONG (Croatia) - Jelena Berkovic
Hope Foundation for Social Entrepreneurship (HoFoSe), (Tanzania) - Tumainiel Mangi
Institute for Development of Freedom of Information (Georgia) - Giorgi Kldiashvili
Instituto de Derecho y Económia ambiental (IDEA) - Paraguay
IPLEX (Costa Rica)
K-Monitor (Hungary) - Sandor Lederer
mySociety (UK) - Mark Cridge
Niimar Iraghw Cultural Group and Education Initiatives (Tanzania) - Daniel Thomas
Open Government Foundation (Colombia) - Alexander Plata Pineda
Open Knowledge Foundation (Germany) - Daniel Dietrich
Poder Ciudadano (Argentina) - Pablo Secchi
Poder Ciudadano (Venezuela)
Policy Alert (Nigeria)- Tijah Bolton Akpan
Pro Acceso (Chile)
Rasheed Coalition for Integrity and Transparency (Jordan) - Osama M. Al Azzam MBA, ACPA
Social Justice (Côte d'Ivoire) - Julien Tingain
Socio Economic Research and Development Centre SERDEC (Nigeria) - Tijani Abdulkareem

Stati Generali dell'Innovazione (Italy) - Flavia Marzano
The Christian Spiritual Youth Ministry (Tanzania) - Nicodemus Siayi Soko
TI Bosni i Hercegovina (Bosnia & Herzegovina)
TI Ukraine (Ukraine)
Towards Transparency (TT); Centre for Social Governance Research (CENSOGOR)
Transparencia por Colombia (Colombia) - Elisabeth Ungar Bleier
Transparencia por Venezuela
Transparency International Georgia (Georgia)
Visor Chubut Observatorio de Informacón Pública de la provincia del Chubut (Argentina) - Gaitán Tabuyo
Vouliwatch (Greece) - Stefanos Loukopoulos
Women Against AIDS and Poverty (Tanzania) - Agnes C. Lowri

Individuals
Dr. David Goldberg (Scotland)
Marija Risteska, PhD, Centre for Research and Policy Making (Macedonia)
Aniceta C. Baltar, Concerned Citizens of Abra for Good Government (Philippines)

Annex A: STRENGTHENING THE ELIGIBILITY CRITERIA

There are a number of specific ways to strengthen the eligibility criteria. For example, when it comes to **access to information laws**, it is not sufficient simply to have a law, but it should be of a certain quality. For countries with weak laws (Italy is a case in point), the OGP should make it a precondition to reform within a certain period of becoming an OGP member.

For any country where there is a backlash against transparency through weakening of the legal framework for access to information (as was recently threatened in the UK, and has happened in Hungary, and in Honduras with secrecy laws that undermine the access to information law), there should be a rapid response mechanism and the country should be held to account by the OGP.

A bigger challenge **is measuring levels of transparency in practice**, given the concern that some OGP member countries have strong laws but very poor levels of transparency in practice. There is usually ample evidence from local civil society about this and a priority for the OGP should be to support and encourage measurement of actual transparency in order to evaluate real levels of openness in the participating countries. This could be done, for example, through a broader basket of documents, beyond budget information and assets declarations, and could better take into account indexes such as the Open Data Index.

When it comes to the **citizen engagement criteria**, the OGP uses the Economist Intelligence Unit's Democracy Index and in particular the civil liberties score. A problem here is that a measure of civil liberties is not a measure of engagement in the sense of participation. It may be there is no current global index of levels of participation and indeed it is something much harder to measure. We therefore recommend that this entry criterion be renamed, but also be taken properly into account (see point 2 above). This should be done in parallel with strengthening the criteria for measuring citizen participation in OGP processes, which should be a core post-entry criterion.

The OGP should also seek out other indices that relate to the core values in the Declaration. For example, when it comes to the commitment to have **the highest standards of professional integrity** and to having robust anti-corruption policies, it seems that to measure this only on the basis of publication of assets declarations for a handful of senior public officials is disingenuous at best. Furthermore, we have a number of OGP members that do not adequately meet this criterion, for example, through having very limited legal frameworks for assets declarations and then not making these public. There is a pressing need to revise this criteria and improve it.