Open Government Partnership

Natural Resource Governance Institute

November 2017

Two Steps Forward, One Step Back: the Open Government Partnership in Mexico

Tamar Hayrikyan

The OGP Openness in Natural Resources Working Group is co-chaired by the Natural Resource Governance Institute and the World Resources Institute. It commissioned three case studies to identify opportunities and challenges in the implementation of natural resource commitments and document how civil society groups participate in these commitments development in different contexts. This case study explores Mexico's OGP commitments related to the extractive sector.

INTRODUCTION

The Open Government Partnership (OGP) has had a tumultuous history in Mexico, most recently marked by the withdrawal of civil society groups from the initiative in May 2017 following allegations that the Mexican government had been spying on activists and journalists and the absence of and official investigation into the matter.[1] Three National Action Plans (NAPs) preceded this turn of events, starting in 2011 under the administration of former President Felipe Calderón. Mexico's second NAP (2013–2015) was elaborated during a pivotal period for natural resource governance in Mexico: the adoption of the 2013 energy reform.

This initiative created an entirely new universe of regulations for gas and petroleum as the sector opened to private investment. (The sector was previously dominated by the state-owned oil company Pemex.) As a result, the reform has created new challenges: ensuring open and fair public tenders; transparent and inclusive revenue management; and effective management of environmental, social and human rights impacts as Mexico undergoes more aggressive and extensive extraction of oil and gas. Two of the three commitments examined at in this case study were directly affected—both positively and negatively—by the energy reform context.

This case study draws on Mexico's experience implementing three natural resource governance commitments from the second NAP: Petroleum for All (commitment number 22), Mining for All (23) and Joining the Extractive Industries Transparency Initiative (EITI) (26).[2] These three commitments address issues that have been subject to significant controversy, public debate, socio-environmental conflict, human rights impacts and civil society demands for increased transparency and access to information for many years—well before the launch of OGP in Mexico. In some cases, OGP has served as a platform for conversations, negotiations, commitments and progressive policies. In other cases, OGP has revealed obstacles to effective natural resource governance deeply engrained in Mexico's legal, budgetary and administrative systems. These obstacles might be overcome in the future even if larger political issues have limited the potential of OGP as a forum for collaboration and dialogue.

The lessons learned from Mexico's OGP experience remain relevant for a possible future renewal of

1 Azam Ahmed and Nicole Perlroth, "Using Texts as Lures, Government Spyware Targets Mexican Journalists and Their Families," *The New York Times*, 19 June 2017, https://www.nytimes.com/2017/06/19/world/americas/mexico-spyware-anticrime.html.

2 *Alianza para el Gobierno Abierto (México)* (Secretariado Técnico Tripartita, 2013), in two other places)tment is titled elsewhere in the case study:in phrases.one by month.rend.n: http://aga.ifai.mx/Noticias/CodeArt_ListPermissionExtension/Plan de Acción 2013-2015.pdf. We chose to focus on the second NAP because the first NAP became obsolete in the wake of the 2013 energy reform. The third NAP is still in the Implementation stage until the end of 2018 and was cut short due to the withdrawal of civil society groups from OGP.

OGP in Mexico as well as for OGP globally. For each commitment, I summarize its primary subcomponents and implementation progress based on the most recent official progress reports (*Tablero de control;* henceforth *Tablero*).[3] I nuance the official results with information from interviews with individuals from the government and civil society who participated directly in the elaboration and/or implementation of the commitment.

COMMITMENT 22: PETROLEUM FOR ALL

"Promote greater transparency and accountability in the hydrocarbons sector so income deriving from these resources are utilized for investment in health, education, infrastructure and social protections, and other investments in development and social well-being."

Minimum commitments:

1. Publish signed contracts with extractive companies.
2. Ensure that regulators publish timely and complete reports on operations, including income and projects.
3. Apply transparency and accountability standards to state-owned companies and natural resource funds.

