OGP IN LATIN AMERICA:
IDENTIFYING OPPORTUNITIES FOR ADVANCEMENT IN OPEN GOVERNMENT COMMITMENTS

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SEPTEMBER 2014

Latin America hosts the highest proportion of countries participating in the Open Government Partnership relative to that of other regions. 15 member countries, 14 of which having presented and submitted National Action Plans, have committed to a total of 328 initiatives aimed at fulfilling open government principles.[1] As a number of countries in the region are now in the process of developing or implementing their second action plans, there is a need for reflection to draw on lessons learned and encourage new ways for citizen engagement in OGP processes.[2] This assessment is part of a larger effort to develop global comparative research on the smartness and ambition of open government commitments, and identify areas where civil society can push for more ambitious action plans.[3]

Important data collections are now available to develop cross-comparative analysis between OGP member countries, highlight good practices, and contribute to sound recommendations to improve action plans. The OGP's Independent Reporting Mechanism (IRM) has produced reports on 48 governments (14 from Latin America) that assess the development and implementation of OGP action plans, and monitor progress in fulfilling open government principles. IRM staff have extracted the data from the progress reports and made it available in open data format. The first database is a compilation of all 978 commitments or actions analyzed as part of the IRM process, including the 328 commitments from the 14 national action plans from Latin America.[4] The second database consists of information on how well each of the OGP participating governments participated in the OGP process as well as the existing institutional arrangements for OGP at the time of publication. The data is a critically important resource for researcher and civil society seeking to evaluate the progress made so far in the implementation of OGP commitments.

The following assessment provides an initial synopsis of some of the general trends that emerge after analyzing the IRM reports and speaking with experts in the field. Those consulted for this include experts working in the areas of fiscal transparency, budget disclosure, freedom of information and expression, technology and innovation, and citizen participation.[5] Several common themes emerge from the discussions, including obstacles to using OGP as a platform to advance open government policies. This assessment discusses these challenges and follows with a set of recommendations for civil society actors involved in the OPG process.[6] It includes a summary of some of the most notable open government achievements in Latin America along with a table of "strong" commitments; those emphasized as ambitious by experts in the field, civil society organizations involved in the OGP process, and the IRM progress reports.

FISCAL TRANSPARENCY & ACCOUNTABILITY

Governments throughout the Americas have made strides to improve transparency policies as part of their OGP commitments. Notable initiatives include commitments to enhance public disclosure of information on official budgets and public procurement. Such initiatives have led to newly available data that has increased public capacity to monitor and hold public officials responsible for the management of public funds.

According to the Global Initiative for Fiscal Transparency (GIFT), Honduras, Dominican Republic and El Salvador, are among the countries that have made rapid increases in fiscal transparency as measured by the Open Budget Index (OBI).[7] Other regional highlights include Brazil and Mexico, which are among six top OGP countries that exhibited both highly ambitious commitments as well as high implementation of their initiatives on fiscal transparency.[8]

Several Latin American countries used technology to enhance public access to fiscal data. The Dominican Republic developed portals to make available information on state purchases and contracts, and worked to connect its transparency portals at the state and municipal level. Paraguay implemented a system to catalogue and increase transparency of state purchases and public services. Uruguay included an initiative to simplify the processes of state services and increase public access to information on services most important to citizens. Brazil created portals to provide open data on resource appropriations on the federal fiscal and social security budgets (Resource Transfer Agreements and Contract System - SICONV). Costa Rica's action plan also included a commitment to create public procurement portals.

Such commitments make available information that was previously shielded from public view, which can be an effective anti-corruption tool. However, experts in the field note that the newly available information does not necessarily lead to greater public participation in the policy-making process. In the case of El Salvador, for example, where the government reported that its transparency portals led to an increase in its OBI score, civil society noted that the portals are generally not well known to the public. Civil society in Peru, Colombia, Costa Rica, and Paraguay, have also emphasized the need for initiatives that expand beyond open data, and promote wider use of newly available information. Thus, in countries where data disclosure is taking place, there is still a need for governments to take the next steps to ensure access to information leads to enhanced citizen engagement in public affairs.

BIG WINS IN FISCAL TRANSPARENCY & ACCOUNTABILITY	
Brazil	Created portals to provide open data on resource appropriations on the fiscal and social security budgets.
Costa Rica	Included a commitment to create public procurement portals.
Dominican Republic	Created transparency portals for state transactions, purchases and contracts. Connected transparency portals at the state and municipal level.
El Salvador	Created transparency portals for information on fiscal expenditures and investment.
Paraguay	Created a system to catalogue and increase transparency of state purchases and public services.
Uruguay	Simplified the processes of state services and increased public access to information on state services.