Implementation of Commitment 22 was directly affected by the adoption of the energy reform, which essentially privatized the hydrocarbon industry in Mexico. Constitutional reforms followed by a series of secondary laws altered the status of the state-owned oil company and regulated the participation of private companies in the Mexican hydrocarbons sector. Progress on this commitment was linked to the adoption of secondary legislation establishing the nature, scope and format of public information related to the energy sector.

Observations

Civil society actors reported that their principle ask with regard to Commitment 22—the publication of key information in a centralized platform in open-data formats—was largely fulfilled. Dialogue with government participants took place at two levels: political (with the Energy Secretariat, or SENER) and technical (with the National Hydrocarbons Commission, or CNH), both of which were considered indispensable for constructive dialogue.

On the political level, not all obstacles were overcome. For example, Pemex's participation was inconsistent and showed a lack of political will, with inconsistent participation in meetings and a lack of follow-through. SENER's participation was consistent, but unprepared: it was observed to be unaccustomed culturally to direct confrontation with civil society actors and lacking in technical knowledge, which together resulted in a limited capacity to field the nature and scope of transparency demands from civil society groups. By contrast, CNH's participation was consistent (the same person came to every meeting) and the commission was receptive to discussing the technical feasibility of complying with expanded transparency commitments. As a result, new information is being published on the CNH's informational web portal in open-data format.[4] Between SENER, CNH and politically experienced and technically knowledgeable participants from civil society, there was sufficient political will and technical capacity to allow for constructive negotiations.

In comparison with implementation, the evaluation and reporting phases of Commitment 22 are lacking. This situation points to deficiencies in the monitoring of progress on commitments, namely a lack of rigor and clarity about evaluation criteria and inconsistent reporting across different media. These discrepancies may be due in part to the absence of co-participation with civil society groups in the evaluation stage of implementation. As shown below in the context of the other commitments, civil society participants reported that during the second NAP, their inputs on the progress report were not incorporated prior to its publication, and their subsequent criticisms resulted in no reaction from the Mexican government.

3 http://tablero.gobabiertomx.org/
4 *Portal de Información Técnica* (Comisión Nacional de Hidrocarburos, 2017), https://portal.cnih.cnh.gob.mx.

COMMITMENT 23: MINING FOR ALL

"Promote greater transparency and accountability in the mining sector to drive development and social well-being."

Minimum commitments:

1 The government and civil society stakeholders jointly elaborate a diagnostic that evaluates the existence, quality, accessibility and gaps in geographic, statistical, socio-environmental, fiscal, financial and administrative information in the mining industry.
2 On the basis of the results of the diagnostic, guarantee access to information, ensuring that it is timely, adequate and in open data format, in accordance with the normative framework in place between November 2013 and October 2015.
3 The government and civil society stakeholders jointly elaborate proposals to eliminate obstacles to transparency in the mining sector identified in the diagnostic.

For the General Directorate for Mining (DGM, a subdivision of the Economy Secretariat), a primary concern throughout the negotiation and implementation of the commitment was to overcome legal, budgetary and administrative obstacles to release information civil society groups were demanding under Commitment 23. For civil society actors, the objective was the publication of certain key categories of information: geochemical survey data, geographical coordinates of concessions, and precise, up-to-date information on titleholders. Civil society actors consistently asked that the information be available in open data formats (CSV or TXT).

Observations

Civil society actors and the DGM reported encountering the greatest amount of difficulties in implementing Commitment 23 due to four types of obstacles:

1 Lack of political will to make certain information (such as updated titleholders of mining concessions) publicly available

2 Civil society actors and government officials uninformed regarding legal or technical aspects of natural resource governance and transparency

3 Incompatibility between transparency aspirations and the Mexican legal framework

4 The DGM's inability to produce the requested information because of an antiquated information management system and a limited budget

One of the most impressive achievements in OGP Mexico was that civil society groups and mining regulators were able to reach a common understanding: the DGM's bare-bones budget was one of the most important obstacles to achieving the transparency goals set in Commitment 23. This point was underscored in an interview with a DGM official, who also emphasized that finding a common technical and strategic language with a civil society counterpart was a determining factor in the DGM's ability and resolution to switch gears. By proactively searching for creative solutions that would enable the office to come through on at least some aspects of Commitment 23, the DGM was able to interpret Mexican jurisprudence to concede that geographical data on mining concessions is public information, even while resource constraints limit the office's ability to maintain updated information.

COMMITMENT 26: JOINING THE EXTRACTIVE INDUSTRIES TRANSPARENCY INITIATIVE (EITI)

"Mexico joins the Extractive Industries Transparency Initiative."

Observations

According to the work plan laid out for this commitment, Mexico was to achieve EITI candidate country status by early 2015. Achieving this objective depended on a series of steps being completed, starting with the formation of the multi-stakeholder group (MSG) comprised of government, industry and civil society actors, followed by submission of the formal application to the EITI International Secretariat and concluding with submission of a work plan. As of the time of writing, EITI Mexico only just obtained candidate country status in EITI (on 25 October 2017).[5]

As was the case with the two other natural resource commitments evaluated in this case study, the official OGP progress report indicates that all of the key steps for Commitment 26 have been completed, even though Mexico has concluded the process of becoming an EITI candidate country only very recently. The *Tablero* links to documents that do not provide support for the claims of completion displayed therein. This governmental practice results in inaccurate and possibly misleading information about the state of progress on OGP commitments.

A key concern of both the government and civil society actors with regard to Commitment 26 was delays in implementation. The Energy Secretariat had to wait for the adoption of energy reform before advancing on EITI, and when it was finally ready to push forward, civil society groups took time to consult and elect civil society representatives nationwide. In short, the formulation of the original EITI commitment underestimated context and time requirements.

Both government and civil society stakeholders concur that civil society was underrepresented in groups that formulated the OGP's EITI commitment. That said, EITI became significantly more representative once it stepped out of OGP. Commitment 26 is an example of OGP serving effectively as an incubator for a natural resource governance commitment that can then flourish outside of the OGP framework. Though Mexico only recently became an EITI candidate country, it continued building a strong MSG, which is operationally and financially independent of OGP.

5 https://eiti.org/news/mexico-embraces-oil-gas-mining-transparency

CROSS-CUTTING OBSTACLES TO IMPLEMENTATION OF OGP NATURAL RESOURCE COMMITMENTS

All three commitments were similarly impacted by a set of common factors specific to the OGP context in Mexico.

Political

- All interviewees, including from the government and civil society groups, observed a notable difference in the pace of work across the three action plans, and the determining factor was the Civil Service Secretariat (SFP) replacing the Office of the Presidency in the leadership of OGP Mexico. Commitment, speed and seriousness of implementation of OGP commitments improved when the Office of the Presidency led the process; under the SFP, progress stalled. Both government and civil society actors attribute this difference to Mexican political culture of servitude and hierarchy, whereby the presidency commands substantially more respect and compliance than the SFP. In addition, the Office of the Presidency led the second NAP at a time when it coincided with Mexico assuming the presidency of the Open Government Partnership between 2013–2015.
- In at least one case, the agency that created the information had no leverage over the agency charged with publishing it (e.g., geographical data on mining, created by the DGM, but published by the Office of the Presidency).
- Allegations of government spying on activists and the absence of an official investigation prompted the withdrawal of civil society groups from OGP.

Methodological

- Government officials who participated in the elaboration of the commitments were not always the ones who had to implement them, especially in the case of Commitment 22. Personnel changes created confusion, misunderstanding, inefficiency and delays in implementation.
- Ambitious timeframes discounted the political context (energy reform) and slower decision-making processes intrinsic to guaranteeing diversity and inclusion (EITI).
- The government self-assessment progress report mechanism (the *Tablero*) generated distrust between the government and civil society groups. Ultimately the government controlled the results of the *Tablero,* and in what appeared to be a self-congratulating public relations tactic, marked all indicators as completed, without taking into account contrasting observations among civil society actors.