EXPANDING OPEN GOVERNMENT BEYOND THE EXECUTIVE

OGP initiatives include commitments aimed at promoting public integrity, such as the establishment of mechanisms to disclose wealth, prevent and fight corruption, and denounce and sanction abuse. Some of these initiatives have also functioned to expand open government to public entities beyond the executive, including to the legislative and judicial branches.

In its first action plan, Argentina committed to presenting a law to reform the judiciary to enhance transparency and access to information related to judicial decisions. Chile's first action plan included an important commitment to reform its law to regulate lobbying, to ensure transparent agendas of public authorities in contact with lobbyist. Interviewed stakeholders agreed on the relevance of regulating lobbyists through the creation of a public, updated registry. Chile also included a commitment to modernize the current Political Parties Act, to make political parties more open to the public. El Salvador included a similarly important commitment to promote the adoption of a law on political parties to regulate and establish norms on functions of all political institutions, which passed in February 2013.

These types of commitments demonstrate how OGP initiatives can expand open government further beyond the executive authorities to other government branches and political actors. There are obvious limitations, however, as the executive can only go so far as presenting laws and amendments before legislative bodies or other forums that require a parliamentary quorum. Moreover, while such initiatives have shown potential for OGP to expand open government beyond the executive, interviewees expressed the need for a stronger focus on expanding OGP to other areas of governance, particularly at the state and local level.

BIG WINS IN EXPANDING OPEN GOVERNMENT BEYOND THE EXECUTIVE	
Argentina	Presented a law to reform the judiciary to enhance transparency and access to information on judicial decisions.
Chile	Reformed its law to regulate lobbying. Reformed the political parties act.
El Salvador	Passed a law on political parties.

EXTRACTIVE INDUSTRIES TRANSPARENCY INITIATIVE (EITI)

26 of the total of 328 total OGP commitments from the region targeted transparency, including sector-based initiatives, such as the public works sector (Guatemala), housing sector (Colombia), economic and social sectors (El Salvador and Mexico), education (Brazil), and extractive industries (Colombia, Guatemala, Mexico, and Peru).[9]

Many of the initiatives relating to extractive industries involve taking measures to qualify to join the international Extractive Industry Transparency Initiative (EITI). Colombia's EITI initiative, for example, took the existing foundation of Mapa Regalías, a portal that maps out investment and royalty figures (royalty map) in areas of the country where there is significant resource extraction, and incorporated its further development into the first action plan. The idea of the map, which is near completion, was to provide free access to information to the public with the aim of reducing asymmetries to decision-making. [*See* Mapa Regalías, or Royalty map portal]. Colombia submitted its action plan for candidacy to EITI at the end of August 2014, just a bit shy of the original May 2014 target.

Mexico's first action plan included a commitment to join the EITI, but progress was limited to creating a working group. Mexico's second action plan, released January 2014, again contained a commitment to join the EITI. According to the EITI website, however, Mexico is still not yet a candidate country. Peru was designated an EITI compliant country in 2012, and included a commitment in its first actin plan to strengthen its EITI commission, expand its representation,

and evaluate implementation in regions with extractive industries. Peru's IRM report noted limited progress in fulfilling the EITI commitment, and highlighted the need for a monitoring mechanism to ensure progress of Peru's EITI commission. Guatemala became a candidate country for EITI in 2011, and included a commitment in its first action plan in 2012 to create a national commission to implement the EITI initiatives. While Guatemala fulfilled its objective to join EITI, it did not fulfill its other pledges to promote the diffusion of state information on extractive industry royalties.

BIG WINS IN THE EXTRACTIVE INDUSTRIES TRANSPARENCY INITIATIVE (EITI)	
Colombia	Took steps to join the EITI. Created a portal to map out investment and royalty figures in the country with the most recourse extraction.
Guatemala	Fulfilled its pledge to join the EITI.
Peru	Took steps to increase access to environmental information; committed to strengthen its EITI Commission, which developed measurement tools and reports about the level of completion of EITI measures in its annual reports.

PROMOTING FREEDOM OF INFORMATION AND EXPRESSION

94 of the 328 commitments in Latin America addressed access to public information,[10] demonstrating the high priority of promoting the right to information as an enabler right for other economic, social, and political rights.

Brazil and Colombia's first plans included commitments to pass access to information laws, which had been debated and advocated for by civil society for years. The laws finally passed in 2012 and 2014, respectively. Other countries, such as Chile, Brazil, El Salvador, Peru and Uruguay, included commitments in their first plans to enact reforms to strengthen the implementation of existing FOI laws. The creation of information offices in all public institutions in El Salvador to receive and respond to FOI requests was an important measure for the protection of the right to public information. Honduras included an important commitment to strengthen its oversight institute *(Instituto de Acceso a la Información Pública* - IAIP), establishing mechanisms for regular verification of government transparency portals.

The passage of Colombia's transparency law is a noteworthy example of how OGP can be used as venue to help promote a culture of openness. Colombia's IRM report highlights how civil society expressed concern over aspects of the draft FOI law that limited access to information that could cause "harm to public interest." Civil society expressed objection to such provisions that exempted from disclosure information from broad categories, such as defense and national security, public order and international relations. In the end, the Constitutional Court struck down the limiting provision, and the law passed last March of 2014 without such limitations.

In spite of these advances, however, new challenges have emerged. While Honduras and El Salvador have made important FOI advances, their transparency systems still require citizens to self-identify when filing a request. This obligation discourages requesters from using the law over privacy and security concerns associated with forfeiting information to the state, especially at the local level. In Honduras, civil society also has noted how the security sector generally operates outside the scope of the FOI law. The country's IRM researcher pointed out the limits to freedom of expression. These include attacks against journalists, and the passage of the Law on Secret Information *(Ley de Secretos)* passed in January 2014.[11]

Civil society organizations in Peru also voice concern that a culture of secrecy is prevailing, particularly with regards to information pertaining to national defense and security. Civil society groups highlight, for example, that Article 12 of Legislative Decree 1129, passed by President Humala in December of 2012, is incompatible with Peru's international law obligations, and with Peruvian law. Similar to the provision struck down in Colombia, the decree allows for broad

exceptions from disclosure for information relating to the defense sector. Peru's IRM report expresses deep concern over the Decree, and noted that it threatens to contravene the country's FOI law.

Civil society in the region has also been quick to point out the need for commitments that ensure greater protections for journalist and whistleblowers. Commitments in other regions can serve as models in this area; Montenegro's Action Plan included commitments to improve media freedoms and adopt whistleblower protection. There is room for growth in this area in the Americas, as several IRM reports recommend incorporating international guidelines, such as international Principles on National Security and the Right to Information (known as the Tshwane Principles) into future plans. Based on international law and best practices, these principles provide guidelines to developing policies relating to whistleblower protections, disclosure of national security-related information, and classification and declassification guidelines.

BIG WINS IN PROMOTING FREEDOM OF INFORMATION AND EXPRESSION	
Brazil	Committed to passing its long-awaited freedom of information law, approved in 2012.
Chile	Approved reforms to the access to information law (Ley No. 22.285).
Colombia	Committed to passing its long-awaited freedom of information law, approved in 2014. Constitutional Court struck down provision limiting access to information related to defense and national security.
El Salvador	Created information offices in all public institutions to receive and respond to FOI requests from citizens.
Uruguay	Empowered the Access to Public Information Unit (UAIP) to carry out activities to enhance the capacity of public entities to fulfill their transparency obligations as mandated by the Access to Information Law (Ley No. 18.381).

POLICING & PUBLIC SAFETY

One of the 5 challenges that OGP seeks to address is the creating safer communities, including measures that address public safety, police and military transparency, clarity on budgets, and rights of citizens.[12] While several governments in other regions have included commitments concerning police and public prosecution services, these types of initiatives have been lacking in Latin America's action plans. It is important for regional actors to consider commitments that ensure the publication of relevant information relating to police budgets and statistical data on crime, and ensure more effective civil society oversight of police operations.[13]

The challenge in Latin America has been getting these type of commitments introduced, notably in the countries with the greatest need for enhanced transparency in the security sector. Civil society groups in Peru have organized forums and developed proposals to increase transparency in the security sector. Nonetheless, the country's first action plan contained no commitments directly related to defense expenditures or public security, and civil society has expressed frustration over the inability to get ambitious commitments introduced in the second action plan that target the defense sector.