Budgetary/administrative

- No budget was assigned to the implementation of OGP commitments. It appears that the reason was either a lack of awareness that this was a best practice, and/or legal/administrative obstacles in Mexico to assign *ad hoc* budgets outside of the legislative process.
- The mining commitments would not have been overambitious had the DGM been endowed with a larger budget and more modern technological infrastructure.
- The Office of the Presidency's open data platform, datos.gob.mx, is lacking as an access-to-information tool. While it is intended to function as the primary hub for information created from OGP commitments, it does not establish minimum requirements for methodological rigor or consistency. (For example, that files include metadata that have to be regularly updated.) Nor does the platform comply with basic tenets of open data, such as maintaining version control of the files so that the public can observe and review changes in the data over time.

LESSONS LEARNED AND RECOMMENDATIONS

- **Participation and methodological clarity.** Governments need to invest resources and efforts in ensuring broad and inclusive participation of civil society in both the development, implementation and monitoring of the natural resource commitment; and designing and implementing an effective participatory methodology for elaborating clear, context-sensitive, realistic natural resource commitments, as well as for evaluating implementation quality and progress (taking care not to equate consultation with co-creation).
- **Time sensitivity.** Government officials and civil society actors respond to distinct time pressures and require different processes and timeframes to engage in spaces that require commitment and representation. They should negotiate with an understanding of these differences and a dose of realism about the practical challenges to efficiency inherent in both sectors, especially when representativeness and inclusion should take priority.
- **Budget.** In the case of EITI and Petroleum for All, though the government did not assign a budget for implementation within the OGP framework, resources were available from other sources, such as independent donors or from internal allocations piggybacking on energy reform. However, regulation of the mining sector has yet to undergo an upgrade in the Mexican legislative framework and thus remains drastically underfunded; implementation of Commitment 23 suffered accordingly.
- **Capacity building.** The absence of a baseline understanding of key concepts such as transparency and open data, as well as of the scope of initiatives such as OGP and EITI, can unnecessarily lengthen and confuse discussions in the OGP space. Prior capacity building of civil society and government officials provided by international experts on these topics could help make better use of the time dedicated to negotiating and elaborating commitments. In addition to capacity-building, the OGP Support Unit or Working Group could contribute to country processes by creating methodological toolkits on natural resource commitments.
- **Technical expertise.** When both civil society and government interlocutors have a high level of technical expertise on natural resource governance, OGP serves as an effective platform for opening direct lines of communication, leading to overcoming distrust and clarifying misunderstandings, accelerating reform and building long-term constructive relationships between civil society and government in the sector.
- **Knowledge sharing.** Beyond simply technical expertise, it can also be extremely helpful for participants from both parties to get to know what implementing the commitment would look like from the other side of the table. Major obstacles to implementation, such as distrust or lack of empathy, can be overcome when counterparts in civil society and government can have truly transparent and frank dialogue about their respective needs, limitations and expectations.
- **Limitations.** OGP has demonstrated its potential for encouraging constructive dialogue, creating political pressure and advancing a culture of transparency. However, it is important to recognize its success depends on broader national contexts in which complementary legislative, political and social processes are taking place. In Mexico, OGP was part of a broader, ongoing process of campaigning for reforms in natural resource governance, particularly in the field of transparency. Mexico's national transparency institute, INAI,[6] and compelling transparency through the judicial system with especially reticent government agencies (called the *Amparos* process)[7] play an important role in ensuring the success of good governance initiatives.

6 *Instituto Nacional de Transparencia, Acceso a la Información y Protección de Datos Personales* (2017), http://inicio.inai.org.mx/SitePages/ifai.aspx.
7 https://en.wikipedia.org/wiki/Recurso_de_amparo