Honduras included a commitment it its first action plan to support a proposal for public security reform, which was considered only moderately ambitious and achieved limited completion. The IRM report recommended that the second action plan for Honduras address the OGP challenge of creating more secure communities, and include commitments relating to public security and community policing. Civil society in Honduras, however, met resistance from the government when trying to introduce such commitments. Only after international donors

emphasized the need to highlight security as an open government priority area, civil society was able to introduce a less-than ambitious commitment in its second action plan to increase citizen participation in the security sector.[14]

Other IRM reports, such as the report on the Dominican Republic, also called for commitments relating to citizen security and social programs. Mexico's IRM report emphasized that during the administration of Felipe Calderón, there were limits on the availability of information relating to security matters, such as information on the number of victims resulting from counter-drug policies, and the military budget. Mexico's second action plan took steps to address these areas, including important commitments to create a registry on detained persons, and a database on disappeared persons. These are important transparency issues, as it's considered best practice for states to make available data on the number of people in pre-trial detention, acquitted, and serving sentences in prison. Taking it a step further could involve creating national crime databases open and accessible to academic researchers and civil society organizations and the general public, and permitting further publication without restrictions.[15]

Even more ambitious initiatives could involve publishing data on complaints against police. Commitments could also address the need to provide information to citizens on how to register a complaint against the police (including protection for whistleblowers). Such commitments are fundamental for countries in Latin America to ensure greater transparency in their security sectors.

OPPORTUNITIES FOR ADVANCING OPEN GOVERNMENT THROUGH CIVIL SOCIETY ENGAGEMENT

While OGP has served as a platform to promote government openness at the national level, the success of the partnership varies greatly between countries across the region, and generally, citizens are demanding stronger commitments and more tangible results from their governments.

Recommendations for further civil society engagement, as reflected by experts and civil society involved in the OGP process in the Americas, include the following:

- Encourage the adoption of commitments that strengthen OGP activities at the subnational level.[16] For OGP to be effective, it needs to filter beyond the national level and enhance capacity for citizen engagement at the state and local level.
- Use available data to develop comparative research that highlights success stories and identifies room for advancements. Openness proponents have generally identified the need for evidence-based analysis to demonstrate how openness commitments can be put into action, and lead to positive results.
- Promote the adoption of commitments relating to public safety and policing. Use upcoming regional meetings and workshops as platforms to establish this as a priority area for the region to include in the open government agenda.
- Develop strategic plans to clearly identify priority areas for advancing open government agendas. This can involve regular forums involving civil society at the domestic level to develop unified strategies on how to advance transparency in areas of critical importance (local government, security sector, promotion of freedom of expression, etc.)
- Use OGP as an international platform and the IRM as an outlet to encourage adherence to international open government standards, and express objections to domestic efforts to rollback transparency gains.

Opportunities exist for civil society to utilize OGP as a mechanism to open greater civic space for participation by enhancing access to public information. Participating in OGP, however, requires considerable resources and investment from civil society organizations. There are levels of engagement that civil society can engage in, from participating remotely through mailing lists and webinars, to focusing on thematic areas, to full-on commitment in the production of government action plans. To justify this level of engagement, civil society needs to see more tangible results to be ensured that their hard work and investments are resulting in significant gains in government openness.[17]

For governments, it's essential to adopt commitments that extend beyond the executive agencies, in particular to the legislative and judicial branches. This can involve promoting reforms relating to judicial issues, proposing roundtables for the legislature and others to discuss transparency, strengthening Ombudsman offices and independent FOI oversight bodies, promoting laws on political parties, among others. It is also important to including stronger commitments that enhance citizen engagement through awareness-raising activities in order to inform the public about the initiatives underway to encourage broader participation, notably at the state and local level.

ENDNOTES:

1. Trinidad and Tobago has yet to complete its first action plan, which is in process, and planned for completion in 2014. See Alvaro Ramirez-Alujas & Niclas Dassen, *Winds of Change, The Progress of Open Government Policymaking in Latin America and the Caribbean*, Inter-American Development Bank, April 2014. The figure 328 refers only to the combined commitments of the first round of action plans.

2. Several Latin American countries have submitted their second action plans; Mexico (2014), Brazil (2013), Guatemala (2014), Honduras (2014), and Paraguay (2014). Several more are expected to be released in 2014. See Alonso Cerdán, *Thirteen New National Action Plans are Available on the OGP Website*, July 9, 2014, http://bit.ly/1zpghjB.

3. This assessment is part of an initiative of the OGP's Civil Society Coordinator team (CSC), Hivos, and the World Wide Web Foundation, to support civil society in OGP member states, emphasizing developing countries, with concrete tools and research to enhance their capacity to advance their open government advocacy efforts through the OGP platform. With support from the International Development Resource Center (IDRC), the project is creating advocacy tools based on evidence-based research for use by civil society and to improve the quality and ambition of OGP commitments.

4. The dataset includes the commitments and actions of seven of the founding eight countries: Brazil, Indonesia, Mexico, Philippines, South Africa, the United Kingdom, and the United States, ad those of 35 countries from the second OGP cohort. For more on the dataset, *see* guide to IRM data release; http://bit.ly/1tYcEBc. *See* also Joseph Foti, *Open Government Partnership (OGP) by the Numbers: What IRM data does (and does not) say about success in OGP*, July 2014, which uses a dataset that collapses all milestones with multiple commitments to single, aggregate milestones, bringing the total number of commitments assessed down from 978 to 898.

5. The opinions expressed in this assessment are based on analysis of the available IRM data on the implementation of Latin America OGP Action Plans along with interviews with open government experts from the World Bank, Inter-American Development Bank, University Professors, International Budget Partnership, regional freedom of information and expression advocates, and discussions with public officials and stakeholders within the countries highlighted in the assessment. The author would like to thank Cecilia Blondet, Nicolás Dassen, Felipe Estefan, Andrés Hernández, Greg Michener, Haydeé Pérez Garrido, Vivek Ramkumar, Moisés Sánchez, and Fabrizio Scrollini for their useful input and feedback in the development of this article.

6. The article does not provide prescriptive recommendations, nor is it exhaustive, rather it aims to provide a preliminary examination of the current standing of OGP and hopes for future open government initiatives in the Latin America region.

7. The other four were Croatia, Indonesia, Moldova and the Philippines. *Fiscal Transparency in OGP countries, and the Implementation of OGP Commitment: An Analysis*, Global Initiative for Fiscal Transparency, background paper prepared for the OGP-GIFT Fiscal Openness Working Group Asia Pacific Regional Meeting. http://bit.ly/1mmqAek.

8. *Fiscal Transparency in OGP countries, and the Implementation of OGP Commitment: An Analysis,* Global Initiative for Fiscal Transparency, background paper prepared for the OGP-GIFT Fiscal Openness Working Group Asia Pacific Regional Meeting. http://bit.ly/1mmqAek.

9. Alvaro Ramirez-Alujas & Niclas Dassen, *Winds of Change, The Progress of Open Government Policymaking in Latin America and the Caribbean*, Inter-American Development Bank, April 2014.

10. *Id*, at 16.

11. Reporters Without Borders, *New secrecy law in Honduras deals blow to public's right to be informed* (Jan. 16, 2014), <http://bit.ly/1iifSt5>.

12. The 5 grand challenges are Improving Public Services Increasing Public Integrity, More Effectively Managing Public Resources, Creating Safer Communities, and Increasing Corporate Accountability.

13. The Open Society Foundations produced an analysis of OGP security sector sample commitments, with recommendations for future commitments. *See Open Government Partnership Security Sector Sample Commitments*, Open Society Foundations, September 2011.

14. *Second Action Plan of the Government of Honduras*, 2014-2014, June 30, 2014, commitment number 14.

15. The Open Society Foundations produced an analysis of OGP security sector sample commitments, with recommendations for future commitments. *See Open Government Partnership Security Sector Sample Commitments*, Open Society Foundations, September 2011.

16. Action plans for only five countries in the region included specific commitments addressing open government at the sub-national level (Colombia, Mexico, Honduras, Paraguay and the Dominican Republic. Alvaro Ramirez-Alujas & Niclas Dassen, *Winds of Change, The Progress of Open Government Policymaking in Latin America and the Caribbean*, Inter-American Development Bank, April 2014.

17. Joseph Foti writes, "In considering 'Success' in OGP, one could look at varying results, ranging from inputs and outputs –whether or not basic OGP activities (action plans developed, high level summits attended) have been carried out—to outcomes—whether OGP had a net effect on opening government—to impacts—measuring whether opening government had a tangible impact on peoples' lives. The farther one moves from inputs, the less results will be directly attributable to explicitly OGP-related activity." Joseph Foti, *Open Government Partnership (OGP) by the Numbers: What IRM data does (and does not) say about success in OGP*, July 2014.

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